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Release #50-2025
nyc.gov/doi

FOR IMMEDIATE RELEASE
THURSDAY, DECEMBER 18, 2025

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DOI ISSUES REPORT EXAMINING CITY CONFLICTS OF INTEREST BOARD'S INTERPRETATION OF THE CITY'S MOONLIGHTING RESTRICTIONS AND TRANSPARENCY OF COIB'S ADVISORY OPINIONS

Jocelyn E. Strauber, Commissioner of the New York City Department of Investigation ("DOI"), issued a Report today that examines the New York City Conflict of Interest Board's (COIB) apparent position that the "moonlighting restrictions" in the City's Conflicts of Interest Law ("Chapter 68"), which generally prohibit full-time City employees from having second jobs with firms that do business with the City, do not apply to City-employed attorneys who seek to serve as outside counsel to entities with City business. DOI was prompted to explore this issue after learning that COIB issued an advisory opinion to First Deputy Mayor Randy Mastro, which determined that Mastro would not violate Chapter 68 by continuing to serve as an outside attorney to the Madison Square Garden Group ("MSG") in a lawsuit against a former New York Knicks player.

DOI is unaware of any legal authority supporting COIB's view and found that COIB overlooked the law's "moonlighting restrictions" in its advisory opinion issued to First Deputy Mayor Mastro. COIB takes the position that its advisory opinions are confidential; DOI obtained a copy of the advisory opinion issued to Mastro from City Hall and is independently confirming the letter's existence for the first time in this Report. Although COIB had the authority to permit Mastro to continue representing MSG while serving as First Deputy Mayor, it is DOI's position, supported by the plain language of Chapter 68, that the law requires COIB to do so via public waiver. Such a waiver, which would be issued upon a finding that the representation technically violated the law's moonlighting restrictions but did not conflict with the City's interests, would have publicly disclosed both: (1) the terms of the attorney/client relationship between Mastro and MSG and (2) COIB's permission for the arrangement. Instead, COIB issued what it considered to be a confidential advice letter to Mastro and, when it received a press inquiry about its "clearance" of Mastro's representation, said it could not respond because of City confidentiality laws.

DOI did not, and is not, investigating Mastro's representation of MSG, which he continued only after obtaining COIB's permission. Mastro was entitled to rely on the advice he received from COIB, even though DOI believes that the advice was legally flawed. A copy of the Report is attached to this release and can also be found here: https://www.nyc.gov/site/doi/newsroom/public-reports-current.page

DOI Commissioner Jocelyn E. Strauber said, "New York City's Conflicts of Interest Law impacts City employees at every level, including those in the most senior City government positions. Based on an examination of one COIB advisory opinion involving the City's second highest ranking executive, DOI found that COIB's interpretation of the law is inconsistent with the plain language of Chapter 68, as well as certain prior decisions of the COIB concerning the law's moonlighting restrictions. DOI also found that Chapter 68 requires that COIB make its advisory opinions public, in redacted form, and that COIB's lack of transparency in failing to do so undermines public confidence in COIB's determinations and limits information available to City employees about the rules that govern their conduct. DOI has made five recommendations that we urge COIB to accept and implement."

DOI also found that COIB does not comply with Chapter 68's requirement to publish its advisory opinions in redacted form. (Advisory opinions are distinct from waivers, which must be published without

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redactions, because advisory opinions do not give employees permission to engage in conduct that would otherwise violate the law.) Even if COIB had properly determined that First Deputy Mayor Mastro's relationship with MSG did not violate the law's moonlighting restrictions, COIB should have released a redacted advisory opinion disclosing its legal analysis. Such a publication would have notified the public that COIB does not consider outside attorneys to be subject to Chapter 68's moonlighting restrictions. But COIB did not comply with the statutory requirement to publish a redacted opinion in this case, and in fact has not done so since 2018 despite having issued hundreds of written advisory opinions since then.

COIB's questionable interpretation of the law effectively relieves it of the requirement to issue public waivers when it authorizes City-employed attorneys to act as outside counsel to private firms with City business. This, combined with COIB's failure to comply with the law's publication requirement for its advisory opinions, point to an overarching concern that COIB is operating in a less transparent manner than Chapter 68 envisions. Indeed, the fact that COIB cleared the First Deputy Mayor to serve as an attorney for a powerful local business interest was revealed for the first time only in the press and due to litigation. COIB's advice to Mastro is particularly significant because Mastro, like any senior City Hall official, has broad authority with respect to City matters that in theory could be beneficial to the client he was authorized to represent.

In connection with this Report, DOI is issuing the following Policy and Procedure Recommendations:

1. COIB should review the advice it gave to First Deputy Mayor Mastro concerning his ongoing legal representation of MSG to ensure that such advice is consistent with Chapter 68's moonlighting restrictions. If COIB determines that its advice was incorrect, COIB should amend its advice, and should issue a waiver to Mastro if COIB determines that a waiver is appropriate.

2. COIB should review its previously-issued advisory opinions to determine whether it has permitted any other City-employed attorneys to represent private firms with City business. If COIB has issued such opinions and the relevant conduct remains ongoing, COIB should re-consider that advice and, if necessary, amend its advice and issue waivers to the relevant individuals if COIB determines that such waivers are appropriate.

3. In the alternative, if COIB maintains that Chapter 68's moonlighting restrictions apply exclusively to in-house (not external) attorneys to firms with City business, it should issue a formal rule to that effect.

4. COIB should publish waivers pursuant to Charter Section 2604(e) on its website, so that members of the public do not need to submit FOIL requests to view them. The waivers should be published in a searchable format comparable to how COIB publishes its enforcement dispositions.

5. COIB should comply with Charter Section 2603(c)(3)'s requirement to publish its advisory opinions, including the March 2025 opinion issued to First Deputy Mayor Mastro, either by publishing the opinions with redactions or, if the required redactions would be so comprehensive as to deprive the opinions of any practical value, by publishing summaries of the opinions that omit the identity of involved parties.

The examination was conducted by DOI Inspectors General Audrey Feldman and Eleonora Rivkin who were supervised by Deputy Commissioner of Legal Affairs and General Counsel Andrew Brunsden, Deputy Commissioner of Strategic Initiatives Christopher Ryan, and Deputy Commissioner/Chief of Investigations Dominick Zarrella.

New York City
Department of Investigation

Report on the New York City Conflicts of Interest Board's Advisory Opinion and Moonlighting Waiver Practices

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DECEMBER 2025

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I. Executive Summary

The New York City Conflicts of Interest Board ("COIB" or the "Board") is an independent agency that interprets and enforces the City's Conflicts of Interest Law, codified at Chapter 68 of the City Charter. The law seeks to prevent situations where a public servant's private interests could influence their official decisions, to ensure public confidence that City officials are acting with the City's best interests in mind, and to avoid misuse of public resources for personal benefit. The Board consists of five appointed members and relies on a staff of approximately 20 full-time employees for its day-to-day work.

The Board and its staff give advisory opinions (or simply "advice") to City employees regarding whether their planned future conduct would comply with Chapter 68. If the Board determines that certain conduct would technically violate Chapter 68 but does not create an actual conflict of interest, the Board can issue a waiver allowing a City employee to proceed with conduct that would otherwise violate the law. A key distinction between the Board's advisory opinions and its waivers is that the Board has long treated its advice as entirely confidential, whereas the law requires the Board to make its waivers public. So, if the Board determines that an employee's proposed conduct would *not* violate the law, its advice to that effect remains private; if the Board determines that an employee's proposed conduct *would* violate the law but decides to issue the employee a waiver, the Board's waiver will be publicly available.

On March 18, 2025, the Board issued an advisory opinion to then-incoming First Deputy Mayor Randy Mastro, who had until then been a partner in a private law firm. The Board's letter to Mastro (hereinafter the "Mastro Advice Letter") opined that Mastro would not violate Chapter 68 by continuing to represent a longtime client, the Madison Square Garden group and its ownership (collectively "MSG"), for a limited period, in a lawsuit against a former New York Knicks player.

In the Mastro Advice Letter, the Board concluded that "Mr. Mastro may continue to represent MSG" under certain "specific and limited circumstances," including representations by Mastro that he would perform a limited amount of work for MSG while in office and that he would do so without compensation. The letter does not grant a waiver to Mastro; rather, the Board's letter concludes that Mastro's proposed course of conduct does not violate Chapter 68, such that no waiver is required.

Shortly after the Board issued its advice, the *New York Daily News* reported that COIB had "cleared" the representation.[1] COIB cited "city confidentiality laws" in refusing to confirm whether it had provided any advice to Mastro at all.[2] Mastro nevertheless confirmed in a public court filing dated April 4, 2025 that he had indeed received the Board's approval to represent MSG and summarized the advice he received from the Board.[3] DOI thereafter requested and obtained from City Hall a copy of the Mastro Advice Letter.

DOI found that the Board's advice to Mastro overlooked Chapter 68's broad restrictions on City employee "moonlighting": holding a second job or position with a private company or organization that does business with the City of New York. The applicable provision states that "no regular employee shall have an interest in a firm . . . engaged in business dealings with the city."[4] The law defines "interest" to include holding a "position" "as an attorney, agent, broker or consultant to the firm."[5] While the law is not a model of clarity, the plain language of the statute prohibits any full-time City employee (including First Deputy Mayor Mastro) from holding a position as an attorney to a privately-held firm with City business dealings (such as MSG).

In advising Mastro that his continued representation of MSG would not violate Chapter 68, the Board did not address the moonlighting restrictions quoted above. Instead, the Board considered several other provisions of Chapter 68 that could be implicated by Mastro's representation of MSG and provided advice that would allow him to undertake the representation without violating those provisions. The Board's failure to address the moonlighting restrictions in the Mastro Advice Letter implies that the Board found Mastro's proposed representation did not violate those restrictions.

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[1] Chris Sommerfeldt, *Randy Mastro to Remain MSG Lawyer While Mayor Adams' Top Deputy, Sparking Concern*, NY DAILY NEWS (Mar. 27, 2025), https://www.nydailynews.com/2025/03/27/randy-mastro-remain-msg-lawyer-while-mayor-adams-top-deputy-sparking-concern/.

[2] *Id.* ("COIB Executive Director Carolyn Miller said [] city confidentiality laws preclude her from commenting on whether the board gave Mastro permission to stay on the MSG case. Miller noted that Mastro is free to disclose any advice the board may have given him.")

[3] Letter from Randy M. Mastro to Hon. Richard J. Sullivan, *Oakley v. MSG Networks, et al.*, No. 17-cv-6903 (RJS) (SDNY), Dkt. 352. The filing was submitted in response to a motion by the plaintiff to disqualify Mastro from representing MSG based on his new City role. In the letter, Mastro wrote that he had submitted a declaration accompanying the request for advice to the COIB in which he had "swor[n] 'as a lawyer committed to meeting all of my ethical obligations,' that [he] felt 'compelled'" to continue representing MSG through the summary judgment phase of the litigation.

[4] City Charter Sections 2604(a)(1)(b), 2601(12), 2601(18); *see also* City Charter Section 2604(a)(6) ("[A] public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city.").

[5] City Charter Section 2601(12), (18).

The Board's advice to Mastro also raises the question of whether the Board has permitted any other City-employed attorneys to represent entities with City business unbeknownst to the public – a question that DOI cannot answer because COIB will not produce its advisory opinions to us for that purpose. DOI learned of the Board's advisory opinion to Mastro and was therefore able to explore the circumstances of that advice only because the content of the advice was made public, at least in part, by Mastro in connection with the litigation in which the Board authorized him to represent MSG.

DOI understands COIB's position to be that the moonlighting restrictions apply only to in-house attorneys employed by entities who do business with the City, but not to outside counsel who are retained by such entities. DOI is unaware of any authority that supports such a distinction. While an agency's interpretation of its own enabling law carries great weight, the Board's conclusion that City employees can act as outside attorneys to firms with City business without a waiver contravenes the literal text of the law, relevant legislative history, and past guidance issued by COIB itself. The Board's position also undermines the public's reasonable expectations of transparency regarding the outside activities of City-employed attorneys, at least to the extent those outside activities involve clients with City business. Should COIB persist in its interpretation, at a minimum it should engage in rulemaking to formalize a position that contradicts the plain language of the statute.

Although DOI agrees that COIB had the authority to permit Mastro's ongoing representation of MSG, the Board would have had to do so via public waiver (rather than via a private advice letter). Specifically, the law allows COIB to grant City employees public "moonlighting waivers" if the Board determines that a moonlighting arrangement prohibited by Chapter 68 "would not be in conflict with the purposes and interests of the City."[6]

As a result, the Board's determination (which in DOI's view is legally questionable) that Mastro's representation of MSG would not violate Chapter 68's moonlighting restrictions effectively hid the Board's permission for Mastro to engage in that representation from the public. This is because the Board's determination that Mastro's conduct would *not* violate the law allowed the Board to style its permission as a private "advice letter" rather than as a public waiver.

Even if the Board had properly determined that Mastro's representation of MSG would not violate Chapter 68, DOI found that the Board should have at a minimum released an anonymized summary of its legal opinion to the public. Chapter

[6] City Charter Section 2604(e). Alternatively, the Board could have issued an advisory opinion to Mastro determining that his conduct would violate the law and declining to issue him a waiver.

68 requires the Board to "make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party."[7]

Despite this requirement, in recent years COIB has taken the position that its advisory opinions are completely confidential because they are subject to the law's requirement that COIB's "records, reports, memoranda and files" remain confidential unless otherwise specified.[8] DOI believes this reading improperly overlooks the law's *separate* publication requirement that applies specifically to the Board's advisory opinions.

To be clear, DOI is not investigating First Deputy Mayor Mastro's representation of MSG, which he continued only after obtaining COIB's permission. Mastro was entitled to rely on the advice he received from the Board.[9] DOI is focused only on the plausibility of COIB's conclusion that Chapter 68 did not prohibit Mastro's position as outside counsel to MSG (and derivatively, that Mastro did not need a public waiver to engage in the representation). DOI also takes no position on whether it would have been appropriate for the Board to issue Mastro a public waiver to permit his representation of MSG under the circumstances.

More detailed explanations of DOI's findings are laid out below. DOI is also issuing policy and procedure recommendations ("PPRs") to COIB. Specifically, DOI is recommending that the Board either revise the advice it gave to Mastro (and any other similarly-situated employees) or formalize via rulemaking its position that outside attorneys are not subject to Chapter 68's moonlighting restrictions. DOI is also recommending that the Board comply with Chapter 68's publication requirement for its advisory opinions, which would entail publishing the advice it issued to Mastro in redacted form. Finally, DOI is recommending that the Board make its public waivers more easily accessible.

A visual summary of the process for seeking COIB moonlighting waivers and/or advisory opinions is included as **Appendix A** to this Report.

[7] City Charter Section 2603(c)(3).

[8] City Charter Section 2603(k).

[9] *See* City Charter Section 2603(c)(2) ("A public servant whose conduct or action is the subject of an advisory opinion [issued by COIB] shall not be subject to penalties or sanctions by virtue of acting or failing to act due to a reasonable reliance on the opinion.").

II. Findings

A. Background

COIB Advisory Opinions

The law requires the Board to issue advisory opinions upon the request of a City employee regarding whether the employee's "proposed future conduct or action" would comply with Chapter 68.[10] COIB generally refers to its advisory opinions as "advice" (or historically, "legal advice").

COIB's advice takes three forms:[11]

1. "Attorney-of-the-Day" Advice: The overwhelming majority of requests for advice are answered by COIB's "Attorney-of-the-Day" service, where COIB staff attorneys provide same-day responses to emails, calls, or public web portal submissions from City employees. COIB documents its informal advice in "call logs" but does not share with advice-seekers any written record of the advice provided.

2. "Staff Letters": COIB staff attorneys occasionally answer requests through "Staff Advice Letters" when a "question is a bit more complicated, or if the public servant wants or needs a more formal response."[12]

3. "Board Letters": The full five-member Conflicts of Interest Board may provide "Board Advice Letters" for questions that are "complex, novel, or sensitive."[13] The Board receives analysis and recommendations from its staff attorneys before issuing such letters.[14]

[10] City Charter Section 2603(c).

[11] *See generally* N.Y.C. Conflicts of Interest Bd., 2024 Annual Report (hereinafter "2024 Annual Report"), p. 5-7. COIB published its 2024 Annual Report in mid-2025, after DOI inquired about the distinction between "formal" and "informal" advice in COIB's earlier annual reports, which referred to those terms but did not define them. *See* N.Y.C. Conflicts of Interest Bd., 2023 Annual Report, p. 5-6. https://www.nyc.gov/assets/coib/downloads/pdf2/annual_reports/2023-nyc-coib-annual-report.pdf; N.Y.C. Conflicts of Interest Bd., 2022 Annual Report, p. 7-8, https://www.nyc.gov/assets/coib/downloads/pdf2/annual_reports/2022-nyc-coib-annual-report.pdf.

[12] 2024 Annual Report p. 5.

[13] *Id.*

[14] *Id.*

Chapter 68's Moonlighting Restrictions and COIB Moonlighting Waivers

Chapter 68 includes a blanket "moonlighting" prohibition barring full-time City employees from having an "interest" in a privately-held firm "engaged in business dealings with the City."[15] The law specifies that an "interest" includes a "position" with a firm, and that a "position" includes acting as "an attorney, agent, broker, or consultant to the firm."[16]

The law literally prohibits many secondary employment or contractual arrangements that do not pose a substantive conflict of interest, especially when the moonlighting employee does not exercise policy discretion in their City government position and/or the second employer does business with City agencies but not with the employee's City agency. In those circumstances, COIB can issue waivers allowing employees to engage in otherwise-prohibited moonlighting, provided that: (a) the head of the employee's agency approves it; and (b) the Board determines that the moonlighting "would not be in conflict with the purposes and interests of the City."[17]

The law requires the Board to issue its waivers in writing and to make them public.[18] Notably, the Board has no authority to issue an advisory opinion to an employee clearing the employee to engage in conduct that would otherwise violate the law; rather, the Board must do so via public waiver. In contrast, if the Board determines that the employee's proposed conduct would not violate the law, or that it would violate the law and cannot be waived, the Board will issue the employee an advisory opinion to that effect (see **Appendix A**).

B. Chapter 68's Transparency Framework

Chapter 68's Requirement to Publish Redacted Advisory Opinions

In contrast with its public moonlighting waivers, COIB has long maintained that its advisory opinions are entirely protected from public disclosure by the provision in Chapter 68 that makes the Board's "records, reports, memoranda and files" confidential, "except as otherwise provided" by the law.[19] While there may be benefits to keeping ethics advice confidential as a policy matter, in our view the law does not support COIB's position.

[15] City Charter Section 2604(a)(1)(b).

[16] City Charter Section 2601(12), (18).

[17] City Charter Section 2604(e).

[18] *Id.*

[19] City Charter Section 2603(k).

Contrary to COIB's longstanding practice, the law requires COIB to publish all its advisory opinions "with such deletions as may be necessary to prevent disclosure of the identity of any public servant or involved party."[20] COIB has suggested that this non-disclosure requirement calls for redactions so extensive that the published opinions would be without practical value in all cases.[21] DOI cannot meaningfully assess the merits of this somewhat sweeping position without access to the opinions themselves.

Notably, however, COIB regularly published anonymized advisory opinions issued to individual employees (including several high-ranking officials) throughout the 1990s into the early 2000s.[22] The Board also occasionally sought and obtained waivers of confidentiality where the official was so prominent that the Board could not effectively anonymize its advice.[23] Moreover, a recent appellate court decision questioned whether the law treats COIB's external communications, including communications with senior City officials, as confidential at all (though it did not address advisory opinions specifically).[24] COIB also regularly discloses its advice to DOI in the event of an investigation into alleged violations of Chapter 68 by the advice-seeking employee, and publicly discloses its advice if DOI substantiates a finding that the employee disregarded it.[25]

[20] City Charter Section 2603(c)(3).

[21] *See* 2024 Annual Report, p.5.

[22] *See, e.g.*, COIB, Advisory Opinion 2001-1 (Application of Ban on Political Fundraising by Policymakers to Case Where the Policymaker Is the Candidate); Advisory Opinion 98-10 (Pro Bono Legal Services to Community School Board); 94-11 (Agency Head Owns Real Property in the City).

[23] *See, e.g.*, COIB, Advisory Opinion 2007-4 (Financial Interests of Mayor Michael R. Bloomberg); Advisory Opinion 2012-1 (Financial Interests of Deputy Mayor Robert K. Steel); Advisory Opinion 2000-3 (Police Commissioner's Endorsement of Book Supporting the Police Museum); Advisory Opinion 96-2 (Position of HHC President Marcos at NYU Medical School).

[24] See *Matter of New York Times Co. v. City of New York Off. of the Mayor*, 194 A.D.3d 157, 163 (App. Div. 1st Dep't 2021) ("Section 2603(k) provides confidentiality to the Board's own work product and files as it goes about its sensitive work of investigating and adjudicating ethics complaints. However, when those records are transmitted to other governmental agencies and are no longer in the sole possession of the Board, confidentiality under section 2603(k) ceases to apply to those records.").

[25] Specifically, if DOI's investigation substantiates the allegation, and COIB files an enforcement action, the resulting public disposition generally references and describes the advice that the employee received. *See, e.g.*, *In re David Jimenez*, Enf't Disposition No. 2021-429, COIB (2021), https://www.nyc.gov/assets/coib/downloads/pdf4/enf-dis/2021-429.pdf; *In re Michael Bobick*, Enf't Disposition No. 2019-385, COIB (2020), https://www1.nyc.gov/assets/coib/downloads/pdf4/enf-dis/2019-385.pdf; *In re Wilfredo Vega*, Enf't Disposition No. 2016-090, COIB (2017), https://www1.nyc.gov/assets/coib/downloads/pdf4/enf-dis/2019-385.pdf. COIB may also account for an employee's failure to heed its advice by increasing its financial penalty assessment.

Moonlighting Advice Versus Moonlighting Waivers

The result of COIB's overall approach (visualized in **Appendix A**) is that the public can obtain COIB's moonlighting waivers but not its advisory opinions.[26] As a result, only those determinations that an employee's proposed course of conduct *does* violate the law, requiring a waiver, are made public, while those determinations that an employee's proposed course of conduct *does not* violate the law, and thus does not require a waiver, remain private.

The Board's failure to publish its redacted advisory opinions as required by law effectively conceals the Board's reasoning for permitting public officials to engage in conduct that at the very least raises a potential Chapter 68 violation, at least in certain cases. There is no question that First Deputy Mayor Mastro's representation of MSG (which we discuss in detail below) raises such a potential violation. When the advisory opinion involves a senior public official seeking a secondary position, there is heightened public interest in the implications of that person's ability to hold such employment and the basis for permitting it, but COIB's current practices deny the public basic awareness of the Board's positions on those issues. Indeed, the fact that the First Deputy Mayor obtained COIB's permission to serve as an attorney for a powerful local business interest was revealed for the first time only in the press. This sort of permission is of particular significance because Mastro, like any senior City Hall official, has broad authority with respect to City matters that in theory could be beneficial to his client.

C. The Board's Advice to First Deputy Mayor Mastro

The Mastro Advice Letter

The Mastro Advice Letter recounts that Mayor Eric Adams contacted COIB shortly before Mastro's appointment in March 2025 "'requesting advice as to whether, in accordance with [Chapter 68], Randy Mastro may continue to represent [MSG]" in

[26] As noted above, Charter Section 2604(e) requires moonlighting waivers to be "made public by the board." Yet COIB's website directs visitors to submit a Freedom of Information Law ("FOIL") request to view past waivers. *See* N.Y.C. Conflicts of Interest Bd., Waivers, N.Y.C. Gov., https://www.nyc.gov/site/coib/public-documents/waivers.page (last visited Sept. 3, 2025). In contrast, the Board publishes its enforcement dispositions, which the law similarly requires "shall be made public," in searchable format on its webpage. *See* Charter Section 2603(h)(4), N.Y.C. Conflicts of Interest Bd., Enforcement Dispositions and Fines, N.Y.C. Gov., https://www.nyc.gov/site/coib/public-documents/enforcement-dispositions.page (last visited Sept. 3, 2025). It is not clear why the Board conditions access to its waivers (but not its enforcement decisions) on the public's willingness to make an application that is then subject to review and a determination by COIB as to whether the waiver is disclosable under FOIL.

an ongoing case involving civil claims brought by former New York Knicks player Charles Oakley over his removal from MSG in 2017.

According to the letter, Mastro sought to be involved in the summary judgment phase of the litigation in a limited capacity following his appointment as First Deputy Mayor. Specifically, Mastro sought to appear at a court conference scheduled for April 2025, and to review a final draft of the briefs supporting an anticipated motion by MSG for summary judgment. Mastro represented that he would make all appearances in his individual capacity (not in association with his former law firm), and that he would not be compensated for any work on the case following his City appointment.

The Board ultimately concluded that "under these specific and limited circumstances . . . Mr. Mastro may continue to represent MSG" provided he fully recused himself from "any matter involving MSG" while in office. Significantly, however, the Mastro Advice Letter failed to address whether Mastro's ongoing representation of MSG would violate Chapter 68's moonlighting restrictions, which would have triggered the need for a waiver. Rather, the letter mainly addressed whether the representation would violate a separate provision of the law that prohibits public servants from using their City position to benefit a firm with which they are associated. On that point, the Board concluded that Mastro's representation would not in itself constitute use of his City position to benefit MSG, a conclusion that we do not take issue with.

Chapter 68 Facially Prohibits Mastro's Representation of MSG

The Mastro Advice Letter's failure to consider whether Mastro's proposed conduct would violate Chapter 68's moonlighting restrictions is difficult to understand. Mastro's role as counsel to MSG, a private firm with City business dealings, facially violates the law's requirement that "no regular employee shall" hold a "position" including "as an attorney" with "a [privately-held] firm which such regular employee knows is engaged in business dealings with the city."[27] His conduct also falls outside the scope of the law's safe harbor exception, which permits city servants to act as pro-bono counsel to nonprofit entities provided that the entity "has no business dealings with the city agency in which the public servant is employed": MSG is a for-profit entity and has business dealings with the executive branch of City government.[28]

[27] City Charter Sections 2604(a)(1)(b), 2601(12), 2601(18); *see also* City Charter Section 2604(a)(6) ("[A] public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city.").

[28] *See* Section 2604(b)(5) ("For the purposes of this subdivision, the agency served by . . . a public servant who is deputy mayor . . . shall be the executive branch of the city government.").

In other words, the Board's advice to First Deputy Mayor Mastro was not consistent with Chapter 68's moonlighting restrictions or any prior interpretation of those restrictions of which we are aware. (As noted above, DOI takes no position on whether the Board could or should have issued Mastro a waiver pursuant to a finding that Mastro's representation of MSG would not pose a substantive conflict of interest.)

DOI understands COIB to take the position that an individual acting as an outside attorney for a client-firm generally does not qualify as holding a "position" with that firm under the law, even though the law expressly defines the term "position" to include acting "as an attorney, agent, broker, or consultant to the firm." Rather, COIB believes the provision applies only to in-house attorneys employed directly by the firm. COIB cited no authority for this interpretation.[29]

The law's drafting also undercuts COIB's view. The relevant text groups attorneys together with a variety of *outside* agents to entities with City business when it states that a "position" with a firm includes acting as "an attorney, agent, broker, or consultant to the firm."[30] Legislative history further clarifies that the definition of position was written to encompass an "array of relationships from employees to consultants,"[31] and thus should not be read to exclude non-employees. The existence of the law's safe harbor exception (which delineates the specific, limited circumstances in which public servants may serve as outside attorneys to non-profit entities with City business dealings) further undermines COIB's reading.[32]

COIB's current position also conflicts with previous guidance issued by the Board itself. Specifically, in a 1991 public guidance document, the Board wrote that "public servants who are attorneys may engage in the private practice of law during their off-duty hours, provided that . . . their practices are conducted in compliance

[29] COIB appears to be of the view that applying the law as written would be impracticable because numerous attorneys in private practice serve on various City boards and commissions, and thus regularly represent client-firms with business before the City. However, it does not appear that waivers would be required for such attorneys in most cases given their part-time City employment status. This is because Chapter 68 prohibits *part-time* City employees only from holding positions with firms that have business dealings with those employees' own City agencies. *See* Charter Section 2604(a)(1)(b). Even if waivers were required, the Board could simply grant them.

[30] City Charter Section 2601(18).

[31] New York City Charter Revision Commission 1998 Report Volume Two: Section-by-Section Analysis of Proposals 153 (Apr. 1989) (explaining the meaning of "position" in Chapter 68, § 2601(18)).

[32] *See also* COIB, Advisory Opinion 2001-3 (Outside Practice of Law) (2001), available at https://www.nyc.gov/assets/coib/downloads/pdf5/aos/2000-2003/AO2001_3.pdf (elaborating on the circumstances in which the safe harbor exception applies).

with Chapter 68," which "means that a public servant who is an attorney *may not do private legal work for a person or firm which has business dealings with the City*."[33] Although this guidance is old, DOI is unaware of any contrary authority.

Finally, the literal interpretation of the statute makes common sense: Attorneys have a fiduciary duty of loyalty to the clients they represent, which in many cases could be in tension with an attorney's duty, as a City employee, to act in the best interests of the City when their client has City business or an interest in the outcome of City policymaking.

In short, COIB's interpretation contradicts both the plain language of the statute and the Board's own public statements. If COIB wishes to persist with this interpretation, DOI is recommending that it undertake formal rulemaking and subject its view to notice and comment.

The Board Failed to Comply with Statutory Requirements to Make Its Analysis Public

Regardless of whether the Board properly concluded that Mastro's conduct would not implicate Chapter 68's moonlighting restrictions, the Board failed to comply with statutory requirements to make its (in our view questionable) legal analysis public. As discussed in further detail above, the law requires the Board to publish its advisory opinions in redacted form, something that the Board failed to do in this case – and has generally failed to do for a long time.

Alternatively, if the Board determined, in consultation with City Hall, that Mastro's proposed representation of MSG technically violated the law but would not conflict with the City's interests, the Board could have issued Mastro a public moonlighting waiver. It might have been reasonable for the Board to do this: Mastro says he is no longer receiving compensation for his legal services to MSG, the scope of his contemplated ongoing representation appears narrow, and he has agreed to recuse himself from matters involving MSG that come before him at City Hall.

As noted above, though, the Board would need to publish such a waiver without redactions and thereby subject its decision and reasoning to public scrutiny, particularly given MSG's significance within New York City.

D. Other Issues Addressed by DOI's Review

DOI's review also raised concerns with respect to: (1) the lack of public information regarding the different types of "formal" and "informal" advice that the Board issues, and (2) COIB's longstanding practice of calling its advisory opinions

[33] COIB, Advisory Opinion 91-7 (1991), available at https://www.nyc.gov/assets/coib/downloads/pdf5/aos/AO91_07.pdf (emphasis added).

"legal advice," which DOI believes could mislead advice-seekers as to the nature and confidentiality of their communications with Board-employed attorneys. DOI raised these issues with the Board, and it has taken steps to remediate them in its 2024 Annual Report[34] and with changes to its website, which now simply refers to "advice" (rather than "legal advice") and describes the different formats of advice available.[35]

III. Conclusion

COIB regularly tells recipients of its public warning letters that "precise compliance with [Chapter 68] avoids even the appearance of impropriety and helps to strengthen public confidence in City officials." The same agency issued a non-public advisory opinion permitting the City's second highest-ranking executive to maintain a fiduciary relationship with one of the City's major landowners and business interests. The Board's finding that Mastro's representation of MSG would not violate Chapter 68 contradicts the plain text of the statute and, combined with COIB's longstanding failure to publish its redacted advisory opinions as the law requires, has the effect of shielding the Board's questionable legal reasoning from public view. Had the Board instead interpreted the law as it is literally written and issued Mastro a moonlighting waiver, it would have had to make its decision public. The Board's lack of transparency in this space risks jeopardizing public confidence in the Board's determinations as to the senior-most public servants, where the Board's ability to apply Chapter 68 equitably and fairly is of particular importance.

The Board's advice to Mastro raises other questions: First, has the Board permitted any other City-employed attorneys to represent private for-profit firms with City business pursuant to the same interpretation of the law? Second, has the Board permitted any other high-ranking public officials to engage in conduct that facially violates Chapter 68 pursuant to other interpretations? DOI cannot investigate these questions because COIB will not produce its advisory opinions to us for that purpose.

IV. Recommendations

DOI agrees with the changes that the Board has already implemented in response to DOI's review, particularly the changes to COIB's website concerning its advice practices.

[34] 2024 Annual Report, p. 5-7, https://www.nyc.gov/assets/coib/downloads/pdf2/annual_reports/2024-nyc-coib-annual-report.pdf.

[35] *See* N.Y.C. Conflicts of Interest Bd., Get Legal Advice, N.Y.C. Gov., https://www.nyc.gov/site/coib/contact/get-legal-advice.page (last visited Sept. 3, 2025).

DOI's findings point to an overarching concern that the Board is operating in a less transparent manner than Chapter 68 contemplates, highlighting the tension between the need for COIB to conduct its work confidentially and the need for independent oversight over all City agencies, including COIB. For this reason, DOI would also support legislation granting DOI access to the Board's otherwise-confidential documents for the purpose of investigating COIB's policies and practices.

Finally, DOI makes the following Policy and Procedure Recommendations:

1. COIB should review the advice it gave to First Deputy Mayor Mastro concerning his ongoing legal representation of MSG to ensure that such advice is consistent with Chapter 68's moonlighting restrictions. If COIB determines that its advice was incorrect, COIB should amend its advice, and should issue a waiver to Mastro if COIB determines that a waiver is appropriate.

2. COIB should review its previously-issued advisory opinions to determine whether it has permitted any other City-employed attorneys to represent private firms with City business. If the Board has issued such opinions and the relevant conduct remains ongoing, COIB should re-consider that advice and, if necessary, amend its advice and issue waivers to the relevant individuals if COIB determines that such waivers are appropriate.

3. In the alternative, if the Board maintains that Chapter 68's moonlighting restrictions apply exclusively to in-house (not external) attorneys to firms with City business, it should issue a formal rule to that effect.

4. COIB should publish waivers pursuant to Charter Section 2604(e) on its website, so that members of the public do not need to submit FOIL requests to view them. The waivers should be published in a searchable format comparable to how COIB publishes its enforcement dispositions.

5. COIB should comply with Charter Section 2603(c)(3)'s requirement to publish its advisory opinions, including the March 2025 opinion issued to First Deputy Mayor Mastro, either by publishing the opinions with redactions or, if the required redactions would be so comprehensive as to deprive the opinions of any practical value, by publishing summaries of the opinions that omit the identity of involved parties.

APPENDIX A

Summary of COIB Moonlighting Advice and Waivers