


July 9, 2019, Agenda – Open Meeting Matter

To: The Board
From: Chad H. Gholizadeh 
Date: May 29, 2019
Re: Proposed Amendments to Board Rules § 1-13(e) and § 1-13(f)

Staff has prepared proposed amendments to Board Rules § 1-13 subdivisions (e) and (f). Board Rules § 1-13(e) contains a mechanism for an agency to assign a public servant to use City time and City resources in support of a not-for-profit entity that serves a City purpose and, if approved by the Board, be involved in that not-for-profit's City business. The proposed amendment to subdivision (e) clarifies which documents will be posted on the Board's website.

Board Rules § 1-13(f) preserves the Board's discretion to find that conduct not expressly prohibited by Board Rule violates City Charter § 2604(b)(2), although no penalty may be imposed. The proposed amendment to subdivision (f) removes unnecessary references to subdivision (c) and City Charter § 2606(d).

Staff has consulted informally with the New York City Law Department about the proposed amendments and, with the Board's approval, will formally submit them to the Law Department and Mayor's Office of Operations, as required by the City Administrative Procedure Act. See Charter § 1043(d).

Attached are the following:

1. Proposed Board Rules § 1-13 with Commentary (Exhibit 1).

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Conduct Prohibited by City Charter § 2604(b)(2)

What are we proposing? The Conflicts of Interest Board intends to amend its rules by: (1) clarifying which documents will be publicly posted; and (2) re-lettering a rule to reflect subsequent revisions and deleting duplicative text.

When and where is the Hearing? The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place at [time] on [date]. The hearing will be at [location].

This location has the following accessibility option(s) available: []

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Chad H. Gholizadeh at Rules@COIB.nyc.gov.
- **Mail.** You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0730. You can also sign up in the hearing room before the hearing begins on [date]. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by [date].

Do you need assistance to participate in the hearing? You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0723. You must tell us by [date].

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.

What authorizes the Conflicts of Interest Board to make this rule? Sections 1043 and 2603(a) of the City Charter and authorize the Conflicts of Interest Board to make this proposed rule. This proposed

rule was not included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year because it was not contemplated when the Conflicts of Interest Board published the agenda.

Where can I find the Conflicts of Interest Board's rules? The Conflicts of Interest Board's rules are in Title 53 of the Rules of the City of New York.

What rules govern the rulemaking process? The Conflicts of Interest Board must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

STATEMENT OF BASIS AND PURPOSE

The Conflicts of Interest Board (the "Board") is proposing to amend subdivisions (e) and (f) of Board Rules § 1-13.

Proposed Revisions to Board Rules § 1-13(e)

Subdivision (e) was recently amended in a rule that went into effect on March 10, 2019. This subdivision provides a mechanism for an agency to assign a public servant to: (a) use City time and City resources in support of a not-for-profit entity that serves a City purpose; and (b) be involved in that not-for-profit's City business, if approved by the Board. The proposed revisions would clarify the nature of the two documents that would be posted on the Board's website pursuant to Board Rules § 1-13(e).

The first is the designation made by an agency head pursuant to Board Rules § 1-13(e)(1) for a public servant to use City time and City resources in support of a not-for-profit entity that, among its other purposes, serves a City purpose as part of the public servant's City agency responsibilities, provided that the public servant takes no part in the not-for-profit's business dealings with the City. The second posted document contains the Board's determination pursuant to Board Rules § 1-13(e)(2) that a public servant may be involved in the not-for-profit's business dealings with the City; the agency head's request for such a Board determination would

remain a confidential document pursuant to Charter § 2603(k), which mandates the confidentiality of all requests to the Board for either advice or waivers.

Proposed Revisions to Board Rules § 1-13(f)

The proposed revisions to § 1-13(f) are technical corrections. First, the proposed revision would remove the cross-reference to subdivision (c) since there has never been an independent violation of that subdivision, but rather a violation of subdivisions (a) and/or (b). The proposed revision would also delete a clause that is duplicative of Charter § 2606(d).

Text of the Proposed Rule

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (e) of Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is amended to read as follows:

(e) (1) An agency head may designate a public servant to perform work on behalf of a not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis, including serving as a board member or other position with fiduciary responsibilities provided that:

(i) there is a demonstrated nexus between the proposed [activity] work, the public servant's City job, and the mission of the public servant's agency; [and]

(ii) such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit;

~~[(ii)]~~ (iii) the designated public servant takes no part in the entity's business dealings with the City at the entity or at his or her agency, except that Council Members may sponsor and vote on discretionary funding for the entity; and

~~[(iii)]~~ (iv) within 30 days the written designation is disclosed to the Conflicts of Interest Board [and will be posted on the Board's website].

(2) A public servant designated in accordance with paragraph (1) of this subdivision may take part in such entity's business dealings with the City at the entity and/or at his or her agency if, after written approval of the agency head, the Board determines that there is a demonstrated nexus between the proposed participation, the public servant's City job, and the mission of the public servant's agency[;] and that such participation furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit entity.

(3) The Board will post on its website designations of a public servant made pursuant to paragraph (1) of this subdivision or the Board's determination made pursuant to paragraph (2) of this subdivision.

~~[(3)]~~ (4) The designation made pursuant to paragraph (1) and approval made pursuant to paragraph (2) of this subdivision must be by the head of the agency served by the public servant, or by a deputy mayor if the public servant is an agency head. A public servant who is an elected official, including a district attorney, is the agency head for the public servants employed by the official's agency or office. A public servant who is an elected official, including a district attorney, may provide the designation pursuant to paragraph (1) and the agency head approval pursuant to paragraph (2) for him or herself.

§ 2. Subdivision (f) of Section 1-13 of Chapter 1 of Title 53 of the Rules of the City of New York is amended to read as follows:

(f) Nothing contained in this section shall preclude the Conflicts of Interest Board from finding that conduct other than that proscribed by subdivisions (a), ~~[through]~~ (b), and (d) of this section violates City Charter §2604(b)(2)[, although the Board may impose a fine for a violation

of City Charter §2604(b)(2) only if the conduct violates subdivision (a), (b), (c), or (d) of this section]. The Board may not impose a fine for violation of subdivision (d) where the public servant induced or caused another public servant to engage in conduct that violates City Charter §2604(b)(2), unless such other public servant violated subdivision (a)[,] or (b) [or (c)] of this section.