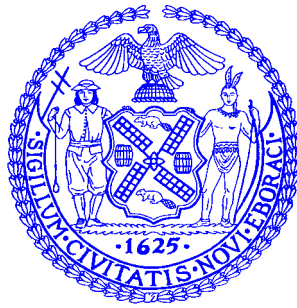


CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

ANNUAL REPORT

2007



Steven B. Rosenfeld
Chair

Monica Blum
Kevin B. Frawley
Angela Mariana Freyre
Andrew Irving
Members

Mark Davies
Executive Director

2 Lafayette Street
New York, New York 10007

<http://nyc.gov/ethics>



ETHICS LIGHTS THE WAY TO GOOD GOVERNMENT

<http://nyc.gov/ethics>

The New York City Conflicts of Interest Board's Annual Report is designed and produced in-house at 2 Lafayette Street, Suite 1010, New York, New York 10007.

TABLE OF CONTENTS

| | <i>Page</i> |
|--|-------------|
| Introduction..... | 5 |
| 1. Members and Staff of the Conflicts of Interest Board..... | 5 |
| 2. Training and Education..... | 6 |
| 3. Requests for Guidance and Advice..... | 12 |
| 4. Administrative Rules..... | 18 |
| 5. Enforcement..... | 18 |
| 6. Financial Disclosure..... | 24 |
| 7. Budget, Administration, and Information Technology..... | 28 |
| Exhibit 1: Conflicts of Interest Board: 1993, 2001, 2006, 2007. | 30 |
| Exhibit 2: Members, Staff, and Former Members of the Conflicts of Interest Board..... | 33 |
| Exhibit 3: Training and Education Classes on Chapter 68..... | 35 |
| Exhibit 4: COIB Training Classes by Agency..... | 36 |
| Exhibit 5: Legal Advice Workload: 1993 to 2007..... | 37 |
| Exhibit 6: Requests for Advice on Chapter 68..... | 38 |
| Exhibit 7: Responses to Requests for Advice on Chapter 68.... | 39 |
| Exhibit 8: Enforcement Cases (Chapter 68)..... | 40 |
| Exhibit 9: Enforcement Workload: 1993 to 2007..... | 41 |

| | |
|---|----|
| Exhibit 10: Enforcement Fines..... | 42 |
| Exhibit 11: Financial Disclosure Reports..... | 46 |
| Exhibit 12: Financial Disclosure Bill (A.8023-B)..... | 47 |
| Exhibit 13: New York City Conflicts of Interest Board: Proposed State Legislation..... | 51 |
| Advisory Opinions and Enforcement Cases of the Board – Summaries and Indexes..... | 57 |
| Advisory Opinion Summaries (2007)..... | 58 |
| Cumulative Index to Advisory Opinions by Charter Chapter 68 Section – 1990-2007..... | 65 |
| Cumulative Index to Advisory Opinions by Subject – 1990-2007..... | 72 |
| Enforcement Case Summaries (2007)..... | 78 |

(1) In *COIB v. Clair*, COIB Case No. 2005-244 (2007), the Board imposed its most significant fine to date for accepting a gift in violation of Charter § 2604(b)(5). The Board imposed a \$6,500 fine on a former Assistant Commissioner for the New York City Fire Department (“FDNY”) Office of Medical Affairs, who accepted valuable gifts from a firm doing business with FDNY, a firm whose work he evaluated in his capacity as the Assistant Commissioner in the FDNY Office of Medical Affairs. The former Assistant Commissioner acknowledged that, in late 2000 or early 2001, he introduced an automated coding and billing product to FDNY personnel produced by ScanHealth, an information technology company in the emergency medical service and home health care fields. FDNY selected ScanHealth as a preferred vendor in 2003 and entered into a \$4.3 million contract with ScanHealth in 2004. The former Assistant Commissioner acknowledged that, while he served on the Evaluation Committee to monitor and evaluate the ScanHealth contract, he accepted reimbursement of travel expenses from ScanHealth for trips to Hawaii (in the amount of \$2,592.00), Minnesota (in the amount of \$199.76), and Atlanta (in the amount of \$1,129.00); three or four dinners (each in excess of \$50.00); and tickets to the Broadway production of “Mamma Mia.” The former Assistant Commissioner acknowledged that this conduct violated the City’s Conflicts of Interest Law, which prohibits: (a) using one’s City position for personal gain; (b) accepting a valuable gift from a firm doing business with the City; and (c) accepting compensation, except from the City, for performing any official duty or accepting or receiving a gratuity from a firm whose interests may be affected by the City employee’s actions.

(2) In *COIB v. Sanders*, COIB Case No. 2005-442 (2007), the Board imposed the first Chapter 68 fine (\$1,000) upon a Member of the New York City Council. The Board fined a Council Member who, having married his Chief of Staff, continued to employ her, as his subordinate, in that capacity for eight months after their marriage. The Council Member acknowledged that this conduct violated the provisions of the Conflicts of Interest Law, which (a) prohibit a public servant from using his or her position as a public servant to obtain any financial gain, contract, license, privilege, or other private or personal advantage, for any person or firm “associated with the public servant,” such as a spouse, and (b) prohibit a public servant from entering into a financial relationship with his superior or subordinate. The Board took the occasion of the publication of the disposition to remind all public servants that marriage is a “financial relationship” within the meaning of the City’s Conflicts of Interest Law and that such a financial relationship between superiors and subordinates is prohibited even if the superior-subordinate relationship precedes the marriage.

(3) *COIB v. Mazer*, COIB Case No. 2005-467 (2007), involved the Board's first fine for disclosure of confidential information. The Board fined the former General Counsel and Deputy Commissioner for Legal Affairs of the New York City Taxi and Limousine Commission ("TLC") \$2,000 for disclosing, after he left City service, confidential information he gained while at the TLC. The former General Counsel admitted that, after he left City service, he prepared and executed an affidavit revealing the substance of confidential conversations with the TLC's First Deputy Commissioner concerning TLC's application of the rules regarding alternative fuel medallions that were bid at an October 2004 auction. The former General Counsel admitted that these internal TLC conversations were not public at the time the affidavit was prepared and that his disclosure of these internal, non-public agency discussions violated the provision of the Conflicts of Interest Law that prohibits former City employees from disclosing or using for private advantage any confidential information gained from City service.

(4) *COIB v. Cantwell*, COIB Case No. 2005-690 (2007), illustrates that even the smallest request to a subordinate to engage in political activities violates Chapter 68. The Board imposed a \$1,500 fine on a former Vice President of Information Technology for the New York City School Construction Authority ("SCA") who used City resources and personnel in connection with his political campaign. The former Vice President acknowledged that in 2005 he ran for election to a position as a member to the Town Board of Smithtown, New York, and that in connection with his campaign he used an SCA photocopier and SCA printer to photocopy and print campaign materials and that he requested a subordinate to review and correct an electronic file containing his signature for use on a campaign mailing. Prior to his campaign, in response to his request for advice, the former Vice President had been advised by the Board that such conduct was prohibited by the City Charter. The former Vice President acknowledged that his conduct violated the provisions of the Conflicts of Interest Law which prohibit public servants from using City letterhead, personnel, equipment, resources, or supplies for non-City purposes and from requesting any subordinate to participate in a political campaign. The Board took the opportunity to remind all public servants that they are absolutely prohibited from using City resources, of any kind and of any amount, on campaigns for public office and that requesting the assistance of a subordinate, for any amount of time and in any fashion, on campaign related matters violates the City Charter.

(5) In *COIB v. Pentangelo*, COIB Case No. 1999-026 (2007), the Board issued a decision, after a full trial on the merits at the New York City Office of Administrative Trial and Hearings (“OATH”), affirming the importance of the job-hunting restrictions contained within Charter § 2604(d)(1). The Board found that, in July and August 1998, a former Director of Engineering with the New York City Department of Transportation (“DOT”), certified and signed ten invoices which verified that City-owned parking garages were properly managed and operated by a City vendor, Kinney Systems, Inc., and authorized DOT’s payment of over \$290,000 in management fees to Kinney. During this same period when he was certifying and signing these Kinney invoices, the Director of Engineering was actively negotiating for, and ultimately accepted, a position with Central Parking Corporation, which he knew was the parent corporation of Kinney. The OATH Administrative Law Judge found, and the Board adopted as its own findings, that this conduct violated the City’s Conflicts of Interest Law, which prohibits a public servant from soliciting, negotiating for, or accepting any position with a firm involved in a particular matter with the City while the public servant is directly concerned or personally participating in that particular matter. The Board fined the former DOT Director of Engineering \$1,500.

The Board’s “Summaries of Enforcement Cases” provides a useful digest of all of the Board’s enforcement results from 1990 to date. This document is available on CityShare, the City’s Intranet, and on the Board’s website (at http://www.nyc.gov/html/conflicts/downloads/pdf2/Enforcement_Case_Summaries.pdf) for use by all City workers and members of the public as an easy reference guide to cases the Board has prosecuted. The dispositions themselves, like the Board’s advisory opinions, are available on the CityLaw website free of charge to all in full-text searchable form (at <http://www.citylaw.org/cityadmin.php>).

The Enforcement Unit increased its use of the “three-way settlement” procedure to resolve cases that overlap with disciplinary proceedings brought by other City agencies. In 2007, such three-way settlements were concluded with the Administration for Children’s Services, the Department of Design and Construction, the Department of Education, the Department of Health and Mental Hygiene, the Human Resources Administration, the Department of Probation, the Department of Sanitation, and the New York City Housing Authority.

Electronic Filing of Financial Disclosure Reports

At the end of 2006, the Board's staff began working with DOI and the City's Department of Information Technology and Telecommunications ("DoITT") to integrate DOI's financial reports into the electronic filing application. The integration was completed in time for the 2006 filing period, which ran during the summer of 2007. Public servants required to file both a COIB and DOI financial disclosure report did so electronically as part of a single filing. In addition, Department of Education filers answered their supplemental DOE questions electronically, thus eliminating the supplemental DOE paper forms.

Throughout 2007, staff worked closely with DoITT to improve the electronic filing application. The process for entering multiple securities was streamlined, thus saving the filer significant time. For all filers who filed electronically for calendar year 2005, the reports appeared "pre-populated" for the 2006 filing period. Those filers merely had to review and update the prior year's report, an effort that for most filers required only a few minutes. Filers no longer need to fill out a completely new report every year.

Other enhancements to the electronic filing system included modifying the application to allow a filer to assign a delegate to assist with entering data. In order to do so, the filer simply clicks on a box that says "manage delegate account" at the beginning of the filing application. Once the filer provides the name, address, and telephone number of the person who will be assisting with the filing, the screen displays a password, which the filer may, in his or her discretion, give to another person who may enter the data for the filer. However, the application is restricted so that the filer, and only the filer, may review, certify, and sign the report electronically.

The filing application has also been enhanced with "rollover" functionality to show the filer specifically what information is missing. In order to access this feature, the filer clicks on the box called "Show Rollover Menus." When the filer rolls his or her mouse over a particular question, the application will describe the information that is missing so that the filer may supply it.

EXHIBIT 2
MEMBERS, STAFF, AND FORMER MEMBERS
OF THE
CONFLICTS OF INTEREST BOARD

Members

Steven B. Rosenfeld, Chair
Monica Blum
Kevin B. Frawley
Angela Mariana Freyre
Andrew Irving

Staff

Executive

Mark Davies, Executive Director

Legal Advice

Wayne G. Hawley, Deputy Executive Director & General Counsel
Sung Mo Kim, Deputy General Counsel
Karrie Ann Sheridan, Associate Counsel
Jessie Beller, Assistant Counsel

Enforcement

Carolyn Lisa Miller, Director of Enforcement
Dinorah Núñez, Deputy Director of Enforcement
Vanessa Legagneur, Assistant Counsel
Bre Injeski, Assistant Counsel
Maritza Fernandez, Litigation Coordinator

Training and Education

Alex Kipp, Director of Training and Education
Jonathan Wingo, Senior Trainer/Training Coordinator

Financial Disclosure

Felicia A. Mennin, Director of Financial Disclosure & Special Counsel
Joanne Giura-Else, Deputy Director of Financial Disclosure
Holli R. Hellman, Senior Financial Disclosure Analyst
Veronica Martinez Garcia, Administrative Assistant
Michelle Burgos, Financial Disclosure Analyst (*until April 2007*)
Candice Flament, Financial Disclosure Analyst (*beginning September 2007*)
James Wilson, Assistant Financial Disclosure Analyst (*beginning September 2007*)

Administrative

Ute O'Malley, Director of Administration
Varuni Bhagwant, Deputy Director of Administration

Information Technology

Derick Yu, Director of IT

Former Members of the Board

| | |
|---|-----------|
| Merrill E. Clarke, Jr., Chair | 1989 |
| Beryl Jones | 1989-1995 |
| Robert J. McGuire | 1989-1994 |
| Sheldon Oliensis, Chair | 1990-1998 |
| Shirley Adelson Siegel | 1990-1998 |
| Benjamin Gim | 1990-1994 |
| Benito Romano, Acting Chair (1998-2002) | 1994-2004 |
| Jane W. Parver | 1994-2006 |
| Bruce A. Green | 1995-2005 |

EXHIBIT 3
TRAINING AND EDUCATION CLASSES ON CHAPTER 68

| <u>Year</u> | <u>Department of Ed Classes</u> | <u>Other Agency Classes</u> | <u>Total Classes¹</u> |
|-------------------|---------------------------------|-----------------------------|----------------------------------|
| 1995 | 0 | 24 | 24 |
| 1996 | 0 | 30 | 30 |
| 1997 | 0 | 90 | 90 |
| 1998 | 10 | 53 | 63 |
| 1999 | 23 | 69 | 92 |
| 2000 | 221 | 156 | 377 |
| 2001 | 116 | 74 | 190 |
| 2002 | 119 | 167 | 286 |
| 2003 ² | 43 | 139 | 182 |
| 2004 | 119 | 169 | 288 |
| 2005 | 80 | 162 | 242 |
| 2006 ³ | 43 | 151 | 194 |
| 2007 | 75 | 341 | 416 |

¹ These totals do not include classes conducted by agency training/legal staff under COIB's "Train the Trainer" program nor briefings set up and conducted exclusively by DOI.

² As a result of layoffs, the Board had no Training and Education Unit and therefore no training and education classes from May 15, 2003, to October 15, 2003.

³ From December 2005 to September 2006 the Training and Education Unit had an effective staff of one, as the Senior Trainer position was vacant from December to mid-July, and the new hire needed to be trained before he could begin teaching classes.

EXHIBIT 4

COIB TRAINING CLASSES BY AGENCY

Agencies that held ten or more classes are in bold

Agencies that held three to nine classes are in italics

Agencies that held one or two classes are not separately listed

| 2000 | 2001 | 2002 | 2003 ¹ | 2004 | 2005 | 2006 ² | 2007 |
|--|--|---|---|---|--|--|--|
| Bd. of Education Buildings DEP DOT Finance Parks Sanitation Correction DCAS DDC DOI EDC Health HPD HRA NYPD TLC | Bd. of Education DCAS Finance HPD <i>DEP DDC FIRE DOITT Sanitation Transportation</i> | Buildings Correction DCAS Education Finance Sanitation SCA ACS <i>City Planning DDC DEP DOT Health HPD NYCERS Parks Transportation</i> | Correction Education DOHMH HRA NYCERS <i>Buildings DCAS DHS DYCD Finance Law</i> | Buildings DCAS Education DHS HRA <i>DCLA DFTA Finance DOHMH DOITT NYCERS</i> | Parks Finance DCA DYCD DOB Education Education DDC HRA TLC DOITT DCAS <i>Community Boards HHC HPD DOC DOHMH Comptroller</i> | Comptroller DCAS DDC DOB Education Finance Sanitation <i>Community Boards DOC DOHMH DoITT DYCD HHC Manhattan Borough Pres TLC</i> | Buildings DCAS DDC DOHMH Education FDNY Finance FISA HHC NYCHA Taxi & Limo Transportation CCRB <i>Community Boards DCP DoITT DYCD EDC HPD HRA NYCERS NYPD Parks</i> |
| Agencies Holding One or Two Classes: 22 | Agencies Holding One or Two Classes: 14 | Agencies Holding One or Two Classes: 29 | Agencies Holding One or Two Classes: 12 | Agencies Holding One or Two Classes: 27 | Agencies Holding One or Two Classes: 17 | Agencies Holding One or Two Classes: 21 | Agencies Holding One or Two Classes: 39 |
| Total Classes: 377³ | Total Classes: 190³ | Total Classes: 286³ | Total Classes: 182³ | Total Classes: 288³ | Total Classes: 242³ | Total Class: 194³ | Total Class: 416³ |

¹ As a result of layoffs, the Board had no Training and Education Unit and therefore no training and education classes from May 15, 2003, to October 15, 2003.

² From December 2005 to September 2006, the Training and Education Unit had an effective staff of one, as the Senior Trainer position was vacant from January to mid-July, and the new hire needed to be trained before he could begin teaching classes.

³ These totals do not include classes conducted by agency training/legal staff under COIB's "Train the Trainer" program nor briefings set up and conducted exclusively by DOI.

EXHIBIT 5
LEGAL ADVICE WORKLOAD: 1993 TO 2007

| | 1993 | 2002 | 2003 (Increase v. 2002) | 2004 (Increase v. 2003) | 2005 (Increase v. 2004) | 2006 (Increase v. 2005) | 2007 (Increase v. 2006) |
|--|---------------------------------------|---------------------------------------|--|--|--|--|--|
| Staff | 5 attorneys | 3 attorneys | 3 attorneys | 3 attorneys | 3 attorneys | 4 attorneys | 4 attorneys |
| Telephone requests for advice | N/A | 2,410 | 2,342 (-3%) | 2,633 (+12%) | 2,926 (+11%) | 2,895 (-1%) | 3,326 (+15%) |
| Written requests for advice | 321 | 691 | 559 (-19%) | 535 (-4%) | 515 (-4%) | 568 (+10%) | 613 (+8%) |
| Issued opinions, letters, waivers, orders | 266 | 505 | 535 (+6%) | 470 (-12%) ¹ | 543 (+16%) | 415 (-24%) ² | 605 (+46%) |
| Opinions, etc. per attorney | 53 | 168 | 178 (+6%) | 157 (-12%) ¹ | 181 (+15%) | 172 (-5%) | 151 (-12%) |
| Pending written requests at year end | 151 | 184 | 160 (-13%) | 191 (+19%) | 127 (-34%) | 225 (+77%) | 178 (-21%) |
| Median age of pending requests at year end | 8- ¹ / ₂ months | 3- ¹ / ₂ months | 5- ¹ / ₂ months | 8 months | 12 months | 7- ¹ / ₂ months | 7 months |

¹ The Legal Advice Unit lost its longtime Special Counsel and lacked an attorney for two months in 2004 before hiring an attorney intern.

² The FY2007 budget added a fourth line for the Legal Advice Unit, which had only two attorneys from April through October 2006, when the third line was backfilled, and did not add the fourth attorney until December, for an average of 2.4 attorneys in 2006.

EXHIBIT 6
REQUESTS FOR ADVICE ON CHAPTER 68

| <u>Year</u> | <u>Requests Received</u> |
|-------------|--------------------------|
| 1996 | 359 |
| 1997 | 364 |
| 1998 | 496 |
| 1999 | 461 |
| 2000 | 535 |
| 2001 | 539 |
| 2002 | 691 |
| 2003 | 559 |
| 2004 | 535 |
| 2005 | 515 |
| 2006 | 568 |
| 2007 | 613 |

EXHIBIT 7
RESPONSES TO REQUESTS FOR ADVICE ON CHAPTER 68

| <u>Year</u> | <u>Staff Letters</u> | <u>Waivers/ (b)(2) Letters</u> | <u>Board Letters, Orders, Opinions</u> | <u>Total</u> |
|-------------|----------------------|------------------------------------|--|--------------|
| 1996 | 212 | 49 | 25 | 286 |
| 1997 | 189 | 116 | 24 | 329 |
| 1998 | 264 | 111 | 45 | 420 |
| 1999 | 283 | 152 | 28 | 463 |
| 2000 | 241 | 179 | 52 | 472 |
| 2001 | 307 | 148 | 46 | 501 |
| 2002 | 332 | 147 | 26 | 505 |
| 2003 | 287 | 165 | 83 | 535 |
| 2004 | 252 | 157 | 61 | 470 |
| 2005 | 241 | 223 | 79 | 543 |
| 2006 | 178 | 158 | 79 | 415 |
| 2007 | 269 | 246 | 90 | 605 |

