

Outside Employment

Charter Sections: 2604(b)(2)
2604(b)(3)
2604(b)(4)

Advisory Opinion No. 95-19

The Conflicts of Interest Board (the "Board") has received a request for an opinion from the Department of Mental Health, Mental Retardation and Alcoholism Services (the "Department") as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, Department employees may work part-time performing certain types of clinical evaluations for the Family Court.

For the reasons discussed below, it is the opinion of the Board that it would not violate Chapter 68 for the Department's employees to perform clinical evaluations for the Family Court, provided that they obtain and perform such work in the manner discussed below.

Background

The Department has asked the Board whether Department clinicians may, in the course of part-time, outside employment, perform evaluations for the Family Court in custody and visitation cases. The Department has advised the Board that it has no objection to its

clinicians performing these evaluations provided that, in so doing, the clinicians act in accordance with Chapter 68.

Among other things, Department employees conduct clinical evaluations for the Family Court in abuse, neglect and juvenile delinquency cases and aid the Court in making decisions involving the termination of parental rights and the disposition of juvenile delinquency cases. In the past, Department employees had also conducted clinical evaluations for the Family Court in custody and visitation cases. However, these types of evaluations are not mandated by the City Charter and, in May 1992, due to budget constraints, the Department discontinued performing them.

The Department has informed the Board that the Department's clinicians would not be the only clinicians performing these evaluations for the Family Court in custody and visitation cases inasmuch as other professionals who are not employed by the City also perform such evaluations. The Court has two methods of selecting clinicians to conduct evaluations, depending upon the judicial department in which the particular Family Court is located. Clinicians are selected from

either: (1) a Court-certified list, commonly referred to as an "18b panel"; or (2) a recommendation from a private attorney to the judge. In each instance, the judge makes the final determination as to which clinician will perform the evaluation.

Discussion

This request for an opinion must be considered in light of Charter Sections 2604(b)(2) and (b)(3). "No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties." Charter Section 2604(b)(2). In addition, Charter Section 2604(b)(3) provides that "[n]o public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant."

In the course of performing their official duties for the City, the Department's clinicians work with

Family Court judges and attorneys and become known in their field of expertise. It is possible, therefore, that while engaging in this outside employment some Department clinicians may be appointed by and or appear before some of the same judges they encounter as part of their official duties.

Because clinicians have pre-existing relationships, developed while working for the City, with the judges and attorneys for whom they would be performing evaluations, clinicians desiring this outside employment could be perceived as using their official positions to obtain appointments. While it is commonplace for individuals to establish reputations among those with whom they work and to thereby obtain new job opportunities, public servants should be cognizant that it is improper for them to use their official City positions to obtain private advantages.

The ability to improperly use one's position for financial gain is sharply reduced when established criteria for appointment exist. The 18b panel, for example, requires all applicants to meet certain objective requirements and standards; however, a referral process, involving recommendations from

private attorneys, does not utilize such requirements and standards. Furthermore, referrals from private attorneys permit clinicians to be selected based on factors other than the clinicians' qualifications to perform the evaluation. Thus, appointments made by the Family Court from an 18b panel, and not as the result of a referral from a private attorney, provide a method of appointing clinicians which might militate against the possibility that Department employees would improperly use their positions to obtain private advantages. See Charter Section 2604(b)(3).

Based on the foregoing, Department employees may, consistent with Chapter 68, engage in outside employment performing evaluations for the Family Court, provided that the appointments are made from an 18b panel and further, that they do not use their City titles or positions to obtain or attempt to obtain any private or personal advantage for themselves, private attorneys or any other individuals involved in the proceedings. See Charter Sections 2604(b)(2) and (b)(3).

In addition, Department employees may not conduct evaluations for litigants or interested parties if they

have conducted evaluations involving these litigants or interested parties as part of their official City duties. Further, Department employees may not conduct any evaluations for litigants or interested parties in matters where the employees' involvement would require them to appear against the interests of the Department.

In addition, Department employees who are appointed to conduct these evaluations must perform this outside work only at times when they are not required to perform their official duties for the City; may not use any City supplies, equipment or personnel in performing this outside work; and may not disclose or use for private advantage any confidential information concerning the City. See Charter Sections 2604(b)(2), (3) and (4), respectively.

Conclusion

For the reasons discussed above, it is the opinion of the Board that it would not violate Chapter 68 for the Department's employees to accept appointments to perform custody and visitation evaluations for the Family Court, provided that the clinicians are appointed from a court-certified panel and, after having been appointed, they act in

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accordance with Charter Sections 2604(b)(2), (b)(3) and (b)(4). If, in the future, the Department resumes, as one of its official functions, conducting evaluations in custody and visitation cases, then the Department should seek further guidance from the Board.

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Chair

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Dated: July 17, 1995