

Post-Employment Restrictions  
Particular Matter

Charter Section 2604(d)(4)

Advisory Opinion No. 96-7

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a former public servant as to whether she may, consistent with the post-employment restrictions of Chapter 68 of the City Charter, represent a group of clients on an application pursuant to the law which her former agency administers. For the reasons discussed below, it is the opinion of the Board that the former public servant may not represent this group of clients on this particular application.

Background

The former public servant, who left her City agency in 1992 and who is currently a partner in a private law firm, has advised the Board that, in her position with the City, she conducted hearings

concerning applications under the same law pursuant to which she now seeks to proceed. As a public servant, she had been involved in the processing of applications and in managing other hearing officers who, like her, prepared recommendations for possible adoption by her City agency. The former public servant has described her function as "quasi-judicial."

The former public servant has further advised the Board that before she left her former agency, she was assigned a particular application. Recently, one of the individuals who had made this application asked the former public servant to represent him and his co-applicants on the hearing to be held on this same application, which had been delayed since 1992 and which had just been scheduled. The former public servant stated that she would not have recalled the substance of this case or that she had acted as a hearing officer on it if this individual had not reminded her of that fact. Agency records indicate that she conducted three pretrial conferences, scheduled the case for trial, granted various adjournment requests, and otherwise presided over the matter over a period of several months.

Discussion

The former public servant, who has been out of City service for more than four years, seeks to represent a group of clients with respect to an application and related proceedings, which were pending at the time she left City service. Further, the former public servant was involved in this matter in the manner described above.

Charter Section 2604(d)(4) provides that no former public servant shall appear before the City, or receive compensation for any services rendered, in relation to any particular matter involving the same party or parties with respect to which such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities. The most relevant factor in considering the former public servant's request for an opinion is therefore the extent to which her involvement on the matters described above was "personal and substantial."

It is the opinion of the Board that the kind of activity in which, according to agency records, the former public servant engaged is "personal and substantial" for the purposes of Chapter 68. The

former public servant acted as the presiding hearing officer over the same proceeding in which she now seeks to become involved, as counsel to the same group of individuals who had appeared before her as applicants in this matter. As a hearing officer, she conducted pretrial conferences, scheduled the case for trial, granted various adjournment requests, and performed other tasks which could have affected the outcome of the proceeding. This level of involvement is "substantial," and, accordingly, the former public servant is now prohibited from working on this matter. See Charter Section 2604(d)(4).<sup>1</sup>

It is also the opinion of the Board that the former public servant's participation in this matter could create a conflict of interest under Charter Section 2604(d)(5), which provides, among other things, that no former public servant shall disclose or use for

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<sup>1</sup> Cf. Judiciary Law Section 17 ("A judge or surrogate or former judge or surrogate shall not act as attorney or counsellor in any action, claim, matter, motion or proceeding, which has been before him in his official character"); Code of Professional Responsibility, EC 9-3 ("A lawyer who leaves judicial office or other public employment should not thereafter accept employment in connection with any matter in which the lawyer had substantial responsibility prior to leaving, since to accept employment would give the appearance of impropriety even if none exists").

private advantage any confidential information gained from public service which is not otherwise made available to the public. As a hearing officer on this matter, the possibility that the former public servant had access to confidential information concerning the party which would now be her adversary (i.e., her former agency) would create the appearance of impropriety.

Conclusion

For the reasons discussed above, it is the opinion of the Board that it would violate the post-employment provisions of Chapter 68 for the former public servant to represent a group of clients on a matter with respect to which she had been personally and substantially involved as a hearing officer for the City.

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