

Advisory Opinion No. 90-8

A public servant who is an attorney and a Mayoral appointee to the Police Department's Civilian Complaint Review Board (the "CCRB") asked for an opinion as to what extent the post-employment restrictions in Chapter 68 of the City Charter would prohibit him from representing police officers in court or in the Police Department trial room when his term on the CCRB ends.

The CCRB is responsible for reviewing civilian complaints against members of the Police Department. It has twelve members, six of whom are Police Department employees who serve on the CCRB without compensation. The other six members are appointed by the Mayor, with the approval of the City Council, and receive a per diem from the Office of the Mayor.

Relevant Charter Sections

Charter Section 2604(d) sets forth the post-employment restrictions applicable to public servants who leave City government after April 1, 1990.

Charter Section 2604(d)(2) provides in pertinent part that:

No former public servant shall, within a period of one year after termination of such person's service with the city, appear before

the city agency served by such public servant; provided, however, that nothing contained herein shall be deemed to prohibit a former public servant from making communications with the agency served by the public servant which are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the public servant's service with that agency. (Emphasis added.)

Charter Section 2601(3) provides that the "agency served by a public servant" is, in the case of a paid public servant, the agency employing such public servant. Charter Section 2604(d)(4) provides that:

No person who has served as a public servant shall appear, whether paid or unpaid, 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 particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities.

Conclusion

It is the opinion of the Board that the agency served by Mayoral appointees to the CCRB is the Office of the Mayor, which pays their per diem compensation. Accordingly, a public servant who is an attorney and a Mayoral appointee to the CCRB may, within one year after leaving the CCRB, represent police officers in the Police Department trial room on particular matters

with which he had not participated personally and substantially in his official capacity.

However, to avoid the appearance of impropriety, a former Mayoral appointee to the CCRB should not represent a police officer concerning any matter pending before the CCRB during his tenure there, even if he had not personally participated in that matter.

Merrell E. Clark, Jr.
Chair

Robert J. McGuire

Beryl R. Jones

Dated: July 25, 1990