



## **ENFORCEMENT**

by  
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### **A. Introduction**

Corruption is costly. The great economic cost of corruption creates incentives to root it out. Self-dealing by government officials distorts economic development by, for example, committing governments to projects they can ill afford and may not even need, like roads that lead nowhere.

Economic cost is not the only byproduct of corruption. People suffer the consequences of nepotism, when, for example, tainted government hiring decisions lead to the relaxation of safety regulations. Sometimes such decisions even contribute to deaths or injuries in unsafe public works projects. In New York City, the rule is that no government official may use or even attempt to use his official position to benefit himself or a close family member or business associate.

### **B. The New York City Enforcement Program**

Some breaches of the public trust can best be addressed by local government ethics agencies equipped to enforce civil penalties. This chapter reviews the New York City ethics enforcement experience.

Any good ethics enforcement program has the following features: (1) fairness; (2) effective penalties; (3) some type of confidentiality prior to final decision; (4) a means of publishing final findings of conflict of interest so that the particular cases can be used for educational purposes; and (5) appellate review. The New York City model presupposes certain fundamental indicia of fairness in the legal process: due process of law, meaning a full and fair opportunity to be heard in an administrative court that is unbiased, and confidential proceedings until a finding of conflict of interest is made by the body charged with enforcing the ethics laws.

Confidentiality provisions in enforcement proceedings recognize the tension between the interest of the party charged with unethical conduct in preserving his or her reputation and the right of the public to know, once the charges are proved, when officials act in a corrupt way. In addition, the New York City enforcement process requires publication of case results where findings of conflict of interest are made. The enforcement program also allows for effective monetary and other penalties that will serve to deter misconduct in the future, both in the case of a specific respondent and in general.

The New York City Conflicts of Interest Board's *advisory* function must be distinguished from its *enforcement* function. The Board's advisory function pertains only to prospective conduct. The Board administers Chapter 68 of the New York City Charter, which contains the City's conflicts of interest law. In this role, the Board dispenses advice to City officials who want to comply with the law and seek approval for future conduct they propose (such as teaching part-time at a university that has business dealings with the City, or placing private investments in a blind trust before accepting a City appointment).<sup>1</sup>

By contrast, the Board's enforcement function applies to past conduct that violates Chapter 68 of the City Charter, the City's ethics law, or section 12-110 of the Administrative Code, the City's financial disclosure law.<sup>2</sup>

### **Examples of potential Chapter 68 violations**

Following are some examples of ethics code violations in New York City:

- Holding a prohibited interest in a firm that does business with the City.
- Engaging in conduct that conflicts with official duties, such as using City resources for private purposes.
- Taking certain gifts worth \$50 or more.
- Coercing other employees into working on or contributing to political campaigns.
- Accepting certain moonlighting jobs.
- Negotiating with City contractors for jobs when working with those entities on particular City matters.
- Entering into a financial relationship with a superior or subordinate (*e.g.*, asking

one's subordinate for a \$5,000 loan or setting up a private delivery or cleaning service together).

- Leaving City service and appearing before one's former City agency for pay on a non-ministerial matter within a year of termination of service, or working (at any time, whether paid or unpaid) on the same particular matter in the private sector that one previously worked on personally and substantially for the City. We call these one-year and lifetime prohibitions the "post-employment" or "revolving door" restrictions. They prevent City employees from taking advantage of their government connections to benefit themselves, family members, or other private entities with which they are associated. These rules curtail favoritism that deprives others of a fair opportunity to obtain City business.

### **C. Enforcement Procedures**

The New York City Office of Administrative Trials and Hearings ("OATH") is New York City's central administrative tribunal, which hears cases from a wide variety of City agencies.<sup>3</sup> The Board routinely delegates the hearing function to OATH, which employs professional administrative law judges and courtrooms equipped with hearing facilities and transcription capabilities. The use of such a central tribunal creates great efficiencies, eliminates the need for a local ethics commission to have its own hearing facilities, and adds a layer of professionalism, independence, and formality to the proceedings.

To prove a case at OATH, the Board's enforcement unit must produce witnesses who have personal knowledge and documents concerning alleged violations. Rumors and newspaper reports are not enough. All Board proceedings and records are confidential, except a final order and findings of a violation.<sup>4</sup> Public dispositions are discussed below in section D.

#### **1. Complaints**

When the Board receives a *complaint*, the Board has five choices as to how to treat it under Charter § 2603(e):

- a. Dismiss if no action is required; or
- b. Refer the complaint to the New York City Department of Investigation ("DOI") for investigation; or
- c. Make an "initial determination of probable cause" to believe that a public servant violated the Charter and serve notice of that initial determination upon the public servant; or

- d. Refer the complaint back to the agency head employing the public servant if the violation is minor or if related disciplinary charges are pending;<sup>5</sup> or
- e. Issue a private warning letter to the official. Where conduct was inappropriate, but minor, a private warning or censure letter may be the proper disposition of a case of alleged violation of the ethics laws. These letters are also useful if, in the future, an official who has been warned or censured commits another offense. For these letters, and indeed any casework to be useful, they must also be retrievable by the name of the official for future reference.

If the Board makes an early referral to another agency for possible disciplinary charges, the agency head must then consult with the Board prior to final disposition.<sup>6</sup> This consultation allows the Board to provide guidance on the interpretation of the Charter citywide, and fosters consistency and fairness in the administration of the law.<sup>7</sup>

The Board may also direct DOI to investigate matters that are not brought by formal complaint.<sup>8</sup> An important source of such complaints is the news media. An article in the newspaper citing allegations of corruption can trigger an investigation that will determine whether the facts and evidence support the public account. For example, *The New York Times* published an article on April 26, 1993, that reported that the City's former Comptroller had recommended Fleet Securities as a co-manager on a bond issue seven months after the Comptroller's United States Senate campaign had obtained a \$450,000 loan from Fleet's affiliate, Fleet Bank. An investigation followed.

DOI must also report to the Board confidentially on cases that involve or may involve violations of the conflicts of interest law.<sup>9</sup> City agencies also have an obligation to refer complaints of Charter violations to the Board.<sup>10</sup>

The Board has jurisdiction over *former* public servants.<sup>11</sup> This means that public servants cannot insulate themselves from enforcement of the ethics law simply by resigning quietly, sometimes with hefty severance payments if they are offered at the crucial time, and hoping that serious cases will go away.

## **2. Extra Due Process: After DOI Conducts an Investigation** **A Full and Fair Opportunity to Be Heard**

Once DOI makes its *confidential* report<sup>12</sup> to the Board, the Board may have additional questions and ask DOI to continue or expand its investigation. With the report and information

available, the Board then determines whether to proceed with a probable cause notice or to dismiss. If there is insufficient evidence to warrant enforcement proceedings, the Board may close the case. In its discretion, the Board may inform the target that the matter is closed.

### **3. After the Notice of Initial Determination of Probable Cause**

If the Board finds probable cause to believe that the City employee has violated the Charter, the enforcement staff will issue a written, “Notice of Initial Determination of Probable Cause.” The City employee or official then has 15 days (20 days if service was by mail) to answer the notice, either orally or in writing. The City official has the right to be represented by counsel or any other person.<sup>13</sup> The OATH Rules of Practice also apply, but the Board’s Rules govern in case of a conflict between the two sets of procedural rules.<sup>14</sup> The New York Civil Practice Law and Rules (the “CPLR”) governing cases in the state courts of New York do not govern in administrative proceedings such as the Board’s hearings, except as expressly provided in particular rules that have reference to the CPLR.

The Board reviews the response and will either dismiss the case or sustain its finding and hold a hearing or direct a hearing to be held at OATH.<sup>15</sup> Most hearings are held at OATH before an administrative law judge, although a Board member may conduct the hearing.<sup>16</sup> It is important to note that the Board has in fact entertained these early defenses and dismissed cases at this stage. This means that the process is not *pro forma*, and City officials do have a real opportunity to short-circuit a case that should not go forward for reasons not previously brought to the Board’s attention. If a “probable cause” notice has been served upon the City official, and he has responded, and the Board decides to dismiss the case, that official is entitled to a written notice of dismissal.<sup>17</sup>

If the City employee is subject to any state law or collective bargaining agreement providing for the conduct of disciplinary proceedings, the Board must refer the matter to the appropriate agency if the Board sustains its probable cause finding, and the agency must consult with the Board prior to final decision.<sup>18</sup> However, a unionized employee who leaves City service falls under the Board’s jurisdiction and will be subject to full enforcement proceedings after leaving City service. The Board encourages, when appropriate, “three-way” settlements in cases where a unionized employee, his agency, and the Board can reach a public resolution of conflicts of interest claims.

### **4. Formal Proceedings**

If the Board sustains its finding of probable cause to believe that the City official violated the Charter, the Board’s enforcement counsel serves a formal Petition.<sup>19</sup> The respondent serves an Answer (8 days after service of Petition, 13 days if service was by mail).<sup>20</sup> The failure to answer means that all the allegations of the Petition are deemed admitted.<sup>21</sup> Pleadings may be amended within 25 days prior to hearing. If a party wishes to amend the pleadings later than 25 days prior to trial, there must be consent or leave of the Board or of an OATH administrative law judge.<sup>22</sup>

Documents may be exchanged. There is no right to take depositions of witnesses. Depositions may be taken only upon motion for “good cause shown.”<sup>23</sup>

## **5. Subpoenas**

Only the administrative law judge at OATH or a Board member may issue subpoenas for witnesses and documents.<sup>24</sup> An OATH rule adopted in 1998 removes the attorneys’ ability to issue subpoenas in OATH cases, and requires the parties to have subpoenas signed by the administrative law judge.<sup>25</sup> Subpoenas can be used to compel production of documents or attendance of witnesses at or prior to a hearing. Under OATH’s new subpoena rule, the party seeking the subpoena is deemed to be making a motion, which can be made on 24-hours notice, even by fax. OATH continues to encourage the making and scheduling of requests for subpoenas by telephone conference call to the administrative law judge.

## **6. The Hearing**

Hearings are not public unless requested by the public servant.<sup>26</sup> At OATH, each case is assigned a trial judge and a settlement judge. In most cases (unless the parties’ views of the necessary outcome are so divergent that settlement seems impossible), the parties must be prepared to engage in serious settlement discussions prior to the commencement of trial. If the settlement judge cannot resolve the matter, the trial judge presides at the hearing. This two-judge approach promotes settlements and allows the parties to speak freely with a neutral third party about the strengths and weaknesses of the case without fear of prejudicing the trier of fact.

Each side may present an opening statement summarizing the case and the proofs. Enforcement counsel makes the first presentation. The prosecuting attorney has the burden to prove the case by a preponderance of the evidence and must initiate the presentation of the evidence. The City official then makes an opening statement, and presents his or her case. The enforcement attorney may present rebuttal evidence.<sup>27</sup>

Witnesses take an oath and deliver their testimony on the record. An audiotape of the proceedings is made, and OATH sees that the tape is transcribed into a *verbatim* transcript of the testimony. The parties or their counsel (or other representative, since non-lawyers may appear at OATH) conduct direct and cross-examination. The rules of evidence are relaxed, and hearsay is admissible. Modern technology permits the tribunal to make the transcript available cheaply in a computer diskette form, which allows searches by words and phrases. Both sides also present documentary evidence. The Board’s first full-blown trial, which involved the former City Comptroller, took eleven days. There were 2,000 pages of testimony, 150 trial exhibits, and more than fifteen witnesses.

After the close of the evidence, each side may present a closing statement.<sup>28</sup> This time, the

City official goes first. As part of its mandate to educate City officials about the conflicts of interest laws, the Board has produced two, one-hour videotaped mock trials showing all of these elements of the trial phase of the Board's proceedings. The tapes have been broadcast on the City's Crosswalks Television station.

## **7. Post-Hearing Procedure**

After the close of the trial, the OATH administrative law judge considers the full record of the case, including the transcript and the documentary and other exhibits. After due reflection on the facts and the applicable law, the administrative law judge issues a confidential, non-binding written report and recommendation (findings of fact and conclusions of law).<sup>29</sup>

The parties have 10 days from service of OATH's report and recommendation to submit comments to the Board.<sup>30</sup> The Board considers OATH's report and all of the evidence in the record.<sup>31</sup> The Board then makes its own order and findings of fact and conclusions of law.<sup>32</sup> Deference is given to the administrative law judge, but the Board issues its own decision and is free to modify the recommendations of the administrative law judge. If no violation is found, the order is not made public.<sup>33</sup> If a violation is found, the order is made public, as are the final findings and conclusions.<sup>34</sup>

In April of 1996, in the case of the former City Comptroller, Elizabeth Holtzman, after a full trial on the merits, the Board fined Ms. Holtzman \$7,500 (of a maximum \$10,000) for violating section 2604(b)(3) of the Charter (prohibiting use of public office for private gain). The Board also found that she had violated section 2604(b)(2) (prohibiting conduct that conflicts with the proper discharge of official duties) with respect to her participation in the selection of a Fleet Bank affiliate as a co-manager of a City bond issue when she had a \$450,000 loan from Fleet Bank to her United States Senate campaign, a loan she had personally guaranteed.<sup>35</sup>

Similarly, in January 1998, the Board imposed a \$1,000 fine on a former Assistant District Attorney who issued a false grand jury summons to a police officer to interfere with his scheduled testimony against the Assistant District Attorney's husband in traffic court on the same day. The Assistant District Attorney had previously been dismissed by the District Attorney's office.<sup>36</sup>

In another case, the Board fined Kerry Katsorhis, former Sheriff of the City of New York, \$84,000 for numerous ethics violations. This is the largest fine ever imposed by the Board. The fine was collected in full in December 2000. Katsorhis habitually used City letterhead, supplies, equipment, and personnel to conduct an outside law practice. He had correspondence to private clients typed by City personnel on City letterhead during City time and mailed or faxed using City postage meters and fax machines. Katsorhis also endorsed a political candidate using City letterhead and attempted to have the Sheriff's office repair his son's personal laptop computer at City expense. Katsorhis also attempted to have a City attorney represent one of Katsorhis' private clients at a court appearance. In 2000, the New York State Supreme Court Appellate

Division, First Department, twice dismissed as untimely perfected a petition to review the Board's decision, and the New York Court of Appeals dismissed as untimely a motion seeking leave to appeal the Appellate Division's orders. Accordingly, all appeals have been exhausted and the Board decision stands.<sup>37</sup>

Pursuant to its Charter requirements, the Board published its final decisions in these cases.

**8. Appeals to the State Courts:  
Supreme Court; Appellate Division; Court of Appeals**

The prerequisite to appeal to the courts is *final* action by the Board. Prior to a final Board order, an appeal would be premature. The familiar legal principle in administrative law of "exhaustion of administrative remedies" requires that the person who feels aggrieved by an agency decision complete the administrative process (where he may find redress) before challenging the final agency action in the courts.

In the *Katsorhis* case, the parties agreed to by-pass the court of first instance (the New York State Supreme Court) and proceed directly to the Appellate Division. Similarly, in the *Holtzman* case, the parties proceeded directly to the Appellate Division. There, the principal issue was whether there was "substantial evidence" to support the Board's decision. The Appellate Division upheld the Board's ruling in *Holtzman*, and, as noted, dismissed the *Katsorhis* case for failure to perfect the appeal (by filing the record and a legal brief within the nine months allowed under that Court's rules).

On April 30, 1998, the New York Court of Appeals unanimously affirmed the Appellate Division, First Department, ruling confirming the Board's decision in *COIB v. Holtzman*.<sup>38</sup>

Significantly, the Court of Appeals, New York State's highest court, upheld the Board's reading of the standard of care applicable to public officials: "A City official is chargeable with knowledge of those business dealings that create a conflict of interest about which the official 'should have known.'"<sup>39</sup> The Court also found that Ms. Holtzman had used her official position for personal gain by encouraging a "quiet period" that had the effect of preventing Fleet Bank from discussing repayment of her Senate campaign loan. The Court held: "Thus, she exhibited, if not actual awareness that she was obtaining a personal advantage from the application of the quiet period to Fleet Bank, at least a studied indifference to the open and obvious signs that she had been insulated from Fleet's collection efforts."<sup>40</sup> Finally, the Court held that the Federal Election Campaign Act does not pre-empt local ethics laws.

**D. Disposition By Agreement**

It is possible to reach a "disposition by agreement" at any point.<sup>41</sup> Any such disposition

which contains an acknowledgment that the respondent violated the Charter or the Administrative Code shall be made public.<sup>42</sup> This publication requirement has a salutary effect. It allows the public to be apprised of important cases, and puts enforcement to work as a part of the Board's education program: teaching by example. It helps to hold officials accountable. Dispositions by agreement afford the officials more of a say in the outcome of enforcement cases than they may have if they proceed to trial and lose. Early settlements spare both the City and the official who has been served with claims of conflicts of interest a great deal of time and resources. Often, a negotiated settlement, in which the official can have input into the penalty and the description of his or her conduct, will be more palatable to the official than a full trial which carries the risk of a judicial findings, upon a fully developed record, that his or her conduct was improper.

A settlement or disposition by agreement generally requires a monetary fine, an admission of a violation of the law, a meaningful statement of facts, and an agreement that the disposition is public. For example, in *COIB v. Matos*, COIB Case No. 94-368 (1996), there was an admission of a Charter violation and a \$1,000 fine for sending a resume to a City contractor while the official was directly concerned with that contractor's particular matter with the City. Many government employees do not have the resources to pay huge fines, and an ethics enforcement agency can and should take into account true financial hardship in setting the fine. In the *Matos* case, the Board agreed to forgive a portion of the fine in recognition of unemployment and real hardship shown by sworn affidavit, if the hardship continued. The Board thus held the case open for a year after the disposition, by its terms, for the submission by Matos and review by the Board of a second, sworn statement of circumstances showing continued hardship.

There is plenty of room for creativity in settling cases. If the City official is cash-poor, and would have to extend payments over a long period of time, that can be done. The Board requests a confession of judgment in such cases, to avoid protracted collection problems if the official defaults on the settlement payment schedule. An official who wishes to settle but lacks cash may agree to disgorge ill-gotten gains by signing over to the City, for example, payments he will receive from unauthorized moonlighting with a company that does business with the City and resign the outside employment that offends the conflicts of interest law. The Board fined a firefighter \$7,500 for unauthorized moonlighting with a distributor of fire trucks and spare parts to the Fire Department. As part of the settlement, the firefighter agreed to disgorge income from his after-hours job, and the vendor, in effect, funded the settlement.<sup>43</sup>

The Board fined former Police Commissioner Kerik \$2,500 for using three New York City police officers to perform private research for him. He used information the officers found in a book about his life that was published in November of 2001. The Board noted that Mr. Kerik cooperated fully and expeditiously with the investigation and resolution of this matter. The three officers used limited City time and resources in their research, and two of the officers had made five trips to Ohio for the project, each spending 14 days of their off-duty and weekend time. *In re Kerik*, COIB Case No. 2001-569 (2002).

The Board concluded a settlement with Veronica Smith, a former Administration for Children's Services ("ACS") caseworker who admitted violating the conflicts of interest law by

soliciting a \$4,000 loan from a foster mother and accepting the foster mother's loan of \$2,500 while continuing to evaluate her fitness as a foster mother. The Board fined Ms. Smith \$3,000 and required her to repay the foster mother in full within two years. However, if Ms. Smith makes full repayment of the loan in the time allotted, the Board's fine will be forgiven. If she fails to repay the loan, the Board will execute judgment in the full amount of the \$3,000 fine, and Ms. Smith will still have to repay the loan. In setting the terms of the fine, the Board took into account Ms. Smith's circumstances, which include serious personal and family health problems. *COIB v. Smith*, COIB Case No. 2000-192 (2002).

In *COIB v. Birdie Blake-Reid*, COIB Case No. 2002-188 (2002), the Board and the former New York City Board of Education ("BOE") concluded a settlement with Birdie Blake-Reid, the Executive Director of the Office of Parent and Community Partnerships at BOE. Ms. Blake-Reid, who agreed to pay an \$8,000 fine, misused her City position habitually by directing subordinates to work on projects for her church and for a private children's organization, on City time using City copiers and computers over a four-year period. One temporary worker sometimes fell behind in his BOE work when Ms. Blake-Reid directed him to make her private work a priority. BOE funded overtime payments to him when he stayed to finish his BOE work. Ms. Blake-Reid acknowledged that she violated City Charter provisions and Board Rules that prohibit public servants from misusing their official positions to divert City workers from their assigned City work and misapplying City resources for their private projects.

In *COIB v. McGann*, COIB Case No. 99-334 (2000), a construction inspector from the Department of Buildings was fined \$3,000 for giving one of his private business cards to a homeowner at a site where this inspector had just issued six notices of violation. The inspector had written on his private business card the words, "ALL TYPES OF CONSTRUCTION ALTERATIONS," and he told the homeowner that he used to do construction work and could advise her on such work. The private business cards used by this inspector also contained his Department of Buildings pager number and the name "B.E.S.T. Vending Service." The inspector was required to cease using the name "B.E.S.T." in his private business because that name could be confused with the name of his City unit, the "B.E.S.T. Squad" (Building Enforcement Safety Team). He admitted violating sections 2604(b)(2) and (b)(3) of the Charter. This matter was a "three-way" settlement with the Board, the Department of Buildings, and the inspector. An innovative provision in this disposition was a "two strikes" provision in which the inspector agreed to summary termination in case of any further violation of the conflicts of interest law.

In a three-way settlement, the Board and the New York City Department of Transportation ("DOT") suspended, demoted to a non-supervisory position with a \$1,268 annual pay cut, and fined a City parking official \$2,500 for using his position to solicit a subordinate to marry his daughter in Ecuador and for repairing the cars of subordinates for compensation. Moran was also placed on probation for two years, during which time he is ineligible for promotions or salary increases. In addition, Moran can be terminated summarily if he violates the DOT code of conduct or the conflicts of interest law again. Thus, the Board used a "two strikes" provision originally developed in the *McGann* case, noted above. *COIB v. Milton Moran*, COIB Case No. 99-51, OATH Index No. DOT-012261 (2001). A court challenge by

Mr. Moran of the settlement was dismissed by the New York State Supreme Court on November 5, 2001, Index No. 118741/01 (DeGrasse, J.).

In *COIB v. RosaLee Adams*, COIB Case No. 2002-088 (2003), the Board concluded a settlement with the former First Vice President of Community School Board for School District 16, RosaLee Adams. Ms. Adams testified at an administrative hearing in her official capacity on behalf of her sister without disclosing their family connection. Ms. Adams' sister was an Interim Acting Assistant Principal in the same district and was appealing her "Unsatisfactory" rating. Her appeal of her performance rating was denied. The former Chancellor later removed Ms. Adams from the school board in February 2002, under the State Education Law, which provides further for permanent disqualification of a community school board member from employment, contracting, or membership with the City School District for the City of New York after a finding that the member knowingly interfered with the hiring, appointment, or assignment of employees. Ms. Adams paid a fine of \$1,500 as part of the settlement with the Board.

More recently, in *COIB v. Brian Andersson*, COIB Case No. 2001-618 (2004), the Board concluded a settlement with Commissioner Brian G. Andersson of New York City Department of Records and Information Services ("DORIS"). Mr. Andersson agreed to pay a fine of \$1,000 and acknowledged that he had used DORIS records to conduct genealogy research for at least four private clients, in violation of City Charter provisions and Board Rules that prohibit public servants from using City office for private gain and from misusing City time and resources for non-City purposes. In the settlement, Mr. Andersson acknowledged that he violated the Board's advice and his own written representations to the Board when he used DORIS records for private clients, by supplying them with DORIS marriage, birth, and death records or identifying information needed for such records, as well as DORIS photographs. The Board took the occasion of this Disposition to remind City officials to take care to separate their private business matters from their official City work and to seek Board advice if their circumstances change, or the manner in which they intended to conduct their City and private jobs begins to differ from the reality of their daily work. The Board noted that high-level officials have a special obligation to set an example of honesty and integrity for the City workforce.

In the matter of *James Arriaga*, COIB Case No. 2002-304 (2003), the Board and the Department of Education concluded a three-way settlement in a case involving James Arriaga, an Assistant Architect at the Department of Education Division of School Facilities, who had a private firm he knew had business dealings with the City and who conducted business on behalf of private interests, for compensation, before the City's Department of Buildings ("DOB") on City time, without the required approvals from the Department of Education and the Board. The Board took the occasion of this settlement to remind City-employed architects who wish to have private work as expeditors that they must do so only on their own time **and** that they are limited to appearances before DOB that are ministerial only – that is, business that is carried out in a prescribed manner and which does not involve the exercise of any substantial personal discretion by DOB officials. Arriaga admitted that he pursued his private expediting business at times when he was required to provide services to the City and while he was on paid sick leave. The Board fined Arriaga \$1,000, and the Department of Education suspended him for 30 days without pay and fined him an additional \$2,500 based on the set of disciplinary charges attached

to the settlement.

In *COIB v. Cathy Mumford*, COIB Case No. 2002-463 (2003), the Board and the Department of Education concluded a settlement with Cathy Mumford, a Department of Education teacher who was involved in the hiring and payment of her husband's company to write a school song for the school where she worked and conduct workshops. Ms. Mumford certified the receipt of the song six months before the song was received. She signed a purchase order indicating receipt of the song for the purpose of remitting the purchase order for payment. The Department of Education fined Ms. Mumford \$5,000 for the improper payment of \$3,500 to Soul'd Out, and Ms. Mumford agreed to pay a fine of \$2,500 for violating the conflicts of interest law, amounting to a fine totaling \$7,500. Ms. Mumford was also transferred to another school and removed from purchasing responsibilities.

Annexed hereto as Appendix A is a comprehensive summary of the Board's enforcement dispositions, including settlements and cases that went to trial.

**E. Penalties (Conflicts of Interest Cases)**

Following is a summary of the penalties applicable in cases involving violations of the conflicts of interest law in New York City:

1. The Board can impose a civil monetary fine up to \$10,000 per violation. (Charter § 2606(b).)
2. The Board can recommend suspension or removal from office after consultation with the relevant agency head. (Charter § 2606(b).)
3. The Board can void a contract or transaction (after consultation with the agency head). (Charter § 2606(a).)

In the *Holtzman* case, former Mayor David Dinkins removed Fleet Securities as a co-manager of bonds under his own powers on May 13, 1993, almost immediately after the press reported the story. This action preceded the Board's administrative proceedings.

4. Violation of Chapter 68 is a misdemeanor. Upon conviction (in a separate criminal proceeding conducted by one of the City's District Attorneys), the City official must forfeit public office or employment. (Charter § 2606(c).)

In the first criminal jury trial and conviction of a Chapter 68 violation since the 1990 Charter revisions strengthened the enforcement provisions of the Charter, the case of *Basil Randolph Jones*, a City Department of Finance Deputy Tax Collector was

convicted of two felonies (offering a false instrument for filing) and of a misdemeanor violation of the Charter, for holding an interest in a firm engaged in business dealings with the City while he was employed by the City without seeking review of his conflict by the Board. Mr. Jones had denied that he worked for another City agency when he applied to the New York City Department of Housing Preservation and Development for a one million dollar contract to manage and rehabilitate City buildings. He was sentenced to five years probation, fined \$5,000, and ordered to perform 100 hours of community service relating to housing. He also cooperated with the government in a separate case that involved allegations of systemic corruption.

More recently, in 2001, two Department of Buildings officials were prosecuted criminally in Manhattan for accepting gifts from expeditors. In the *Hilton* matter, the court declared a mistrial and the defendant pleaded guilty to a misdemeanor violation of the City's conflicts of interest law. In the *Cox* case, the defendant was convicted following a jury trial of the misdemeanor of receiving unlawful gratuities and of two felony counts of offering false instruments for filing by deliberately answering falsely in City financial disclosure reports calling for the listing of the gifts.

It should be noted that actual knowledge of a business dealing with the City is required for criminal conviction based on holding a prohibited interest. (Charter § 2606(c).) Criminal proceedings are brought by other law enforcement agencies, like the District Attorney's Office, not the Board. However, Chapter 68 imputes knowledge of business dealings with the City for purposes of all cases involving civil penalties under a "should have known" standard. Thus, Charter § 2604(a)(6) provides that for purposes of imposing civil penalties such as the \$10,000 fine, voiding a transaction, or recommending disciplinary action as provided in Charter § 2606(a) and (b), "a public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city."

In 2000, the Board announced that it had rebuked former NYC Police Commissioner Howard Safir for accepting a free trip to the 1999 Academy Awards festivities in Los Angeles. Revlon was the donor of the trip, valued at over \$7,000. The Board defined for the first time the duties of high-level public servants to inquire about the business dealings of the donor. Because this was the first public announcement of this duty, and the business dealings of Revlon were small and difficult to discover, the Board declined to charge Safir with violating the Board's Valuable Gift Rule, which prohibits public servants from accepting gifts valued at \$50 or more from persons they know or should know engage or intend to engage in business dealings with the City. Safir repaid the cost of the trip. *Acceptance of Valuable Gift (Safir)*, COIB Case No. 99-115 (2000). The concept of imputed knowledge is a central theme of Chapter 68 of the City Charter. Public servants may not accept gifts from donors they know engage in or

even *intend* to engage in business dealings with the City, *see* Charter § 2604(b)(5). The burden is on the public servant to inquire about the business dealings and intended business dealings of those who try to bestow gifts upon them.

5. Conviction for buying public office leads to lifetime disqualification from being elected, appointed, or employed in City service. (Charter § 2606(c).)

**F. Penalties (Financial Disclosure Violations)**

Penalties for violating the City's financial disclosure requirements are similar to penalties for violating the Charter:

1. Monetary fines up to \$10,000 for each intentional violation (failure to file, failure to pay a late fine, failure to include assets or liabilities, or misstatements of assets or liabilities). (Administrative Code § 12-110(h).) *See COIB v. Desai*, Index No. 403858/95 (Sup. Ct. N.Y. Co. 1996).
2. Violation is a misdemeanor punishable by imprisonment up to a year, a fine of up to \$1,000, or both, and is grounds for disciplinary penalties, including removal from office. (Administrative Code § 12-110(h).) Criminal proceedings are brought by other law enforcement agencies.

**G. Conclusion**

It must be emphasized, after all, that the primary purpose of enforcement lies not in punishing public servants but in preventing future conflicts of interest. The Board views its enforcement mandate as both educational and preventive.

A successful enforcement program can reduce waste, encourage compliance by officials who might otherwise err, promote integrity in government decision-making, and increase public confidence in the officials elected or appointed to serve the people.

A credible enforcement program will gain credibility for officials. Corruption must not be allowed to flourish. Fair, humane, and sensible enforcement will foster good government and sound economic development by ensuring that scarce resources are properly allocated and deployed for the right reasons.

*May 1, 2003*

- <sup>1</sup> Charter § 2603(c).
- <sup>2</sup> Charter § 2603(e); Administrative Code § 12-110(h).
- <sup>3</sup> See Chapter 45-A of the Charter.
- <sup>4</sup> Charter §§ 2603(h)(4), 2603(k).
- <sup>5</sup> Charter § 2603(e)(2)(d).
- <sup>6</sup> See Rules of the Conflicts of Interest Board (“Board Rules”), Vol. 12, Title 53, Chapter 2, RULES OF THE CITY OF NEW YORK (“RCNY”) § 2-04(c).
- <sup>7</sup> See generally Vol. II REPORT OF THE NEW YORK CITY CHARTER REVISION COMMISSION, December 1986-November 1988, at p. 165.
- <sup>8</sup> Charter § 2603(f).
- <sup>9</sup> Charter § 2603(f)(2).
- <sup>10</sup> Charter § 2603(g)(2).
- <sup>11</sup> Charter §§ 2603(e)(3), 2603(g)(3), 2603(h)(7).
- <sup>12</sup> Charter § 2603(f)(1).
- <sup>13</sup> Board Rules §§ 2-01(a), 2-05(e).
- <sup>14</sup> Board Rules § 2-03(c).
- <sup>15</sup> Charter § 2603(h)(2); Board Rules §§ 2-01(d), 2-02.
- <sup>16</sup> Board Rules § 2-03(a).
- <sup>17</sup> Charter § 2603(h)(2).
- <sup>18</sup> Charter § 2603(h)(2). See generally Vol. II REPORT OF THE NEW YORK CITY CHARTER REVISION COMMISSION, December 1986-November 1988, at p. 165.
- <sup>19</sup> Board Rules § 2-02(b).
- <sup>20</sup> Board Rules §§ 2-02(c), 2-05(e).
- <sup>21</sup> Board Rules § 2-02(c)(3).
- <sup>22</sup> Board Rules § 2-02(d).
- <sup>23</sup> 12 RCNY, Title 48, § 1-33(b).
- <sup>24</sup> Board Rules § 2-03(b).
- <sup>25</sup> 12 RCNY, Title 48, § 1-43.
- <sup>26</sup> Charter § 2603(h)(4); Board Rules § 2-05(f).
- <sup>27</sup> Board Rules § 2-03(d)(3).
- <sup>28</sup> Board Rules § 2-03(d)(3).
- <sup>29</sup> Board Rules § 2-04(a).
- <sup>30</sup> Board Rules § 2-04(a).
- <sup>31</sup> Board Rules § 2-04(b).
- <sup>32</sup> Board Rules § 2-04(a), (b).
- <sup>33</sup> Board Rules § 2-04(d).
- <sup>34</sup> Charter § 2603(h)(4); Board Rules §§ 2-04(b), 2-05(f).
- <sup>35</sup> *COIB v. Holtzman*, COIB Case No. 93-121 (1996), *aff’d*, 240 A.D.2d 254, 659 N.Y.S.2d 732 (1st Dept. 1997), *aff’d*, 91 N.Y.2d 488, 673 N.Y.S.2d 23, 695 N.E.2d 1104 (1998).
- <sup>36</sup> *COIB v. Nancy Campbell Ross*, COIB Case No. 97-76 (1997).
- <sup>37</sup> *COIB v. Katsorhis*, COIB Case No. 94-351 (1998), *appeal dismissed*, M-1723/M-1904 (1<sup>st</sup> Dep’t, April 13, 2000), *appeal dismissed*, 95 N.Y.2d 918, 719 N.Y.S.2d 645 (Nov. 21, 2000)].

<sup>38</sup> 91 N.Y.2d 488, 673 N.Y.S.2d 23, 695 N.E.2d 1104 (1998).

<sup>39</sup> 91 N.Y.2d at 497.

<sup>40</sup> 91 N.Y.2d at 498.

<sup>41</sup> Board Rules § 2-05(h).

<sup>42</sup> *Id.*

<sup>43</sup> *COIB v. Ludewig*, COIB Case No. 97-247 (1999).

<sup>44</sup> *See* Charter § 2606(d).

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<http://nyc.gov/ethics>

