

## HOW TO MAKE AN ETHICS PROGRAM WORK

Mark Davies  
New York City Conflicts of Interest Board

**Educate public officials, the public, and the press** about what the ethics law and the ethics board are and are not

- That the **purpose of ethics laws** is to promote both the reality *and the perception* of integrity in government by *preventing* unethical conduct *before* it occurs
- That the **focus** of ethics laws is therefore **upon prevention**, not punishment
- That ethics laws assume that the vast majority of **public servants are honest** and want to do the right thing, and thus that these laws are not meant to catch corrupt officials
- That ethics laws **do not regulate morality**, or even ethics, **but** conflicts (usually financial conflicts) between a public servant's official duties and private interests (*i.e.*, **divided loyalty**)
- That ethics laws should **encourage good people** to serve in government by providing guidance to officials and reassurance to citizens that their public servants are serving the public and not themselves

**Facilitate the enactment of an effective government ethics law** that promotes the above purpose and principles

- By resting upon the **three pillars** of
  - A clear, comprehensive, simple, and sensible **code of ethics**
  - Sensible transactional, applicant, and annual **disclosure**
  - Effective **administration** that provides quick and confidential advice, training and education, public disclosure, and reasonable enforcement
- By establishing an **independent ethics board**
  - With **pro bono members**, who have no other government position, engage in no political activities, have no government contracts, do not lobby the government, have fixed terms, and are removable only for cause
  - With **budget protection**

## ORAL AND WRITTEN ADVICE

- Purpose:** To prevent conflicts of interest by giving government officers and employees quick answers to their ethics questions.
- Cover:** Advice, particularly written advice, provides “cover” for officials unjustly accused of violating the ethics code.
- Authority:** The ethics commission is the only agency authorized to authoritatively interpret the ethics law.
- Confidentiality:** The ethics commission's communications with government officials seeking advice must be protected against disclosure to the public or to other government agencies, at least to the extent that the government official asks for advice on future conduct. (Past conduct is a matter for enforcement, and officials should be told that.)
- Oral advice:** Ethics commission attorneys should be available every day to answer questions by telephone. An official should be able to ask a question without revealing his or her name.
- Written advice:** Written opinions should be given quickly. Simple questions should be answered by staff. Only complicated questions should go to the commission.
- Ethics officers:** If possible, set up ethics officers in every agency, who will act as a liaison to the ethics commission. But officials must always be able to come directly to the ethics commission.
- Opinions:** Written advisory opinions should be distributed to every agency so that officials may consult them. The opinions should not reveal who requested the opinion.
- Waivers:** Ethics commissions should have limited power to waive certain provisions of the code of ethics where they do not make sense in the particular case.

**CALLER INFORMATION SHEET**

COIB Attorney:

Date:

Time:

Caller Name:	
<input type="checkbox"/> <i>Check if Anonymous</i>	
Affiliation:	
Phone:	Fax:
Address:	
Email:	

<b>CALLER</b>	<input type="checkbox"/> City Servant	<input type="checkbox"/> Media	<input type="checkbox"/> Civilian Public	<input type="checkbox"/> Fed/State/Local
<b>CATEGORY:</b>	<input type="checkbox"/> Private Law Firm	<input type="checkbox"/> Civic	<input type="checkbox"/> Former City Servant	

<b>TOPIC:</b>			
<input type="checkbox"/> Moonlighting	<input type="checkbox"/> Volunteer Activities	<input type="checkbox"/> Political Activities	<input type="checkbox"/> Enforcement
<input type="checkbox"/> Gifts/Honoraria	<input type="checkbox"/> Ownership Interests	<input type="checkbox"/> Post-Employment	<input type="checkbox"/> Community Bd
<input type="checkbox"/> Certification	<input type="checkbox"/> Use Position (b)(3)	<input type="checkbox"/> FD	<input type="checkbox"/> Fundraising
<input type="checkbox"/> Other	_____		

<b>ACTION TAKEN:</b>	
<input type="checkbox"/> Oral Answer	
<input type="checkbox"/> GAVE WARNING THAT ADVICE IS BASED ON INFORMATION SUPPLIED AND NOTICE OF AVAILABILITY OF WRITTEN ADVICE.	
<input type="checkbox"/> Referred Caller to: _____	
<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Suggested Written Request for advice	
<input type="checkbox"/> Advised conduct prohibited unless & until caller submits written request for advice	
<input type="checkbox"/> Possible Enforcement	
<input type="checkbox"/> Suggested Sending in Written Complaint	
<input type="checkbox"/> Materials to Be Sent (to addressee above)	
Indicate Materials Needed: _____	
_____	
Secretary to Initial & Date When Materials Sent: _____	

**New York City Conflicts of Interest Law, Covering New York City Public Servants  
(Plain Language Version<sup>1</sup>)**

1. **Misuse of Office.** Public servants may not use or misuse the position to financially benefit themselves, their family members, or anyone with whom they have a business or financial relationship.
2. **Misuse of City Resources.** Public servants may not use City letterhead, personnel, equipment, supplies, or resources for a non-City purpose, nor may they pursue personal or private activities during times when they are required to work for the City.
3. **Gifts.** Public servants may not accept anything valued at \$50 or more from anyone that they know or should know is doing business or seeking to do business with the City.
4. **Gratuities.** Public servants may not accept anything from anyone other than the City for performing their official duties.
5. **Seeking Other Jobs.** Public servants may not seek or obtain a non-City job with anyone whom they are dealing with in their City job.
6. **Moonlighting.** Public servants may not have a job with anyone that they know or should know does business with the City or that receives a license, permit, grant, or benefit from the City.
7. **Owning Businesses.** Public Servants may not own any part of a business or firm that they know or should know does business with the City or that receives a license, permit, grant, or benefit from the City, nor may their spouses, or their domestic partners, nor any of their children.
8. **Confidential Information.** Public servants may not disclose confidential City information or use it for any non-City purpose, even after they leave City service.
9. **Appearances Before the City.** Public servants may not accept anything from anyone other than the City for communicating with any City agency or for appearing anywhere on a City matter.
10. **Lawyers and Experts.** Public servants may not receive anything from anyone to act as a lawyer or expert against the City's interests in any lawsuit brought by or against the City.
11. **Buying Office or Promotion.** Public servants may not give or promise to give anything to anyone for being elected or appointed to City service or for receiving a promotion or raise.
12. **Business with Subordinates.** Public servants may not enter into any business or financial dealings with a subordinate or supervisor.
13. **Political Solicitation of Subordinates.** Public servants may not directly or indirectly ask a subordinate to make a political contribution or to do any political activity.
14. **Coercive Political Activity.** Public servants may not force or try to force anyone to do any political activity.

**New York City  
Conflicts of Interest Board  
2007**

<b>Adopted Budget (FY2009)</b>	\$1,989,348
Personal Services	\$1,767,424
Other Than Personal Services (includes temp receptionist)	\$ 221,924
<b>Jurisdiction</b>	
Agencies Subject to COIB	ca. 100
Officers & Employees Subject to COIB	ca. 325,000
Lobbyists (Gifts Only)	
City-Affiliated Non-Profits (Financial Disclosure Only)	ca. 50
<b>Staff</b>	
Legal Advice	21
Enforcement	4 (4 attorneys)
Financial Disclosure	5 (4 attorneys)
Training	6 (1 attorney)
Executive/Administrative/IT	2 (0 attorneys)
Total Attorneys	4 (1 attorney)
	10
<b>Legal Advice</b>	
Staff	4 (4 attorneys)
Telephone Requests for Advice	3,326
Written Requests for Advice	613
Written Opinions, Letters, Waivers, Orders	605
Staff Letters	269
Waivers/(b)(2) Letters	246
Formal Advisory Opinions	4
Board Letters and Orders	86
Opinions per Attorneys	151
Pending Written Requests at Year End	178
Average Response Time	30 days
<b>Enforcement (Prosecution Only; No Investigative Authority)</b>	
Staff	5 (4 attorneys)
Complaints Received	465
Cases Closed	429
Dispositions Imposing Fines	61
Public Warning Letters	26
Fines Collected	\$76,750
Referrals to Department of Investigation for Investigation	137
Reports from Department of Investigation	143

## How city workers can avoid big trouble

Adam Lisberg

Saturday, July 12th 2008, 10:16 PM

The city's ethics cops were hard at work last week naming seven city employees who have to pay fines and face public humiliation for violating taxpayer expectations that they serve without conflicts of interest.

Three of them were called out for breaking ethics rules on behalf of nonprofit groups.

A school principal was fined \$2,250 for asking his teachers to donate to a Haitian relief group he runs; a Health Department worker was penalized \$7,500 for running a nonprofit for teens that works with several city agencies, including her own; and an environmental department architect was charged \$1,000 for using his city phone and computer to talk to the Parks Department about youth wrestling programs run by his nonprofit.

These kinds of cases are the bread and butter of the Conflicts of Interest Board, five mayoral appointees confirmed by the City Council who make sure New York's 300,000 employees don't abuse city time or resources.

Most of the board's dozens of cases each year seem like cut-and-dried probes of boneheaded moves by employees who ought to know better. The board also offers ethics classes and confidential advice to city workers so they don't get in a jam in the first place.

But the one way for a city employee to stay out of trouble while helping a nonprofit on city time may just be to request a waiver in advance - which is exactly what Mayor Bloomberg did for his top brass.

Last year, the mayor asked the Conflicts of Interest Board to let his health commissioner, Thomas Frieden, work gratis on health issues for the Bloomberg Family Foundation, at times with his city phone and computer.

The board agreed, finding "that this work would further the purposes and interests of the city."

When the Daily News noted in December that Deputy Mayor Patti Harris and her assistant Allison Jaffin were doing the same kind of work, Bloomberg promptly asked for - and received - the same clearance.

The Bloomberg Family Foundation isn't the only nonprofit serving a city interest. In 2006, the board cleared Bloomberg and other city officials to raise money for the World Trade Center Memorial Foundation, saying the group's activities "plainly support the purposes and interests of the city."

Bloomberg praised the board in May for being practical-minded in a speech at its annual ethics seminar.

"If we rule out every potential conflict, then we are going to keep the best and the brightest out of government and not get their services," Bloomberg said. "So it's finding that right balance. And I think the COIB, in all fairness, has so far found that balance."

Representatives for the three city workers who got slammed last week declined to comment. But the ethics lesson for city employees may be less about what to do - and more about how to do it.

Or as ethics watchdog **Gene Russianoff of the New York Public Interest Research Group** puts it: "It's really the difference between asking the conflicts board for permission, and getting caught."

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## BIO OF THE EXECUTIVE DIRECTOR

### Mark Davies

Mark Davies has served as Executive Director of the Conflicts of Interest Board since 1994. He previously served as Executive Director of the New York State Temporary State Commission on Local Government Ethics and as a Deputy Counsel to the New York State Commission on Government Integrity and prior to that as a full-time law professor and in private practice, specializing in municipal law and litigation. A graduate of Columbia College and Columbia Law School, he is the chair of the Government Ethics and Professional Responsibility Committee of the New York State Bar Association's Municipal Law Section. He has also served on the steering committee of the international Council on Governmental Ethics Laws. He has lectured extensively on ethics and has authored numerous publications, including contributions to *Ethics, Lawyers and the Public Sector* (ABA 1999), *Ethics and Law Enforcement: Toward Global Guidelines* (Praeger 2000), and *Ethics in Government - The Public Trust: A Two-Way Street* (NYSBA 2002).