

ETHICS ISSUES FOR ASSISTANT CORPORATION COUNSELS

Assistant Corporation Counsels (“ACCs”) should be familiar with the New York Rules of Professional Conduct, which became effective on April 1, 2009. The complete text of the New York Rules is readily available for consultation at all times on the Law Department intranet website, under “Practicing Law,” and on the Professional Responsibility intranet site, which is located under “Useful Links.” Information about recorded programs on Legal Ethics and other topics can be obtained on the Professional Development website. Be aware, however, that recorded programs created prior to April 1, 2009 address the predecessor New York Code of Professional Responsibility. While there are not many substantive changes between the “old” code and the new rules, the content of those pre-April 1, 2009 programs was based on the old rules. On April 2, 2009 a program was conducted here at the Law Department addressing the new rules. That program was recorded and it is available for all ACCs to view. In addition, both the old code, and a conversion table listing the new rules and their predecessor provisions, are available on the Professional Responsibility website.

ACCs who believe that they are faced with a question concerning appropriate ethical conduct in the course of conducting their day-to-day duties should first immediately inform their supervisor or chief, so that the situation may be appropriately addressed. If for some reason the supervisor or chief is unavailable, then the Law Department Professional Responsibility Committee, chaired by Executive Assistant Corporation Counsel Paul Rephen, is also available as a resource for ACCs who have questions or concerns regarding appropriate ethical conduct. To refer a matter to the Committee, ACCs may email Paul Rephen directly.

During the course of representing the City you may encounter issues that have ethical implications. Some of those issues may include the concepts set forth below:

1. **The City of New York as Client.** ACCs represent the City of New York as an entity and are required to act in the best interests of that entity. ACCs do not represent officers and employees of the City in their individual capacity unless representation is specifically authorized by law.
2. **Duties of a Government Lawyer.** ACCs, like all government lawyers, should hold themselves to the highest ethical standards.
 - a. **Civil Matters.** Government lawyers acting in a civil law context should avoid maintaining litigation that is obviously unfair, should seek justice and should develop a full and fair record, and should avoid harassing parties or bringing about unjust settlements or results.
 - b. **Criminal Matters.** (See Rule 3.8) Government lawyers acting in a criminal law context should seek justice and not merely convictions, and should make timely disclosures to the defendant of the existence of evidence that would tend to negate the guilt of the accused, mitigate the degree of the offense, or reduce punishment.

3. Conflicts of Interest (Former Clients). (See Rule 1.11)

a. Substantially Related Matters. ACCs are not permitted to work on matters at the Law Department that are substantially related to matters they worked on while in private practice. Potential conflicts should be discussed with division supervisors as soon as they become apparent.

b. Client Confidences and Secrets. (Rule 1.6) A government lawyer must be aware of any situation where he or she has knowledge of a former client's "confidence" or "secret" that may be useful in any matter he or she handles on behalf of the government. When such a situation arises, the lawyer may not participate in the matter. This may be of special importance where the client of another lawyer in the lawyer's former firm is involved in a matter with the government.

4. Conflicts of Interest (Concurrent Clients). The outside practice of law for profit while employed by the Law Department is prohibited.¹ ACCs are encouraged to participate in outside pro bono work, and such opportunities are available on the intranet site, under "Working at the Law Department," "Volunteer Legal Activities." However, ACCs may not participate in any pro bono work that creates a conflict of interest.² ACCs who are unsure whether a particular pro bono matter creates a conflict of interest should consult Andrea Berger in the Legal Counsel division.

5. Post-Employment Restrictions. There are post-employment restrictions in Chapter 68 of the New York City Charter, which will be covered in the Conflict of Interest Law class.

¹ See, e.g., Admin. Code § 7-103; Law Department Office Manual on intranet website under "Standards of Conduct."

² A conflict of interest could arise, e.g., in the following situations: (1) where the ACC has prosecutorial responsibilities and the pro bono work involves criminal defense matters related to the ACC's cases; (2) the City is involved in the issue that is the basis for the pro bono activity; or (3) the City is likely to become involved in the pro bono matter, or has a strong interest in the outcome of the matter, and the ACC's judgment on behalf of either the City or the pro bono client would be affected thereby. See Admin. Code of the City of New York § 7-103; Conflict of Interest Board Opinion 2001-03; NYSBA Opinion 670.