

## **GUIDING PRINCIPLES FOR LAW DEPARTMENT EMPLOYEES CONCERNING CONFLICTS OF INTEREST**

*Members of the Law Department's Committee on Professional Responsibility and Ethics often receive questions from agency employees about various issues that are addressed by Charter Chapter 68 ("Conflicts of Interest"), the Administrative Code, the Rules of Professional Conduct and the Law Department's internal policies. Accordingly, the Committee has prepared a synopsis of these topics for the general edification of Law Department employees. The summaries below are intended for general guidance. If you have any particular questions concerning these matters, they should be raised with your supervisors. If they cannot answer your questions, you or they can contact Paul Rephen (Chair), Karen Griffin (Vice Chair) or Andrea Berger.*

### **Involvement with non-Law Department legal matters**

**Administrative Code § 7-103 makes it unlawful for ACCs to appear as attorneys in any actions or litigation except in the discharge of their duties. In addition, it is the office's policy that ACCs are not permitted to maintain an outside practice of law.**

- The Administrative Code prohibition against appearances in actions or litigation includes representing family members or friends.
- You may assist a family member or friend with a non-litigation matter such as a real estate closing or drafting of a Will, provided that this work is performed without compensation and there is no City interest in the matter. It is the Law Department's policy that any non-litigation legal work must be approved by the Managing Attorney.
- If a co-worker asks for your advice about a legal matter, you are not prohibited from discussing it so long as there is no payment involved and the matter does not involve the City.
- You can represent yourself in a potential or actual litigation, including actions or proceedings against the City. If you do so, you cannot be involved in your Department work in any matter that may raise issues raised by or similar to your case.
- Any outside legal work that you are permitted to engage in must be performed on your own time, and you may not use any City resources, including your office computer or

BlackBerry. This proscription on the use of City resources does not apply to the *de minimis* use of office resources (equipment and time) in connection with a pro bono or bar association activity that has been authorized in advance by the office.

### **Outside employment**

**It is Law Department policy that no employee may engage in any outside employment if such employment would interfere with the proper and effective performance of his/her duties, or create or appear to create a conflict of interest, or reflect adversely upon the Law Department or the City.**

- In general, employees who wish to have any paid or unpaid outside position -- whether it's teaching, grant-writing, or any other work -- must first obtain permission from their Division Chiefs or designated supervisor, and then should consult with Andrea Berger on how to proceed.

- If a proposed employer has any business dealings with the City you will need to obtain a waiver from the Conflicts of Interest Board ("COIB"), after obtaining permission from the Law Department (in writing). The requirement of a COIB waiver does not apply when the second position is with another government agency, which would include public institutions of higher learning such as CUNY or SUNY. However, aside from this exception, because most private institutions of higher learning in the New York City area engage in some business dealings with the City, you will need a COIB waiver to teach at such an institution.

- If you have any outside position, whether paid or unpaid, you must not reveal confidential information you learned in the course of representing the City and/or working for the Law Department. Teaching certain topics, such as "How to Sue the City" would conflict with your duties as an Assistant Corporation Counsel.

- You may not use City time or resources in connection with any outside job, whether paid or unpaid.

### **Acceptance of gifts and attendance at events**

**The City's "valuable gifts rule" prohibits a City public servant from accepting any thing or series of things worth more than \$50 from any person or entity doing business with the City.**

- Most parties/events will provide more than \$50 worth of food, drink and entertainment. If the host of the event is doing business with the City, you cannot attend unless you get permission from the Corporation Counsel after it is determined that it is in the City's interests for you to attend. Your first step should be to discuss the matter with Andrea Berger.

- A birthday or holiday gift from a relative or close personal friend working for a firm doing business with the City might be permitted if (1) it can be shown that the reason for the gift is the family or social relationship and not the City business dealings (in this regard, such concepts as "my new best friend" are not favored ones); and (2) the acceptance of the gift does not create an appearance that you are misusing your office for private gain or that you have compromised your impartiality. If such a gift is offered to you under these circumstances, you should consult with Andrea Berger before accepting it.

### **Actions against the City**

- If a family member, domestic partner or a person or entity with whom you have a business or financial relationship has a matter with the Law Department, you should recuse yourself from any involvement with the matter.

- The COIB has defined the term "business or financial relationship" to include, but not be limited to, relationships such as debtor/creditor, roommates and shares in a vacation home.

### **Pro Bono and Bar Association Activities**

The Law Department has a program that encourages its attorneys to participate in pro bono and bar association activities that have been approved in advance by this office. If you are interested in any of these, please visit our intranet website at

<http://lawmtiisv1/intranet/webpage/divisions/Pro%20bono/probono.html> or consult with Andrea Berger.

### **Post-employment and job-seeking matters**

**If a private firm or company you are dealing with on behalf of the Law Department invites you to interview for an open position, there are steps you must take:**

- You cannot apply for this position if you are still dealing with the firm as a City employee.
- In order to apply for the position, you must notify your supervisor and request to be taken off any matter involving the firm during the time your application is pending.

**If you get the job at this firm/company, several post-employment rules that are discussed below are applicable:**

- There is no specific restriction prohibiting a former ACC from representing a party with regard to a transactional matter involving the City, or a party who has interests adverse to the City in litigation. However, Charter Chapter 68 prohibits former City employees, including former employees of this office, from working on any matter in which they "participated personally and substantially" while in City service and prohibits former employees from disclosing any confidential information gained from such City service. The COIB has issued opinions interpreting these provisions. If you have any questions as to whether this applies to you in a particular situation, contact the COIB.

### **Post-employment restrictions on "appearances"**

- The Charter also prohibits former employees from "appearing" before their former agencies (e.g., the Law Department) within a period of one year following termination of their service. "Appear" means making any communication for compensation other than ministerial matters.

- There is an exception to this one-year ban for communications with the Law Department "which are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency, body or court, unless the proceeding was pending in the agency served during the period of the public servant's service with that agency." The COIB has interpreted this exception to allow attorneys to communicate with their former agency if the matter was not pending at their former agency during one's tenure there. If it was not, you may communicate with opposing counsel from the Law Department to, for example, settle a matter or engage in any other discussions relating to the litigation.