

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Legal Defense Trusts

What are we proposing? The Conflicts of Interest Board is proposing to establish rules governing legal defense trusts provided for in Chapter 11 of Title 3 of the New York City Administrative Code.

When and where is the Hearing? The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place at 10:30 a.m. on August 1, 2019. The hearing will be at Spector Hall at 22 Reade Street, New York, NY 10007.

This location has the following accessibility option(s) available: wheelchair accessible

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Chad H. Gholizadeh at rules@coib.nyc.gov
- **Mail.** You can mail comments to Chad H. Gholizadeh, Assistant Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
 - **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0730. You can also sign up in the hearing room before the hearing begins on August 1, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by July 31, 2019 at 5:00 p.m.

Do you need assistance to participate in the hearing? You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0723. You must tell us by July 31, 2019, at 5:00 p.m.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board, 2 Lafayette Street, Suite #1010, New York, New York 10007.

What authorizes the Conflicts of Interest Board to make this rule? Sections 1043 and 2603(a) of the City Charter and Section 3-1106 of the Administrative Code authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule was not included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal Year because the Legal Defense Trusts law had not yet been enacted when the Conflicts of Interest Board published the agenda.

Where can I find the Conflicts of Interest Board’s rules? The Conflicts of Interest Board’s rules are in Title 53 of the Rules of the City of New York.

What rules govern the rulemaking process? The Conflicts of Interest Board must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

STATEMENT OF BASIS AND PURPOSE

Local Law No. 48 of 2019 amended the New York City Administrative Code to permit the creation of legal defense trusts to pay for enumerated expenses related to certain legal liabilities incurred by public servants. This law, codified at Chapter 11 of Title 3 of the New York City Administrative Code, is entitled “Legal Defense Trusts” (“Chapter 11”), and it sets forth requirements about the types of legal defense trusts that may be created, the manner in which such trusts must be registered with the Conflicts of Interest Board (“Board”), the source and amount of the contributions the trust may accept, how trust funds may be utilized, and reporting requirements for donations and expenditures. The Board is charged with administering, enforcing, and promulgating rules necessary to implement Chapter 11.

These proposed rules would implement Chapter 11 and be codified as a new Chapter 5 of Title 53 of the Rules of the City of New York (“Board Rules”). To clarify and assist with compliance with the requirements set forth in Chapter 11, the proposed rules would: (1) define “in-kind donation” and “pro bono assistance”; (2) establish how the Board would aggregate contributions; (3) identify specific documents and information that must be submitted to the Board as part of the reporting requirements of Administrative Code § 3-1103; (4) establish reporting

requirements related to the dissolution of legal defense trusts; (5) establish the manner in which information and documents must be submitted; and (6) establish document retention requirements.

Set forth below is a more detailed description of the rules being proposed.

Section 5-01: This proposed section would define “in-kind donation” and “pro bono assistance.” The proposed definition of “in-kind donation” would include any donation of any value, but exclude routine and incidental personal expenses paid by a trustee or volunteer clerical staff for the administration of the trust, such as the use of a personal laptop or a trustee paying for his or her own travel expenses. Such personal expenses of the trustee(s), including the value of travel, meals, or the use of space in connection with the administration of the trust, are not expenditures payable or reportable by the trust pursuant to Administrative Code § 3-1102(f)(1)(b) when they are not billed to or paid by the trust.

The proposed definition of “pro bono assistance” would include only professional services, such as legal, accounting, and fundraising services. The proposed definition would exclude work done by a trustee for the purpose of administering the trust, such as preparing the trust agreement and submissions to the Board, maintaining required records, or communicating with beneficiaries and government agencies, as well as work done by clerical volunteers, such as folding letters for a mass mailing.

Section 5-02: This proposed section would require the aggregation of donations for both the \$5,000 donation limit and for the \$100 reporting threshold. In the interests of preventing the use of cash to circumvent or otherwise evade scrutiny on the source of contributions, proposed Board Rules § 5-03(b) would prohibit the acceptance of cash totaling \$100 or more from a single donor.

This proposed section would also clarify that in-kind donations and pro bono services may only be accepted for the purpose of administering the trust pursuant to Administrative Code § 3-1102(f)(1)(b). This would establish that a legal defense fund can only accept in-kind donations or pro bono services for which it could have permissibly made expenditures to acquire.

Section 5-03: This proposed section would implement the reporting requirements of Administrative Code § 3-1103. Proposed Board Rules §§ 5-04(a)(2) and 5-04(b)(2) would require the trustee(s) to submit electronic copies of the listed documents to ensure compliance with the law’s limitations on the source of donations, donation limits, and permissible expenditures.

Section 5-04: This proposed section would establish reporting requirements for the termination of legal defense trusts. Upon dissolution of a legal defense trust, the trustee(s) would be required to submit the listed documents and information to confirm compliance with Administrative Code § 3-1104.

Section 5-05: This proposed section would require submission of all documents and information required by these rules using the reporting website maintained by the Board.

Section 5-06: This proposed section would establish record retention procedures by which the Board would ensure compliance with the requirements of Chapter 11.

New material is underlined.

Section 1. Title 53 of the Rules of the City of New York is amended by adding a new Chapter 5, entitled “Legal Defense Trusts” to read as follows:

CHAPTER 5
LEGAL DEFENSE TRUSTS

§ 5-01 Definitions.

“In-kind donation” means any donation of any value, other than money, such as the use of space, materials, supplies, or perishables. The donation value of an in-kind donation will be

established by a reasonable estimate of that portion of its fair market value that is not paid or reimbursed by the trust. Personal expenses paid by the trustee(s) or volunteer clerical staff for the purpose of administering the trust are not in-kind donations.

“Pro bono assistance” means the provision of professional services, including but not limited to legal, accounting, and fundraising services. The donation value of pro bono assistance will be established by a reasonable estimate of that portion of its fair market value that is not paid or reimbursed by the trust. Pro bono assistance does not include uncompensated work by the trustee(s) for the purpose of administering the trust or volunteer clerical assistance.

§ 5-02 Donations.

(a) Multiple donations made by a person shall be aggregated for the purposes of the:

(1) \$5,000 donation limit established in Administrative Code § 3-1102(e)(1); and

(2) \$100 reporting threshold established in Administrative Code § 3-1103(a)(1).

(b) A legal defense trust may not accept cash totaling \$100 or more from a single donor.

(c) A legal defense trust may not accept a donation without having received the signed disclosure document from the donor as required by Administrative Code § 3-1102(e)(3).

(d) In-kind donations and pro bono assistance may only be accepted for the purposes of administering the trust , pursuant to Administrative Code § 3-1102(f)(1)(b).

§ 5-03 Reporting and Disclosure.

(a) In addition to the information required by Administrative Code § 3-1103(a)(1) regarding the reporting of donations, the trustee(s) must:

(1) Disclose

- (i) the description and use of any in-kind donation and any pro bono assistance accepted; and
- (ii) the date and amount of any refund to a donor.

(2) Submit the following documents:

- (i) a copy of the receipt, check, or other document establishing that the donation was made by the donor;
- (ii) a copy of the receipt, check, or other document establishing that a refund, if any, was made by the legal defense trust;
- (iii) a copy of the receipt or other written record establishing the value of in-kind donations or pro bono assistance; and
- (iv) a copy of the donor's signed disclosure document.

(b) In addition to the information required by Administrative Code § 3-1103(a)(2) regarding the reporting of expenditures, the trustee(s) must:

(1) Disclose

- (i) the date the expense was incurred;
- (ii) the date the expense was paid; and
- (iii) the amount, if any, returned to the trust pursuant to Administrative Code § 3-1102(f)(4).

(2) Submit the following documents:

- (i) a copy of the itemized receipt for each expense; and
- (ii) a copy of the check or other document establishing that the expenditure was paid by the legal defense trust.

(c) Quarterly reports submitted by the legal defense trust must include all bank, credit card, and merchant account statements received by the trust during the reporting period.

§ 5-04 Dissolution.

(a) If the trustee(s) returns donations on dissolution of a legal defense trust, the trustee(s) must submit in the last disclosure report pursuant to Administrative Code § 3-1103:

(1) the name and address of each donor receiving a refund;

(2) the amount of the refund;

(3) the date of the refund; and

(4) a copy of the check or other document establishing that the refund was made.

(b) If the trustee(s) transfers donations to a charitable organization upon dissolution of a legal defense trust, the trustee(s) must submit in the last disclosure report submitted pursuant to Administrative Code § 3-1103:

(1) the name and address of each charitable organization receiving a transfer;

(2) the amount of the transfer;

(3) the date of the transfer; and

(4) a copy of the check or other document establishing that the transfer was made.

§ 5-05 Electronic Submission of Compliance Documents.

All information and documents required by this chapter must be submitted by the trustee(s) using the reporting website maintained by the Board.

§ 5-06 Record Retention.

The trustee(s) must maintain records and documents sufficient to demonstrate compliance with these rules and must retain these records and documents for 2 years following completion of the final audit upon dissolution of the legal defense trust.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Rules Regarding Legal Defense Trusts

REFERENCE NUMBER: 2019 RG 033

RULEMAKING AGENCY: Conflicts of Interest Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: May 15, 2019

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Rules Regarding Legal Defense Trusts

REFERENCE NUMBER: COIB-9

RULEMAKING AGENCY: Conflict of Interest Board

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ [Stephen Narloch]
Mayor's Office of Operations

[May 15th, 2019]