

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding the Use of City Title in Promotional Materials

What are we proposing? The Conflicts of Interest Board proposes to adopt rules regarding a public servant's use of City title in promotional materials produced by or on behalf of a non-City product, program, or entity.

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 by videoconference at 10:30 a.m. on Monday, July 20, 2020 and is accessible by:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: <https://us02web.zoom.us/j/86956127825?pwd=SXBDTWVnNWRjcCtmdXM1VW5TNVRtUT09>.
- **Telephone.** To access the hearing by telephone, dial (929) 436-2866. When prompted, enter the Meeting ID 869 5612 7825 and password 080824.

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 Rules@COIB.nyc.gov.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by phone at (212) 437-0730 or by email at lee@coib.nyc.gov.

Is there a deadline to submit comments? Yes, you must submit written comments by Monday, July 20, 2020.

This hearing has the following accessibility option(s) available: The Zoom platform accommodates screen reader software. Simultaneous transcription or a sign-language interpreter are available upon request.

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, including if you need a sign language interpreter or simultaneous transcription. You can advise us by email at lee@coib.nyc.gov or by telephone at (212) 437-0730. You must tell us by Thursday, July 16, 2020.

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/>. 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 on the Conflicts of Interest Board’s website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

What authorizes the Conflicts of Interest Board to make this rule? Sections 1043, 2603(a), and 2603(c)(4) of the City Charter 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 it was not contemplated 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 of the Proposed Rule

City Charter § 2604(b)(2) prohibits a public servant from engaging in “any business, transaction or private employment, or hav[ing] any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.” As codified in Board Rules § 1-13(b), this means that a public servant may not use City resources, including his or her City title, “for any non-City purpose.”

The Conflicts of Interest Board proposes to adopt a new § 1-18 of the Board Rules to apply City Charter § 2604(b)(2) to promotional materials produced by or on behalf of a non-City product, program, or entity. The Board has addressed such promotional materials, including book blurbs and print advertisements, in four advisory opinions on endorsements: Nos. 1991-1, 1995-2, 1998-6, and 2000-3. These opinions reflect a determination by the Board that “the City’s interest must be the clear determinant” for a public servant to use his or her City title to promote non-City products, programs, or entities. A.O. No. 1995-2 at 4. Without such a clear City purpose, the use

of City resources would “present[] a significant risk of creating the appearance that the public servant’s official position is being used to advance a private interest.” A.O. No. 1991-1 at 1.

The Board has often concluded, both in this context and others, that a City agency itself is in the best position to decide how best to advance its mission. Thus, in Advisory Opinion No. 2008-6, an opinion on official fundraising, the Board observed: “Elected and appointed officials are selected for, among other things, their good judgment, and the Board finds no basis in Chapter 68 to limit the discretion of these officials as to their official charitable fundraising if they are exercising discretion within their defined areas of responsibility.” A.O. No. 2008-6 at 10-11. As a result, the Board advised in this Advisory Opinion, subsequently codified in Board Rules § 1-14, that an agency head need not obtain the Board’s approval every time the agency wanted to fundraise on behalf of a not-for-profit organization.

In providing advice about an individual public servant’s use of City title for endorsements, the Board under normal circumstances defers to an agency head’s determination provided that a demonstrable nexus exists between the product, program, or entity and the agency’s mission. Accordingly, the Board proposes to codify a rule that would permit public servants, with the approval of their agency head, to use their City titles in promotional materials produced by or on behalf of a non-City product, program, or entity, provided that there is a demonstrable nexus between the product, program, or entity and the mission of the public servant’s City agency.

The determination of whether a demonstrable nexus exists depends on the specific circumstances of the endorsement and the nature of the public servant’s work for the City. For example:

- In A.O. No. 2000-3, the Board advised the Police Commissioner that he may write and sign a letter that would serve as the introduction to a book published to raise funds for the NYPD Museum, a not-for-profit organization with the sole mission of educating the public about the New York City Police Department.

- In confidential advice, the Board advised an elected official that the elected official could author a welcome letter for the first edition of a privately published freely distributed magazine promoting public transportation in the City. The Board advised the official that the official could write the letter for the purpose of promoting tourism and the use of public transportation within the elected official's district.
- In confidential advice, the Board advised an elected official that the elected official could not appear in an advertisement for a hospital located within the elected official's district. The Board provided similar advice to a high-ranking public servant's proposed appearance in an advertisement for a for-profit business in A.O. No. 1991-1.
- In confidential advice, Board staff advised a high-ranking public servant that the public servant could author a testimonial for a book that demonstrated the City's role in alleviating inequality and poverty.

To ensure that a public servant is not acting to benefit an associated person or firm—including a close family member such as a spouse, sibling, parent, or child, or any person or firm having a business or financial relationship with the public servant—the rule would prohibit an endorsement where the public servant or the public servant's agency head is associated, within the meaning of City Charter § 2601(5), with either the entity or an employee of the entity that is the subject of the endorsement. This means, for example, that if an agency head's spouse wrote a book on a matter connected to the mission of the agency, an agency employee may not provide a promotional blurb for the book on behalf of the agency.

Text of the Proposed Rule

New material is underlined.

Section 1. Title 53 of the Rules of the City of New York is amended by adding a new section 1-18, to read as follows:

§ 1-18 Use of City Title in Promotional Materials

(a) Pursuant to Charter § 2604(b)(2) and § 2604(b)(3), a public servant may use or permit the use of his or her City title and/or City agency in promotional materials produced by or on behalf of a non-City product, program, or entity provided that all of the following conditions are met:

(i) a demonstrable nexus exists between the product, program, or entity and the mission of the public servant's agency;

(ii) neither the agency head nor the public servant is associated, within the meaning of Charter § 2601(5), with either the person or entity or an employee of the person or entity that is the subject of the endorsement or whose product or program is the subject of the endorsement;

(iii) the public servant's agency head approves in writing the use of the public servant's City title and/or City agency; and

(iv) if the promotional materials solicit donations for a not-for-profit organization, the public servant and public servant's agency comply with the requirements of Board Rules § 1-14.

(b) For purposes of this section, an elected official, including a District Attorney, is the agency head of the staff members in their office. The Speaker of the New York City Council is the agency head of the central staff of Council, and a Council Member is the agency head of the staff of their office.

**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: Use of City Title in Promotional Materials

REFERENCE NUMBER: 2020 RG 037

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 29, 2020

**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: Use of City Title in Promotional Materials

REFERENCE NUMBER: COIB-17

RULEMAKING AGENCY: Conflicts of Interests 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) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) 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/ Francisco X. Navarro
Mayor's Office of Operations

May 31, 2020
Date