

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

### **Notice of Adoption of Final Rules**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter, that the Conflicts of Interest Board has adopted Board Rules amending its rules governing the acceptance of gifts by public servants.

The proposed Rules were published in the City Record on February 9, 2022, and a public hearing was held on March 14, 2022. No comments were received. The Conflicts of Interest Board has added a clarifying phrase in Board Rules 1-01(a)(2)(iv), reiterating the existing obligation found in Charter 2604(d)(1) regarding negotiations for other employment. The Conflicts of Interest Board now adopts the following Rules.

### **STATEMENT OF BASIS AND PURPOSE**

In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued concerning public servants’ acceptance of gifts. In connection with this comprehensive review, the Board amends Board Rules §§ 1-01(a) through 1-01(c) to provide additional clarity.

#### **a. What is a Valuable Gift (§ 1-01(a))**

Board Rules § 1-01(a) reorganizes the text of previous Board Rules § 1-01(a) by adding line breaks to improve readability. Board Rules § 1-01(a)(1) amends the definition of “valuable gift” by replacing “thing” with the more illustrative, but substantively identical, term “item of value.”

Board Rules § 1-01(a)(2) codifies four exceptions to the definition of “valuable gift”:

First, Board Rules § 1-01(a)(2)(i) codifies the Board’s longstanding advice that public servants may utilize discounts available to the general public, including discounts for government employees. See Advisory Opinion (“A.O.”) No. 1995-14 (advising that public servants may utilize a special offer extended by a bank to both City employees and many businesses and organizations in a geographic area); A.O. No. 2006-4 (advising that public servants may utilize generally available government employee discounts); but see A.O. No. 1995-5 (advising that soliciting a discount for a subset of City employees would violate Charter § 2604(b)(3)).

Second, Board Rules § 1-01(a)(2)(ii) codifies the Board’s longstanding advice that public servants may accept prizes from raffles or giveaways that are available without respect to whether the participants are public servants and where participation in the raffle

or giveaway does not use City resources or identify the participant as a public servant. See A.O. No. 1991-20 (advising that a public servant may accept a prize from a competition because, in part, he did not identify himself as a public servant in his submission); A.O. No. 2012-3 (advising that a public servant may accept a raffle prize exceeding \$50 where no City resources were used in the raffle entry).

Third, Board Rules § 1-01(a)(2)(iii) codifies the Board's determination that public servants may accept free attendance at union conferences in order to conduct union business. See A.O. No. 2006-3 (advising that public servants may accept free food and accommodation from a union to attend that union's conference on their own time).

Finally, Board Rules § 1-01(a)(2)(iv) permits public servants to accept travel expenses from a prospective employer in order to conduct an interview, provided that the travel expenses are reasonable, the trip is no longer than necessary to complete the interview, and the public servant complies with City Charter § 2604(d)(1). Because a public servant seeking employment is already prohibited by Charter § 2604(d)(1) from participating in any particular matter involving the potential employer, the acceptance of reasonable travel expenses poses a diminished risk of any actual or perceived impropriety.

Board Rules § 1-01(a)(3) is substantively the same as prior Board Rules § 1-01(a), and revisions are proposed for clarification of the text.

#### **b. Definitions (§ 1-01(b))**

Board Rules § 1-01(b) reorganizes the text of prior Board Rules § 1-01(b) by adding paragraphs, with two substantive changes:

First, Board Rules § 1-01(b) replaces the term "relative" with "family member" to make consistent the usage of that term with other sections of the Board Rules.

Second, Board Rules § 1-01(b)(2) expressly includes step-relatives, consistent with the Board's longstanding interpretation of Chapter 68. See, e.g., *COIB v. J. Purvis*, COIB Case No. 2012-898a (2013) (finding that an Associate Job Opportunity Specialist with the New York City Human Resources Administration ("HRA") misused his position in the HRA Rental Assistance Unit to issue an assistance check from HRA to his stepdaughter); *COIB v. G. Jones*, COIB Case No. 2012-458 (2013) (finding that a New York City Housing Authority ("NYCHA") Construction Project Manager misused his position when he recommended his stepson for a job with a vendor that the Construction Project Manager supervised as part of his official NYCHA duties).

#### **c. Gifts from Family Members or Close Personal Friends (§ 1-01(c))**

Board Rules § 1-01(c) is identical to prior Board Rule § 1-01(c) except for the addition of a header.

New material is underlined.

Section 1. Subdivisions (a) through (c) of Section 1-01 of Chapter 1 of Title 53 of the Rules of the City of New York are REPEALED and new subdivisions (a) through (c) are added to read as follows:

**§ 1-01 Valuable Gifts.**

(a) What is a Valuable Gift

(1) For the purposes of Charter § 2604(b)(5), a “valuable gift” is any gift to a public servant that has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, promise, or item of value in any other form.

(2) For the purposes of Charter § 2604(b)(5), a “valuable gift” does not include:

- i. An unsolicited discount available to the general public, all government employees, or all City employees.
- ii. A prize from raffles or giveaways made available irrespective of whether the participants are public servants and where participation in the raffle or giveaway does not use City resources or identify the participant as a public servant.
- iii. Free attendance at labor union conferences and events, and any attendant meals or refreshments, offered by such union for the purposes of conducting union business.
- iv. Travel expenses paid by a prospective employer for a public servant to interview for a position, provided that the travel expenses are reasonable, the trip is no longer than necessary to complete the interview, and the public servant complies with City Charter § 2604(d)(1).

(3) For the purposes of Charter § 2604(b)(5), two or more gifts to a public servant will be considered a single gift if they are given to the public servant within a twelve-month period by the same person or persons who the public servant knows or should know are:

- i. family members of one another; or
- ii. directors, trustees, or employees of the same firm or affiliated firms.

(b) Definitions

As used in this section:

(1) The term “family member” means:

- i. a spouse, domestic partner, child, grandchild, parent, sibling, and grandparent;
- ii. a parent, child, or sibling of a spouse or domestic partner; and
- iii. a spouse or domestic partner of a parent, child, or sibling.

(2) The terms “child,” “grandchild,” “parent,” “grandparent,” and “sibling” include a step-child, step-grandchild, step-parent, step-grandparent, and step-sibling.

(3) Firms are “affiliated” if:

- i. one is a subsidiary of the other; or
- ii. a single person or firm owns at least 25 percent of each firm.

(c) Gifts from Family Members or Close Personal Friends

For the purposes of Charter § 2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:

(1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and

(2) the public servant's receipt of the gift would not result in or create the appearance of:

- i. using their office for private gain;
- ii. giving preferential treatment to any person or entity;
- iii. losing independence or impartiality; or
- iv. accepting gifts or favors for performing official duties.

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