



THE COUNCIL OF THE CITY OF NEW YORK

Christine C. Quinn, Speaker

BRIEFING PAPER
OF THE
COMMITTEE ON RULES, PRIVILEGES AND ELECTIONS

Joel Rivera, Chairperson

February 29, 2012

Topic I: *New York City Conflicts of Interest Board – (Mayoral Candidate for appointment upon advice and consent of the Council)*

- **Erika Thomas-Yuille [M-741]**

The New York City Conflicts of Interest Board (“COIB”), which is mandated to meet at least once per month, primarily serves to provide clear guidance to public employees regarding prohibited conduct through training, education, and the issuance of advisory opinions. COIB is required to publish an index of its opinions and an annual report. COIB’s mandate covers Council as well as mayoral agency employees. COIB also collects and reviews financial disclosure reports. [*New York City Charter* (“Charter”) §§ 2602 and 2603.] COIB promulgates rules as necessary to implement and interpret the provisions of Chapter 68 of the *Charter* (“*Conflicts of Interest Code*” or the “*Code*”), consistent with the goal of providing clear guidance regarding prohibited conduct. [*Charter* § 2603(a).] COIB is authorized to hear and decide violations of the *Code*. Additionally, COIB is empowered to impose fines of up to \$10,000 and recommend suspensions or removals from City employment in appropriate cases.

COIB members are chosen for their independence, integrity, civic commitment and high ethical standards. Members are prohibited from holding public office, seeking election to any public office, being a public employee in any jurisdiction, holding political party office, or appearing as a lobbyist before the city. [*Charter* § 2602(b).]

COIB consists of five members who are appointed by the Mayor with the advice and consent of the City Council.¹ The term of office for COIB members is six years. The Council must act on mayoral nominations to COIB within forty-five days of submission. [*Charter* § 2602(c).] If the Council fails to act within forty-five days of receipt of such nomination from the Mayor, the nomination is deemed to be confirmed. [*Charter* § 2602(c).] If the Mayor does not submit a nomination for appointment of a successor to the Council at least sixty days prior to the expiration of the term of the member whose term is expiring, the term of the member in office is extended for an additional year and the term of the eventual successor to such member is shortened by an equal amount of time. COIB members are prohibited from serving more than two consecutive six-year terms. [*Charter* § 2602(c).] Two members of COIB constitute a quorum and all acts of COIB must be by the affirmative vote of at least two members. [*Charter* § 2602 (h).]

Members of COIB serve until their successors have been confirmed. Any vacancy occurring other than by expiration of term is filled by nomination by the Mayor, made to the Council within sixty days of the creation of the vacancy, for the unexpired portion of the term of the member succeeded. If the Council fails to act within forty-five days of receipt of such nomination from the Mayor, the nomination is deemed to be confirmed. [*Charter* § 2602(e).]

COIB members may be removed by the Mayor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of the COIB section of the *Charter*, after written notice and an opportunity for a reply. [*Charter* § 2602(f).]

Pursuant to the Charter, COIB is authorized to appoint a Counsel to serve at its pleasure and to employ or retain other such officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the Counsel may be defined in writing, provided that neither the

¹ At present, COIB's members include: Steven B. Rosenfeld (Chair), Angela Mariana Freyre, Andrew Irving, Kevin B. Frawley, and Monica Blum.

Counsel, nor any other officer, employee or consultant of COIB, shall be authorized to issue advisory opinions, promulgate rules, issue subpoenas, issue final determinations concerning violations of Chapter 68 of the *Charter*, or recommend or impose penalties. Also, COIB may, and has, delegated its authority to issue advisory opinions under *Charter* § 2604(e) to its Chair. [*Charter* § 2602(g), and as per COIB's Executive Director.²]

By statute, members are entitled to receive per diem compensation for each calendar day when performing the work of COIB. According to COIB's Deputy Executive Director, the rate for members is \$250 per diem, and the rate for the Chair is \$275 per diem.

If appointed, Mrs. Thomas-Yuille, a Manhattan resident, will be eligible to serve the remainder of a six-year term that expires on March 31, 2016. Copies of Mrs. Thomas-Yuille's résumé and report/resolution are annexed to this briefing paper.

Topic II: New York City Environmental Control Board – (Mayoral Candidate for appointment upon advice and consent of the Council)

- **Thomas D. Shpetner [Preconsidered-M]**

Within the New York City Office of Administrative Trials and Hearings ("OATH") there is an Environmental Control Board ("ECB") that adjudicates notices of violation issued by various city agencies including the Departments of Environmental Protection, Police, Sanitation, Health and Mental Hygiene, Fire and Buildings. ECB has the power to render decisions and orders and to impose civil penalties under law provided for such violations. ECB may apply to a court of competent jurisdiction for enforcement of any decision, order or subpoena that it issues. ECB's responsibilities and structure are outlined in *New York City Charter* section 1049-a.

Among the provisions of law enforced by ECB are those relating to the cleanliness of city streets; the disposal of wastes; the provision of a pure, wholesome and adequate supply of water; the prevention of air, water and noise pollution; the regulation of street peddling; and the city response to emergencies caused by releases or threatened releases of hazardous substances. ECB has the

² Mark Davies currently serves as the COIB's Deputy Executive Director.

authority to make, amend or rescind such rules and regulations to carry out its duties. Also, ECB has concurrent jurisdiction with the Board of Health to enforce those provisions of the health code and the rules and regulations relating thereto that the Board of Health shall designate. [*Charter* § 1049-a.]

ECB consists of the Commissioners of the Departments of Environmental Protection, Sanitation, Health and Mental Hygiene, Buildings, Police, Fire and the Chief Administrative Law Judge of OATH, as well as six persons appointed by the Mayor with the advice and consent of the Council. The Chief Administrative Judge of OATH serves as Chair of ECB. Within its appropriation, ECB may appoint an Executive Director and such hearing officers, including non-salaried hearing officers and other employees as it finds necessary, to properly perform its duties. [*Charter* § 1049-a.]

Members other than agency Commissioners may not be employed by the City. Five of the six non-Commission members must possess broad general background and experience, one in each of the following areas: air pollution control, water pollution control, noise pollution control, real estate, or the business community. The sixth non-Commission member represents the general public. Members other than the agency Commissioners are compensated and receive a \$175.10 per diem when performing the work of ECB. Member terms are for four years. [*Charter* § 1049-a.]

If appointed, Mr. Shpetner, a resident of Brooklyn, will serve the remainder of a four-year term that will expire on November 24, 2013. A copy of Mr. Shpetner's résumé and report/resolution is annexed to this Briefing paper.

Topic III: New York City Civilian Complaint Review Board – (Candidate for re-designation by the Council)

- **Mitchell G. Taylor [Preconsidered-M]**

New York City Charter ("Charter") § 440 created the New York City Civilian Complaint Review Board ("CCRB" or "the Board") as an entity independent of the New York City Police Department ("NYPD"). Its purpose is to investigate complaints concerning misconduct by officers of NYPD towards members of the public. The Board's membership must reflect the City's diverse population, and all members must be residents of the City.

The CCRB consists of a board of thirteen members of the public as well as a civilian staff to assist the CCRB exercising its powers and fulfilling its duties. The members are appointed by the Mayor as follows: five members, one from each borough are designated by the City Council; five members, including the chair, are selected by the Mayor; and three members having law enforcement experience are designated by the Police Commissioner. Only those appointees to CCRB designated by the Police Commissioner may have law enforcement experience. Experience as an attorney in a prosecutorial agency is not deemed law enforcement experience for purposes of this definition. The CCRB hires the Executive Director, who in turn hires and supervises the agency's all-civilian staff. There are two Deputy Executive Directors: one is responsible for administration and the other for investigations. [*Charter* § 440(b)(1)(2).]

All appointees to CCRB serve three-year terms. Vacancies on the CCRB resulting from removal, death, resignation, or otherwise, are filled in the same manner as the original appointment; the successor completes the former member's unexpired term. [*Charter* § 440(b)(4).] Board members are prohibited from holding any other public office or public employment. [*Charter* § 440(b)(2).] All CCRB members are eligible for compensation for their work on a per diem basis. The current per diem rate is \$315.

The CCRB is authorized to "receive, investigate, hear, make findings and recommend action" upon civilian complaints of misconduct by members of the NYPD towards the public. Complaints within the CCRB's jurisdiction are those that allege excessive force, abuse of authority, discourtesy, or use of offensive language, including but not limited to slurs relating to race, ethnicity, religion, gender, sexual orientation or disability. [*Charter* § 440(c)(1).]

The CCRB has promulgated procedural rules pursuant to the City's Administrative Procedural Act ("CAPA"). These rules regulate the way in which investigations are conducted, recommendations are made, and members of the public are informed of the status of their complaints. The rules also outline the establishment of panels consisting of at least three Board members (no panel may consist exclusively of Mayoral appointees, Council appointees or Police Commissioner appointees); these panels may supervise the investigation of complaints and to hear, make findings and recommend action with respect to such complaints. The CCRB, by majority vote of all its members, may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of complaints. [*Charter* § 440(c)(2).]

The CCRB's findings and recommendations with respect to a complaint, and the basis therefore, must be submitted to the Police Commissioner. In all such cases where a finding or recommendation has been submitted, the Police Commissioner is required to report to the CCRB on any action taken with respect to that complaint. The law prohibits the CCRB from making any finding or recommendation solely on the basis of an unsworn complaint or statement. In addition, the law prohibits the CCRB from using prior complaints against a member of the NYPD that have been unsubstantiated, unfounded or withdrawn as the basis for any finding or recommendation regarding a current complaint. [*Charter* § 440(c)(1).]

It should also be noted that the CCRB has established a voluntary mediation program in which a complainant may choose to resolve his or her complaint through informal conciliation. Both the alleged victim and the subject officer must voluntarily agree to mediation. Mediation is offered as an alternative to investigation to resolve certain types of complaints, none of which can involve physical injury or damage to property. If the mediation is not successful, the alleged victim has the right to request that the case be fully investigated. [*Charter* § 440(c)(4).]

Also, the CCRB is required to issue to the Mayor and to the City Council a semi-annual report describing its activities and summarizing its actions, and is also mandated to develop and administer an on-going program to educate the public about CCRB. [*Charter* § 440(c)(6).]

If re-designated by the Council and subsequently re-appointed by the Mayor, Bishop Taylor, a resident of Queens, will serve the remainder of a three-year term that will expire on July 4, 2014. A copy of Bishop Taylor's résumé and report/resolution is annexed to this Briefing paper.

Attachments

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³ NYS Bar Admission pending