Denver Board Of Ethics
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DENVER BOARD OF ETHICS
DIGEST OF SELECTED OPINIONS
July 1– December 31, 2014

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between July 1 and December 31, 2014 in response to fact-specific requests for advisory opinions or complaints.
These opinions should not be used as conclusive guidance for situations where the facts may differ. Please contact the Board of Ethics to discuss any specific issues you may have.

Case 14-10 (no jurisdiction)

A Police Department commander requested an advisory opinion. Some judges of the Denver County Court and assistant city attorneys encourage individuals who have been convicted of solicitation for prostitution to attend an 8-hour class known as "John School," provided by a private company. The company provides six 8-hour such classes per year and charges each participant $400 for the class. The company has requested that one on-duty detective attend each class and spend about an hour to train about "the negative consequences of prostitution," addressing potential criminal and civil consequences and awareness of prostitution victimization issues.

The officers are not paid by the company for their time. The commander asked whether on-duty police officers should help a for-profit entity deliver these classes and thereby take time away from their official duties.

The Board decided that, because no section of the Code of Ethics or other city ordinance addresses this issue, the Police Department should use managerial judgment as to whether it is a wise allocation of city resources to require on-duty detectives to assist in training at John Schools. The Board suggested that the commander might wish to request the company to pay off-duty detectives for their time, if such secondary employment is approved by the Police Department.

Cases 14-14 through 14-16 and 14-19 through 14-22 (no jurisdiction)

A recently-terminated city employee filed complaints concerning a Career Service Authority hearing officer, several employees of her former department and an assistant city attorney for their involvement in the hearing that affirmed her termination.

Executive Director
L. Michael Henry

Board Members
Edgar L. Neel – Chair
Brian J. Spano – Vice Chair
Roy V. Wood
Andrew S. Armatas
Sylvia Smith

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The employee alleged:

- The hearing officer failed to subpoena witnesses requested by the employee and was biased at the hearing.
- One employee submitted a false affidavit about the events in question.
- Another employee was untruthful in testimony at the hearing.
- The Assistant City Attorney was unfair because she did not interview all of the witnesses and did not attempt to review surveillance tape from the incident in question.
- A supervisor improperly and unfairly promoted employees when other employees were more qualified.
- Another employee perjured herself at the hearing.
- Another employee lied and also defamed the employee in an e-mail.

The Board of Ethics concluded that none of these allegations pertain to any issues governed by the Denver Code of Ethics and, in addition, the employee had the opportunity to defend herself at the hearing. The Board of Ethics is not an appellate body to re-try or review personnel hearings. The Board dismissed all of these complaints pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics because the Board has no jurisdiction over this type of issue and because the alleged violations, if true, would not constitute a violation of the Code.

Case 14 - 24 (gifts)

A city employee requested an advisory opinion. Her husband is the president of a teachers' union outside of Denver and, as such, he gets invited to dinners or hosts functions for his teachers. The city employee wished to know whether she may attend such dinners or functions and also what the reporting requirements under the City's Financial Disclosure Ordinance.

Acceptance of gifts of meals is regulated by Section 2-60 of the Code of Ethics:

> **Sec. 2-60. Gifts to officers, officials, and employees.**
>
> The purpose of this section is to avoid special influence by those who give gifts to city officers, employees or officials.
>
> (a) Except when acceptance is permitted by paragraph (b) below, **it shall be a violation of this code of ethics for any officers, officials, or employees, any member of their immediate families to solicit or to accept any of the following items if (1) the officer, official, or employee is in a position to take direct official action with regard to the donor; and (2) the city has an existing, ongoing, or pending contract, business, or regulatory relationship with the donor:**
>
> (1) Any money, property, service, or thing of value that is given to a person without adequate and lawful compensation…

The Board of Ethics concluded that neither the City department nor the employee have any direct official action power regarding the teacher's union or any decisions regarding that school district. In addition, the union is not doing any business with the City and County of Denver. Therefore, the Board

of Ethics advised the employee that acceptance of meals provided by or in connection with the teachers' union are not prohibited by Section 2-60(a).

Regarding disclosure of acceptance of the meal invitations pursuant to the Financial Disclosure Ordinance, Section 2-72 of the Denver Revised Municipal Code provides:

> *Annual employee report required.* Every employee shall file an employee report with his or her appointing authority no later than August 1 of each year. The report shall cover the period from January 1 to December 31 of the prior year and **shall list the names of sources of any gifts in excess of twenty-five dollars ($25.00) either individually or in the aggregate, as a result of employment with the city, from anyone pursuing business with the city, except gifts from a member of the employee's immediate family.** The report shall also list tickets to sporting, recreational, educational, or cultural events, lodging, parking privileges, and travel expenses received from any public entity during the preceding calendar year. (emphasis added)

The Board of Ethics concluded that the employee does not need to disclose any of these meals, because they are given to her as the union president's spouse (not "as a result of her employment with the city") and also they are not "from anyone pursuing business with the city."

Case 14 – 25 (conflict of interest)

An employee of the Office of Children's Affairs/Head Start requested an advisory opinion. He told the Board of Ethics that:

> In my current role…, I manage a contract with Sewall Child Development Center (Sewall) for supplemental disabilities services for Head Start children (age 3-5).

Sewall's mission is to assist all children (birth to age 6) and their families to achieve their highest potential and enhancing opportunities for young children, including those with special needs due to disabilities, developmental delays, and economic disadvantages.

The employee was asked by Sewall staff and a community board member of REACH Charter School to serve on the board of REACH Charter School, which will begin operations on January 1, 2015. Sewall was the sponsor of REACH, which was approved as a charter school by Denver Public Schools in April 2014. REACH and Sewall will be two separate entities. REACH will obtain its funds from Denver Public Schools and not the Denver Office of Children's Affairs/Head Start. The employee advised the Board that he will not be paid for his service on the REACH board and that he will not devote any of his city time to his work for REACH. The employee wished to know if he would violate the Code of Ethics if he serves on the REACH board. The employee advised the Board:

> REACH will be a separate legal entity as of January 2015. After it separates, the connection between the two organizations will be that Sewall has the right to appoint one Board member onto the REACH Board at all times and the two organizations will have an annual MOU outlining the relationship. We will be renting the building from Sewall and may contract with them for some specialist services.

Conflicts of interest are regulated by Section 2-61:

Sec. 2-61. Conflict of interest while employed.

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

(a) Except when advised by the city attorney that the rule of necessity applies, an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter. A substantial interest shall be deemed to exist if:

(1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter;

(2) He, she, a spouse, a domestic partner or minor children solely or aggregated together, a business associate or an employer owns or own one (1) percent or more, or a member of the immediate family other than a spouse, domestic partner or minor children own or owns five (5) percent or more, of another party in the matter;

(3) He or she, a member of the immediate family, a business associate or an employer is an officer in another party in the matter..

(f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.

(g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

The Board of Ethics concluded that none of the subsections above prohibit the employee from serving on the REACH board. In addition, the only section that would prohibit him from taking direct official action as a city employee regarding REACH is Section 2-61(a)(3) if he were to be elected as an *officer* of REACH. However, there would be the appearance of impropriety or special favoritism to REACH if he: 1) were to take any direct official action as a city employee regarding the REACH charter school; or 2) were to vote on the REACH board on any matter regarding the Denver Office of Children's Affairs/Head Start; or 3) were to vote regarding any possible dispute, such as a landlord-tenant dispute, between Sewall and REACH. The Board strongly recommended that he should abstain from involvement or voting in such situations and should be sure that such abstentions are documented.

Case 14-26 (no jurisdiction)

A terminated employee filed a complaint with the Board of Ethics concerning her former supervisor. The employee had an injury in the past and suffers from post-traumatic stress disorder. The employee alleged that the supervisor's actions violated the Americans with Disabilities Act. The employee also filed a complaint with the federal Equal Employment Opportunity Commission, alleging a violation of the ADA.

The Board concluded that here is no section of the Code of Ethics that addresses the alleged conduct by the supervisor. The EEOC may have jurisdiction over this type of complaint, but the Board of Ethics does not. The Board dismissed this complaint pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because the Board has no jurisdiction over this type of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics.

Case 14-27 (no jurisdiction)

An employee requested an advisory opinion. She indicated that she found a wad of $20 bills, totaling $320, on the floor near the building entrance of her City workplace. She picked up the wad and brought it to her office. She put a sign at the front desk and the security station, requesting anyone inquiring about the money to be directed to her. She gave the money to her supervisor for safekeeping and placed a listing on craigslist. She also called Denver police headquarters and was told that no one had inquired there about the lost cash. She also asked the Office of Human Resources, which recommended that she contact the Board of Ethics.

The employee wished to know if she can ethically keep the money after a reasonable time expires if no one legitimately claims the lost money.

The Board of Ethics advised the employee that there is no section of the Code of Ethics or other city rule or policy that directly addresses this question or that would prohibit her from retaining the funds after a reasonable period of time, such as 30 days, expires and after taking the reasonable measures that she did to find the rightful owner. The Board indicated that it believes that the employee took every reasonable measure (and more, such as using craigslist) to try to find the rightful owner of the funds.

Case14-28 (outside employment, conflict of interest)

An employee in the Environmental Planning Review Section of the Contracts and Performance Management Division of the Office of Economic Development (OED) requested an advisory opinion. She had submitted her resignation, with the intention of setting up her own consulting firm "for historic and environmental compliance services." She was working on-call part-time for OED, which was in the process of hiring her replacement.

The employee wished to know if she can begin to work on her own consulting firm and seek clients before she leaves OED completely.

Section 2-63 of the Code of Ethics provides:

> **Sec. 2-63. Contemporaneous or outside employment.**
>
> The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.

(a) All officers other than elective officers and **all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity.**(emphasis added). All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.

(b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.

(c) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity.

(d) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.

(e) City resources may not be used for any outside employment or outside business activity (emphasis added)

Therefore, the Board of Ethics advised her that, since she was still an employee of the City, she must obtain her appointing authority's written approval for her proposed outside employment or business activity and must not use city time or resources for her outside work.

Section 2-61 provides the following regarding conflicts of interest:

Sec. 2-61. Conflict of interest while employed.

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests,

(a) Except when advised by the city attorney that the rule of necessity applies, **an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or <u>an employer other than the city</u> of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter**. A substantial interest shall be deemed to exist if:

(1) He or she or a member of the immediate family, a business associate or **an employer other than the city** is the other party in the matter…(emphasis added)

(f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.

(g) No officer, employee or official may have any other employment or position which is

incompatible with his or her duties or that adversely affect the interests of the city. (emphasis added)

Therefore, the Board advised the employee that, if she obtains any private clients before she leaves OED completely, she may not take direct official action regarding any of those clients. Since her work at OED included recommending for or against contracts with or grants to applicants for funds from the U.S. Department of Housing and Urban Development through OED, such work would fit within the definition of direct official action in Section 2-52(b).

Section 2-64(a) regulates subsequent employment:

Sec. 2-64. Subsequent employment.

The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.

(a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

Therefore, the Board advised that the employee must wait at least 6 months from the date she completely retired from OED before obtaining employment with any person or entity whose application for a grant or loan through OED she reviewed and made a recommendation about.

Case14-29 (case withdrawn by requester before opinion issued)

Case 14-30 (subsequent employment)

A former employee requested an advisory opinion concerning subsequent employment. He was employed by Denver International Airport, resigned from the position of Chief Financial Officer for DIA in September, 2014 and began work beginning October 1, 2014 as CFO for a major company which owns, develops and/or operates real estate in the Denver metropolitan area ("the company").

The employee asked the Board of Ethics for advice on three issues regarding his future work at the company:

1. The company will be the developer of the former University of Colorado Hospital and Health Sciences Center site at 9th Avenue and Colorado Blvd. and is working with the Denver Urban Renewal Authority (DURA) on agreements for the financing of infrastructure on the site. In his role as CFO at DIA, he did not have any interaction with DURA nor did he make any decisions for private businesses seeking agreements with DURA.
2. As CFO, he had oversight of DIA's financial functions, including collections of revenues from concessionaires and oversight of the procurement process for revenue and expenditure contracts. Since January 2014 he also had oversight of all aspects of the concessions program at DIA. The company is a partial owner (80%) of the Retail Merchandising Unit in a joint venture and is active in managing that operation. As CFO at DIA and with oversight of concessions, the employee had the ability to take direct official action in relation to that contract, although he did not take any actions specific to that contract. He advised the Board that he did not have anything

to do with preparing an RFP/Q or approving the contract with the company or the other entity in the Retail Merchandising Unit regarding the concession program at DIA. It was handled entirely by the concessions team that did not report to him when this was done in 2011. The group that manages the program for the company will report to him.

3. The company may be interested in responding to an upcoming RFQ/P document from DIA that would potentially reconfigure the Jeppesen Terminal building. If the company is successful, it will likely contract with an outside group to help with the reconfiguration. The RFP/Q will likely be released in November 2014. The employee said that he was aware of the project in his role as CFO at DIA and had some discussions regarding how to structure the RFP/Q when it is released, but he advised the Board of Ethics that he did not take any direct official action on that request. He said that briefings that he saw on the project were publicly shared with DIA's concessionaires. DIA's process is led by another DIA employee, who is reporting to DIA's Executive Director on the reconfiguration project.

Section 2-64 of the Denver Code of Ethics regulates subsequent employment:

> **Sec. 2-64. Subsequent employment.**
>
> The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.
>
> (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take **direct advantage, unavailable to others, of matters with which he or she took direct official action** during his or her service with the city (emphasis added)

The definition of "direct official action" in the Code of Ethics includes:

> 2-52(b) any action which involves:
>
> (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.
>
> (2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments;
>
> (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city…

The Board of Ethics concluded as follows:

1. Regarding the redevelopment of the 9th and Colorado Blvd. site, since the employee had no involvement whatsoever and did not exercise any direct official action regarding that site or with the Denver Urban Renewal Authority, the Code of Ethics does not prohibit or limit him from working on this project with the company beginning immediately.
2. Regarding working on the company's involvement in the DIA concession program, as CFO, the

employee "oversaw" all aspects of the concession program, although he said that he did not take any specific direct official action regarding the contract. The Board decided that general oversight power should be equated with the term "administer" in the definition of "direct official action" and, therefore, he should not be involved with the company's interest in the DIA concession program until 6 months after his retirement date from DIA. This would include, but not be limited to, any discussions or negotiations between the Retail Merchandising Unit, in which the company holds an 80% stake, and DIA regarding any issues surrounding concessions at DIA. In the interest of avoiding any impropriety, it would be advisable for him to screen himself from any internal discussions at the company regarding DIA concessions, as well as any external discussions with the RMU, the 20% owner or DIA for six months following his retirement.

3. Regarding the company's possible decision to submit a proposal in response to DIA's wish to reconfigure the terminal, since he was aware of the proposed reconfiguration and discussed how to structure DIA's RFP/Q, the Board of Ethics concluded that he must wait until 6 months after his retirement before he can do any work on this project with the company, including helping to respond to DIA's RFP/Q.

Case14-31 (outside employment)

The Internal Affairs Bureau of the Police Department requested an advisory opinion regarding whether certain conduct regarding outside employment is permitted or prohibited by the Denver Code of Ethics, with the main purpose being to obtain guidance that can be used for future similar situations and not to determine any violation or punishment concerning any particular situation.

Section 2-63 of the Code of Ethics provides:

> **Sec. 2-63. Contemporaneous or outside employment.**
>
> The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.
>
> (a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.
>
> (b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.
>
> (f) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity.
>
> (g) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
>
> **(h) City resources may not be used for any outside employment or outside business activity.** (emphasis added)

In addition, Section 2-67 provides:

> **Sec. 2-67. Use of public office for private gain.**
>
> No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself, for his or her immediate family, for any business entity with which he or she is affiliated or for any person or entity with whom the officer, official or employee is negotiating or has any arrangement concerning prospective employment.

As additional consideration, even though the Board of Ethics does not enforce departmental rules and regulations, DPD Rule and Regulation 206 provides:

> **Soliciting Business**
>
> Members shall not solicit subscriptions, sell books, papers, tickets, merchandise or other things, or collect or receive money or other things of value from the public for any purpose whatsoever while on duty or in uniform or representing oneself as a member of the Department, except as authorized by the Chief of Police.

In addition, DPD Rule and Regulation 114.01(e) provides:

> **114.01 Secondary Employment**
>
> (e.) Supervisors and command officers are prohibited from working any Secondary Employment
>
> that is scheduled by a subordinate officer in their chain of command.

Such scheduling of secondary employment by a subordinate City employee could also be a conflict of interest prohibited by Section 2-61 (a) of the Code of Ethics.

After reviewing the information and documents submitted, the Board of Ethics concluded that:

- Any outside employment or outside business activity by any City employee must be approved in writing pursuant to Rule 2-63 of the Denver Code of Ethics and any stricter departmental rules
- A City employee must not earn or attempt to earn or solicit any income or compensation during his or her City work time, aside from City salary
- A City employee should discuss with his or her supervisor how to separate City work time from time during which the City employee may earn money from outside employment or business activity
- A City employee must not use City resources for outside employment or business activity
- A City employee must not wear a City uniform during time devoted to outside employment or business activity or in any material advertising the outside employment or business activity
- A City employee must not use confidential City information for outside employment or business activity
- A City employee must not hire or schedule any outside or secondary employment for a City employee who is above him or her in the supervisory chain (which would include both police

and non-police secondary employment for police officers) in order to avoid conflicts of interest and the appearance of impropriety

- If it were the case that any City employee was being paid by the City to attend a conference or other event and earned or attempted to earn additional income during that same time to do training or solicit training business or sell products, that would violate both Sections 2-63(e) and 2-67 of the Code of Ethics.

Case14-32 (outside employment)

The Executive Director of the Department of Community Planning and Development (CPD) requested an advisory opinion regarding outside employment. He proposed to work as a paid consultant/advisor to the University of Denver Sturm College of Law's Rocky Mountain Land Use Institute (RMLUI). He believes that this would be accomplished in a few meetings per month.

RMLUI's website indicates:

> The Rocky Mountain Land Use Institute seeks to elevate the law, policy and practice of sustainable development in the West to promote nature-friendly, prosperous, and equitable communities.
>
> The 24th Annual Land Use Conference, Western Places/Western Spaces: Building Fair & Resilient Communities, will be held Thursday, March 12 and Friday, March 13, 2015.
>
> RMLUI's academic mission focuses on increasing educational opportunities for students and the practice community through the course offerings and symposia. We have also developed relationships with other academic programs and professional firms to promote research opportunities.
>
> The focus of RMLUI's practice program is the Sustainable Development Community Code Framework, a tool for municipalities interested in implementing sustainable initiatives, and the annual conference, one of the premier gatherings of sustainable development professionals.

The proposed work plan details numerous tasks that the Executive Director would be asked to perform, including:

- Identify issues of concern in the broader community that may be appropriate subjects for academic research, student field work, or other university engagement.
- Advise RMLUI regarding possible opportunities for DU and the City and County of Denver to partner on specific planning projects.

Section 2-63 of the Code of Ethics requires written approval of any outside employment or business activity by the appointing authority of a city employee or non-elected officer:

> **Sec. 2-63. Contemporaneous or outside employment.**
>
> The purpose of this section is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity.

(a) All officers other than elective officers and all employees shall report existing or proposed outside employment (excluding unpaid volunteer activity) or other outside business activity annually in writing to their appointing authorities and obtain his or her appointing authority's approval thereof prior to accepting initial employment or outside business activity. All officials shall immediately report any change in employment status to their appointing authorities which could give rise to a conflict of interest.

(b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics….

(i) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity.
(j) Copies of documents arising from this section shall be placed in each officer's or employee's departmental personnel file.
(k) City resources may not be used for any outside employment or outside business activity.

This proposal also raises a question about conflicts of interest, which are regulated by Section 2-61:

Sec. 2-61. Conflict of interest while employed.

The purpose of this section is to avoid influence on the official actions of city officers, employees or officials by their private or family interests.

(a) Except when advised by the city attorney that the rule of necessity applies, **an officer, official, or employee shall not take direct official action on a matter before the city** if he or she or a member of the immediate family, a business associate **or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter**. A substantial interest shall be deemed to exist if:

(1) He or she or a member of the immediate family, a business associate or an employer other than the city is the other party in the matter…(emphasis added)…

(f) Officers, employees or officials who are prohibited from taking direct official action due to a substantial conflict of interest shall disclose such interest to his or her colleagues on a board or commission or to his or her supervisor or appointing authority, shall not act or vote thereon, shall refrain from attempting to influence the decisions of others in acting or voting on the matter and shall work with his or her supervisor or appointing authority to ensure that the matter is assigned to someone without conflicting interests.

(g) No officer, employee or official may have any other employment or position which is incompatible with his or her duties or that adversely affect the interests of the city.

The Board of Ethics concluded that the proposed outside employment of the Executive Director by RMLUI and/or DU would benefit the City and County of Denver and that the policy goals of RMLUI

are consistent with the goals of the City and County of Denver. The Board advised the Executive Director that:

- He must obtain his appointing authority's (the Mayor's) written approval of this outside employment , as required by Section 2-63 of the Code of Ethics
- He must comply with all of the requirements of Section 2-61(f) if any type of contract between DU and/or RMLUI and CPD or the City and County of Denver or any land use or other type of decision or action by CPD regarding DU and/or RMLUI is under consideration, in order to mitigate the conflict of interest with his outside employer
- If any opportunities for planning students to work with CPD or for local educational institutions to "partner" with CPD arise, he should make opportunities to compete for such available to all similar institutions, and not just to his outside employer, DU or RMLUI
- A City employee must not earn or attempt to earn or solicit any income or compensation during his or her City work time, aside from City salary
- A City employee must not use City resources for outside employment or business activity
- A City employee must not use confidential City information for outside employment or business activity.

Case14-33 (no jurisdiction)

A Denver citizen filed a complaint concerning an officer in the Internal Affairs Bureau of the Police Department. The citizen indicated that went to a bank branch and attempted to withdraw $9000 in cash from his account. He had a balance in the account of more than $10,000.

As described in the complaint, a bank teller, the assistant branch manager, the manager and an off-duty uniformed Denver police officer working as a security guard all indicated that he would only be allowed to withdraw $2000 on one day, because that was a bank policy and/or they did not have a supply of cash that would allow a withdrawal of more than that at one time. Following several discussions between the parties, he said that the off-duty police officer said to him: "Do you want to close your account?...We're going to close your account right now…I am getting a cashier's check to close your account!"

Eventually, the off-duty officer, with the help of two on-duty police officers that she called for assistance, wrote, signed and gave to the citizen a City and County of Denver Unified Summons and Complaint for disturbing the peace, which ordered him to appear in County Court. He indicated that he did appear in court on the appointed day; however, he found that the summons and complaint had not been filed with the court and nothing ever came of it.

Sometime thereafter, he filed a complaint with the Internal Affairs Bureau concerning the off-duty officer's conduct at the bank. The IAB officer sent him a letter which "declined the complaint for further disciplinary review." According to the letter, "the complaint…was investigated thoroughly by the command staff of the Operational Support Bureau and then reviewed by the Internal Affairs Bureau." Apparently someone interviewed the off-duty officer and some bank employees. On the same day, he received a letter from a Deputy Monitor of the Office of Independent Monitor, stating "the evidence determined the officer did nothing outside of department policy." Apparently the IAB letter was the only contact between the citizen and the IAB officer.

The citizen cited a section of the DPD Operations Manual that he believed the off-duty officer violated:

114.00 - EMPLOYMENT OUTSIDE THE POLICE DEPARTMENT

114.01 Secondary Employment

(1) SECONDARY EMPLOYMENT, as used in this section, is defined as any work, including self-employment, performed by any officer apart from official assigned duties and required duty times.

Secondary Employment is not permitted under certain circumstances as identified in this policy.

Secondary Employment Police Work can be denied or limited in hours at any time by the Chief of Police or an officer's commander. Violations of this section may result in a suspension of the off-duty work privilege in addition to formal disciplinary action…

b. Officers employed to perform Secondary Employment Police Work will be bound by their police authority for the enforcement of the ordinances and laws of the City, State, and United States.

Officers may act to prevent a breach of the peace or to enforce the law, but officers shall not enforce rules made in the interest of the secondary employer. (emphasis added)

The Board of Ethics concluded that there is nothing in the Denver Code of Ethics that would prohibit the IAB officer's decision or anything else that he did regarding the citizen and/or the off-duty officer. In addition, the citizen did not suffer any real harm. He presumably withdrew the full amount from his bank account soon after the date in question, he was not jailed and he was not convicted of any offense relating to the bank situation.

Case14-34 (outside business activity)

In 2012 in Case 12-25 a person seeking to be hired by DIA requested and the Board of Ethics gave him an advisory opinion regarding outside business activity. In summary, the Board indicated that, if he was to be hired, the continuation of his pre-existing outside business activity with a small company that he owned ("the company") would not violate the Denver Code of Ethics, subject to the recommendations in the opinion.

He was not hired at that time, but has now recently been hired by DIA. He and his supervisor wish to have the Board consider whether to reaffirm its earlier opinion.

The Board of Ethics concluded that the facts have not changed in any way that would change the opinion given by the Board in Case 12-25.

The Board reaffirmed that:

- The Board does not find any inherent conflict of interest between his job with DIA and his work with the company;
- However, as required by Section 2-63, he cannot engage in any outside business activity with the company unless he obtains written approval from his appointing authority on an annual basis;
- If that is approved, he must not use any City resources or time for his outside work;
- In addition, the company should not work on any project or for a client that would conflict with the employee's loyalty to the City and County of Denver and DIA.

- In addition, the employee should note that Section 1.2.9B of the Denver Charter provides that "no…employee shall have a direct interest in a contract or similar instrument with the city if he or she participated in approving or establishing the contract or instrument…"

In addition, the Board concluded that, since the employee has no ownership interest in a similarly-named company which has a contract with DIA that the employee will manage, the employee will not be required by Section 2-61 of the Code of Ethics to abstain from managing the contract with that separate company.

Case14-35 (subsequent employment)

A former Public Works employee requested an advisory opinion. He resigned from his job as a Project Manager in the Traffic Engineering Division. He began to work for a private consulting company which specializes in traffic engineering.

The consulting company has had an on-call contract for services as needed with the City and County of Denver for some time and also has had a few individual specific contracts. The former employee advised the Board of Ethics that "I did not approve or negotiate those contracts. I was also not involved in direct review of their work and approval of the invoices related to these projects." There was and will be some connection between the former employee's work at Public Works and what he will do at the consulting company.

Subsequent employment is regulated by Section 2-64(a) of the Denver Code of Ethics:

> **Sec. 2-64. Subsequent employment.**
>
> The purpose of this section is to avoid the actuality or appearance that employers who hire former city officers or employees may get special treatment.
>
> (a) During six (6) months following termination of office or employment, no former officer, official, or employee shall obtain employment outside of the city government in which he or she will take direct advantage, unavailable to others, of matters with which he or she took direct official action during his or her service with the city.

Since the former employee did not negotiate or approve or administer or recommend any of the contracts between the City and the consulting company, (exercise direct official action as defined in Code Section 2-52(b)), the Board concluded that he is not required to wait 6 months before he works for the consulting company and he may now work on all of the projects mentioned in the matrix that he presented to the Board of Ethics that interface with Denver Public Works. In addition, the Board concluded that the interests of Denver and the consulting company are not in conflict in studying or implementing any of these projects.