

Running a Local Municipal Ethics Board: Ten Steps to a Better Board

By Steven G. Leventhal

The members of a local municipal ethics board are often respected members of the community with no background in government. They may be drawn from the clergy, and have strong grounding in the principles of their respective faiths; they may be accomplished members of the Bar, thoroughly versed in the code of professional responsibility that governs the practice of law, or they may be civic minded citizens, committed to public service and confident in the wisdom of their own moral compasses.



But even with these impressive credentials, board members may be uncertain of the board's purpose and function, unaware of the standards of conduct applicable to municipal officers and employees, and unfamiliar with the structure, operation and language of government.

This article is intended to offer them guidance in organizing and running their boards.

Step 1: Understand Your Mission

Logic and experience indicate that the vast majority of municipal officers and employees are honest, and genuinely wish to do the right thing. The dual goals of a municipal ethics program are to assist municipal officers and employees in avoiding ethical missteps before they occur, and to assure a skeptical public that the decisions of its government are based on the public interest and not on the private interests of the decision makers.

Many people use the words “morality” and “ethics” as if they had the same meaning. This is understandable, because their meanings are similar. Morality comes from the Latin word *mores*, for the characteristic customs and conventions of a community. Ethics comes from the Greek word *ethos*, for the characteristic spirit or tone of a community. But in the applied context of government ethics, it is inaccurate and unhelpful to think of these words as having the same meanings.

To illustrate the difference between morality and ethics, consider that an honest municipal employee, recognizing that she has a conflict of interest in a particular matter, may choose the official action that advances the public interest, even at the expense of

her own personal interest. Has she acted immorally? Certainly not. However, our well-meaning municipal employee has acted unethically, because even an innocent conflict of interest tends to undermine public confidence in government and justifies the suspicion that an official action was motivated by personal considerations rather than by the public interest.

It is unhelpful to think of government ethics in moral terms, because doing so implies a moral failure among municipal officers and employees, and breeds resentment among the honest majority, who take rightful pride in their personal integrity.

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Some laws prohibit conduct that is inherently immoral, such as murder and larceny. This type of misconduct is known as a *malum in se*. It is prohibited because it is wrong. But some laws prohibit and even criminalize conduct that would otherwise be perfectly moral because we find it a safer, more economical or more efficient way to organize our society. The Vehicle and Traffic Law and the Internal Revenue Code are examples of laws that prohibit conduct that is not inherently immoral. This type of misconduct is known as a *malum prohibitum*. It is wrong because it is illegal.

Similarly, a local municipal ethics code does not prohibit conduct because the conduct is morally wrong.¹ Rather, it regulates official conduct in order to achieve the dual goals of assisting honest officers and employees in avoiding ethical missteps before they occur, and inspiring public confidence in government by encouraging high standards of conduct among municipal officers and employees. Ethics regulations are the rules of the road for official conduct.

Step 2: Learn How to Analyze a Government Ethics Problem

So where do you find these rules of the road? They are scattered about in many legal nooks and crannies, including the State Constitution, various state and local statutes, published court decisions, and agency regulations. But don't be discouraged. In New York, most ethics problems can be analyzed by considering three questions:

- Does the conduct violate Article 18 of the New York General Municipal Law?
- If not, does the conduct violate the local municipal code of ethics?
- If not, does the conduct seriously and substantially violate the spirit and intent of the law, and thus create a prohibited appearance of impropriety?

Article 18 of the New York General Municipal Law is the state law that establishes minimum standards of conduct for the officers and employees of all municipalities within the State, except the City of New York.² Among other things, Article 18 prohibits a municipal officer and employee from having a financial interest in certain municipal contracts that he or she has the power to control individually or as a board member,³ from accepting gifts or favors worth \$75 or more where it might appear that the gift was intended to reward or influence an official action,⁴ from disclosing confidential government information,⁵ from receiving payment in connection with any matter before his or her own agency,⁶ and from receiving a contingency fee in connection with a matter before any agency of the municipality.⁷

If you find that the conduct under review violates Article 18, you are finished with your analysis. The conduct is prohibited by state law and you need go no further. But if you find that the conduct does not violate Article 18, you must ask yourself the second question: Does the conduct under review violate the local municipal code of ethics?

Local municipalities are authorized by Article 18 to adopt their own codes of ethics.⁸ A local ethics code may not permit conduct that is prohibited by Article 18. However, a local code may be stricter than Article 18. It may prohibit conduct that Article 18 would allow.⁹ Local ethics codes typically fill gaps in the coverage of Article 18 by, among other things, closing the “revolving door” (post-employment contacts with the municipality), establishing rules for the wearing of “two hats” (the holding of two government positions, or moonlighting in the private sector) and, in some cases, prohibiting “pay to play” practices and the political solicitation of subordinates, vendors and contractors.

If, after determining that the conduct under review does not violate Article 18, you find that it does violate your local ethics code, your analysis is done. The conduct is prohibited by local law. But, if you find that the conduct neither violates Article 18 nor the local code of ethics, there is yet another question that you must consider.

Ethics regulations are not only designed to promote high standards of official conduct, but also to

foster public confidence in government. An appearance of impropriety undermines public confidence. Therefore, courts in some cases have found that government officials have an implied duty to avoid conduct that seriously and substantially violates the spirit and intent of ethics regulations, even where no specific statute is violated.¹⁰

Accordingly, the third question in this protocol for analyzing government ethics problems—Does the conduct seriously and substantially violate the spirit and intent of the law, and thus create a prohibited appearance of impropriety?—may well be posed instead as: How will this conduct look on the front page of the local newspaper?

The goal of prevention—and just plain fairness—requires that officers and employees have clear advance knowledge of what conduct is prohibited, and what conduct is not. Discernable standards of conduct help dedicated municipal officers and employees to avoid unintended violations and unwarranted suspicion. When the board finds that there is a prohibited appearance of impropriety, the finding should have a rational basis, and the board’s reasoning should be clear and convincing. Such a finding should be reserved for the rare cases involving conduct that is contrary to public policy, and that raise the specter of self-interest or partiality. It should not be found in cases where the improper appearances are speculative or trivial.¹¹

Where a contemplated action by an official might create an appearance of impropriety, the board should recommend that the official refrain from acting. But ethics boards should be restrained in finding, after the fact, that an official’s conduct violated the implied duty to avoid appearances of impropriety. They should be especially restrained in finding that a member of a voting board, and in particular a legislator, was required to refrain from participating in a matter called for a vote, because an abstention by a member of a voting body will normally be counted as a “nay” vote,¹² and because the recusal of a legislator disenfranchises voters.

Step 3: Set the Right Tone—Be Credible

By setting the right tone, the board can better advance the dual goals of helping the municipal workforce avoid ethical missteps before they occur and inspiring public confidence in government decision making.

One clear lesson of recently publicized scandals is that an otherwise forgiving public will not abide hypocrisy. Board members should scrutinize their own investment, business or political activities, and rid themselves of conflicts. They should avoid entanglements that might cast doubt on their objectivity.

A board that is perceived as politically motivated will have no credibility as the source of ethics advice or the arbiter of ethics disputes. Rather than inspire public confidence, it will reinforce public cynicism. Board members should avoid partisanship in their official and unofficial activities. They should banish political considerations from their deliberations and decision-making.

Most ethics inquiries escape public notice. But some draw intense public attention and attract press inquiries. The board is a deliberative body and speaks only through its duly rendered opinions and decisions. Individual board members should avoid public statements that may send mixed messages, and may undermine the force and credibility of the board's determinations.

According to Socrates, there are four things that a judge must do: listen patiently, speak wisely, deliberate soberly, and decide impartially. This ancient admonition is a worthy guide for the members of a municipal ethics board in the discharge of their official duties.

Step 4: Empower the Board to Control Its Own Business—Be Independent

There is an understandable tendency for a municipal administration to exercise direct or indirect influence over its appointed boards and commissions. This may occur with the best of intentions. For example, a municipal attorney or other official appointed to a board may feel that he or she is in the best position to call meetings, set the agenda, or guide the board in its deliberations. But an ethics board dominated by administration insiders cannot exercise independent judgment and oversight.

To ensure both the reality and the perception that the board can and does operate independently, the board should select its own chair. Like all boards, the ethics board must conduct its business at meetings attended in person by a quorum of its members.¹³ Meetings should be called by the chair, or by a majority of the members.

A clerical employee should be appointed by the municipality to serve as secretary to the board, under direction of the chair. The secretary should be responsible for sending notices, receiving inquiries and complaints, keeping minutes, maintaining the transactional, applicant and annual disclosure statements filed with the board,¹⁴ and keeping an indexed file of the board's opinions and decisions.

Under normal circumstances, the municipal attorney will serve as counsel to the board. The board should have a modest but sufficient budget to obtain independent legal advice on the rare occasions when the municipal attorney may have a conflict of interest,

and to allow for the services of a stenographer when a hearing is conducted. Because the activities of the board may sometimes be controversial, its expenditures for these purposes, within the limits of a modest budget, should not be subject to external approval.

Step 5: Get the Message Out—Be Proactive

Many local ethics boards never meet, and are completely ignored by their respective municipalities. But because the municipal ethics program is designed to help officers and employees avoid inadvertent ethical violations, it is essential that the board actively promote awareness among them of their ethical obligations, and encourage them to seek ethics advice when questions arise.

Ethics codes tend to be drafted by lawyers, written in *legalese*, and unintelligible to the common reader. Yet the municipal workforce is mostly composed of non-lawyers, all of whom must adhere to the code of ethics. Therefore, every municipality should prepare and distribute a plain-language guide to government ethics no more than two or three pages in length.¹⁵

The plain-language guide should include a short and simple statement of purpose. It should note that the guide was prepared to assist officers and employees in avoiding actual or potential conflicts of interest, but that it is not intended to replace the actual text of the local code of ethics. It should incorporate—in plain language—the mandates of Article 18 and the standards adopted by the local municipality in its code of ethics, and should advise against conduct that creates an appearance of impropriety.

The plain language guide should inform municipal officers and employees that they may obtain free, confidential ethics advice from the board of ethics, and provide the board's contact information. It should encourage officers and employees to resolve any doubts they may have about their ethical obligations by obtaining the board's advice before acting.

Ethics training is another important means of getting the message out. A regular series of educational programs should be conducted at convenient times and places so that they may be widely attended by the municipal officers and employees. Experience indicates that daytime programs will be widely attended by employees, even if attendance is not mandatory. Evening programs are generally more convenient for the members of boards and commissions, many of whom hold full-time outside employment.

Step 6: Master the Art of Giving Ethics Advice

The day will come. You may be at a cocktail party, or at a community event. You will be approached by an acquaintance who has heard of your appointment to

the ethics board and wishes to discuss an ethics question. But beware. You probably won't have all the facts that you will need to give a proper answer. Certainly, you don't want to be cited as having approved a code violation. Ethics inquiries often involve the exercise of judgment. The exchange of opinions among board members is an important part of the decision-making process. All ethics inquiries should be referred to the full board for determination.

The board should respond only to written requests for ethics advice, and should only decide actual "cases and controversies." Fact-finding is a critical step in rendering ethics advice. Only the facts of a particular case will determine the issues that you must consider. The particular facts of an actual case will often determine the outcome of an ethics inquiry. When a request is made for general information about the ethics code, the board should respond by providing the inquiring party with a copy of the plain-language guide.

The board of ethics should maintain a record of the question that was posed, and the information that it relied on in reaching its opinion. It should carefully consider whether it has all the facts that it needs to form an opinion. Ethics questions are often more complicated than they appear. If an employee holds a civil service title, you may need to review the job description associated with that title. But perhaps the employee is working "out of title," performing functions that are not part of his or her job description. Conflicts may sometimes arise based on the duties associated with a job title, or they may arise based on the duties actually performed. You may need to know whether a particular employee is a "policy maker," or is in a position to influence policy making. You may need to know how a particular agency interacts with another. Once you have gathered your facts, you still may not know the whole story. To avoid setting a bad precedent, limit the application of your opinion to the facts presented.

Article 18 authorizes a county ethics board to act with respect to officers and employees of the county, and with respect to officers and employees of a municipality within the county that has not established its own board of ethics.¹⁶ A municipal ethics board other than a county board may act only with respect to its own officers and employees.¹⁷ Ethics advice is intended to provide a shield against unwarranted criticism for honest officers and employees, not a sword for use by political or personal foes. Typically, a local municipal ethics board is authorized to give advice only to officers and employees inquiring about themselves.

The board should act promptly when it receives a request for ethics advice. Many inquiries will be time sensitive. For example, an outside job opportunity may be lost while a municipal employee waits for the ethics board to determine whether the duties of the

outside job would be compatible with the employee's government duties.¹⁸ Untimely ethics advice is useless to the inquiring officer or employee, discourages officers and employees from seeking advice before acting, and undermines the purpose of preventing ethics violations before they occur.

The board's job is to interpret the obligations of officers and employees under the code of ethics and related authorities. Not every question posed to the board of ethics will raise a government ethics issue. For example, the professional conduct of attorneys—even municipal attorneys—is governed by the Lawyer's Code of Professional Responsibility.¹⁹ Officers and employees seeking advice about the professional obligations of attorneys should be referred to the professional ethics committee of the local bar association. Inquiries that pose questions of municipal law should be referred to the municipal attorney.

In drafting your advisory opinions, remember that confidentiality advances the purposes of the municipal ethics program by encouraging officers and employees to seek advice before acting. Where possible, an advisory opinion should omit the name of the inquiring officer or employee, and any other identifying facts.

Your task will be easier if you develop a template for drafting opinions. First frame the issue presented. Next, set forth the governing authority. Discuss how the law applies to the facts, and then state the board's conclusion. Advisory opinions should identify which board members participated in the matter, and any members who may have recused themselves.²⁰ They should be dated and signed by the chair, and delivered only to the inquiring officer or employee unless he or she consents to a broader distribution.

In framing the issue, keep in mind that if the advice applies only to the inquiring officer or employee, the board's opinion is more likely to be exempt from disclosure under the New York Freedom of Information Law, and it is more likely that the board's deliberations may be conducted in executive session under the Open Meetings Law.²¹ On the other hand, determinations that are broad declarations of policy may be subject to disclosure under the Freedom of Information Law, and the proceedings that produce them may be subject to public access under the Open Meetings Law.²² Because officers and employees are more likely to seek ethics advice when their inquiries are treated as confidential, local municipal ethics boards should conduct their advisory function in a manner that is likely to preserve the privacy of the inquiring parties.

Courts give great weight to the advisory opinions of local municipal ethics boards.²³ In giving ethics advice, be reasonable and practical. Keep in mind that inconsistent rulings encourage skepticism. But don't

ignore the lessons of experience. Respect your own precedents, but take a fresh look when warranted. Remember that your goals are to assist honest officers and employees in avoiding ethical missteps before they occur, and to inspire public confidence in government by encouraging high standards of conduct among municipal officers and employees. Treat every request for ethics advice as a teaching opportunity. Write advisory opinions that are clear, explanatory and educational.

Step 7: Adopt Rules of Procedure for Investigating Complaints

Unlike a request for ethics advice, an ethics complaint can normally be filed by anyone—even anonymously—or the board may initiate an investigation on its own. Article 18 does not provide guidelines for the investigation of complaints by a local ethics board. Particular practices vary from one municipality to another, based on the board's mandate as set forth in the local code of ethics.

Consistent with the authority conferred on the board by the local code of ethics, the board should adopt its own rules of procedure for investigating complaints, and have them in place before a complaint is received or an investigation is required. In adopting its rules, the board should be mindful of the fundamental requirements of due process: notice and an opportunity to be heard.²⁴

The board should preserve a record of the complaint, all notices to and from the board, and all evidence that it receives in the course of its investigation including documents and testimony. The board should work closely with its counsel to ensure that the result of its investigation will withstand judicial review. (For a discussion of what to expect if the board or its members are sued, see Step 9.)

If the facts alleged by the complainant or discovered by the board raise the suspicion that a crime may have been committed, the matter should be referred to the District Attorney. To avoid interfering with the District Attorney's investigation or prosecution of the case, the board should refrain from acting while the matter is under investigation or prosecution by the District Attorney's office.

Step 8: Develop Procedures for Review of Annual Disclosure Statements

In municipalities having populations of 50,000 or more, the board of ethics is usually charged with the responsibility of administering the financial disclosure law adopted pursuant to Article 18.²⁵ Depending upon the number of officers and employees required to file financial disclosure statements, the board of ethics

may not have the resources to adequately discharge this responsibility on its own without the assistance of staff assigned by the municipality to handle the daily administrative and clerical duties that such a program entails.

Even where the board of ethics has delegated the day-to-day administration of the financial disclosure law to staff, it still may be called upon to inspect the annual disclosure statements for the purpose of detecting any actual or potential conflicts that they may reveal. Undoubtedly, this task will be performed without the assistance of investigators, auditors or forensic experts. The board should exercise care in developing procedures for the review of annual disclosure statements, and in establishing the parameters of its review, in order to avoid the potential that its members will later be blamed for failing to catch an actual or potential conflict.

Step 9: Know What to Expect if the Board or Its Members Are Sued

Because they are not "final determinations," the advice given by an ethics board is not subject to judicial review and reversal.²⁶ As a result, there are few reported cases involving challenges to the decisions of local municipal ethics boards. But when an ethics board engages in the quasi-judicial function of determining whether an ethics violation has occurred, or imposes a fine or other penalty, its decisions will be subject to judicial review in a proceeding under Article 78 of the New York Civil Practice Law and Rules.²⁷

In an Article 78 proceeding, the petitioner will have the burden of proving that the board's determination was illegal, arbitrary or capricious, that the board abused its discretion, or that the decision was unsupported by substantial evidence.²⁸

Lawsuits brought against the board will normally be handled by the municipal attorney, or other counsel retained by the municipality, at no cost to the individual board members. But what if the individual board members are sued by an aggrieved party? The individual members of a local municipal ethics board are entitled to a qualified immunity from individual liability where they exercised discretion within the scope of their official duties, and where they have not violated a plaintiff's constitutional rights.²⁹

A municipality may, by local law, provide for the defense and indemnification of its officers and employees in civil claims arising out of their acts or omissions while acting within the scope of their official duties, except where the claim is brought by or on behalf of the municipality. The indemnification will not apply to judgments based on intentional wrongdoing or recklessness, or to awards of punitive damages.³⁰ Where

the municipality provides an officer or employee with defense and indemnification, any settlement of the claim is subject to approval by the municipality.³¹

The municipality may purchase insurance to fund its obligations under the indemnity,³² or it may purchase liability insurance to protect its officers and employees from liability arising out of the performance their official duties even without a local law providing for the defense and indemnification of officers and employees by the municipality.³³ Board members should inquire whether their municipality has adopted a local law providing for the defense and indemnification of its officers and employees, and whether the municipality has purchased insurance to protect them from liability arising from the performance of their official duties.

A lawsuit against the board of ethics or its members may pit the interests of branches, departments or agencies of government, or those of individual officers or employees, against one another, and may present the municipal attorney with a professional conflict of interest. It is sometimes difficult to determine whether a municipal attorney has a professional conflict of interest because he or she may, at various times, owe a duty of loyalty to one or more individual officers or employees, branches, departments or agencies of government, the government as a whole, or directly to the public.³⁴ This distinction is important because conversations with a municipal attorney will not be privileged unless they occur between the municipal attorney and his or her client.³⁵

The joint defense of a municipality and the individual members of a municipal board will give rise to a professional conflict where the defendants assert inconsistent defenses. A professional conflict would also arise where the individual board members are sued for punitive damages, because a municipality cannot be liable for punitive damages.³⁶ Clients may waive the professional conflict by giving informed consent if a disinterested lawyer would conclude that defense counsel's professional judgment would not be impaired by the joint representation.³⁷ In cases where the municipal attorney has a professional conflict of interest, the indemnified officer or employee is entitled to be represented by private counsel of his or her choice.³⁸

Step 10: Take Advantage of Ethics Resources

We are fortunate that several dedicated government ethicists have labored in recent years to organize the subject of government ethics into a coherent discipline, and to develop a body of written materials available to assist local municipal ethics boards in doing their important and difficult work.

Articles by Professors Mark Davies, Patty Salkin, Les Steinman and others are available online. For example, back issues of this publication, the NYSBA / MLRC *Municipal Lawyer*, are available to members of NYSBA's Municipal Law Section on its Web site at www.nysba.org/MunicipalLawyer. The Association's Municipal Law Section is a ready source of ethics education and support. An extensive online ethics library is available at the Web site of the New York City Conflicts of Interest Board.

An extensive library of local municipal codes is available on the Web site of "e-codes." Advisory opinions of the New York Attorney General and the New York Comptroller are available on their respective Web sites. Helpful information is available online to members of the New York State Association of Counties, the Association of Towns of the State of New York, the New York Conference of Mayors and Municipal Officials, and the Conference on Government Ethics Laws.

Congratulations and good luck. Your work is among the most important in government.

Endnotes

1. In some instances, a municipal officer or employee may engage in morally culpable misconduct. But such cases are more likely to be prosecuted by the local district attorney's office than by the local municipal ethics board, and they are more likely to be prosecuted as violations of the New York Penal Law than as violations of the state or local codes of ethics. *See, e.g.*, Penal Law § 195.00 (official misconduct) and art. 200 (bribery involving public servants and related offenses).
2. For a helpful summary of Gen. Mun. Law Article 18, *see* Davies, *Article 18: A Conflicts of Interest Checklist for Municipal Officer and Employees*, NYSBA / MLRC *Municipal Lawyer*, Summer 2005, Vol. 19, No. 3, pp. 10–12.
3. *See* Gen. Mun. Law §§ 800–805.
4. *See* Gen. Mun. Law § 805-a.
5. *Id.* N.B. The phrase "confidential information" is not defined in Gen. Mun. Law Article 18. Taken together, the Freedom of Information Law (Pub. Off. Law, art. 6) and the Open Meetings Law (Pub. Off. Law, art. 7) are a powerful legislative declaration that public policy disfavors government secrecy. *See* Leventhal and Ulrich, *Running a Municipal Ethics Board: Is Ethics Advice Confidential?*, NYSBA / MLRC *Municipal Lawyer*, Spring 2004, Vol. 18, No. 2, pp. 22–24. For a suggested definition of "confidential information" in the context of Gen. Mun. Law, Article 18, *see* Leventhal, *Running a Local Municipal Ethics Board: Glossary of Municipal Ethics Terms*, NYSBA / MLRC *Municipal Lawyer*, Spring 2006, Vol. 20, No. 2, pp. 20–21 (*Confidential Information*. Information in any format that is either (1) prohibited by federal or state law from disclosure to the public, or (2) prohibited from disclosure by local law, ordinance, or resolution of the municipality, and exempt from mandatory disclosure under the New York State Freedom of Information Law (FOIL) and the New York State Open Meetings Law).
6. *Supra*, n. 4.
7. *Id.*
8. *See* Gen. Mun. Law § 806.

9. See Davies, *Enacting a Local Ethics Law—Part I: Code of Ethics*, NYSBA / MLRC Municipal Lawyer, Summer 2007, Vol. 21, No. 3, pp. 4–8.
10. See, e.g., *Zagoreos v. Conklin*, 109 A.D.2d 281, 491 N.Y.S.2d 358 (2d Dep’t 1985); *Tuxedo Conservation and Taxpayer Association v. Town Board of Tuxedo*, 69 A.D.2d 320, 418 N.Y.S.2d 638 (2d Dep’t 1979).
11. See *Peterson v. Corbin*, 275 A.D.2d 35, 713 N.Y.S.2d 361 (2d Dep’t 2000).
12. See Gen. Const. Law § 41.
13. Pub. Off. Law §§ 100–111 (Open Meetings Law); see Freeman, *Board of Ethics: Public Disclosure?* NYSBA / MLRC Municipal Lawyer, Spring 2008, Vol. 22, No. 2, pp. 12–15; Leventhal and Ulrich, *Running a Municipal Ethics Board: Is Ethics Advice Confidential?*, NYSBA / MLRC Municipal Lawyer, Spring 2004, Vol. 18, No. 2, pp. 22–24.
14. For a thorough discussion of the types of disclosure statements typically filed with a local municipal ethics board, see Davies, *Enacting a Local Ethics Law—Part II: Disclosure*, NYSBA / MLRC Municipal Lawyer, Fall 2007, Vol. 21, No. 4, pp. 8–17.
15. A library of plain-language guides and leaflets is posted on the Web site of the New York City Conflicts of Interest Board.
16. See Gen. Mun. Law §§ 808(2)-808(4).
17. *Id.*
18. In the absence of a constitutional or statutory prohibition, an official may hold two public offices, or a public office and a position of secondary employment, unless the duties of the two positions are incompatible. See *People ex rel. Ryan v. Green*, 58 N.Y. 295 (1874).
19. N.Y. Comp. Codes R. & Regs. Tit. 22, § 1200.
20. Where a board member recuses himself or herself due to a conflict of interest, the member should refrain from participating in the discussion, deliberations or vote on the matter. See 1995 Op. Atty. Gen. 2. For a helpful discussion of the principles applicable to recusal and abstention, see Steinman, *Recusal and Abstention from Voting: Guiding Principles*, NYSBA / MLRC Municipal Lawyer, Winter 2008, Vol. 22, No. 1, pp. 17–19.
21. See Leventhal and Ulrich, *Running a Municipal Ethics Board: Is Ethics Advice Confidential?*, Municipal Lawyer, Spring 2004, Vol. 18, No. 2, pp. 22–24; N.Y. Comm. on Open Gov’t. FOIL Adv. Op. 8922 (1995); OML Adv. Ops. 2269 (1993), 2805 (1997).
22. *Id.*; see also Freeman, *Board of Ethics: Public Disclosure?*, NYSBA / MLRC Municipal Lawyer, Spring 2008, Vol. 22, No. 2, pp. 12–15.
23. See *Byer v. Town of Poestenkill*, 232 A.D.2d 851, 648 N.Y.S.2d 768 (3d Dep’t 1996); *Parker v. Gardiner Planning Bd.*, 184 A.D.2d 937, 585 N.Y.S.2d 571 (3d Dep’t 1992); *DiLucia v. Mandelker*, 110 A.D.2d 260, 263, 493 N.Y.S.2d 769, 771 (1st Dept. 1985), *aff’d*, 68 N.Y.2d 844 (1986).
24. For further advice on investigations and enforcement procedures, see Davies, *Enacting a Local Ethics Law—Part III: Administration*, NYSBA / MLRC Municipal Lawyer, Winter 2008, Vol. 22, No. 1, pp. 11–16.
25. See Gen. Mun. Law §§ 810, 811, 812.
26. See *Best Payphones, Inc. v. Department of Info. Tech. & Telecom. of City of N.Y.*, 5 N.Y.3d 30 (2005), *reargument den.* 5 N.Y.3d 824 (2005); *Stop-The-Barge v. Cahill*, 1 N.Y.3d 218 (2003); *Scarpati-Reilly v. Town of Huntington Bd. of Ethics & Fin. Disc.*, 300 A.D.2d 404, 751 N.Y.S.2d 753 (2d Dep’t 2002); *Neale v. Cohen*, 281 A.D.2d 421, 721 N.Y.S.2d 110 (2d Dep’t 2001); *Hammer v. Veteran*, 86 Misc. 2d 1056, 386 N.Y.S.2d 170 (Sup. Ct. West. 1975), *aff’d*, 53 A.D.2d 629, 385 N.Y.S. 2d 1017 (2d Dep’t 1976).
27. See, e.g., *Gray v. Epstein*, 2008 N.Y. Slip Op 51706U (Suff. Co. Sup. Ct. 2008) (Petitioner appealed decision of the Town of Smithtown Ethics Board that she violated the town code of ethics, and imposed a civil penalty of \$3,500; court affirmed the board’s decision, but set aside the monetary penalty because the Code did not provide the Ethics Board with the authority to impose monetary penalties.).
28. See N.Y. Civ. Prac. Law & Rules § 7803.
29. See *Shechter v. Comptroller of City of New York*, 79 F.3d 265 (2d Cir. 1996).
30. Pub. Off. Law § 18 (Defense and indemnification of officers and public entities).
31. *Id.*
32. *Id.*
33. Gen. Mun. Law § 52 (Liability insurance for officers and employees).
34. See Salkin, *Beware: What You Say to Your Government Lawyer May Be Held Against You—The Erosion of the Government Attorney-Client Confidentiality*, 35 Urb. Law 283 (2003); Salkin and Phillips, *Program On Law And State Government Fellowship Symposium: Integrity in Public Service: Living Up to the Public Trust? Eliminating Political Maneuvering: A Light in the Tunnel for the Government Attorney-Client Privilege*, 39 Ind. L. Rev. 561 (2006).
35. *Id.*
36. See *Cook County, Illinois v. U.S. ex rel. Chandler*, 538 U.S. 119, 129 (2003) (citing *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 259–260 (1981); *Sharapata v. Islip*, 56 N.Y.2d 332 (1982)).
37. N.Y. Comp. Codes R. & Regs. Tit. 22, § 1200.24(c)(DR 5–105).
38. Pub. Off. Law § 18 (Defense and indemnification of officers and public entities).

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