



CITY AND COUNTY OF DENVER

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DENVER BOARD OF ETHICS

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DENVER BOARD OF ETHICS

2010 ANNUAL REPORT

Submitted: February 15, 2011

I. INTRODUCTION

The Denver Board of Ethics hereby submits its tenth annual report to the Mayor and City Council, as required by Section 2-66 of the Denver Code of Ethics.

The mission of the Board of Ethics is:

To encourage and guide city officers, officials and employees to adhere to high levels of ethical conduct so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public.

Appendix A below gives brief biographies of the five members of the Denver Board of Ethics.

The Board expresses its appreciation to all of the city elected officials, employees and board and commission members who have requested ethical advice or help in 2010 and for the advice and representation given to the Board by Assistant City Attorney Helen Raabe.

The Board held twelve monthly meetings during 2010. This report is a summary of the work accomplished by the Board during that time.

II. ADVISORY OPINIONS, WAIVERS, COMPLAINTS

In 2010 the Board received and handled a total of 61 written formal cases - as compared with:

- 66 cases in 2009
- 73 in 2008
- 47 in 2007
- 46 in 2006
- 46 in 2005
- 48 in 2004
- 47 in 2003
- 50 in 2002
- 31 in 2001.

Twenty-seven of the 2010 formal cases were requests for advisory opinions and/or waivers, while 34 were complaints.

A digest of the Board's significant 2010 opinions is attached below as **Appendix B** and is posted on the Board of Ethics website at www.denvergov.org/ethics. The Board dismissed all of the complaints that it considered in 2010 after preliminary screening, primarily due to lack of jurisdiction over the subject matter.

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2010, the Board of Ethics has received a total of 514 written formal cases, consisting of 288 requests for advisory opinions and/or waivers and 226 complaints about possible violations of the Code of Ethics. Most of the complaints received have been dismissed because the allegations relate to subjects and/or persons not covered by the Denver Code of Ethics. Examples of such dismissed complaints contain allegations that police officers make improper arrests or searches or that deputy sheriffs use excessive force. In such cases, the Board of Ethics encourages the complaining parties to submit their complaints to the Internal Affairs Bureaus of the Police or Sheriff Departments.

The subjects of the requests for formal advisory opinions or waivers during this entire 2001-2010 period break down as follows, with the 2010 cases enumerated in parentheses:

- conflicts of interest – 93 (8)
- gifts – 73 (8)
- travel expenses and lodging – 28 (3)
- outside employment or outside business activity – 77 (6)
- hiring of relatives – 5 (1)
- supervision of relatives – 17 (3)
- subsequent employment – 55 (2)

- use of public office for private gain – 8
- prior employment – 1
- other or no jurisdiction– 132 (17)
- use of confidential information or records 3 (3)

(Some requests involved more than one subject.)

In addition to the written formal complaints and requests for advisory opinions and waivers, the Board's staff director in 2010 received approximately 250 telephone, e-mail or in-person requests for unofficial, informal consultation about the Code of Ethics or other ethics issues, as compared with:

- 260 in 2009
- 277 in 2008
- 277 in 2007
- 254 in 2006
- 266 in 2005
- 249 in 2004
- 192 in 2003
- 130 in 2002
- 50 in 2001

For a total of 2205 since January 2001.

III. ETHICS HANDBOOK

In 2009 the 2008 edition of the Ethics Handbook was distributed to all new city officers and employees and, for the first time, to all on-call city employees. In 2010, the Ethics Handbook was distributed to all new city employees. The Board of Ethics will probably seek budget funding for 2012 to print an updated handbook, which will include amendments to the Code of Ethics made by City Council since 2008.

IV. ETHICS TRAINING

The Board of Ethics continues to believe that excellent, consistent ethics training is critically important to the successful implementation of the citywide ethics program. All city employees, officers and officials should be trained to recognize ethical issues and to take appropriate steps to avoid unethical conduct.

From 2002 through the end of 2010, 99% of all city employees and officers subject to the Code of Ethics have received at least 3 hours of ethics training. The Board's Staff Director gave ethics training in 2010 to several new Mayoral appointees, a newly-elected City Councilperson and several fire recruits. In conjunction with the Board's ethics training consultant, he also gave refresher ethics training to all managers and supervisors at the

Department of Human Services. The Career Service Authority continued to give three-hour ethics training once a month to new city CSA employees. In 2006, with support from the Board of Ethics, the Career Service Authority Board amended CSA Rule 6 to require that new CSA employees must receive ethics training before they can pass their probationary period, which has significantly increased compliance with the ethics training requirement.

The Board expresses its continued appreciation to the Training and Organizational Development Division of the Career Service Authority, agency heads and trainers in individual agencies who have made this ethics training effort successful.

V. OTHER MATTERS

BUDGET

The adopted 2011 budget for the Board of Ethics is \$104,100, compared to:

- \$102,500 for 2010
- \$105,800 for 2009
- \$94,600 for 2008
- \$97,600 for 2007
- \$86,700 for 2006
- \$86,000 for 2005
- \$82,600 for 2004
- \$96,000 for 2003
- \$87,300 for 2002.

STAFF

Michael Henry, the Staff Director of the Board of Ethics, is the sole employee of the Board. The Board encourages citizens and city employees, officers and officials to contact him at 720-865-8412 or michael.henry@denvergov.org.

VI. OTHER 2010 ACCOMPLISHMENTS

In late 2010, the Board devoted significant effort to participating in and responding to a performance audit of the citywide ethics program performed by the Auditor's Office and presented to the Audit Committee.

VII. 2011 GOALS FOR BOARD OF ETHICS

A. Continue to implement and improve ethics training

The Board of Ethics, in cooperation with Career Service Authority, has overseen the delivery of ethics training for all Denver officers, officials and employees. The Board should in 2011 continue to pursue this goal by working with all city ethics trainers to encourage accuracy and consistency and high quality of the ethics training with cooperation from CSA and city departments.

B. Continue to receive, review and decide expeditiously requests for advisory opinions, requests for waivers and complaints regarding alleged misconduct

C. Improve public information about Code of Ethics

- a) Develop regular articles about Code/Board of Ethics to submit to City departmental newsletters and the city employee newsletter, Insight.
- b) Organize and publicize city-wide and/or departmental informational lunchtime or after -work discussions of ethical issues – twice per year. Seek public comments at the meetings about ethics concerns of citizens.
- c) Continue to publish digests of recent opinions of the Board of Ethics

D. Improve implementation of Executive Order 134 regarding gifts to the city

- a) Work with City Clerk's and Mayor's Offices to ensure that gifts to the city over \$2500 are posted on a website by the City Clerk pursuant to Executive Order 134.
- b) Work with City Clerk's and Mayor's offices to develop a uniform reporting form for Executive Order 134.

E. Analyze ethics-related responses to 2011 Denver Employee Survey and work with Career Service Authority Training Division to assist departments and agencies if survey indicates need for improvement of ethical culture

- F. Study Code of Ethics in light of the Board's experience and research Codes of Ethics from other jurisdictions and recommend any improvements to City Council for approval, including the recommendations from 2009 for which City Council requested further consideration**
- G. Sponsor or co-sponsor a forum for Mayoral candidates in the 2011 city election to address ethics issues. (The Board of Ethics co-sponsored such a forum in 2003 with the city's Diversity Committee for approximately 10 mayoral candidates. All city employees were invited and approximately 150 attended)**
- H. Work with City Council and the Mayor's Office to implement recommendations of the 2010 performance audit of city-wide ethics program**

VIII. CONFORMANCE WITH CITY GOALS

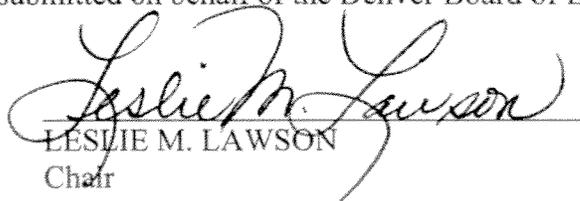
The Board of Ethics believes that its work during 2010 and its goals for 2011 support the following of the City and County of Denver's goals:

- ✓ Better place to live and create jobs – by encouraging an ethical culture in Denver city government and by encouraging confidence in Denver city government among its citizens and customers
- ✓ Better place to work – by encouraging high ethical standards throughout city government
- ✓ Denver city government will live within its means – by continuing to thrive as the city's smallest agency with the smallest budget

IX. CONCLUSION

The Board of Ethics believes that, with help from the Mayor, City Council, the City Attorney's Office, Career Service Authority, the ethics trainers in city agencies and the great majority of managers and employees of the City and County of Denver, it made continued progress in 2010 to establish ethics as a recognized core value and cultivate public confidence in city government.

Respectfully submitted on behalf of the Denver Board of Ethics,


LESLIE M. LAWSON
Chair

APPENDIX A DENVER BOARD OF ETHICS

Board Members (as of January 2011)

Leslie M. Lawson earned a B.A and J.D. from the University of Wyoming. She has served as an attorney for the Equal Employment Opportunity Commission, as an in-house attorney for a major oil corporation, as an attorney in a small law firm, as a Denver district judge and as a member of the Judicial Arbiter Group. She is a past president of the Colorado Women's Bar Association. Currently she is a mediator and arbitrator and a partner in Dispute Management, Inc. Re-appointed by City Council. Term expires 4-20-2013. She served as Chair of the Board of Ethics from May 2005 through May 2006 and as Vice-Chair from May 2007 to May 2008. She was re-elected as chair in May 2010. Due to her experience as a judge, she serves as presiding officer at hearings on complaints conducted by the Board.

Ann A. Terry earned a B.A. in Sociology from the University of Iowa and a J.D. from Drake University Law School. She was a prosecutor in Iowa and then worked in Colorado with the Jefferson County District Attorney's Office and the Colorado District Attorneys' Council and served as a legislative liaison and public policy analyst for the Colorado Department of Public Safety. She has served on a number of non-profit boards and committees and has taught several law school courses. She developed an ethics curriculum for prosecutors, law enforcement and victims' advocates. She is currently the executive director of the Special District Association for Colorado. Re-appointed by the Mayor. Term expires 4-30-2013. In May 2006 she was elected Chair of the Board of Ethics and served through May 2007. She currently serves as Vice-Chair, having been elected in May 2009 and re-elected in May 2010.

Lori Mack earned a B.A. in Communication from the University of Colorado. She is currently the Economic Development Administrator for the City and County of Denver's Office of Economic Development – Youth Programs. She was a fellow for the Denver Fellowship in Urban Government in the Denver Office of Accountability and Reform in 2004. During her 23 years with the City and County of Denver, she worked at Art, Culture and Film; Aviation; Excise & Licenses, and Career Service Authority. She was appointed to serve on the Denver Public Schools Bond and Mill Levy Committee and continues to serve on various private and public committees. Reappointed by the Mayor and City Council, her term expires 4-30-2013. In May 2006 she was elected Vice-Chair of the Board of Ethics and in May 2007 was elected Chair and served for one year.

Edgar L. Neel earned a B.A. from Amherst College and a J.D. from Cornell University Law School. He has practiced law in Denver for over twenty-five years. His focus is on commercial and construction matters, representing contractors, insurers and surety companies in complex claims and litigation. He is a director and currently the president of the Denver law firm of Pendleton, Friedberg, Wilson and Hennessey, P.C. He was the District Director for Congresswoman Diana DeGette in 1997. Appointed by City Council. Term expires 4-20-2011. He was elected chair of the Board of Ethics in May 2008 and served for two years.

Syl Morgan-Smith. Originally trained as a graduate nurse, she has past careers as a Denver television news anchorwoman, radio producer/announcer, managing newspaper editor and Director of Communications for Rockwell International at the Rocky Flats Facility. She is now Manager of Diversity & Community Relations at the National Renewable Energy Laboratory in Golden and is a loaned executive to the Urban League of Metro Denver for 2010-11. She is the founder and president of the Colorado Gospel Music Academy and Hall of Fame. She received the Martin Luther King, Jr. Trailblazer Award, and was inducted into the Colorado Black Hall of Fame for outstanding community service. She previously served as the first civilian member of the Denver Police and Firemen's Pension Fund board, chair of the Denver Commission on Community Relations, Board member for Denver Children's and Spaulding Rehabilitation Hospitals, the Denver Zoo, and First National and First Interstate Banks in Jefferson County. In 1997, she founded a tutorial program at Denver Public Schools to help children with English as second languages learn to read, and is the recipient of two honorary doctorate degrees. Appointed by the Mayor. Term expires 4-30-2011.

APPENDIX B

DENVER BOARD OF ETHICS DIGEST OF SELECTED OPINIONS January 1– December 31, 2010

PLEASE NOTE: This is a selected set of summarized opinions given by the Denver Board of Ethics between January 1 and December 31, 2010 in response to fact-specific requests for advisory opinions or complaints. **They 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 09 – 63 (no jurisdiction)

A citizen filed a complaint against a city employee who briefly used his city e-mail to communicate to the Manager of Parks and Recreation and to the president of the city employee's neighborhood association concerning the employee's opposition to a proposal by the citizen to establish a service in certain city parks and to have associated advertising in parks. The employee also communicated, accurately, that the citizen had been charged with petty theft in an unrelated matter. That case was dismissed by the Denver County Court. The Board of Ethics concluded that the employee's conduct did not violate any part of the Denver Code of Ethics and dismissed the complaint; however, the Board cautioned the city employee not to use his city e-mail for issues such as this, in order to avoid the appearance of impropriety.

Case 10 – 1 (conflict of interest)

A staff member of the Internal Affairs Bureau of the Sheriff Department requested an advisory opinion regarding a situation being considered by the IAB. The IAB had learned that a civilian employee of the Sheriff Department is married to a convicted felon. The husband had been convicted of a felony in the 1980s and had been incarcerated for approximately one year. The employee married her husband in the 1990s. The husband had also been incarcerated for two non-felony charges, one of which (in a different county) followed the marriage and which the employee reported to the Sheriff Department. There was no evidence that the employee used her public position in any

way to benefit her husband. The Board of Ethics was not able to conclude that the employee had violated any section of the Denver Code of Ethics or Section 1.2.9 of the Denver Charter (regarding conflict of interest) or a Sheriff Department policy regarding fraternization.

Cases 10 – 2 and 10 – 11 (no jurisdiction)

The Board of Ethics dismissed both of these cases because they concerned alleged misconduct by persons who were not City and County of Denver officers, employees or officials.

Case 10 – 3 (outside employment, conflict of interest)

A city employee, who is an attorney and is a former state employee, requested an advisory opinion as to whether she would violate the Denver Code of Ethics if she would counsel with state employees and, perhaps, state legislators on a volunteer, unpaid basis concerning legislative efforts to reduce retirement benefits to state retirees through the Public Employees Retirement Administration. She had already informed her supervisor, who did not object.

Section 2-63 Of the Code of Ethics requires that any city employee contemplating “outside employment or outside business activity” must report it to his or her appointing authority and obtain written approval; however, the Code specifically excludes “unpaid volunteer activity” from that requirement. In addition, the Board of Ethics concluded that city employees have the same First Amendment constitutional right of all U. S. citizens to “petition the government for redress of grievances” and that the conflict of interest section of the Code of Ethics (2-61) does not address or prohibit this situation.

The Board also advised the employee that there is no reason that she may not truthfully identify herself by title as an employee of the City and County of Denver, but, if she does so, she should indicate that her opinions are strictly her own and not the city’s or her department’s.

Case 10 – 4 (no jurisdiction)

A citizen filed a complaint regarding her former spouse, a city employee, for failing to pay a court-ordered settlement in the dissolution of marriage case and for failing to inform her of his current address so that court papers could be served on him. The Board of Ethics dismissed the complaint, because the Denver Code of Ethics does not deal with such issues; however the Board encouraged the employee to pay his debt in order to avoid the appearance of impropriety. The Board also suggested that the citizen or her attorney might contact the city employee’s supervisor to discuss where and when papers might be served on him.

Cases 10 – 5 and 10 – 6 (no jurisdiction)

A city employee filed complaints against her immediate supervisor and the human resources director in her department. The Board of Ethics dismissed the complaints because they involved personnel issues which were not subjects covered by the Denver Code of Ethics.

Case 10 – 7 (conflict of interest)

A police detective requested an advisory opinion as to whether he could be a candidate for a vacant Denver City Council seat. He is assigned to a police district that does not overlap with the City Council District. The detective said that he would retire from the police force if he would be successful in the election and that he understood that he could not campaign on city time or use any city resources in his campaign and that he should not campaign in police uniform. The Board of Ethics concluded that there is no section of the Code of Ethics or the Denver Charter that would prohibit a city employee from being a candidate for City Council. The Board also recommended that the detective should comply with his representations, mentioned above.

Case 10 – 8 (no jurisdiction – time limit)

A citizen who had filed a lawsuit in federal court on behalf of her company against the City and County of Denver, the Denver Department of Aviation and four individual employees of the Department of Aviation also filed a complaint with the Board of Ethics concerning one of the city employees.

The company alleged in the lawsuit that it had two contracts to provide services at Denver International Airport which were improperly terminated in 2007. One paragraph of the lawsuit alleged:

Plaintiff understood it was not appropriate to give gifts to any City employee.... one of the contract compliance technicians...assigned to monitor Plaintiff's work, told Plaintiff other contractors purchased gifts for City employees and that Plaintiff might be more successful if it did so. In response, Plaintiff wrote a letter...stating; "We have been told by several sources that we would need to play the politics (including wining, dining and gift giving) to work successfully at DIA. We find this reprehensible and refuse to buckle under to such demands."

The lawsuit did not specify the approximate date of that alleged conversation, but it was presumably sometime before May 2007. The lawsuit also did not provide any specificity about which DIA employees actually might have received gifts from whom or when. None of the other allegations in the lawsuit involved the Denver Code of Ethics.

Section 2-56(3) of the Denver Code of Ethics provides that the procedural rules that the Board of Ethics must adopt shall "prohibit the board from accepting complaints or

inquiries about actions that took place more than two years prior to the date of filing.” Since the alleged conversation in question presumably took place before May 2007 (more than two years before the citizen filed her complaint with the Board of Ethics), the Board determined that it could not proceed any further with this complaint. If any prohibited gift-soliciting or gift-taking by unnamed DIA personnel did take place, that also would have been more than two years before the filing of the complaint.

The Board stated that the allegation, if proven to be true, could indicate serious misconduct by unspecified DIA employees, in violation of section 2-60 of the Code of Ethics; however, the Board dismissed the complaint because the Board has no jurisdiction over this issue, due to the 2-year limitation.

Case 10 – 9 (outside employment)

On behalf of the Police Department, a lieutenant requested an advisory opinion to clarify how the Board of Ethics would interpret a recent addition to the Code of Ethics. On November 30, 2009, City Council adopted the following new subsection of the Code of Ethics outside employment section (which had been recommended by the Board of Ethics):

2-63 (c) City resources may not be used for any outside employment or outside business activity.

The lieutenant suggested that “the broad wording” of that change “may be interpreted to mean that Denver police officers may not make use of issued equipment (police radios, marked police vehicles, explosive detection canines, etc.) while working secondary employment assignments approved by their appointing authority and in their capacity as police officers.”

The Police Department, in its Rule 114.01 in its Operations Manual, has 7 pages of detailed provisions regarding Secondary Employment, including:

- 114.01(3)(l) – use of police vehicles in the performance of Secondary Employment Police Work duties if approved by the Division Chief when such use can be justified for the safety of the public and/or officers or when such use is determined to be in the best interest of the department;
- 114.01(4)(g) – officers performing Secondary Employment Police Work in an establishment selling liquor will be in full uniform...;
- 114.01(4)(h) – officers working in any secondary employment in a construction area “are required to wear the department-authorized” helmet;
- 114.01(4)(i) – officers working in traffic direction or control “are required to wear the basic cap and reflective vest apparel.”

The lieutenant gave two examples of current practice that could be interpreted to violate Section 2-63 (c):

1. Special events, such as the Denver Marathon, where off-duty officers (who are paid by the event organizers) use police pool vehicles to provide traffic control and safety;
2. Sporting events such as Broncos or Rockies games in private facilities, where a city-owned explosive-detecting dog is used to conduct a sweep of the facility. The police officer-handler is paid by the sports organization for the off-duty work.

The Board of Ethics concluded that when it recommended passage of Section 2-63(c) to City Council, the Board did not consider these situations and welcomed the opportunity to clarify how it will interpret Section 2-63(c) in the future.

The Board decided that in the future it will not find a violation of section 2-63(c), even though police officers use city equipment and are paid by a private entity for secondary employment in situations where 1) the secondary employment is approved, regulated and administered by the Police Department and 2) the police officers are working in their capacity as police officers. The Board emphasized that this clarification applies only to the Police Department and to police-related secondary employment.

Case 10 – 10 (outside business activity)

A city employee requested an advisory opinion about his proposal to write a book.

Section 2-63 of the Denver Code of Ethics requires the written approval on an annual basis from an appointing authority for any city employee to engage in outside employment or outside business activity and also provides that “city resources may not be used for any outside employment or outside business activity.”

Section 2-61(g) of the Code of Ethics also provides that “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 determined that the employee will not violate the Denver Code of Ethics if he:

- Obtains his hiring authority’s written approval for writing the book and any follow-up marketing activities on an annual basis;
- Does not use any city time or equipment or other resources to write or market the book;
- Does not write about any trade secrets or other information that might damage the City and County of Denver.

Case 10 – 12 (gifts - charitable solicitation)

A Division Chief in the Police Department requested an advisory opinion as to whether he and other police personnel can sell raffle tickets to benefit a charitable organization of which he is a board member – Families of Homicide Victims and Missing Persons. He

also wished to know if posters for the raffle can be set up and can tickets be sold within city police facilities.

Section 2-60(c) of the Code of Ethics specifically permits city personnel to “solicit or redirect donations for charitable purposes to a 501(c) or other charitable organization...”

Section 2-60(c) It shall not be a violation of this article for an officer, official, or employee to solicit donations to the city or to solicit or redirect donations for charitable purposes to a 501(c) or other charitable organization or to provide assistance to individuals affected by illness, crime or disaster or who have educational or other charitable needs, provided that solicitation and financial records are maintained and provided that the soliciting person, or a member of the soliciting person's immediate family does not keep or use the gift or receive any monetary benefit therefrom.

This section does not prohibit such solicitation in city buildings.

The city policies for posting, advertising and solicitation from the Facilities Management Division provide that material for posting in any city buildings must be 1) pre-approved by the Facilities Management Division and 2) posted only on “designated bulletin boards.”

The Board of Ethics concluded that city employees are specifically allowed to solicit donations for charitable purposes by Section 2-60(c) of the Code of Ethics. The Board, however, recommended that the Division Chief urge anyone involved in the solicitation to avoid any appearance of pressure on subordinate officers, employees or citizens to buy raffle tickets, even though it is a worthy purpose. The Board also urged him to be sure that the posting policies of the Police Department and/or the Facilities Management Division are followed.

Case 10 – 13 (supervision of relative)

The Director of Corrections and a Division Chief in the Sheriff Department requested an advisory opinion and/or a waiver regarding supervision of an immediate family member. In April 2010, the Sheriff Department opened the new Downtown Detention Center (DDC) as part of the new Justice Center. The Division Chief has been in charge of the Sheriff Department's Downtown Division since February 2009 and was also the project manager for the construction of the DDC. She will have overall responsibility for operation of the DDC.

The Division Chief's brother has been with the Sheriff Department for over 32 years, primarily at the County Jail on Smith Road. The Director of Corrections has transferred him to the DDC, along with 200 other Sheriff Department employees and approximately 1500 inmates. There will be 2 levels of supervision (Major and Captain) between the Division Chief and her brother at the DDC.

Section 2-59(b) of the Code of Ethics prohibits supervision of an immediate family member (the definition of which includes brother) unless a waiver is given by the Board of Ethics:

Sec. 2-59. Employment and supervision of family members.

The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members.

(a) Unless he or she obtains a waiver pursuant to section 2-54, no officer, official, or employee shall appoint or hire a member of his or her immediate family for any type of employment, including, but not limited to, full time employment, part time employment, permanent employment, temporary employment, and contract employment.

(b) No officer, official, or employee shall **supervise or be in a direct line of supervision** over a member of his or her immediate family. If an officer, official, or employee comes into a direct line of supervision of a member of his or her immediate family, he or she shall have six (6) months to come into compliance or to obtain a waiver pursuant to section 2-54.

(c) When waivers from this section are sought so that a member of the immediate family may be hired or may be in the direct line of supervision, it is the intent of the council that the board of ethics not unreasonably withhold waivers. Examples of circumstances which might result in a waiver include, but are not limited to:

- (1) The family member who is proposed to be hired was certified through a competitive process conducted pursuant to law and the officer, official, or employee who would make the appointment did not influence or affect the certification.
- (2) The officer, official, or employee who would officially make the appointment is acting ministerially and did not select the family member or attempt to influence the person who did.
- (3) The family member who would be in the line of supervision was already working in the agency before the officer, official, or employee came into the line of supervision, and the officer, official, or employee can and will abstain from participating in any personnel actions involving the family member.
- (d) **The phrase "direct line of supervision" shall mean the supervisor of an employee and the supervisor of an employee's supervisor.** (emphasis added)

In this case, a large number of Sheriff Department personnel are moving to the new facility and, according to the Director of Corrections, “the experience and expertise of” both the Division Chief and her brother “with operating a new facility will be important to the successful transition and ongoing operational success” of the new facility, which will be in the “best interests of the city.”

The Board of Ethics determined that the placement of both at the DDC will not violate Section 2-59 of the Code of Ethics, because there will be two levels of supervision between the Division Chief and her brother and, therefore, she will not be in the direct line of supervision over her brother. Therefore, no waiver is required in this situation. However, the Board recommended that, in order to avoid the appearance of impropriety:

- The Division Chief should abstain from any involvement in any personnel action (positive, negative or neutral) regarding her brother and she should notify others at DDC that she will do so and
- There should always be at least 2 levels of supervision between the Division Chief and her brother. If this situation were to change, such as by a promotion of her brother, she should return to the Board of Ethics for advice and/or a waiver regarding the changed circumstances.

Case 10 – 14 (outside employment)

A police sergeant requested an advisory opinion. He graduated from law school in 2000 and is licensed to practice law in Colorado. He currently works from 10pm to 6am at Police Headquarters. He is considering associating with a law firm part-time in order to gain experience for a possible second career in the practice of law. He has not negotiated an arrangement with any specific law firm. He asked whether part-time law practice in his off-duty time would be permitted by the Code of Ethics.

Section 2-63 of the Code of Ethics requires that any city employee must obtain written approval from the employee’s appointing authority before engaging in outside employment or outside business activity. This approval must be renewed annually.

The Board of Ethics concluded that part-time outside law practice is not prohibited by the Code of Ethics, so long as written approval from the appointing authority is obtained (and renewed on an annual basis) and also decided that such law practice is not incompatible with his city duties.

In order to avoid potential conflicts of interest or other issues, the Board advised that he also should comply with the following conditions:

1. not practice any criminal law in the City and County of Denver;
2. not represent any persons or entities besides himself in matters where those interests are in conflict with the City and County of Denver, either in civil or criminal law;
3. not represent any persons or entities besides himself in any matter before any agency of the City and County of Denver government;

4. not practice criminal law where any Denver police officer is connected to a case in his or her official capacity;
5. not use any Denver Police Department or City and County of Denver records, databases or equipment in his practice of law, except through channels approved for other citizens and after paying any appropriate fees;
6. not conduct any law practice business during his on-duty city hours or while in his police uniform or in City and County of Denver workplaces;
7. not advertise or promote himself or his law practice by stating that he is a Denver police officer or employee;
8. not co-counsel or associate in a law firm with any other attorney or attorneys representing clients with interests in conflict with the City and County of Denver;
9. not share any Police Department confidential information with clients or others.
10. should abide by Sections of the Police Disciplinary Matrix RR141.1, RR141.2, RR203 and RR312.1.

The Board also reminded him that he is subject to the Colorado Rules of Professional Conduct for attorneys adopted by the Colorado Supreme Court.

Case 10 – 15 (conflict of interest)

The Director of the Division of Small Business Opportunity (DSBO) of the Denver Office of Economic Development (OED) requested an advisory opinion.. Her sister wishes to apply for certification as a Disadvantaged Business Enterprise (DBE), which would assist her to apply for a position on a Regional Transportation District project, which is partially funded by the federal government. DBE standards and certification are established in federal law and apply to federally-funded projects.

A DSBO certification committee, of which the Director is a member, is responsible for certifying or not certifying applicant business enterprises as DBEs after reviewing documents submitted by an applicant

Section 2-52(b)(2) of the Code of Ethics provides that one of the elements of “direct official action” is “enforcing laws or regulations or issuing or enforcing or regulating permits, licenses, benefits or payments.” Although the word “certify” does not appear in the definition, the Board of Ethics believes that the quoted section should be interpreted to include certification of DBEs by DSBO.

The Board of Ethics concluded that the certification of the sister’s company as a DBE would be a prohibited conflict of interest for the Director under Section 2-61(a)(1) of the Code of Ethics, since an “immediate family member” is the other party in the matter. According to Section 2-61(f) of the Code:

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.

The Director advised the Board of Ethics that there is a backlog in DSBO in certifying DBEs and, as a result, the office has hired a third-party consultant to review applications in order to reduce the backlog and that the Director would assign her sister's DBE application to the consultant and that she would recuse herself from participating in the decision by the certification committee on her sister's application in order to minimize a conflict of interest.

The Board advised the Director that, if her sister applies for DBE certification from DSBO, the Director must recuse herself from any involvement in the certification of her sister's company as a DBE and comply with all of the provisions of Section 2-61(f) in order to avoid a conflict of interest. The Board encouraged the Director to consult with the City Attorney's Office to be sure that the consultant and the certification committee can perform their functions without any influence or participation by the Director.

Case 10 – 16 (subsequent employment)

The former Director of Workforce Development in the Denver Office of Economic Development was employed by the city from March 2007 until April 2010, when she left city government to become executive director of a nonprofit organization known as SkillBuild Colorado.

She had become the volunteer co-chair of the steering committee of SkillBuild Colorado in January 2009 and helped guide the process to start SkillBuild Colorado, which is a "workforce funding collaborative." The City and County of Denver provided \$10,000 cash in 2009 to SkillBuild Colorado and has committed \$305,000 in "aligned funding" and \$20,000 in cash for 2010. The Director "committed" the funds in December 2009 to SkillBuild Colorado.

SkillBuild Colorado hired an executive director in the spring of 2009, but he left that position in September 2009. The Director began to discuss with the chair of the SkillBuild Colorado steering committee in February 2010 the possibility of her becoming the executive director of SkillBuild Colorado.

The Board of Ethics considered whether the former Director is permitted by the Denver Code of Ethics to accept the job as executive director of SkillBuild Colorado without waiting six months or, if not, whether a waiver is appropriate.

Subsequent employment for city officers and employees 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.

The Board of Ethics determined that the former Director's actions in working with other agencies to apply for funding from the national organization and in "committing" funds as Director of Workforce Development to SkillBuild Colorado amount to "direct official action" on her part as defined in Section 2-52(b), because those actions amount to "negotiating, approving... a contract,...grant or similar instrument in which the city is a party." The Board concluded that acceptance of the executive director's job for SkillBuild Colorado (without waiting for 6 months) would violate Section 2-64(a), because 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."

The Board then considered whether a waiver is appropriate. Section 2-54(f) allows the Board of Ethics to grant a waiver "if it finds that a waiver will serve the best interests of the city." The Executive Director of the Office of Economic Development advised the Board of Ethics that he believes that "having someone at the helm of SkillBuild who understands Denver, regionalism and workforce development will benefit Denver and the region in the long term."

The Board of Ethics concluded that it is in the city's best interests for the former Director to commence work at SkillBuild Colorado without waiting for 6 months and therefore granted a waiver because:

- The goals of the City and County of Denver and SkillBuild Colorado are very similar, which are to provide opportunities for self-sufficiency for low skilled and underemployed individuals in the Denver community.
- The former Director will be taking a pay cut from her city job. In other words, there should not be any perception that she arranged to take the SkillBuild job out of self-interest so that she could earn a higher salary.
- She has a set of skills that will greatly assist in accomplishing the common goals of the city and SkillBuild Colorado
- Even if 6 months passed, it would not make a difference or change the situation as to the city or SkillBuild Colorado because the funding for 2010 had already been established.

Case 10 – 17 (hiring and supervision of relative)

An electrical superintendent at Denver International Airport requested an advisory opinion. DIA was in the process of hiring two electrical shop maintenance technicians.

One of several applicants for those positions was the superintendent's 22-year-old step-son.

The superintendent says that he had nothing to do with the early stages of the hiring process and that, after a written examination and interviewing, his step-son was second on the list of 13 finalists. The superintendent was not involved in interviewing the finalists. The superintendent would normally make the hiring decision, which he described as "checking the scores on the written examination with another supervisor and verifying that all the paperwork is in order and then sending the paperwork to human resources." However, he advised the Board of Ethics that the hiring decision or signing of paperwork can be delegated to his supervisor, who must sign off on all hiring paperwork anyway.

If the superintendent's step-son is hired, there would be one supervisory level (supervisor) between the superintendent and his step-son who would be a technician.

The hiring and supervising of relatives is regulated by Section 2-59 of the Code of Ethics:

Sec. 2-59. Employment and supervision of family members.

The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members.

(a) Unless he or she obtains a waiver pursuant to section 2-54, no officer, official, or employee shall appoint or hire a member of his or her immediate family for any type of employment, including, but not limited to, full time employment, part time employment, permanent employment, temporary employment, and contract employment.

(b) No officer, official, or employee shall supervise or be in a direct line of supervision over a member of his or her immediate family. If an officer, official, or employee comes into a direct line of supervision of a member of his or her immediate family, he or she shall have six (6) months to come into compliance or to obtain a waiver pursuant to section 2-54.

(c) When waivers from this section are sought so that a member of the immediate family may be hired or may be in the direct line of supervision, it is the intent of the council that the board of ethics not unreasonably withhold waivers. Examples of circumstances which might result in a waiver include, but are not limited to:

- (1) The family member who is proposed to be hired was certified through a competitive process conducted pursuant to law and the officer, official, or employee who would make the appointment did not influence or affect the certification.

- (2) The officer, official, or employee who would officially make the appointment is acting ministerially and did not select the family member or attempt to influence the person who did.
- (3) The family member who would be in the line of supervision was already working in the agency before the officer, official, or employee came into the line of supervision, and the officer, official, or employee can and will abstain from participating in any personnel actions involving the family member.
 - (d) The phrase "direct line of supervision" shall mean the supervisor of an employee and the supervisor of an employee's supervisor.

The definition of "immediate family member" in Section 2- 52(c) of the Denver Code of Ethics includes "step-son," which is defined in Webster's Dictionary as "the son of one's husband or wife by a former marriage." The definition of step-son has nothing to do with the age of the person, just as all of the definitions of relatives in the Code of Ethics have nothing to do with their age. Therefore, the Board of Ethics determined that Section 2-59(a) would prohibit the superintendent from "hiring or appointing" his step-son. However, as noted above, the superintendent said that he was not involved in the hiring process yet and that he could ask his supervisor to review and sign the paperwork.

Section 2-59(b) would prohibit the superintendent from supervising either his step-son or his step-son's supervisor. Therefore, the possible hiring of the step-son would violate that section unless the superintendent would obtain a waiver from the Board of Ethics.

The Board of Ethics, however, decided not to grant a waiver in this situation. The Board said that it does not believe that it is in the best interests of the city to have immediate family members in the same work group separated by only one level of supervision. The Board wishes to discourage similar situations in the future due to the appearance of favoritism to immediate family members that such a hiring and supervising situation involves. Although the Board has given a number of waivers in the past to allow supervision by an immediate family member, in those cases, the family member had already been hired as a member of that city department.

Case 10-18 (conflicts of interests, gifts)

The Director of Strategic Marketing in the Office of Economic Development requested that the Board of Ethics review the issue of "sponsorship programs" and particularly the question of whether such programs might cause any conflicts of interest.

In June 2008 the city issued a document entitled City Sponsorship Policy and Procedures. At that time, the city was facing and is still facing hard economic times and saw sponsorships as a way to earn revenue and/or decrease expenses for the city.

There are 2 citywide sponsorship arrangements that are officially approved. The first is a contract by which a cell-phone company paid the city \$20,000 in return for the right to market through city communications (such as the Insight city employee newsletter, the city employee website and a table at the annual picnic for all city employees) the fact that the company has agreed to offer any city employee a 15% discount on company products. Presumably, the company hoped that it would increase its product sales through marketing of this discount to city employees. The second is a contract by which a vending machine company pays the city for the exclusive right to place vending machines in city locations, such as break rooms in city offices, which includes exclusivity for one line of soft drinks. Prior to the exclusive sponsorship, various agencies had their own vending machine arrangements.

There are also a large number of department-specific sponsorships. An example is that a health-care company pays the city to subsidize swimming-pool admissions during the summer for low-income young people in return for placing its name on the program and obtaining publicity and good-will. Another example is that another healthcare company pays for and places its name on guidebooks for the city park system. These two companies also provide health insurance to city employees.. The Denver Office of Cultural Affairs solicits and obtains sponsorships for concerts in parks. Theaters and Arenas, through a private contractor, solicits many sponsorships for events in its venues.

Denver's Purchasing Director, who is involved with some, but not all, of the sponsorship programs, says that the programs he is involved in invite different companies so that different companies have a fair opportunity to participate. For example, three cell-phone companies were all invited to participate in the sponsorship relating to cell-phone discounts for city employees. He also says that there should not be any expectation that a company that has a sponsorship arrangement with the city will get any special advantage in a bidding process for any city purchasing contract or purchase order because of the sponsorship. He informs buyers in the Purchasing Division that they must base their selections on specific criteria and should not be influenced by whether a company has a sponsorship arrangement with the city or not.

The gift section of the Denver Code of Ethics (2-60) prohibits (with many exceptions) the solicitation or acceptance of gifts to city personnel 1) if the city person is in a position to take direct official action regarding the donor and 2) if the city has an existing, ongoing or pending contract, business or regulatory relationship with the donor. The purpose of Section 2-60 is "to avoid special influence by those who give gifts to city officers, employees or officials." Section 2-60(c), on the other hand, specifically permits a city person to "solicit donations to the city"...if the city person "does not use the gift and it cannot reasonably be inferred that the gift was intended to influence the officer, official or employee in the performance of his or her duties."

Sponsorships are different from gifts or donations because the sponsor will receive some consideration for its sponsorship, such as advertising or exposure to city employees or the exclusive right to sell soft drinks to city employees.

The Board of Ethics concluded that the Denver Code of Ethics does not prohibit such sponsorships. However, the Board believes that city sponsorships and perhaps other public-private partnerships involve ethical issues and challenges. In particular, there might be a public perception by a sponsor and/or the public that a sponsor might have a special influence with or get a special advantage from the city regarding, for example, a city regulatory or contracting function as a quid pro quo for its sponsorship. Any perception that any entity should “pay to play” with the city government should be discouraged

The Board recommended that the Director of Strategic Marketing, the Purchasing Division, the City Attorney’s Office and the Mayor’s Office should give careful thought to avoiding the appearance of impropriety, through the following measures (several of which are already being followed by some agencies):

1. developing and publicizing consistent written policies regarding sponsorships for use by all city agencies and departments. Perhaps a new executive order should be considered for this purpose;
2. requiring that all sponsorship agreements should be in writing and available to the public;
3. having all sponsorships be for a limited term;
4. clarifying that the only consideration to a private party from a sponsorship agreement is what is stated in the written sponsorship agreement and that no other favor or advantage will be given by the city or any city agency, employee, officer or official;
5. clarifying that all city contracts and purchase orders are issued based only upon the specific criteria which must be considered for that contract or purchase order and are not influenced by a party’s involvement or non-involvement in any city sponsorship arrangement;
6. making sure that whoever solicits a sponsorship has nothing to do with any contracting or regulatory function that the potential sponsor might be involved in;
7. approaching several possible sponsors, rather than one, for each sponsorship opportunity and having objective criteria for the selection, if more than one express interest;
8. making sure that the decision regarding a sponsorship may not be made by any city person who has any city or personal relationship with a possible sponsor;
9. considering amending Executive Order 134 to require city departments or agencies to disclose any sponsorships with a value of \$2500 or more. (Currently, Executive Order 134 excludes sponsorships from the definition of “gifts to the city” which must be reported;)
10. being aware that the Board of Ethics will be glad to provide advice on individual sponsorship issues.

Case 10-19 (subsequent employment)

An employee in the Office of the Controller who administers the city’s payroll system requested an advisory opinion and/or waiver. She had been offered and has accepted a

position with a payroll administration company (“the company”) that provides computerized payroll services to the City and County of Denver. She planned to leave city government at the end of July 2010. She advised the Board of Ethics that

My role at the company will be an Industry Lead who will be responsible for providing industry expertise related to the (new) Government/Public Sector vertical that has been established within the organization. I will assist existing customers, new customers and prospective customers with guidance around finding a solution that will meet the needs of their unique organization(s).

The Board of Ethics determined that she was “in a position to take direct official action” regarding the same company.

The employee said that she wished to work during August of 2010 approximately 10 hours per week after she leaves city government to finish some large and sensitive city projects with the company, an example of which is the consolidation of the DIA payroll platform with the city’s payroll platform. The company offered to allow her to continue to assist the Citywide Payroll Division in an advisory role, to be paid for by the company, not the city. She advised the Board of Ethics that the city’s lengthy hiring process for on-call employees and city budgetary limitations would not allow her to be paid by the city for this additional work within a reasonable time.

She also indicated that after she joins the company she will not negotiate or administer the contract between Denver and the company.

Two separate issues are raised by this case, both of which involve Section 2-64(a) of the 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.

The first issue is whether the employee would violate Section 2-64(a) by going to work for the company without waiting 6 months after she leaves her job with the city. The Board of Ethics concluded that her employment by the company without waiting for 6 months after she leaves city government will violate Section 2-64(a) because she took direct official action regarding the company because she administered the company’s contract with the city.

The second issue is whether the employee would violate Section 2-64(a) or any other section of the Code of Ethics by working on a part-time basis for the city after she retired from the city. Section 2-64(a) specifically applies to employment “outside of the city government” and, by extension, permits subsequent employment inside the city government. In Cases 04-21 and 06-26 the Board of Ethics approved subsequent employment with the city on a contract basis after retirement from the city. This case, however, is somewhat different in that the company proposed to pay her for the part-time work that she would do for the city. The Board concluded that her proposed part-time work for the city would not violate 2-64(a), but that having the company pay for her work for the city would be or would appear to be a conflict of interest for her, for the company, and for the city (although not a conflict specifically prohibited by Section 2-61 of the Code of Ethics).

The Board, however, determined to grant the employee a waiver, pursuant to Section 2-54(f) of the Denver Code of Ethics to permit her to: 1) work for the company without waiting for 6 months after she leaves city government and 2) be paid by the company for work she does to finish up certain important projects for the city, so long as she will not do any work for the company regarding the Denver-company contract for the first 6 months after she leaves city government, except for the limited work that she will do to finish the ongoing projects. In addition, the Board recommended that she should avoid doing any other type of work regarding the City and County of Denver for the first 6 months.

The Board determined that this waiver is in the best interests of the city as it will allow the completion of these important projects for the city.

Case 10 – 20 (conflict of interest)

An administrator of youth programs for the Office of Economic Development (OED) requested an advisory opinion. One of the programs that she administers is a summer work-based mentoring program for young people. In 2009 the program served more than 1100 youth. The administrator’s husband’s company, has participated in this program since the late 1990s, several years before the administrator began to work for OED.

The city pays wages and training costs for the young people from federal and state grants. The employers obtain the benefit of the young people’s work for the employers; however, they must also provide training, supervision, etc. The employers do not receive any funds for participating in the program.

The administrator did not select her husband’s company to participate nor did she assign the young people to the company. OED held a recruitment event in July 2010 and the youth chose which employers they wanted to interview with; the employers determined and made job offers to the youth that they believed were the most excited and interested in the work-based mentoring opportunity. The administrator’s husband was not able to participate in the recruitment event, however, he did have an operations manager

interview and make the selection and offer to two young people who were selected and they will work approximately 160 hours for the husband's company during the summer.

The Board of Ethics was not able to find any violation of the Code of Ethics or any type of impropriety in this situation because:

- The administrator was not involved in appointing or assigning the young workers to her husband's company;
- She did not select her husband's company to be involved in the program. The company had been involved for several years before she went to work for OED.
- The program will not pay any funds to the husband's company.

In order to avoid any appearance of impropriety, however, the Board recommended that the administrator should delegate to a colleague in OED all responsibility for reviewing or signing documents related to the young people assigned to her husband's company, if any, and any other responsibility for overseeing those relationships in 2010 and any future years.

Case 10- 21 (no jurisdiction)

A complaint was filed by a real estate professional from another state who was in Colorado on business. She was at Denver International Airport, trying to pick up her father, who was arriving on Frontier Airlines. She said that she:

...stopped in front of Frontier Arrivals and was immediately told by a Denver police officer to leave. He wrote me a ticket because I could not leave fast enough. He threw my insurance at me in the car and refused to tell me his name....He continued to make rude comments...I then circled the airport and then parked in the garage. The officer came up with another officer...He said I was parked incorrectly and needed to re-park my car. The car was parked fine and I asked him why he was treating me like this and continually saying derogatory things. He said "I get paid to harass you..."

The ticket for impeding traffic required the citizen to pay \$100 by mail or to appear in court in October 2010. She paid the ticket via the internet and it is now a closed case. The defendant was charged with the 3-point 54-160 Impeding Traffic violation. By paying online she agreed to plead guilty to the standard plea offer which carries 1-point.

The Board of Ethics dismissed this case pursuant to sections 2-56(6)(a) and (b) of the Code of Ethics because the Board of Ethics has no jurisdiction over these issues and because the alleged violation, if true, would not constitute a violation of the Code of Ethics. There is no section of the Code of Ethics that prohibits unprofessional or rude or insulting comments by a police officer. The Board, however, advised the citizen that the alleged statement that "I get paid to harass you," if it could be proven, was unprofessional misconduct and that she might wish to notify the Office of the Independent Monitor and/or the Commander in the officer's police district of her complaint.

Case 10 – 22 (gifts)

On behalf of the Police Department, a lieutenant requested an advisory opinion, stating:

Today a homeless citizen came into Denver Police Headquarters and wanted to donate a painting that he had made. One of the secretaries accepted the painting and the citizen said it was titled “Unity in the Community.” The secretary took his name and a contact number and told the citizen that she would have to check to see if we could accept the painting. He said that he was donating it to us as a symbol of cooperation between the community and the police department. Can we accept this? Do we need to fill out any paperwork if we can accept it?

Section 2-60 of the Denver Code of Ethics regulates the acceptance of gifts. In particular, Section 2-60(c) provides that “it shall not be a violation” of the Code of Ethics:

for an officer, official or employee to solicit donations to the city or to solicit or redirect donations for charitable purposes...provided that the soliciting person, or a member of the soliciting person’s immediate family does not keep or use the gift or receive any monetary benefit therefrom.

Since the citizen’s intent was apparently to donate his painting to the city and not to an individual city employee, the Board of Ethics concluded that there will be no violation of the Code of Ethics for the painting to be accepted on behalf of the city and that the citizen should be thanked for his generous gift.

Executive Order 134 requires that any gift to the city over the value of \$2500 must be disclosed to the City Clerk’s Office by the department or agency in question. If the value of the gift is less than \$2500, the gift to the city does not need to be disclosed.

Case 10 – 23 (confidential information)

A representative of the Denver Police Protective Association (PPA) filed a complaint concerning the Independent Monitor (Monitor). According to the 2004 ordinance which established the Office of Independent Monitor (OIM) and also the Citizen Oversight Board (COB), Denver Revised Municipal Code 2-371, et seq., the OIM:

shall actively monitor and participate in certain investigations of uniformed personnel; make recommendations to the Manager of Safety regarding administrative action, including possible discipline, for such uniformed personnel; make recommendations regarding policy issues and address any other issues of concern to the community, the members of the Citizen Oversight Board.... the manager of safety, the chief of police or the undersheriff...

The PPA representative specifically complained about the Monitor’s alleged breach of confidentiality regarding an April 2009 case of alleged excessive force by two Denver

police officers in which one young man was injured. Some of the incident was captured by a city-operated HALO (High Activity Location Observation) camera

The Internal Affairs Bureau of the Police Department investigated whether excessive force was used by one or both of the officers and also whether one or both of the officers did not tell the truth during the investigation. Manager of Safety Alvin LaCabe resigned approximately June 1, 2010 without having resolved the disciplinary cases and the Mayor then appointed Ronald Perea as Manager of Safety. After the Monitor disagreed with some findings by the Division Chief of Patrol, Mr. Perea reviewed the entire investigation and decided on July 20, 2010 to impose minor discipline on both officers and the case was closed by the Internal Affairs Bureau.

The Monitor disagreed with that decision, believing that both officers should be dismissed. He communicated his disagreement through posting a 4-page written report on the OIM website on August 13, 2010; by discussing the case in executive session with the COB on July 29, 2010 and by submitting to a television interview (from Denver) on Good Morning America on August 16, 2010. The Monitor did not disclose the names of the two officers in his written report or in his Good Morning America interview.

After its discussion with the Monitor, the COB issued a letter on August 2, 2010, agreeing with the Monitor that “the unwarranted use of force and departing from the truth are serious matters that require stern consequences, which were not reflected in the type and level of discipline imposed in this case.”

The PPA representative also complained that the Monitor made an Open Records Act request for portions of the Police Department’s internal investigative file, including a link to the HALO video of the incident in question, saying that, since the Monitor already had full access to that material, “his request would appear to have an ulterior motive.” The PPA representative also said that “a near identical Open Records request was submitted” to the Records Manager of the Department of Safety by two local media reporters, which he characterized as the Monitor’s “encouraging the media’s involvement” and that the Monitor “directed” the reporters in their efforts.

The PPA representative also stated that “Orders of Disciplinary Action issued by the Manager of Safety are personnel records and are, therefore, not subject to disclosure by either the Manager of Safety or the Monitor pursuant to ...Colorado Revised Statutes 24-72-202(4.5) (a portion of the Colorado Open Records Act - CORA).”

After considerable media and public discussion about this disciplinary case, Mr. Perea resigned as Manager of Safety on August 24, 2010. The PPA representative filed his complaint with the Board of Ethics on September 7, 2010.

The Board of Ethics concluded that the only section of the Denver Code of Ethics which is involved in this matter is Section 2 – 68, which was adopted by City Council on November 30, 2009:

Sec. 2-68. Use of confidential records

No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties , except in the performance of official duties or as required by law or court order.

The Board of Ethics does not have any jurisdiction over any other related issues.

The Board of Ethics concluded that it does not believe that CORA applies to the Monitor in this situation. The stated policy of CORA is “that all public records shall be open for the inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.” Section 24-72-204(3)(a) provides that “the custodian shall deny the right of inspection of...personnel files...” However, the Board of Ethics does not believe the Monitor can be deemed to be the “custodian” of personnel files developed by the Police Department or the Manager of Safety.

After reviewing a written response from the Monitor, the Board of Ethics decided that it had enough information to decide this case without a public hearing and the Board dismissed the complaint because:

- The Monitor has a responsibility established by ordinance to “make recommendations regarding policy issues and address any other issues of concern to the community;”
- Allegations of excessive force by Denver police officers and whether the police disciplinary process functions well are matters of great concern to the Denver community and the media, particularly in the case in question;
- The Monitor’s communications and actions were “in the performance of official duties” and, therefore, did not violate Section 2-68 of the Code of Ethics;
- The ordinance regulating the Independent Monitor does not prohibit the Monitor from making additional reports beyond his annual report. In fact, the Monitor is required by Section 2-375(c) to provide “in addition to the annual report...an ongoing status report which shall be available to the public and which shall include, among other things...recommendations regarding...the sufficiency of investigations and appropriateness of disciplinary sanctions, if any.” The ordinance does not specify the form or timing or manner of publication of such a “status report;”
- The Monitor did not disclose the names of the officers in his website report or in his interview with Good Morning America;
- The Monitor’s discussion with the COB took place in executive session;
- There is no evidence that the Monitor prompted reporters to initiate an Open Records request or otherwise to publicize the story. Even if there were any such evidence, that would not violate Section 2-68.

Cases 10-24 and 25 (confidential information)

Two separate city employees filed requests for advisory opinions on similar topics. The first employee was disturbed that someone in the human resources office had e-mailed to

everyone in the work group a list of personal holidays used or not used by each employee for some administrative purpose. The employee thought that such information should be confidential and should not be shared with other employees.

The second employee was upset when an executive assistant at a staff meeting publicly congratulated another employee in the work group by name for enrolling in the Wellness Challenge recently established by the carriers that offer health insurance to city employees. The Wellness Challenge is a premium discount program for city employees who complete an on-line health assessment and complete a physical activity program. The website says that “all activities are voluntary and confidential.”

Neither of the two employees indicated that they believed that the city employees who revealed such information acted maliciously or that anyone was harmed by the revelations. Neither employee wished to file a complaint against anyone. Rather, they want to understand what use of confidential information is permitted and what is not. One employee suggested there should be an educational program about the boundaries of “confidential” information.

Both of these requests concern how the Board of Ethics will interpret Section 2-68 of the Code of Ethics, which was passed by City Council on November 30, 2009:

Sec. 2-68. Use of confidential records

No officer, official or employee may disclose any information or records that are not available to the public, which were acquired in the course of official duties , except in the performance of official duties or as required by law or court order.

Some “information or records” are clearly required to be kept confidential, usually as a result of separate laws, such as:

- Health records
- Social Security numbers or information
- Sealed court records
- Income tax records
- personnel files
- Trade secrets
- Attorney-client communications

The Colorado Open Records Act (CORA), Colorado Revised Statutes 24-72-200.1 through 24-72-205, applies to the City and County of Denver and regulates what public records must or may be made available by “the custodian of any public records” to a member of the public upon a proper request. CORA, however, does not appear to regulate non-written “information.” In addition, CORA does not address if and when information can be shared with persons who are not requesting public records as a member of the public, such as co-workers or acquaintances.

The City and County of Denver’s only ordinance relating to “public records” (2-271 and

2-272) prohibits disclosure of home addresses and telephone numbers of city officers, officials and employees “so that they may perform their duties without fear of reprisal, retribution or intimidation.”

The Board of Ethics decided that these requests provide a good opportunity for the Board to begin to discuss with city personnel the meaning and purpose of section 2-68. In general, the Board of Ethics believes that:

- Section 2-68 applies to information as well as written “records”
- Section 2-68 applies to revealing information or records to co-workers or friends or family members or government customers or other members of the public and not only to members of the public making a CORA records request
- City personnel should use decorum, professionalism and respect for privacy and not reveal personal information about co-workers or customers to anyone “except in the performance of official duties or as required by law or court order.”
- On the other hand, common sense and good judgment should allow city personnel to communicate respectfully, for example, about a co-worker’s illness in order to show support.
- Additional interpretation of Section 2-68 will be developed by the Board of Ethics through future requests for advisory opinions or complaints.
- An important fact to consider in each case, among many, is whether the person has voluntarily waived confidentiality or not. Regarding participation in the wellness program, for example, it would be important to know whether the employee who had enrolled had voluntarily communicated this to others or not.

The Board also decided that it will attempt to initiate a city working group and/or a forum for city employees to discuss in more detail what should be the obligations of all city personnel regarding confidential information and records.

Case 10 – 26 (gifts, travel expenses)

A captain in the Denver Sheriff Department requested an advisory opinion and/or waiver. The captain has responsibility for working with a private toxicology laboratory to perform alcohol and drug testing for inmates that participate in an alternative sentencing program.

Denver has had a contract with the laboratory since 1998. The captain has been responsible for the alternative sentencing programs for the last two years. The contract with the laboratory will expire on December 31, 2010. The captain said that:

We reached out to the laboratory regarding some proposed changes and asked a representative to come to Denver. The laboratory proposed that we visit their laboratory in California to see their entire operation, review their productions and receive the necessary training to read their reports and understand their process.

The laboratory offered to have the captain and a technician from the Sheriff Department travel to the laboratory with “all travel costs” to be paid by the laboratory.

The captain advised the Board of Ethics that she will be one of the chief decision-makers for the Sheriff Department in determining the status of the contract with the laboratory, including whether to re-negotiate it or to request the laboratory and other companies to respond to a request for proposals. She also told the Board that the Sheriff Department has no funds available to pay for her trip, because it is facing a large budget shortfall.

Gifts, including "travel expenses and lodging" are 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...

(6) Travel expenses and lodging...

(b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client...

(7) Reasonable expenses paid by non-profit organizations or other governments for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city...

Since the captain has overall responsibility for the alternative sentencing programs for the Sheriff Department, including drug and alcohol testing, the Board of Ethics determined that she has "direct official action" power regarding the laboratory, as defined in Section 2-52(b) of the Code of Ethics. Therefore, she would violate Section 2-60(a) by accepting travel and lodging expenses, unless one of the exceptions in Section 2-60(b) applies or unless the Board grants a waiver pursuant to Section 2-54(f) because a waiver would serve the best interests of the city. The travel expense exception in 2-60(b)(7), however, only applies to "reasonable expenses paid by non-profit organizations or other governments" and not to a for-profit company like the laboratory. Since the technician who would also go on the trip is not in a position to take direct official action regarding the laboratory he would not violate the Code by accepting travel expenses and lodging

from the laboratory.

The Board, however, granted the captain a waiver because the best interests of the city, particularly public safety, will be served by allowing her to travel to the laboratory to learn about new techniques available for drug and alcohol testing by on-site observation and discussion. The Board limited the waiver to moderately-priced travel and lodging expenses.

Case 10 – 27 (conflict of interest, outside employment)

A recently appointed Deputy Director of an agency requested an advisory opinion. Before his appointment, he had been involved in a family real estate firm. He will generally be responsible for several housing programs at the agency, including anti-foreclosure programs and Troubled Asset Recovery Programs.

A few months ago, he and a group of other real estate colleagues began to discuss forming a “housing group to raise private funding commitments to purchase bulk inventory of foreclosed and failed short sale properties in an effort to provide for-sale and rental single-family homes of several thousand homes in several states.” He advised the Board of Ethics that, as soon as he began to consider his possible appointment, the idea of the housing group was put on hold until he could determine if there would be a prohibited conflict of interest.

He advised the Board that, if he goes forward with the housing group, “the group does not anticipate partnering, contracting with, or competing with the City and County of Denver” or requesting or obtaining any loans from the agency. The group would anticipate bidding on groups of approximately one thousand homes in several states at a time and the group could decline to bid on any groups of homes that included any homes within the City and County of Denver.

Regarding the family real estate firm, he told the Board that he is in the process of finalizing two real estate transactions and that, as soon as they are finalized, he will not have any involvement in transactions with the firm so long as he is with the city agency.

The first issue in this case is that Section 2-63 of the Code of Ethics requires written approval by any city employee’s appointing authority of any outside employment or outside business activity:

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..

The second issue concerns conflicts of interest, which are regulated by Section 2-61 of the Code of Ethics:

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;
- (4) He or she, a member of the immediate family, a business associate or an employer is directly involved in obtaining the city's business for another party in the matter;
- (5) He or she, a member of the immediate family, a business associate or an employer is directly involved in negotiating the contract or preparing the bid, proposal, response to a request for qualifications, or similar document for another party in the matter, other than in a

purely clerical capacity; or

(6) A member of his or her immediate family performs more than a nominal portion of the work in the matter, or supervises or manages more than a nominal portion of the work.

(7) He or she or a member of his or her immediate family participated personally in providing legal representation or lobbying for another party in the matter or owns five (5) percent or more of a law firm or lobbying firm representing another party in the matter.

(b) For purposes of this section, business associate means a person or entity with whom an officer, official or employee or a member of his or her immediate family is a partner or a co-owner of a business in which the business associate and the officer, official or employee or a member of his or her immediate family each own at least one percent of the business...

(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 determined that:

1. The Deputy Director is not prohibited by the Code of Ethics from participating in the housing group
2. The housing group would be more than a passive investment on his part. Therefore, if the Deputy Director decides to proceed with the housing group, he must obtain written approval from the Mayor's Office for the outside business activity, pursuant to Section 2-63 of the Code of Ethics and should probably also discuss it with the Director of the agency. He and the housing group should have a very clear agreement among themselves that the group will not partner with, contract with, or compete with the City and County of Denver or request or obtain any loans from the agency.
3. The group should not bid on or be involved with any group of homes that include any homes within the City and County of Denver, as that would be a conflict of interest due to competition with homes involved in the agency's programs.
4. If the housing group would attempt to transact any business with OED, he would be required to abstain from any involvement pursuant to Section 2-61(f) of the Code of Ethics. However, since has such a high position, which is related to

housing, at the agency, such an attempt would seriously compromise the necessary objectivity and fairness of the agency, which could not be satisfactorily resolved by his recusal and delegation to someone else at the agency.

5. He should withdraw as quickly as possible from all transactions in the family real estate firm and that, if the family firm proposes to transact any business with the agency, he must disclose and completely abstain from any agency involvement in such a transaction, pursuant to Section 2-61(f).

Case 10 – 28 (gifts)

A Deputy Chief of Police requested an advisory opinion about whether it would violate the Code of Ethics for the Police Department or individual police officers and employees to receive free fifteen-minute Trigger Point Therapy Massages from an organization called Foundation for Wellness Professionals, through its Massage a Hero program. The Deputy Chief said that the program “would be a benefit to our crew and staff while also helping build morale.”

A local representative of the foundation said that they emphasize preventative care and estimated that a one-hour Trigger Point Therapy Massage would generally cost between \$40 and \$60 for a paying client.

The only section of the Denver Code of Ethics which pertains to this issue is the gift section:

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...

(7) Any reduction in price or any discount that is not similarly available to all city officers, officials, and employees on the same terms...(emphasis added)

The definition of “direct official action” in Section 2-52(b) of the Code of Ethics includes “enforcing laws,” which is what police officers do all day long. In addition, the City and County of Denver has an existing business or regulatory relationship with all residents or

taxpayers of Denver. Therefore, assuming that the foundation and/or the individual massage practitioners, are residents or taxpayers of Denver, free massages to police officers or employees would be gifts prohibited under section 2-60(a).

However, the Board determined that 15-minute free massage services should be allowed as an exception as follows:

Section 2-60(b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client:

- (5) Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of twenty-five dollars (\$25.00) or less, such as inexpensive tee shirts, pens, calendars, books, flowers, or other similar items;..

The Board decided that the proposal by the massage practitioners does not seem to violate the purpose of section 2-60, which is "to avoid special influence by those who give gifts to city officers, employees or officials."

If the Police Department wishes to accept this offer, the Board recommended that the Department should put a few restrictions around the program such as:

- Confidentiality should be maintained
- Only one free massage per officer or employee
- There should be no obligation or pressure on the individual officers or employees to continue massage or any other treatment on a paid basis.

Case 10 – 29 (lack of jurisdiction)

An inmate at the Downtown Detention Center filed a complaint against a child welfare caseworker, stating that the caseworker was "overzealous" in a child welfare investigation that she was performing concerning children of the inmate's former fiancée and that the caseworker contradicted a judge's order or statement which the inmate believed permitted him to return to the former fiancée's home. Apparently, a Denver county judge at a preliminary appearance released the inmate on bond on a pending charge of misdemeanor child abuse and told him that he could return to the home. The caseworker later forbade him to return to the home. It is not clear whether that judge at the preliminary appearance was aware of the investigation being performed by the caseworker.

The issues raised in this complaint are not covered by the Denver Code of Ethics. The inmate and/or his attorney could and should have raised the issue of returning to the home with the judge handling the criminal case against him.

The Board of Ethics 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 10 – 30 (outside employment)

An employee at Denver International Airport who works in ground transportation as a Landside Service Agent requested an advisory opinion. The employee expedites the flow of air passengers, visitors and vehicles inside the terminal at DIA and on the outside of the 5th level of the terminal.

The employee wishes to obtain an outside job with an event transportation management company, at times other than his DIA work hours. If approved, he would work for the company as a “meeter-greeter” for groups arriving at DIA who had contracted or “pre-booked” with the company for services, including ground transportation. Most of these groups would be for conferences or conventions in Colorado. The employee and others would direct or escort members of the groups to buses or limousines that have already been pre-booked in advance.

The employee has no involvement in and no direct official action authority over permitting or selecting drivers or transportation or other companies at DIA. He is not able in his city job to steer or encourage passengers to use company vehicles, because the vehicles are only available for those conferences or conventions that have pre-booked them for their exclusive use. The employee advised the Board of Ethics that he does not have any authority over where vehicles may or may not park at DIA or any ability to ticket vehicles for improper parking.

Outside employment is regulated by Section 2-63 of the Code of Ethics, the purpose of which is to avoid possible conflicts of interest and time conflicts between city jobs and outside employment or business activity. Pursuant to Section 2-63, no city employee can engage in proposed outside employment unless he or she receives written approval from the appointing authority on an annual basis.

Since the employee has no direct official action power regarding the company or any other transportation company at DIA, the Board of Ethics determined that there is not a conflict of interest that would be prohibited by Section 2-61 of the Code of Ethics (regarding conflicts of interest).

The Board emphasized that, if the employee obtains approval from his appointing authority, he must not do any type of work for the company during his city work time and must not use any city resources for his outside employment. The Board also recommended that, if he obtains approval from his appointing authority, the employee and the company should agree that he can only work as a meeter-greeter inside the DIA terminal and not beyond the outer doors of the terminal, so that no one would get the

unfounded impression that he might be improperly using his city position to steer passengers to certain buses or limousines.

Case 10 – 31 (supervision of relatives)

A division chief and a major in the Denver Sheriff Department submitted a request for an advisory opinion and/or waiver. The major was recently assigned as one of two Deputy Sheriff Majors to the Downtown Division of the Denver Sheriff Department. His primary focus is on administrative matters at the Downtown Detention Center (DDC), the sheriffs operation at the Lindsay-Flannigan Courthouse and the sheriffs operation at Denver Health Medical Center.

The major's son is a deputy sheriff at the Denver County Jail. He has expressed an interest in transferring to the Downtown Division where his primary duties would focus on the general supervision of inmates.

A large number of Sheriff personnel and also inmates were transferred in April 2010 from the Denver County Jail on Smith Road to the DDC, when the new DDC opened.

Supervision of immediate family members (the definition of which includes son) is regulated by Section 2-59 of the Code of Ethics:

Sec. 2-59. Employment and supervision of family members.

The purpose of this section is to avoid favoritism by city officers, employees or officials to their immediate family members...

(b) No officer, official, or employee shall supervise or be in a direct line of supervision over a member of his or her immediate family. If an officer, official, or employee comes into a direct line of supervision of a member of his or her immediate family, he or she shall have six (6) months to come into compliance or to obtain a waiver pursuant to section 2-54.

(c) When waivers from this section are sought so that a member of the immediate family may be hired or may be in the direct line of supervision, it is the intent of the council that the board of ethics not unreasonably withhold waivers. Examples of circumstances which might result in a waiver include, but are not limited to:...

(3) The family member who would be in the line of supervision was already working in the agency before the officer, official, or employee came into the line of supervision, and the officer, official, or employee can and will abstain from participating in any personnel actions involving the family member.

(d) The phrase "direct line of supervision" shall mean the supervisor of

an employee and the supervisor of an employee's supervisor.

The Board of Ethics determined that the placement of both the major and his son at the DDC will not violate Section 2-59 of the Code of Ethics, because there will be two levels of supervision between the father and his son and, therefore, the major will not supervise and will not be in a direct line of supervision over his son. Therefore, no waiver is required in this situation. However, the Board recommends that, in order to avoid the appearance of impropriety, if Deputy Sheriff Horner is transferred to DDC:

- The major should abstain from any involvement in any personnel action (positive, negative or neutral) regarding his son and he should notify others at DDC that he will do so;
- There should always be at least 2 levels of supervision between the major and his son. If this situation were to change, such as by a promotion of the son, the father and/or the son should return to the Board of Ethics for advice and/or a waiver regarding the changed circumstances;
- In the decision on whether to transfer the son to the DDC the father should not be the decision-maker and that the decision should be based on whatever criteria the Sheriff Department would normally use in considering such a transfer:

Case 10 – 32 (gifts – travel expenses)

A City Council member requested an advisory opinion and/or waiver. He had been invited to attend an organizational meeting in San Antonio, Texas of the advisory board of a new organization.. The organization is a nationwide network of elected and appointed government officials committed to juvenile justice policy reform and advocacy.

Neither City Council nor the district Council office has sufficient budget to pay for the airfare to this meeting. An airline company has offered to donate airfare to and from the meeting for the Council member. City Council will need to vote in the next few months on a new lease for that airline company at Denver International Airport, which is currently being negotiated. Therefore, the Board determined that the Council member is “in a position to take direct official action” regarding the airline company, because the City Council must vote on all leases of city property, including gates and other facilities at DIA. The Board of Ethics, as a result, determined that for the Council member to accept airfare from the airline company would violate Section 2-60(a) of the Denver 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...
- (6) Travel expenses and lodging;

None of the exceptions listed in Section 2-60(b) apply to this situation.

The Board considered whether to grant a waiver, which would allow the Council member to accept airfare from the airline, but the Board decided not to do so. Although the Board understands that the work of the new organization will be very important and beneficial, the Board determined that that was outweighed by the possible appearance that the gift from the airline could influence the vote regarding the city lease to the airline, even in the event that the Council member recused himself from that vote. The lease is also a very important issue for the city.

The Board encouraged the Council member to look for another donor to pay the airfare that would not pose this conflict of interest. Board members suggested a number of other organizations that possibly might be able to contribute the necessary funds, without the issue of a conflict of interest.

Cases 10 - 33 through 10 – 39 (no jurisdiction; time limit)

A former resident of the Denver area filed complaints concerning five members of the Denver Police Department and two former Assistant City Attorneys. Her allegations were that she was racially-profiled in a traffic stop in mid-2008, received obscene insults from the traffic officer, was not properly advised of her rights, was defamed by improper release of information regarding her traffic ticket and lost her vehicle by an improper use of the public nuisance abatement process.

The Board of Ethics dismissed all of these complaints because Section 2-56(3) of the Denver Code of Ethics provides that the Board is “prohibited from accepting complaints or inquiries about actions that took place more than two years prior to the date of filing” and pursuant to Sections 2-56(6)(a) and (b) of the Code of Ethics, because the Board has no jurisdiction over these types of issue and because the alleged violation, if true, would not constitute a violation of the Code of Ethics.

In addition, the Board noted that the complaining party placed some or all of these issues before the Internal Affairs Bureau of the Denver Police Department, the Denver County Court (regarding the traffic ticket and the vehicle impoundment) and the United States

District Court, all of which have more appropriate jurisdiction than the Board of Ethics over these issues.

Case 10 – 40 (gifts; travel expenses)

The Board received a request for an advisory opinion from a Senior Management Analyst for the Office of Economic Development. She had been invited to attend and participate in a series of meetings as a member of a National Science Foundation (NSF) Visiting Committee. Her travel expenses would be paid by South Carolina Advanced Technology Education Center (SCATE Center). She wished to know if her acceptance of the travel expenses from the SCATE Center will comply with the Code of Ethics.

She advised the Board of Ethics that:

from 10/20/2008 to 2/02/2009, the South Carolina Advanced Technology Education Center (SCATE) had a \$5,300 contract with WIRED at Metro Denver EDC to provide technical assistance to the community colleges in the metro Denver region.

The employee had been the administrator from 2006 through early 2010 on loan to the Metro Denver Economic Development Corporation for the Workforce Innovation in Regional Economic Development (WIRED) Initiative.

SCATE Center is a non-profit organization.

In responding to another request for an advisory opinion in March 2009 from the same employee, the Board determined:

You do take “direct official action” regarding contracts with WIRED sub-grantees because you “administer” the contracts, which is part of the definition of “direct official action” in Section 2-52(b) of the Denver Code of Ethics.

Section 2-60(a) of the Denver Code of Ethics provides:

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:

(6) **Travel expenses and lodging;**

Section 2-60(b), however, provides several exceptions, including:

2-60(b) Officers, officials, and employees and the members of their immediate family may accept the following even if the officer, official, or employee is in a position to take direct official action with regard to the donor, or, if the donor is a lobbyist or representative, the donor's client....

(7) Reasonable expenses paid by non-profit organizations or other governments for attendance at a convention, fact finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the city...

The Board of Ethics determined that, because of her senior position in WIRED and OED, she was or is "in a position to take direct official action" regarding any past, current or future agreements or contracts or grants between Denver and SCATE Center.

However, the Board of Ethics determined that it would not violate the gift section of the Code of Ethics for her to accept travel expenses from SCATE Center because it is a non-profit organization, which would make this a permitted exception pursuant to section 2—60(b)(7) of the Code of Ethics.

Case 10 – 41 (conflicts of interest)

A Business Development Associate II in the Youth Services Division of the Office of Economic Development (OED) requested an advisory opinion. He develops employment and community educational opportunities for 14 - 21 year-old young people under various federal, state and local funded programs. He was appointed by Governor Ritter in August 2009 to serve as an unpaid member of the 20-member State Rehabilitation Council (SRC), which oversees the state Division of Vocational Rehabilitation (DVR). OED does not receive any funds from DVR and the employee does not have any role in negotiating, administering or distributing any DVR or DHS funds or contracts with OED.

All of the members of the SRC have been asked to "meet with their legislators to discuss the value of services that DVR creates, including the matching funds and other benefits that supplement the (State) General Funds." Presumably this request has been made to the SRC members because of the state's serious budget crisis which the legislature will need to deal with and because a number of new legislators have just been elected.

The Board of Ethics determined that, because the employee does not have any role in negotiating, administering or distributing any DVR or DHS funds or contracts with OED, he will not have an impermissible conflict of interest if he communicates truthfully as a citizen volunteer about vocational rehabilitation to members of the legislature or by serving as a member of the SRC. The Board, however, recommended that, if the SRC

ever considers any proposed grant or contract with OED, he should abstain from any involvement in that issue as an SRC member and he should not be involved in negotiating, distributing or administering any such grants or contracts for OED.

