

DENVER BOARD OF ETHICS

2018 ANNUAL REPORT

Submitted: February 14, 2019

I. INTRODUCTION

The Denver Board of Ethics hereby submits its eighteenth 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.

Brief biographies of the current members of the Denver Board of Ethics (all unpaid volunteers) are below in [Appendix A](#).

The Board expresses appreciation to all City elected officials, employees, board and commission members and citizens who requested ethics advice or help in 2018.

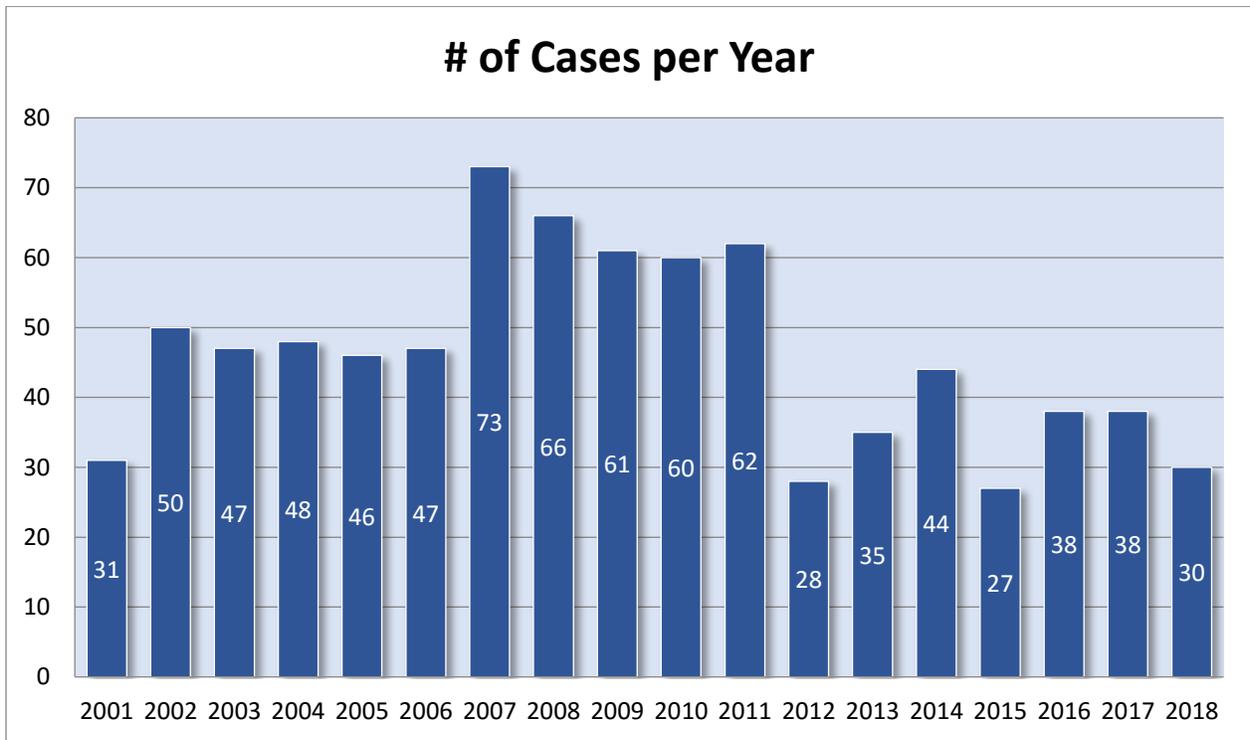
The Board held eleven monthly meetings in 2018. This report is a summary of the work accomplished by the Board during that time.

II. ADVISORY OPINIONS, WAIVERS, COMPLAINTS

In 2018 the Board received a total of 30 written formal cases - as compared with:

- 38 cases in 2017
- 27 cases in 2016
- 44 cases in 2015
- 35 cases in 2014
- 28 cases in 2013
- 62 in 2012
- 60 in 2011
- 61 in 2010
- 66 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-two of the formal cases received in 2018 were requests for advisory opinions, while eight were complaints.



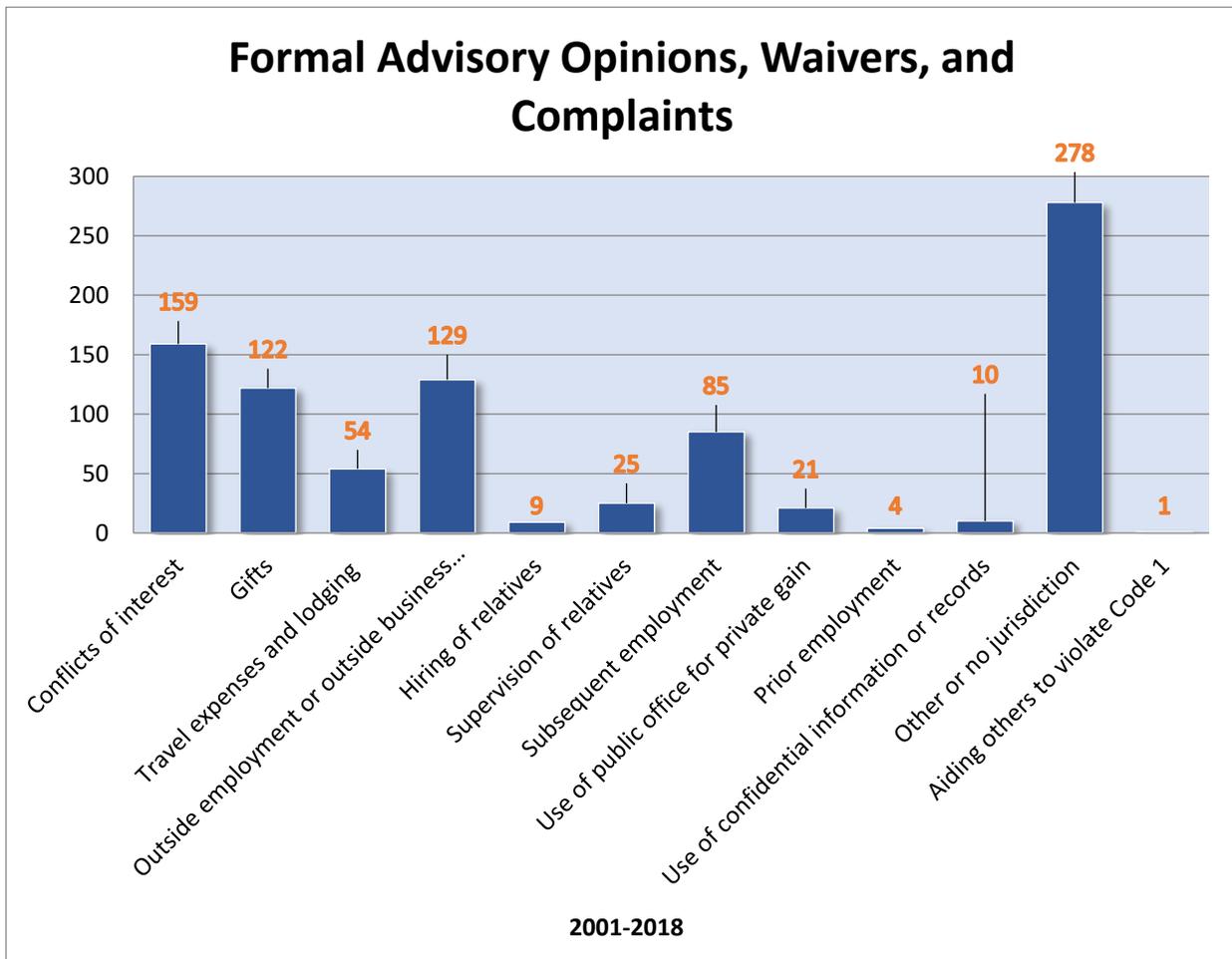
A digest of the Board’s 2018 opinions is printed below as **Appendix B** and is posted on the Board of Ethics website at www.denvergov.org/ethics.

Between the passage of the new Denver Code of Ethics in January 2001 and December 31, 2018, the Board of Ethics received a total of 810 written formal cases, consisting of 457 requests for advisory opinions and/or waivers and 353 complaints alleging possible violations of the Code of Ethics. In 2018 the Board dismissed all of the complaints that it resolved after preliminary screening, due to lack of jurisdiction over the subject matters and/or lack of evidence of any violations of the Code of Ethics and/or the minor nature of any alleged violation.

Since 2001, most of the complaints were dismissed because the allegations related to subjects and/or persons not covered by the Code of Ethics. Examples of such dismissed complaints alleged that police officers made improper arrests or searches or that deputy sheriffs used excessive force. In such cases, the Board encouraged the complaining parties to submit their complaints to the Internal Affairs Bureaus of the Police or Sheriff Departments and/or the Office of Independent Monitor. Other dismissed complaints dealt with non-city personnel or with rude behavior by city personnel (not covered by the Denver Code of Ethics). Other dismissed complaints did not present sufficient evidence of unethical conduct.

The subjects of the requests for formal advisory opinions or waivers and complaints decided during the entire 2001-2018 period break down as follows, with the number of 2018 cases in parentheses:

- conflicts of interest – 159 (5)
 - gifts – 122 (4)
 - travel expenses and lodging – 54 (1)
 - outside employment or outside business activity– 129 (6)
 - hiring of relatives – 9 (0)
 - supervision of relatives – 25 (1)
 - subsequent employment – 85 (3)
 - use of public office for private gain – 21 (1)
 - prior employment – 4 (0)
 - use of confidential information or records - 10 (1)
 - other or no jurisdiction – 278 (9)
 - aiding others to violate Code 1 (1)
- (Some requests involved more than one subject.)



In addition to the written official complaints and requests for advisory opinions and waivers, the Board’s Executive Director in 2018 received approximately 212 telephone, e-mail or in-person

requests for unofficial, informal consultation about the Code of Ethics or other ethics issues, as compared with:

- 237 in 2017
- 271 in 2016
- 225 in 2015
- 249 in 2014
- 223 in 2013
- 275 in 2012
- 309 in 2011
- 249 in 2010
- 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 4,561 since January 2001.

The Board and its Executive Director take pride in responding to all requests or complaints as promptly as possible, usually within one day for unofficial requests and within one month for official requests for advice or complaints.

III. ETHICS HANDBOOK

The recently-updated 2018 ethics handbook can be found at www.denvergov.org/ethics. In addition, the Board of Ethics has many hard copies of the 2018 ethics handbook available for city personnel or citizens who request them through michael.henry@denvergov.org.

IV. ETHICS TRAINING

The Board of Ethics believes 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.

In 2006, with support from the Board of Ethics, the Career Service Authority Board amended Career Service Rule 6 (now included in Rule 5) to require that new CSA employees, including Deputy Sheriffs, receive ethics training before they can pass their probationary period.

From 2002 through the end of November 2015 all new city employees and officers subject to the Code of Ethics received 3 hours of ethics training either in a classroom or one-on-one with the Board's Executive Director. In December 2015 most classroom ethics training was changed to online ethics training through the City University course in Ethics and Public Accountability, developed by the Board of Ethics and the Training and Organizational Development Practice of the Office of Human Resources.

In 2018, ethics training was given to approximately 1807 new city employees (compared to 1214 in 2017). Of those, 1607 successfully completed the training online and 200 new recruits in the Police, Fire and Sheriff Department Academies received classroom training from the Board's Executive Director. In addition, in 2018 the Executive Director gave individual ethics training to 31 new Mayoral appointees and other high-level new hires. In 2019 and future years, online training will be the primary method of ethics training for new Career Service Authority employees and the Board's Executive Director will continue to give in-person ethics training to new recruits in the Police, Fire and Sheriff Department Academies

For some time, the Board of Ethics and the Office of Human Resources have considered how refresher ethics training can be provided to some or all city personnel at regular intervals. Refresher ethics training is provided or required at a large percentage of private and governmental organizations. In the Denver city government, there are many employees of 10 or more years who have not had ethics training more than once at the beginning of their city careers. The Board will work with the Mayor's Office and the Office of Human Resources to implement refresher ethics training for all employees at 5-year intervals, beginning in early 2019.

V. OTHER MATTERS

BUDGET

The adopted 2019 budget for the Board of Ethics is \$152,790 as compared to \$148,143 for 2018.

STAFF

Michael Henry, the Executive 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. He expects to retire in late August 2019 after 19 years in that position and the Board, with assistance from the Office of Human Resources, will recruit and interview candidates for a new Executive Director.

OTHER 2018 ACTIVITIES

As a result of one of the 2017 amendments to the Code of Ethics, a Board of Ethics Nomination Committee was appointed to screen applications to serve on the Board of Ethics. The committee consists of Brian Spano (appointed by the Mayor), Michael Lopez (appointed by City Council) and Michelle Stermer (appointed by the Presiding Judge of the County Court).

In 2018, with the cooperation of Technology Services, the Board developed and implemented a feature on the Board of Ethics website (www.denvergov.org/ethics) that makes the Board's digests of its opinions since 2001 searchable by users.

VI. 2019 GOALS FOR BOARD OF ETHICS

A. Continue to implement and improve ethics training

The Board of Ethics, in cooperation with the Office of Human Resources, oversees the delivery of ethics training for all Denver officers, officials and employees. The Board will in 2019 continue to pursue this goal by encouraging accuracy, consistency and high quality of the ethics training with cooperation from OHR and city departments. The Board will monitor the evaluations from new city employees who have taken the online ethics training through City University and make continuous improvements. The Board will continue to encourage city departments and agencies to devote time at staff meetings to ethics discussions. The Board will also work with OHR to implement refresher ethics training for city personnel every 5 years, to begin in early 2019. In addition, the Board will work to improve the content and format of online ethics training.

B. Continue to receive, review and promptly decide requests for advisory opinions, requests for waivers and complaints alleging misconduct

C. Improve public information about Code of Ethics

- a) Develop articles about Code/Board of Ethics to submit to city departmental newsletters and the city employee bulletins or newsletters.
- b) Organize and publicize at least one city-wide and/or departmental informational lunchtime or after-work discussion of ethics issues per year. Seek public comments at the meetings and otherwise about ethics concerns of city employees and citizens.

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 reported by agencies and departments and 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. Improve communications about ethics issues with City Council, the Mayor's Office and City departments

F. Assist the Board of Ethics Nomination Committee to fulfill its responsibility to recruit and screen interested candidates for appointment to the Board of Ethics by the Mayor and City Council and to forward at least three nominees to the Mayor or City Council for each vacancy. The Board anticipates that there will be two vacancies on the 5-person Board in mid-2019.

- G. Propose that the Auditor should schedule a performance audit of the Board of Ethics and a comparison with the work of other ethics jurisdictions in the United States. The last such audit was in 2010.**

VII. HOW THE BOARD OF ETHICS HELPS TO ACCOMPLISH THE CITY'S GOALS

The Mayor's Vision:

- We will deliver a world-class City where everyone matters. The Board of Ethics works to develop an ethical culture at all levels of Denver government for the benefit of all City personnel and citizens.

The Hancock Administration's City Goals are:

- Driving private-sector economic growth and job creation.
- Improving education and opportunities for *all* kids.
- Strengthening our safety net and public confidence in the police department.

The goal of the Board of Ethics is to establish public confidence in all city departments and agencies.

The Administration's two core values to achieve these goals are:

- Improving sustainability. The Board of Ethics minimizes use of paper communications, especially with the transition to online ethics training.
- Improving customer service. The Board of Ethics and its Executive Director respond promptly to all questions and complaints from the public and City personnel and encourage and help all departments and City personnel to act ethically for the benefit of the public.

VIII. CONCLUSION

The Board of Ethics believes that, with help from the Mayor, City Council, the City Attorney's Office, the Office of Human Resources and the great majority of managers and employees of the City and County of Denver, it continued its progress in 2018 to establish ethics as a recognized core value and to cultivate public confidence in Denver city government.

Respectfully submitted on behalf of the Denver Board of Ethics,



Patrick D. Tooley
Chair

APPENDIX A

DENVER BOARD OF ETHICS – Board Members as of December 2018

Patrick D. Tooley obtained his J.D. from the University of Colorado School of Law and his B.A from the University of Colorado. He served as a Chief Deputy District Attorney in Arapahoe County, Colorado until 1993, when he joined Dill Dill Carr Stonbraker and Hutchings, P.C., as a partner. His law practice focuses on complex civil litigation, criminal law, appeals, and administrative law. His volunteer activities include service as mediator and as inventory counsel for the Office of Attorney Regulation, and service as a hearing board member, appointed by the Colorado Supreme Court, to hear attorney disciplinary matters. Appointed by City Council to a term which will expire on May 1, 2019. He was elected Chair of the Board in November 2016 and has continued as Chair since then.

Julia C. Yeckes earned her B.A. in Music from Lewis and Clark College and her J.D. from the S.J. Quinney College of Law with a Certificate in Environmental and Natural Resource Law. She became an active member of the Colorado Bar in May 2016. Upon graduation, she ran the Pre-Award Grants and Contracts Program for the University of Colorado Denver's Renal Division, where she worked on research proposal submissions and regulatory compliance. Ms. Yeckes now serves as a Staff Attorney for Energy Fuels Resources Corporation at its Lakewood, CO corporate headquarters. While at Lewis and Clark College, she chaired the College Honor Board, which heard academic integrity violations, and the College Review Board, which heard on-campus felony cases. Appointed by City Council, her term will end on April 20, 2021. She was elected Vice-Chair of the Board in July 2017.

Sylvia S. Smith has been employed with the City and County of Denver in a variety of capacities - from Director of Policy and Research in the Auditor's Office to her current position as a **Neighborhood Manager** with the Denver Office of Economic Development where she oversees the Neighborhood team charged with program services and facility improvement project investments. She holds a B. A. in Political Science from the University of Colorado at Denver. She has been active in many organizations including the Colorado Black Women for Political Action, Single Mothers of Color, Inc., National Council of Negro Women, Inc., Denver Section and Colorado Common Cause. She currently serves as a Commissioner for the Denver Asian American Pacific Islander Commission. Appointed by the Mayor and City Council to 2 terms, ending June 24, 2021 She served as Vice-Chair of the Board in 2015 - 2017.

Roy V. Wood earned his B.A, M.A. and Ph.D. from the University of Denver. He was a Professor and Dean of the School of Communications at Northwestern University from 1972 to 1988. In 1989, he became the first Provost of the University of Denver. In 2006, he chaired a blue-ribbon panel on ethics for the Colorado House of Representatives. The Speaker of the Colorado House appointed him as a member of the first Colorado Independent Ethics Commission and he completed that term in June 2011. He taught classes at D.U. in communications ethics and dialogue. Appointed by the Mayor to 2 terms, expiring April 30, 2019. He served as Vice-Chair of the Board of Ethics in 2012 - 2014.

Andrew S. Armatas earned his B. A. at the University of Colorado at Boulder and his J. D. from the University of Denver. He served as a Denver Assistant City Attorney, a partner in a Denver law firm, City Attorney for Broomfield and a Denver County Court Judge, retiring in January 2013 after 23 years of service on the bench. During 7 of those years, he served as Presiding Judge of the Denver County Court. He was appointed by the Mayor to 2 terms, ending April 30, 2021.

APPENDIX B

DENVER BOARD OF ETHICS DIGEST OF OPINIONS January 1– December 31, 2018

PLEASE NOTE: This is a set of summarized opinions given by the Denver Board of Ethics between January 1 and December 31, 2018 in response to fact-specific requests for advisory opinions or complaints. These opinions should not be used as conclusive guidance for situations where the facts may differ. Please contact the Board of Ethics to discuss any specific issues you may have.

Case 17-26 (request for advisory opinion withdrawn by requesters)

Cases 17-30 and 17-31 (use of public office for private gain, use of confidential information, aiding others)

An attorney for the Fraternal Order of Police, the union representing most Denver deputy sheriffs, filed complaints on behalf of the FOP concerning a major and an assistant chief in the Denver Sheriff Department (DSD). The complaints alleged that:

- DSD organized a promotional process for sergeants who wished to compete for promotion to captain.
- The assistant chief organized and oversaw the department’s four majors “as a workgroup to develop test content” for the promotional process.
- All of the majors in the agency participated in meetings, discussions and communications for the purpose of developing the test material, including the major who was the subject of the complaint.
- That major is married to a Denver Sheriff sergeant who tested for the position of captain. The major’s brother-in-law...also participated in the promotional process for the rank of captain.
- After the examinations, the major’s spouse finished in the number 2 position for promotion and his brother-in-law finished in the number 3 position for promotion.
- The assistant chief should not have allowed the major to participate in developing the test content for the promotional process, because the major had a conflict of interest.

If it could be proven that the major communicated the content of the promotional examination, that could constitute use of public office for private gain, which is prohibited by Section 2-67 of the Code of Ethics:

Sec. 2-67. Use of public office for private gain.

No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself, for his or her immediate family, for any business entity with which he or she is affiliated or for any person or entity with whom the officer, official or employee is negotiating or has any arrangement concerning prospective employment. (emphasis added)

Both the major's spouse and his brother-in-law are members of his immediate family, as defined in Section 2-52(c) of the Code of Ethics.

Such conduct could also violate Section 2-68 of the Code of Ethics:

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 assistant chief's alleged awareness and involvement, if proven, could be a violation of Section 2-69:

Sec. 2-69. Aiding others

No officer, official or employee may knowingly aid or assist any officer, official or employee in the violation of any provision of this code of ethics.

The Board of Ethics reviewed a confidential investigative report prepared by an outside investigator, which was submitted to the Sheriff Department. According to the Deputy Director of Safety, "We are closing the matter with findings of no policy violations. We are going to address the question of policy or protocol changes to get in front of issues like those raised in this investigation."

In summary, the investigative report to DSD concluded that it could not be proven by a "preponderance of the evidence" standard of proof used in DSD disciplinary matters that there was any violation of DSD policies by either the major or the assistant chief.

The standard of proof required for the Board of Ethics to find a violation of the Code of Ethics is the higher standard of "clear and convincing evidence."

The Board of Ethics dismissed both complaints based on (a) the Board's independent review of the investigative report and (b) the Board's determination that a violation of the Code of Ethics could not be proven by clear and convincing evidence based on the facts as the Board understands them, particularly in light of the Department of Safety's determination that a finding of wrongdoing was not supported by a preponderance of evidence.

By copy of this opinion, the Board communicated to the Manager of Safety, the Deputy Manager of Safety and the Sheriff that DSD should consider protocol or policy changes to address potential conflicts of interest regarding promotional examinations and examinations to enter the Sheriff Academy. The facts as the Board understands them create a strong appearance of impropriety which potentially undermines the confidence of the members of DSD and the public in the fairness and integrity of the promotional process, all of which could be avoided if DSD had better safeguards in place.

Cases 17-32, 17-33, 17-34 and 17-35 (conflicts of interest)

An attorney filed four complaints on behalf of a client. The client alleged that a city department head, the director of a city agency and two members of the city's Crime Prevention and Control Commission (CPC) acted unfairly and unethically in selecting a new contractor to receive a city contract to provide services to detainees in Denver's detention facilities to prepare them for re-entry into society. The client's entity had had a similar contract for several years before it expired in late 2017.

After extensive investigation, the Board of Ethics dismissed the complaints against the department head and the director of the city agency, pursuant to Section 2-56(6)(b) because the allegations against them, if true, would not have violated the Code of Ethics.

In addition, the Board dismissed the complaints against the two members of the CPCC. Although both members had substantial conflicts of interest by virtue of their connection with co-applicants for the contract, both of them appropriately complied with Section 2-61(f) of the Code of Ethics because they disclosed their conflicts of interest, they recused themselves from voting on the proposals, they did not influence the development of the Request for Proposals and there was no evidence that they attempted to influence the decisions of others.

Nevertheless, the Board strongly encouraged the Crime Prevention and Control Commission to consider changes in its protocol, policy and training to address potential conflicts of interest in dealing with any future requests for proposals for contracts. The facts as the Board understands them created an appearance of impropriety potentially undermining the confidence and trust of the public and bidders in the fairness and integrity of the contracting process. This could have been avoided if CPCC had better safeguards and strategies to minimize or eliminate participation by those with substantial conflicts of interest. For example, the appearance of impropriety would have been minimized if one of the members had not been assigned to the review and the interview panels and if both of the members had left the room when the CPCC discussed and voted on the proposals. Remaining in the room by a member of a city body with a substantial conflict of interest may inhibit free discussion and deliberation by the other members of the body.

Case 18-1 (subsequent employment)

A Senior Engineer/Project Manager in the Public Works Department requested an advisory opinion. He had accepted a position with an international engineering firm in a consulting position as a Road & Highway Project Manager in its Infrastructure unit. The engineering firm has an office in Denver.

The engineering firm will likely compete for engineering and/or construction contracts on some of the City of Denver's many upcoming projects from the National Western Stock Show redevelopment and/or the many bond projects approved by Denver voters in November 2017. If it does so compete, the firm will likely list the former employee as a team member in its proposal(s). However, the employee advised the Board of Ethics that the firm hired him to do infrastructure project management work for any entity or client and that there were no conditions from the firm that required the company to win any city project in order for him to be employed by the firm and that any work by him for the firm would depend on the need at the time.

The former employee advised the Board that, during his nine years with the Denver city government, he never had any direct involvement with the engineering firm, including any direct official action over the firm, in the projects he has worked on.

Subsequent employment is governed 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 advised the former employee that he will not violate Section 2-64(a) of the Denver Code of Ethics if he begins to work for the engineering firm at any time after he left his

city job and he does not need to wait for 6 months because he took no direct official action regarding the firm during his service with the city.

Case 18-2 (request for advisory opinion withdrawn by requester)

Case 18-3 (gifts, travel expenses) - waiver granted

An Associate Buyer in the Purchasing Division assists the Denver Fire Department (DFD) with its purchases of equipment, gear, supplies etc. She and DFD requested an advisory opinion as to whether DFD's Quartermaster would violate the gift section of the Denver Code of Ethics by accepting registration, lodging, meals and/or certification expenses from for-profit entities to attend conferences or training sessions. They told the Board of Ethics:

The Quartermaster performs support services for the Denver Fire Department by regulating inventory control of consumable and non-consumable goods including uniforms & PPE (Personal Protective Equipment or Bunker Gear), medical supplies, station and cleaning supplies and any other supplies or service needs. His or her responsibilities include:

1. Maintaining accountability for fire department inventory and ensuring the proper distribution of gear for the safety and wellbeing of all personnel.
2. Ensuring maintenance compliance documentation and personnel accountability for assets.
3. Rotating supplies and gear based on product expiration dates and standards of health and safety.
4. Maintaining responsibility and accountability for inventory as it flows to supply rooms, vehicles and stations...

An unusual element of the DFD quartermaster assignment, which is for only one person at a time, is that it is an assignment limited to 18 months. Only a DFD captain can serve as the quartermaster. One of the quartermaster's main functions is to serve as a subject matter expert in safety and efficiency standards in firefighting and fire prevention. This involves much learning, especially since a new quartermaster must start the learning process every 18 months.

There are approximately three conferences or training sessions each year throughout the United States, which are organized/facilitated by nonprofit or governmental organizations such as the Occupational Safety and Health Administration and the National Fire Protection Association, both of which promulgate standards for health and safety regulations regarding issues important to fire departments and firefighters and update their standards approximately every three years.

These conferences or training sessions are usually "sponsored" by several for-profit manufacturing companies, which contribute money to pay for lodging, travel, meals, registration costs and sometimes certification fees for persons who want to be certified as an expert in OSHA standards, etc.

The DFD budget contains very little funding for education, research and training.

It is the goal of DFD and Purchasing to learn about new issues and standards so that purchasing of equipment, gear and supplies can be done proactively, instead of reactively after safety problems have occurred. They gave an example of a recent death of a Denver firefighter who died after falling from a roof during a fire and could not be easily cut out of his heavy gear by the knives that other firefighters had as part of their equipment. That led the Purchasing Division and DFD to purchase better knives for such a purpose. That, however, was, unfortunately, a reactive decision. Even though many, if not all, of the training sessions and conferences have products on display at booths and manufacturers' representatives available, the chief purpose is education and not sales. Learning about firefighter safety is a primary concern and standards, knowledge and products related to safety are constantly changing.

Acceptance of gifts by city personnel, including travel expenses, is regulated by Section 2-60 of the Denver Code of Ethics, the relevant portions of which are:

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...
- (9) Meals...

(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...

- (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 in an official capacity reasonably related to the recipient's employment by the city; (emphasis added)

Direct official action is defined as:

Sec. 2-52. Definitions.

- (b) *Direct official action* means any action which involves:
 - (1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making...
 - (3) Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;...

Quartermasters do not “take direct official action” because the decisions to approve contracts or select vendors are not made by quartermasters. The quartermasters are given copies by Purchasing of bids from vendors or manufacturers to comment on, but the names of the vendors or manufacturers are redacted.

The Board of Ethics concluded that:

1. It would not violate Section 2-60(a) of the Denver Code of Ethics for DFD quartermasters to accept travel, lodging, meals, registration and/or certification expenses from non-profit or governmental entities to attend training sessions or conferences, due to the exception in Section 2-60(b)(7).
2. It would not violate Section 2-60(a) of the Denver Code of Ethics for DFD quartermasters to accept travel, lodging, meals, registration and/or certification expenses from any manufacturers of equipment, gear and supplies, because Purchasing and DFD do not contract with manufacturers. Rather, they contract with vendors or distributors.
3. Quartermasters sometimes do take direct official action regarding contracts with vendors or distributors by recommending certain contracts. Based on the facts as the Board understands them, however, the quartermaster would not exercise direct official action as to the manufacturers who sponsor the training sessions or conferences. However, to the extent it is arguable that the for-profit manufacturer is the donor, the Board determined that a waiver is warranted pursuant to Section 2-54(f) of the Denver Code of Ethics because it believes that it is in the best interests of the city for DFD to be able in a proactive way to protect the safety of firefighters and the public.

Case 18-4 (outside employment)

A Staff Assistant in the Public Works Department requested an advisory opinion. She helps to collect the annual outside employment form from employees, so that employees can comply with Section 2-63 of the Denver Code of Ethics. She asked whether a city employee who is in the United States Air Force Reserves or any other military branch must file an annual outside employment form and obtain permission from his or her appointing authority. In the Denver city government there are several military reservists who are obligated to comply with orders to attend training, usually one weekend per month, or to perform other duties, such as helping with disaster relief. All military reservists are paid, based upon the person’s pay grade and years of service in the reserves.

Outside employment is governed by Section 2-63 of the Denver Code of Ethics:

Sec. 2-63 Outside employment or business activity.

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. (emphasis added)

(b) If the appointing authority or the officer, official or employee believes that there is a potential conflict of interest between the person's public responsibility and his or

her possible outside employment or outside business activity, he, she or they are encouraged to consult the board of ethics.

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

The Board of Ethics concluded, however, that a city appointing authority or supervisor does not have the legal ability to disapprove a reservist's continued service in the U. S. military reserves once he or she has already committed to such service and has received military orders to report for training or service. The Denver Code of Ethics cannot supersede military orders from the United States government. Therefore, city employees in the reserves or other military service are not required to comply with Section 2-63 by requesting approval of such military training or service. However, the Board encourages all Denver employees to comply with any departmental or Career Service rules to give adequate notice to supervisors or appointing authorities for planning purposes. This, however, is a personnel matter and not an issue related to conflicts of interest or any other matter related to the Denver Code of Ethics.

Cases 18-5 and 18-6 (requests for advisory opinion withdrawn by requester)

Case 18-7 (gifts)

The Deputy Director of the Arts and Venues Department (A&V) requested an advisory opinion as to whether A&V's Imagine 2020 District Challenge program, in which, during 2017, it gave \$2020 to each City Council district office, to implement an arts program in the district, might violate the gift section of the Denver Code of Ethics, as interpreted by the Board in its advisory opinion in Case 17-27. The District Challenge was based upon A&V's Cultural Plan, known as Imagine 2020. A&V and the Denver Cultural Commission believe that the Imagine 2020 program was very successful in 2017 and would like to continue it for 2018 and beyond.

The giving and acceptance of gifts is regulated by Section 2-60 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;... (emphasis added)**

On November 17, 2017, the Board of Ethics issued Advisory Opinion 17-27 as follows:

...Regarding gift items from city departments or agencies, there are two important points. First, City Council members are in a position to take direct official action regarding many city agencies, such as if they have contracts over \$500,000 that Council must vote upon. In addition, "the city has an existing, ongoing, or pending contract,

business, or regulatory relationship with the donor” (the individual city departments or agencies that offer gift items to City Council members). Therefore, Council members are prohibited by Section 2-60(a) from accepting gifts from city departments or agencies. Second, City Council is a separate and independent branch of city government from the executive branch departments and agencies and the restrictions in the gift section of the Code of Ethics apply with equal force, whether gifts are from entities or persons inside or outside of city government. Thus, the Board of Ethics rejects the interpretation of the gift section of the Code that City Council members or other city personnel may accept gifts from city agencies because they are all part of the same city government...

The Board of Ethics determined that the payments by A&V to City Council members’ office budgets of funds through its District Challenge program are not prohibited by Section 2-60 of the Denver Code of Ethics or by the Board’s advisory opinion in Case 17-27, both of which are intended to regulate gifts to individual city personnel. The funds in the 2020 District Challenge given by A&V, on the other hand, are payments to benefit the residents/citizens of different districts of the city and are not to benefit any individual city person. No City Council members personally benefit from this donation of funds from A&V and all funds will be appropriately accounted for in the City Council members’ office budgets. Put simply, no “gift” is being solicited or received. Therefore, A&V may offer and Council members may accept funds and/or art programs and/or art pieces for the benefit of the public and not for their personal use.

Cases 18-8 and 18-9 (no jurisdiction)

A citizen filed complaints concerning two employees of the Department of Human Services (DHS), alleging that the employees failed to give proper oversight to Rocky Mountain Human Services (RMHS), a non-profit organization that is under contract with DHS to administer mill levy funds approved by Denver voters in 2003 to serve persons with intellectual and developmental disabilities.

In a 2015 performance audit by the Denver Auditor of the administration of the RMHS contract by DHS, one of the problems identified was that “RMHS has inappropriately utilized mill levy funds for individuals residing outside of the City and County of Denver.”

The complainant raised many different issues about RMHS, including her belief that RMHS continues to provide service to out-of-Denver residents from the Denver mill levy and that DHS and the employees are not adequately monitoring and enforcing the contract between DHS and RMHS.

The Board of Ethics determined that none of the actions raised in the complaints concerning the employees or DHS are prohibited by the Denver Code of Ethics. The Board dismissed both complaints pursuant to Section 2-56(6)(a) of the Denver Code of Ethics because the Board has no jurisdiction over such issues.

Case 18 - 10 (gifts) - waiver granted

A sergeant in the Denver Police Department requested an advisory opinion on behalf of the group of city employees planning a Family Fun Day for all divisions of the Department of Safety and their families. One of the planning board members believes that Pepsi-Cola may donate enough soda and water for the expected 700 –1000 attendees. The sergeant wished to know if the solicitation and acceptance of such would violate the Denver Code of Ethics.

Solicitation and acceptance of gifts are governed by Section 2-60 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;..

(9) Meals except as provided for in subsection (b)(4) of this section...

The Board of Ethics determined that solicitation or acceptance of water and soda from Pepsi-Cola for Department of Safety personnel and their families would not violate Section 2-60 because Fire, Sheriff, Paramedics and 911 personnel are not in a position to “take direct official action” regarding Pepsi-Cola. While police officers do have direct official action power (“enforcing the laws”), the Board does not believe that a large corporation such as Pepsi-Cola could be perceived to be making a donation in order to get special influence to obtain better police or fire protection for its business. Many large companies have items in their budget for community benefit or appreciation for first responders/law enforcement.

In addition, the benefit to each city person would be very small – one or two inexpensive sodas or waters per city person. The Board of Ethics in Case 17-15 decided on August 18, 2017 that:

- When used in Section 2-60 of the Denver Code of Ethics, the word “meal” does not include beverages or snacks alone, such as coffee, tea, water, soft drinks, lemonade, doughnuts or fruit offered to and/or accepted by city officers or employees.
- Provided that the donor is providing the beverage or snack on an infrequent and isolated basis and provided further that the item is of modest value, a city employee or officer may accept the item, even if they are in a position to take direct official action with regard to the donor.
- Such items need not be disclosed by employees or officers on their Financial Disclosure forms.

The Board did discuss, however, that, in this case, the value of the total gift by Pepsi would be several hundred dollars and would be more substantial than a gift of a water or soda to an individual employee.

However, because some might perceive that the solicitation and/or acceptance of this gift from Pepsi-Cola might violate Section 2-60(a) of the Denver Code of Ethics, the Board voted to grant a waiver, pursuant to Section 2-54(f) of the Code of Ethics, so that these items may be solicited and accepted and determined that an event such as Family Fun Day for city employees and their families is in the city’s best interest.

Case 18-11 (outside business activity)

A Technician in the Denver Police Department who is an instructor at the Police Academy requested an advisory opinion. A few years ago, he obtained approval from his appointing authority to establish a “non-police-related secondary employment company” to develop and provide training outside DPD.

In 2016 he developed a 40-hour training course called “Back to Basics,” which is now mandatory for all DPD officers. In 2018, he was asked by the Clark County Nevada Probation Department to construct a similar training course for its use. He would be paid by Clark County for adjusting the course for its use and would perform any work on the revised course on his off-duty time. He advised the Board of Ethics:

But, due to the fact that I created the Back to Basics training while on-duty, I was initially hesitant to accept this contract ... for that reason, I would like to receive an advisory opinion.

Outside employment by city employees is regulated by Section 2-63 of the Code of Ethics:

Sec. 2-63 Outside employment or business activity.

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.

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

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

The Board of Ethics determined that it will not be a violation of the outside employment section or any other section of the Denver Code of Ethics for the Technician to develop a similar training program for Clark County, NV so long as, in accordance with Section 2-63, he “obtains his... appointing authority's approval thereof prior to accepting initial employment or outside business activity.” In addition, he should not use any city time, computers, paper or other city resources for his outside business.

The Board noted, however, that “Back to Basics” may, in certain circumstances, be considered the intellectual property or work product of the City of Denver. The Board recommended that he speak both with his chain-of-command and with the Denver City Attorney’s Office about whether there are limitations on using materials developed on Denver city time in any course developed for other cities or counties. However, intellectual property and copyright issues are complicated legal matters and are not within the jurisdiction or the expertise of the Board of Ethics and, thus, the Board intends this recommendation to be merely helpful, not binding.

Case 18-12 (conflict of interest)

A Human Resources Partner for the Denver County Court requested an advisory opinion about whether there would be a violation of the Code of Ethics for County Court employees to participate as volunteers in the annual Paintathon house-painting event sponsored by Brothers Redevelopment, Inc., a Denver non-profit homebuilder on Saturday August 18, 2018. Brothers Redevelopment describes itself as “promoting safe, affordable, accessible housing and housing services for the low-income, elderly and disabled throughout Colorado.”

The requester’s concern arose from the fact that “Brothers Redevelopment is also a named party in many civil actions with the Court, primarily as plaintiff in Forcible Entry and Detainer cases (evictions).” She advised the Board that “this is a much beloved event for our employees and the community.” She also indicated that:

In the past Career Service Authority employees as well as judicial officers have volunteered. My inquiry is primarily regarding direction for CSA employees, as judicial officers have Judicial Canons they must abide by, including potential conflicts of interest such as this.

Conflicts of interest are governed by Section 2-61 of the Denver 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 a board member or 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, lobbying or other professional services for another party in the matter or owns five (5) percent or more of a law firm, lobbying firm or other professional services firm representing another party in the matter...

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

The Board determined that it will not be a violation of the conflict of interest section or any other section of the Denver Code of Ethics for Denver County Court employees to participate as volunteers in a community-serving program sponsored by Brothers Redevelopment, Inc., because County Court employees have no direct official action authority regarding Brothers Redevelopment, Inc. In addition, the volunteer employees do not have any “substantial employment, contractual or financial interest in that matter.”

Case 18 - 13 - request for advisory opinion withdrawn by requester

Case 18 - 14 - no jurisdiction

A Denver citizen was arrested, charged with misdemeanor assault and given a citation to appear in the Denver County Court at a later date. He appeared on that date, was advised of the charge and was directed to appear in court on February 23 to enter a plea. He advised the Board that he was given a paper by the court, advising that his trial date was set for April 16, 2018 and ordering him to appear in court on that date. However, the Public Defender’s file has a copy of a setting slip, signed by the complainant, setting the jury trial for April 12.

On April 13, 2018, he was stopped by a police officer, who requested his driver’s license and did a warrant check. The warrant check showed that a warrant had been issued earlier that morning for failure to appear for trial, which was set for April 12. He then was taken into custody at the Downtown Detention Facility, where he remained until May 23, 2018, unable to pay the bond set for \$200. On May 23, he pled guilty to the assault charge and a separate petty theft charge and were sentenced to time served and released. He alleged that someone in the County Court altered/falsified the date of the trial setting from April 16 back to April 12, causing him to be wrongfully incarcerated between April 13 and May 23. However, he provided no evidence of such falsification and the court records indicate that he was notified in writing of the proper trial date of April 12, 2018.

On May 25, 2018, the complainant hand-wrote a document entitled “Civil Law Suit” against the “Denver County Court General Sessions Division.” He said in his complaint to the Board of Ethics that he delivered the document to the City Attorney’s office. The essence of the complaint against the City Attorney is that she did not reply to the complainant’s “lawsuit.” However, the “lawsuit” delivered to the City Attorney’s office was not a valid lawsuit, because it was not filed with any court and no filing fee was paid to the court.

It is unfortunate that the complainant, who apparently did intend to appear in court for trial, did not remember the correct court date, failed to appear and, as a result, was incarcerated for 41 days. There is, however, no evidence that the City Attorney violated any section of the Denver Code of Ethics by not doing anything to respond to the “lawsuit” delivered to her office.

The Board of Ethics dismissed the complaint pursuant to Sections 2-56(a) and (b) of the Denver Code of Ethics because the Board has no jurisdiction over matters such as this and because the alleged violation, if true, would not constitute a violation of the Code of Ethics.

Case 18 – 16 (outside employment or business activity)

A Denver firefighter assigned to Denver International Airport requested an advisory opinion. He indicated that all airport personnel must wear an identification badge to enter the secure areas of the airport and that “traditionally, the most common type of ID badge holder is the lanyard type that you wear around your neck,” but he explained that there are many “situations where a lanyard can easily become entangled or pose a safety hazard.” The firefighter advised the Board that he had an idea to invent a badge holder and wallet that can be worn on the arm and that he has obtained written approval for this outside business activity from his chain of command.

He requested the Board of Ethics to “provide authorization for the ID wearable badge holders and wallets to be marketed to other departments within the City and County of Denver and to airport businesses.”

The Board determined that nothing in the Denver Code of Ethics prohibits the firefighter from marketing the wearable ID badge and wallet to other city departments and to businesses and construction workers at Denver International Airport, since he has obtained written approval from his chain of command and so long as he does not use any city time or other city resources for the business pursuant to Section 2-63 of the Denver Code of Ethics. The Board also advised that he should not identify himself as a Denver firefighter in his marketing/advertising and should not communicate with businesses at the airport or other city departments through the city’s communication networks.

Case 18 – 17 (subsequent employment)

A Project Manager for the Denver Department of Public Works Project Development and Community Design Division and the Department of Parks and Recreation worked to support the North Denver Cornerstone Community Collaborative (NDCC) for 3 years and recently resigned from city government to work for the Denver office of an international consulting, planning and engineering firm.

He advised the Board that he just learned that the firm was planning to pursue with Public Works a contract project to develop Bike Facility Engineering Standards and that he would likely be the lead for this pursuit. He requested an advisory opinion about whether he may work immediately for the firm without waiting for 6 months and, in particular, work on the bike facility project, if a contract is awarded to the firm. He advised the Board, however, that:

My previous role at the City was focused on the NDCC area, including the Globeville, Elyria and Swansea neighborhoods, as well as the River North District. To avoid any perceived or real ethical concerns, I plan not to seek any projects or other consulting work related to NDCC (or any other City organization within the geographic boundaries of NDCC) for at least six months.

Subsequent employment is regulated by Section 2-64 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.

Direct official action is defined in the Code of Ethics as follows:

Sec. 2-52. Definitions.

(b) *Direct official action* means any action which involves:

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

In his request for an advisory opinion, the former city employee described two interactions that he had with the firm when he worked for the city.

The Board concluded that the former employee did take direct official action regarding the firm when he worked for the city government by serving on a panel to recommend Capital Project Management on-call contractors, including the firm that now employs him. However, the Board determined that, if the firm is selected by the City for the Bike Facility Engineering Standards project, he may work on that project, but that he should comply with his expressed willingness not to work on any projects or other consulting work related to NDCC (or any other city organization within the geographic boundaries of NDCC) for at least six months following the termination of his employment with the city.

Cases 18- 18 and 18 - 19 (no jurisdiction)

A citizen who works in an office in downtown Denver filed complaints concerning two Denver police officers. She was driving her car and had an accident with a truck in a downtown intersection. The citizen was convinced that the other driver was at fault.

The citizen complained that:

- The officers did not cite the other driver for any type of violation.
- One officer did not accept any photos that the citizen took on her phone.
- The other officer created a “fraudulent, not-to-scale drawing-report” and did not respond to her request to obtain footage of the accident from nearby building security cameras.

The Board of Ethics concluded that these allegations do not have anything to do with the Denver Code of Ethics, which only deals with conduct by Denver city employees and elected officials

related to conflicts of interest, improper gifts, nepotism, employment issues and use of public office for private gain.

The Board of Ethics voted to dismiss both of these complaints pursuant to Sections 2-56(6)(a) and (b) of the Denver Code of Ethics, because the Board of Ethics has no jurisdiction over such matters and the allegations, if true, would not constitute violations of the Denver Code of Ethics.

Case 18-20 (gifts)

A Police Department Commander requested an advisory opinion regarding the offer by a philanthropist to donate approximately \$56,000 in exercise equipment for the gym in a Police district headquarters. The donor and the Police Department would like to route the donation through the Denver Police Foundation, a 501(c)(3) tax-exempt charitable organization.

Acceptance of gifts is regulated by Section 2-60 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 donors 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;..

(c) It shall not be a violation of this article for an officer, official, or employee to solicit or accept donations to the city or to solicit, accept 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, however, that

The Board of Ethics advised the Commander that it will not be a violation of Section 2-60 of the Denver Code of Ethics if the Police Department accepts the donation of exercise equipment from the donor because the donation will be to the City and County of Denver's Police Department, through the Police Foundation, and not to any individual city officers, employees or officials. In addition, Section 2-60(c) provides that it shall not be a violation of the Code of Ethics for city personnel to accept donations to the city.

The Board also reminded the Police Department that Executive Order 134 requires that any city department must report gifts to the city over \$2500 to the Denver Clerk and Recorder.

Case 18 – 21 (subsequent employment)

The Executive Director of the Community Planning and Development Department (CPD) requested an advisory opinion when he resigned from his job with the city and was hired as Chief Executive Officer of the National Western Center Authority (NWCA). CPD deals with planning, zoning, building permits, inspections and historic preservation.

In late 2017, the City Council authorized the establishment of the NWCA and the Mayor appointed a board for the NWCA, with City Council's approval. The NWCA holds a long-term lease on

approximately 250 acres in the Globeville, Elyria and Swansea neighborhoods in Denver and will be responsible for managing and programming the campus, which is envisioned to be a “year-round tourism, event, education and agricultural innovation center.”

In August 2018 the Mayor requested the Director to take the job as CEO of the NWCA.

The Director and also the Executive Director of the National Western Center Office (NWCO), which is a division of the Denver Department of Public Works, advised the Board of Ethics that:

- During his tenure with the Denver city government, he did not take any direct official action on any aspects of the National Western program. The Mayor’s Office of the National Western Center (NWCO) operates under an Executive Order from the Mayor, under which it performs construction and related activities largely independently from City agencies. The NWCO makes Program decisions through a Steering Committee which includes the Western Stock Show Association and Colorado State University partners; however, he never participated with that group.
- He has not participated in the selection of any contractors on the NWC Program.
- He did not participate in drafting meetings with the City Attorney’s Office or with outside counsel.
- He was briefed periodically as a part of the Mayor’s appointee and cabinet groups about the documents and the campus.
- Although planning staff in CPD helped prepare and recommend the Framework Plan for the National Western campus and recommend the rezoning of the campus, after much work by various stakeholders, the final decisions on both were made by City Council.

Subsequent employment is regulated by 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 definition of “direct official action” is:

Sec. 2-52. Definitions.

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

The Board of Ethics determined that the former Director will not violate Section 2-64(a) of the Denver Code of Ethics if he goes to work immediately for NWCA and will not have to wait six months because he will not be taking direct advantage of matters with which he took direct official action during his employment with the city.

In addition, the goals and interests of the City and County of Denver and the NWCA appear to be identical and not in conflict regarding the redevelopment, reuse and programming of the National Western Center. Also, the NWCA is a non-profit government authority and his decisions and actions as CEO will be subject to the oversight of the NWCA board.

Case 18 – 22 (outside business activity) – waiver granted

An Associate City Planner in the Denver Community Planning and Development Department (CPD) requested an advisory opinion. He initially worked in the Development Services Division of CPD, then worked for the Planning Services Division and currently works in the Commercial Zoning Division of CPD.

The planner owns and lives in a home in Denver. The current zoning (E-SU-Dx) will not allow the construction of an accessory dwelling unit in the backyard, although some other single-family zone districts allow them. He is considering applying to have the home rezoned to a single-family zone district that would allow an accessory dwelling unit, such as E-SU-D1 or E-SU-D1x. Assuming that the property is appropriately rezoned to allow an accessory dwelling unit and that such a unit is constructed, he has not yet decided whether he would plan to rent the unit out and earn income from it or not.

Outside business activity is regulated by Section 2-63 of the Denver Code of Ethics:

Sec. 2-63 Outside employment or business activity.

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.

(c) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person.

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

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

The first issue the request raises is whether a city employee who rents out a single accessory dwelling unit in the employee's back yard engages in "outside business activity" that would come under Section 2-63 of the Denver Code of Ethics. Neither the Denver Code of Ethics nor any opinions of the Board of Ethics provide sufficient clarity on that question. Therefore, the Board of Ethics assumed without deciding (one way or another) that renting an accessory dwelling unit constitutes "outside business activity" under Section 2-63.

The next issue the request raises is whether the planner's involvement in a process to rezone his property would be an impermissible conflict of interest under Section 2-61 of the Code of Ethics, which provides:

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...

(c) An officer, official, or employee may represent himself or herself before a city board or commission in accord with such board's procedures, provided that the officer, official, or employee does not also participate in the board's decision in his or her official capacity...

(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 definition of direct official action is:

Section 2-52(b) *Direct official action* means any action which involves:

(1) Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, business loan or other similar instrument in which the city is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision making.

(2) Enforcing laws or regulations or issuing, enforcing, or regulating permits, licenses, benefits or payments... (emphasis added)

The planner did not work in the Residential Permitting Section of CPD, which would need to approve plans for the accessory dwelling unit, or in the Planning Services Division, which manages rezoning issues. The Commercial Zoning section of CPD, where the planner presently works, would have nothing to do with permitting or reviewing or rezoning his property. Therefore, the Board determined that he will have no direct official action power regarding permitting and/or rezoning for accessory dwelling units. Therefore, it would not be an impermissible conflict of interest in violation of Section 2-61 for him to be involved as a property-owner in city processes that would enable the construction of an accessory dwelling unit on his own property. Section 2-61(c) specifically provides that an “employee may represent himself or herself before a city board or commission in accord with such board's procedures, provided that the officer, official, or employee does not also participate in the board's decision in his or her official capacity...”

After considering all of the circumstances of this case, including the need for affordable housing units in Denver, and, assuming without deciding, that the rental of an accessory dwelling unit would constitute “outside business activity” under Section 2-63, the Board of Ethics granted him a waiver, pursuant to Section 2-54(f) of the Code of Ethics. Nevertheless, he must still comply with Section 2-63(e) – “City resources may not be used for any outside employment or outside business activity.”

Case 18 – 23 (outside business activity)

The Chief Building Official in the Denver Community Planning and Development Department (CPD) requested an advisory opinion.

He recently formed a Colorado limited liability corporation (LLC). He advised the Board of Ethics that there are no projects or contracts yet for the LLC and that the primary purpose of the LLC “is to manufacture modular homes in a factory that can then be assembled on a home or construction site...They are built in pieces and assembled at the site...The construction duration is minimal and could be completed within 14 days.”

The business plan for the LLC is that it will sell all of the separate pieces of a home to a customer. The customer will then arrange for the location and personally or through a representative obtain all of the necessary permits and assemble the pieces and arrange for the utilities. “The LLC will not be involved in any permitting or construction...or inspections.” He advised the Board that the City and County of Denver has adopted and complies with the 2015 International Residential Code and, therefore, has little discretion over what residential construction is allowed in Denver.

He said that he will be the chief executive officer of the LLC and that his role “will be focused on a national level and will not target Denver developers or other local entities, which will be performed by another person who has been in the Denver region most of his career.”

He advised the Board that the plan is for the company to donate 3% of its units “to construct homeless shelters for single, pregnant and addicted women.”

He already obtained written approval for this outside business from his appointing authority. He said that he expects to work on this outside business approximately 15 hours per week.

Outside business activity is regulated by Section 2-63 of the Code of Ethics:

Sec. 2-63 Outside employment or business activity.

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.

(d) An officer or employee who has received the written permission of the appointing authority may engage in outside employment or other outside business activity. If, however, the board has rendered an advisory opinion to an officer, employee or official and/or an appointing authority and the board has reason to believe that the officer, employee or official has not complied with the opinion, the board shall notify the appointing authority and the appointing authority shall report to the board in executive session regarding the action, if any, taken with respect to the person...

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

Another issue in this case is whether there is an impermissible conflict of interest, which would violate Section 2-61 of the Code of Ethics, which provides:

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;...

(c) An officer, official, or employee may represent himself or herself before a city board or commission in accord with such board's procedures, provided that the officer, official, or employee does not also participate in the board's decision in his or her official capacity...

(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.

One of the elements in the definition of “direct official action” is Section 2-52(b)(2) – “enforcing laws or regulations or issuing, enforcing or regulating permits, licenses, benefits or payments.”

The Board of Ethics determined that he would violate Section 2-61 if he (a) has any involvement as Denver’s Chief Building Official, in the permitting, development, construction or problem-resolution of any LLC project in the City and County of Denver or (b) supervises anyone else in CPD who does so or (c) assists any purchasers of LLC manufactured modular homes to obtain permits, licenses or other approvals from the City of Denver. However, if the LLC is not in any way involved in the Denver permitting process for any of its homes/units located in Denver, he would not be involved in taking any direct official action regarding the company or his business associates and, therefore, he would not violate Section 2-61.

The Board advised him that he will not violate Section 2-63 or Section 2-61 of the Denver Code of Ethics so long as he:

- Obtains written approval from his appointing authority for the outside business on an annual basis.
- Uses no city resources, such as city time, computers, paper, telephone, etc., for his outside business.
- Has nothing whatsoever to do in his city position with permitting, inspections, construction or arranging for utilities for the LLC’s customers.
- Has nothing whatsoever to do in his city position with permitting, inspections, construction or arranging for utilities for any fabrication plant of the LLC inside the City and County of Denver.
- Recuses himself from any attempt at problem-resolution if any problems occur on any projects of the LLC’s Denver customers.
- Does not mention in any advertising for the LLC his employment by the City and County of Denver.

Case 18 – 24 (supervision of immediate family) - waiver granted

The director of a division of a city department requested an advisory opinion and/or waiver. The division recently hired from the outside a new section supervisor, who lives with an employee of that section. As the director explained to the Board:

In order to manage the supervisory relationship with staff and avoid any opportunity for or perception of bias between the supervisor and his staff as a result of his supervision of his girlfriend/employee, the division is taking the following steps:

1. The supervisor will not have any input on the employee’s performance
2. The supervisor will not have any input over disciplinary or promotional actions related to the employee
3. The supervisor will leave the room when any disciplinary or other specific conversations regarding the employee occur
4. The employee and supervisor will not be scheduled on the same shift to the extent that this can be avoided although some overlap will always occur because of shift schedules.

The director requested an advisory opinion “on our approach to managing the perception and activities associated with the supervisor/employee relationship.”

Hiring and supervision of immediate family members is regulated by Section 2-59 of the Denver 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. (emphasis added)

The definition of immediate family is as follows:

Section 2-52(c) *Immediate family* means husband, wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, father or mother-in-law, son or daughter in-law, brother or sister in-law, aunt, uncle, nephew, niece, grandmother, grandfather, grandchildren, brother, sister, domestic partner, any person with whom he or she is cohabiting and any person to whom he or she is engaged to be married. The term includes any minor children for whom the person or his or her domestic partner provides day-to-day care and financial support. A "domestic partner" is an unmarried adult, unrelated by blood, with whom an unmarried officer, official, or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses. (emphasis added)

Supervision by the supervisor of the employee with whom he is cohabiting would violate Section 2-59 of the Code of Ethics. However, the Board decided to grant a waiver to the supervisor pursuant to Section 2-54(f) of the Code of Ethics to permit him to have the very minimal degree of supervisory contact with the employee as described in the detailed letter to the Board from the director. Because of the facts that 1) the division had a vacancy for this supervisory position for

more than nine months; 2) the supervisor is highly qualified for the position and 3) the division had two different recruitment processes before hiring the supervisor, the Board concluded that such a waiver would be in the best interests of the city.

Case 18 – 25 (outside employment)

A lieutenant in the Denver Fire Department (DFD) who is considering running for a seat on the Denver City Council requested an advisory opinion as to whether this would comply with the Denver Code of Ethics.

If he is elected to City Council, he will retire from the Fire Department.

Section 2-63 of the Denver Code of Ethics should be considered regarding any political office which pays a salary or other type of payment. Denver City Council members receive a yearly salary. However, since he will retire from DFD if he is elected, he is not required by Section 2-63 to obtain written permission from the Fire Chief.

The Board of Ethics concluded that the Denver Code of Ethics does not prohibit the lieutenant from being a candidate for the Denver City Council. However, he must not use any DFD resources, including city time, paper, computers, etc., on campaign activities, as he has already agreed.

After discussing the issue of “job trade” with the lieutenant, the Board learned that, if he trades a job shift with another firefighter, which is common practice in DFD, he would not be on-call for DFD during those traded shifts and such trades would be documented by DFD’s Telestaff time-keeping system. Therefore, the Board indicated that it does not believe that there would be an ethical problem if he campaigns for office on a job shift which he has traded with another firefighter through the Telestaff process.

Cases 18-26 and 18-27 (no jurisdiction)

Two citizens filed separate complaints concerning a manager in the Elections Division of the Clerk and Recorder’s Office. The citizens signed up to serve as election judges for the few weeks before the November 6, 2018 election. The Election Division of the Denver Clerk and Recorder’s Office manages all Denver elections, including hiring election judges, running election centers around the city and counting ballots.

The complainants both spent a couple of days being trained as election judges and then were both assigned to work at an election center. They both expected to work through November 6; however, they both were terminated on October 24, 2018. They claimed that the terminations were for “invalid reasons” and that they were “fired unjustly.”

The Board of Ethics concluded that the issues the complainants raised are not addressed by the Denver Code of Ethics. They are personnel and/or civil disputes, which the Board of Ethics has no jurisdiction to resolve.

The Board dismissed the complaints 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 the alleged violations, if true, would not constitute violations of the Code of Ethics.

