MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004–1609
(212) 487–5300
FAX (212) 487–5349
www.vote.nyc.ny.us

AGENDA
COMMISSIONERS MEETING
TUESDAY, JUNE 2, 2009
AT 1:30 P.M.

1. Minutes
   a) 05/12/09
   b) 05/26/09

2. Marcus Cederqvist
   a) HAVA Update

3. Steven H. Richman
   a) Dates for Commissioners' Hearings – Designating and OTB Petitions for the September 15, 2009 Primary Election
   b) Temporary Additional Staff for the Office of the General Counsel during Fiscal Year 2010

4. John Ward
   a) Comparative Expenditures
   b) FY10 PS Spending Plan

5. Executive Session
   a) Personnel Matters

For Your Information

- Letter to Hon. Ann T. Pfau, Chief Administrative Judge – Office of Court Administration, State of New York
- The Ethical Times – Volume 11, Issue 2
- NYS Board of Elections Weekly Status Report for the Week of May 21, 2009 through May 28, 2009
- Pilot Program and 6210 Regulations
- Special Term for Election Matters – June 2, 2009 Special Elections – 77th and 85th Assembly Districts – Bronx County
- Letter from the U.S. Department of Justice, Civil Rights Division
- 18 Counties to Scrap Voting Machines
- Marshall 2nd Circuit Decision
- Colville Charles v. Board of Elections in the City of New York – Case No. 10133657
- Department of Justice Pre-Clearance Submissions Numbered 2009-CW-01 & 2009-K04

News Items of Interest

- *The New York Times:* City Resists State on Voting-Machine Program
- *New York Law Journal:* Spending for Lobbyists Again Rises, but Report Says Growth Slows

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May 28, 2009

TO: The Commissioners of Elections

FROM: Steven H. Richman, General Counsel

COPIES: Marcus Cederqvist, George Gonzalez, Pamela Perkins, Joseph LaRocca, John Owens, Steven Denkberg & Charles Webb

RE: DATES FOR COMMISSIONERS' HEARINGS – DESIGNATING AND OTB PETITIONS FOR THE SEPTEMBER 15, 2009 PRIMARY ELECTION

In order to prepare the petition rules and calendar booklet for public distribution, THE COMMISSIONERS MUST DETERMINE THE DATES OF THEIR HEARINGS ON SPECIFICATIONS OF OBJECTIONS AND RELATED MATTERS FOR THE SEPTEMBER 15, 2009 PRIMARY ELECTION.

Please note that in discussions with the non-judicial staff in each judicial district and Appellate Division within the City of New York, I have been advised that the Court of Appeals has scheduled any appeals in election matters for August 26, 2009. Accordingly, the Appellate Divisions will hear election matters on August 18, 2009 (and August 19, 2009 if necessary) and the Supreme Court must conclude their proceedings by Friday, August 14, 2009.

Pursuant to the Election Law, he Calendar of Filing Dates provides that Midnight, Monday, July 27, 2009 is the last possible day to file Specifications of Objections to designating petitions. Monday, August 3, 2009 is the last possible day to file Specifications of Objections to OTB petitions. The last day to institute a judicial proceeding regarding a designating petition is Thursday, July 30, 2009 or (3) business days after BOE hearing where petition is invalidated. The last day to institute judicial proceedings relating to OTB petitions is August 6, 2009 or (3) business days after BOE hearing where petition is invalidated.

In light of the foregoing and the requests from the non-judicial staff in each Judicial District that the Board conclude its consideration of specific objections and related matters as early as possible, I recommend the following dates for your hearings:

Thursday, July 30, 2009 and Friday, July 31, 2009
for designating petitions and

Tuesday, August 11, 2009 at 1:30 PM
for OTB petitions.

Thank you for your consideration and understanding.

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June 1, 2009

TO: The Commissioners of Elections in the City of New York

FROM: Steven H. Richman, General Counsel
John Owens, Director of Campaign Finance Enforcement

COPIES: Marcus Cederqvist, George Gonzalez, Pamela Perkins, Stewart Lieberman, John Ward, Steven Denkberg & Charles Webb

RE: Temporary Additional Staff for the Office of the General Counsel during Fiscal Year 2010 for the 2009 Primary (including potential Run-Off Primary), General Elections and Related Matters

For the last eight years, following extensive staff consultations as well as consideration, review and approval by the Commissioners, the Board contracted for two temporary legal support positions to assist the Office of the General Counsel in the performance of the multiple functions this office and the Board are required to perform during the busy election season. We used this method to enable the Board to be competitive with other city agencies, let alone private firms.

This year, following discussions and consultations with the Executive Director, the Deputy Executive Director and the Administrative Manager, we agreed that the Board would again be best served by retaining the services of an outside legal staffing agency to provide the temporary legal

staffing we need for the 2009 Primary and General Election as well as the implementation of a new voting system.

Pursuant to your direction following submission of my April 20, 2009 Memorandum to the Commissioners and your authorization at your meeting held on April 21, 2009, the Office of the General Counsel began the process and submit this recommendation to the Commissioners for their consideration and approval, in accordance with Section 3-08 of the Procurement Policy Board Rules ("Small Purchases").

Please note that based on our prior experience, both Mr. Owens and I firmly believe that recently admitted attorneys would be of more assistance than para-legals. Many of your recall from your own contacts with them over the past years that young yet competent, qualified and dedicated attorneys were able to contribute to our ability to successfully complete are assigned mission in a most difficult year.

Accordingly, by letter dated May 11, 2009, [copy attached] I contacted seven (7) temporary legal staffing agencies and asked them to submit proposals. Five responded. The Board has received proposals from the following agencies (in alphabetical order) for newly admitted attorneys:

A. HIRE Counsel [$ 27.33 per hour];

B. LSP [$35 per hour (not admitted); $47 per hour(admitted);

C. Peak Counsel [$28 per hour];

D. Premier Group [$32,78 per hour];

E. Staffing Ease [$28 – 32.50 per hour, depending on experience].

[Note: DeNovo Legal and Special Counsel did not respond to our request for a bid this year.]

Each temporary agency's compete submission is on file in the Office of the General Counsel. I want to call your attention to the fact that the bids submitted for the upcoming fiscal year are lower than lose submitted for the current fiscal year, which ranged from $42 to $50 per hour.

After review and discussion with other attorneys who have used the services of all these agencies, including other city and state government entities, I am confident that each are qualified agencies. Premier has provided the Board with a temporary staff for the Executive Office (most recently last fall to assist with processing voter registrations). Mr. Owens and I share a concern that the bid submitted by HIRE for a rate of $27.33 per hour is lower than all of the others and may impact on their ability to provide the Board with competent, qualified temporary attorneys. Similarly, LSP's bid submitted bid is considerably higher than all the others submitted.

Please note that our providers for 2001 and 2002 no longer are in this field and the firm that provided us with attorneys in 2003 and 2004 has closed its New York City office and moved its operations in Washington, D.C. Staffing Ease was selected for the last four years (on the basis of quality of the attorneys provided as well as a low range bid for temporary attorneys]. Phil Stupak and Donovan Rinker-Morris in 2005, Josh Russell, Hani Khalil and Alex Gross in 2006, Jack Courtney in 2007 and 2008 and Randi Rosen during the current fiscal year proved to be outstanding additions to our team.

Based on the dollar amounts submitted and our experience during the prior years, we recommend that we go with the firm that provided us with quality temporary attorneys and submitted a bid in the low range for newly admitted attorneys, **STAFFING EASE.** As our second choice, we would recommend the Premier Group, based on their work in providing the Board with qualified temporary staff for non-legal activities as well as the reasonable nature to their bid amount.

Based on the Office of General Counsel's experience during the last two municipal elections, and given the anticipated level of political activity, The Office of the General Counsel would use these temporary staff members for an average of 40 - 45 hours a week (40 hours at base rate, overtime at time and one-half) resulting in total weekly cost of approximately $ 3,100 a week per person for approximately 26 weeks ($80,000 to $85,000 total through the conclusion of the General Election canvass). Please be

advised that the Office of the General Counsel will, as it has done in prior years, continue to work to control costs so that the total cost does not to exceed $100,000 for the fiscal year (absent extraordinary circumstances or events). Please note that this amount is included in our projected Fiscal Year 2010 OTPS allocation.

Therefore, we respectfully request that you authorize the Board staff to proceed.

Upon your authorization and approval, the Board will execute a Memorandum of Agreement, file the required information with the Comptroller's office, have the agency select individuals for our review, make our selections and have them here on Wednesday, July 1, 2009.

Thank you for your cooperation and understanding in this matter.

Attachment

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srichman@boe.nyc.ny.us

May 11, 2009

Dear M :

RE: Request for proposals to provide temporary additional legal support services for the Office of the General Counsel during the period of July 1, 2009 through November 2009 (2009 Primary and General Election Matters)

The Board of Elections in the City of New York is seeking proposals from vendors to provide temporary additional legal support services for the Office of the General Counsel during the period of July 1, 2008 through November 21, 2008, for the 2008 Primary and General Elections. Please note that the end date is subject to change, due to the uncertainty of the election administration process.

These two (2) temporary additional legal support staff members should be recent graduates of an ABA accredited law school, and/or newly admitted attorneys here in the State of New York. These temporary legal support staff members will assist the Board's Office

of the General Counsel and the multiple functions it performs during the upcoming election season during fiscal year 2009 in order to assist the Board in fulfilling its statutory responsibilities.

The major functions of the temporary legal staff members will be:

(a) document review – review of election documents filed with the Board (petitions, cover sheets certificates, specifications of objections, et. al.) to insure compliance with and conformance with the New York State Election Law and the Rules adopted by this Board;

(b) legal research – conduct research on election law issues in order to assist the Board in making its determinations on the validity of objections as well as the preparation of materials for use in judicial proceedings;

(c) reporting on results – following review of said election documents, prepare reports for presentation to the Commissioners on their findings and recommendations for action;

(d) records management – coordinate the review and disposition of all materials insuring an accurate record of said custody

(e) communication of determinations – prepare for the General Counsel's review written communications which sets forth the Commissioners' determination in each matter for all parties involved;

(f) assist in the operation of the Office of the General Counsel, including responding to telephone inquiries, persons appearing at the office as well as assisting the General Counsel and permanent staff in the performance of related tasks;

(g) attending judicial proceedings as observers on behalf of the Board and/or assisting the General Counsel or other permanent legal staff in representing the Board either at administrative hearings or judicial proceedings.

(h) correspondence preparation – prepare written communications to various parties outlining the Board

The Board believes that persons with law school training would be of more assistance than paralegals. Based on our experience with temporary legal staff during the last few years, I anticipate that we would use these staff members for at least 40 hours a week. In addition, some weeks (petition filing, pre-election day) may involve more than 40 hours.

In addition, on Primary Day, September 15, 2009 and on the General Election Day, November 3, 2009 (and if there is a Citywide Runoff Primary on September 29, 2009), these temporary legal staff members would be expected to work from 5:30 AM until the close of the polls and the preliminary tabulation of results (approximately midnight).

SUBMISSION OF PROPOSAL

Please note that a prompt response is essential. We must complete the selection process by Thursday, May 21, 2009 so that the Commissioners of the Board of Elections can approve the staff recommendation of a firm and permit my colleagues and I to interview candidates recommended by the selected firm. This office will then makes its selection and the temporary legal staff members will begin working here at the Board on Tuesday, July 1, 2009, just seven working days before the start of the petition filing process. During the period of July 1, through July 10, 2009 we will give the temporary legal staff members an orientation and training session with respect to their duties here at the Board.

DEADLINE FOR SUBMISSION

Therefore, I request that if you are interested, please submit a written proposal no later than **the close of business (5:00 PM, EDT) on Thursday, May 21, 2009** to my attention here at the Board, (it can be delivered by hand, regular mail, e-mail or via fax), setting forth the rates that your firm would charge to provide the temporary legal services described herein. Please be so kind as to indicate if different rates apply to the different categories of temporary employees as I have outlined above.

I want to thank you in advance for your cooperation and understanding in this matter. If you have any questions, please call me at (212) 487-5338. My telefax number is (212) 487-5342. My e-mail address is: srichman@boe.nyc.ny.us

Very truly yours,

STEVEN H. RICHMAN
General Counsel

Copy: Marcus Cederqvist, Executive Director
George Gonzalez, Deputy Executive Director
Pamela Perkins, Administrative Manager
Elliot Borak, Agency Chief Contracting Officer
John Ward, Finance Officer

BOARD OF ELECTIONS
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DATE: June 02, 2009

TO: Commissioners

FROM: John J. Ward
Finance Officer

RE: Comparative Expenditures

FY09	P.S. Projection through 5/29/09 Payroll:	$18,155,500
FY09	P.S. Actual through 5/29/09 Payroll:	$23,886,688
	Difference	($ 5,731,188)

Overtime pays two weeks ending 5/15/09

OVERTIME USAGE

General Office		25,125
Brooklyn		15,880
Queens		15,123
Bronx		7,782
New York		59
Staten Island		183
	Total	$64,152

Respectfully submitted,

Finance Officer

Office of Management and Budget

Monthly P.S Computation Report - Form A

(in thousands of dollars)

Agency : Board of Elections

Prepared by : John Ward

Phone : 212 487-5326 Date : 6-2-09

F.Y. 10 Agency No. 003 U/A 001

Related to Plan Condition: INITSPLANB509

Reserve (in $000s):

PAYROLL
1. Weekly ☐
2. Bi-Weekly ☑
3. Semi-Monthly ☐
4. Monthly ☐

PERSONNEL TYPE
1. Regular ☑
2. Uniformed ☐
3. Pedagogical ☐

CONTROL CATEGORY GROUP
200 CD ☐
300 Intra-City ☐
500 Other Categorical ☐
600 IFA ☐
700 100% State/Fed ☐
800 Water Authority ☐
OTH City/Mixed ☑

Note: Do not use the shaded areas on this spreadsheet.

DESCRIPTION	OBJECT CODES	SPOG	JULY	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	P-JUNE	TOTAL
Beginning Full Time Normal Gross Payroll			511	511	511	511	511	511	511	511	511	511	511	511		
Additions To Beginning Payroll																
Salary Adjustments																
Additions																
Other Additions																
Deductions From Beginning Payroll																
Separations																
Other Deductions																
Ending Full Time Normal Gross Payroll																
Number of Payrolls In the Month			2	3	2	2	2	2	3	2	2	2	2	2		13,286
Monthly Payroll			1022	1533	1022	1022	1022	1022	1533	1022	1022	1022	1022	1022	332	10
Deductions/Additions For Accrual			(322)													13,296
Total Full Time Normal Gross	001, 004, 005		700	1533	1022	1022	1022	1022	1533	1022	1022	1022	1022	1022		
Number of Full Time Positions																
Beginning Number of Full Time Positions																
Add: New Hires																
Less: Separations																
Ending Number of Full Time Positions																
Non Full Time Normal Gross																
Other Salaried (Part-Time, Seasonal)	021, 022	OTS														
Unsalaried	031, 035	UNS	175	175	225	175	225	109	60	60	60	60	50	40		1414
Additional Normal Gross																
Overtime	047, 048		350	400	300	250	275	275	175	125	125	125	120	100		2620
Differentials	040 - 044	DIF	7	10	7	7	7	7	9	7	7	7	7	7		89
Holiday Pay	045															
Terminal Leave	046															
Other Adjustments	049, 050, 052, 054 - 061, 073, 091, 099	ADG														
Lump Sums To Be Scheduled	051, 053	TBS														
Non Payroll Personal Service																
Fringe Benefits	062 - 069, 081, 085 - 089	FRB			31			31			31			31		124
Pensions	070 - 072, 074 - 080, 082 - 084, 094	FRB														
Total Personal Service During Month			1232	2118	1585	1459	1529	1444	1777	1214	1245	1214	1199	1200	332	17,543

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June 2, 2009

Hon. Ann T. Pfau
Chief Administrative Judge
Office of Court Administration
State of New York
25 Beaver Street
New York, NY 10004

Dear Chief Administrative Judge Pfau:

I am writing to you on behalf of the Board of Elections in the City of New York. We respectfully request that your office once again convene a meeting with the appropriate Judges and staff of the Office of Court Administration (OCA) and the Commissioners and staff of this Board of Elections to discuss, plan and review procedures to be established for the September 15, 2009 Primary Election and possible citywide Runoff Primary on September 29, 2009.

Please note that in both 2001 and 2005, through the cooperative efforts of your office (and then Chief Administrative Judge Jonathan Lippmann), special procedures were implemented with respect to Post-Primary judicial activities that would impact on the Board's ability to:

(a) determine if a Runoff Primary is required for any of the three citywide offices (Mayor, Comptroller and Public Advocate); and

(b) conduct such a required Runoff Primary(s) on September 29th.

Specifically, a single Justice of the New York State Supreme Court was designated to hear any applications relating to the canvass and recanvass of votes in the September primary that could affect the canvass/recanvass for any of the citywide offices that could require a run-off Primary Election. In 2001 OCA designated Justice Steven W. Fisher, and in 2005, Justice Leslie G. Leach was designated. Also, the Office of Court Administration developed a contingency plan to provide additional Justices and judicial support personnel to supervise any contested canvass or recanvass in each of the City's five boroughs, in order to help insure that a Runoff primary could be conducted, if needed. These procedures were implemented using Administrative Transfer Orders issued by the Deputy Chief Administrative Judge for Courts in New York City.

As we all now know, the events of September 11, 2001 resulted in unique and extraordinary circumstances including the rescheduling of both the Primary and Runoff Primary that year. It is clear that the extensive consultations between your office and colleagues and the Board as well as our mutual pre-planning efforts enabled all of us to respond in an effective fashion to those events, which we hope and pray will never have to be repeated. In 2005, those efforts were also of great assistance in enabling the Board to promptly canvass the votes cast in the Primary Election and determine that a run-off Primary Election was not required under Section 6-162 of the New York State Election Law, while protecting the rights of all candidates, including those in very close contests.

Once again, the Board anticipates that there will be a significant number of contested Primary elections throughout the City in September 2009. This increases the potential for litigation which could impact on the Board's ability to determine the outcome of a

specific citywide primary, the need for a Runoff Primary and the ability to conduct such a Runoff Primary fourteen (14) days after the first Primary.

Therefore, the Board respectfully requests that in this municipal election year, we again undertake the process that proved successful in 2001 and 2005.

Please be so kind as to have a member of your staff contact me to set a time for our first meeting for this election cycle at your earliest possible convenience.

On behalf of the Board of Elections in the City of New York, I want to thank you and your colleagues at the Office of Court Administration for their continuing cooperation and assistance. We look forward to continuing to work with you and your colleagues in 2009, as we all seek to insure that the rights of all of New York City's voters are protected and their ability to cast their ballots preserved and enhanced.

With sincere best wishes, I am

Very truly yours,

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

By: _____
STEVEN H. RICHMAN, GENERAL COUNSEL

Copy: Hon. Fern A. Fisher, Deputy Chief Administrative Judge
for New York City Courts
Maria Logus, Esq., Chief of Staff, Office of the Deputy Chief
Administrative Judge for New York City Courts

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

Commissioners of Elections in the City of New York
Marcus Cederqvist, Executive Director
George Gonzalez, Deputy Executive Director
Pamela Perkins, Administrative Manager
John Owens, Director, Campaign Finance Enforcement
Steven Denkberg, Counsel to the Commissioners
Charles Webb, III, Counsel to the Commissioners
Joseph LaRocca, Coordinator, Candidate Records Unit

THE NEW YORK CITY LAW DEPARTMENT

Michael A. Cardozo, Esq., Corporation Counsel of the City of New York
Thomas Crane, Esq., Assistant Corporation Counsel of the City of New York in charge of the General Litigation Division
Stephen Kitzinger, Assistant Corporation Counsel of the City of New York

F.Y.I.

Marcus Cederqvist

From: Alexander Kipp [Kipp@coib.nyc.gov]
Sent: Monday, June 01, 2009 3:56 PM
To: Alexander Kipp
Subject: The Ethical Times--Volume 11, Issue 2

Hello,

Attached you will find the latest edition of the Conflicts of Interest Board's newsletter, *The Ethical Times*. This edition includes an article on political activities and the Conflicts of Interest Law, as well as summaries of recent enforcement cases. Also included are summaries of two recent advisory opinions, one on the use of City vehicles by elected officials, and another on City Council discretionary grants and avoidance of potential conflicts of interest. Please forward it along to anyone you think would/should be interested.

Best,

Alex Kipp
Director, Training & Education Unit
NYC COIB
212.442.1421
kipp@coib.nyc.gov

Volume 11, Issue 2—June 2009

Ethics lights the way to good government

The Ethical Times

A publication of the New York City Conflicts of Interest Board

Harold Lehmann, Editor

Political Activities

By Sung Mo Kim

Question: *I am a City employee. There is a candidate for City-elective office who I think would do a good job for my community. I want to contribute and start volunteer work for her campaign. My volunteer work would involve passing out leaflets in my neighborhood, attending rallies, and making calls to voters. Am I permitted to engage in such political activities?*

Answer: Contributing to a campaign, passing out leaflets in your neighborhood, attending rallies, and making calls to voters are generally OK. Of course, there are some common-sense restrictions. For example, you must perform these activities on your own time, not on City time. And you can't use City resources, such as computers, phones, fax, copiers, letterhead, or personnel. In addition, to ensure that election politics are separate from City employment, you may not even ask your subordinates to participate in or contribute to a campaign.

Question: *I understand that I may not ask my subordinates to contribute to a campaign and that I may not coerce fellow employees to contribute to a campaign. But may I ask people with whom I have no dealings in my City job to contribute to a campaign?*

Answer: Fundraising on behalf of a candidate is generally OK, unless you are a high-ranking appointed official, in which case you are prohibited from requesting any person to make a contribution to a candidate for City elective office or to a City elected official running for any elective office (e.g., a City Council Member running for the State Assembly).

Question: *What if the campaign offered to pay me for some of my work. Would that be OK? Do I need obtain one of those moonlighting waivers?*

Answer: Working for a campaign, even for one that receives Campaign Finance Board funding, and getting paid for such work is generally OK, and you don't need to obtain a moonlighting waiver for such work. But you must comply with the restrictions outlined above about not using City time or resources in connection with this work, and you must follow any additional rules your own agency may have about outside employment. You must also make sure you do not communicate with any City agency, such as the Campaign Finance Board, on behalf of the campaign for which you work.

Question: *What if I want to run for elective office and keep my City job?*

Answer: The answer here can get a little complicated because, in addition to the City's conflicts of interest law, candidates for elective office may also be subject to Mayoral Directive 91-7 and the federal Hatch Act. Therefore, if you're planning to run for elective office, we suggest you call the Conflicts of Interest Board for further guidance.

Question: *There appears to be more restrictions on high-level public servants. Are there other restrictions that apply to high-level public servants that I should be aware of?*

Answer: Yes, in addition to not being able to fundraise for candidates for City elective office or for a City elected official running for any elective office, high-level public servants may not hold the position of district leader, be a member of a national or state committee of a political party, serve on the executive board of a county committee, or have any position higher than these positions.

If you have any questions about whether your political activities would create a conflict of interest, call the Conflicts of Interest Board at 212-442-1400 and ask for the attorney of the day. You can also email us through our website (http://www.nyc.gov/ethics) by clicking on "Contact COIB." All calls and emails are confidential, and you may contact us anonymously.

* * *

Sung Mo Kim is Deputy General Counsel at the New York City Conflicts of Interest Board.

Recent Enforcement Cases

▶ The Board fined a FDNY firefighter $1,000 for attempting to use his position to avoid receiving a parking ticket for illegally parking near a fire hydrant.

▶ The Board issued a public warning letter to a DOE Assistant Principal for hiring her brother to work as a teacher in her department and approving his timesheets.

▶ The Board, the DOE, and the DOE Division of School Facilities concluded a settlement in which a Custodian Engineer received a DOE-imposed penalty valued at more than $7,904 for, among other misconduct, removing two 55-gallon drums without permission from a DOE school for his personal use.

▶ The Board and DSNY concluded a three-way settlement with a Sanitation Worker who sold unauthorized DSNY merchandise for personal profit from his personal vehicle outside of a DSNY garage on City time.

(cont'd on back, first column)

Recent Enforcement Cases

▶The Board fined an Administrative Engineer for DEP $6,000 for representing his private plumbing business in business dealings with DOB on more than 232 occasions and attending DOB inspections of his private plumbing work during his DEP work hours.

▶The Board concluded a settlement in which it accepted an agency-imposed penalty of a 13-day suspension, valued at $1,466, against a Case Manager for HRA for using her position to enable her husband, a real estate broker, to earn a rental fee from an HRA client.

▶A former Caseworker for HRA who used HRA letterhead to misrepresent her income to HUD was sentenced in U.S. District Court to two years' probation, six months' home confinement and was ordered to pay restitution in the full amount that she had defrauded the government, $41,035.

▶The Board and the HRA have concluded a three-way settlement with an HRA Food Stamps Eligibility Specialist who agreed to an eleven work-day fine and a $400 fine payable to the Board, for a total financial penalty of $2,071 for using City time and City resources to do work for his private business.

▶The Board fined a former Assistant Supervisor for the OPA Garnishment Unit $2,000 for using her City position and City resources to lower the amount of money garnished from her brother's City salary.

▶The Board issued a public warning letter to a Special Project Coordinator at Parks for serving without approval as the volunteer President of a non-profit with business before the City, and for misusing City time and resources on behalf the non-profit.

▶The Board fined an ALJ at the Parking Violations Bureau $750 for providing free legal representation to his supervisor.

▶The Board and DOHMH concluded a three-way settlement in which a DOHMH Principal Administrative Associate was suspended by DOHMH for five days, valued at $817, for using City resources to do non-City work during times when she was required to be working for DOHMH.

▶The Board fined the former Director of Special Projects at OCME $3,250 for using City resources and his City position to perform work related to a private consulting venture.

▶The Board and DOHMH concluded a three-way settlement with a Coordinating Manager in the DOHMH Bureau of Health Care Access and Improvement in which she was suspended for twenty-five days, valued at $5,000, for using City time and City resources for an outside business and to complete an online defensive driving course.

▶The Board fined the Director of Facilities Management for the Division of School Facilities at DOE $1,150 for using subordinates to perform a personal favor for him using a City vehicle.

▶The Board and HRA have concluded a three-way settlement in which an HRA Job Opportunity Specialist was fined twenty-one-days' pay by HRA, valued at $3,074, for accessing confidential information about her mother and attempting to expedite her mother's request for a reimbursement check from HRA.

▶The Board fined a former Senior Inspector for the Enforcement Division at DCA $4,000 for accepting money from a gas station owner whose station he was inspecting as part of his official DCA duties.

▶The Board fined the former Director of SLA $12,000 for making compensated appearances, in the form of numerous e-mails, on matters of interest to clients of his law firm.

▶The Board fined the former Director of SEQRA Coordination and the Watershed Management Program for DEP $2,000 for violating the "lifetime particular matter ban."

▶The Board fined a former DHS Attorney $2,000 for providing resume services to a DHS Security Officer during City hours, and for making a job inquiry on his behalf via e-mail.

▶The Board fined a former ACS Child Protective Specialist $6,626.04 for using her City-issued cellular telephone to make over 1,000 personal telephone calls, amounting to a $6,126.04 telephone bill for which she failed to reimburse ACS.

▶The Board fined a Senior Electrical Estimator for the DSNY $1,000 for twice submitting bids for contracts with Parks and Recreation on behalf of his private electrical company.

▶The Board fined a Deputy Chief of EMS for the FDNY $500 for using a City-owned FDNY vehicle for unauthorized personal purposes.

▶The Board and HRA concluded a three-way settlement in which an HRA Principal Administrative Associate was suspended by HRA for 60 days, valued at $8,232, for approving her mother's food stamp application and authorizing a food stamp case be opened for her mother.

Recent Advisory Opinions

2009-1: Elected Officials for whom the NYPD has determined that security in the form of an official vehicle and security personnel is required may make any lawful use of the official vehicle and security personnel for personal purposes, including pursuit of outside business or political activities, without any reimbursement to the City, provided that such use is not otherwise a conflict of interest and further provided that the Elected Official is in the vehicle during all such use. Elected Officials for whom security protection has not been mandated by the NYPD, but whose duties require them to be constantly available to respond to the needs of constituents and to public emergencies, may make any lawful use of their allotted City vehicles and/or drivers within the five boroughs, including pursuit of outside business of political activities, without reimbursement to the City, provided that the use is not otherwise a conflict of interest and further provided that the Elected Official is in the vehicle during all such use.

2009-2: The Board considered the sponsorship of discretionary funding awards by Members of the City Council to community based organizations and discussed a number of situations where, in light of the sponsoring Member's affiliation with the proposed recipient, such awards would and would not be permissible. Where the Council Member serves the organization as a paid employee, sponsoring an award for the organization would be impermissible. Where the Council Member serves, in his or her private capacity, as a member of the organization's board of directors, sponsoring an award for the organization would likewise be impermissible; however, where the Member serves on the organization's governing board as part of his or her Council responsibilities, sponsoring an award for the organization would not violate the conflicts of interest law. Where a member of the Council Member's family serves the organization as a paid employee, sponsoring funding for the organization will be permissible only where the proposed funding does not appear reasonably likely to provide a material benefit to the family member. Where, in contrast, the Member's family member serves the organization as an unpaid member of its board of directors, the Member will not violate the conflicts law by sponsoring funding for the organization.□

Interested in more information?

Get in touch with COIB's Training & Education Unit to arrange a class in Chapter 68 for you and your staff. Contact Alex Kipp, Director of Training, at kipp@coib.nyc.gov

The New York City Conflicts of Interest Board
2 Lafayette Street
Suite 1010
NYC 10007

Phone: 212-442-1400
Fax: 212-442-1407
TDD: 212-442-1443
www.nyc.gov/ethics

A searchable index of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School at:

http://www.citylaw.org/cityadmin.php

Selina Williams

From: George Gonzalez
Sent: Friday, May 29, 2009 12:30 PM
To: *Commissioners
Cc: *Chief & Deputy Chief Clerks (all); *Managers; *ExecSupportGroup
Subject: FW: 5-29-09 Status Report

Attachments: 5-29-09 Status Report.pdf

5-29-09 Status Report.pdf (67 ...

Dear Commissioners,

Attached, please find the State Board's weekly report to the court for the week ending May 29, 2009.

George González
Deputy Executive Director
Board of Elections
32 Broadway - 7th Floor
New York, NY 10004
212.487.5403 - phone
212.487.5349 - fax
ggonzalez@boe.nyc.ny.us

——Original Message——
From: ROBBYANN MITOLA [mailto:RMITOLA@elections.state.ny.us]
Sent: Friday, May 29, 2009 11:50 AM
To: ANNA SVIZZERO; JOHN CONKLIN; KIMBERLY GALVIN; PAUL COLLINS; ROBERT BREHM; ROBERT WARREN; STAN ZALEN; TARRY BREADS; TODD VALENTINE
Subject: 5-29-09 Status Report

Attached is the weekly HAVA Compliance Update for the week ending May 29, 2009.

Thank you.

Have a great weekend!
RobbyAnn

State of New York
STATE BOARD OF ELECTIONS

James A. Walsh
Chair
Douglas A. Kellner
Chair
Gregory P. Peterson
Commissioner
Evelyn J. Aquila
Commissioner

40 STEUBEN STREET
ALBANY, N.Y. 12207
Phone: 518/474-6367 Fax: 518/486-4546
website: www.elections.state.ny.us

Todd D. Valentine
Executive Director
Stanley L. Zalen
Executive Director
Kimberly A. Galvin
Special Counsel
Paul M. Collins
Deputy Counsel

May 29, 2009

Honorable Gary L. Sharpe
United States District Court
for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, New York 12207

Re: *United States v. New York State Board of Elections, et al.*
Civil Action No. 06-CV-0263 (GLS)

Dear Judge Sharpe,

We enclose herewith Status Report of the Defendant New York State Board of Elections for the week ending May 28, 2009.

Respectfully submitted,

s/_____
Kimberly A. Galvin (505011)
Special Counsel

s/_____
Paul M. Collins (101384)
Deputy Special Counsel

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 5/21/09-5/28/09

Following is a detailed report concerning the previous week's progress in implementing the terms of the Court's Orders.

PLAN A

Overall Compliance Status Summary

Overall, activities and progress toward HAVA compliance are in jeopardy and behind schedule.

Contracting with Voting System Vendors

Status of tasks in this category: on schedule

- The vendor contract amendments are at OSC for final review. OGS and NYSBOE have answered several follow-up questions from them and are awaiting a final decision.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: in jeopardy and behind schedule

- Overall progress of testing :
  - SBOE Election Operations Unit had a meeting with NYSTEC to review and discuss County Receipt Process.
  - SBOE is currently reviewing a draft of Security Policy. Once an agreement is reached detailed county templates can be drafted.
  - SysTest is continuing to test the voting systems and reports that all testing is progressing in a timely fashion.

Delivery and Implementation of Voting Systems & Devices

- Procedures for acceptance testing and delivery of new voting systems have been drafted. After OSC signs off on the contract amendments, they will be finalized and shared with the counties.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

On May 19th the NYC BOE responded to the State Board's Steering Committee's request for information. The SBOE staff is currently discussing the points made by NYC in an effort to determine how next to proceed.

Selina Williams

From: Marcus Cederqvist
Sent: Thursday, May 28, 2009 3:04 PM
To: *Commissioners
Cc: *ExecutiveManagement; *Managers; *Chief & Deputy Chief Clerks (all); *ExecSupportGroup
Subject: FW: Pilot Program and 6210 regs

FYI.

-----Original Message-----
From: CoExecutiveDirectors [mailto:CoExecutiveDirectors@elections.state.ny.us]
Sent: Thursday, May 28, 2009 2:23 PM
Subject: Pilot Program and 6210 regs

Here is a link to the State Board's proposed HAVA Pilot Program for 2009 that was approved by the State Board at its last meeting on May 12. This has been submitted to the United States Department of Justice. We expect that it will be formally approved and ordered by the Federal Court shortly.

http://www.elections.state.ny.us/HAVA.html#pilot

Below is also the link to 6210 of the regulations on our website

http://www.elections.state.ny.us/HAVAVotingMachines.html

Sincerely,

Stanley Zalen

27

Co-Executive Director

Todd Valentine
Co-Executive Director

New York State Board of Elections
40 Steuben Street
Albany, New York 12207
Ph. 518-474-8100
Fax. 518-486-4068

Web: www.elections.state.ny.us

BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004–1609
(212) 487–5300
www.vote.nyc.ny.us

STEVEN H. RICHMAN
GENERAL COUNSEL
Tel: (212) 498-5338
Fax: (212) 497-5342
E-Mail:
srichman@boe.nyc.ny.us

May 28, 2009

TO: **The Commissioners of Elections,**

FROM: **Steven H. Richman, General Counsel**

COPY: **Marcus Cederqvist, George Gonzalez, Pamela Perkins, Roseanna Rahmouni, Valerie Vasquez-Rivera, Charles Webb, Steven Denkberg, John Owens, Deputy Chief Clerks – Bronx**
Stephen Kitzinger, Esq., Assistant Corporation Counsel, NYC Law Department
Lester Paverman, Esq., Legal Bureau, NYC Police Department

RE: **SPECIAL TERM FOR ELECTION MATTERS – JUNE 2, 2009 SPECIAL ELECTIONS – 77th and 85th ASSEMBLY DISTRICTS- BRONX COUNTY**

Attached is a copy of Administrative Transfer Order 66 issued by Hon. Fern A. Fisher, Deputy Chief Administrative Judge of the State of New York for New York City Courts, on May 27, 2009, establishing a Special Election Matters Term to hear and determine all cases arising under the Election Law relating to the eligibility for voting in the June 2, 2009 Special Elections in Bronx County.

This Special Term for Election Matters will convene from 7 AM to 9 PM at the Bronx Office of the Board of Elections.

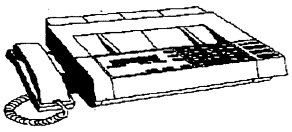
Notes to the Deputy Chiefs:

PLEASE MAKE THE APPROPRIATE ARRANGEMENTS TO ACCOMMODATE THE JUSTICES OF THE SUPREME COURT AND THEIR SUPPORT PERSONNEL.

If the assigned Justice does not appear at the scheduled time, please contact my office immediately so that appropriate notifications to the Deputy Chief Administrative Judge's office can be made and the situation addressed forthwith.

Thank you for your cooperation in this matter. If you have any questions, please call me.

Attachment



FAX TRANSMISSION SHEET

DATE: 5/27/09

TO: Mr. Steven Richman

FROM: Hon. Fern Fisher

SUBJECT: Special Election - Tuesday - 6/2/09

- ☑ Bronx County
- ☐ Richmond County
- ☐ Kings County
- ☐ New York County
- ☐ Queens County

NUMBER OF PAGES (including cover sheet): _____

FOR YOUR INFORMATION _____

OTHER ACTION TO BE TAKEN AND/OR COMMENTS:

_____

_____

If you do not receive all pages, please call: Maria (646) 386-4201

ADMINISTRATIVE TRANSFER ORDER 66

Pursuant to the authority vested in me, I hereby temporarily designate a Special Term, of the Supreme Court, Civil Branch, Bronx County, Twelfth Judicial District, for Election Matters, Relative to a Special Election to be held on Tuesday, June 2, 2009, to hear and determine all cases arising under the Election Law relating to eligibility for voting, and do assign the following Supreme Court Justices to hold such Special Term for Election Matters, in addition to their other assignments.

BRONX COUNTY
Board of Elections
1780 Grand Concourse, Bronx, New York 10457

7:00 A.M. to 2:00 P.M.	HON. MARK FRIEDLANDER
2:00 P.M. to 9:00 P.M.	HON. IRA GLOBERMAN

Dated: New York, New York
May 21, 2009

FERN A. FISHER
Deputy Chief Administrative Judge
New York City Courts

U.S. Department of Justice
Civil Rights Division

CC:MSR:ER:maf
DJ 166-012-3
2007-0266

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

County
FYI

May 28, 2009

Spencer Fisher, Esq.
Senior Counsel
City of New York Law Department
100 Church Street
New York, New York 10007

Steven H. Richman, Esq.
General Counsel
Board of Elections
32 Broadway
New York, New York 10004-1609

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 MAY 28 PM 6:27

Dear Messrs. Fisher and Richman:

This refers to your March 16 and March 31, 2009, letters concerning the procedures for conducting the February 20, 2007, April 24, 2007, and June 5, 2007, special vacancy elections for the City of New York in Bronx, Kings and New York Counties, New York, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on March 17, 2009; supplemental information was received on March 31, 2009.

With regards to the procedures for conducting the February 20, 2007, and April 24, 2007, special vacancy elections, these matters have been administratively closed.

With regards to the procedures for conducting the June 5, 2007, special vacancy election for the 65th Assembly District of the New York State Assembly, Mr. Steven H. Richman, Esq., General Counsel for the New York City Board of Elections, has informed us that this election was conducted by the State and therefore the City is not authorized to make a submission of this change. Accordingly, it would be inappropriate for the Attorney General to make a determination concerning your submission. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.23(a) and 51.35.

Sincerely,

Christopher Coates
Chief, Voting Section

Comm Mtg

FYI

Steven H. Richman

From: Green, Norman P. [GreenN@co.chautauqua.ny.us]
Sent: Thursday, May 28, 2009 12:52 PM
Subject: FYI

stargazette.com

May 28, 2009

18 counties to scrap voting machines

Voters will have paper ballots fed into scanners

By Cara Matthews
Albany Bureau

ALBANY - Mechanical-lever voting machines will be locked away in 18 counties this fall, as the state moves forward with its latest plan to comply with a federal election-modernization law.

Instead, voters will take pencil to paper and mark up their ballots before feeding them into optical scanners. People with disabilities and other voters have the option of using ballot-marking machines before scanning in their choices.

All states were supposed to implement the Help America Vote Act by January 2006. New York, which was sued by the U.S. Department of Justice for multiple delays, will be the last to comply.

The date for fully implementing the federal law has been pushed back several times. Last year was supposed to be the final time voters used decades-old lever machines, but problems with testing new machines and other factors led to changing the date to fall 2010. The state Board of Elections notified the Justice Department last year that it was at risk for missing the 2009 deadline.

Meanwhile, 45 counties have agreed to some level of participation in piloting the new voting systems this fall. Eighteen of those will use them countywide, including Broome, Chenango, Cortland, Delaware, Putnam, Schuyler and Steuben counties.

"There won't be a lever machine in those places," John Conklin, a state Board of Elections spokesman, said of the 18 counties.

New York City, which has five counties, and Westchester, Rockland, Ontario, Nassau and Suffolk are among the 16 counties that opted not take part in the pilot program. Participation is voluntary.

The plan is pending before the Department of Justice. If it gets approved, the judge overseeing the ongoing litigation would have to OK it. State officials are confident their plan will be accepted.

The new machines are still being tested by the state and won't be certified until mid-December, after this year's elections. The state Board of Elections wants to grant authorization for counties to use them this year.

SysTest Labs, which is conducting testing for the state, had its accreditation suspended last fall and reinstated in February.

State officials anticipate that counties will have all the machines they need for the 2010 elections by March 15 next year.

Joseph Fazzary, Schuyler County Republican elections commissioner, said the state Board of Elections' timeline is tight. The software on machines that counties currently own has to be upgraded because scanners are being used this year. That is scheduled for completion by the end of July. Counties have to train poll workers and conduct public outreach on using the machines.

"I don't think too many of the commissioners are too comfortable with the timeline," Fazzary said.

Harriet Jenkins, Chenango County's Republican elections commissioner, said she has confidence in the new system. Voters who don't use a ballot-marking device, which accommodates people with disabilities, simply have to fill out a paper ballot. It's similar to marking an absentee ballot. Some people hear that there is new equipment and think they will have to use a computerized touch-screen machine, she said.

"They're just scared of the unknown," she said.

Chenango has some extra machines on hand in case something goes wrong and, since paper ballots are being used, they could be counted by hand as a fail-safe, Jenkins said. The county is keeping its lever machines for a

few years, though, just in case things don't work out, she said.
Congress passed the Help America Vote Act after the disputed presidential race in 2000 to modernize elections and enable people with disabilities to vote independently.
Last year, most New York voters used lever machines. A court order required that one accessible ballot-marking device had to be available at every poll site for people with disabilities, such as low vision or limited hand dexterity, and any other voter. But voters did not feed them into scanners. Instead, they were sealed in envelopes and counted later.
For the two years before that, each county had to have at least one ballot-marking device.
Douglas Kellner, co-chairman of the state Board of Elections, said he's proud of how New York is implementing HAVA. Other states have purchased new voting machines, only to find they need to replace them because they don't work properly or meet specifications. New York has adopted high standards to guarantee the machines' integrity and security, and it is being cautious about spending its federal HAVA funds, he said.
Kellner said Delaware County, whose lever voting machines were damaged in last year's flood, was the first to propose having a pilot program this year.
-- -- --
Forty-five counties are participating in the pilot project on some level. Several Gannett-point counties are not: http://www.votechautauqua.com/Media%20Releases/CountyElectionsParticipationSurvey05172009.pdf

Comm Mtg
Ex 1

Steven H. Richman

From: Steven H. Richman

Sent: Tuesday, May 26, 2009 12:06 PM

To: *Commissioners; *ExecutiveManagement; *Managers; *Legal Department; Troy Johnson; Timothy Gay

Subject: Marshall 2d Circuit Decision.pdf - Adobe Reader

ATTACHED FOR YOUR INFORMATION, REVIEW AND FILES IS A COPY OF THE DECISION ISSUED BY THE U.S. COURT OF APPEALS FOR THE 2ND CIRCUIT AFFIRM THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK'S GRANTING THE BOARD MOTION FOR SUMMARY JUDGMENT IN THE MATTER OF VALORIE MARSHALL'S PROCEEDING ALLEGING DISCRIMINATORY ACTIONS ON THE PART OF THE BOARD OF ELECTIONS.

STEVEN H. RICHMAN
General Counsel
Board of Elections in the City of New York
32 Broadway, 7th Floor
New York, NY 10004-1609
Tel: (212) 487-5338
Fax: (212) 487-5342
E-Mail: srichman@boe.nyc.ny.us

MANDATE

SDNY (NYC)

07-4561-cv
Marshall v. NYC Board of Elections

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of April, two thousand and nine.

Present: CHESTER J. STRAUB,
ROSEMARY S. POOLER,
REENA RAGGI,
Circuit Judges.

VALORIE MARSHALL,

Plaintiff-Appellant,

-v- (07-4561-cv)

NYC BOARD OF ELECTIONS,

Defendant-Appellee.

Appearing for Appellant: Valorie Marshall, Pro Se, New York, N.Y.

Appearing for Appellee: Sharyn Michele Rootenberg, New York City Law Department, New York, N.Y.

37

ISSUED AS MANDATE: MAY 18 2009

Appeal from the United States District Court for the Southern District of New York (Kaplan, J.).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED.**

Appellant Valorie Marshall, pro se, appeals the district court's grant of summary judgment dismissing her claims against the New York City Board of Elections ("BOE") of race, sex, and religious discrimination and retaliation under Title VII of the Civil Rights Act of 1964. We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

We review a district court's order granting summary judgment de novo, and ask whether the court properly concluded that there were no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. See Miller v. Wolpoff & Abramson, L.L.P., 321 F.3d 292, 300 (2d Cir. 2003).

The district court properly found that Marshall failed to exhaust her religious discrimination claim. In neither Marshall's initial letter to the New York City Commission on Human Rights ("CCHR"), nor her administrative charge, did she make any allegation that she was discriminated against on the basis of her religion, nor did she include any incidents that would have allowed the CCHR to investigate such allegations. Accordingly, her religious discrimination claim was not reasonably related to her charge of race and gender discrimination. See Holtz v. Rockefeller & Co., Inc., 258 F.3d 62, 83 (2d Cir. 2001) (holding religious discrimination claim not reasonably related to EEOC charge alleging discrimination on basis of age and sex).

With respect to Marshall's hostile work environment claim, a review of the evidence shows that, even if all the incidents that Marshall alleged had occurred, the conduct was not sufficiently pervasive to alter the conditions of her employment, nor was there any evidence that it was on account of Marshall's race or sex. See Alfano v. Costello, 294 F.3d 365, 374 (2d Cir. 2002). Her supervisor's alleged references to lunch dates and weekend outings with his same-sex partner do not amount to harassment. Such discussions are equally unprofessional to, but no more harassing to Marshall than would be references to heterosexual relationships. Although Marshall may have been legitimately offended when her supervisor allegedly showed her a sexual device he had purchased for his partner, that one event does not rise to the severity necessary to constitute a hostile work environment, see id., nor does it demonstrate that her workplace was permeated with sex or gender intolerance. Marshall's allegations that her supervisor displayed a violent temper, stood over her with clenched fists on several occasions, disparaged her educational background, and engaged in crass behavior are troubling. But Title VII is not a "general civility code for the American workplace;" it prohibits only harassment that is discriminatory. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 80 (1998).

Marshall also alleges that she suffered adverse job reassignments and disciplinary measures in retaliation for filing an employment discrimination charge. To establish a prima facie case of retaliation under Title VII, a plaintiff is required to show: "[1] that she engaged in protected participation or opposition under Title VII, [2] that the employer was aware of this activity, [3] that the employer took adverse action against [her], and [4] that a causal connection exists between the protected activity and the adverse action, i.e., that a retaliatory motive played a

part in the adverse employment action." Cifra v. Gen. Elec. Co., 252 F.3d 205, 216 (2d Cir. 2001) (quotation marks omitted). In the absence of direct evidence of retaliatory motive, courts apply the McDonnell Douglas test. See Taitt v. Chem. Bank, 849 F.2d 775, 777 (2d Cir. 1988) (applying McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), to a retaliation claim). Under McDonnell Douglas, the defendant has the burden to demonstrate a "legitimate, nondiscriminatory reason" for the adverse action against the plaintiff. 411 U.S. at 802. If the defendant articulates such a reason, the burden shifts back to the plaintiff "to show that the reasons proffered by the defendant were not the defendant's true reasons, but rather a pretext for [retaliation]." Taitt, 849 F.2d at 777.

Marshall's job transfer in July 2004 to the Scribe and Payroll units was not retaliatory because it occurred before Marshall first filed a charge of discrimination in August 2004. In October 2005, Marshall was transferred from her job in the Manhattan office to a job in the executive office, where her title remained the same, but she alleges she had been reassigned to mailroom duties that she believes were "beneath [her] qualifications." We assume, without deciding, that such a transfer could constitute a materially adverse action. See, e.g., Kessler v. Westchester County Dep't of Soc. Servs., 461 F.3d 199, 207-08 (2d Cir. 2006) (retaliation may be actionable even when the alleged adverse action "had not effected any change in [the employee's] salary, benefits, job title, grade, or hours of work"). Marshall also argues that she earned less overtime pay after her transfer.

BOE Administrative Manager Pamela Perkins stated that the reasons for Marshall's October 2005 transfer included: (1) Marshall was a Democrat, and the BOE needed to place another Democrat in the administrative assistant title in the executive office to ensure equity between the political parties, and (2) to avoid the difficulties Marshall had working with the management in the Manhattan office, as evinced by Marshall's employee evaluations. Although Marshall claims that Perkins told her the "real reason" for her transfer was her former supervisor's request, she presents no evidence that he harbored retaliatory motives. Cf. Roge v. NYP Holdings, Inc., 257 F.3d 164, 170 (2d Cir. 2001) ("[Plaintiff] has not offered any evidence that the [defendant's] justifications, even if pretextual, served as a pretext for [] discrimination." (quotation marks omitted)). Marshall does not offer evidence from which a reasonable factfinder could conclude that the BOE's reasons were pretexts for retaliation.

Marshall also received two employee advisories on March 29, 2005, shortly after her employment discrimination complaint was dismissed by the CCHR. However, the BOE offered evidence that one of those advisories was motivated by a legitimate business reason, that Marshall violated office procedures by excusing her own latenesses prior to submitting documentation of transit delays. Marshall has not pointed to any evidence that this explanation was a pretext for retaliation. The other employee advisory was rescinded. Marshall points to no circumstances suggesting that the issuance of the later-rescinded advisory was sufficiently "adverse" such that it "could well have dissuaded a reasonable employee in [her] position from complaining of unlawful discrimination." Kessler, 461 F.3d at 209.

We have carefully reviewed the Appellant's remaining arguments and find them to be without merit. Accordingly, the judgment of the district court hereby is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: _____

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk
DEPUTY CLERK

39

Com Mtg
FY1

NEW STATE
DIVISION OF HUMAN RIGHTS
20 EXCHANGE PLACE, 2ND FLOOR
NEW YORK, NEW YORK 10005

(212) 480-2522
Fax: (212) 480-0143
www.dhr.state.ny.us

DAVID A. PATERSON
GOVERNOR

GALEN D. KIRKLAND
COMMISSIONER

May 26, 2009

Board of Elections in the City of New York
Attn: Steven Richman, General Counsel
42 Broadway, 7th floor
New York, NY 10004

Re: Colville Charles v. Board of Elections in the City of New York
Case No. 10133657

This is in response to your request for an extension of time for submission of material to the New York State Division of Human Rights.

An extension is hereby granted until **June 19, 2009.**

No further requests for extensions will be considered.

Very truly yours,

Leon C. Dimaya
Regional Director

cc: Steven H. Richman, Esq., General Counsel
Board of Elections in the City of New York
32 Broadway Suite 7TH FLOOR
New York, NY 10004

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 MAY 28 PM 2:26

BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004–1609
(212) 487–5300
www.vote.nyc.ny.us

STEVEN H. RICHMAN
GENERAL COUNSEL
Tel: (212) 498-5338
Fax: (212) 497-5342
E-Mail:
srichman@boe.nyc.ny.us

May 18, 2009

TO: The Commissioners of Elections

FROM: Steven H. Richman, General Counsel

COPIES: Marcus Cederqvist, George Gonzalez, Pamela Perkins, Steve Ferguson, John Owens, Joseph LaRocca, Charles Webb, & Steven Denkberg, & OCG Files;
Chief Clerk & Deputy Chief Clerk, Brooklyn

RE: **DEPARTMENT OF JUSTICE PRE - CLEARANCE OF SUBMISSIONS NUMBERED 2009-CW-01 & 2009-K04**

Attached hereto is a copy of a letter dated May 20, 2009 from Christopher Coates, Chief of the Voting Section, Civil Rights Division, U.S. Department of Justice advising that the Attorney General of the United States does not object to our pre-clearance submissions:

2009-CW-01 – (Dated March 27, 2009) the Designating and Opportunity to Ballot Petition Rules for the September 2009 Primary Election;

2009 K-04 - (Dated March 24, 2009) making poll site changes in the 40th and 55th Assembly Districts, County of Kings for the September 2009 Primary Election.

Therefore, the changes are effective as of May 20, 2009.

Thank you for your attention to this matter.

Attachment

U.S. Department of Justice

Civil Rights Division

CC:MSR:JKI:par
DJ 166-012-3
2009-1201

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

May 20, 2009

Steven H. Richman, Esq.
General Counsel
Board of Elections
32 Broadway
New York, New York 10004-1609

Dear Mr. Richman:

This refers to five polling place changes, and changes to the candidate qualification procedures for the City of New York in Bronx, Kings and New York Boroughs, New York, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on March 30, 2009.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act 28 C.F.R. 51.41.

Sincerely,

Christopher Coates
Chief, Voting Section

F.Y.I.

The New York Times
City Room
Blogging From the Five Boroughs

MAY 28, 2009, 7:30 AM

City Resists State on Voting-Machine Program

By JENNIFER 8. LEE

Alejandra Laviada
for The New York Times New York City and the surrounding suburban counties are not taking part in a pilot program for new voting machines.

A long-delayed effort by New York State to comply with the federal Help America Vote Act, enacted after the 2000 election debacle, is encountering resistance in New York City, where officials insist on keeping the mechanical-lever voting machines that have been a mainstay of local elections since 1962.

Earlier this month, State Board of Elections voted to approve a pilot program that would introduce optical-scanning voting machines in most of the state's 62 counties [pdf].

Most of the counties have agreed to take part in the project, and 16 will switch entirely to the optical-scan machines, according to a list that was released on May 12 as part of the commission's vote on the proposal [pdf]. But there are notable hold-outs: the five boroughs of New York City, and Nassau, Suffolk, Westchester and Rockland Counties in the downstate suburbs. (Other counties that are not taking part include Clinton, Columbia, Essex, Washington and Warren.)

"New York City certainly put up a lot of resistance," said Douglas A. Kellner, co-chairman of the State Board of Elections.

On one level, the conflict involves a complex set of issues concerning the testing and certification of new voting machines, but at the core of the tension is a desire by some local officials to hold onto tried-and-true technology.

The state board notes that New York is under a court order to comply with the federal law since the Justice Department sued the state in 2006 for failing to comply with the Help America Vote Act.

The city's Board of Elections says the voting system it used last year — in which the traditional lever voting machines were supplemented by the use of ballot-marking devices accessible to disabled voters — meets the goals of the federal law. Indeed, the city board takes the view that participation in the pilot program is in fact not allowed.

"Participation in the pilot program proposed by the State Board of Elections is not authorized by state law," said Gregory C. Soumas, the Democratic elections board

43

commissioner for Manhattan. "Any expenditures for voting systems incurred pursuant to the state board's pilot program are not authorized by law."

The State Board of Elections says it is entirely proper for the state's counties to use optical-scan technology in elections this fall while awaiting full certification before the federal elections in 2010.

Part of the problem is that SysTest, a company charged with certifying election machines around the state, was deaccredited by the federal government last October. (The company has since won back its accreditation.)

Mr. Kellner said that SysTest is in the final stages of certifying optical-scan voting technology that can be used in elections around the state this fall. "We have given temporary authorization for the pilot program," he said. "The pilot project is a compromise that shows the Department of Justice we are moving forward in an orderly fashion to introduce the new optical-scanning machines."

But Mr. Soumas said the city board prefers to stick with what it believes works: "the mechanical voting machines supplemented by the ballot marking devices to assist people with disabilities."

The push to retain the old mechanical-level voting machines is accompanied by a deep skepticism of electronic voting machines.

Eleven counties — Columbia, Delaware, Dutchess, Essex, Greene, Rensselaer, Schuyler, Sullivan, Ulster, Washington, and Warren — have passed resolutions asking for the lever machines to be preserved. But this would probably require repealing, or revising, the state's Election Reform and Modernization Act of 2005 [pdf], which is more restrictive than the federal law because it requires a paper audit trail per machine, as opposed to per voting site, as Help America Vote Act does.

One of the civic groups that favor the resolutions is the Election Transparency Coalition. Its co-founder, Andi Novack, a lawyer who has outspoken on voting problems, criticized the state's pilot program, saying, "The new machines haven't been certified."

Mr. Kellner, of the state board, called the resistance unrealistic. "There are some citizen advocates who want to keep the lever machines forever," he said. "That is just not an option that is available to the state or the counties at this time."

Mr. Soumas, of the city board, noted that 2009 is not a federal election year, and maintained that the Help America Vote Act does not apply to local elections. He extolled the virtues of the mechanical-lever machines. "The mechanical lever machines are universally agreed as accurate," he said. "While it may take longer to certify the result, accuracy is our goal and we should not be in a hurry to wrong."

Com Mtg –
F.Y.I.

Spending for Lobbyists Again Rises, but Report Says Growth Slows

BY DANIEL WISE

FOR THE 12th straight year, Wilson Elser Moskowitz Edelman & Dicker earned more revenues last year from lobbying than any other organization in the state, according to the annual report of the New York State Commission on Public Integrity.

Wilson Elser led a field of 6,624 registered lobbyists, generating $10.8 million. Overall, lobbyists earned $173.9 million from 4,155 clients, a modest 1.6 percent increase from the $171 million recorded in 2007, according to the report, which was released yesterday.

The increase of $3 million in lobbying expenses last year contrasted with an increase of more than $20 million, or 13.4 percent, from 2006 to 2007.

Five of the 10 firms that grossed the most from lobbying work last year were either law firms or affiliated with law firms.

The other law firms on the list were Greenberg Traurig, with earnings of $4.7 million (number four); Hinman Straub Advisors, $4.6 million (number five); Malkin & Ross, $3.3 million (number eight); and Davidoff Malito & Hutchner, $3 million (number 10).

Among clients, the highest expenditures were the $4.4 million of New York State United Teachers, Verizon's $2.6 million and the Medical Society of New York's $1.7 million.

The sectors of the economy that spent most heavily in lobbying during 2008 were health care, $29.9 million, and real estate and building, $26.1 million.

Wilson Elser's top client was the New York Bankers Association, which paid a retainer of $372,000 for work performed

» Page 7

Online

A link to the report is posted at nylj.com.

The Cost of Lobbying

In millions

SOURCE: Commission on Public Integrity

Lobbyists

« Continued from page 1

during 2008, the second largest lobbying contract. Last year Wilson Elser added as clients Off-Track Betting operations in Nassau and Suffolk counties and in the Albany area.

The single largest lobbying contract was the $472,532 Hinman Straub received from the Excelcus Health Plan Inc. Second was the New York Bankers Association's contract, followed by $370,399 from developers of the Atlantic Yards development in Brooklyn.

Although spending growth has slowed, the report noted that the number of lobbyists nonetheless grew by nearly 24 percent and the number of clients went up 27 percent.

And the commission noted that there was plenty of government activity for lobbyists to influence. In 2008, there were 18,296 bills pending before the Legislature and 1,737 rules, regulations and rates under consideration by state agencies. Additionally, the commission received registrations from lobbyists active in procurement matters and local government issues.

Lobbying expenditures have increased in 30 of the last 31 years.

"The lobbying industry takes the New York state motto, 'Excelsior'—'ever upward'—to heart," said Blair Horner, the legislative director of the New York Public Interest Group.

Kenneth L. Shapiro, the managing partner of Wilson Elser's Albany office, attributed the rise to the fact that lobbying has become so time consuming that "more and more" people and companies with interests before governmental entities "feel the need for professional representation."

The Public Integrity Commission was created in 2007 through the merger of the New York State Ethics Commission and the Temporary New York State Commission on Lobbying.

Statewide, the commission conducted 563 random audits last year of disclosures that lobbyists and their clients are required to make, and uncovered lapses in 22 instances serious enough to warrant the issuance of formal findings.

The number of audits conducted in 2008, the commission's first full year of operation, climbed to 563, or 25 percent, from the 450 audits conducted

New York Law Journal

FRIDAY, MAY 8, 2009

Top Lobbyists in 2008

Firm	Ranking Last Year	Compensation and Reimbursed Expenses
1. Wilson Elser Moskowitz Edelman & Dicker* (Manhattan)	1	$10,767,131
2. Patricia Lynch Associates Inc. (Albany)	2	$7,953,272
3. Bolton St. Johns (Albany)	3	$5,849,922
4. Greenberg Traurig* (Albany)	4	$4,710,999
5. Hinman Straub* Advisors (Albany)	6	$4,565,048
6. Kasirer Consulting (Manhattan)	5	$4,541,156
7. James F. Capalino & Associates Inc. (Manhattan)	10	$4,048,884
8. Malkin & Ross* (Albany)	8	$3,306,262
9. Brown McMahon & Weinraub* (Albany)	9	$3,254,164
10. Davidoff Malito & Hutcher* (Manhattan)	7	$3,024,030

* Denotes law firms

Top Lobby Clients of 2008

Firm	Ranking Last Year	Compensation and Reimbursed Expenses:
1. New York State United Teachers	3	$4,394,588
2. Verizon	1	$2,571,224
3. Medical Society of the State of New York	7	$1,660,525
4. Healthcare Association of New York State	6	$1,646,931
5. Greater New York Hospital Association	5	$1,565,796
6. United University Professions	n/a	$1,108,421
7. Goldman Sachs Group Inc. (including affiliates and subsidiaries)	n/a	$1,013,447
8. Working Families Organization	n/a	$1,006,516
9. Public Employees Federation	n/a	$924,275
10. Trustees of Columbia University	2	$919,429

SOURCE: Commission on Public Integrity

in 2007. The number of audits resulting in formal findings, however, dropped to 22, or 12 percent, from the 25 issued in 2007.

The commission's annual report also included recommendations for legislative changes including increased protection for whistleblowers and giving the commission the authority to impose a penalty of up to $10,000 for acting with intent to obstruct a commission investigation.

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