**CONFIDENTIAL**

[Date]

Name

City of Chicago

Chicago, IL 606

**Re: Case No. 151698.A – Request for Reconsideration**

Dear \_\_\_\_\_\_\_\_\_\_\_:

On [date] , you requested a formal opinion from the Board of Ethics addressing whether and how the Governmental Ethics Ordinance [“Ethics Ordinance” or “Ordinance”] would restrict you were you to practice law either as a sole practitioner, or as a member of a law firm, upon leaving your City job as an Officer with the Department of H The Board carefully considered all the facts presented in light of the Ordinance, and that evening issued its formal advisory opinion to you.

As that opinion explained fully, the Board determined that, among other restrictions, under §2-156-100(b) of the Ordinance, you will be prohibited from assisting or representing any client in an administrative proceeding before the H for one year after you leave your H employment. The Board also determined that you are prohibited, under §2-156-100(a) of the Ordinance, from assisting or representing any client or person (other than the City itself) with respect to any proceeding conducted before the H in which you were counsel of record or participated personally and substantially during your years of employment with H.

[On the day following the date on which the Board issued its opinion] , Board staff received your request for reconsideration (which was addressed to the Board’s Chair).

Rule 3-8 of the Board’s Rules and Regulations provides that a request for reconsideration of a Board opinion must contain “an explanation of material facts or circumstances that were not before the Board in its deliberations on the opinion … [and also provides that] if the Board finds that [such] material facts or circumstances do not alter its decision, it shall deny the request and so notify the person requesting the reconsideration.”

Your request does not present any material facts that were not before the Board on or before [at its meeting]. Instead, your request asserts that the Board’s interpretation of the Ethics Ordinance is erroneous. Specifically, your request claims that the Board misinterpreted §2-156-100(a) as it applies to your circumstances.[[1]](#footnote-1) You do state in your request that you agree with the Board that you are permanently restricted “from representing a client in any matter that may have come into H during [your] tenure,” but also assert that this restriction would not apply to representing clients in matter that may have come into H after [your] departure.” Even though you have raised no new material facts that might cause the Board to alter its opinion, you do present some legal argumentation. In the interest of clarity, the Board will treat these arguments as “new circumstances” and address them in this letter, even though the Board had, in issuing its opinion, already implicitly rejected your proffered interpretation of the Ordinance.

First, in reviewing your request for reconsideration, the Board redirects your attention to the text of its advisory opinion. In issuing it, the Board relied upon *§2-156-100(b)* of the Ordinance, *not §2-156-100(a)*, in determining that the Ordinance’s one (1) year prohibition applies to you. That section states:

*No former official or employee shall, for a period of one year after termination of the official’s or employee’s term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.*

The Board, having reviewed your responsibilities as an [officer], concluded that you were personally and substantially involved in the subject matter of the administration of justice by the H, and then, accordingly, determined that you are subject to the one (1) year prohibition as to that subject matter.

Second, in your request for reconsideration, you rely upon Illinois Rule of Professional Conduct 5.6[[2]](#footnote-2) in positing that you cannot be restricted in your practice of law upon leaving City service.

However, as indicated in footnote 5 of the Board’s advisory opinion, it is the advice of the [Senior Title] for the Illinois Attorney and Disciplinary Commission [“ARDC”] that a municipality or other governmental entity, such as the City of Chicago, **may** reasonably restrict a government attorney’s post-government practice of law. Further, he stated that Rule 5.6, which prohibits lawyers from imposing certain restrictions on an attorney’s right to practice, is applicable to lawyers in the private sector, and, to his knowledge, has never been applied to lawyers in the public sector.[[3]](#footnote-3) The Rule itself explicitly refers to lawyer “offering or making” partnership or other agreements restricting the rights of other lawyers to practice. By obvious contrast, in your case, we deal not with partnership or other employment agreements, but with a law – a Municipal Ordinance, duly and legally enacted by a legislative body, namely the Chicago City Council.

Moreover, as the Board noted in its advisory opinion, under federal conflict of interest law, certain senior level federal government employees, *including lawyers*, are subject to a one (1) year cooling off period, during which *they cannot appear before their former agencies, regardless whether they had worked on the matter they wish to bring before their former agency while with the government*. This one (1) year restriction applies and is enforced in all 50 states, including those that have a Rule of Professional Conduct that is identical to Rule 5.6.[[4]](#footnote-4)

Last, the Board directs your attention to an advisory opinion (Advisory Opinion No. 93-11) issued by the New York City Conflicts of Interest Board [“COIB”], attached hereto, which is directly on point. The State of New York has a Rule of Professional Conduct, also numbered 5.6, that is identical to Illinois’s Rule 5.6. New York City has a post-employment restriction that provides: “No former public servant shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant.” New York City Charter Chapter 68, §2604(d)(2). The opinion considered whether the Chief Counsel for a particular unit of a city agency could appear before a different unit of the same agency less than one (1) year after he left his City service. The COIB noted that the former government employee was an expert in the laws administered by his former agency, and as such, expected to continue handling matters involving such laws. Nonetheless, the COIB opined that, as both units are “part of an integrated enforcement process, intended to help the City eliminate certain unlawful conduct and prevent it from occurring in the future,” the lawyer would be prohibited for one (1) year from appearing before the agency as a whole.

Similarly, this Board, in the advisory opinion issued to you on , determined that §2-156-100(b) of the Ordinance prohibits you for one (1) year after your effective termination date from assisting or representing any client or other person with respect to the subject matter of the administration of justice by the H; in effect, as explained in the opinion, this means assisting or representing any person or client in an administrative hearing before the H for one year. Neither the opinion, the Board of Ethics, or the Ethics Ordinance impinge upon your ability to practice law for that one year period in any other way (except for the “permanent prohibition” described above, under §2-156-100(a), in which you may not represent or assist any person other than the City in any administrative proceeding involving the City in which you served as counsel or record or participated personally and substantially).

Hence, upon careful consideration of the “circumstances” presented in your request for reconsideration, none of which were material in the Board’s opinion, the Board voted today to deny your request for reconsideration.

Sincerely,

[signed]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Russell F. Carlson,

Pro-Tem Chair

1. Your request for reconsideration also takes issue with the “Board’s reading of ‘contract management authority’” as found in §2-156-100(b) of the Ordinance. However, the Board, in the advisory opinion issued to you, did not need to determine whether you actually had or exercised contract management authority, nor did the Board need to run through a litany of any cases in which you participated personally and substantially. Your assertion, made in your request, that you were never counsel of record in a H proceeding does not release or exempt you from the prohibition in 100(a). Instead, it is incumbent on you to ensure that you do not advise or represent someone on a proceeding in which you did personally and substantially participate during your years at H. If there were in fact none, then this particular prohibition would have no practical effect in your case. [↑](#footnote-ref-1)
2. That Rule, entitled **RESTRICTIONS ON RIGHT TO PRACTICE, provides that:**

**“**A lawyer shall not participate in offering or making:

 (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a client controversy.

**Comment**

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.”

Adopted July 1, 2009, effective January 1, 2010. [↑](#footnote-ref-2)
3. Notably, the article you attach to your request, “Five Things Every Lawyer Should Know about Agreements that Restrict, or Effectively Restrict, A Lawyer’s Practice After Termination,” covers lawyers who practice with a firm, in-house lawyers and corporate lawyers, but is silent as to government lawyers. [↑](#footnote-ref-3)
4. The article attached to your request for reconsideration states that “[w]ith limited variations… [Rule] 5.6 has been adopted in nearly every State. [↑](#footnote-ref-4)