

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CITY OF CHICAGO ALDERMAN)	
HOWARD BROOKINS, JR.)	
)	
Plaintiff)	No.
)	
v.)	
)	
CHICAGO BOARD OF ETHICS,)	
Board Members, William F. Conlon,)	
Zaid Abdul-Aleem, Nancy C. Andrade,)	
Stephanie Cox-Baston, David Daskal,)	
Dr. Daisy Lezama, Barbara A. McDonald,)	
And Board Executive Director Steve I.)	
Berlin, in his official and individual capacity)	
)	
Defendants.)	

**COMPLAINT FOR COMMON LAW WRIT OF CERTIORI, FOR MANDAMUS,
DECLARATORY RELIEF AS WELL AS RELIEF IN LAW**

NOW COMES, Plaintiff CITY OF CHICAGO ALDERMAN HOWARD BROOKINS, JR.,
with the instant complaint for common law writ of certiorari, for mandamus, for declaratory
judgment and for other claims in law and damages, and in support states as follows

I. Introduction

1. Without proper authority or jurisdiction, the City of Chicago Board of Ethics made a finding of probable cause that Aldermen Howard Brookins violated the City of Chicago Ethics Ordinance by working as a criminal defense attorney on behalf of someone accused of a crime in the City of Chicago. The Ethics Board stretched logic into incredulity by finding that this representation violated Brookins' fiduciary duty to the City of Chicago.

Importantly, however, they made this finding during a hearing and process that was infirmed from the outset—as it was initiated without the proper process designated by law.

2. The Board then followed up that infirmed process with a second hearing that occurred without authority or jurisdiction, and occurred in violation of the Board’s own rules, and resulted in a finding of violation by Brookins and a levying of a fine. That second hearing occurred on December 14, 2020.
3. This complaint, filed with 35 days of that infirmed hearing, combines multiple claims, including a claim for common law writ of certiorari to vacate the infirmed finding by the City of Chicago’s subdivision agency the Board of Ethics; a writ of mandamus requiring the Board and its Board members and staff to follow City Ordinance and its own rules, a declaratory action seeking that reaffirms the obvious language of the City Code; and certain complaints for damages.

II. The Parties

4. City of Chicago Alderman Howard Brookins has represented one of Chicago’s most prestigious Black middle-class wards as its alderman since 2003. Prior to becoming an alderman, Brookins, who is part of an iconoclast Chicago family that engages in both business and politics, was a practicing attorney that previously did both criminal defense and criminal prosecutions. Upon becoming an Alderman, Brookins maintained his practice as a criminal defense attorney. A resident in his ward on Chicago’s South Side, Brookins has simultaneously been an accomplished Chicago Alderman and an accomplished criminal defense attorney for the last 18 years.
5. The Chicago Board of Ethics is a creation of the City Council upon which Brookins serves. The CBOE is a subdivision of the municipal government of the City of Chicago. The Chicago Board of Ethics is established and has its authority defined pursuant to MCC 2-

156-005, et. seq. and pursuant to MCC 2-156-310, et. seq. The Board of Ethics has no authority to initiate investigations of any kind. Instead it may: a) Receive and refer complaints of violations to the Inspector General or to the agency in which the violation occurred; or b) Issue a finding of probable cause that a violation has occurred ONLY if such a finding is requested by the inspector general and ONLY after the inspector general has notified the subject of the request in writing (MCC 2-156-385). See generally 2-156-380. ON its own website, the Board says its mission is to: “(i) interpret its provisions; (ii) educate City governmental personnel and the public about the Ordinance; (iii) confidentially advise persons subject to the Ordinance on complying with both its letter and spirit; (iii) promote transparency by making public information about lobbyists and their activities and recusal notices, annual conflicts of interest disclosures, and ethics pledge filed by City employees and officials; and (iv) accurately, and consistent with due process of law, adjudicate completed investigations of Ordinance violations, commence enforcement actions where no investigation is required, determine whether violations occurred and assess appropriate penalties, and make such information public.”

6. William F. Conlon is an officer of the City of Chicago by virtue of his being a Board member for the Chicago Board of Ethics, and is sued in his official capacity.
7. Zaid Abdul-Aleem is an officer of the City of Chicago by virtue of his being a Board member for the Chicago Board of Ethics, and is sued in his official capacity.
8. Nancy C. Andrade is an officer of the City of Chicago by virtue of her being a Board member for the Chicago Board of Ethics, and is sued in her official capacity.
9. Stephanie Cox-Baston is an officer of the City of Chicago by virtue of her being a Board member for the Chicago Board of Ethics, and is sued in her official capacity.

10. David Daskal, is an officer of the City of Chicago by virtue of his being a Board member for the Chicago Board of Ethics, and is sued in his official capacity.
11. Dr. Daisy Lezama is an officer of the City of Chicago by virtue of her being a Board member for the Chicago Board of Ethics, and is sued in her official capacity.
12. Barbara A. McDonald is an officer of the City of Chicago by virtue of her being a Board member for the Chicago Board of Ethics, and is sued in her official capacity.
13. Steve I. Berlin is an officer and employee of the City of Chicago as the Executive Director of the Board of Ethics. He is being sued in both his official and personal capacity.

III. Background Facts

14. On July 17, 2019 there was an informal conversation between Alderman Brookins, an Illinois Licensed attorney and the Board of Ethics Executive Director Steve Berlin. The purpose of that conversation, obvious in context and substance, was for Brookins to obtain information and thoughts relative to a legislative decision that Brookins was in the process of making regarding an amendment to Section 2-156-090 of the Chicago Municipal Code (which regulates ethics requirements and the Board of Ethics). As such, Brookins understood this conversation to be both informal and to be privileged pursuant to the legislative deliberative process.
15. As a follow up to this informal discussion, Brookins had several conversations with multiple legislative colleagues, all for the purpose of assessing certain proposed legislative changes to the Municipal Code relative to ethics requirements and the Board of Ethics.
16. Prior to the passage of the amendment, on which Brookins voted, the relevant portion of the code currently reads:

(b) No elected official or employee may derive any income or compensation from the representation of any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in which *the city is a party and that person's interest is adverse to that of the city.* [emphasis added]

The original amendment to subsection (b) read as follows:

(b) No elected official or employee may derive any income or compensation or other tangible benefit from the representation of any person with an interest adverse to the City, in any judicial or quasi-judicial proceeding before any administrative agency or court: (i) in which the city is a party; or (ii) that impacts anticipated city revenue, or the health, safety or welfare of City residents *such that the City has the right to become a party to that proceeding and that person's interest is adverse to that of the city.* For purposes of this subsection, the City is presumed to have the right to become a party in any tax, bankruptcy or environmental protection proceeding that may impact the City's revenue, or the health, safety or welfare of City residents. [emphasis added]

The ultimate amendment that passed and went into effect on December 17, 2019 read as follows:

(b) No elected official or employee may represent, or derive any income or compensation or other tangible benefit from the representation of any person in any judicial or quasi-judicial or other proceeding before any administrative agency or court: (i) in which the city is an adverse party; or (ii) that may result in an adverse effect on City revenue, City finances, or the health, safety, welfare or relative tax burden of any City residents.

17. The purpose of Brookins' questions to Berlin were specifically to determine if the Board of Ethics view of the impact of removing the phrase "such that the City has a right to become a party to that proceeding" from the original amendment. One of Brookins (many questions) was whether removing that phrase would somehow implicate attorneys that did criminal defense.
18. It appears that despite the purpose of these communications between Alderman Brookins and City Employee Berlin being for the purpose of making a legislative decision, the Executive Director and the Board took this as a formal request pursuant to Rule 3-4 for an advisory opinion as it relates to §2-156-090(b), and its prohibition against an elected official from representing persons with an adverse interest to the City. Alderman Brookins is a criminal defense attorney that from time to time represents criminal defendants charged and prosecuted in state court by the Cook County State's Attorney Office, including criminal defendants arrested and charged with offenses alleged to have occurred in the City of Chicago and investigated by the Chicago Police Department.
19. On September 13, 2019, the Board of Ethics released an advisory opinion captioned as "Case No. 19027.A, Practice of Criminal Defense by City Elected Officials." A copy of that letter is attached to this Complaint as Exhibit 1. The question the Board understood it was providing an advisory opinion on is whether an elected official can represent a criminal defendant that has been accused of committing a crime in Chicago or where the charge was the result of an investigation done by law enforcement working for the City of Chicago.
20. In drafting that advisory opinion, the Board noted the Code Amendment and also noted Rule 1.7 of the Illinois Supreme Court's Rules of Professional Responsibility (an ethics rules that specifically addresses conflicts of interests for current clients). Ex. 1, p. 2. In drafting the advisory opinion, the Board began by stating more relevant than Section

2-156-090(b), is Code Section 2-156-020. *Id.* That section simply says that “Officials and employees shall at all times in performance of their public duties owe a fiduciary duty to the City.” The Board then noted that it therefore would not be addressing whether the amended Section 2-156-090(b) prevents an elected official from representing criminal defendants (the original purpose of both dialogues from Aldermen X and Y). *Id.*

Ultimately, the Board concluded that:

As set forth above, the Board concludes that (i) aldermen owe an undivided fiduciary duty to the City of Chicago; (ii) similarly, aldermen-attorneys owe an undivided fiduciary duty to their clients; (iii) aldermen-attorneys are therefore placed in an untenable position when they represent clients in criminal matters involving CPD, as their current fiduciary duties are in conflict; and (iv) such conflicts result in the erosion of public confidence both in the legal profession and in government; and thus (v) when aldermen also act as private attorneys in criminal matters that involve the CPD, they unavoidably face a conflict between their duties to the City of Chicago and to their private legal clients, which is prohibited by both the Ethics Ordinance’s fiduciary duty provision, §2-156-020 and by Rule 1.7 of the Illinois Rules of Professional Conduct...aldermen who are licensed attorneys are prohibited...from personally representing, or receiving or deriving compensation or anything else of value from representation by others, persons in traffic or criminal cases in which there is participation by Chicago Police Department (“CPD”) personnel...” *Id.*, p. 6

21. On September 27, 2019, Brookins, through counsel, filed a letter for reconsideration of this advisory opinion pursuant to the CBOE's Rules, Rule 3-8. See Exhibit 2. Plaintiff reiterates the arguments made in that September 27, 2019 herein:

22. Relying on its previous jurisprudence regarding Section 2-156-020, the Board concluded that:

“aldermen cannot fulfill their fiduciary responsibilities to the City if they represent clients in criminal cases where, for example, they may need to aggressively question the credibility or conduct of CPD personnel, or attack the legitimacy of search warrants, arrests, or interrogations on behalf of private clients. If successful (attorneys are expected to zealously advocate for their clients), there may well result negative financial ramifications for the City from improper searches, arrests, or interrogations. At the same time, Aldermen are obligated to engage in fair- minded debate and deliberate and vote on CPD matters that come before the City Council, and to represent their constituents on CPD matters in the community— essential aldermanic roles. Thus, we conclude that the Ordinance’s fiduciary duty prohibits aldermen from representing clients in criminal cases...in which CPD personnel and their work have been involved, as among other roles, arresting officers, executors of search warrants, custodians of evidence or they otherwise participate in the proceeding or matter.” *Id.*, at p. 4.

23. The Board also relied upon an ARDC Review Board opinion in *In re Samuel J. Cahnman*, Opinion No. 3121596, issued July 11, 2016. *Id.*, at p. 4. The Board found that the Cahnman opinion was dispositive in finding that there is necessarily a Rule 1.7 conflict any time a municipal body’s elected official represents criminal clients on cases where officers from that municipal body were part of the case. *Id.*, pages 5-6.

24. The Board's analysis of MCC 2-156-020 as it related to an Aldermen engaging in criminal defense was flawed and riddled with troubling assumptions and basic logic fallacies, and its analysis of the Cahnman case simply misses the relevant holdings and precedential analysis within that case. First, the advisory opinion rested on a basic misunderstanding of fiduciary duty. As eloquently detailed in the legal opinion by Mary Robinson, attached as Exhibit B to the letter to reconsider, and attached as Exhibit 3 to this Complaint, the advisory opinion "inaccurately and unwisely assumes that dedication to the interests of the City requires acceptance or at least passivity in the face of illegal conduct by city employees." Ex. 3, p. 1.
25. As Ms. Robinson (the administrator at the ARDC for 15 years), explained that the Board's opinion essentially turned the concept of fiduciary duty on its head by basically requiring all elected officials to turn a blind eye to police misconduct regardless of how harmful that conduct is to the City and to the City's residents. Such a requirement itself puts any alderman-attorney at risk of losing their law license.
26. Building upon Robinson's opinion the ramifications of the opinion is that it usurps an elected officials' primary fiduciary duty—to the constituents that elected them. As duly elected officials, it is the aldermen that create the laws and policies by which the employees for the City must operate. As such, the ultimate fiduciary duty of all elected officials in a properly functioning democracy is to the constituents that they serve and that elected them. All of the scholarship on the issue of elected officials and their fiduciary duties discusses their duty of loyalty to the public interest—not necessarily to the specific corporate unit of government that they manage or legislate for. See e.g. *The False Promise of Fiduciary Government*, *Notre Dame Law Review*, Vol 89, Issue 3, 2-2014, Seth Davis; and see *Translating Fiduciary Principles Into Public Law*, *Harv Law Review Forum*, 126 *Harv.L.Rev.* 671 (2013), David L. Ponet, Ethan J. Leib, & Michael Serota. Further, this

fiduciary duty to the public interest and to one's constituents is not a duty that can be legislated away, nor is it a duty that an administrative body created by elected legislators can usurp.

27. There is another point to reiterate that is implicit in Ms. Robinson's opinion. Criminal Defense lawyers have the legal obligation to follow all of the rules of professional responsibility. These include the rules to not mislead a tribunal, to not suborn perjury, to not engage in meritless or frivolous forms of litigation. Therefore, if a lawyer is attacking the credibility of a police officer, there is by definition a basis in the record to question the credibility of that police officer. If a lawyer is filing a motion to question the basis of a search, there is by definition a basis in the record to question the basis of that search. If the lawyer is questioning the basis of an investigation, there is by definition a basis in the record to question the efficacy of that investigation. If, however, there are no issues regarding the conduct of the police, and sufficient evidence of guilt than a criminal defense attorney will not have a reason or basis to call into doubt the credibility of any police officer, and as happens more than 90 percent of the time, the defendant will just plead guilty. See https://www.cookcountystatesattorney.org/sites/default/files/files/documents/cesao_2017_data_report_180220.pdf

28. The second overall argument made in the letter for reconsideration to the board in September of 2019 was the obvious point that the CBOE's advisory opinion misapplied Rule 1.7 and the Cahnman decision. Again, the Robinson opinion clearly and concisely described the Board's misapplication of Cahnman and its holding. Put simply the Cahnman decision is not applicable to the facts presented here. Cahnman was accused of regular and multiple violations of his duties to his clients. The ARDC never addressed and

was never asked to address whether Cahnman's representations somehow violated his duties to the municipal body of government, to the public interest or to his constituents.

29. The third overall argument in the Letter seeking CBOE reconsideration was the plain point that a formal advisory opinion was never sought. The Ethics Board overstepped its properly delegated authority by twisting informal inquiries meant to aid the legislative deliberative process, and then turning those informal discussions into a feigned formal request for an advisory opinion and then releasing that opinion after the vote on the legislative issue that prompted the conversation. Although administrative bodies such as the Board have the authority to create rules and policies as delegated to them by legislative bodies, they do not have such authority when they act outside their own rules or when they act in abrogation of the intent of the authority granted them. See *Department of Transportation v. Keller Development Corp.*, 122 Ill. App. 3d 1038, 462 N.E.2d 532, 78 Ill. Dec. 413 (1984).
30. On October 29, 2019, the Board of Ethics filed its "confidential" order denying the letter for reconsideration. That ruling came in the form of a letter from Board Chair William F. Conlon, and is attached as Exhibit 4.
31. The ordinance amendment passed and went into effect in December of 2019. Alderman Brookins continued to simultaneously operate as an effective Alderman, and as an effective criminal defense attorney.
32. On November 9, 2020, Brookins was contacted by reporter Heather Cherone and told that he was being investigated by the Chicago Board of Ethics for representing former Alderman Joe Moreno who was being charged with criminal conduct related to reporting a stolen vehicle, and possible insurance fraud.

33. November 9, 2020, WTTW ran a news story entitled "Ethics Board Investigating Ald. Brookins' Decision to Represent Former Ald. Moreno." The online version can be found here: <https://news.wttw.com/2020/11/09/ethics-board-investigating-ald-brookins-decision-represent-former-ald-moreno>. Cherone wrote that "Chicago Board of Ethics Executive Director Steve Berlin said the Board is looking into whether Ald. Brookins has violated Chicago's Governmental Ethics Ordinance."
34. On November 11, 2020 Brookins wrote a letter to Inspector General requesting that Berlin and the Board be investigated for violating their own rules and the Municipal Code. A copy of that letter and its attachments is attached as Exhibit 5. That letter is summarized herein:
35. Neither the Board nor Berlin had the authority to initiate an investigation; and Berlin's statement to the press implying otherwise was not only erroneous, it was defamation and a violation of his own ethics because the Board and Berlin have a duty of confidentiality; and if an investigation were to be initiated the Ethics Ordinance that Berlin is tasked with upholding requires that he not comment on any pending investigation. His comments to WTTW were a clear violation. And, the advisory opinion that was written by Berlin and that was cited in the WTTW story was both initiated without authority and its finding was contrary to the law.
- a. The Chicago Board of Ethics is established and has its authority defined pursuant to MCC 2-156-005, et. seq. and pursuant to MCC 2-156-310, et. seq. The Board of Ethics has no authority to initiate investigations of any kind. Instead, it may: a) Receive and refer complaints of violations to the Inspector General or to the agency in which the violation occurred; or b) Issue a finding of probable cause that a violation has occurred ONLY if such a finding is requested by the inspector general

and **ONLY** after the inspector general has notified the subject of the request in writing (MCC 2-156-385). See generally 2-156-380.

- b. Further It is true that the Board has the right to render advisory opinions, but they may do so only "when requested by an official or employee, or by a person who is personally and directly involved." 2-156-380 (k)(1). And, those opinions may not reveal the identity of the subject. *Id.*
- c. Further, all Board of Ethics members and its Executive Director have a duty of confidentiality, as detailed in MCC 2-156-400. ("advisory opinions issued by and complaints to the board and determinations and recommendations thereon shall be confidential..."). When a Board member or the Executive Director knowingly violates the confidentiality provisions, they shall be subject to sanctions. MCC 2-156-500. The applicable sanctions for a knowing violation of the confidentiality clause appear to be a fine of not less than \$1000 and not more than \$5000 for each violation. MCC 2-156-465(b)(8)

36. Additionally, Berlin committed multiple ethics violations and violated Brookins' civil rights in engaging in the interview with WTTW.

- a. The Board had no authority to initiate an investigation of Mr. Brookins. The Code is clear that the Board can receive and refer complaints or it can conduct hearings once requested by the Inspector General;
- b. The Code is clear that neither Board members nor the Executive Director can discuss subjects of pending investigations (or in this case faux pending investigations). Berlin's comments to WTTW clearly violated that provision of the code.

- c. Based on the current publicly available information, it now appears that Berlin is engaged in targeted persecution of Alderman in violation of basic fairness concepts of equal protection and due process, and in violation of the general fiduciary requirement of the Municipal Code and the Board of Ethics own rules that the Executive Director act in the interest of the City of Chicago and not to pursue a personal vendetta.

37. On November 16, 2020, Brendan Shiller, received a letter from CBOE Board Chair William Conlon, regarding “Case No. 20036.C.Alderman Howard Brookins (Ward 21)”, attached as Exhibit 6. The Letter notes that because Shiller sent the November 11, 2020 letter and posted it on Twitter, the Board assumed that Shiller represents Brookins for the purpose of its investigation and proceedings, and was therefore providing notice of a hearing pursuant CBOE Board Rule 2-13.

- a. Rule 2-13 states: Any notice, formal advisory opinion, letter of admonition or warning, determination, finding, or other recommendation or other served document required by these Rules shall be served by the Board or its staff: (i) via personal delivery or overnight delivery service to the addressee’s last known residence or place of business; (ii) by both certified mail, return receipt requested, and first class mail to the addressee’s last known residence or actual place of business. Such notice shall also include the following: “You have the right to have a union representative [if applicable] or legal counsel present with you. If you desire to have a representative present, it is your responsibility to contact and inform him/her of the time and location of the meeting or hearing.” (iii) in such manner as the Board directs, if service is impracticable under paragraphs (i) and (ii) above; or (iv) in any manner agreed upon by the Board and the addressee or his or her

attorney or representative, including email. Where the addressee has appeared through a representative (in accordance with Rule 2-12, above), all documents served by the Board subsequent to that appearance shall also be served upon the representative by one of the methods listed above.

- b. Rule 2-12 states: Whenever these Rules or the Ordinance provide for a meeting or hearing with the subject of an investigation, that subject may appear before the Board, its designee, or any hearing officer appointed pursuant to Rule 4 on his or her own behalf, and/or with or through an attorney or other representative, such as a union official. Any representative appearing on behalf of a subject shall file a notice of appearance with the Board, its designee, or hearing officer in a manner designated by the Board, designee or hearing officer. The filing of a notice of appearance constitutes a representation that the person appearing has been authorized by the person subject to these Rules or the Ordinance.
38. At no time did Shiller file an appearance with the CBOE on behalf of Alderman Brookins. This was done for several reasons. First, Brookins did not specifically hire Shiller to file an appearance on behalf off Brookins for any hearings by the CBOE. Shiller was hired to send the letter to Inspector General Ferguson that was sent, and to possibly file any federal or state civil rights claims that may arise. Second, the hearing initiated by the CBOE was without jurisdiction over Brookins because it was done without authority.
39. The letter that was sent to Shiller attached as Exhibit 6, stated that the Board had determined that there was probable cause to believe that Brookins violated MCC 2-156-020 and his fiduciary duty to the City by representing Joe Moreno in his criminal case in People v. Moreno. Ex. 6. The letter was also sent to Shiller via an email from Berlin. Attached as Exhibit 7. Shiller responded to that email with a single word reply that said

“received.” The Letter from Conlon to Shiller also stated that there would be a closed session on Monday, December 14 at 3 p.m. and that Brookins or his representative would have the opportunity to “discuss this matter and/or provide any facts or information, including documentation or other materials to attempt to rebut the Board’s probable cause determination.” Ex. 6.

40. Shiller did not forward either the letter or email to Brookins. Shiller did not inform Brookins that he had received the letter or email. Shiller had no conversations with Brookins regarding the hearing. Shiller and Brookins did have ongoing attorney/client conversations regarding possible civil rights and other claims against Berlin and the City.
41. On the evening of December 14, 2020, Berlin emailed Shiller. Exhibit 8. The contents of the email was “I have received 3 bounce backs, and tried calling the law office but I get no answer. This is the fourth and final attempt tonight.” Attached to the email was an order from the Board fining Brookins \$5000. Exhibit 9. Shiller responded to the email with a single word reply that said “received.” Shiller did not forward the email to Brookins. Brookins learned of the hearing and the fine via media reports.

I. Claims

A. Count 1–Common Law Writ of Certiorari

42. Plaintiff re-alleges all previous paragraphs of this Complaint as though fully set forth herein.
43. Plaintiff seeks a common law petition for *writ of certiorari* to review a decision of the City of Chicago Board of Ethics.
44. As more fully described throughout this document, the Board of Ethics did not have jurisdiction and authority to enter a finding of probable cause, nor to have a hearing and

then enter a finding of violation, nor to levy a fine against Brookins because it failed to follow the Chicago Municipal Code and the entire process was initiated without authority.

45. In addition, and as a separate basis for the entering of the sanction and the levying of the fine being infirmed is that the Board ignored its own rules and failed to properly notify Brookins and give him an opportunity to contest the infirmed proceedings.

46. A third basis for vacating the order from the Board of Ethics is that it is substantively infirmed and relies on faulty legal reasoning, and is in clear violation of settled law.

47. In sum, the Board of Ethics: 1) a finding of probable cause; 2) entering of an order finding a violation; and 3) levying of a fine; were all entered in an arbitrary and capricious manner because they ignored City Ordinance in initiating the process (and therefore had no authority); ignored their own rules in holding the hearings; and ignored settled law in making their substantive findings.

48. As such Brookins seeks a grant of common law writ of certiorari that reverses the decision of the Board, and grants any and all further relive that this court deems just and appropriate.

B. Count 2 Mandamus

49. Plaintiff re-alleges all previous paragraphs of this Complaint as though fully set forth herein. Defendant The Chicago Board of Ethics, has a non-discretionary duty created by City of Chicago Municipal Code to follow the code in the manner that it conducts its business. Pursuant to the Code, the Board may issue a finding of probable cause that a violation of the Ethics Code has occurred, only if such a finding is requested by the inspector general and only after the inspector general has notified the subject of the request in writing. MCC 2-156-385.

50. Defendants Board of Ethics, and all named Individual Defendants acting in their official capacity, violated the provisions of the Chicago Municipal Code that determine how they may initiate the investigatory process that leads to a finding of probable cause.
51. In so doing, the Board of Ethics not only violated Alderman Brookins' Due Process Rights, they violated their statutory duties under the law. This violation continues to this day, as the Board of Ethics continues to pursue infirmed remedies that result from their infirmed process.
52. As a result of the Defendants' violation of the Municipal Code, Brookins continues to suffer harm, including harm to his reputation, emotional distress, and time and expense defending against an illegally instituted, and substantively specious sanction.
53. Defendant Board of Ethics has clear authority under City of Chicago Code to follow the law, and has the power and affirmative duty to follow the law, and to cease its procedurally infirmed initiation of case number 20036.
54. Therefore, Brookins seeks a court order mandating The Chicago Board of Ethics to follow its own procedures and to vacate any processes, including Case number 20036 that were initiated without a proper referral from the Inispector General as dictated by MCC 2-156-385.

C. Count 3 Declaratory Relief

55. Plaintiff re-alleges all previous paragraphs of this Complaint as though fully set forth herein. Plaintiff moves pursuant to 735 ILCS 5/2-701(a), seeking a declaration that the Board of

Ethics order of sanction against Alderman Brookins is invalid as a violation of its own procedures, a violation of the Municipal Code, and as a result also a violation of Brookins' due process rights; and in the alternative substantively infirmed, and therefore invalid.

56. First, the Board of Ethics has implicitly interpreted Section 2-156-385 of the MCC as not requiring a referral from the inspector general as a predicate for any action by them. As such, this is an actual controversy as to the construction of this section of the Municipal Code. This actual controversy has resulted in harm and damage to Brookins, as the faulty initiation of a finding of probable cause in derogation of the Municipal Code eventually led to the levying of a \$5000 fine against Brookins.
57. As such, Brookins seeks a ruling from this court declaring that the proper reading of MCC 2-156-385 is that the Chicago Board of Ethics may not imitate a finding of probable cause hearing without a proper referral from the Inspector General.
58. Second, the Board of Ethics explicitly misinterpreted its own rules as it relates to service and notice (Rules 2-12 and 2-13). As such there is an actual controversy as to the construction of the Chicago Board of Ethics Rules. This dispute over the rules harmed Brookins as it led to a hearing being held on December 14, 2020 that he did not receive proper notice of and did not participate in that led to a finding of a violation and a levying of a sanction.
59. As such, Brookins seeks a ruling from this court declaring that the proper reading of Rules 2-12 and 2-13 required him or an attorney that had filed an appearance with the Board on his behalf to be served and notified of the hearing.
60. Third, the Board of Ethics has explicitly interpreted MCC Section 2-156-020 as prohibiting any employee or officer of the City of Chicago being an attorney in any case where a City employee may be a witness. And More specifically has specifically interpreted

that statute as prohibiting any City Officer from representing criminal defendants where any City of Chicago Employee may be a witness. Putting aside the obvious irony that Brookins is one of the 50 people that passed the ordinance and is therefore in an expert position to interpret the legislative intent, the Board's interpretation is fallacious on its face. And this interpretation has caused Brookins harm.

61. As such, Brookins seeks a ruling from this court declaring that the proper reading of 2-156-020 is that it does not prevent him from representing criminal defendants in criminal cases where City employees may be witnesses.

62. Therefore, Brookins seeks the above three declaratory rulings, as well as attorney fees and costs, and any other remedies this Court deems just.

D. Count 4-Due Process

63. Plaintiffs re-allege and incorporate all of the allegations in the preceding paragraphs.

64. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall deprive any person of life, liberty, or property, without due process of law.

65. The Board of Ethics is attempting to deprive Brookins of \$5000 through a process that it erroneously initiated in violation of the Chicago Municipal Code, and from a hearing that it held without following its own rules on notice.

66. Both of the actions described above violated Brookins' Due Process rights under both state and federal law.

67. Plaintiffs demand judgment against Defendants for compensatory damages, punitive damages, attorneys' fees, costs, and such other and additional relief as this Court deems equitable and just.

E. Count 5-Equal Protection of One Claim

68. Plaintiffs re-allege and incorporate all of the allegations in the preceding paragraphs.
69. Both the State and Federal Constitutions prohibit state actors from treating individuals disparately under the law.
70. Defendants treated Plaintiff differently than other similarly situated City of Chicago Employees and Officers that engage in outside legal and professional work that at times involves City employees as witnesses.
71. This conduct is in violation of both state and federal equal protection claims.
72. Plaintiffs demand judgment against Defendants for compensatory damages, punitive damages, attorneys' fees, costs, and such other and additional relief as this Court deems equitable and just.

F. Count 6- Defamation

73. Plaintiffs re-allege and incorporate all of the allegations in the preceding paragraphs.
74. This count is pled against Steve Berlin in his individual capacity.
75. All proceedings and investigations being conducted by the Board are required to be confidential until such time as a finding is made, pursuant to City Code.
76. On November 9, 2020, Berlin voluntarily discussed his belief that Brookins had violated the Ethics Code with WTTW Reporter Heather Cherone. This discussion occurred prior to the Board taking any formal action. And to this day, as mentioned above, the Board still has not received a proper referral that would allow action.
77. The contention by Berlin that Brookins had violated the Ethics rules are false.
78. Berlins false statements were published in function.
79. Berlins false statements directly impacted and caused financial harm to Brookins.

80. Berlin's false statements while concerning a public figure, also imply possible criminal wrongdoing in addition to implying ethical wrongdoing.

81. Therefore, the statements to Cherone constitute defamation per se.

82. Wherefore, Plaintiff prays that judgment be entered against Defendant for actual and punitive damages sufficient to compensate for the damages caused by Defendant's publication of false statements and to deter Defendant and others from similar behavior in the future.

Respectfully Submitted,
/s/ Travis Richardson
Travis Richardson

Travis Richardson
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Exhibit List

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EXHIBIT 1



BOARD OF ETHICS
CITY OF CHICAGO

ADVISORY OPINION

To The Honorable X Alderman, Ward
The Honorable Y Alderman, Ward

Date: September 13, 2019

Re Case No. 19027.A, Practice of Criminal Defense Law by City Elected Officials

Executive Summary

The Board of Ethics has determined that aldermen who are licensed attorneys may not represent (or receive compensation or anything else of value from the representation by another attorney of) persons in criminal cases where there is involvement by Chicago Police Department personnel. More precisely, we have determined that the fiduciary duty provision of the City's Governmental Ethics Ordinance (the "Ethics Ordinance") prohibits City Council members who are licensed attorneys¹ from personally representing or receiving or deriving compensation or anything else of value from the representation by others of persons in traffic or criminal cases in which there is participation by Chicago Police Department ("CPD") personnel, as, for example, arresting officers, executors of search warrants, investigators, witnesses, or custodians of evidence.²

I. Background

On July 17, 2019, before a meeting of the City Council's Committee on Ethics and Government Oversight to consider amendments to Municipal Code Chapters 2-56 and 2-156, Alderman X, an attorney licensed to practice in Illinois, asked our Executive Director whether proposed amendments to §2-156-090(b) would limit his ability to practice criminal defense law, in addition to his aldermanic duties. The Executive Director advised the alderman that he would need to take the matter up through a formal advisory opinion issued by the Board. Then, on July 22, Alderman Y emailed the Executive Director on behalf of Alderman X asking the same question. On July 24, the City Council passed (among others) amendments to §2-156-090(b), "Representation of Other Persons," which take effect on December 17, 2019.

This opinion answers the aldermen's question.

This is a matter of first impression for the Board.

¹ Among elected City officials, five (5) currently serving City Council members have disclosed an outside law practice on their 2019 Statement of Financial Interests: Howard Brookins (2nd Ward), Edward Burke (14th Ward), Leslie Hairston (5th Ward), Chris Faliaferro (29th Ward), and Patrick Daley Thompson (1st Ward). Our review of Statements of Financial Interests filed by aldermen since 2013 shows that four (4) other aldermen, only one (1) of whom is still a member of the City Council, disclosed outside law practices as well. None disclose precisely what type of law they practice, as they are not required to. There are other City Council members who are attorneys, but they have not reported an outside law practice.

² Data supplied by the Cook County State's Attorney's Office ("SAO") show that, for 2019 alone, 66.16% of all felony charges, excluding narcotics cases, brought by that office have arisen from criminal occurrences investigated by the CPD, and that 66.87% of all felony charges, excluding narcotics cases, brought by that office have arisen from criminal occurrences in the City of Chicago. The Board draws a reasonable inference that, if narcotics cases are included, the percentages of cases investigated by the CPD and of criminal occurrences occurring in Chicago charged by the SAO would each be higher.

II. Relevant Law

The following Ethics Ordinance sections are relevant to this opinion:

2-156-020 Fiduciary duty. "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the city."

2-156-090(b) Representation of Other Persons [as amended, effective December 17, 2019]. "No elected official or employee may represent, or derive income, compensation or other tangible benefit from the representation of, any person in any judicial, quasi-judicial or other proceeding before any administrative agency or court: (i) in which the City is an adverse party; or (ii) that may result in an adverse effect on City revenue, City finances, or the health, safety, welfare or relative tax burden of any City residents."

Also relevant to our analysis is Rule 1.7 of the Illinois Supreme Court's Rules of Professional Conduct (the "RPC") for Illinois attorneys, entitled **Conflict of Interest: Current Clients**.³ It provides:

"(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or**
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.**

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
- (2) the representation is not prohibited by law;**
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and**
- (4) each affected client gives informed consent."**

III. Analysis

A. The Ethics Ordinance

The provision of the Ethics Ordinance most relevant to this case is *not* §2-156-090(b) as amended, the one prompting the aldermen's question. Rather, it is the Ordinance's fiduciary duty provision. Under existing §2-156-090(b), a violation occurs only where the City is a party and has interests adverse to those of the person represented by the alderman-attorney.⁴ This current prohibition is thus largely irrelevant to the question posed here: criminal complaints are typically brought by State's Attorneys in the name of the People of Illinois, and the City is rarely a party to such proceedings. However, under this provision as amended, effective December 17, 2019, a violation would occur if the alderman-attorney represents clients even in criminal proceedings where the City is *not* a party but that nonetheless may result in "an adverse effect on the health, safety or welfare of any Chicago residents."

³ For the full text of the RPC, see http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VIII/default_NEW.asp. The RPC are promulgated, interpreted, and enforced by the Illinois Supreme Court and the Attorney Registration and Disciplinary Commission ("ARDC"), one of its arms. RPC Rule 1.7 became effective January 1, 2010, and has not been amended since.

⁴ For that reason, we advised Alderman [redacted] in Case No. 03027.A that he was prohibited from representing or receiving compensation or income from someone else's representation of persons in actions against individual CPD officers, *not* by §2-156-090(b), as the City was and is not a party in those actions, but by the fiduciary duty he owes to the City as an elected alderman.

Based on this Board's previous interpretations of the Ordinance's fiduciary duty provision (§2-156-020), we find it unnecessary to address the aldermen's questions under amended §2-156-090(b), given the facts at hand. The Board leaves the application of that provision to another day. Rather, our analysis under the Ordinance's fiduciary duty provision is direct, clear and dispositive (and, as explained in B. below, consistent with relevant state law).

The Board has recognized in numerous cases since 1990 that the fiduciary duty owed to the City by City officials and employees obligates them all, including aldermen, to discharge their public duties in the City's best interests. More pointedly, in a series of advisory opinions since 1990 addressing the outside practice of law by aldermen, we have held that the fiduciary duty *aldermen* owe the City:

"establishes an obligation for aldermen to give, within lawful limits, undivided loyalty to the City of Chicago in the discharge of their public duties. In these public duties, they must be able to exercise professional judgments free from outside influence or conflicting duties to another entity. *This duty is based upon the position of the person as alderman ... and is distinct from the fiduciary duty owed by attorneys to their clients ... City Council members legislate on all areas of City government. Therefore they owe a very broad fiduciary duty to the City.* In addition, because City Council members are elected officials, chosen by the public, they are accountable to the public's trust in a way much more expansive than are members of [City] boards and commissions."⁵ (Emphasis added.)

While the question raised here presents a matter of first impression for the Board, we have applied the fiduciary duty provision in another case where an alderman-attorney wished to represent persons in lawsuits against individual CPD officers, and where, as here, the City was not itself a party to the litigation. In Case No. 03027.A, we considered whether the Ethics Ordinance prohibits an alderman-attorney from representing clients in litigation against individual CPD members arising out of allegations of misconduct by those members while performing their City responsibilities.

We determined that an alderman's fiduciary duty to the City prohibits him or her from personally representing or receiving any income or compensation from the representation by another of clients in such proceedings. We stressed that, even though the City would not be named as an adverse party in such cases, it is obligated by contract (namely, collective bargaining agreements with the various unions representing CPD personnel) to defend against such claims at its own expense and pay from its treasury any judgments or settlement amounts. Moreover, defendant CPD officers could use attorneys from the City's Law Department to defend them if they wished, thereby putting aldermen-attorneys in the conflicting position of having to cross-examine and challenge the conduct of other City employees or officials on behalf of their private clients. And, of course, the City Council approves settlement agreements in such cases, depending on the amount.

We wrote that "an essential feature of fiduciary duty is that it is indivisible – aldermen ... owe 100% of their allegiance to the City and its taxpayers."⁶ We explained⁷ that aldermen are of course not prohibited from engaging in the outside practice of law, but must "avoid taking on legal representations that would compromise their ability to exercise their aldermanic responsibilities free from any outside influences or duties (such as those owed to law clients)." *See also* Case No. 90035.A, where we determined that aldermen owe a broad fiduciary duty to the City and thus cannot represent City employees in workers' compensation cases against the City, even if the aldermen-attorneys receive no monetary compensation for the work. We wrote that: "[w]hen a City

⁵ See Case Nos. 90035.A, pp. 3-4, 03027.A, p. 4, 18007.A, p. 8. These cases and all Board opinions cited in this opinion, are collected and posted in full text here: https://www.chicago.gov/city/en/depts/ethics/supp_info/fiduciary_duty__ao121.html

⁶ Case No. 03027.A, p. 4.

⁷ This Board has, since the Ethics Ordinance was first enacted, issued a series of advisory opinions recognizing that the Ethics Ordinance does not *per se* prohibit aldermen or City employees from practicing law, in addition to their City positions and responsibilities, though of course the Ordinance, historically, and as recently amended, prohibits certain types of representation. See Case Nos. 18007.A, 90035.A, 11045.A, 12049.Q, and 15032.Q.

Council member, who is a lawyer, represents a client in a Worker's Compensation case against the City, he or she faces an irresolvable conflict between competing fiduciary duties."⁸

Put another way, aldermen cannot fulfill their fiduciary responsibilities to the City if they represent clients in criminal cases where, for example, they may need to aggressively question the credibility or conduct of CPD personnel, or attack the legitimacy of search warrants, arrests, or interrogations on behalf of private clients. If successful (attorneys are expected to zealously advocate for their clients), there may well result negative financial ramifications for the City from improper searches, arrests, or interrogations. At the same time, aldermen are obligated to engage in fair-minded debate and deliberate and vote on CPD matters that come before the City Council, and to represent their constituents on CPD matters in the community -- essential aldermanic roles.

Thus, we conclude that the Ordinance's fiduciary duty provision prohibits aldermen from representing clients in criminal cases (regardless of which agency brings the charges, such as the Cook County State's Attorney or Illinois Attorney General) in which CPD personnel and their work have been involved, as, among other roles, arresting officers, witnesses, executors of search warrants, custodians of evidence, or they otherwise participate in the proceeding or matter.⁹

B. Illinois Law

State law is also relevant to our analysis. Our conclusion under the Ethics Ordinance is consistent with the way Illinois tribunals have applied the ethics rules to which all Illinois attorneys are bound. Illinois law is clear that a sitting alderman who is a licensed attorney has a conflict of interests and thereby would violate RPC 1.7 by accepting an engagement for criminal defense work where police officers employed by the same government entity to which he or she was elected are arresting officers, investigators, or witnesses, or otherwise participate in the arrest or related activities giving rise to the case. The RPC are enacted by the Illinois Supreme Court, and enforced by the ARDC. The Board takes note of these provisions, as they lend insight and guidance for evaluating fiduciary responsibilities of attorneys who are also elected officials.¹⁰

In *In re Samuel J. Cahman*, Opinion No. 3121596, issued July 11, 2016, and affirmed by the Illinois Supreme Court on November 21, 2016,¹¹ the ARDC's Review Board determined that a Springfield alderman violated the RPC by representing defendants in cases where Springfield Police Department officers made the arrests or would serve as witnesses. The Review Board recommended that the alderman-attorney be suspended from the practice of law for 90 days and the Illinois Supreme Court imposed that sanction. It considered the following question under the RPC: does a sitting alderman who is also a licensed attorney engage in a conflict of interest by representing clients who are defendants in traffic and criminal cases in which his municipality's police officers were the arresting officers?

⁸ Case No. 90035 A, p. 4

⁹ We have found that only one of our cohort municipal ethics agencies has addressed a similar question. It came to the same conclusion. The New York City Conflict of Interests Board, applying not that state's ethics rules for attorneys, but rather New York City's governmental ethics charter, came to the same determination. See Advisory Opinion No. 2008-5, City of New York Conflicts of Interest Board, December 17, 2008 (attorneys employed by the City may not represent criminal defendants in courts within the City, but criminal defense work outside the City would not be barred so long as these matters do not require communications with New York City [District Attorneys], NYPD employees, or other City officials). See https://www1.nyc.gov/assets/colib/downloads/pdfs/aes-2004-2013/A02008_5.pdf

¹⁰ This is not the first time we have found it relevant to examine the ethics rules covering Illinois attorneys. In 1990, we issued our advisory opinion in Case 90035 A, applying the Illinois Supreme Court's then recent *In re Vrdolyak* decision. We stated:

"The Board is required to follow the law as set forth by the Illinois Supreme Court, and the Ethics Ordinance may be applied only to the extent it does not conflict with that Court's decisions. Therefore, in light of *Vrdolyak*, City Council members who are lawyers, as lawyer-legislators, may not represent City employees in Worker's Compensation actions against the City."

¹¹ See https://www.ardc.org/rd_database/rulesdecisions.html

Alderman Cahnman, an attorney engaged in private practice in Springfield, represented more than a dozen defendants charged with traffic and criminal violations in Sangamon County Circuit Court while serving as a Springfield alderman. In each case, Springfield Police Department officers were the arresting or citation-issuing officers. The violations at issue included a variety of charges, mostly traffic- or retail theft-related.

The Review Board analyzed the case under RPC Rule 1.7. That Rule, as noted above, prohibits a lawyer from representing a client if “there is a significant risk that the representation will be materially limited by the lawyer’s responsibilities to another client, a former client or third person or by a personal interest of the lawyer.” Drawing upon the Illinois Supreme Court’s reasoning in an earlier case, *In re LaPinska*,¹² the Review Board stated that a “conflict arises when an attorney’s independent judgment on behalf of a client may be affected by loyalty to another party.” The Review Board also recognized that a violation of Rule 1.7 does *not* require a showing that a lawyer’s judgment was *in fact* compromised, only that it *might* be compromised. It stated:

“the key inquiry in determining whether a conflict of interest exists is whether there is a potential for diverging interests ... [and] it seems inescapable that when an alderman represents defendants in cases where police officers from the city he serves are arresting officers, there is always a potential for diverging interests.”¹³

The Review Board explained that, if a city police officer is a witness for the prosecution, the alderman-attorney, as defense counsel, may well need to cross-examine that officer, or others, even though the city itself is not a party (criminal complaints are typically brought by State’s Attorneys in the name of the People of Illinois):

“He [the alderman-attorney] thus has a choice to make – assail the police officer’s actions [and/or testimony] and thereby potentially do harm to the city, or go easy on the police officer and thereby fail to be an uncompromising advocate for his client. That is an untenable situation for an attorney-alderman to place himself in vis a vis his client ...”¹⁴

Accordingly, it determined that Cahnman, as attorney *and* as alderman:

“owed his undivided fidelity and a fiduciary duty to both his clients and the City of Springfield. We agree ... that [he] had a concurrent conflict, in that he operated under two divided and conflicting loyalties – one to the City for which he was alderman, and one to his client ... in the cases in which [the client] was arrested or issued citations by Springfield police officers. We believe that the circumstances here require a finding that [he] violated Rule 1.7.”¹⁵

The Review Board also relied on the Illinois Supreme Court’s 1990 decision in *In re Vrdolyak*.¹⁶ In that case, the Illinois Supreme Court held that, as an alderman, Vrdolyak owed “his undivided loyalty and a fiduciary duty to the City.”¹⁷ It advised generally that “a lawyer-legislator should anticipate possible conflicts of interest when accepting employment and guard against them.”¹⁸ And, it cautioned:

¹² 72 Ill. 2d 461, 470, 381 N.E.2d 700 (1978).

¹³ A.R.D.C. Review Board Case 2014PRC0102, pp. 10, 15 (2016).

¹⁴ *Id.*, at pp. 15-16.

¹⁵ *Id.*, at pp. 10-11.

¹⁶ 137 Ill. 407, 422, 560 N.E.2d 840 (1990). There, as noted above, the Court censured then-Alderman Vrdolyak for representing City employees in workers’ compensation claims against the City while an alderman.

¹⁷ *Id.*, 137 Ill.2d at 419.

¹⁸ *Id.*, 137 Ill.2d at 423 (citations omitted).

"If we are to maintain public confidence in our system of government and the legal profession, attorneys who serve as public officials must avoid not only direct conflicts of interests, but also any situation which might appear to involve a conflict of interest."¹⁹

Our research shows that other attorney regulatory bodies that have addressed this issue also prohibit their lawyer-legislators from representing clients in criminal actions involving police personnel from the government entity to which they are elected.²⁰

Thus, we take notice that, as a matter of Illinois law, Chicago aldermen are prohibited by the RPC from representing clients in criminal matters involving personnel from the CPD, because such representation places the aldermen in a conflict of interests between those duties they owe to their clients and those they owe to the city for which they serve as elected officials.

IV. Conclusions and Determination

As set forth above, the Board concludes that: (i) aldermen owe an undivided fiduciary duty to the City of Chicago; (ii) similarly, aldermen-attorneys owe an undivided fiduciary duty to their clients; (iii) aldermen-attorneys are therefore placed in an untenable position when they represent clients in criminal matters involving CPD, as their concurrent fiduciary duties are in conflict; and (iv) such conflicts result in the erosion of public confidence both in the legal profession and in government; and thus (v) when aldermen also act as private attorneys in criminal matters that involve the CPD, they will unavoidably face a conflict between their duties to the City of Chicago and to their private legal clients, which is prohibited by both the Ethics Ordinance's fiduciary duty provision, §2-156-020, and by Rule 1.7 of the Illinois Rules of Professional Conduct for Attorneys.

The Board therefore determines that City of Chicago aldermen who are licensed attorneys are prohibited by their fiduciary duty to the City (under the City's Governmental Ethics Ordinance) from personally representing, or receiving or deriving compensation or anything else of value from the representation by others, of persons in traffic or criminal cases in which there is participation by Chicago Police Department ("CPD") personnel, as, for example, arresting officers, executors of search warrants, investigators, witnesses, or custodians of evidence.²¹

Our determination does not prohibit aldermen from practicing criminal law, *so long as CPD personnel have no involvement in the case, as, for example, arresting officers, executors of search warrants, custodians of evidence, or witnesses*. Similarly, our determination does not prohibit law partners or associates of City elected officials from representing clients in criminal actions even if CPD personnel were involved in the case, provided the City elected official and the law firm enter into and observe an impermeable screening arrangement whereby the City elected official does not participate in the case in any way or receive any income, compensation, or other thing of value from the matter, including substitute payments.²²

¹⁹ *Id.* 137 Ill 2d at 424-425, citing *Higgins v. Advisory Committee on Professional Ethics*, 73 N.J. 123, 125, 373 A.2d 372, 373 (1977) (New Jersey Supreme Court affirmed a lower court's opinion that a member of a board of chosen freeholders (similar to a county board in Illinois) who is an attorney may not represent a criminal defendant indicted for a crime in the county in which the freeholder-attorney holds office)

²⁰ See e.g. Supreme Court of Ohio Board of Commissioners on Grievances and Discipline Opinion 96-6, August 9, 1996 (It is improper under the Ohio Code of Professional Responsibility for a lawyer to represent, privately or by court appointment, criminal defendants in municipal court while serving as a city council person for the municipality because such representation creates an appearance of impropriety and may appear to place personal or professional interests in conflict with official duties. Such representation is particularly inappropriate when the criminal defendant has been investigated or arrested by a police officer where the attorney serves.); Michigan State Bar Opinion CI-1137, April 2, 1986 ([A] lawyer who is a city council member of a municipality must refrain from defending in any court persons accused of crimes where police officers of that city are the prosecuting officers or complaining witnesses. The opinion cited the concern that an attorney-alderman will not be able to preserve the appearance of undivided loyalty and avoid any appearance of conflict if the lawyer represents the client.) and Iowa S. Ct. Board of Professional Ethics and Conduct Opinion No. 04-10, June 8, 2004 (it is improper for a city council member to represent a criminal defendant charged under state law if city police officers are involved in the arrest and may be called as witnesses). The Review Board's *Cahman* opinion cites other cases as well.

²¹ Our opinion addresses only whether City elected officials can represent individuals in criminal cases where the CPD is involved. We note, but do not address here, that the standards are different for appointed officials - the test for them is whether the representation in a criminal or judicial, quasi-judicial or administrative proceeding is 'wholly unrelated' to their work as a City board or commission member. We also do not address the question answered by our New York City colleagues - whether City employees may engage in this type of law practice. Those questions are not before the Board in this case.

²² See Case No. 18007.A, pp. 8-9

In light of our determination, we advise that, *if* Alderman X currently represents clients in criminal matters where CPD officers are involved, as, for example, arresting officers, executors of search warrants, custodians of evidence, or witnesses, he withdraw his representation from such cases as soon as practicable, and, consistent with his obligations under the RPC, assist his clients in finding suitable counsel to take over the matters

V. Penalties for Violating the Ordinance's Fiduciary Duty Provision

The penalties for being found to have violated the Ordinance's fiduciary duty provision are severe: violators shall be subject to a fine of not less than \$1,000 and not more than \$5,000 for each offense (per §2-156-465(b)(7), as amended, effective September 28, 2019). Moreover, being found in violation of the City's Governmental Ethics Ordinance for this type of practice could invite scrutiny and potential enforcement action from the ARDC.

VI. Reliance

The Board's determinations and advice are based solely on the application of Illinois law and the Governmental Ethics Ordinance to the question presented. This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered. *Because many issues surrounding the outside practice of law by elected officials are fact-specific, we urge City elected officials to seek confidential guidance from Board staff with questions they may have.*

The Board appreciates the opportunity to advise you, and your professionalism in seeking our advice on this and prior occasions. If you have further questions about this or any other matter, please contact the Board's legal staff.



William F. Conlon
Board Chair

EXHIBIT 2



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September 27, 2019

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Re: Case No. 19027.A, Practice of Criminal Defense Law by City Elected
Officlas

Mr. Conlon;

On behalf of Alderman X and pursuant to Rule 3-8 of the Boards Amended Rules and Regulations (as effective of January 5, 2017) and in accordance with MCC Chapter 2-56, I write to request a reconsideration of the Board's September 13, 2019 advisory opinion. In so doing, my Client does not concede that this was a proper formal opinion pursuant to Rule 3-4, and in fact still contends that the advisory opinion, in addition to being substantively incorrect, is procedurally infirmed.

A. Procedural Background

On July 17, 2019 there was an informal conversation between Alderman X, an Illinois Licensed attorney and the Board of Ethics Executive Director. The purpose of that conversation, obvious in context and substance, was for the Alderman to obtain information and thoughts relative to a legislative decision that Alderman X was in the process of making regarding an amendment to Section 2-156-090 of the Chicago Municipal Code (which regulates ethics requirements and the Board of Ethics). As such, Alderman X understood this conversation to be both informal and to be privileged pursuant to the legislative deliberative process.

As a follow up to this informal discussion, Alderman X had several conversations with multiple legislative colleagues, all for the purpose of assessing certain proposed legislative changes to the Municipal Code relative to ethics requirements and the Board of Ethics.

On July 22, 2019, one of those colleagues, Alderman Y, still engaged in the legislative deliberative process relative to assessing a constitutionally protected vote to be made at the July 24, 2019 City Council Meeting, then emailed the Executive Director of the Board of Ethics a follow up question. The purpose of the email was to follow up on the discussion that Alderman X had initiated, and again with the intent engaging in the legislative deliberative process and assessing the efficacy of the amendment up for vote at the July 24, 2019 City Council meeting.

On July 24, 2019, the City Council passed the amendment, which is to take effect on December 17, 2019.

The relevant portion of the code currently reads:

(b) No elected official or employee may derive any income or compensation from the representation of any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in **which the city is a party and that person's interest is adverse to that of the city.** [emphasis added]

The original amendment to subsection (b) read as follows:

(b) No elected official or employee may derive any income or compensation or other tangible benefit from the representation of any person with an interest adverse to the City. in any judicial or quasi-judicial proceeding before any administrative agency or court: (i) in which the city is a party; or (ii) that impacts anticipated city revenue, or the health, safety or welfare of City residents such that the City has the right to become a party to that proceeding and that person's interest is adverse to that of the city. For purposes of this subsection, the City is presumed to have the right to become a party in any tax, bankruptcy or environmental protection proceeding that may impact the City's revenue, or the health, safety or welfare of City residents. [emphasis added]

The ultimate amendment that passed and that goes into effect on December 17, 2019 reads as follows:

(b) No elected official or employee may represent, or derive any income or compensation or other tangible benefit from the representation of any person in any judicial or quasi-judicial or other proceeding before any administrative agency or court: (i) in which the city is an adverse party; or (ii) that may result in an adverse effect on City revenue, City finances, or the health, safety, welfare or relative tax burden of any City residents.

It appears that despite the purpose of these communications being for the purpose of making a legislative decision, the Executive Director and the Board took this as a formal request pursuant to Rule 3-4 for an advisory opinion as it relates to §2-156-090(b), and its prohibition against an elected official from representing persons with an adverse interest to the City. Alderman X is a criminal defense attorney that from time to time represents criminal defendants charged and prosecuted in state court by the Cook County States Attorney Office, including criminal defendants arrested and charged with offenses alleged to have occurred in the City of Chicago and investigated by the Chicago Police Department.

On September 13, 2019, the Board of Ethics released an advisory opinion captioned as “Case No. 19027.A, Practice of Criminal Defense by City Elected Officials.” A copy of that letter is attached as Exhibit 1. To this request for reconsideration. The question the Board understood it was providing an advisory opinion on is whether an elected official can represent a criminal defendant that has been accused of committing a crime in Chicago or where the charge was the result of an investigation done by law enforcement working for the City of Chicago.

In drafting that advisory opinion, the Board noted the Code Amendment and also noted Rule 1.7 of the Illinois Supreme Court’s Rules of Professional Responsibility (an ethics rules that specifically addresses conflicts of interests for current clients). Ex. 1, p. 2.

In drafting the advisory opinion, the Board began by stating more relevant than Section 2-156-090(b), is Code Section 2-156-020. Id. That section simply says that “Officials and employees shall at all times in performance of their public duties owe a fiduciary duty to the City.” The Board then noted that it therefore would not be addressing whether the amended Section 2-156-090(b) prevents an elected official from representing criminal defendants (the original purpose of both dialogues from Aldermen X and Y). Id.

Ultimately, the Board concluded that:

As set forth above, the Board concludes that (1) aldermen owe an undivided fiduciary duty to the City of Chicago; (ii) similarly, aldermen-attorneys owe an undivided fiduciary duty to their clients; (iii) aldermen-attorneys are therefore placed in an untenable position when they represent clients in criminal matters involving CPD, as their current fiduciary duties are in conflict; and (iv) such conflicts result in the erosion of public confidence both in the legal profession and in government; and thus (v) when aldermen also act as private attorneys in criminal matters that involve the CPD, they unavoidably face a conflict between their duties to the City of Chicago and to their private legal clients, which is prohibited by both the Ethics Ordinance’s fiduciary duty provision, §2-156-020 and by Rule 1.7 of the Illinois Rules of Professional Conduct...aldermen who are licensed attorneys are prohibited...from personally representing, or receiving or deriving compensation or anything else of value from representation by others,

persons in traffic or criminal cases in which there is participation by Chicago Police Department (“CPD”) personnel...” Id., p. 6

This Rule 3-8 request for reconsideration has timely followed, via notice being hand delivered to the Board on the 14th day following the opinion.

B. Apparent Legal Basis for Advisory Opinion

Relying on its previous jurisprudence regarding Section 2-156-020, the Board concluded that:

“aldermen cannot fulfill their fiduciary responsibilities to the City if they represent clients in criminal cases where, for example, they may need to aggressively question the credibility or conduct of CPD personnel, or attack the legitimacy of search warrants, arrests, or interrogations on behalf of private clients. If successful (attorneys are expected to zealously advocate for their clients), there may well result negative financial ramifications for the City from improper searches, arrests, or interrogations. At the same time, Aldermen are obligated to engage in fair-minded debate and deliberate and vote on CPD matters that come before the City Council, and to represent their constituents on CPD matters in the community—essential aldermanic roles. Thus we conclude that the Ordinance’s fiduciary duty prohibits aldermen from representing clients in criminal cases...in which CPD personnel and their work have been involved, as among other roles, arresting officers, executors of search warrants, custodians of evidence or they otherwise participate in the proceeding or matter.” Id., at p. 4.

The Board also relied upon an ARDC Review Board opinion in *In re Samuel J. Cahnman*, Opinion No. 3121596, issued July 11, 2016. Id., at p. 4. The Board found that the Cahnman opinion was dispositive in finding that there is necessarily a Rule 1.7 conflict any time a municipal body’s elected official represents criminal clients on cases where officers from that municipal body were part of the case. Id., pages 5-6.

C. Analysis and Argument

The Board’s analysis of MCC 2-156-020 as it relates to an Aldermen engaging in criminal defense is flawed and riddled with troubling assumptions and basic logic fallacies, and its analysis of the Cahnman case simply misses the relevant holdings and precedential analysis within that case. As such, the Board should reconsider its advisory opinion.

1. The advisory opinion rests on a basic misunderstanding of fiduciary duty

As more eloquently detailed in the legal opinion by Mary Robinson, attached as Exhibit B, the advisory opinion “inaccurately and unwisely assumes that dedication to the interests of the City

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requires acceptance or at least passivity in the face of illegal conduct by city employees.” Ex. B, p. 1.

a. *Fiduciary Duty is predicated on lawful loyalty, not covering up unlawful conduct of City Employees*

As Ms. Robinson (the administrator at the ARDC for 15 years—See Ex. C), explains the Board's opinion essentially turns the concept of fiduciary duty on its head by basically requiring all elected officials to turn a blind eye to police misconduct regardless of how harmful that conduct is to the City and to the City's residents.

Such a requirement itself would put any alderman-attorney at risk of losing their law license.

Given the thoroughness of sound reasoning in Ms. Robinson's legal opinion attached, the board is simply asked to review that opinion to understand the very problematic reasoning in its own advisory opinion.

b. *In a democracy, an independently elected official has its first fiduciary obligation to the public interest and to constituents that elect him or her*

To build, upon Ms. Robinson's opinion, however, it is important to point out however that the ramifications of the opinion is that it usurps an elected officials primary fiduciary duty—to the constituents that elected them.

As duly elected officials, it is the aldermen that create the laws and policies by which the employees for the City must operate. As such, the ultimate fiduciary duty of all elected officials in a properly functioning democracy is to the constituents that they serve and that elected them.

All of the scholarship on the issue of elected officials and their fiduciary duties discuss their duty of loyalty to the public interest—not necessarily to the specific corporate unit of government that they manage or legislate for. See e.g. *The False Promise of Fiduciary Government*, Notre Dame Law Review, Vol 89, Issue 3, 2-2014, Seth Davis; and see *Translating Fiduciary Principles Into Public Law*, Harv Law Review Forum, 126 Harv.L.Rev.671 (2013), David L. Ponet, Ethan J. Leib, & Michael Serota.

Further, this fiduciary duty to the public interest and to ones constituents is not a duty that can be legislated away, nor is it a duty that an administrative body created by elected legislators can usurp.

c. *The advisory opinion rests on a basic misunderstanding of criminal defense representation*

There is another point to reiterate that is implicit in Ms. Robinson's opinion. Criminal Defense lawyers have the legal obligation to follow all of the rules of professional responsibility. These include the rules to not mislead a tribunal, to not suborn perjury, to not engage in meritless or frivolous forms of litigation.

Therefore, if a lawyer is attacking the credibility of a police officer, there is by definition a basis in the record to question the credibility of that police officer. If a lawyer is filing a motion to question the basis of a search, there is by definition a basis in the record to question the basis of that search. If the lawyer is questioning the basis of an investigation, there is by definition a basis in the record to question the efficacy of that investigation.

If however, there are no issues regarding the conduct of the police, and sufficient evidence of guilt than a criminal defense attorney will not have a reason or basis to call into doubt the credibility of any police officer, and as happens more than 90 percent of the time, the defendant will just plead guilty. See https://www.cookcountystatesattorney.org/sites/default/files/files/documents/ccsao_2017_data_report_180220.pdf

2. The advisory opinion misapplies Rule 1.7 and the Cahnman Decision

Again, the Robinson opinion attached as Exhibit B clearly and concisely describes the Board's misapplication of Cahnman and its holding. Put simply the Cahnman decision is not applicable to the facts presented here. Cahnman was accused of regular and multiple violations of his duties to his clients. Ex. B. The ARDC never addressed and was never asked to address whether Cahnman's representations somehow violated his duties to the municipal body of government, to the public interest or to his constituents.

3. A formal advisory opinion was never sought

The Ethics Board overstepped is properly delegated authority by twisting informal inquiries meant to aid the legislative deliberative process, and then turning those informal discussions into a feigned formal request for an advisory opinion and then releasing that opinion after the vote on the legislative issue that prompted the conversation.

Not only did this conduct violate the Board's own rules, it is a usurpation of legislative authority. Although administrative bodies such as the Board have the authority to create rules and policies as delegated to them by legislative bodies, they do not have such authority when they act outside their own rules or when they act in abrogation of the intent of the authority

granted them. *See Department of Transportation v. Keller Development Corp.*, 122 Ill. App. 3d 1038, 462 N.E.2d 532, 78 Ill. Dec. 413 (1984).

D. Conclusion

Because the Board misapplied the concept of fiduciary duty as it relates to a democratically elected official (in multiple ways), because the Board made basic bad assumptions and logic fallacies when applying this concept in this particular situation to an alderman and criminal defense attorney, and because the Board did not follow its own rules and mandate, the Board should reconsider and overturn its previous opinion.

CC/

Steve Berlin, Executive Director

Enc:

Exhibit A—Board Opinion

Exhibit B—Robinson Opinion

Exhibit C—Robinson CV

Sincerely,

Brendan Shiller

Brendan Shiller
Managing Partner, Shiller Preyar Law Offices
Board President, Westside Justice Center

Exhibit A



BOARD OF ETHICS
CITY OF CHICAGO

ADVISORY OPINION

To The Honorable X Alderman, Ward
The Honorable Y Alderman, Ward

Date: September 13, 2019

Re Case No. 19027 A, Practice of Criminal Defense Law by City Elected Officials

Executive Summary

The Board of Ethics has determined that aldermen who are licensed attorneys may not represent (or receive compensation or anything else of value from the representation by another attorney of) persons in criminal cases where there is involvement by Chicago Police Department personnel. More precisely, we have determined that the fiduciary duty provision of the City's Governmental Ethics Ordinance (the "Ethics Ordinance") prohibits City Council members who are licensed attorneys¹ from personally representing or receiving or deriving compensation or anything else of value from the representation by others of persons in traffic or criminal cases in which there is participation by Chicago Police Department ("CPD") personnel, as, for example, arresting officers, executors of search warrants, investigators, witnesses, or custodians of evidence.²

I. Background

On July 17, 2019, before a meeting of the City Council's Committee on Ethics and Government Oversight to consider amendments to Municipal Code Chapters 2-56 and 2-156, Alderman X, an attorney licensed to practice in Illinois, asked our Executive Director whether proposed amendments to §2-156-090(b) would limit his ability to practice criminal defense law, in addition to his aldermanic duties. The Executive Director advised the alderman that he would need to take the matter up through a formal advisory opinion issued by the Board. Then, on July 22, Alderman Y emailed the Executive Director on behalf of Alderman X asking the same question. On July 24, the City Council passed (among others) amendments to §2-156-090(b), "Representation of Other Persons," which take effect on December 17, 2019.

This opinion answers the aldermen's question.

This is a matter of first impression for the Board.

¹ Among elected City officials, five (5) currently serving City Council members have disclosed an outside law practice on their 2019 Statement of Financial Interests: Howard Brookins (2nd Ward), Edward Burke (14th Ward), Leslie Hairston (5th Ward), Chris Faliaferro (29th Ward), and Patrick Daley Thompson (1st Ward). Our review of Statements of Financial Interests filed by aldermen since 2013 shows that four (4) other aldermen, only one (1) of whom is still a member of the City Council, disclosed outside law practices as well. None disclose precisely what type of law they practice, as they are not required to. There are other City Council members who are attorneys, but they have not reported an outside law practice.

² Data supplied by the Cook County State's Attorney's Office ("SAO") show that, for 2019 alone, 66.16% of all felony charges, excluding narcotics cases, brought by that office have arisen from criminal occurrences investigated by the CPD, and that 66.87% of all felony charges, excluding narcotics cases, brought by that office have arisen from criminal occurrences in the City of Chicago. The Board draws a reasonable inference that, if narcotics cases are included, the percentages of cases investigated by the CPD and of criminal occurrences occurring in Chicago charged by the SAO would each be higher.

II. Relevant Law

The following Ethics Ordinance sections are relevant to this opinion:

2-156-020 Fiduciary duty. "Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the city."

2-156-090(b) Representation of Other Persons [as amended, effective December 17, 2019]. "No elected official or employee may represent, or derive income, compensation or other tangible benefit from the representation of, any person in any judicial, quasi-judicial or other proceeding before any administrative agency or court: (i) in which the City is an adverse party; or (ii) that may result in an adverse effect on City revenue, City finances, or the health, safety, welfare or relative tax burden of any City residents."

Also relevant to our analysis is Rule 1.7 of the Illinois Supreme Court's Rules of Professional Conduct (the "RPC") for Illinois attorneys, entitled **Conflict of Interest: Current Clients**.³ It provides:

"(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or**
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.**

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
- (2) the representation is not prohibited by law;**
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and**
- (4) each affected client gives informed consent."**

III. Analysis

A. The Ethics Ordinance

The provision of the Ethics Ordinance most relevant to this case is *not* §2-156-090(b) as amended, the one prompting the aldermen's question. Rather, it is the Ordinance's fiduciary duty provision. Under existing §2-156-090(b), a violation occurs only where the City is a party and has interests adverse to those of the person represented by the alderman-attorney.⁴ This current prohibition is thus largely irrelevant to the question posed here: criminal complaints are typically brought by State's Attorneys in the name of the People of Illinois, and the City is rarely a party to such proceedings. However, under this provision as amended, effective December 17, 2019, a violation would occur if the alderman-attorney represents clients even in criminal proceedings where the City is *not* a party but that nonetheless may result in "an adverse effect on the health, safety or welfare of any Chicago residents."

³ For the full text of the RPC, see http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VIII/default_NEW.asp. The RPC are promulgated, interpreted, and enforced by the Illinois Supreme Court and the Attorney Registration and Disciplinary Commission ("ARDC"), one of its arms. RPC Rule 1.7 became effective January 1, 2010, and has not been amended since.

⁴ For that reason, we advised Alderman [redacted] in Case No. 03027 A that he was prohibited from representing or receiving compensation or income from someone else's representation of persons in actions against individual CPD officers, *not* by §2-156-090(b), as the City was and is not a party in those actions, but by the fiduciary duty he owes to the City as an elected alderman.

Based on this Board's previous interpretations of the Ordinance's fiduciary duty provision (§2-156-020), we find it unnecessary to address the aldermen's questions under amended §2-156-090(b), given the facts at hand. The Board leaves the application of that provision to another day. Rather, our analysis under the Ordinance's fiduciary duty provision is direct, clear and dispositive (and, as explained in B. below, consistent with relevant state law).

The Board has recognized in numerous cases since 1990 that the fiduciary duty owed to the City by City officials and employees obligates them all, including aldermen, to discharge their public duties in the City's best interests. More pointedly, in a series of advisory opinions since 1990 addressing the outside practice of law by aldermen, we have held that the fiduciary duty *aldermen* owe the City:

"establishes an obligation for aldermen to give, within lawful limits, undivided loyalty to the City of Chicago in the discharge of their public duties. In these public duties, they must be able to exercise professional judgments free from outside influence or conflicting duties to another entity. *This duty is based upon the position of the person as alderman ... and is distinct from the fiduciary duty owed by attorneys to their clients ... City Council members legislate on all areas of City government. Therefore they owe a very broad fiduciary duty to the City.* In addition, because City Council members are elected officials, chosen by the public, they are accountable to the public's trust in a way much more expansive than are members of [City] boards and commissions."⁵ (Emphasis added.)

While the question raised here presents a matter of first impression for the Board, we have applied the fiduciary duty provision in another case where an alderman-attorney wished to represent persons in lawsuits against individual CPD officers, and where, as here, the City was not itself a party to the litigation. In Case No. 03027.A, we considered whether the Ethics Ordinance prohibits an alderman-attorney from representing clients in litigation against individual CPD members arising out of allegations of misconduct by those members while performing their City responsibilities.

We determined that an alderman's fiduciary duty to the City prohibits him or her from personally representing or receiving any income or compensation from the representation by another of clients in such proceedings. We stressed that, even though the City would not be named as an adverse party in such cases, it is obligated by contract (namely, collective bargaining agreements with the various unions representing CPD personnel) to defend against such claims at its own expense and pay from its treasury any judgments or settlement amounts. Moreover, defendant CPD officers could use attorneys from the City's Law Department to defend them if they wished, thereby putting aldermen-attorneys in the conflicting position of having to cross-examine and challenge the conduct of other City employees or officials on behalf of their private clients. And, of course, the City Council approves settlement agreements in such cases, depending on the amount.

We wrote that "an essential feature of fiduciary duty is that it is indivisible – aldermen ... owe 100% of their allegiance to the City and its taxpayers."⁶ We explained⁷ that aldermen are of course not prohibited from engaging in the outside practice of law, but must "avoid taking on legal representations that would compromise their ability to exercise their aldermanic responsibilities free from any outside influences or duties (such as those owed to law clients)." *See also* Case No. 90035.A, where we determined that aldermen owe a broad fiduciary duty to the City and thus cannot represent City employees in workers' compensation cases against the City, even if the aldermen-attorneys receive no monetary compensation for the work. We wrote that: "[w]hen a City

⁵ See Case Nos. 90035.A, pp. 3-4, 03027.A, p. 4, 18007.A, p. 8. These cases and all Board opinions cited in this opinion, are collected and posted in full text here: https://www.chicago.gov/city/en/depts/ethics/supp_info/fiduciary_duty__ao121.html

⁶ Case No. 03027.A, p. 4.

⁷ This Board has, since the Ethics Ordinance was first enacted, issued a series of advisory opinions recognizing that the Ethics Ordinance does not *per se* prohibit aldermen or City employees from practicing law, in addition to their City positions and responsibilities, though of course the Ordinance, historically, and as recently amended, prohibits certain types of representation. See Case Nos. 18007.A, 90035.A, 11045.A, 12049.Q, and 15032.Q.

Council member, who is a lawyer, represents a client in a Worker's Compensation case against the City, he or she faces an irresolvable conflict between competing fiduciary duties."⁸

Put another way, aldermen cannot fulfill their fiduciary responsibilities to the City if they represent clients in criminal cases where, for example, they may need to aggressively question the credibility or conduct of CPD personnel, or attack the legitimacy of search warrants, arrests, or interrogations on behalf of private clients. If successful (attorneys are expected to zealously advocate for their clients), there may well result negative financial ramifications for the City from improper searches, arrests, or interrogations. At the same time, aldermen are obligated to engage in fair-minded debate and deliberate and vote on CPD matters that come before the City Council, and to represent their constituents on CPD matters in the community -- essential aldermanic roles.

Thus, we conclude that the Ordinance's fiduciary duty provision prohibits aldermen from representing clients in criminal cases (regardless of which agency brings the charges, such as the Cook County State's Attorney or Illinois Attorney General) in which CPD personnel and their work have been involved, as, among other roles, arresting officers, witnesses, executors of search warrants, custodians of evidence, or they otherwise participate in the proceeding or matter.⁹

B. Illinois Law

State law is also relevant to our analysis. Our conclusion under the Ethics Ordinance is consistent with the way Illinois tribunals have applied the ethics rules to which all Illinois attorneys are bound. Illinois law is clear that a sitting alderman who is a licensed attorney has a conflict of interests and thereby would violate RPC 1.7 by accepting an engagement for criminal defense work where police officers employed by the same government entity to which he or she was elected are arresting officers, investigators, or witnesses, or otherwise participate in the arrest or related activities giving rise to the case. The RPC are enacted by the Illinois Supreme Court, and enforced by the ARDC. The Board takes note of these provisions, as they lend insight and guidance for evaluating fiduciary responsibilities of attorneys who are also elected officials.¹⁰

In *In re Samuel J. Cahman*, Opinion No. 3121596, issued July 11, 2016, and affirmed by the Illinois Supreme Court on November 21, 2016,¹¹ the ARDC's Review Board determined that a Springfield alderman violated the RPC by representing defendants in cases where Springfield Police Department officers made the arrests or would serve as witnesses. The Review Board recommended that the alderman-attorney be suspended from the practice of law for 90 days and the Illinois Supreme Court imposed that sanction. It considered the following question under the RPC: does a sitting alderman who is also a licensed attorney engage in a conflict of interest by representing clients who are defendants in traffic and criminal cases in which his municipality's police officers were the arresting officers?

⁸ Case No. 90035 A, p. 4

⁹ We have found that only one of our cohort municipal ethics agencies has addressed a similar question. It came to the same conclusion. The New York City Conflict of Interests Board, applying not that state's ethics rules for attorneys, but rather New York City's governmental ethics charter, came to the same determination. See Advisory Opinion No. 2008-5, City of New York Conflicts of Interest Board, December 17, 2008 (attorneys employed by the City may not represent criminal defendants in courts within the City, but criminal defense work outside the City would not be barred so long as these matters do not require communications with New York City [District Attorneys], NYPD employees, or other City officials). See https://www1.nyc.gov/assets/colib/downloads/pdfs/aes-2004-2013/A02008_5.pdf

¹⁰ This is not the first time we have found it relevant to examine the ethics rules covering Illinois attorneys. In 1990, we issued our advisory opinion in Case 90035 A, applying the Illinois Supreme Court's then recent *In re Vrdolyak* decision. We stated:

"The Board is required to follow the law as set forth by the Illinois Supreme Court, and the Ethics Ordinance may be applied only to the extent it does not conflict with that Court's decisions. Therefore, in light of *Vrdolyak*, City Council members who are lawyers, as lawyer-legislators, may not represent City employees in Worker's Compensation actions against the City."

¹¹ See https://www.ardc.org/rd_database/ru/esdc/decisions.html

Alderman Cahnman, an attorney engaged in private practice in Springfield, represented more than a dozen defendants charged with traffic and criminal violations in Sangamon County Circuit Court while serving as a Springfield alderman. In each case, Springfield Police Department officers were the arresting or citation-issuing officers. The violations at issue included a variety of charges, mostly traffic- or retail theft-related.

The Review Board analyzed the case under RPC Rule 1.7. That Rule, as noted above, prohibits a lawyer from representing a client if “there is a significant risk that the representation will be materially limited by the lawyer’s responsibilities to another client, a former client or third person or by a personal interest of the lawyer.” Drawing upon the Illinois Supreme Court’s reasoning in an earlier case, *In re LaPinska*,¹² the Review Board stated that a “conflict arises when an attorney’s independent judgment on behalf of a client may be affected by loyalty to another party.” The Review Board also recognized that a violation of Rule 1.7 does *not* require a showing that a lawyer’s judgment was *in fact* compromised, only that it *might* be compromised. It stated:

“the key inquiry in determining whether a conflict of interest exists is whether there is a potential for diverging interests ... [and] it seems inescapable that when an alderman represents defendants in cases where police officers from the city he serves are arresting officers, there is always a potential for diverging interests.”¹³

The Review Board explained that, if a city police officer is a witness for the prosecution, the alderman-attorney, as defense counsel, may well need to cross-examine that officer, or others, even though the city itself is not a party (criminal complaints are typically brought by State’s Attorneys in the name of the People of Illinois):

“He [the alderman-attorney] thus has a choice to make – assail the police officer’s actions [and/or testimony] and thereby potentially do harm to the city, or go easy on the police officer and thereby fail to be an uncompromising advocate for his client. That is an untenable situation for an attorney-alderman to place himself in vis a vis his client ...”¹⁴

Accordingly, it determined that Cahnman, as attorney *and* as alderman:

“owed his undivided fidelity and a fiduciary duty to both his clients and the City of Springfield. We agree ... that [he] had a concurrent conflict, in that he operated under two divided and conflicting loyalties – one to the City for which he was alderman, and one to his client ... in the cases in which [the client] was arrested or issued citations by Springfield police officers. We believe that the circumstances here require a finding that [he] violated Rule 1.7.”¹⁵

The Review Board also relied on the Illinois Supreme Court’s 1990 decision in *In re Vrdolyak*.¹⁶ In that case, the Illinois Supreme Court held that, as an alderman, Vrdolyak owed “his undivided loyalty and a fiduciary duty to the City.”¹⁷ It advised generally that “a lawyer-legislator should anticipate possible conflicts of interest when accepting employment and guard against them.”¹⁸ And, it cautioned:

¹² 72 Ill. 2d 461, 470, 381 N.E. 2d 700 (1978).

¹³ A.R.D.C. Review Board Case 2014PR00102, pp. 10, 15 (2016).

¹⁴ *Id.*, at pp. 15-16.

¹⁵ *Id.*, at pp. 10-11.

¹⁶ 137 Ill. 407, 422, 560 N.E. 2d 840 (1990). There, as noted above, the Court censured then-Alderman Vrdolyak for representing City employees in workers’ compensation claims against the City while an alderman.

¹⁷ *Id.*, 137 Ill. 2d at 419.

¹⁸ *Id.*, 137 Ill. 2d at 423 (citations omitted).

"If we are to maintain public confidence in our system of government and the legal profession, attorneys who serve as public officials must avoid not only direct conflicts of interests, but also any situation which might appear to involve a conflict of interest."¹⁹

Our research shows that other attorney regulatory bodies that have addressed this issue also prohibit their lawyer-legislators from representing clients in criminal actions involving police personnel from the government entity to which they are elected.²⁰

Thus, we take notice that, as a matter of Illinois law, Chicago aldermen are prohibited by the RPC from representing clients in criminal matters involving personnel from the CPD, because such representation places the aldermen in a conflict of interests between those duties they owe to their clients and those they owe to the city for which they serve as elected officials.

IV. Conclusions and Determination

As set forth above, the Board concludes that: (i) aldermen owe an undivided fiduciary duty to the City of Chicago; (ii) similarly, aldermen-attorneys owe an undivided fiduciary duty to their clients; (iii) aldermen-attorneys are therefore placed in an untenable position when they represent clients in criminal matters involving CPD, as their concurrent fiduciary duties are in conflict; and (iv) such conflicts result in the erosion of public confidence both in the legal profession and in government; and thus (v) when aldermen also act as private attorneys in criminal matters that involve the CPD, they will unavoidably face a conflict between their duties to the City of Chicago and to their private legal clients, which is prohibited by both the Ethics Ordinance's fiduciary duty provision, §2-156-020, and by Rule 1.7 of the Illinois Rules of Professional Conduct for Attorneys.

The Board therefore determines that City of Chicago aldermen who are licensed attorneys are prohibited by their fiduciary duty to the City (under the City's Governmental Ethics Ordinance) from personally representing, or receiving or deriving compensation or anything else of value from the representation by others, of persons in traffic or criminal cases in which there is participation by Chicago Police Department ("CPD") personnel, as, for example, arresting officers, executors of search warrants, investigators, witnesses, or custodians of evidence.²¹

Our determination does not prohibit aldermen from practicing criminal law, *so long as CPD personnel have no involvement in the case, as, for example, arresting officers, executors of search warrants, custodians of evidence, or witnesses*. Similarly, our determination does not prohibit law partners or associates of City elected officials from representing clients in criminal actions even if CPD personnel were involved in the case, provided the City elected official and the law firm enter into and observe an impermeable screening arrangement whereby the City elected official does not participate in the case in any way or receive any income, compensation, or other thing of value from the matter, including substitute payments.²²

¹⁹ *Id.* 137 Ill.2d at 424-425, citing *Higgins v. Advisory Committee on Professional Ethics*, 73 N.J. 123, 125, 373 A.2d 372, 373 (1977) (New Jersey Supreme Court affirmed a lower court's opinion that a member of a board of chosen freeholders (similar to a county board in Illinois) who is an attorney may not represent a criminal defendant indicted for a crime in the county in which the freeholder-attorney holds office)

²⁰ See e.g. Supreme Court of Ohio Board of Commissioners on Grievances and Discipline Opinion 96-6, August 9, 1996 (It is improper under the Ohio Code of Professional Responsibility for a lawyer to represent, privately or by court appointment, criminal defendants in municipal court while serving as a city council person for the municipality because such representation creates an appearance of impropriety and may appear to place personal or professional interests in conflict with official duties. Such representation is particularly inappropriate when the criminal defendant has been investigated or arrested by a police officer where the attorney serves.); Michigan State Bar Opinion CI-1137, April 2, 1986 ([A] lawyer who is a city council member of a municipality must refrain from defending in any court persons accused of crimes where police officers of that city are the prosecuting officers or complaining witnesses. The opinion cited the concern that an attorney-alderman will not be able to preserve the appearance of undivided loyalty and avoid any appearance of conflict if the lawyer represents the client.) and Iowa S. Ct. Board of Professional Ethics and Conduct Opinion No. 04-10, June 8, 2004 (it is improper for a city council member to represent a criminal defendant charged under state law if city police officers are involved in the arrest and may be called as witnesses). The Review Board's *Cahman* opinion cites other cases as well.

²¹ Our opinion addresses only whether City elected officials can represent individuals in criminal cases where the CPD is involved. We note, but do not address here, that the standards are different for appointed officials - the test for them is whether the representation in a criminal or judicial, quasi-judicial or administrative proceeding is 'wholly unrelated' to their work as a City board or commission member. We also do not address the question answered by our New York City colleagues - whether City employees may engage in this type of law practice. Those questions are not before the Board in this case.

²² See Case No. 18007.A, pp. 8-9

In light of our determination, we advise that, *if* Alderman X currently represents clients in criminal matters where CPD officers are involved, as, for example, arresting officers, executors of search warrants, custodians of evidence, or witnesses, he withdraw his representation from such cases as soon as practicable, and, consistent with his obligations under the RPC, assist his clients in finding suitable counsel to take over the matters

V. Penalties for Violating the Ordinance's Fiduciary Duty Provision

The penalties for being found to have violated the Ordinance's fiduciary duty provision are severe: violators shall be subject to a fine of not less than \$1,000 and not more than \$5,000 for each offense (per §2-156-465(b)(7), as amended, effective September 28, 2019). Moreover, being found in violation of the City's Governmental Ethics Ordinance for this type of practice could invite scrutiny and potential enforcement action from the ARDC.

VI. Reliance

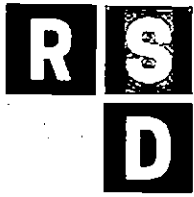
The Board's determinations and advice are based solely on the application of Illinois law and the Governmental Ethics Ordinance to the question presented. This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered. *Because many issues surrounding the outside practice of law by elected officials are fact-specific, we urge City elected officials to seek confidential guidance from Board staff with questions they may have.*

The Board appreciates the opportunity to advise you, and your professionalism in seeking our advice on this and prior occasions. If you have further questions about this or any other matter, please contact the Board's legal staff.



William F. Conlon
Board Chair

Exhibit B



ROBINSON
STEWART
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Mary Robinson Partner
Direct 312.676.9874

Stephanie Stewart Partner
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September 26, 2019

Alderman Howard B. Brookins
Chicago City Council
121 N. LaSalle St.
Room 300
Chicago, IL 60602

Re: Board of Ethics, Case No. 19027.A Opinion

Dear Alderman Brookins:

At your request, I reviewed the opinion issued by the Board of Ethics in the above case. In my opinion, the conclusions reached are faulty in two important respects: 1) the Board's analysis of an alderman's fiduciary duties to the City inaccurately and unwisely assumes that dedication to the interests of the City requires acceptance or at least passivity in the face of illegal conduct by City employees; and 2) the Board misstates the holding and the reasoning of the attorney discipline decision in *In re Cahnman*, M.R. 29259, 14PR0102 (November 2016).

Fiduciary Duty. The Opinion of the Board of Ethics in this case concludes that representation of a private client in a criminal case where Chicago Police Department personnel are involved as arresting or investigating officers is antithetical to an alderman's fiduciary duty to the City of Chicago. Specifically, the Board asserts:

“. . . aldermen cannot fulfill their fiduciary responsibilities to the City if they represent clients in criminal cases where, for example, they may need to aggressively question the credibility or conduct of CPD personnel, or attach the legitimacy of search warrants, arrests, or interrogations on behalf of private clients. If successful, there may well result negative financial ramifications for the City from improper searches, arrests, or interrogations. At the same time, alderman are obligated to engage in fair-minded debate and deliberate and vote on CPD matters that come before the City Council, and to represent their constituents on CPD matters in the community - essential aldermanic roles." (Case No. 19027.A, at p. 4)

In my opinion, the assumptions underlying that analysis are themselves antithetical to an appropriate understanding of the duties of any fiduciary, which never include supporting or even tolerating illegal conduct directed at the intended beneficiaries of the fiduciary's duties,

which, in this case, includes the populace of the City of Chicago, including and in particular, the residents of the Ward represented by the alderman.

As the Opinion observes, prior Board of Ethics opinions have characterized aldermen's fiduciary duty to the City as an obligation "to give, *within lawful limits*, undivided loyalty to the City of Chicago in the discharge of their public duties . . . free from outside influence or conflicting duties to another entity." (Case No. 19027.A, at p. 3) The fiduciary duty runs to the entity of the City of Chicago, not to its officers and employees, with the ultimate intended beneficiaries being the residents of this City.

Even under the more stringent restrictions on lawyers arising from duties of both loyalty and confidentiality, the fiduciary duties of a lawyer who represents an entity run to the entity as a whole, and those duties require the lawyer to address, not ignore, illegal conduct by the entity's employees and officers if that conduct threatens the well-being of the entity, even to the extent of disclosing confidential information. 2010 Illinois Rules of Professional Conduct ("IRPC"), Rule 1.13(b).¹ The Comments to Rule 1.13 recognize that government lawyers may have expanded ability and responsibility to question and address apparently illegal conduct by government officials and employees because the duty to serve the public interest results in a different balance between preserving confidentiality and assuring that wrongful acts are prevented or rectified. IRPC 1.13, Cmt. [9]. Indeed, in the service of a governmental client, a lawyer's obligation to question or take action against illegal conduct can require consideration of the potential injury not only to the public interest in the integrity of government but also to the constitutionally or statutorily guaranteed rights of the governmental unit's constituents. Restatement (Third), The Law Governing Lawyers, sec. 97, cmt. j (2000).

In short, an alderman's fiduciary duties to the City do not require loyalty to all City employees or support of conduct just because it has been committed by an employee of the City. Instead, the alderman's fiduciary duties run to the public interest in the integrity of government and the support of rights owed by a government to its citizens. An alderman's fiduciary duties to the City are fulfilled, not frustrated, by prevention and suppression of illegal police conduct. Those duties are fulfilled, not frustrated, by endeavors that call out illegal police conduct and seek to vindicate rights that have been infringed.

The Board's allusion to the potential of "negative financial ramifications for the City from improper searches, interrogations and arrests" encapsulates the logical fallacy of its assumptions. It is the improper conduct that can result in negative financial ramifications for the City, not an alderman/attorney's success in vindicating the constitutional rights of

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the victim of that conduct. That victim has the legal right to pursue damages whether or not his or her attorney succeeds in securing some relief in the criminal case. Indeed, the damages will be considerably less onerous the sooner the wrong is righted. It is wrongful convictions and years of wrongful imprisonment that result in major financial ramifications to the City, and taking action to prevent those damages from accruing serves the City's financial interests.

Lawyer Conflict. As additional support for its conclusion, the Board of Ethics asserted that under a recent Illinois attorney discipline case, *In re Cahman*, supra, an alderman/attorney is precluded under the lawyer conflict of interest rules from representing a criminal defendant in a case where police officers of the alderman's city are involved. That is not what that decision held. The Review Board there recited that there is no Illinois precedent establishing such a proposition and that it was not prepared to recommend a *per se* rule to that effect. Instead, the Review Board held that under the unique circumstances of the case, the attorney/alderman had a conflict of interest because his duties to the city were likely to impair the zeal and effectiveness of his representation of one particular client (not all 12) he had represented in traffic and criminal proceedings where Springfield Police Department officers were involved. That particular client was repeatedly arrested by Springfield police. He filed at least three lawsuits against the City alleging FOIA violations because of the City's failure to release records of police misconduct, and other lawsuits against the City seeking damages for destruction of police files and for police misconduct directed against him. The alderman/attorney's representation of the client in traffic and criminal cases occurred concurrently with the client's civil litigation against the City, which was based, in part, on incidents at issue in the criminal cases. While representing the client in those related cases, the alderman participated in closed session meetings of the City Council where the client's civil litigation was discussed without revealing his representation of the client, and he initially declined to abstain when the City Council was about to vote on settlement of his client's civil rights case.

The Board's reliance on *Cahman* for the proposition that an alderman necessarily violates his fiduciary duties to the City by undertaking representation in criminal cases where the City's police officers are involved misses the whole point of that case, where the Review Board explicitly focused its concerns on the lawyer's violation of duties to the private client and *not* the City. Indeed, the Review Board stated that it agreed with the findings of the ARDC Hearing Board that the attorney/alderman's representation of the private client in multiple traffic and criminal cases did *not* involve adversity or potential to harm to the City, which was not a party to the criminal cases, did not control those cases, and had no significant financial interests at stake. Where the Review Board disagreed with the Hearing Board's determination that a conflict did not exist was in the Hearing Board's failure to recognize the potential negative impact upon the zeal and diligence of the attorney's representation of the private client. Still, the Review Board recognized that the conflict it found was one that could have been waived by the private client upon explanation to the client of the potential impact of the alderman/attorney's responsibilities to the City, but

September 26, 2019

Page 4 of 4

Cahnman conceded that he had not sought a waiver from the client.

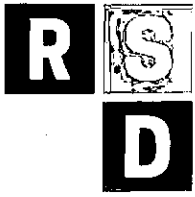
The *Cahnman* decision is about a conflict that could impair zealous representation of a private client at war with a city's police force, and even then, a conflict which that private client could waive. It by no means supports a conclusion that representation of private clients in cases where city police are involved necessarily involves a violation of an alderman's fiduciary duties to the city.

Conclusion. In my opinion, the Board of Ethics' conclusion that an alderman/attorney is precluded from representing private clients in cases where CPD personnel are involved depends on inaccurate and unwise assumptions that the alderman's fiduciary duties to the City preclude him or her from challenging improper conduct by City employees whereas, in fact, those duties not only permit but may also may require the alderman to challenge that improper conduct. It is my further opinion that under Illinois law, there is no *per se* conflict of interest involved in an alderman's representation of private clients in cases where CPD personnel are involved, and the *Cahnman* decision stands for the contrary proposition that a conflict arises only when unique circumstances of adversity between the private client and police are present and where the client has not waived that conflict.

Respectfully,


Mary Robinson

Exhibit C



**ROBINSON
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DOPPKE**

Mary Robinson *Partner*
Direct 312.676.9874

Stephanie Stewart *Partner*
Direct 312.782.5102

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Curriculum Vitae

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Program (provides assistance to Illinois lawyers in solving ethical dilemmas); overseeing the annual registration of Illinois attorneys and maintenance and publication of registration data; presentations to Illinois and national audiences on professional responsibility topics; and, from time to time, personally handling the hearing or appeal in particular matters.

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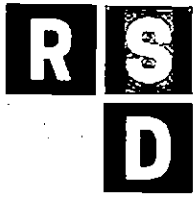
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"Avoiding ARDC Anxiety: A Disciplinary Primer," 84 Ill Bar J 452 (September 1996).

EXHIBIT 3



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September 26, 2019

Alderman Howard B. Brookins
Chicago City Council
121 N. LaSalle St.
Room 300
Chicago, IL 60602

Re: Board of Ethics, Case No. 19027.A Opinion

Dear Alderman Brookins:

At your request, I reviewed the opinion issued by the Board of Ethics in the above case. In my opinion, the conclusions reached are faulty in two important respects: 1) the Board's analysis of an alderman's fiduciary duties to the City inaccurately and unwisely assumes that dedication to the interests of the City requires acceptance or at least passivity in the face of illegal conduct by City employees; and 2) the Board misstates the holding and the reasoning of the attorney discipline decision in *In re Cahnman*, M.R. 29259, 14PR0102 (November 2016).

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" . . . aldermen cannot fulfill their fiduciary responsibilities to the City if they represent clients in criminal cases where, for example, they may need to aggressively question the credibility or conduct of CPD personnel, or attach the legitimacy of search warrants, arrests, or interrogations on behalf of private clients. If successful, there may well result negative financial ramifications for the City from improper searches, arrests, or interrogations. At the same time, alderman are obligated to engage in fair-minded debate and deliberate and vote on CPD matters that come before the City Council, and to represent their constituents on CPD matters in the community - essential aldermanic roles." (Case No. 19027.A, at p. 4)

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which, in this case, includes the populace of the City of Chicago, including and in particular, the residents of the Ward represented by the alderman.

As the Opinion observes, prior Board of Ethics opinions have characterized aldermen's fiduciary duty to the City as an obligation "to give, *within lawful limits*, undivided loyalty to the City of Chicago in the discharge of their public duties . . . free from outside influence or conflicting duties to another entity." (Case No. 19027.A, at p. 3) The fiduciary duty runs to the entity of the City of Chicago, not to its officers and employees, with the ultimate intended beneficiaries being the residents of this City.

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In short, an alderman's fiduciary duties to the City do not require loyalty to all City employees or support of conduct just because it has been committed by an employee of the City. Instead, the alderman's fiduciary duties run to the public interest in the integrity of government and the support of rights owed by a government to its citizens. An alderman's fiduciary duties to the City are fulfilled, not frustrated, by prevention and suppression of illegal police conduct. Those duties are fulfilled, not frustrated, by endeavors that call out illegal police conduct and seek to vindicate rights that have been infringed.

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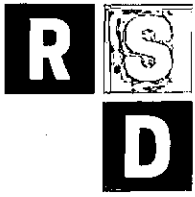
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EXHIBIT 4



BOARD OF ETHICS
CITY OF CHICAGO

CONFIDENTIAL

October 29, 2019

Brendan Shiller
Shiller Preyar Law Offices
601 South California
Chicago, IL 60612-3305

Re: Petition for Reconsideration, Case No. 19027.A

Dear Mr. Shiller:

Our office received your letter dated September 27, 2019 in the matter captioned above, requesting that the Board reconsider the Advisory Opinion issued to your client on September 13. After discussing this request at our meeting today, the Board voted unanimously, 4-0, to deny it and reaffirm our opinion. Specifically,

1. Your petition raises no material facts or circumstances not already considered by the Board at its September 13 meeting, when it voted unanimously to issue its opinion. Board Rule 3-8, which addresses requests for reconsideration, provides that a person requesting reconsideration of an advisory opinion must include "an explanation of material facts or circumstances that were not before the Board in its deliberations."

2. You argue that your client did not seek a formal Board advisory opinion and that:

"The Ethics Board overstepped is [sic] properly delegated authority by twisting informal inquiries meant to aid the legislative deliberative process ... [and] ... not only did this conduct violate the Board's own rules, it is a usurpation of legislative authority."

However, first, §2-156-380(l) of the Governmental Ethics Ordinance is clear that the Board may issue a formal advisory opinion "when requested in writing by an official or employee." On July 17, your client asked our Executive Director in person whether proposed amendments to §2-156-090 of the Governmental Ethics Ordinance would affect his ability to practice criminal defense law, *not* whether your client should vote for or against it. Our Executive Director explained to your client that he could not answer this question then and there and, in order to answer the question properly, he would need to take the matter up through a formal advisory opinion issued by the full Board. He then wrote to and spoke with me, and I directed that, because of the matter's significance, it be handled in a formal written opinion to be issued by the Board at its September 13 meeting. He then explained the same thing via email a few days later in response to the same question posed in writing by your client's colleague, identified as Alderman Y in the formal opinion.

Even if we concede that your client did not seek a formal Board opinion by submitting a written request, our Executive Director, who, as your client knows, is a City employee, immediately and in writing explained your client's request for advice to me, as Board Chair (and City official). I directed that the matter be taken up in a formal Board opinion. This satisfies the Ordinance's requirement that a request for a formal opinion be in writing. Moreover, this Board has inherent authority to issue opinions without a formal request by another (it can do so at the urging of a Board member or in response to its staff's request for an opinion). Even if a person who has requested a formal opinion withdraws

that request before the Board issues an opinion, the Board may nonetheless issue an opinion or take other appropriate action in the matter consistent with the Governmental Ethics Ordinance. See Board Rule 3-3. Advisory opinions are not just for the individual(s) involved, but form a body of guidance for all other elected and appointed City officials and City employees.¹

Second, your argument is disingenuous: your client's statement to the media, as reported in a July 26, 2019 Chicago Tribune article (this was already two days *after* the City Council voted unanimously to pass this Ordinance amendment and more than a week after he posed the question to our Executive Director), shows he anticipated and was waiting for a ruling from this Board on this very question:

"Already, some aldermen with side jobs expressed concerns about how the ordinance might be enforced. South Side Alderman Howard Brookins, Jr., 21st Ward, practices criminal defense law. His clients don't win financial awards from the city, and he said administration officials told him the outside employment provision isn't meant to address his kind of work. Nonetheless, he's preparing for the possibility. 'You never know if you'll get an overzealous ethics officer who wants to make it apply,' Alderman Brookins said. If there is a ruling from the Ethics Board that says his law practice runs afoul of the ordinance, the alderman said he would sue the city."

This Board then issued that ruling on September 13, in the form of a formal advisory opinion (albeit based on a different provision in the Governmental Ethics Ordinance, so the Board did not need to reach the particular provision to which your client referred).

Third, I, three (3) other Board members, our Executive Director, and three (3) other Board staff members are Illinois attorneys. Your letter argues in effect that our Executive Director and we seven (7) other attorneys should have ignored your client's question and the follow-up from your client's colleague. That would arguably constitute a failure of our duty as members and staff of the Board of Ethics to answer him professionally and expeditiously. This remains so even though your client is displeased with our answer.

Last, you appear to be arguing that your client's question to our Executive Director was privileged under "legislative deliberative process" or perhaps the "speech and debate" or "legislative immunity clause" of the Illinois Constitution (Article IV, Section 12), and thus the Board had no authority to issue its advisory opinion. These arguments also fail.

First, the "deliberative process" privilege can be found in various statutory enactments. For example, that "privilege" is an exemption to the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 170/7(1)(f), which exempts from FOIA production "preliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed or policies or actions are formulated." This privilege protects – *from disclosure to the public under the FOIA* – "the opinions that public officials form while creating governmental policy ... thus, in order to qualify for the privilege, a document must be both predecisional in the sense that *** it is actually *** related to the process by which policies are formulated."² We are not in a FOIA request posture here. Our advisory opinion is not a FOIA request nor is it issued pursuant to one, and your client's question to our Executive Director was not a FOIA request, and this Board has treated your client's request and its opinion in accordance with the confidentiality provisions in §2-156-380(1) of the Governmental Ethics Ordinance and Board Rules 3-9 and 3-10. There was no "usurpation of legislative authority" here. This Board does not vote on legislation. It is charged with interpreting the provisions of the Governmental Ethics Ordinance. This is exactly what we did here, and exactly what your client expected us to do.

Second, your claim that the Board's advisory opinion somehow violates the "legislative immunity clause" of the Illinois Constitution is meritless. That clause protects legislators from libel or slander suits for claims or statements they make while engaging in the legislative process. See *Geick v. Kay*, 236 Ill. App. 3d 868, 603 N.E.2d 121, 127 (2nd Div. 1992) ("[A]n official of the executive branch of the Federal, State or local governments cannot be held liable for statements

¹ Every formal opinion issued by this Board and by its predecessor Board (established by a 1986 Executive Order issued by Mayor Washington) is posted on our website, with a search index: <https://www.chicago.gov/city/en/depts/ethics/index.html#general>.

² See Public Access Opinion 18-001, Office of the Attorney General, January 23, 2018, <http://www.illinois.gov/ocip/opinions/2018/18-001.pdf>.

made within the scope of his official duties ... Absolute privilege regarding communications made within the scope of official duties has been extended to mayors of Illinois municipalities or chief administrators"); and Black's Law Dictionary, 8th Ed., 1999 ("**legislative immunity**: the immunity of a legislator from civil liability arising from the performance of legislative duties"). The doctrine is irrelevant here: the Board is not attempting to bring a civil action for defamation, libel, or slander or any other cause of action against your client. Rather, we are answering the question he *voluntarily* put to our Executive Director, *expecting an answer*. Were your apparent reading of this privilege correct, a member of the City Council or the Mayor could request an opinion from the Board of Ethics but then in effect quash and invalidate that opinion just because he or she claims to have made the request in the course of performing legislative duties. Such a reading would render nugatory the power and duty of the Board of Ethics delegated to it by the City Council in §2-156-380(l) of the Municipal Code of Chicago "to render advisory opinions with respect to the provisions of this chapter based upon a real or hypothetical set of circumstances."

3. You and Ms. Mary Robinson argue that your client's fiduciary duty as an alderman allows, or, perhaps, even *requires*, that, *as a private attorney*, he represent clients in litigation where members of the Chicago Police Department ("CPD") were arresting officers, witnesses, etc. This argument fundamentally misunderstands the nature of the two competing, separate fiduciary duties your client owes: one to the City, as an alderman; the other, to his clients, as a private attorney. Ms. Robinson writes:

"In my opinion, the assumptions under [the Board's fiduciary duty analysis] are themselves antithetical to an appropriate understanding of the duties of any fiduciary, which never include supporting or even tolerating illegal conduct directed at the beneficiaries of the fiduciary's duties, which in this case, includes [sic] the populace of the City of Chicago, including and in particular, the residents of the Ward represented by the alderman ... [and] the fiduciary duties of a lawyer who represents an entity run to the entity as a whole, and those duties require the lawyer to address, not ignore, illegal conduct by the entity's employee's and officers if that conduct threatens the well-being of the entity, even to the extent of disclosing confidential information."

First, *of course* an alderman's fiduciary duty in his role *as an alderman* is to call out illegal or abusive conduct by other municipal employees or officers, including CPD members, appropriately advocate for his or her constituents against such conduct and advocate and vote for City policies that minimize such conduct and protect the treasury of the City. Our opinion does not assert otherwise. In fact, our opinion stands for the proposition, consistent with prior Board advisory opinions and the Illinois Supreme Court's decision in *In re Vrdolyak*,³ that, by representing private clients in cases in which CPD members are the arresting officers, etc., which would require him to vigorously seek to impugn the conduct, integrity, and legality of actions by CPD members on behalf of his private law clients, *he is inherently compromising his fiduciary duty to act as an alderman on such issues because he is confusing his professional responsibilities as a licensed Illinois attorney and his personal pecuniary interest as a private attorney with his fiduciary duty to the public as an alderman, thereby improperly allowing the former to taint the latter*. Advising your client he can no longer represent criminal defendants in cases where the CPD has been involved in no way lessens or impairs his fiduciary duty or his ability *as an alderman* to advocate for his constituents against, for example, abusive police behavior. It seems both you and Ms. Robinson elide over or altogether miss this essential point, and the related point that, by representing private clients (regardless whether paying or *pro bono*) in cases where the credibility and conduct of CPD personnel is at issue, your client is engaging in an archetypical breach of his fiduciary duty to the City, because his judgments *qua* alderman on matters involving CPD, by way of example, approving its budget, voting on appointees to become Police Superintendent or members of the Police Board, approving settlements in civil litigation (which often implicate CPD members' conduct), etc., are inherently compromised by his judgments *qua* private criminal defense attorney. This is what our opinion states, and what our jurisprudence since Case No. 90035.A from 1990 stands for.

Second, we are unable to find any case issued by a court or administrative agency standing for the proposition that an alderman's fiduciary duty to the city that elected him – which is the concern of §2-156-020 of the Governmental Ethics Ordinance – is consistent with representing private clients in litigation (for compensation, or even *pro bono*) where he might need to impugn the conduct of that city's police officers. The decision in *In re Cahnman* (discussed below) makes

³ 137 Ill.2d 407, 560 N.E.2d 840 (1990)

clear that *the mere potential* that he might need to do so is problematic and unacceptable, and that a violation of the Rules of Professional Conduct does *not* require a showing that a lawyer's judgment *was in fact* compromised, only that the lawyer put himself in a position where it *could be* compromised.⁴

4. Last, Ms. Robinson argues that this Board improperly relies on the Attorney Registration and Disciplinary Commission's ("ARDC") Review Board's 2016 *in Re Cahnman* decision. She writes that:

"The Board's reliance on Cahnman for the proposition that an alderman necessarily violates his fiduciary duties to the City by undertaking representation in criminal cases where the City's police officers are involved misses the whole point of that case, where the Review Board explicitly focused its concerns on the lawyer's violation of duties to the private client and not the City."

The argument misses the point. The Review Board, citing *in Re Vrdolyak*, states:

"As both an attorney and an alderman, Respondent 'owed his undivided fidelity and a fiduciary duty' to both his clients and the City of Springfield ... We agree with the Administrator that Respondent had a concurrent conflict, in that he operated under two divided and conflicting loyalties - one to the City for which he was alderman, and one to his client ... in the cases in which he was arrested or issued citations by Springfield police officers ... it seems inescapable that, when an alderman represents defendants in cases where police officers from the city he serves are the arresting officers, there is always a potential for diverging interests. For example, if a city police officer is a witness for the prosecution, the alderman-attorney, as defense counsel, must cross-examine the police officer. He thus has a choice to make - assail the police officer's actions or credibility and thereby potentially do harm to the city, or go easy on the police officer and thereby fail to be an uncompromising advocate for his client. That is an untenable situation for an attorney-alderman to place himself in vis a vis his client..." [Emphasis added]⁵

That is, under the principle announced in *Cahnman*, an alderman who represents clients in cases in which CPD members are the arresting officers, etc. is inherently compromising his fiduciary duty to act vigorously on behalf of his clients because of the concurrent fiduciary duty he owes to the City as an alderman. Further, it is *also*, in *our* opinion, an untenable situation for an attorney-alderman to place himself *in vis a vis the City of Chicago under §2-156-020 of the Governmental Ethics Ordinance*. This conclusion is fully consistent with our prior advisory opinions since Case No. 90035.A, and with the Illinois Supreme Court's *In re Vrdolyak* decision. It is also consistent with the *Cahnman* opinion: there the Review Board had to recognize the alderman's fiduciary responsibility to the City when it found he had violated his professional duty to his client.

For these reasons, your client's petition for reconsideration of our advisory opinion in Case No. 19027.A is denied. Should we have credible evidence that your client continues to represent clients in criminal matters in which members of the CPD are witnesses, arresting officers, etc., we will be required to commence enforcement actions against him. If we determine he violated the Ordinance, he will be subject to fines of up to \$5,000 per violation (for violations occurring on or after September 28, 2019) and we will be required to make our determinations and fines public. Such an outcome may well invite enforcement action from the ARDC with the ensuing risk to your client's law license.

Yours very truly,



William F. Conlon, Chair

⁴ A.R.D.C. Review Board Case 2014PR00102, pp. 10, 15 (2016).

⁵ *Id.* See <https://www.illinois.gov/att/d/arc/rules-for-attorneys.html>, pp. 10, 13, 15, 16.

EXHIBIT 5

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November 10, 2020

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VIA ELECTRONIC MAIL AND US MAIL TO:

City of Chicago Inspector General Joseph M. Ferguson

City of Chicago

740 N. Sedgwick, Suite 200

Chicago IL 60654-2996

reportcorruption@igchicago.org

Dear Inspector General Joseph M. Ferguson:

I am formally requesting that pursuant to your authority granted in MCC 2-56-010 through 2-56-030 to investigate the overreach of the City of Chicago Board of Ethics in general and the misconduct of the Board's Executive Director Steven I. Berlin in particular. They have abused their authority, and violated the Municipal Code of Chicago in multiple ways, as detailed below.

I. Recent Background and Introduction

For background, on Monday, November 9, 2020, WTTW ran a news story entitled "Ethics Board Investigating Ald. Brookins' Decision to Represent Former Ald.

Moreno." The online version can be found here:

<https://news.wttw.com/2020/11/09/ethics-board-investigating-ald-brookins-decision-represent-former-ald-moreno>

Reporter Heather Cherone wrote that "Chicago Board of Ethics Executive Director Steve Berlin said the Board is looking into whether Ald. Brookins has violated Chicago's Governmental Ethics Ordinance."

First, neither the Board nor Berlin have the authority to initiate an investigation.

Berlin's statement to the press implying otherwise is not only erroneous, it is

defamation and a violation of his own ethics. Second, the Board and Berlin do have

a duty of confidentiality, and if an investigation were to be initiated the Ethics

Ordinance that Berlin is tasked with upholding requires that he not comment on

any pending investigation. His comments to WTTW were a clear violation. Third, as

has been noted now by multiple judges, the advisory opinion that was written by

Berlin and that was cited in the WTTW story was both initiated without authority

and its finding was contrary to the law.

This wrongly initiated and erroneously decided advisory opinion has falsely cast a heavy shadow on Alderman Brookins' ethics for more than a year. Recognizing that the opinion carried neither the weight of law, nor the actual threat of sanction

. . .
(because the Board does not have the authority to initiate investigations on its own), Alderman Brookins decided not to waste his own the City of Chicago's resources seeking a declaratory judgment invalidating the toothless opinion.

Ald. Brookins still does not want to waste his own time and resources and the City's time and resources getting a declaratory judgment from the Circuit Court of Cook County that the Board's ruling (attached as attachment 2) was wrongfully initiated and erroneously decided. Therefore, we are requesting four things from you:

1. A confirmation that from the perspective of the Office of the Inspector General there is no conflict of interest for an employee or officer of the City of Chicago to represent criminal defendants being prosecuted by the Cook County State's Attorney, and that therefore you have not requested an investigation into Mr. Brookins;
2. A confirmation that the Board of Ethics does not have any authority to initiate its own investigations;
3. An investigation into Mr. Berlin for violating the Confidentiality Clause (2-156-400) of Ethics Code by telling WTTW that Alderman Brookins is under investigation (whether he is or he is not); and
4. An investigation into Mr. Berlin for engaging in abuse of power and other misconduct in violation of the City Ethics Code you are charged with enforcing pursuant to 2-56-030 including defamation, targeted prosecution in violation of equal protection and due process concepts, government waste, and other abuses.

II. Background on Initial Advisory Opinion

In the interest of brevity, I will not detail all of the issues with the initial advisory opinion referenced in the WTTW story. I have attached: 1) the unrequested advisory opinion; 2) the request for reconsideration, including an advisory opinion from a respected judge and state ethics expert; and 3) a ruling from a criminal judge in *People v. Jones* where Brookins was found not to have a conflict.

In sum, the Board of Ethics has ruled that Alderman Brookins is violating his fiduciary duty to the City of Chicago if he acts as a criminal defense attorney in any case where the incident occurred in Chicago and Chicago police officers may be witnesses. For all of the reasons detailed in our letter requesting a reconsideration in the fall of 2019, this advisory opinion is illogical on its face. City of Chicago employees are witnesses in literally thousands of civil and criminal cases every day in Cook County, including mortgage foreclosure, personal injury, property disputes and others. Being a lawyer that simply cross examines a witness that happens to be a Chicago employee does not create a conflict as an Alderman in Chicago. The underlying assumption in this advisory opinion is that Chicago employees will lie as witnesses and, therefore, when subject to cross examination be adverse. Alderman Brookins, however, has more faith in Chicago Employees than the Board does. But second, if and when Chicago employees are lying, it is them that are adverse to the interest of the City of Chicago—and Alderman Brookins uncovering those lies through cross examination is consistent with his fiduciary duty to protect the interest of the City.

The effect of this advisory opinion is that no Alderman can be a practicing attorney. If the City Council wants to make the aldermanic office a full-time position and prohibit outside work as an attorney, they

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can do that with ordinance. They have not. There is nothing in the municipal code that prevents Alderman Brookins from working as a criminal defense attorney.

In addition to resting on irrational assumptions, the advisory opinion was initiated by Berlin himself (and not a request from Brookins or any other employee or officer) in violation 2-156-380.

III. Relevant Authority of the Board of Ethics

The Chicago Board of Ethics is established and has its authority defined pursuant to MCC 2-156-005, *et. seq.* and pursuant to MCC 2-156-310, *et. seq.*

The Board of Ethics has no authority to initiate investigations of any kind. Instead it may: a) Receive and refer complaints of violations to the Inspector General or to the agency in which the violation occurred; or b) Issue a finding of probable cause that a violation has occurred ONLY if such a finding is requested by the inspector general and ONLY after the inspector general has notified the subject of the request in writing (MCC 2-156-385). See generally 2-156-380.

It is true that the Board has the right to render advisory opinions, but they may do so only “when requested by an official or employee, or by a person who is personally and directly involved.” 2-156-380 (k)(1). And, those opinions may not reveal the identity of the subject. *Id.*

Further, all Board of Ethics members and its Executive Director have a duty of confidentiality, as detailed in MCC 2-156-400. (“advisory opinions issued by and complaints to the board and determinations and recommendations thereon shall be confidential...”). When a Board member or the Executive Director knowingly violates the confidentiality provisions, they shall be subject to sanctions. MCC 2-156-500. The applicable sanctions for a knowing violation of the confidentiality clause appear to be a fine of not less than \$1000 and not more than \$5000 for each violation. MCC 2-156-465(b)(8)

IV. Berlin’s Conduct and Code Violations

Berlin’s claim to WTTW that the Board is investigating Brookins is a clear violation of the Municipal Code in multiple ways.

First, the Board has no authority to initiate an investigation of Mr. Brookins. The Code is clear that the Board can receive and refer complaints or it can conduct hearings once requested by your office. We are asking for confirmation that neither of these have occurred.

Second, on the substance, Alderman Brookins representing criminal defendants in cases where Chicago employees may be witnesses is not a conflict of interest. We would like confirmation from your office that you have not requested a probable cause finding from the Board simply because Alderman Brookins continues to represent criminal defendants.

Third, the Code is clear that neither Board members nor the Executive Director can discuss subjects of pending investigations (or in this case faux pending investigations). Berlin’s comments to WTTW clearly violate that provision of the code. We are requesting that you investigate, and if appropriate make a request that the Board of Ethics make a finding of probable cause that Berlin has violated MCC 2-156-400 of the code, and is subject to a fine for each violation.

. . .

Finally, based on the current publicly available information, it now appears that Berlin is engaged in targeted persecution of Alderman in violation of basic fairness concepts of equal protection and due process, and in violation of the general fiduciary requirement of the Municipal Code and the Board of Ethics own rules that the Executive Director act in the interest of the City of Chicago and not to pursue a personal vendetta.



Brendan Shiller
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Attachments

1. Letter for reconsideration with exhibits
 - a. Original Board Opinion
 - b. Robinson opinion
 - c. Robinsons CV
2. Denial of Petition for reconsideration
3. Clapps Ruling



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September 27, 2019

William F. Conlon
Board Chair
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John Russell
Will County

Tanya Woods
Real Estate

Jeannette Samuels
Civil Rights

Joseph Dicola
Civil Rights

Dan Massoglia
Civil Rights

Re: Case No. 19027.A, Practice of Criminal Defense Law by City Elected
Officlas

Mr. Conlon;

On behalf of Alderman X and pursuant to Rule 3-8 of the Boards Amended Rules and Regulations (as effective of January 5, 2017) and in accordance with MCC Chapter 2-56, I write to request a reconsideration of the Board's September 13, 2019 advisory opinion. In so doing, my Client does not concede that this was a proper formal opinion pursuant to Rule 3-4, and in fact still contends that the advisory opinion, in addition to being substantively incorrect, is procedurally infirmed.

A. Procedural Background

On July 17, 2019 there was an informal conversation between Alderman X, an Illinois Licensed attorney and the Board of Ethics Executive Director. The purpose of that conversation, obvious in context and substance, was for the Alderman to obtain information and thoughts relative to a legislative decision that Alderman X was in the process of making regarding an amendment to Section 2-156-090 of the Chicago Municipal Code (which regulates ethics requirements and the Board of Ethics). As such, Alderman X understood this conversation to be both informal and to be privileged pursuant to the legislative deliberative process.

As a follow up to this informal discussion, Alderman X had several conversations with multiple legislative colleagues, all for the purpose of assessing certain proposed legislative changes to the Municipal Code relative to ethics requirements and the Board of Ethics.

On July 22, 2019, one of those colleagues, Alderman Y, still engaged in the legislative deliberative process relative to assessing a constitutionally protected vote to be made at the July 24, 2019 City Council Meeting, then emailed the Executive Director of the Board of Ethics a follow up question. The purpose of the email was to follow up on the discussion that Alderman X had initiated, and again with the intent engaging in the legislative deliberative process and assessing the efficacy of the amendment up for vote at the July 24, 2019 City Council meeting.

On July 24, 2019, the City Council passed the amendment, which is to take effect on December 17, 2019.

The relevant portion of the code currently reads:

(b) No elected official or employee may derive any income or compensation from the representation of any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in **which the city is a party and that person's interest is adverse to that of the city.** [emphasis added]

The original amendment to subsection (b) read as follows:

(b) No elected official or employee may derive any income or compensation or other tangible benefit from the representation of any person with an interest adverse to the City. in any judicial or quasi-judicial proceeding before any administrative agency or court: (i) in which the city is a party; or (ii) that impacts anticipated city revenue, or the health, safety or welfare of City residents such that the City has the right to become a party to that proceeding and that person's interest is adverse to that of the city. For purposes of this subsection, the City is presumed to have the right to become a party in any tax, bankruptcy or environmental protection proceeding that may impact the City's revenue, or the health, safety or welfare of City residents. [emphasis added]

The ultimate amendment that passed and that goes into effect on December 17, 2019 reads as follows:

(b) No elected official or employee may represent, or derive any income or compensation or other tangible benefit from the representation of any person in any judicial or quasi-judicial or other proceeding before any administrative agency or court: (i) in which the city is an adverse party; or (ii) that may result in an adverse effect on City revenue, City finances, or the health, safety, welfare or relative tax burden of any City residents.

It appears that despite the purpose of these communications being for the purpose of making a legislative decision, the Executive Director and the Board took this as a formal request pursuant to Rule 3-4 for an advisory opinion as it relates to §2-156-090(b), and its prohibition against an elected official from representing persons with an adverse interest to the City. Alderman X is a criminal defense attorney that from time to time represents criminal defendants charged and prosecuted in state court by the Cook County States Attorney Office, including criminal defendants arrested and charged with offenses alleged to have occurred in the City of Chicago and investigated by the Chicago Police Department.

On September 13, 2019, the Board of Ethics released an advisory opinion captioned as “Case No. 19027.A, Practice of Criminal Defense by City Elected Officials.” A copy of that letter is attached as Exhibit 1. To this request for reconsideration. The question the Board understood it was providing an advisory opinion on is whether an elected official can represent a criminal defendant that has been accused of committing a crime in Chicago or where the charge was the result of an investigation done by law enforcement working for the City of Chicago.

In drafting that advisory opinion, the Board noted the Code Amendment and also noted Rule 1.7 of the Illinois Supreme Court’s Rules of Professional Responsibility (an ethics rules that specifically addresses conflicts of interests for current clients). Ex. 1, p. 2.

In drafting the advisory opinion, the Board began by stating more relevant than Section 2-156-090(b), is Code Section 2-156-020. Id. That section simply says that “Officials and employees shall at all times in performance of their public duties owe a fiduciary duty to the City.” The Board then noted that it therefore would not be addressing whether the amended Section 2-156-090(b) prevents an elected official from representing criminal defendants (the original purpose of both dialogues from Aldermen X and Y). Id.

Ultimately, the Board concluded that:

As set forth above, the Board concludes that (1) aldermen owe an undivided fiduciary duty to the City of Chicago; (ii) similarly, aldermen-attorneys owe an undivided fiduciary duty to their clients; (iii) aldermen-attorneys are therefore placed in an untenable position when they represent clients in criminal matters involving CPD, as their current fiduciary duties are in conflict; and (iv) such conflicts result in the erosion of public confidence both in the legal profession and in government; and thus (v) when aldermen also act as private attorneys in criminal matters that involve the CPD, they unavoidably face a conflict between their duties to the City of Chicago and to their private legal clients, which is prohibited by both the Ethics Ordinance’s fiduciary duty provision, §2-156-020 and by Rule 1.7 of the Illinois Rules of Professional Conduct...aldermen who are licensed attorneys are prohibited...from personally representing, or receiving or deriving compensation or anything else of value from representation by others,

persons in traffic or criminal cases in which there is participation by Chicago Police Department (“CPD”) personnel...” Id., p. 6

This Rule 3-8 request for reconsideration has timely followed, via notice being hand delivered to the Board on the 14th day following the opinion.

B. Apparent Legal Basis for Advisory Opinion

Relying on its previous jurisprudence regarding Section 2-156-020, the Board concluded that:

“aldermen cannot fulfill their fiduciary responsibilities to the City if they represent clients in criminal cases where, for example, they may need to aggressively question the credibility or conduct of CPD personnel, or attack the legitimacy of search warrants, arrests, or interrogations on behalf of private clients. If successful (attorneys are expected to zealously advocate for their clients), there may well result negative financial ramifications for the City from improper searches, arrests, or interrogations. At the same time, Aldermen are obligated to engage in fair-minded debate and deliberate and vote on CPD matters that come before the City Council, and to represent their constituents on CPD matters in the community—essential aldermanic roles. Thus we conclude that the Ordinance’s fiduciary duty prohibits aldermen from representing clients in criminal cases...in which CPD personnel and their work have been involved, as among other roles, arresting officers, executors of search warrants, custodians of evidence or they otherwise participate in the proceeding or matter.” Id., at p. 4.

The Board also relied upon an ARDC Review Board opinion in *In re Samuel J. Cahnman*, Opinion No. 3121596, issued July 11, 2016. Id., at p. 4. The Board found that the Cahnman opinion was dispositive in finding that there is necessarily a Rule 1.7 conflict any time a municipal body’s elected official represents criminal clients on cases where officers from that municipal body were part of the case. Id., pages 5-6.

C. Analysis and Argument

The Board’s analysis of MCC 2-156-020 as it relates to an Aldermen engaging in criminal defense is flawed and riddled with troubling assumptions and basic logic fallacies, and its analysis of the Cahnman case simply misses the relevant holdings and precedential analysis within that case. As such, the Board should reconsider its advisory opinion.

1. The advisory opinion rests on a basic misunderstanding of fiduciary duty

As more eloquently detailed in the legal opinion by Mary Robinson, attached as Exhibit B, the advisory opinion “inaccurately and unwisely assumes that dedication to the interests of the City

September 27, 2019

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requires acceptance or at least passivity in the face of illegal conduct by city employees.” Ex. B, p. 1.

a. *Fiduciary Duty is predicated on lawful loyalty, not covering up unlawful conduct of City Employees*

As Ms. Robinson (the administrator at the ARDC for 15 years—See Ex. C), explains the Board's opinion essentially turns the concept of fiduciary duty on its head by basically requiring all elected officials to turn a blind eye to police misconduct regardless of how harmful that conduct is to the City and to the City's residents.

Such a requirement itself would put any alderman-attorney at risk of losing their law license.

Given the thoroughness of sound reasoning in Ms. Robinson's legal opinion attached, the board is simply asked to review that opinion to understand the very problematic reasoning in its own advisory opinion.

b. *In a democracy, an independently elected official has its first fiduciary obligation to the public interest and to constituents that elect him or her*

To build, upon Ms. Robinson's opinion, however, it is important to point out however that the ramifications of the opinion is that it usurps an elected officials primary fiduciary duty—to the constituents that elected them.

As duly elected officials, it is the aldermen that create the laws and policies by which the employees for the City must operate. As such, the ultimate fiduciary duty of all elected officials in a properly functioning democracy is to the constituents that they serve and that elected them.

All of the scholarship on the issue of elected officials and their fiduciary duties discuss their duty of loyalty to the public interest—not necessarily to the specific corporate unit of government that they manage or legislate for. See e.g. *The False Promise of Fiduciary Government*, Notre Dame Law Review, Vol 89, Issue 3, 2-2014, Seth Davis; and see *Translating Fiduciary Principles Into Public Law*, Harv Law Review Forum, 126 Harv.L.Rev.671 (2013), David L. Ponet, Ethan J. Leib, & Michael Serota.

Further, this fiduciary duty to the public interest and to ones constituents is not a duty that can be legislated away, nor is it a duty that an administrative body created by elected legislators can usurp.

c. *The advisory opinion rests on a basic misunderstanding of criminal defense representation*

There is another point to reiterate that is implicit in Ms. Robinson's opinion. Criminal Defense lawyers have the legal obligation to follow all of the rules of professional responsibility. These include the rules to not mislead a tribunal, to not suborn perjury, to not engage in meritless or frivolous forms of litigation.

Therefore, if a lawyer is attacking the credibility of a police officer, there is by definition a basis in the record to question the credibility of that police officer. If a lawyer is filing a motion to question the basis of a search, there is by definition a basis in the record to question the basis of that search. If the lawyer is questioning the basis of an investigation, there is by definition a basis in the record to question the efficacy of that investigation.

If however, there are no issues regarding the conduct of the police, and sufficient evidence of guilt than a criminal defense attorney will not have a reason or basis to call into doubt the credibility of any police officer, and as happens more than 90 percent of the time, the defendant will just plead guilty. See

https://www.cookcountystatesattorney.org/sites/default/files/files/documents/ccsao_2017_data_report_180220.pdf

2. The advisory opinion misapplies Rule 1.7 and the Cahnman Decision

Again, the Robinson opinion attached as Exhibit B clearly and concisely describes the Board's misapplication of Cahnman and its holding. Put simply the Cahnman decision is not applicable to the facts presented here. Cahnman was accused of regular and multiple violations of his duties to his clients. Ex. B. The ARDC never addressed and was never asked to address whether Cahnman's representations somehow violated his duties to the municipal body of government, to the public interest or to his constituents.

3. A formal advisory opinion was never sought

The Ethics Board overstepped is properly delegated authority by twisting informal inquiries meant to aid the legislative deliberative process, and then turning those informal discussions into a feigned formal request for an advisory opinion and then releasing that opinion after the vote on the legislative issue that prompted the conversation.

Not only did this conduct violate the Board's own rules, it is a usurpation of legislative authority. Although administrative bodies such as the Board have the authority to create rules and policies as delegated to them by legislative bodies, they do not have such authority when they act outside their own rules or when they act in abrogation of the intent of the authority

granted them. *See Department of Transportation v. Keller Development Corp.*, 122 Ill. App. 3d 1038, 462 N.E.2d 532, 78 Ill. Dec. 413 (1984).

D. Conclusion

Because the Board misapplied the concept of fiduciary duty as it relates to a democratically elected official (in multiple ways), because the Board made basic bad assumptions and logic fallacies when applying this concept in this particular situation to an alderman and criminal defense attorney, and because the Board did not follow its own rules and mandate, the Board should reconsider and overturn its previous opinion.

CC/

Steve Berlin, Executive Director

Enc:

Exhibit A—Board Opinion

Exhibit B—Robinson Opinion

Exhibit C—Robinson CV

Sincerely,

Brendan Shiller

Brendan Shiller
Managing Partner, Shiller Preyar Law Offices
Board President, Westside Justice Center

Exhibit A



BOARD OF ETHICS
CITY OF CHICAGO

ADVISORY OPINION

To The Honorable X Alderman, Ward
The Honorable Y Alderman, Ward

Date: September 13, 2019

Re Case No. 19027.A, Practice of Criminal Defense Law by City Elected Officials

Executive Summary

The Board of Ethics has determined that aldermen who are licensed attorneys may not represent (or receive compensation or anything else of value from the representation by another attorney of) persons in criminal cases where there is involvement by Chicago Police Department personnel. More precisely, we have determined that the fiduciary duty provision of the City's Governmental Ethics Ordinance (the "Ethics Ordinance") prohibits City Council members who are licensed attorneys¹ from personally representing or receiving or deriving compensation or anything else of value from the representation by others of persons in traffic or criminal cases in which there is participation by Chicago Police Department ("CPD") personnel, as, for example, arresting officers, executors of search warrants, investigators, witnesses, or custodians of evidence.²

I. Background

On July 17, 2019, before a meeting of the City Council's Committee on Ethics and Government Oversight to consider amendments to Municipal Code Chapters 2-56 and 2-156, Alderman X, an attorney licensed to practice in Illinois, asked our Executive Director whether proposed amendments to §2-156-090(b) would limit his ability to practice criminal defense law, in addition to his aldermanic duties. The Executive Director advised the alderman that he would need to take the matter up through a formal advisory opinion issued by the Board. Then, on July 22, Alderman Y emailed the Executive Director on behalf of Alderman X asking the same question. On July 24, the City Council passed (among others) amendments to §2-156-090(b), "Representation of Other Persons," which take effect on December 17, 2019.

This opinion answers the aldermen's question.

This is a matter of first impression for the Board.

¹ Among elected City officials, five (5) currently serving City Council members have disclosed an outside law practice on their 2019 Statement of Financial Interests: Howard Brookins (2nd Ward), Edward Burke (14th Ward), Leslie Hairston (5th Ward), Chris Faliaferro (29th Ward), and Patrick Daley Thompson (1st Ward). Our review of Statements of Financial Interests filed by aldermen since 2013 shows that four (4) other aldermen, only one (1) of whom is still a member of the City Council, disclosed outside law practices as well. None disclose precisely what type of law they practice, as they are not required to. There are other City Council members who are attorneys, but they have not reported an outside law practice.

² Data supplied by the Cook County State's Attorney's Office ("SAO") show that, for 2019 alone, 66.16% of all felony charges, excluding narcotics cases, brought by that office have arisen from criminal occurrences investigated by the CPD, and that 66.87% of all felony charges, excluding narcotics cases, brought by that office have arisen from criminal occurrences in the City of Chicago. The Board draws a reasonable inference that, if narcotics cases are included, the percentages of cases investigated by the CPD and of criminal occurrences occurring in Chicago charged by the SAO would each be higher.

II. Relevant Law

The following Ethics Ordinance sections are relevant to this opinion:

2-156-020 Fiduciary duty. “Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the city.”

2-156-090(b) Representation of Other Persons [as amended, effective December 17, 2019]. “No elected official or employee may represent, or derive income, compensation or other tangible benefit from the representation of, any person in any judicial, quasi-judicial or other proceeding before any administrative agency or court: (i) in which the City is an adverse party; or (ii) that may result in an adverse effect on City revenue, City finances, or the health, safety, welfare or relative tax burden of any City residents.”

Also relevant to our analysis is Rule 1.7 of the Illinois Supreme Court’s Rules of Professional Conduct (the “RPC”) for Illinois attorneys, entitled **Conflict of Interest: Current Clients**.³ It provides:

“(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or**
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.**

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
- (2) the representation is not prohibited by law;**
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and**
- (4) each affected client gives informed consent.”**

III. Analysis

A. The Ethics Ordinance

The provision of the Ethics Ordinance most relevant to this case is *not* §2-156-090(b) as amended, the one prompting the aldermen’s question. Rather, it is the Ordinance’s fiduciary duty provision. Under existing §2-156-090(b), a violation occurs only where the City is a party and has interests adverse to those of the person represented by the alderman-attorney.⁴ This current prohibition is thus largely irrelevant to the question posed here: criminal complaints are typically brought by State’s Attorneys in the name of the People of Illinois, and the City is rarely a party to such proceedings. However, under this provision as amended, effective December 17, 2019, a violation would occur if the alderman-attorney represents clients even in criminal proceedings where the City is *not* a party but that nonetheless may result in “an adverse effect on the health, safety or welfare of any Chicago residents.”

³ For the full text of the RPC, see http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VIII/default_NEW.asp. The RPC are promulgated, interpreted, and enforced by the Illinois Supreme Court and the Attorney Registration and Disciplinary Commission (“ARDC”), one of its arms. RPC Rule 1.7 became effective January 1, 2010, and has not been amended since.

⁴ For that reason, we advised Alderman [redacted] in Case No. 03027 A that he was prohibited from representing or receiving compensation or income from someone else’s representation of persons in actions against individual CPD officers, *not* by §2-156-090(b), as the City was and is not a party in those actions, but by the fiduciary duty he owes to the City as an elected alderman.

Based on this Board's previous interpretations of the Ordinance's fiduciary duty provision (§2-156-020), we find it unnecessary to address the aldermen's questions under amended §2-156-090(b), given the facts at hand. The Board leaves the application of that provision to another day. Rather, our analysis under the Ordinance's fiduciary duty provision is direct, clear and dispositive (and, as explained in B. below, consistent with relevant state law).

The Board has recognized in numerous cases since 1990 that the fiduciary duty owed to the City by City officials and employees obligates them all, including aldermen, to discharge their public duties in the City's best interests. More pointedly, in a series of advisory opinions since 1990 addressing the outside practice of law by aldermen, we have held that the fiduciary duty *aldermen* owe the City:

"establishes an obligation for aldermen to give, within lawful limits, undivided loyalty to the City of Chicago in the discharge of their public duties. In these public duties, they must be able to exercise professional judgments free from outside influence or conflicting duties to another entity. *This duty is based upon the position of the person as alderman ... and is distinct from the fiduciary duty owed by attorneys to their clients ... City Council members legislate on all areas of City government. Therefore they owe a very broad fiduciary duty to the City.* In addition, because City Council members are elected officials, chosen by the public, they are accountable to the public's trust in a way much more expansive than are members of [City] boards and commissions."⁵ (Emphasis added.)

While the question raised here presents a matter of first impression for the Board, we have applied the fiduciary duty provision in another case where an alderman-attorney wished to represent persons in lawsuits against individual CPD officers, and where, as here, the City was not itself a party to the litigation. In Case No. 03027.A, we considered whether the Ethics Ordinance prohibits an alderman-attorney from representing clients in litigation against individual CPD members arising out of allegations of misconduct by those members while performing their City responsibilities.

We determined that an alderman's fiduciary duty to the City prohibits him or her from personally representing or receiving any income or compensation from the representation by another of clients in such proceedings. We stressed that, even though the City would not be named as an adverse party in such cases, it is obligated by contract (namely, collective bargaining agreements with the various unions representing CPD personnel) to defend against such claims at its own expense and pay from its treasury any judgments or settlement amounts. Moreover, defendant CPD officers could use attorneys from the City's Law Department to defend them if they wished, thereby putting aldermen-attorneys in the conflicting position of having to cross-examine and challenge the conduct of other City employees or officials on behalf of their private clients. And, of course, the City Council approves settlement agreements in such cases, depending on the amount.

We wrote that "an essential feature of fiduciary duty is that it is indivisible – aldermen ... owe 100% of their allegiance to the City and its taxpayers."⁶ We explained⁷ that aldermen are of course not prohibited from engaging in the outside practice of law, but must "avoid taking on legal representations that would compromise their ability to exercise their aldermanic responsibilities free from any outside influences or duties (such as those owed to law clients)." *See also* Case No. 90035.A, where we determined that aldermen owe a broad fiduciary duty to the City and thus cannot represent City employees in workers' compensation cases against the City, even if the aldermen-attorneys receive no monetary compensation for the work. We wrote that: "[w]hen a City

⁵ See Case Nos. 90035.A, pp. 3-4, 03027.A, p. 4, 18007.A, p. 8. These cases and all Board opinions cited in this opinion, are collected and posted in full text here: https://www.chicago.gov/city/en/depts/ethics/supp_info/fiduciary_duty__ao121.html

⁶ Case No. 03027.A, p. 4.

⁷ This Board has, since the Ethics Ordinance was first enacted, issued a series of advisory opinions recognizing that the Ethics Ordinance does not *per se* prohibit aldermen or City employees from practicing law, in addition to their City positions and responsibilities, though of course the Ordinance, historically, and as recently amended, prohibits certain types of representation. See Case Nos. 18007.A, 90035.A, 11045.A, 12049.Q, and 15032.Q.

Council member, who is a lawyer, represents a client in a Worker's Compensation case against the City, he or she faces an irresolvable conflict between competing fiduciary duties."⁸

Put another way, aldermen cannot fulfill their fiduciary responsibilities to the City if they represent clients in criminal cases where, for example, they may need to aggressively question the credibility or conduct of CPD personnel, or attack the legitimacy of search warrants, arrests, or interrogations on behalf of private clients. If successful (attorneys are expected to zealously advocate for their clients), there may well result negative financial ramifications for the City from improper searches, arrests, or interrogations. At the same time, aldermen are obligated to engage in fair-minded debate and deliberate and vote on CPD matters that come before the City Council, and to represent their constituents on CPD matters in the community -- essential aldermanic roles.

Thus, we conclude that the Ordinance's fiduciary duty provision prohibits aldermen from representing clients in criminal cases (regardless of which agency brings the charges, such as the Cook County State's Attorney or Illinois Attorney General) in which CPD personnel and their work have been involved, as, among other roles, arresting officers, witnesses, executors of search warrants, custodians of evidence, or they otherwise participate in the proceeding or matter.⁹

B. Illinois Law

State law is also relevant to our analysis. Our conclusion under the Ethics Ordinance is consistent with the way Illinois tribunals have applied the ethics rules to which all Illinois attorneys are bound. Illinois law is clear that a sitting alderman who is a licensed attorney has a conflict of interests and thereby would violate RPC 1.7 by accepting an engagement for criminal defense work where police officers employed by the same government entity to which he or she was elected are arresting officers, investigators, or witnesses, or otherwise participate in the arrest or related activities giving rise to the case. The RPC are enacted by the Illinois Supreme Court, and enforced by the ARDC. The Board takes note of these provisions, as they lend insight and guidance for evaluating fiduciary responsibilities of attorneys who are also elected officials.¹⁰

In *In re Samuel J. Cahman*, Opinion No. 3121596, issued July 11, 2016, and affirmed by the Illinois Supreme Court on November 21, 2016,¹¹ the ARDC's Review Board determined that a Springfield alderman violated the RPC by representing defendants in cases where Springfield Police Department officers made the arrests or would serve as witnesses. The Review Board recommended that the alderman-attorney be suspended from the practice of law for 90 days and the Illinois Supreme Court imposed that sanction. It considered the following question under the RPC: does a sitting alderman who is also a licensed attorney engage in a conflict of interest by representing clients who are defendants in traffic and criminal cases in which his municipality's police officers were the arresting officers?

⁸ Case No. 90035 A, p. 4

⁹ We have found that only one of our cohort municipal ethics agencies has addressed a similar question. It came to the same conclusion. The New York City Conflict of Interests Board, applying not that state's ethics rules for attorneys, but rather New York City's governmental ethics charter, came to the same determination. See Advisory Opinion No. 2008-5, City of New York Conflicts of Interest Board, December 17, 2008 (attorneys employed by the City may not represent criminal defendants in courts within the City, but criminal defense work outside the City would not be barred so long as these matters do not require communications with New York City [District Attorneys], NYPD employees, or other City officials). See https://www1.nyc.gov/assets/colib/downloads/pdfs/aes-2004-2013/A02008_5.pdf

¹⁰ This is not the first time we have found it relevant to examine the ethics rules covering Illinois attorneys. In 1990, we issued our advisory opinion in Case 90035 A, applying the Illinois Supreme Court's then recent *In re Vrdolyak* decision. We stated:

"The Board is required to follow the law as set forth by the Illinois Supreme Court, and the Ethics Ordinance may be applied only to the extent it does not conflict with that Court's decisions. Therefore, in light of *Vrdolyak*, City Council members who are lawyers, as lawyer-legislators, may not represent City employees in Worker's Compensation actions against the City."

¹¹ See https://www.ardc.org/rd_database/ru/esdc/decisions.html

Alderman Cahnman, an attorney engaged in private practice in Springfield, represented more than a dozen defendants charged with traffic and criminal violations in Sangamon County Circuit Court while serving as a Springfield alderman. In each case, Springfield Police Department officers were the arresting or citation-issuing officers. The violations at issue included a variety of charges, mostly traffic- or retail theft-related.

The Review Board analyzed the case under RPC Rule 1.7. That Rule, as noted above, prohibits a lawyer from representing a client if “there is a significant risk that the representation will be materially limited by the lawyer’s responsibilities to another client, a former client or third person or by a personal interest of the lawyer.” Drawing upon the Illinois Supreme Court’s reasoning in an earlier case, *In re LaPinska*,¹² the Review Board stated that a “conflict arises when an attorney’s independent judgment on behalf of a client may be affected by loyalty to another party.” The Review Board also recognized that a violation of Rule 1.7 does *not* require a showing that a lawyer’s judgment was *in fact* compromised, only that it *might* be compromised. It stated:

“the key inquiry in determining whether a conflict of interest exists is whether there is a potential for diverging interests ... [and] it seems inescapable that when an alderman represents defendants in cases where police officers from the city he serves are arresting officers, there is always a potential for diverging interests.”¹³

The Review Board explained that, if a city police officer is a witness for the prosecution, the alderman-attorney, as defense counsel, may well need to cross-examine that officer, or others, even though the city itself is not a party (criminal complaints are typically brought by State’s Attorneys in the name of the People of Illinois):

“He [the alderman-attorney] thus has a choice to make – assail the police officer’s actions [and/or testimony] and thereby potentially do harm to the city, or go easy on the police officer and thereby fail to be an uncompromising advocate for his client. That is an untenable situation for an attorney-alderman to place himself in vis a vis his client ...”¹⁴

Accordingly, it determined that Cahnman, as attorney *and* as alderman:

“owed his undivided fidelity and a fiduciary duty to both his clients and the City of Springfield. We agree ... that [he] had a concurrent conflict, in that he operated under two divided and conflicting loyalties – one to the City for which he was alderman, and one to his client ... in the cases in which [the client] was arrested or issued citations by Springfield police officers. We believe that the circumstances here require a finding that [he] violated Rule 1.7.”¹⁵

The Review Board also relied on the Illinois Supreme Court’s 1990 decision in *In re Vrdolyak*.¹⁶ In that case, the Illinois Supreme Court held that, as an alderman, Vrdolyak owed “his undivided loyalty and a fiduciary duty to the City.”¹⁷ It advised generally that “a lawyer-legislator should anticipate possible conflicts of interest when accepting employment and guard against them.”¹⁸ And, it cautioned:

¹² 72 Ill. 2d 461, 470, 381 N.E. 2d 700 (1978).

¹³ A.R.D.C. Review Board Case 2014PR00102, pp. 10, 15 (2016).

¹⁴ *Id.*, at pp. 15-16.

¹⁵ *Id.*, at pp. 10-11.

¹⁶ 137 Ill. 407, 422, 560 N.E. 2d 840 (1990). There, as noted above, the Court censured then-Alderman Vrdolyak for representing City employees in workers’ compensation claims against the City while an alderman.

¹⁷ *Id.*, 137 Ill. 2d at 419.

¹⁸ *Id.*, 137 Ill. 2d at 423 (citations omitted).

"If we are to maintain public confidence in our system of government and the legal profession, attorneys who serve as public officials must avoid not only direct conflicts of interests, but also any situation which might appear to involve a conflict of interest."¹⁹

Our research shows that other attorney regulatory bodies that have addressed this issue also prohibit their lawyer-legislators from representing clients in criminal actions involving police personnel from the government entity to which they are elected.²⁰

Thus, we take notice that, as a matter of Illinois law, Chicago aldermen are prohibited by the RPC from representing clients in criminal matters involving personnel from the CPD, because such representation places the aldermen in a conflict of interests between those duties they owe to their clients and those they owe to the city for which they serve as elected officials.

IV. Conclusions and Determination

As set forth above, the Board concludes that: (i) aldermen owe an undivided fiduciary duty to the City of Chicago; (ii) similarly, aldermen-attorneys owe an undivided fiduciary duty to their clients; (iii) aldermen-attorneys are therefore placed in an untenable position when they represent clients in criminal matters involving CPD, as their concurrent fiduciary duties are in conflict; and (iv) such conflicts result in the erosion of public confidence both in the legal profession and in government; and thus (v) when aldermen also act as private attorneys in criminal matters that involve the CPD, they will unavoidably face a conflict between their duties to the City of Chicago and to their private legal clients, which is prohibited by both the Ethics Ordinance's fiduciary duty provision, §2-156-020, and by Rule 1.7 of the Illinois Rules of Professional Conduct for Attorneys.

The Board therefore determines that City of Chicago aldermen who are licensed attorneys are prohibited by their fiduciary duty to the City (under the City's Governmental Ethics Ordinance) from personally representing, or receiving or deriving compensation or anything else of value from the representation by others, of persons in traffic or criminal cases in which there is participation by Chicago Police Department ("CPD") personnel, as, for example, arresting officers, executors of search warrants, investigators, witnesses, or custodians of evidence.²¹

Our determination does not prohibit aldermen from practicing criminal law, *so long as CPD personnel have no involvement in the case, as, for example, arresting officers, executors of search warrants, custodians of evidence, or witnesses*. Similarly, our determination does not prohibit law partners or associates of City elected officials from representing clients in criminal actions even if CPD personnel were involved in the case, provided the City elected official and the law firm enter into and observe an impermeable screening arrangement whereby the City elected official does not participate in the case in any way or receive any income, compensation, or other thing of value from the matter, including substitute payments.²²

¹⁹ *Id.* 137 Ill 2d at 424-425, citing *Higgins v. Advisory Committee on Professional Ethics*, 73 N.J. 123, 125, 373 A.2d 372, 373 (1977) (New Jersey Supreme Court affirmed a lower court's opinion that a member of a board of chosen freeholders (similar to a county board in Illinois) who is an attorney may not represent a criminal defendant indicted for a crime in the county in which the freeholder-attorney holds office)

²⁰ See e.g. Supreme Court of Ohio Board of Commissioners on Grievances and Discipline Opinion 96-6, August 9, 1996 (It is improper under the Ohio Code of Professional Responsibility for a lawyer to represent, privately or by court appointment, criminal defendants in municipal court while serving as a city council person for the municipality because such representation creates an appearance of impropriety and may appear to place personal or professional interests in conflict with official duties. Such representation is particularly inappropriate when the criminal defendant has been investigated or arrested by a police officer where the attorney serves.); Michigan State Bar Opinion CI-1137, April 2, 1986 ([A] lawyer who is a city council member of a municipality must refrain from defending in any court persons accused of crimes where police officers of that city are the prosecuting officers or complaining witnesses. The opinion cited the concern that an attorney-alderman will not be able to preserve the appearance of undivided loyalty and avoid any appearance of conflict if the lawyer represents the client.) and Iowa S. Ct. Board of Professional Ethics and Conduct Opinion No. 04-10, June 8, 2004 (it is improper for a city council member to represent a criminal defendant charged under state law if city police officers are involved in the arrest and may be called as witnesses). The Review Board's *Cahman* opinion cites other cases as well.

²¹ Our opinion addresses only whether City elected officials can represent individuals in criminal cases where the CPD is involved. We note, but do not address here, that the standards are different for appointed officials - the test for them is whether the representation in a criminal or judicial, quasi-judicial or administrative proceeding is 'wholly unrelated' to their work as a City board or commission member. We also do not address the question answered by our New York City colleagues - whether City employees may engage in this type of law practice. Those questions are not before the Board in this case.

²² See Case No. 18007.A, pp. 8-9

In light of our determination, we advise that, *if* Alderman X currently represents clients in criminal matters where CPD officers are involved, as, for example, arresting officers, executors of search warrants, custodians of evidence, or witnesses, he withdraw his representation from such cases as soon as practicable, and, consistent with his obligations under the RPC, assist his clients in finding suitable counsel to take over the matters

V. Penalties for Violating the Ordinance's Fiduciary Duty Provision

The penalties for being found to have violated the Ordinance's fiduciary duty provision are severe: violators shall be subject to a fine of not less than \$1,000 and not more than \$5,000 for each offense (per §2-156-465(b)(7), as amended, effective September 28, 2019). Moreover, being found in violation of the City's Governmental Ethics Ordinance for this type of practice could invite scrutiny and potential enforcement action from the ARDC.

VI. Reliance

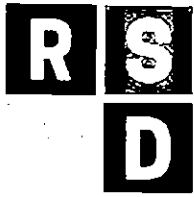
The Board's determinations and advice are based solely on the application of Illinois law and the Governmental Ethics Ordinance to the question presented. This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered. *Because many issues surrounding the outside practice of law by elected officials are fact-specific, we urge City elected officials to seek confidential guidance from Board staff with questions they may have.*

The Board appreciates the opportunity to advise you, and your professionalism in seeking our advice on this and prior occasions. If you have further questions about this or any other matter, please contact the Board's legal staff.



William F. Conlon
Board Chair

Exhibit B



ROBINSON
STEWART
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Mary Robinson Partner
Direct 312.676.9874

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September 26, 2019

Alderman Howard B. Brookins
Chicago City Council
121 N. LaSalle St.
Room 300
Chicago, IL 60602

Re: Board of Ethics, Case No. 19027.A Opinion

Dear Alderman Brookins:

At your request, I reviewed the opinion issued by the Board of Ethics in the above case. In my opinion, the conclusions reached are faulty in two important respects: 1) the Board's analysis of an alderman's fiduciary duties to the City inaccurately and unwisely assumes that dedication to the interests of the City requires acceptance or at least passivity in the face of illegal conduct by City employees; and 2) the Board misstates the holding and the reasoning of the attorney discipline decision in *In re Cahnman*, M.R. 29259, 14PR0102 (November 2016).

Fiduciary Duty. The Opinion of the Board of Ethics in this case concludes that representation of a private client in a criminal case where Chicago Police Department personnel are involved as arresting or investigating officers is antithetical to an alderman's fiduciary duty to the City of Chicago. Specifically, the Board asserts:

“. . . aldermen cannot fulfill their fiduciary responsibilities to the City if they represent clients in criminal cases where, for example, they may need to aggressively question the credibility or conduct of CPD personnel, or attach the legitimacy of search warrants, arrests, or interrogations on behalf of private clients. If successful, there may well result negative financial ramifications for the City from improper searches, arrests, or interrogations. At the same time, alderman are obligated to engage in fair-minded debate and deliberate and vote on CPD matters that come before the City Council, and to represent their constituents on CPD matters in the community - essential aldermanic roles." (Case No. 19027.A, at p. 4)

In my opinion, the assumptions underlying that analysis are themselves antithetical to an appropriate understanding of the duties of any fiduciary, which never include supporting or even tolerating illegal conduct directed at the intended beneficiaries of the fiduciary's duties,

which, in this case, includes the populace of the City of Chicago, including and in particular, the residents of the Ward represented by the alderman.

As the Opinion observes, prior Board of Ethics opinions have characterized aldermen's fiduciary duty to the City as an obligation "to give, *within lawful limits*, undivided loyalty to the City of Chicago in the discharge of their public duties . . . free from outside influence or conflicting duties to another entity." (Case No. 19027.A, at p. 3) The fiduciary duty runs to the entity of the City of Chicago, not to its officers and employees, with the ultimate intended beneficiaries being the residents of this City.

Even under the more stringent restrictions on lawyers arising from duties of both loyalty and confidentiality, the fiduciary duties of a lawyer who represents an entity run to the entity as a whole, and those duties require the lawyer to address, not ignore, illegal conduct by the entity's employees and officers if that conduct threatens the well-being of the entity, even to the extent of disclosing confidential information. 2010 Illinois Rules of Professional Conduct ("IRPC"), Rule 1.13(b).¹ The Comments to Rule 1.13 recognize that government lawyers may have expanded ability and responsibility to question and address apparently illegal conduct by government officials and employees because the duty to serve the public interest results in a different balance between preserving confidentiality and assuring that wrongful acts are prevented or rectified. IRPC 1.13, Cmt. [9]. Indeed, in the service of a governmental client, a lawyer's obligation to question or take action against illegal conduct can require consideration of the potential injury not only to the public interest in the integrity of government but also to the constitutionally or statutorily guaranteed rights of the governmental unit's constituents. Restatement (Third), The Law Governing Lawyers, sec. 97, cmt. j (2000).

In short, an alderman's fiduciary duties to the City do not require loyalty to all City employees or support of conduct just because it has been committed by an employee of the City. Instead, the alderman's fiduciary duties run to the public interest in the integrity of government and the support of rights owed by a government to its citizens. An alderman's fiduciary duties to the City are fulfilled, not frustrated, by prevention and suppression of illegal police conduct. Those duties are fulfilled, not frustrated, by endeavors that call out illegal police conduct and seek to vindicate rights that have been infringed.

The Board's allusion to the potential of "negative financial ramifications for the City from improper searches, interrogations and arrests" encapsulates the logical fallacy of its assumptions. It is the improper conduct that can result in negative financial ramifications for the City, not an alderman/attorney's success in vindicating the constitutional rights of

¹ Rule 1.13 (b): "If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a crime, fraud or other violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization."

the victim of that conduct. That victim has the legal right to pursue damages whether or not his or her attorney succeeds in securing some relief in the criminal case. Indeed, the damages will be considerably less onerous the sooner the wrong is righted. It is wrongful convictions and years of wrongful imprisonment that result in major financial ramifications to the City, and taking action to prevent those damages from accruing serves the City's financial interests.

Lawyer Conflict. As additional support for its conclusion, the Board of Ethics asserted that under a recent Illinois attorney discipline case, *In re Cahman*, supra, an alderman/attorney is precluded under the lawyer conflict of interest rules from representing a criminal defendant in a case where police officers of the alderman's city are involved. That is not what that decision held. The Review Board there recited that there is no Illinois precedent establishing such a proposition and that it was not prepared to recommend a *per se* rule to that effect. Instead, the Review Board held that under the unique circumstances of the case, the attorney/alderman had a conflict of interest because his duties to the city were likely to impair the zeal and effectiveness of his representation of one particular client (not all 12) he had represented in traffic and criminal proceedings where Springfield Police Department officers were involved. That particular client was repeatedly arrested by Springfield police. He filed at least three lawsuits against the City alleging FOIA violations because of the City's failure to release records of police misconduct, and other lawsuits against the City seeking damages for destruction of police files and for police misconduct directed against him. The alderman/attorney's representation of the client in traffic and criminal cases occurred concurrently with the client's civil litigation against the City, which was based, in part, on incidents at issue in the criminal cases. While representing the client in those related cases, the alderman participated in closed session meetings of the City Council where the client's civil litigation was discussed without revealing his representation of the client, and he initially declined to abstain when the City Council was about to vote on settlement of his client's civil rights case.

The Board's reliance on *Cahman* for the proposition that an alderman necessarily violates his fiduciary duties to the City by undertaking representation in criminal cases where the City's police officers are involved misses the whole point of that case, where the Review Board explicitly focused its concerns on the lawyer's violation of duties to the private client and *not* the City. Indeed, the Review Board stated that it agreed with the findings of the ARDC Hearing Board that the attorney/alderman's representation of the private client in multiple traffic and criminal cases did *not* involve adversity or potential to harm to the City, which was not a party to the criminal cases, did not control those cases, and had no significant financial interests at stake. Where the Review Board disagreed with the Hearing Board's determination that a conflict did not exist was in the Hearing Board's failure to recognize the potential negative impact upon the zeal and diligence of the attorney's representation of the private client. Still, the Review Board recognized that the conflict it found was one that could have been waived by the private client upon explanation to the client of the potential impact of the alderman/attorney's responsibilities to the City, but

September 26, 2019

Page 4 of 4

Cahnman conceded that he had not sought a waiver from the client.

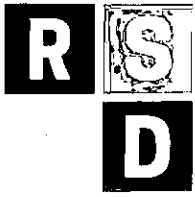
The *Cahnman* decision is about a conflict that could impair zealous representation of a private client at war with a city's police force, and even then, a conflict which that private client could waive. It by no means supports a conclusion that representation of private clients in cases where city police are involved necessarily involves a violation of an alderman's fiduciary duties to the city.

Conclusion. In my opinion, the Board of Ethics' conclusion that an alderman/attorney is precluded from representing private clients in cases where CPD personnel are involved depends on inaccurate and unwise assumptions that the alderman's fiduciary duties to the City preclude him or her from challenging improper conduct by City employees whereas, in fact, those duties not only permit but may also may require the alderman to challenge that improper conduct. It is my further opinion that under Illinois law, there is no *per se* conflict of interest involved in an alderman's representation of private clients in cases where CPD personnel are involved, and the *Cahnman* decision stands for the contrary proposition that a conflict arises only when unique circumstances of adversity between the private client and police are present and where the client has not waived that conflict.

Respectfully,


Mary Robinson

Exhibit C



**ROBINSON
STEWART
MONTGOMERY &
DOPPKE**

Mary Robinson *Partner*
Direct 312.676.9874

Stephanie Stewart *Partner*
Direct 312.782.5102

Sari W. Montgomery *Partner*
Direct 312.676.9872

James A. Doppke, Jr. *Partner*
Direct 312.676.9878

Curriculum Vitae

MARY ROBINSON

Current Positions

***Robinson, Stewart, Montgomery & Doppke, LLC* Partner**

Represent lawyers and law firms in matters involving attorney ethics and professional responsibility, including defending disciplinary investigations and prosecutions, advising on responses to ethical issues, structuring practices to conform to ethical precepts, and providing expert consulting and witness services in connection with litigation.

Professional Experience

***Cook County Shakman Compliance Administrator* (March 2009 – October 2018)**

By appointment of Federal District Court, in the case of *Michael Shakman, et al. v. The Democratic Organization of Cook County, et al*, U.S.Dist.Ct., N.D.Ill. No. 69 C 2145, responsible for overseeing compliance with decree prohibiting unlawful patronage employment practices in the Office of the President of the Cook County Board, the Cook County Health and Hospital System, and the Cook County Public Defender.

***Administrator, Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, Chicago, Illinois* (March 1992 – March 2007)**

Served as principle executive officer of the agency which operates under the authority of the Illinois Supreme Court and is responsible for the investigation and prosecution of disciplinary complaints against Illinois lawyers. Responsibilities included developing and implementing policies for the investigation of grievances against Illinois lawyers and for determination of when formal disciplinary charges should be pursued and what sanctions should be recommended in disciplinary cases; implementation of the Illinois Client Protection Program (which reimburses clients for losses caused by their attorneys' dishonesty) and the Ethics Inquiry

Program (provides assistance to Illinois lawyers in solving ethical dilemmas); overseeing the annual registration of Illinois attorneys and maintenance and publication of registration data; presentations to Illinois and national audiences on professional responsibility topics; and, from time to time, personally handling the hearing or appeal in particular matters.

Robinson & Skelnik, Elgin, Illinois (1982 – 1992)

Practice, initially as solo, expanding to partnership in 1985, with concentration in civil and criminal appellate representation civil and criminal, with appearances before the Illinois Supreme Court, the Illinois Appellate Court for the First, Second, Third and Fifth Districts, and the United States Court of Appeals for the Seventh Circuit. Practice also included trial work in criminal and family law cases.

Office of the State Appellate Defender

Ottawa, Illinois (1974 – 1977)

Elgin, Illinois (1977 – 1982)

Began as law clerk and then assistant defender in agency's Third Appellate District office in Ottawa, Illinois, representing criminal defendants on appeal to the Illinois Appellate Court and Illinois Supreme Court from any of the twenty-one counties in the Third Appellate District. Appointed Deputy of Second Appellate District Office in Elgin, Illinois, in 1977, becoming responsible for supervising briefing and argument in over 800 appeals from the thirteen counties in the Second District to the Illinois Appellate Court and the Illinois Supreme Court, primarily from felony convictions, including some capital cases, as well as two cases heard by the United States Supreme Court.

Professional Service

American Bar Association

ABA/BNA Lawyer's Manual on Professional Conduct Editorial Board, 2012 to 2015

ABA Standing Committee on Ethics and Professional Responsibility, Member 2007 – 2010

ABA National Conference on Professional Responsibility, Planning Committee, Member 2007 - 2011, Chair 2008 - 2010

ABA Standing Committee on Professional Discipline, Member 1995 – 1997

Other Bar Association

Chicago Bar Association Board of Governors (2017-2019)

Illinois Judicial Ethics Committee (2015 - present)

Illinois State Bar Association Task Force on the Future of Legal Services (2015 - 2017)

Illinois State Bar Association Standing Committee on Future of Legal Services (2017 - 2018)

Illinois Supreme Court Special Committee on Professionalism (2001 – 2004)

Illinois Supreme Court Commission on Professionalism, ex officio member (2004 – 2007)

Commissioner, Attorney Registration and Disciplinary Commission of the Illinois Supreme Court (1989 – 1992)

Illinois Supreme Court Committee on Pattern Jury Instructions in Criminal Cases, Member 1988–1991

Illinois State Bar Association: Special Committee on Ancillary Businesses, Task Force on Multi-Disciplinary Practice, Coordinating Committee for Conclave on Legal Education, Criminal Justice Section Council, Committee on Mental Health

Lecturer and panelist for IICLE and bar association courses on criminal law, search and seizure, and appellate practice; coordinator of appellate practice seminar cosponsored by Illinois Appellate Lawyers Association and John Marshall Law School; lecturer for Illinois Appellate Defender training conferences. (1980 – 1991)

Presentations 1992 – present

Lecturer and panelist on professional responsibility issues for, *inter alia*: ABA National Conference on Professional Responsibility; ABA Conference on the Role of the Court in Improving Lawyer Conduct and Professionalism; ABA Symposium on Teaching Professional Responsibility; CoLAP National Conference for Lawyers Assistance Programs; National Organization of Bar Counsel Midyear and Annual Meetings; Federal Bar Association Women in the Law Conference; National Association of Consumer Bankruptcy Attorneys, American Bankruptcy Institute,

Illinois Appellate Defender and Illinois Attorney General in-house training programs; Illinois State Bar Association, Chicago Bar Association, IICLE, PLI, ALI-ABA, Law Bulletin and various county bar association programs on professional responsibility.

Law School Teaching

Northern Illinois University School of Law, Professional Responsibility Course, Spring Semester 1999 – 2004

Northwestern University Law School, Professional Responsibility Course, Spring Semester, 2005

Education and Licensing

J.D., University of Southern California – 1974

Admitted to practice: Illinois (April 1975), California (January 1975)

Admitted to the bars of the: United States District Court, Northern and Central Districts, United States Court of Appeals for the Seventh Circuit, United States Supreme Court

Awards

Oct 2006 Illinois Lawyers Assistance Program Carl H. Rolewick Award

June 2007 John Marshall Law School Corporate Law Association Francis D. Morrissey Lifetime Achievement Award

Publications

Attorneys Legal Liability – 2018 Edition, Chapter 13, *“Disciplinary Liability,”* Illinois Institute of Continuing Legal Education

“Mandating Civility: Wisdom or Folly?” ABA The Professional Lawyer, Vol. 22, No. 2 (April 2014)

“Discipline and Disability: When Is Disease a Defense?” ABA GP SOLO, p. 31, (October/November 2009)

The Professional Cost of Untreated Addiction and Mental Illness in Practicing Attorneys, *The Professional Lawyer*, 2009 Symposium Issue, p. 101 (ABA Center for Professional Responsibility 2009)

"In The End, It's All About The Children: Chicago Attorneys Travel to Africa," CBA Record, p. 40 (September 2008).

"Colleagues in Crisis. Collateral Damage: Careers and Families," The Judges' Journal, American Bar Association, p. 37 (Spring 2008).

"A Lawyer's Duty To Report Another Lawyer's Misconduct: The Illinois Experience," *The Professional Lawyer*, 2007 Symposium Issue, p. 47 (ABA Center for Professional Responsibility 2007).

"Abusive Tax Shelters: Ethical Pitfalls for Lawyers," *The Professional Lawyer*, 2007 Symposium Issue, p. 99 (ABA Center for Professional Responsibility 2007).

"Avoiding ARDC Anxiety: A Disciplinary Primer," 84 Ill Bar J 452 (September 1996).



BOARD OF ETHICS
CITY OF CHICAGO

CONFIDENTIAL

October 29, 2019

Brendan Shiller
Shiller Preyar Law Offices
601 South California
Chicago, IL 60612-3305

Re: Petition for Reconsideration, Case No. 19027.A

Dear Mr. Shiller:

Our office received your letter dated September 27, 2019 in the matter captioned above, requesting that the Board reconsider the Advisory Opinion issued to your client on September 13. After discussing this request at our meeting today, the Board voted unanimously, 4-0, to deny it and reaffirm our opinion. Specifically,

1. Your petition raises no material facts or circumstances not already considered by the Board at its September 13 meeting, when it voted unanimously to issue its opinion. Board Rule 3-8, which addresses requests for reconsideration, provides that a person requesting reconsideration of an advisory opinion must include "an explanation of material facts or circumstances that were not before the Board in its deliberations."

2. You argue that your client did not seek a formal Board advisory opinion and that:

"The Ethics Board overstepped is [sic] properly delegated authority by twisting informal inquiries meant to aid the legislative deliberative process ... [and] ... not only did this conduct violate the Board's own rules, it is a usurpation of legislative authority."

However, first, §2-156-380(l) of the Governmental Ethics Ordinance is clear that the Board may issue a formal advisory opinion "when requested in writing by an official or employee." On July 17, your client asked our Executive Director in person whether proposed amendments to §2-156-090 of the Governmental Ethics Ordinance would affect his ability to practice criminal defense law, *not* whether your client should vote for or against it. Our Executive Director explained to your client that he could not answer this question then and there and, in order to answer the question properly, he would need to take the matter up through a formal advisory opinion issued by the full Board. He then wrote to and spoke with me, and I directed that, because of the matter's significance, it be handled in a formal written opinion to be issued by the Board at its September 13 meeting. He then explained the same thing via email a few days later in response to the same question posed in writing by your client's colleague, identified as Alderman Y in the formal opinion.

Even if we concede that your client did not seek a formal Board opinion by submitting a written request, our Executive Director, who, as your client knows, is a City employee, immediately and in writing explained your client's request for advice to me, as Board Chair (and City official). I directed that the matter be taken up in a formal Board opinion. This satisfies the Ordinance's requirement that a request for a formal opinion be in writing. Moreover, this Board has inherent authority to issue opinions without a formal request by another (it can do so at the urging of a Board member or in response to its staff's request for an opinion). Even if a person who has requested a formal opinion withdraws

that request before the Board issues an opinion, the Board may nonetheless issue an opinion or take other appropriate action in the matter consistent with the Governmental Ethics Ordinance. See Board Rule 3-3. Advisory opinions are not just for the individual(s) involved, but form a body of guidance for all other elected and appointed City officials and City employees.¹

Second, your argument is disingenuous: your client's statement to the media, as reported in a July 26, 2019 Chicago Tribune article (this was already two days *after* the City Council voted unanimously to pass this Ordinance amendment and more than a week after he posed the question to our Executive Director), shows he anticipated and was waiting for a ruling from this Board on this very question:

"Already, some aldermen with side jobs expressed concerns about how the ordinance might be enforced. South Side Alderman Howard Brookins, Jr., 21st Ward, practices criminal defense law. His clients don't win financial awards from the city, and he said administration officials told him the outside employment provision isn't meant to address his kind of work. Nonetheless, he's preparing for the possibility. 'You never know if you'll get an overzealous ethics officer who wants to make it apply,' Alderman Brookins said. If there is a ruling from the Ethics Board that says his law practice runs afoul of the ordinance, the alderman said he would sue the city."

This Board then issued that ruling on September 13, in the form of a formal advisory opinion (albeit based on a different provision in the Governmental Ethics Ordinance, so the Board did not need to reach the particular provision to which your client referred).

Third, I, three (3) other Board members, our Executive Director, and three (3) other Board staff members are Illinois attorneys. Your letter argues in effect that our Executive Director and we seven (7) other attorneys should have ignored your client's question and the follow-up from your client's colleague. That would arguably constitute a failure of our duty as members and staff of the Board of Ethics to answer him professionally and expeditiously. This remains so even though your client is displeased with our answer.

Last, you appear to be arguing that your client's question to our Executive Director was privileged under "legislative deliberative process" or perhaps the "speech and debate" or "legislative immunity clause" of the Illinois Constitution (Article IV, Section 12), and thus the Board had no authority to issue its advisory opinion. These arguments also fail.

First, the "deliberative process" privilege can be found in various statutory enactments. For example, that "privilege" is an exemption to the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 170/7(1)(f), which exempts from FOIA production "preliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed or policies or actions are formulated." This privilege protects – *from disclosure to the public under the FOIA* – "the opinions that public officials form while creating governmental policy ... thus, in order to qualify for the privilege, a document must be both predecisional in the sense that *** it is actually *** related to the process by which policies are formulated."² We are not in a FOIA request posture here. Our advisory opinion is not a FOIA request nor is it issued pursuant to one, and your client's question to our Executive Director was not a FOIA request, and this Board has treated your client's request and its opinion in accordance with the confidentiality provisions in §2-156-380(1) of the Governmental Ethics Ordinance and Board Rules 3-9 and 3-10. There was no "usurpation of legislative authority" here. This Board does not vote on legislation. It is charged with interpreting the provisions of the Governmental Ethics Ordinance. This is exactly what we did here, and exactly what your client expected us to do.

Second, your claim that the Board's advisory opinion somehow violates the "legislative immunity clause" of the Illinois Constitution is meritless. That clause protects legislators from libel or slander suits for claims or statements they make while engaging in the legislative process. See *Geick v. Kay*, 236 Ill. App. 3d 868, 603 N.E.2d 121, 127 (2nd Div. 1992) ("[A]n official of the executive branch of the Federal, State or local governments cannot be held liable for statements

¹ Every formal opinion issued by this Board and by its predecessor Board (established by a 1986 Executive Order issued by Mayor Washington) is posted on our website, with a search index: <https://www.chicago.gov/city/en/depts/ethics/index.html#general>.

² See Public Access Opinion 18-001, Office of the Attorney General, January 23, 2018, <http://www.illinois.gov/ocip/opinions/2018/13-001.pdf>.

made within the scope of his official duties ... Absolute privilege regarding communications made within the scope of official duties has been extended to mayors of Illinois municipalities or chief administrators"); and Black's Law Dictionary, 8th Ed., 1999 ("**legislative immunity**: the immunity of a legislator from civil liability arising from the performance of legislative duties"). The doctrine is irrelevant here: the Board is not attempting to bring a civil action for defamation, libel, or slander or any other cause of action against your client. Rather, we are answering the question he *voluntarily* put to our Executive Director, *expecting an answer*. Were your apparent reading of this privilege correct, a member of the City Council or the Mayor could request an opinion from the Board of Ethics but then in effect quash and invalidate that opinion just because he or she claims to have made the request in the course of performing legislative duties. Such a reading would render nugatory the power and duty of the Board of Ethics delegated to it by the City Council in §2-156-380(l) of the Municipal Code of Chicago "to render advisory opinions with respect to the provisions of this chapter based upon a real or hypothetical set of circumstances."

3. You and Ms. Mary Robinson argue that your client's fiduciary duty as an alderman allows, or, perhaps, even *requires*, that, *as a private attorney*, he represent clients in litigation where members of the Chicago Police Department ("CPD") were arresting officers, witnesses, etc. This argument fundamentally misunderstands the nature of the two competing, separate fiduciary duties your client owes: one to the City, as an alderman; the other, to his clients, as a private attorney. Ms. Robinson writes:

"In my opinion, the assumptions under [the Board's fiduciary duty analysis] are themselves antithetical to an appropriate understanding of the duties of any fiduciary, which never include supporting or even tolerating illegal conduct directed at the beneficiaries of the fiduciary's duties, which in this case, includes [sic] the populace of the City of Chicago, including and in particular, the residents of the Ward represented by the alderman ... [and] the fiduciary duties of a lawyer who represents an entity run to the entity as a whole, and those duties require the lawyer to address, not ignore, illegal conduct by the entity's employee's and officers if that conduct threatens the well-being of the entity, even to the extent of disclosing confidential information."

First, *of course* an alderman's fiduciary duty in his role *as an alderman* is to call out illegal or abusive conduct by other municipal employees or officers, including CPD members, appropriately advocate for his or her constituents against such conduct and advocate and vote for City policies that minimize such conduct and protect the treasury of the City. Our opinion does not assert otherwise. In fact, our opinion stands for the proposition, consistent with prior Board advisory opinions and the Illinois Supreme Court's decision in *In re Vrdolyak*,³ that, by representing private clients in cases in which CPD members are the arresting officers, etc., which would require him to vigorously seek to impugn the conduct, integrity, and legality of actions by CPD members on behalf of his private law clients, *he is inherently compromising his fiduciary duty to act as an alderman on such issues because he is confusing his professional responsibilities as a licensed Illinois attorney and his personal pecuniary interest as a private attorney with his fiduciary duty to the public as an alderman, thereby improperly allowing the former to taint the latter*. Advising your client he can no longer represent criminal defendants in cases where the CPD has been involved in no way lessens or impairs his fiduciary duty or his ability *as an alderman* to advocate for his constituents against, for example, abusive police behavior. It seems both you and Ms. Robinson elide over or altogether miss this essential point, and the related point that, by representing private clients (regardless whether paying or *pro bono*) in cases where the credibility and conduct of CPD personnel is at issue, your client is engaging in an archetypical breach of his fiduciary duty to the City, because his judgments *qua* alderman on matters involving CPD, by way of example, approving its budget, voting on appointees to become Police Superintendent or members of the Police Board, approving settlements in civil litigation (which often implicate CPD members' conduct), etc., are inherently compromised by his judgments *qua* private criminal defense attorney. This is what our opinion states, and what our jurisprudence since Case No. 90035.A from 1990 stands for.

Second, we are unable to find any case issued by a court or administrative agency standing for the proposition that an alderman's fiduciary duty to the city that elected him – which is the concern of §2-156-020 of the Governmental Ethics Ordinance – is consistent with representing private clients in litigation (for compensation, or even *pro bono*) where he might need to impugn the conduct of that city's police officers. The decision in *In re Cahnman* (discussed below) makes

³ 137 Ill.2d 407, 560 N.E.2d 840 (1990)

clear that *the mere potential* that he might need to do so is problematic and unacceptable, and that a violation of the Rules of Professional Conduct does *not* require a showing that a lawyer's judgment *was in fact* compromised, only that the lawyer put himself in a position where it *could be* compromised.⁴

4. Last, Ms. Robinson argues that this Board improperly relies on the Attorney Registration and Disciplinary Commission's ("ARDC") Review Board's 2016 *in Re Cahnman* decision. She writes that:

"The Board's reliance on Cahnman for the proposition that an alderman necessarily violates his fiduciary duties to the City by undertaking representation in criminal cases where the City's police officers are involved misses the whole point of that case, where the Review Board explicitly focused its concerns on the lawyer's violation of duties to the private client and not the City."

The argument misses the point. The Review Board, citing *in Re Vrdolyak*, states:

*"As both an attorney and an alderman, Respondent 'owed his undivided fidelity and a fiduciary duty' to both his clients and the City of Springfield ... We agree with the Administrator that Respondent had a concurrent conflict, in that he operated under two divided and conflicting loyalties - one to the City for which he was alderman, and one to his client ... in the cases in which he was arrested or issued citations by Springfield police officers ... it seems inescapable that, when an alderman represents defendants in cases where police officers from the city he serves are the arresting officers, there is always a potential for diverging interests. For example, if a city police officer is a witness for the prosecution, the alderman-attorney, as defense counsel, must cross-examine the police officer. He thus has a choice to make - assail the police officer's actions or credibility and thereby potentially do harm to the city, or go easy on the police officer and thereby fail to be an uncompromising advocate for his client. That is an untenable situation for an attorney-alderman to place himself in vis a vis his client..." [Emphasis added]*⁵

That is, under the principle announced in *Cahnman*, an alderman who represents clients in cases in which CPD members are the arresting officers, etc. is inherently compromising his fiduciary duty to act vigorously on behalf of his clients because of the concurrent fiduciary duty he owes to the City as an alderman. Further, it is *also*, in *our* opinion, an untenable situation for an attorney-alderman to place himself *in vis a vis the City of Chicago under §2-156-020 of the Governmental Ethics Ordinance*. This conclusion is fully consistent with our prior advisory opinions since Case No. 90035.A, and with the Illinois Supreme Court's *In re Vrdolyak* decision. It is also consistent with the *Cahnman* opinion: there the Review Board had to recognize the alderman's fiduciary responsibility to the City when it found he had violated his professional duty to his client.

For these reasons, your client's petition for reconsideration of our advisory opinion in Case No. 19027.A is denied. Should we have credible evidence that your client continues to represent clients in criminal matters in which members of the CPD are witnesses, arresting officers, etc., we will be required to commence enforcement actions against him. If we determine he violated the Ordinance, he will be subject to fines of up to \$5,000 per violation (for violations occurring on or after September 28, 2019) and we will be required to make our determinations and fines public. Such an outcome may well invite enforcement action from the ARDC with the ensuing risk to your client's law license.

Yours very truly,



William F. Conlon, Chair

⁴ A.R.D.C. Review Board Case 2014PR00102, pp. 10, 15 (2016).

⁵ *Id.* See <https://www.illinois.gov/att/d/arc/rules-for-rules.html>, pp. 10, 13, 15, 16.

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF COOK)

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 COUNTY DEPARTMENT-CRIMINAL DIVISION

5 PEOPLE OF THE STATE OF ILLINOIS,)
)
6 -vs-) No. 16CR1281801
)
7 WILSON JONES,)

8 REPORT OF PROCEEDINGS had at the
9 hearing of the above-entitled cause before the Honorable
10 JOSEPH CLAPS, one of the Judges of said Division, on
11 August 11, 2020.

12
13 PRESENT:

14 HON. KIMBERLY M. FOXX, Cook County State's Attorney by
15 MS. JENNIFER COOPER, Assistant State's Attorney,

16 on behalf of the People;

17 MR. HOWARD BROOKINS,

18 on behalf of the Defendant.

19

20

21

22

23 REGINA A. CLEMMER
24 OFFICIAL COURT REPORTER
084-004002

1 THE COURT: Wilson Jones. There has to be argument
2 before the ruling. Are you ready to do that.

3 MR. BROOKINS: Howard Brookins. Yes. We are ready.

4 THE COURT: Is your client here?

5 MR. BROOKINS: He thought that he needed to zoom in
6 at 10:00 o'clock, Your Honor. I just text him and told him
7 to zoom in now.

8 THE COURT: Let me know when he gets here, Mr. Brookins.

9 MR. BROOKINS: I will. Thank you.

10 THE COURT: I appreciate it.

11 (The matter was passed and recalled,
12 after which the following proceedings
13 were had:)

14 THE CLERK: Wilson Jones.

15 THE COURT: Where is your client?

16 MR. BROOKINS: Iphone XS Maximum.

17 THE COURT: State, this is your motion. Go ahead.

18 MS. COOPER: Assistant State's Attorney Jennifer Cooper
19 on behalf of the People. Your Honor, I filed this motion
20 because I believe that Mr. Brookins has a conflict that would
21 prevent him from continuing to represent Mr. Jones. That
22 conflict arising from Mr. Brookins' duties as an aldermen in
23 the City of Chicago.

24 As I stated in my motion, the potential conflict

1 that exists is between Mr. Brookins' duties to the citizens
2 of Chicago and his constituents in conflict with his duty to
3 vigorously defend his client.

4 And, judge, this may arise if there is -- was any
5 potential improprieties by members of the Chicago Police
6 Department in this case and I am not suggesting that that
7 occurred at all but I am saying that if there was to be
8 discovered that that had occurred, Mr. Brookins would then be
9 in conflict between his duties to the citizens of Chicago and
10 the members of the Chicago Police Department against his duty
11 to represent his client.

12 Judge, there is a case that lays out the test in
13 these types of situations and that case is People versus
14 Holmes, H-o-l-m-e-s. That's found at 141 Ill. 2d 204.
15 That's a 1990 decision by the Illinois Supreme Court where
16 they laid out a four factor tests for trial courts to use in
17 determining whether there was in fact a conflict.

18 The first question is whether there is the
19 undivided loyalty on behalf of the attorney. And as I point
20 out in my motion, there is a potential for conflict should
21 Mr. Brookins learn something about the members of the police
22 department in his duties as an aldermen that may be used to
23 impeach or cross-examine them in the trial.

24 He would then be learning information about

1 members of the Chicago Police Department through his work as
2 an aldermen which may be confidential information and he
3 would then be conflicted on whether or not to use that
4 information at trial in the vigorous representation of his
5 client.

6 Also, the question of undivided loyalty which I
7 went over before which is whether -- is who does Mr. Brookins
8 ultimately owe loyalty to, his constituents or his client and
9 there might develop a conflict there.

10 The third factor is, if this case were to go to a
11 jury trial, which we don't know that there is a possibility,
12 there is always a possibility, but we don't know how likely
13 it is, but if it were to go to a jury trial, there is
14 potential for confusion in the trier of fact, the jurors.

15 If they recognize Mr. Brookins as an aldermen,
16 they may wonder who is it that he is representing, whose
17 interest, the City of Chicago or the interest of Mr. Jones.

18 And last, judge, the fourth factor in the
19 Holmes test is whether or not there is a potential for
20 reversal of the conviction on appeal.

21 If the People do win a conviction in this case, we
22 want to preserve that. We have an interest in that. The
23 victim's family has an interest in the finality of the case,
24 as does the defendant.

1 And if we know going in the great potential for
2 reversal of that conviction based on a claim of conflict
3 exists, judge, that's a conflict that should not be allowed
4 to continue in the representation of Mr. Brookins.

5 Finally, I attached an opinion from the ARDC,
6 where the ARDC upholds that an elected city official acting
7 as an defense attorney does violate Rule 1.7 of the Illinois
8 Rules of Professional Conduct.

9 That was a case where the title of case is:
10 in re: Samuel J. Cahman. Cahman is spelled, C-a-h-m-a-n and
11 that's a commission report number 2014 PR 00102, an opinion
12 issued in July of 2016.

13 Now the facts of that case, the actions of
14 Mr. Cahman were very egregious. The pattern of practice in
15 that case shows that there was an apparent, very serious
16 conflict that existed but I think the reasoning of the
17 ARDC is what's important there.

18 And the reasoning and I am going to quote from the
19 opinion is: It seems inescapable that whether an aldermen
20 represents defendants in cases where police officers from the
21 city he serves are the arresting officers, there is always a
22 potential for divergent interest.

23 He thus has a choice to make. But fail the police
24 officers actions or credibility and thereby potentially do

1 harm to the city or go easy on the police officer and thereby
2 fail to be an uncompromising advocate for his client. This
3 is an untenable situation for an attorney slash aldermen.

4 And, judge, based on that, we ask that you grant
5 the motion and find that Mr. Brookins is conflicted from
6 continuing representation.

7 THE COURT: Is it your argument that the attorney
8 registration discipline committee erred or ruled that all
9 alderman are, quote, prohibited from representing criminal
10 defendants?

11 Is that your position?

12 MS. COOPER: Judge, that is my position if the criminal
13 defendant has been arrested by the same city department that
14 the alderman represents.

15 THE COURT: No. That's your argument. I am asking if
16 that's what the attorney registration and discipline
17 committee held in that case?

18 MS. COOPER: That's how I read that case. Yes.

19 THE COURT: They could have easily just come up with a
20 rule that said no alderman can represent a criminal
21 defendant.

22 MS. COOPER: They could have, judge. And I believe that
23 the City of Chicago did come up with that rule.

24 THE COURT: You're talking about the ethics?

1 MS. COOPER: Yes.

2 THE COURT: We will get to that in a second.

3 MS. COOPER: Okay.

4 THE COURT: Mr. Brookins, do you want to respond?

5 MR. BROOKINS: Yes, Your Honor. First of all, we
6 attached to our reply or response to their motion a report by
7 Mary Robinson who was a former executive director for the
8 Illinois ARDC.

9 The state keeps talking about a potential conflict
10 of interest. There is no actual conflict of interest and
11 there is not a potential conflict of interest that is not
12 present in any other case that is out there. Should I learn
13 something, it is at that point when I learned something
14 different, then I would have an obligation to withdraw.

15 They cited case of Sam Cahman. And in that case,
16 the conflict of interest was this, his criminal defendant was
17 actually suing the city that he represented at the same time
18 he was representing him.

19 So that wasn't an actual conflict of interest or a
20 potential conflict of interest, it was an actual conflict of
21 interest in that his client was suing the city of which he
22 was a member of the city counsel in the City of Springfield.

23 Your Honor with respect to this case, it is no
24 different than any attorney or any citizen representing

1 anybody in this with respect to whether a potential conflict
2 of interest if should you find out something at some later
3 point in time.

4 I don't think that you should read that so overly
5 broad as to deny my representation of Mr. Wilson in this
6 ongoing case. And I should not go into a matter assuming
7 that any police officer is doing something illegal, it is my
8 duty to inform the court and the city that he is both doing
9 that.

10 My loyalty that I swore to was also as a member of
11 the bar where I am not supposed to participate in wrongdoing
12 and I am supposed to report that wrongdoing, whether it was a
13 neighbor of the City of Chicago and I clearly do not
14 represent the police officers in any individual or other
15 capacity other than being a member. And I have an obligation
16 to look out for all of the taxpayers of which Mr. Wilson is
17 one of them also.

18 And so, we believe that, one, based on an opinion
19 written by Mary Robinson and based on the facts of this
20 individual particular case that there should not be a one
21 size fit all rule with respect to a potential conflict of
22 interest.

23 Again, Mr. Wilson is not accused of harming any
24 individual police officers where my loyalty could potentially

1 be in question. It is not the City of Chicago that is
2 prosecuting Mr. Wilson, it is State of Illinois.

3 These officers were not direct witnesses to any of
4 the things that occurred with respect to this. And if there
5 was a conflict of interest that could be weighed by Mr. Jones
6 and the city has no interest in the outcome of this
7 particular litigation one way or the other.

8 THE COURT: What about the ethics board?

9 MR. BROOKINS: Ms. Robinson spoke directly to that and
10 it never was ruled on by the supreme court. But more
11 importantly, Your Honor, if you read the case and what
12 Mr. Cahman did, again, he was representing Springfield as an
13 aldermen, his client as a criminal defendant in a traffic
14 matter but that same client was suing the City of Springfield
15 which set out the conflict of interest that could not be
16 resolved.

17 THE COURT: Okay. Anything further, state?

18 MS. COOPER: Judge, I would just say that the concern is
19 about the potential. I am not suggesting there is an actual
20 conflict here but that there is a concern about the potential
21 of that.

22 THE COURT: As far as the case goes, did we do pretrial
23 motions on this case?

24 MS. COOPER: Judge, there was a pretrial motion. I

1 believe that was a motion to quash arrest and suppress
2 evidence that was litigated prior to my coming on to the
3 case. And there is currently a motion to suppress statement
4 that is pending.

5 THE COURT: In that motion to quash and suppress, were
6 police officers called?

7 MS. COOPER: I believe so, judge. Yes.

8 THE COURT: Well if you're correct that a potential
9 conflict existed, it existed then, didn't it? They existed
10 on the outset of the case when Mr. Brookins filed his
11 appearance, right?

12 MS. COOPER: Correct.

13 THE COURT: Okay. Mr. Jones, have you discussed this
14 potential conflict, if it exists, with your client -- with
15 your attorney?

16 THE DEFENDANT: Briefly.

17 THE COURT: Well, do you need to talk to him more about
18 it?

19 THE DEFENDANT: Personally, I don't. I would -- I don't
20 have any issues with Mr. Brookins representing me.

21 THE COURT: Well, it's not about issues, it's about your
22 choice. You have a constitutional right to select your
23 attorney, good, bad or indifference. The Supreme Court has
24 commented as well as people representing themselves, no

1 matter how poorly their own representation of themselves
2 might turn out to be. So the choice is yours, nobody else's.

3 Given what the state has said about some potential
4 conflict existing, understanding that if Mr. Brookins found
5 one, he would be obligated to advise me. Are you waiving any
6 potential conflicts?

7 THE DEFENDANT: No, sir.

8 THE COURT: I'm sorry?

9 THE DEFENDANT: No, sir.

10 THE COURT: You are not waiving them?

11 THE DEFENDANT: No. I am not aware of any potential
12 conflicts, other than what was addressed.

13 THE COURT: I am not asking if you are aware of it, I am
14 asking if you waiving the possibility of that existing in
15 order to have Mr. Brookins represent you?

16 THE DEFENDANT: Yes.

17 THE COURT: I have listened to the arguments, I have
18 read the cases and the attachments that Mr. Brookins'
19 attached, the attached response from Mary Robinson.

20 As far as I can tell, there is no per se rule
21 preventing aldermen from representing all criminal defendants
22 where police officers from that entity are witnesses. His
23 client has waived any potential conflict.

24 I think the state's argument about Mr. Brookins

1 loyalty is somewhat misguided. An elected official has a
2 responsibility to represent the public interest, not the
3 city, not his ward, but the public interest.

4 If he came across information that police officers
5 were committing official misconduct, he would be duty bound
6 to present that, not to ignore it.

7 I fail to see any potential conflict that would
8 prevent Mr. Brookins, more importantly from Mr. Jones,
9 continuing their representation by Mr. Brookins.

10 The motion is denied.

11 MR. BROOKINS: Thank you, Your Honor. Your Honor, if we
12 can have a date. There was an offer that was on the table
13 and at the point where the state filed this motion, Mr. Jones
14 was at that point about to accept the offer.

15 THE COURT: There is just one case, right?

16 MR. BROOKINS: That is it. Just the one case.

17 THE COURT: So how long do you want?

18 MR. BROOKINS: I would assume we would need to sign off
19 on the jury waivers waiving his right and do it over zoom,
20 unless he can come into the courtroom to plea on the matter.

21 THE COURT: What's the offer?

22 MS. COOPER: If I may have just a moment. It was a
23 402.

24 MR. BROOKINS: Right, Your Honor. It was your offer on

1 the 402 conference.

2 THE COURT: Okay. I think I have that.

3 MS. COOPER: Your offer was four years on I believe the
4 leaving the scene; plus, three years consecutive on the
5 reckless homicide.

6 THE COURT: What we have to do is, Mr. Brookins, because
7 that would involve him surrendering, we do that live in court
8 at the end of the call. Depending on what day you chose, I
9 can give you an idea about what time I will do it because I
10 have to physically bring the court reporter over and he has
11 to go into custody.

12 MR. BROOKINS: That's not a problem, Your Honor. The
13 question becomes what's the best day to do that.

14 MS. COOPER: I am going to suggest 9/24 based on our
15 court schedule.

16 MR. BROOKINS: Only problem with 9/24, I have several
17 other zoom courts on that day. And if I need to be in the
18 courthouse with him, I don't know how I can get to the zoom
19 call.

20 MS. COOPER: About 9/18.

21 MR. BROOKINS: Same thing. Is there a date in September
22 that's good?

23 THE COURT: Even dates.

24 MS. COOPER: I said September 18th or September 24th.

1 MR. BROOKINS: September 18th is fine.

2 MS. COOPER: Judge, there is one additional issue.

3 Mr. Matthew Pikor is on the zoom. He is the attorney that
4 represents the company that owns the truck that the defendant
5 was allegedly operating when this happened.

6 The truck was processed by the Chicago Police
7 Department. Pictures were taken and evidence was collected.
8 The company is seeking the return of that truck, meaning the
9 release of the hold.

10 THE COURT: What's his name?

11 MS. COOPER: Matthew Pikor, P-i-k-o-r.

12 THE WITNESS: Good morning, Your Honor.

13 THE COURT: I see you. Go ahead.

14 MS. COOPER: I have no objection. I forwarded the order
15 to Mr. Brookins yesterday so he could look at it. If he has
16 no objection, it would be an agreed order and I would bring a
17 copy over to today for you to sign.

18 THE COURT: No objection, I will sign it.

19 MR. BROOKINS: I can't say that I have seen it but I
20 will look at the email and respond to it right away.

21 THE COURT: If there is an issue, we will deal with it;
22 if not, I will sign it.

23 MR. BROOKINS: Thank you, Your Honor. What time should
24 we plan on coming?

1 THE COURT: I don't have many cases so I would say
2 around 10:30.

3 (The matter was continued to 9-18-20.)

4 (Conclusion of today's proceedings.)

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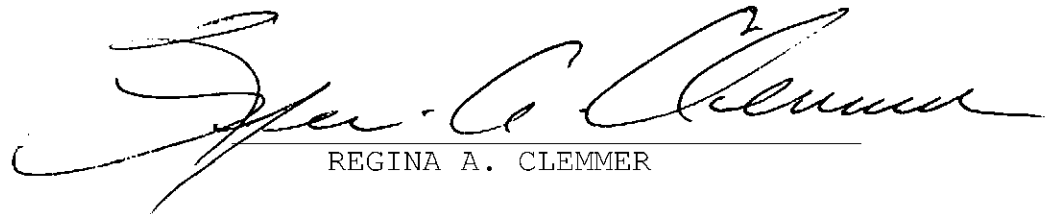
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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3 IN THE CIRCUIT COURT OF COOK COUNTY
4 COUNTY DEPARTMENT-CRIMINAL DIVISION

5 I, REGINA A. CLEMMER, an Official Court
6 Reporter of the Circuit Court of Cook County, County
7 Department - Criminal Division, do hereby certify that I
8 reported in shorthand the proceedings had in the
9 above-entitled cause and that the foregoing is a true and
10 correct transcript of all the proceedings heard before the
11 HONORABLE JOSEPH CLAPS, Judge said court.

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REGINA A. CLEMMER

21 REGINA A. CLEMMER
22 084-004002
23 Dated this 24th day
of August, 2020.

BILL FOR TRANSCRIPT

August 24, 2020

TO: ATTY. HOWARD BROOKINS

FROM: REGINA A. CLEMMER, CSR
Official Court Reporter
4322 Applewood Lane
Matteson, IL 60443

Report of the proceedings of the hearing
held 8-1-2020.

In Re The Matter of: Wilson Jones

16 pages @ \$4.00 per page (Orig. Rate)

Amount due and owing. . . . \$64.00 \$\$

EXHIBIT 6



Board of Ethics Letters

November 16, 2020

CONFIDENTIAL

By Certified and Regular Mail

November 16, 2020

Brendan Shiller
Shiller Preyamao & Samuels Law Offices
601 South California
Chicago, IL 60625-0179

Re: Case No. 20036-C, Alderman Howard Brookins (Ward 21)

Dear Mr. Shiller:

The Board of Ethics interprets its own rules of Chicago's Governmental Ethics Ordinance (the Ordinance), Section 2-156-020 of the Code of Ordinances, which mandates that city employees or officials shall act only in the performance of their public duties owe a fiduciary duty to the City.

According to our records, and a letter addressed to the City's Office of Inspector General you stated that was posted to Twitter on November 13, 2020 (a copy of which is attached), you represent Alderman Howard Brookins in this matter. Hence we are sending this notice to you per Board Rule 2-13.

The Board recently received publicly available information from a Cook County Circuit Court, Criminal Division case file warranting the conclusion that there is probable cause to believe your client, 21st Ward Alderman Howard Brookins, is representing a defendant in a criminal matter involving the Chicago Police Department, in violation of §2-156-020 of the Ordinance and in direct contravention of the determination by this Board to issue advisory opinion in Case No. 19027-A, issued to your client September 13, 2019, and our subsequent denial of your client's request that this Board reconsider our opinion in that case, issued to your client on October 19, 2019.

Specifically, on October 29, 2020, your client filed an appearance in Case No. 19CR7672 (a copy of this appearance is attached), captioned *People v. [redacted]*, pending in the Circuit Court of Cook County, Criminal Division, on behalf of the defendant, indicating he would be representing the defendant in this case. On review of the pleadings in the case shows that it involves members of the City of Chicago Police Department as arresting officers and possibly as material witnesses, given that the defendant was indicted on one charge each of charge of obstruction of justice and insurance fraud, and two charges for filing false police reports.

After considering these facts at our November 16, 2020 meeting, the Board voted unanimously to determine that there is probable cause to believe your client thereby may have violated §2-156-020 of the Ordinance.

THE PURPOSES OF THIS LETTER are to advise you and your client that:

(i) The Board has determined that there is probable cause to believe your client may have violated the Ordinance's fiduciary duty provision, §2-156-020;

(ii) Your client and/or his attorney has the opportunity to meet with the Board in closed session at its regularly scheduled December 7, 2020 meeting (calendarly scheduled for Monday, December 7, at 3:00 p.m. in the Boardroom).

platform), to discuss this matter and/or provide any facts or information, including documentation or other materials, to attempt to rebut the Board's probable cause determination; or

(iii) In lieu of such a meeting, your client may send to the Board, in writing, before the close of business on December 7, 2020, any information or facts that would demonstrate that he did not violate the Ordinance;

(iv) If your client, and/or his attorney, meet with the Board, or alternatively respond in writing by the date mentioned above, the Board will consider all such materials or arguments presented but, if, after reviewing any information presented, the Board, by majority vote, does not reverse its probable cause determination, then the Board shall make a final, public determination that your violated the Ordinance, in accordance with the foregoing cited provision of the Ordinance, and proceed to enforce the sanction, which would be the imposition of a fine between \$1,000 and \$5,000 per violation, and shall recommend that your client take all reasonable future steps not to represent criminal defendants in matters involving the City of Chicago Police Department;

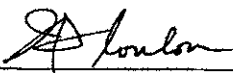
(v) If your client provides satisfactory written evidence that he has withdrawn his appearance in *People v. Moreno* and any other criminal case pending in which he has begun representing clients in criminal matters involving members of the Chicago Police Department as arresting officers, material witnesses, executors of search warrant, or custodians of evidence, etc. since October 19, 2019 at any time prior to the Board's scheduled December 2020 meeting (currently scheduled for December 14 at 3 pm, CST), the Board will dismiss this matter; and

(vi) The Board will observe the confidentiality requirements regarding this matter as provided in Articles V and VII of the Ordinance.

FURTHER, PLEASE TAKE NOTICE THAT IF WE RECEIVE NO RESPONSE BY THE CLOSE OF BUSINESS ON MONDAY, DECEMBER 7, 2020, THE BOARD WILL DEEM YOUR CLIENT'S LACK OF RESPONSE AS AN ADMISSION OF THE BOARD'S PROBABLE CAUSE FINDING AND WILL MAKE THAT FINDING A FINAL DETERMINATION OF A VIOLATION OF §2-156-020 OF THE ORDINANCE, AND FINE YOUR CLIENT AND MAKE THE DETERMINATION AND FINE PUBLIC, EACH AS OUTLINED ABOVE.

Please send responses to:

Board of Ethics, City of Chicago
Attention: Executive Director
740 N. Sedgwick, Suite 500
Chicago IL 60654
Steve.berlin@cityofchicago.org
312-744-9660



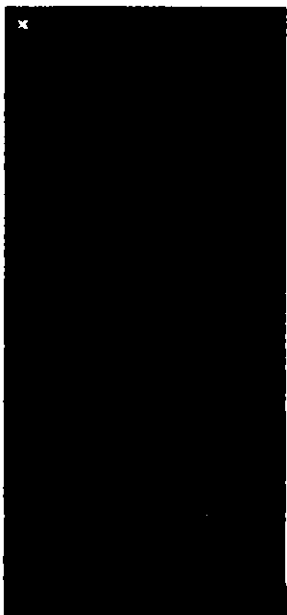
William F. Conlon, Chair
Board of Ethics



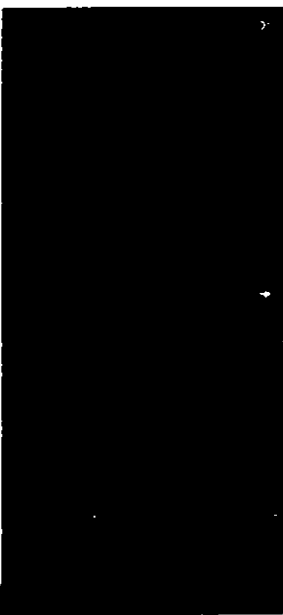
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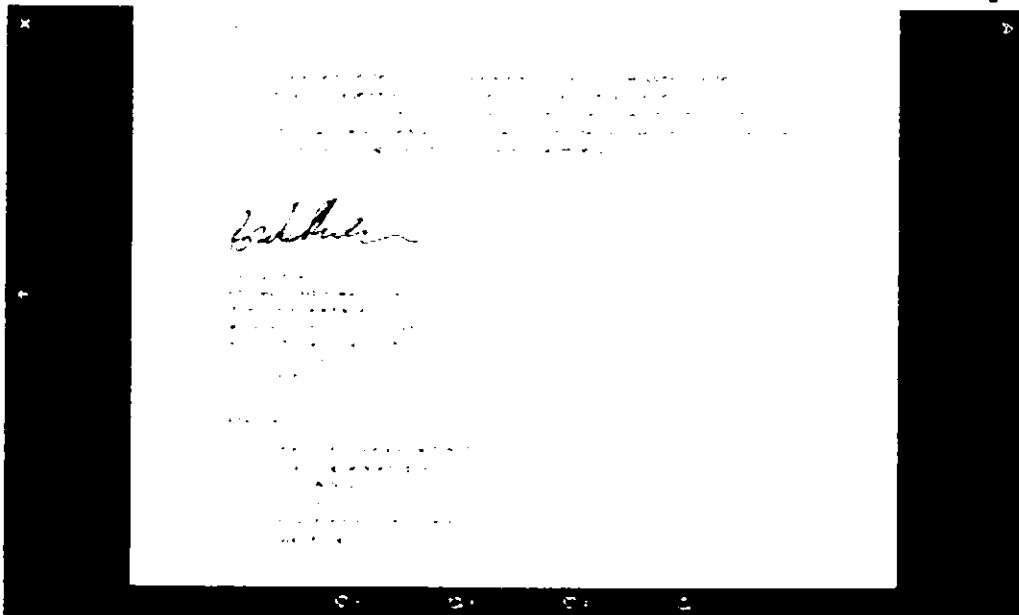
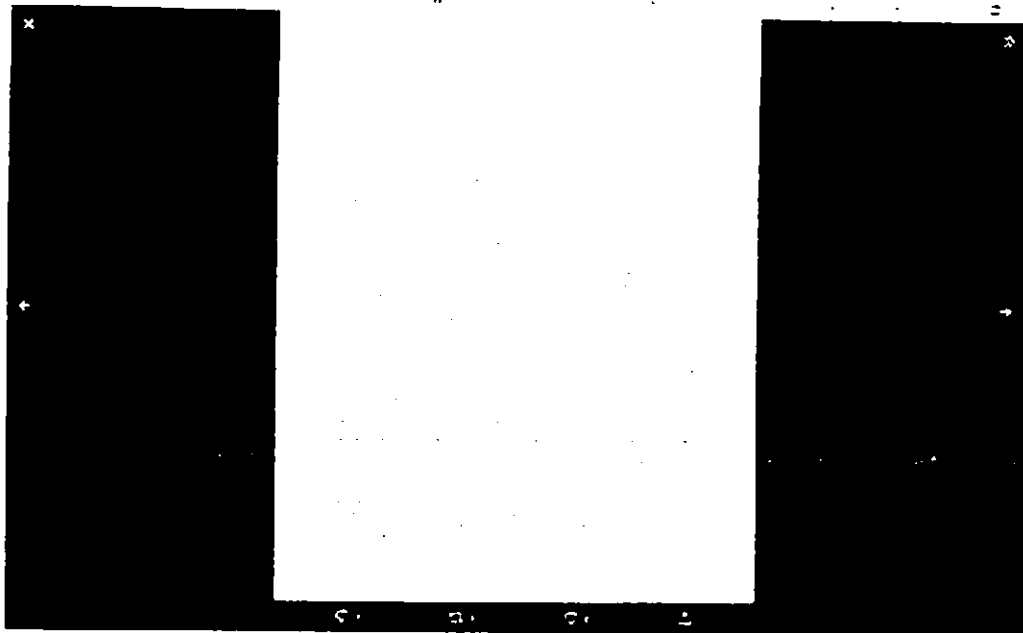
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Appearance

(01/29/18) CCCR N114

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois

Plaintiff

No. 19CD7672

Charge

PROCCO JOSEPH MARINO

Defendant(s)

APPEARANCE

The undersigned, as attorney, enters the appearance of

PROCCO JOSEPH MARINO III

Defendant(s) in the above entitled cause.

Howard B. Brookins
Attorney

Atty. No.: 17929
Atty Name: HOWARD B. BROOKINS
Atty. for: PROCCO JOE MARINO
Address: 180 N LASALLE #3700
City: CHICAGO State: IL
Zip: 60601
Telephone: 312-981-0997
Primary Email: Brookinslawgroup@gmail.com

FILED
2020 OCT 29, PM 2:30
CLERK OF THE
CIRCUIT COURT
CRIMINAL DIVISION
DOROTHY BROWN
CLERK

EXHIBIT 7



Brendan Shiller <shillerlaw@gmail.com>

CONFIDENTIAL: Board of Ethics Case No. 20036.C

1 message

Steve Berlin <Steve.Berlin@cityofchicago.org>

Mon, Nov 16, 2020 at 5:41 PM

To: "BRENDAN@SHILLERPREYAR.COM" <BRENDAN@shillerpreyar.com>

Cc: Richard Superfine <Richard.Superfine@cityofchicago.org>

Dear Mr. Shiller,

Please see the attached Notice of Probable Cause regarding your client, 21st Ward Alderman Howard Brookins. The Board's probable cause finding applies to his appearance in the *People v. Moreno* case and any other criminal case involving CPD members in which your client represents defendants in which he filed his appearance after October 19, 2019. That is the date on which the Board of Ethics denied your client's request to reconsider and change its advisory opinion, issued to him on September 13, 2019. It does not apply to cases in which your client had filed his appearance prior to October 19, 2019.

Tomorrow we will send you copies of this via First Class and Certified mail.

Yours very truly,

Steven I. Berlin

Executive Director

City of Chicago Board of Ethics

740 N. Sedgwick, Suite 500

Chicago, IL 60654

direct: 312-742-8152

fax: 312-744-2793

steve.berlin@cityofchicago.org

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This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail (or the person responsible for delivering this document to the intended recipient), you are hereby notified that any dissemination, distribution, printing or copying of this e-mail, and any attachment thereto, is strictly prohibited. If you have received this e-mail in error, please respond to the individual sending the message, and permanently delete the original and any copy of any e-mail and printout thereof.


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662K

EXHIBIT 8



Brendan Shiller <shillerlaw@gmail.com>

Fwd: CONFIDENTIAL: Board of Ethics Case No. 20036.C

1 message

Steve Berlin <Steve.Berlin@cityofchicago.org>

Mon, Dec 14, 2020 at 5:26 PM

To: Richard Superfine <Richard.Superfine@cityofchicago.org>, "brendan@shillerpreyar.com" <brendan@shillerpreyar.com>

I have received 3 bouncebacks, and tried calling the law office but I get no answer. This is the fourth and final attempt tonight.

Steve
Steven I. Berlin
Executive Director
City of Chicago Board of Ethics
740 N. Sedgwick, Suite 500
Chicago, IL 60654
direct: 312-742-8152
fax: 312-744-2793
steve.berlin@cityofchicago.org

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sent from my iPhone—please excuse typos

From: Steve Berlin <Steve.Berlin@cityofchicago.org>
Sent: Monday, December 14, 2020 5:15 PM
To: Brendan@shillerpreyar.com
Cc: Richard Superfine
Subject: CONFIDENTIAL: Board of Ethics Case No. 20036.C

Dear Mr. Shiller,

At its meeting this afternoon, the Board voted unanimously to issue the attached Notice of Violation to your client, The Honorable Howard Brookins, and impose the maximum fine. This will be made public tomorrow, but as a professional courtesy I am sending you this unsigned version. I will forward you the official, signed notice tomorrow.

Steve

Steven I. Berlin
Executive Director
City of Chicago Board of Ethics
740 N. Sedgwick, Suite 500
Chicago, IL 60654

direct: 312-742-8152

fax: 312-744-2793

steve.berlin@cityofchicago.org

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From: Brendan Shiller <Brendan@shillerpreyar.com>
Sent: Monday, November 16, 2020 5:43 PM
To: Steve Berlin <Steve.Berlin@cityofchicago.org>
Cc: Richard Superfine <Richard.Superfine@cityofchicago.org>
Subject: Re: CONFIDENTIAL: Board of Ethics Case No. 20036.C

[Warning: External email]

Received. Thank you.

Brendan

On Mon, Nov 16, 2020 at 5:41 PM Steve Berlin <Steve.Berlin@cityofchicago.org> wrote:

Dear Mr. Shiller,

Please see the attached Notice of Probable Cause regarding your client, 21st Ward Alderman Howard Brookins. The Board's probable cause finding applies to his appearance in the *People v. Moreno* case and any other criminal case involving CPD members in which your client represents defendants in which he filed his appearance after October 19, 2019. That is the date on which the Board of Ethics denied your client's request to reconsider and change its advisory opinion, issued to him on September 13, 2019. It does not apply to cases in which your client had filed his appearance prior to October 19, 2019.

Tomorrow we will send you copies of this via First Class and Certified mail.

Yours very truly,

Steven I. Berlin

Executive Director

City of Chicago Board of Ethics

740 N. Sedgwick, Suite 500

Chicago, IL 60654

direct: 312-742-8152

fax: 312-744-2793

steve.berlin@cityofchicago.org

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--

This Internet message may contain information that is privileged, confidential, and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this in error, please (1) do not forward or use this information in any way; and (2) contact me immediately.

Neither this information block, the typed name of the sender, nor anything

else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

Shiller Preyar Law Offices

****New Address****

601 S. California Avenue

Chicago, Illinois 60612

312-226-4590


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EXHIBIT 9



BOARD OF ETHICS
CITY OF CHICAGO

NOTICE OF VIOLATION

CONFIDENTIAL

December 14, 2020

By email, certified and regular mail

Brendan Shiller
Shiller Preyar Jarad & Samuels Law Offices
601 South California
Chicago, IL 60612-3305

Re: §2-156-020, Fiduciary Duty, Case No. 20036.C, Alderman Howard Brookins

Dear Mr. Shiller:

According to our records, you are counsel to the Honorable Howard Brookins, Jr., Alderman of the 21st Ward. On November 16, 2020, this Board sent you notice that, at its meeting that day, based on publicly available records, it voted unanimously in the case captioned above to determine there is probable cause to conclude your client may have violated §2-156-020 of the City's Governmental Ethics Ordinance (the "Ordinance"), entitled "Fiduciary Duty," by filing, on October 29, 2020, an appearance as an attorney representing former 1st Ward Alderman Proco Joe Moreno in a criminal case pending in Cook County Criminal Court, *People v. Moreno*, Case No. 19CR7672.

In that Notice, the Board set forth and explained:

- (i) the underlying facts warranting its probable cause finding, namely that your client filed his appearance in *People v. Moreno* in direct contravention of this Board's determination in its Advisory Opinion issued to him in Case No. 19027.A, and our subsequent denial of your client's request that this Board reconsider our opinion in that case, issued on October 19, 2019;
- (ii) your client's right to address the Board in writing and/or in person (with or without Counsel) at the Board's December 2020 meeting to attempt to rebut this finding;
- (iii) that the Board would dismiss this matter if, at any time prior to the Board's scheduled December 14, 2020 meeting, your client provided satisfactory written evidence that he has withdrawn his appearance in *People v. Moreno* and any other criminal case pending in which he began representing clients in criminal matters involving members of the Chicago Police Department as arresting officers, material witnesses, executors of search warrant, or custodians of evidence, etc. since October 19, 2019;
- (iv) if your client wished to present any written information, arguments, or materials demonstrating that he did not violate the Ordinance, that material must be received by the close of business on December 7, 2020;

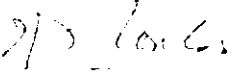
(v) that if we received no response or written materials by then, or, after any such meeting and presentation and due consideration of any such materials the Board votes your client did not rebut the probable cause finding, then the Board would vote to make a final determination that your client violated of §2-156-020, and then, pursuant to §2-156-465(b)(7) of the Ordinance, impose the penalties provided for such a violation, namely a fine of \$1,000 to \$5,000; and

(vi) that we would make your client's violation and fine public.

Despite the facts that you acknowledged receipt of the Board's Notice of Probable Cause via email on November 16, and that, on November 19, 2020 a person identifying herself as an attorney associated with your law firm contacted our legal staff several times by telephone and asked questions about your client's rights in this matter, your client neither appeared before this Board at its December 14 meeting in person or through counsel, nor presented any written information, arguments or materials demonstrating that he did not violate the Ordinance, nor that he has withdrawn his appearance in *People v. Moreno* or other pending criminal cases, if any, involving members of the Chicago Police Department as arresting officers, material witnesses, executors of search warrant, or custodians of evidence, etc., in which, since October 19, 2019, he began representing clients.

THE PURPOSES OF THIS NOTICE OF VIOLATION ARE TO ADVISE YOU THAT:

1. Pursuant to the above-cited sections of the Ordinance, the Board, having fully considered the record before it, determined at its December 14, 2020 meeting, by a unanimous vote, that your client violated §2-156-020 of the Ordinance by filing, on October 29, 2020, an appearance as an attorney representing former 1st Ward Alderman Proco Joe Moreno in a criminal case pending in Cook County Criminal Court, *People v. Moreno*, Case No. 19CR7672; and
2. Pursuant to the above-cited sections of the Ordinance, the Board, by that same vote, assessed a fine of FIVE THOUSAND (\$5,000) DOLLARS against your client for the violation; and
3. Pursuant to the above-cited sections of the Ordinance, the Board also determined, by the same vote, that the violation by your client and the fine assessed against him shall be made public;
4. Your client's obligation to pay the fine begins today, December 14, 2020, and the fine is currently due and owing;
5. Per §2-156-485 of the Ordinance, entitled "Other remedies," the City may maintain an action against your client for an accounting for any pecuniary benefit he has received in violation of the Ordinance, and to recover damages for such violation(s); and
6. Your client has the right to challenge the Board's determination in a court of competent jurisdiction.


William F. Conlon, Chair