

**COOK COUNTY BOARD OF ETHICS**  
69 West Washington Street, Suite 3040  
Chicago, Illinois 60602

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IN THE MATTER OF	)	Case No.: 2016I06
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<b>Larry Rogers, Jr.</b> , (Cook County Board of Review Commissioner)	)	Entered: August 30, 2021
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**ORDER DENYING REQUEST FOR RECONSIDERATION**

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Before the Cook County Board of Ethics (“Board”) is a Request for Reconsideration (“Request”) from Cook County Board of Review Commissioner Larry Rogers, Jr. (“Rogers”) in the above-captioned matter. For the reasons that follow, the Board denies this Request.

**BACKGROUND**

On July 2, 2021, the Board issued a Notice of Determination in which it determined that Larry Rogers, Jr., a Cook County Board of Review Commissioner, knowingly violated §2-571(a)–(b)(1) Fiduciary Duty and §2-579(b) Representation of Other Persons provisions of the Cook County Ethics Ordinance (“Ethics Ordinance”) by representing plaintiffs in three separate cases against the County. *In re Rogers*, 2016I06, at \*3 (Cook County Board of Ethics (“CCBE”), May 20, 2021).

As fiduciaries for the public, Cook County elected officials must perform their duties with the interest of the public in mind and not participate in any action that is deemed improper or in any action that may even give the appearance of impropriety. Cook County Ordinance § 2-571(b)(1). Particularly, the Ethics Ordinance prohibits elected officials from having an economic interest in the representation of “any person in any judicial proceeding in which the County is a party and that person’s interest is directly averse to that of the County.” *See* Cook County Ordinance §2-579(b). By his own admission, ~~Commissioner~~ Rogers, an equity partner of Power, Rogers & Smith, L.L.P, represented clients in litigation against the County in three separate cases.<sup>1</sup> *Id.* at \*2. The Board, through its own investigation, determined that as a shareholder, Rogers received a direct economic benefit from the Firm’s continued representation of clients in litigation against the County. *Id.* Also, the Board noted that Any compensation retained by Rogers would create the appearance of impropriety. *Id.* at \*3. Furthermore, he had already been on notice by the Board that

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<sup>1</sup> *Toro, et al. v. County of Cook, et al.*, No. 2015-L-5487 (Cir. Ct. Cook Co.) (filed May 29, 2015; dismissed based on settlement between parties on or about September 19, 2018); *Fuller, et al. v. County of Cook, et al.*, No. 2011-L-2213 (Cir. Ct. Cook Co.) (filed February 28, 2011; closed May 21, 2016); *The Estate of Kenyatta Brack, Jr., Deceased.*

continued litigation against the County by his Firm was an infraction against the Ordinance. *Id.* at \*2. *See also* Advisory Opinion 10A0007.

As a consequence of this finding, this Board imposed a fine of \$3,000 against Commissioner Rogers, \$1,000 for each of the three cases where he participated in the representation of individuals in adverse proceedings against the County.<sup>2</sup> *Id.* at \*4.

Commissioner Rogers filed a timely Request for Consideration on July 30, 2021.

### ANALYSIS

The Rules and Regulations of this Board provide that “[a]fter the Board has issued its notice of determination in cases where a violation is found, the respondent may within thirty (30) days of the date of the order file with the Board a request for reconsideration.” CCBE Pro. Rule (“Rule”) 5.17(B). Orders granting reconsideration are extraordinary remedies and so “[t]he party requesting review must state with specificity the reason(s) supporting the request for reconsideration. Requests for reconsideration shall be granted only in limited circumstances, such as, but not limited to, the discovery of new, relevant evidence.” Rule 5.17(C); *see e.g.* 11I001 (I and II) Order Denying Request for Reconsideration (request for reconsideration of violation and imposition of fines and corrective action denied by the Board because there was no presentation or new facts or legal precedent).

Here, Commissioner Rogers seeks a reversal of the findings against him, arguing that the Board’s determination that he violated §2-571(a)–(b)(1) and §2-579(b) of the Ethics Ordinance contradicts a previous resolution by the Board on the same set of facts. Request at 1. Specifically, he contends that is improper for the Board to impose fines when he complied with the Board’s recommended corrective action/plan for compliance. *Id.* at 2. The Board of Ethics Rules and Regulations for violations of the Ethics Ordinance indicates that the Board may:

- (1) notify the respondent and, if appropriate, recommend corrective action or a plan for compliance;
- (2) recommend to the appropriate appointed Official, as well as the President or other Elected Official, that disciplinary or other appropriate action be taken;
- (3) recommend to the appropriate appointed Official, as well as the President or other Elected Official, such other remedies as shall be appropriate; *or*
- (4) impose appropriate sanctions as authorized by the Ethics Ordinance.

Rule 5.16 (C) (emphasis added). Commissioner Rogers bases his conclusion on reading of provisions (1) and (4) as mutually exclusive propositions. Because he previously agreed to the

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<sup>2</sup> Ethics Ordinance Section 2-602(d) provides, in relevant part, that “[t]he Cook County Board of Ethics (“Board”) may impose a fine of up to \$1,000.00 per offense on any person, including officials or candidates, found by the Board to have knowingly violated any provision of this article ....” County Code §2-602(d).

compliance plan of refraining from any future litigation and from benefitting financially from any cases handled by his firm involving the County, he argues, it is improper for the Board to also impose sanctions. Request at 2.

This reading of the statute is grammatically flawed. The conjunction “or” is sufficient to indicate one of multiple alternatives, but it need not be construed exclusively. According to the disjunctive canon of construction, a fundamental principle of statutory interpretation, “or” may be exclusive or inclusive depending on legislative intent. *See, e.g., United States v. Moore*, 613 F.2d 1029 (D.C. Cir. 1979); *De Sylva v. Ballentine*, 351 U.S. 570, 573 (1956) (“[T]he word ‘or’ is often used as a careless substitute for the word ‘and.’”). Both “and” and “or” are context-dependent, and each word “is itself semantically ambiguous, and can be used in two quite different senses.” Lawrence E. Filson, *THE LEGISLATIVE DRAFTER’S DESK REFERENCE*, §21.10 (1992). The doctrine of internal consistency dictates that, in the event of ambiguity, provision (4) should have the same status vis-à-vis the other provisions as they have with regard to each other, and therefore supports an inclusive reading. Therefore, it would be reasonable on the part of the Board to take the courses of action recommended by (C)(1) or (C)(4)—or both, as it opted to do. Such an interpretation is consistent with the Board’s imposition of fines and recommendations for correction action or compliance upon a determination of violation. *See* 2016I17b Notice of Determination (imposing a fine of \$250 and a recommendation for corrective or compliance actions); 11I001 (I and II); and 2017I001 Notice of Determination (imposing fines and a recommendation for termination).

Commissioner Rogers further submits that he relied on guidance from the State’s Attorney that the Cook County Ethics Ordinance did not apply to separately elected members of the Cook County Board of Review. Request at 3. However, the Board had issued an Advisory Opinion in 2010 precisely in his case. CCBE Advisory Opinion 10A0007. Further, the Illinois Supreme Court decision in *Blanchard v. Berrios* clarified the matter, indicating that the Board’s opinion took precedence. *See* 2016 IL 120315. Commissioner Rogers concedes that *Blanchard* contravenes his interpretation of the conflict of authorities. Request at 3-4. In support of his argument that his misapprehension was reasonable, he cites to the Circuit Court decision in *Cook County Board of Ethics v. Power, Rogers & Smith*, 17 CH 11543 –issued post-*Blanchard*. *Id.* However, this case was limited to the consideration of the Board’s subpoena for records in this investigation, not on the issue of Commissioner Roger’s violation of the Ethics Ordinance. Accordingly, that is not applicable to the Board’s determination of violation in this matter. Indeed, Rogers was on notice that continued involvement in litigation against the County was a violation of the Ethics Ordinance since 2010 and continued to be so involved.

### CONCLUSION

The Board finds that Commissioner Rogers has not submitted any new evidence or legal precedent that provides a basis for Reconsideration of its prior determination. Accordingly, the Board reaffirms its decision that Commissioner Rogers violated Sections 2-571(a)–(b)(1) and Section 2-579(b) of the Ethics Ordinance. For the foregoing reasons, the Board DENIES the Request for Reconsideration in the above-captioned matter.

This Board orders that Commissioner Rogers pay the fine levied in connection with this matter, totaling \$3,000, within 30 days of the date of this order.

This matter is now considered a final determination of the Cook County Board of Ethics. Any person who has received an adverse determination by the Board of Ethics can seek administrative review within 30 days of the date of the Board's final determination via a writ of certiorari to the Circuit Court of Cook County. County Code §2-591(10).

IT IS SO ORDERED.

August 30, 2021

THE COOK COUNTY BOARD OF ETHICS



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Thomas Szromba

Chairperson