

ASK THE CITY ETHICIST

#16: Thinking About Starting an Outside Practice?

by
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Question: *I work for the City as an industrial hygienist. Lately, I have been thinking of opening a small part-time private practice to supplement my income. Of course I would only work on my private practice during evenings and weekends since my City job is 9-5 Monday through Friday. Aside from making sure that my City and private practice hours don't overlap, is there anything else I need to worry about?*

--Rachelle in Queens

Answer: Many City workers may seek at one time or another to start outside businesses, such as consulting practices, tax preparation services, outside law practice, and the like. Generally, Chapter 68 of the City Charter, the City's "Conflicts of Interest Law," does not prohibit you from pursuing such an endeavor, although there are some potential conflicts issues to avoid which we'll discuss below.

Unfortunately for you, Rachelle, it's not just Chapter 68 compliance issues you'll need to sort out before starting your private practice. There are two other areas you'll need to check as well. First, depending on what agency you work at, you may have a **seek permission** from your agency to partake in **any** outside financial activities. Check with your agency counsel or personnel officer to see if this applies to you. Second, if you are a licensed industrial hygienist, you, just like many other licensed professionals—lawyers, doctors, architects, accountants, auditors, etc.--have a code of professional responsibility to follow. Check with the website of you licensing organization.

Now, while it not a violation of Chapter 68 to start an outside business, there are plenty of things you could do with that business that **could** put you in violation. They span several different parts of the law, but basically all come back to one central idea: as public servants, we are bound to protect the integrity of our positions and the various things we do in the name of the City. That integrity can be compromised if we get into situations where it looks like our official duties are getting mixed with our private financial interests. Rachelle, you've already avoided one of the biggest ones when you said you were keeping you City hours distinctly separate from your private practice hours. Obviously, the time and resources of our City jobs is for City work and not for the pursuit of private financial pursuits. There are a few other things to consider:

Money between Supervisors and Subordinates:

Quite simply, money (and anything else of value, like services) shouldn't change hands. Supervisors and subordinates can't get into any financial relationship, as it tends to cast suspicion on the motivation of a boss, particularly at evaluation time: Is your boss giving you a stellar review for your work performance, or is he doing it because he owes you thousands of dollars in consulting fees and wants a break on the payment schedule? You **could**, however, get into a financial relationship with a co-worker who was not a supervisor or subordinate, but (remembering the point above) you'd still want to do that off the clock and away from the workplace.

Soliciting Business from City Contacts:

Likewise, you could throw some serious suspicions onto your professional integrity if you start soliciting your City contacts for private consulting work. Say you're on the clock, in the middle of handling a case for a City employee who has Repetitive Stress Disorder. It's your job to evaluate this employee's workstation and make recommendations for any necessary changes to his workstation. During this evaluation you tell the City employee that you've also got an occupational therapy practice on the side, (or, say, your brother does) and that he'd do well to come in for a visit.. That person, and anyone else who becomes aware of this solicitation, may feel like you're trying to poach clients from your City contacts. This throws the integrity of your City work into question: is the assessment you're giving of the workstation more a product of your professional opinion, or a product of what you think might drum-up more business for the private practice?

Representing Clients Before City Agencies:

Another thing to watch out for is the kinds of work you do for your private clients. Anytime they need something from the City, such as a license, audit, or inspection, or, say, they want to sue the City, you can't be their representative in their dealings with the City—it's a bit unseemly to have City employees to be seen as serving as a "man on the inside" for private entities seeking a competitive advantage in their dealings with the City.

Furthermore, you should be careful if any client of yours has business dealings with the City, as you are prohibited by Chapter 68 from having a second job with any firm or company that has business dealings with the City. This may seem a bit draconian, but the City has a serious interest in making sure that its contracting processes, licensing processes, evaluations, etc. aren't one huge "old boy" system, where success is based on who's got a City worker on their payroll. Having said that, if your private clients have business dealings with the City, but that business has nothing to do with YOUR City job, you may be eligible for a special dispensation from the Conflicts of Interest Board (the agency that deals with Chapter 68) in the form of a waiver, which basically allows you to go ahead and have those private clients as long as you don't get involved in their business dealings with the City.

That's a lot of different issues, Rachelle, and potentially confusing ones at that. In general, I would say that if you want to start this or any business, you should take advantage of the Board's Legal Advice Unit and get some free confidential advice about the do's and don'ts in writing. They're available 9-5, Monday through Friday. Just call 212-44-2-1400 and ask for the "Lawyer of the Day." You can also email us through our website (<http://www.nyc.gov/ethics>) by clicking on "Contact COIB." All calls and emails are confidential, and you may contact us anonymously.

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