

Ethics lights the
way to good gov-
ernment

The Ethical Times

A Publication of the New York City Conflicts of Interest Board

Quinn Haisley, Editor



Disclosure and Recusal

by
Alex Kipp

Question: *I've worked for the City for 20 years, ten of those at the agency I'm at now. I'm also a homeowner. My unit deals with construction companies. A couple of weeks ago I hired a contractor to do some concrete work on my house. Now, of course, my unit's got pretty strict rules against having financial relationships with contractors that deal with the agency. And when I hired him, he didn't. Now he does, and he hasn't finished the job at my house yet. Do I have to break the contract with him and hire another contractor?*

Answer: I suppose that is an option (if, indeed, you can break the contract without getting sued), although there may be easier avenues to pursue.

First of all, it's probably a good thing your agency has those strict rules against your being financially involved with contractors it deals with. The agency's reputation could pretty quickly go down the tubes if it started to look like its inspectors, contracting officers, (any employee, really) were steering business or giving special attention to contractors with whom they had private dealings. In fact, taking any official action at your City job that affects that contractor's City-related matters would not only violate your agency's rules but would also be a violation of the City's Conflicts of Interest Law.

This is an important point. A violation of the law not only occurs if you try to use your position in some "corrupt" way—looking the other way on an inspection, disclosing confidential information, you name it—but when you take ANY action that affects your contractor's business with the City. This places a pretty high burden on you as a public servant. Perception in public integrity issues is crucial if you want to preserve the public trust. You are in a particularly prickly situation as a homeowner who happens to deal with construction people in your City job because you seem to be on a potential collision course with one of these perception issues any time you get work done on your house.

So, what do you do? Well one option is to never hire any contractor and do all the work yourself. That doesn't seem too practical. Neither does breaking the contract.

This is where two of the most important concepts in public integrity laws might be useful to you: *disclosure* and *recusal*. First, when you see a potential problem like this arise, disclose it. It's

often said that "sunshine is the best disinfectant" when it comes to issues like these. Disclosing the matter puts it out in the open and shows the world your concern for the integrity of your position. How do you disclose it? Call the Conflicts of Interest Board and ask to speak to the Attorney of the Day. When do you disclose it? The earlier, the better. Just to be on the safe side, if I was in your situation, I would've called when I first realized that my contractor might seek business with my agency. In your case, I would call ASAP, and I would also let my supervisor at my agency know about the situation, so that s/he doesn't assign me to any of that contractor's City projects.

It's likely that part of what the Attorney of the Day tells you will involve our second term—*recusal*. This basically means you don't take any action in your City job that would affect matters that this contractor has before ANY City agency. By agreeing to *recuse* yourself from any of those matters, you effectively remove any questions that might arise about potential conflicts between your City job and your private financial interests with this contractor. But remember: recusal isn't automatic, it's something your boss has to approve. You disclose the situation to your supervisor, and you request to be relieved of all responsibility over the contractor. An approval is likely, but not automatic, as there might be situations where recusal is just plain impossible. (For example, if you're the sole expert in your agency on the kind of thing this contractor does, then you're probably the only one who can handle the contractor's matter and recusal would not be possible.)

The point, of course, in all this, is to help you protect your professional integrity, the integrity of your agency, and that of the City. That integrity isn't harmed when you hire a contractor to work on your private residence, as long you don't misuse your City position or contacts to do it. But when that contractor starts dealing with your agency, and you start working with that contractor in your agency capacity, people could easily start questioning the integrity of your official conduct. *Disclosure* and *recusal* may give you a relatively painless means to keep that from happening. (And it's probably easier than breaking your contract.) Give us a call at COIB if want to know more. The number is 212.442.1400.

Alex Kipp is Director of Training & Education at the New York City Conflicts of Interest Board

Recent Enforcement Cases

▶ The Board concluded a settlement with a former Chief of Audit Operations for the DOF who, shortly after leaving City service, took a job for a private accounting and tax firm and, on eight occasions within the twelve months following his departure from DOF, contacted his former DOF subordinates on behalf of the Firm. He agreed to pay a \$5,000 fine.

▶ The Board imposed a \$25,000 fine on a Clerical/Receptionist Community Associate with OEM for violating the City's conflicts of interest law and forgave that fine based on the Community Associate's showing of financial hardship. The Community Associate admitted that she prepared employment verification letters on OEM letterhead on which she underreported her OEM income and submitted those letters to the New York City Human Resources Administration as part of her application for public assistance. She further admitted that, as a result of the fraudulent letters, she received \$23,722 in food stamp benefits and \$403.17 in Medicaid benefits to which she was not entitled.

▶ The Board and DSNY concluded a settlement with a Plumber who, over a six-month period in 2013 and 2014, took 240 gallons of gasoline from DSNY garage and transported the gasoline to his home using a DSNY vehicle, without authorization and for a personal purpose. As a penalty, the Plumber agreed to resign from DSNY and pay a \$4,000 fine to the Board.

▶ The Board concluded a settlement with a Borough Coordinator in the Mayor's Street Activity Permit Office who, on October 12, 2013, used her City position to solicit and accept two complementary food tickets, valued at \$40 each, at a City permitted neighborhood association event on the permitting of which she had worked as part of her City duties. The Borough Coordinator accepted the complementary tickets despite being warned by a neigh-

borhood association volunteer that, as a City employee, she could not accept the tickets. For these violations, the Borough Coordinator agreed to pay a \$2,000 fine to the Board.

▶ In a settlement with the Board, the former General Counsel and Deputy Commissioner for the New York City Mayor's Office for People with Disabilities paid a \$1,000 fine for communicating with his former agency within one year of leaving City service. The former General Counsel and Deputy Commissioner contacted a Junior State Affairs Representative at the Mayor's Office of Legislative Affairs only three months after leaving City service to request an introduction to an employee of the New York State Governor's Office so as to gain assistance from the Governor's Office in obtaining a waiver for his private, out-of-state firm to be a vendor for the Metropolitan Transportation Authority.

▶ The Board issued an Order fining a former Clerical Associate at the Staten Island District Attorney's Office \$10,000 for two violations of City's conflicts of interest law. First, in January 2013, the former Clerical Associate exchanged messages with a convicted drug dealer, offering to provide him with confidential information as to whether he was under investigation or at risk of being arrested in the future if the drug dealer would provide the Clerical Associate's husband with two units of crack cocaine on consignment. Second, in February 2013, when New York City Police Department detectives approached the Clerical Associate's residence in pursuit of her husband, who had just been observed by the detectives purchasing crack cocaine, the Clerical Associate verbally identified herself as an employee of the Staten Island District Attorney's Office and showed her official District Attorney's Office identification to the detectives in an attempt to prevent her husband's arrest.

Congratulations! to the winner of the Conflict of Interest Board's August Public Service Puzzler contest:

Michelle Ramonetti, a Research Assistant at the Department of Housing Preservation and Development.

You can read Ms. Ramonetti's bio and get the details for the August Public Service Puzzler by clicking [here](#).



[Click to Follow Us On Twitter!](#)

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

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

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

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

http://www.nyls.edu/center-for-new-york-city-law/cityadmin_library/

