

*Ethics lights the way
to good government*

THE ETHICAL TIMES

A publication of the New York City Conflicts of Interest Board

Alex Kipp, 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?*

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 or contracting officers (any employee, really) were steering business or giving special attention to contractors with whom they had private dealings, or getting a special deal on their private work because of the City relationship. 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 also 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 set 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? I say the earlier, the better. If I was in your situation, just to be on the safe side, I would've called when I first realized that my contractor might seek business with my agency. In your case, you should call ASAP, and should also let your supervisor at your agency know about the situation, so that s/he doesn't assign you 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 need to disclose the situation to your supervisor and 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 wasn't harmed when you hired the contractor to work on your private residence, as long you didn't misuse your City position or contacts to do it. But when that contractor started dealing with your agency, if you are 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.

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If you are unsure whether your conduct as a City employee might create a conflict of interest, call the Conflicts of Interest Board at 212-442-1400 and ask for the Attorney 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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Recent Enforcement Cases

- ▶ The Board and the DOE concluded a 3-way settlement with a DOE teacher who worked for and held a position on the Board of Directors of a not-for-profit that contracted with the DOE. The teacher was fined \$5,320.92.
- ▶ The Board fined a member of Community Board 2 in Manhattan \$1,000 for voting in favor of a development plan submitted by developer with whom he was associated.
- ▶ The Board issued a public warning letter to a DOF official for participating in a discussion that could have affected the position of her spouse.
- ▶ The Board fined a City Council member \$2000 for using City resources and personnel for his reelection campaign.
- ▶ The Board issued 17 public warning letters to DSNY employees and one public warning letter to a DOE employee for misusing City letterhead seeking leniency in the sentencing of a DSNY employee convicted of a crime.
- ▶ The Board issued a public warning letter to a DOE teacher who had engaged in providing compensated tutoring services for students in her school. Because the teacher ended the relationship upon hearing that her conduct was improper, the Board decided no further action was necessary.
- ▶ The Board issued a public warning to a DOE teacher who babysat a student multiple times and was compensated by

- the child's parents for the work. Because the teacher terminated the relationship upon hearing that it was improper, and because she returned the money, the Board took no further action.
- ▶ The Board fined a NYCHA Administrative Housing Superintendent \$500 for submitting a letter on NYCHA letterhead to NYPD on behalf of a fellow NYCHA employee's application to regain his shotgun/rifle permit.
- ▶ The Board and ACS concluded a 3-way settlement with an ACS Community Coordinator. The respondent was suspended for 5 days without pay, valued at \$896, for holding a meeting in an ACS conference room on behalf of his private business.
- ▶ The Board fined an HPD Director of Emergency Services \$700 for using his City position to obtain a private loan.
- ▶ The Board fined a former DOE principal \$3250 for using her City position to benefit her husband's business dealings with the DOE.
- ▶ The Board fined a former HRA Captain \$5000 for misusing an HRA van to conduct personal business on City time.
- ▶ The Board fined a former Community Board Chair \$1000 for accepting gifts of mattresses and boxsprings from a company doing business with the City.
- ▶ The Board fined a former HPD Development Project Manager \$1000 for negotiating for and accepting a position with a bank involved in a project on which he was working while at HPD.
- ▶ The Board and DOHMH concluded a 3-way settlement with a DOHMH Community Associate who referred prospective daycare providers to his mother's business and selling them Child-Safety equipment. He was fined \$2000, suspended for 21 days, reassigned, and placed on probation.
- ▶ The Board issued a public warning letter to a former DOE teacher for representing three different parents at impartial hearings to determine whether their children should receive special education services. The Board took no further action, taking into consideration the teacher was on a leave of absence and was not compensated for the representations.
- ▶ The Board fined a former DOC Director of Information Technology

- \$4000 for receiving personal loans from a DOC subcontractor.
- ▶ The Board fined a former FDNY Assistant Commissioner \$6500 for accepting gifts of travel from an FDNY vendor, the work of which the Assistant Commissioner evaluated.
- ▶ The Board and the DOE concluded a 3-way settlement with a DOE principal who entered into two financial relationships with a subordinate. The Principal was fined \$2500.
- ▶ The Board and the DDC concluded a 3-way settlement with a former DDC Architect for using DDC time and telephone for his private architecture practice. The Architect agreed to resign and pay a \$2000 fine.
- ▶ The Board fined an HRA Staff Analyst \$500 for conducting business for his private travel agency on City time.
- ▶ The Board fined a former DOT Director of Engineering \$1500 for negotiating and accepting a job with a vendor whose invoices he approved as a part of his City job. □

*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
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