

Communicating Ethics to Municipal Employees

By Joel Rogers

In the world of governmental ethics, much hay gets made about the ethics code as prophylaxis. Naturally, if the objective of ethics rules is to preserve the public trust, then a steady dose of violations splashed across the local paper will undermine that objective. Communicating the message of the ethics code to public employees *before* they get themselves into conflicts, therefore, is one of the most critical tasks of a municipal ethics board.¹ Arguably, having an ethics code without some means of conveying its requirements to public servants may be worse than not having one at all.



Facing the issue of how to train government employees in ethics can generate a number of practical and philosophical questions. Who will conduct training, especially with a minimal budget? How will we reach everybody? Will it be classroom-style training, or will we create tools for self-directed learning? What are we trying to teach? Ethics? Morality? Rules?

What to Teach

A good ethics code—New York City’s Conflicts of Interest Law is one example among many—is generally not about “ethics.” It is really about the financial or political conflicts that can exist between a person’s private life and his or her responsibilities as a public servant. It would seem, therefore, that teaching employees to be “ethical” could not really be the objective of this kind of training. It is tempting, then, to assume that if you’re not teaching “ethics” *per se* (or, more correctly, “morality”), you must be simply teaching employees to follow the rules. What could be more useful, after all, than giving clear guidance on what acts would constitute violations that could get them into trouble? But this dichotomy between teaching employees about right and wrong and teaching them simply to follow the rules is a false one. Neither of these approaches individually would work very well. An individual’s sense of morality is forged over a lifetime, not in a one hour training class, while teaching “rules” sounds at worst like distrust of the employees themselves and also tends to generate a kind of rule-oriented (i.e., *loophole*-orient-

ed) thinking. Moreover, as ethics professionals, we understand that “knowing the rules” is really not sufficient for avoiding conflicts of interest. Attorneys who have worked in ethics for years may agree about what the rule is but may disagree that a given case violates it.

Ethics training must be aimed first at helping public servants understand the *principles* underlying the ethics code. The task of educating employees about these principles is really the task of *selling* your “students” on the importance of these ideas. It is essential, for example, that they recognize what kind of consequences may result not only from situations where an employee’s fairness and impartiality have been compromised by an outside financial interest, but from situations where there might even be the *appearance* that someone is inappropriately benefiting from his official position. To reach trainees successfully, it is critical that they *agree*—at least generally—that the public good is significantly impaired when violations of the ethics code occur. Otherwise, they are likely to view the ethics rules with skepticism, and worry more about getting caught than about why they should use the code as a guide for their actions.

Of course, providing participants with the resources to get more information and to get their questions answered is critical. Whether they are learning from classroom-style training or watching a low-budget “talking head” video, they should come away knowing whom to call for legal advice to keep themselves out of trouble. In turn, it is essential that the agency have a way of providing that support to employees who are trying to do the right thing.

How to Teach It

Classroom-style training with a competent, articulate, and knowledgeable trainer is the most effective method of instruction. However, it is also relatively inefficient, especially if you have many public employees to reach. (In New York City, we have over 300,000 public servants.)

In those municipalities where it would not be practical to reach every public servant through a formal training class, the focus should be on those individuals in each agency who are at the critical nodes where agency culture is established. Senior staff and agency attorneys, for example, must all get ethics training in a classroom setting. Consider training

anyone involved in procurement, too, and, if possible, even vendors doing business or hoping to do business with your municipality.

Effective training is, by definition, interactive. A lecture on ethics rules is an invitation to top executives to sit glued to their Blackberries. Fortunately, the subject of conflicts of interest lends itself beautifully to real discussion because its underlying principles cannot be illustrated except through consideration of cases—actual or hypothetical. Once participants understand the most basic tenets—that using your public position for private advantage or that creating the appearance that your fairness and impartiality may be compromised by a private interest both undermine the public’s trust—they are well qualified to join in a discussion of hypothetical cases you have prepared for them in advance. I have a personal favorite in the classes I teach:

Carole is in charge of the Health Department’s contract with Acme Pharmaceuticals. She knows they are looking for a research director, and her brother happens to have excellent credentials in that field. Carole calls her contact at Acme to set up an interview.

If participants in your training classes are the least bit spirited, you can get a lot of mileage from this simple scenario. No, it shouldn’t be a violation, many of them will argue, because it’s done all the time. After all, it’s not like Carole asked Acme to give her brother a job. She simply asked if they would be interested in interviewing a guy who is well credentialed, right? Naturally, there will be some in the group who understand that there is at least the appearance of an implicit *quid pro quo*, and they can help set the others straight.

This works well because there is a real-life scenario that most employees can relate to, and, with good facilitation from the instructor, there are few participants who won’t have an opinion. It is also valuable because it easily illustrates a specific major provision of any good ethics law—that a public servant may not use or attempt to use his or her official position to obtain any financial gain for the public servant or any person associated with the public servant.²

Also, a solution generally proposed by participants—that Carole should have told her brother about the job opening and not reached out to her contact at Acme—generates another discussion about the misuse of confidential information. In other words, was the opening publicly posted, or is she

using information she learned in her position to get her brother an unfair advantage in his job search?

Some Simple Training Tools

Whether or not you are able to conduct live instruction, there are many inexpensive ways to supplement your training program. At the lowest end, you would do well to consider a 30 minute “talking head” video that employees can be required to view.³ Ideally, the video would present hypothetical examples that illustrate the main provisions of the ethics code, and discuss real life enforcement cases where public officials have been sanctioned for misusing their positions.

While it is wise to navigate the political minefield of your municipality cautiously, there is substantial training value in presenting enforcement cases that have been brought against very high-level public officials. Not only does this help to establish that your ethics board is independent from top government officials (to the extent that the board actually enjoys such independence), but it also helps to communicate that your ethics code is and will continue to be fairly applied to all public servants, regardless of rank or position. Understand that it is not uncommon for employees in lower paying positions to respond to an ethics code as if it unfairly discriminates against them. For example, if there is a fairly low cap on fines against violators, such fines will be more onerous for the lower paid public servant. Also, a prohibition on being paid twice for doing your municipal job (the prohibition on accepting gratuities) can generate some resentment from government workers who believe they are not even being paid *once* for all their hard work. So it is important to communicate that your ethics board recognizes that high-level public officials have an even greater responsibility for the public trust than other public servants, and pursues their violations accordingly.

A basic publications program will also be cost effective in communicating ethics. While a large city’s ethics agency might have numerous written publications aimed at helping employees navigate the ethics code, even the smallest ethics board should have some basic materials. If your ethics code is contained in your municipality’s governing legislation—in other words, if it’s in *legalese*—you must have a “plain-language guide” to help employees understand clearly what’s required of them. This may be in the form of one or two bulleted pages of highlights, or a booklet spelling out in some detail each of the code’s provisions. It should be written at a fairly general level, not only so that it avoids the nuts and

bolts of specific scenarios (this can't, after all, replace your giving legal advice), but also because you don't want to create a document that needs to be modified every time your ethics board issues an opinion or a finding of violation. In New York City, we also have over 20 plain-language leaflets that spell-out in greater detail specific areas of the ethics law (post-employment, political activities, real estate matters, and the like) which are of great value to employees. Whatever you do, don't ambitiously produce materials that will then be difficult to keep current. Out-of-date publications can be a greater liability to your ethics board than no publications at all.

Nowadays, your organization cannot be on the map if it is not on the web. A website for your ethics agency needn't be a big production, but your code should be available for downloading, as should your plain-language materials. Most importantly, your website (and all of your materials) should serve as a resource for public servants seeking further information about ethics. While many issues arising for employees are clearly addressed in your ethics code, many more will be difficult situations with which they will need assistance in the form of legal advice. The single most important message your site can offer is who to talk to resolve specific questions. It is also valuable to stress the confidentiality of such requests for advice, to the extent that your ethics agency ensures it. Visit our website for New York City employees at <http://nyc.gov/ethics> for additional ideas.

Technology can be used in other ways to supplement your training program. Obviously any live training can be made more professional in appearance by including a well-designed PowerPoint presentation. But there are other tools you might consider that can make live training more engaging (and even fun!) using just your laptop and an LCD projector. Consider, for example, a Jeopardy style ethics game that we've played to acclaim with thousands of NYC public servants. A well-known company called Learning Ware, Inc. (<http://www.learningware.com>) makes a product called "Gameshow Pro" that provides, for only a few hundred dollars, excellent training-game templates into which your content can be easily incorporated.

There are many more sophisticated uses of technology available, if you have the means to do it. A mandated certification program for all employees could be built around a program of web-based train-

ing modules tailored to your municipality. This can be an excellent tool because it is quite interactive—each employee would have to answer review questions successfully in order to have his or her name sent to a database of "ethics certified" employees—and would be an efficient means of reaching all of your public servants. There are a number of companies that could consult with your municipality to create such a program, usually at considerable expense. But if you can do it, an ideal might be to require all employees to complete the program once a year (a requirement you could easily audit using the database component), and to continue to provide live training for at least senior staff at all agencies or departments.

Most municipal ethics boards operate in a highly austere fiscal environment, and there's nothing wrong with creating a training program out of "construction paper and tape." While I have offered some low-budget—and some not-so-low-budget—ideas, these are just a fraction of the tools and methods available to you. Let your imagination run wild with games, videos, bookmarks, or even an ethics comic book. Reach as many people as possible, but particularly those people most empowered to establish an ethical culture in the agency and at greatest risk of conflicts of interest. Give public servants not only the information they need to stay clear of ethics violations, but also the tools to evaluate their own potential conflicts as they arise. Most importantly, when the municipal official both understands *and believes* that his or her actions have a direct impact on the degree of trust that the citizenry has for their local government, then and only then have you effectively communicated ethics.

Endnotes

1. Although this article assumes that your municipality has an ethics board, the techniques discussed in this article will work even if you have no such board.
2. See NYC Charter § 2604(b)(3).
3. A simple video may be filmed inexpensively in a TV studio if you have access to one, or can even be a one-person job with a hand-held digital video camera. Duplication of video-tapes or DVDs is not expensive.

Joel Rogers is the Director of Training and Education at the New York City Conflicts of Interest Board. He may be reached at: rogers@coib.nyc.gov. The Board's publications are available on its website: <http://nyc.gov/ethics>.

Originally published in volume 19, number 1, of the *Municipal Lawyer* (Winter 2005), a joint publication of the Municipal Law Section of the New York State Bar Association and the Edwin G. Michaelian Municipal Law Resource Center of Pace University