

the Ethical Times

Getting Back into (Ethical) Shape

A Conflicts Workout Regimen

By Alex Kipp

At last! After sixteen months of fear, boredom, and seemingly endless Zoom calls, the City is returning to normalcy. But as offices begin to re-open, many of us are reckoning with a certain... flabbiness that our bodies acquired as we kept our community safe from COVID by bravely waiting in our apartments for groceries and booze to be delivered. Losing the “COVID Nineteen” will take work, probably some sort of “exercise” that I’m just now reading up on and which frankly sounds like a real drag. But it’s not just our bodies that need to be coaxed back into something resembling fighting form. Many of



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us haven’t had to use our ethics muscles in a while, either. There were no out-of-state conferences to go to. There were no dinners ANYWHERE, let alone with City vendors. For those of us who were teleworking with our own hastily-equipped home “offices,” there weren’t even that many City resources to misuse.

Anyone who wants to get fit (ethically or otherwise) knows it takes three things: pushing muscles to their limits, eating right, and getting plenty of rest. If you’re like me, your office is in downtown Manhattan, so eating right in this abundant swamp of hot tables and questionable cold cuts is not going to happen. And if you’re like me, you have two very young boys at home, so getting rest is off the menu, too. That leaves pushing ethical muscles to their limits. How do we do that? I like to do it by getting into the actual situations where, if I’m not careful, I could actually violate the conflicts of interest law. By doing this repeatedly, I can make big ethical gains in a short amount of time.

Misuse of Position

It’s been a year and half since I’ve had to show my City ID to anyone. Now that I’m back in the office, it’s good to get reacquainted with the dos and don’ts of its use. Using it to get into my work building? Check. Using it get a discount available to all government employees? Check. Using it get

special treatment or free stuff that is ONLY available to me? Problematic. So, for my fitness routine, I try to really push that moment where someone might offer me something just because I'm a public servant. But how can I make sure people know I'm a public servant? I recommend having the front of your City ID printed on seven white polo shirts. I wear one every day so that when people inevitably try to reward me for working at the Conflicts of Interest Board, I can practice my gracious refusal of their generosity. So far, I haven't had any offers, except for some unwelcome and rudely stated fashion advice, which I also graciously refused, so I got my reps in at least.

Job Seeking

Last year, there weren't too many jobs available, and I was more worried about budget cuts killing my current gig. What a difference a year makes! Now, so many businesses are hiring they can't find people willing to work below-subsistence wages fast enough. Anyway, in this boom time of opportunity for job-seekers, we've got to keep our reflexes up and remember that we cannot seek a job with any company we currently deal with in our City capacity. Personally, to work this muscle I like to refuse offers from as many City vendors I oversee as are willing to begin exploring job opportunities with me. Even a discussion that could lead to a job offer in the future could be a violation if I don't recuse myself from dealing with that firm first.

Some people build pecs effortlessly, I comply with this rule effortlessly, as I have never been allowed anywhere *near* a firm my agency deals with. It's like I'm pre-recused!

Nepotism

You won't actually find the word "nepotism" in the conflicts of interest law, but the concept is addressed by the prohibition against (mis)using one's City position to benefit a close family member. We've certainly seen plenty of enforcement cases involving public servants who supervised or awarded con-

tracts to their loved ones. A great way to train for this is to have a close relative's resume come across your desk and then quickly disclose the conflict to your supervisor and recuse yourself from any matters related to the search to fill the position that family member is seeking. The best part is that this is the kind of workout that you can get the whole family involved in! In my case, I encouraged my four-year old son to submit his resume to my unit for consideration. Once he realized that City positions rarely include a midafternoon juice box and nap, he started crying, which honestly is a fair reaction; more disastrously for my workout plan, he explained in detail the questionable ethics of exploiting a toddler in order to practice complying with fairly rudimentary workplace standards. So no dice on the resume and subsequent recusal, but in the meantime, ethics muscles were still flexed, so thanks, son!

So that's three exercises to get you started. And when you get bored, don't forget to change it up. Check out our [YouTube playlist](#) to get inspired. Heft [annual disclosure reports](#) over your head. And if you ever have a question about how to apply a specific technique to a specific set of facts you're facing, reach out to our Attorney of the Day via [this handy webform](#) or by calling 212-442-1400 during business hours. Either way, you'll get ethically swole through confidential, personalized legal advice from an expert attorney.



See you downtown! I'll be the guy in the City badge polo shirt handing out juice boxes.

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Recent Enforcement Cases

Misuse of City Position; Misuse of City Resources & City Time. In addition to working for the NYC Housing Authority (NYCHA) at Woodside Houses, a Property Manager writes books about public policy in West Africa, including one published in 2018. The Property Manager committed multiple violations of the City's conflicts of interest law related to his work writing books:

- He had one of his NYCHA subordinates review and edit the book; he had that subordinate and a second subordinate post reviews of the book on Amazon; and he solicited sales and sold the book to that second subordinate and a third subordinate.
- He used his NYCHA computer to store approximately 610 documents related to his work writing books; a NYCHA printer to print documents related to his books; his NYCHA email account to exchange 22 emails related to the book; and had a NYCHA subordinate review, edit, and discuss a draft of the book during that subordinate's NYCHA work hours.
- He sent nine emails related to the book and discussed a draft of the book during his NYCHA work hours.

The Property Manager paid a \$750 fine to the Board. In setting the fine, the Board took into account that the Property Manager had already agreed, in resolution of a related NYCHA disciplinary action, to serve a 13-workday suspension, valued at approximately \$4,850.

Misuse of City Resources. In addition to working at the Bronx County District Attorney's Office (BXDA), a Community Associate owns a tax preparation business. Between January and April 2019, the Community Associate used her BXDA computer to store 24 files related to her tax preparation business

and a BXDA photocopier/printer to scan five tax-related documents, totaling 46 pages, which she sent to her BXDA email account. The Community Associate also occasionally used a BXDA photocopier/printer to print documents related to her business. The Board imposed a \$1,250 fine, of which \$750 was forgiven based on the Community Associate's documented financial hardship.

Misuse of Confidential Information. To perform her official duties, an Eligibility Specialist II at the NYC Human Resources Administration (HRA) has access to the Welfare Management System (WMS), which contains confidential information about all persons who have applied for or have been determined to be eligible for certain public assistance benefits. On 130 dates between 2002 and 2020, the Eligibility Specialist II accessed WMS to view her own confidential public assistance records and those of two of her close family members. In a joint settlement with the Board and HRA, the Eligibility Specialist II agreed to a 44-day suspension, the forfeiture of 13 days of annual leave, and a one-year limited probationary period. The Board accepted the agency-imposed penalty as sufficient and imposed no additional penalty.



Recent Enforcement Cases

Misuse of City Resources & City Time.

Between February 2015 and April 2017, while employed at the NYC Administration for Children's Services (ACS), a Construction Manager used his ACS email account to exchange 91 emails, 46 of which he sent during his ACS work hours, related to or in pursuit of private architectural work. The Construction Manager paid a \$1,500 fine to the Board.

Disclosure of Confidential Information.

To perform her official duties, a Child Protective Specialist at ACS had access to CONNECTIONS, a confidential database of child abuse and maltreatment investigations. The Child Protective Specialist accessed CONNECTIONS on 13 occasions to view a case involving a person with whom she had a personal relationship and provided this person with information about the case, including details regarding the source of the report and the allegations contained in the report. ACS brought disciplinary charges against the Child Protective Specialist for disclosing this confidential information. While the charges were pending, she submitted paperwork to resign from ACS. The Board determined that resignation was sufficient to resolve the now-former Child Protective Specialist's Chapter 68 violations and imposed no additional penalty.

Prohibited Post-Employment Appearances.

An Early Childhood Education Consultant (ECEC) at the NYC Department of Health & Mental Hygiene (DOHMH) left City service and began working at Children of America (COA), a private preschool and childcare company. Within one year of leaving DOHMH, she participated in three email exchanges with a DOHMH employee about COA's operation of a childcare center in Queens. In August 2018, the ECEC returned to DOHMH, where she worked until April

2019, when she was re-hired by COA. Within one year of her second departure from DOHMH, the former ECEC communicated with DOHMH employees on behalf of COA on 52 occasions, including to secure DOHMH approval to permit COA to open a new facility in Queens. The former ECEC paid a \$6,000 fine to the Board.

Misuse of City Resources. In 2014, a Security Officer at NYC Health + Hospitals/North Central Bronx (H+H) purchased a counterfeit parking placard with the H+H Police shield from a street vendor for \$30. Over approximately three years, the Security Officer displayed this placard in his personal vehicle when he parked illegally on the street near North Central Bronx Hospital. In a joint settlement with the Board and H+H, the Security Officer paid a \$2,500 fine to the Board for using a City resource, namely the H+H Police shield insignia, for a non-City purpose.

A [searchable index](#) of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School.

THE PUBLIC SERVICE PUZZLER

Marvin the Meerkat has gotten some birthday [presents](#), but he can't keep them all! [Send us the secret word](#) hidden in the illegal gifts (and its definition) by 5:00 PM on Friday, July 16th (deadline extended!), and you may be featured in next month's issue.



This month, we profile Melissa Hester of ACS, who loves karaoke!