

the Ethical Times

Moralists, Rogues, and Pragmatists

The Three Types of Public Servants

by Alex Kipp

In 1974, my 63-year-old grandfather arrived from the Soviet Union to live with my family. He didn't speak English too well (neither did I – I was two). To improve his handle on the language, he would watch detective shows involving various combinations of private eyes and public servants in law enforcement – *Kojak*, *Vegas*, *Beretta*, *Barnaby Jones*, and *Charlie's Angels*, just to name a few. His English never got much better (mine, on the other hand, improved enough to be able to write this article), but I got exposed to hours upon hours of procedural suspense.



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One thing you realize if you spend your childhood this way, and then enter into a career in ethics education, is that there are three basic types of public servants, both among television characters and real-life government workers: **moralists**, **rogues**, and **pragmatists**. Those three types line up nicely with three core parts of New York City's conflicts of interest practice: the bright-line **code of ethics**, the **Enforcement** process, and **Legal Advice**.

Moralist TV characters are wholly devoted to rules and institutions. For a moralist, bending the rules would be like bending the tower of a suspension bridge – a step toward unavoidable and complete collapse. Dudley Do-Right was a moralist. The paramedics of *Emergency!* were moralists. *Dragnet's* Joe Friday was an incredibly patronizing moralist and so was his creator, Jack Webb (Webb was also the producer of *Emergency!*, by the way).

"Just the facts," Joe Friday loved to say. The moralist doesn't care *why* you were speeding. He only cares *that* you were speeding (and don't bet on him letting it slide). This is the way the City's **conflicts of interest law**, [Chapter 68 of the City Charter](#), operates. Was accepting that gift from a City vendor a violation? The only question Chapter 68 considers is whether it was worth \$50 or more, or whether it meets

the enumerated requirements for acceptable gifts from relatives or pre-existing friends. The law doesn't care about the giver's intentions, or how the gift made me feel, or even whether I'm sure the gift won't influence my decision-making. Having a bright-line standard like this is important for the good function of government – you want to know where the line is, so you can stay on the right side of the law – but moralists are inflexible and often hard to relate to.

On the opposite end of the ethical TV spectrum are the **rogues**. Rogues care very little about the rules (except when the rules benefit them); they certainly don't care about collateral damage. Rogues were almost always bad guys in the classic procedurals my grandfather and I watched. These days, rogues sometimes get to be antihero protagonists, like *Boardwalk Empire's* gleefully corrupt County Treasurer Nucky Thompson and *Breaking Bad's* teacher-turned-kingpin Walter White.

As villains or as antiheros, ethics rogues make for entertaining TV, but in real life, you don't want them in charge. Fortunately, the number of actual dastardly Chapter 68 rogues seems pretty small. But when someone does decide to run a political campaign out of his public office or misappropriate school equipment for a lucrative side hustle, the Board's **Enforcement Unit** gets to work.

That covers the two extremes. But what about someone like Kojak? He wants to get the bad guys and serve justice (so he isn't a self-interested rogue), but he isn't too concerned about doing it the way his boss would recommend (so he isn't really a moralist, either).

Like the majority of public servants in crime shows and in real life, Kojack is a **pragmatist**. Pragmatists believe in the

system and generally follow the rules, but they view each situation afresh, interested in creating the greatest possible good for the greatest number of people. If that means bending regulations a little bit, so be it: the pragmatist knows that blind adherence for its own sake can result in unjust outcomes.

Pragmatists actually *do* care why you were speeding, and if there's a good enough reason for it (you were racing to the hospital because your wife is in the back seat giving birth, to cite another television cliché), a pragmatist might let you off with a warning (or even tell you the quickest route to the ER). The art of being a successful pragmatist is knowing when to go strictly by the book, and when to get creative, making sure that a novel application of the rules doesn't turn into a reckless disregard for them.

A big chunk of the Board's work lies in pragmatically applying Chapter 68 to specific sets of facts through its **Legal Advice** function. Sometimes the answers sound no different from a moralist's – confidential City information can never be used for personal purposes, period. Other times answers come in the form of **Board Rules** – binding interpretations of the conflicts of interest law meant to answer common questions. For example: the **law** says that superiors and subordinates are prohibited from entering into "any business or financial relationship." That's a sensible rule; we don't want managers getting entangled in the financial affairs of the people whose employment they oversee. But is an intraoffice carpool necessarily a cause for concern? Do we need to send an Enforcement attorney after every breakroom coffee club? A moralist might say so, but thankfully for those of us who just want to get to work and stay caffeinated while we're there, the pragmatists at the Board

have developed [a Board Rule for this sort of situation](#) (tl:dr – these sorts of office practicalities are okay, as long as they are equitably shared among all parties involved).

Practical answers also come in the form of waivers. Waivers are a way of making sure that the law is not overly restrictive in a specific case where something a public servant wants to do violates the letter of the law, but not its spirit. You can find out more about waivers [here](#).

And, of course, pragmatic answers come in response to the thousands of calls the Board receives through our Attorney of the Day line. Every day public servants get asked to teach, to volunteer, to speak at events, to work for private clients, or to do other things in their private lives that contribute to making this City great, but which may run afoul of the bright-line law. Is there a rule for that? Is a waiver possible? How has the Board acted in similar situations in the past? By calling the Board to get quick and practical legal advice, a public servant can find out what is possible, what to avoid, and how best to move forward. That advice is always confidential.

You can get it 9-5, Monday through Friday by calling us at (212) 442-1400, or [visiting us online](#).



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Recent Enforcement Cases

Prohibited Appearances. The Board issued a public warning letter to an employee of the NYC Department of Environmental Protection (DEP), who is a Master Plumber licensed by the NYC Department of Buildings (DOB) and the owner and operator of two private plumbing businesses. The Master Plumber appeared before DOB on behalf of his private businesses when he: (1) filed PW1 and PW2 applications with DOB; and (2) submitted self-certified inspection results to DOB. Public servants with professional licenses who wish to submit permit applications or inspection results to DOB must first obtain a waiver from the Board.

Misuse of Confidential Information. A Clerical Associate II at the NYC Human Resources Administration (HRA) accessed the Welfare Management System (WMS) on 117 occasions to view confidential public assistance records regarding herself, several family members, and addresses and cases with which she was associated. In a joint settlement with the Board and HRA, the Clerical Associate agreed to serve a 30 calendar-day suspension, valued at approximately \$3,066.

Job-Seeking. An Attorney in the Law Enforcement Bureau of the NYC Commission on Human Rights (CCHR) applied for employment at two firms while she was responsible at CCHR for cases against those firms. After the Attorney interviewed with one of the firms, the firm asked her who would be handling its CCHR case going forward. The Attorney promptly contacted the CCHR General Counsel, and the cases against those firms were reassigned to other CCHR attorneys. The Attorney paid a \$500 fine to the Board for seeking employment with firms while she was involved

Recent Enforcement Cases

with those firms' matters on behalf of the City. In setting the fine, the Board balanced the fact that City attorneys are held to a higher standard of compliance with the conflicts of interest law against the facts that the Attorney self-reported her conduct to the Board, promptly took steps to limit the impact of her violations, and did not obtain a position with either firm.

Misuse of City Resources. An Associate Project Manager at DEP was authorized to use a DEP vehicle to attend a meeting in Williamsburg, Brooklyn, on behalf of DEP. After the meeting, before returning to the DEP office in Flushing, Queens, the Associate Project Manager drove the DEP ve-

hicle from Williamsburg to a residential location in Jamaica, Queens, adding more than 10 miles to his trip. The now-former Associate Project Manager paid a \$400 fine to the Board.

Superior-Subordinate Financial Relationship, Misuse of Position. From 2009 through 2015, a DEP Associate Project Manager entered into a prohibited financial relationship with his DEP superior by sharing with him the costs of a one-time Personal Seat License (PSL) fee and annual season tickets for the New York Football Giants. In 2015, the superior left DEP and became a Construction Manager for Arcadis of New York, Inc. The DEP Associate

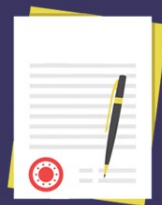
From Our Archives



Gifts with a total value of \$50 are considered a **Valuable Gift**

City employees cannot accept valuable gifts from:

- A firm doing or seeking to do business with the City
- That firm's employees



A gift is any thing of value.

Including:

- Meals
- Loans
- Tickets to an event
- Holiday fruit baskets
- Swag bags
- Gift cards

❖ **Note:** many City agencies have stricter gift rules. Check your agency code of conduct.

Attending events in connection with one's official duties should be discussed with your **General Counsel or **Ethics Liaison**.**



Recent Enforcement Cases

Project Manager and Arcadis Construction Manager continued to share the cost of Giants season tickets until 2018. During 2017, the DEP Associate Project Manager attended contract negotiations with the Arcadis Construction Manager, resulting in the award of a DEP contract to Arcadis; he also proposed combining that contract with another DEP contract for Arcadis. In a joint settlement with DEP and the Board, the Associate Project Manager agreed to resign from DEP. The Board accepted this agency-imposed penalty as sufficient to address the Associate Project Manager's violations of the City's conflicts of interest law.

Superior-Subordinate Financial Relationship, Misuse of Position. A DEP Environmental Police Officer Level II and a subordinate Environmental Police Officer Level I entered into a prohibited financial relationship when the superior sold a used vehicle for \$8,000 to the subordinate. The superior committed a second violation of the conflicts of interest law by selling the vehicle to a person over whom he had supervisory authority. In joint settlements with DEP and the Board, the superior agreed to serve a 10 work-day suspension, valued at approximately \$2,841, and the subordinate agreed to serve a five work-day suspension, valued at approximately \$1,266.

Superior-Subordinate Financial Relationship, Misuse of Position. In 2018, a Director of Information Services Level 2 for NYC Health + Hospitals began renting an apartment to a Health + Hospitals Clinical Business Analyst Level 2. The next month, the Director of Information Services began supervising the Clinical Business Analyst, thus making the apartment rental a prohibited financial relationship with her subordi-

nate. The Director of Information Services committed a second violation of the conflicts of interest law by supervising a person with whom she was in an ongoing financial relationship. The Director of Information Services paid a \$1,500 to the Board.

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

THE PUBLIC SERVICE PUZZLER

Congratulations to the winner of our recent Public Service Puzzler, **Florence Mallette** of DOF, who's been working for the City for 16 years.



In this month's [contest](#), you only need a little bit of ethics knowledge to help Marvin the Meerkat sort his shoes. Entries are due Friday, May 29th.

COIB and COVID-19

COIB remains operational and is here for you. The Attorney of the Day is still available to answer your ethics questions at (212) 442-1400 or via the [legal advice request form](#).

We encourage New Yorkers to follow DOHMH at [@nycHealthy](#) and/or text COVID to 692-692 to receive updates.