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to good government

The Ethical Times

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Automatic vs. Deliberative Thinking

By
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Our brains can only take in and retain a certain amount of information in a given amount of time, and often that time is in short supply. We have therefore developed two types of thinking: one that is automatic, fast and based on instinct; and one that is deliberate, slow and logical. Automatic thinking is the gatekeeper for deliberate thinking; we view most things first through the lens of automatic thinking and only fully engage in deliberate thinking when something diverges from the norm.

Having automatic thinking as the first informational access point to our brains keeps us from getting pancaked by a speeding car when crossing the street. And, it's generally good at letting our more deliberate mode of thinking know when to kick in. For instance, we walk on autopilot in our own neighborhoods but use more deliberate thinking when we're in an unfamiliar one. However, the more intimate a relationship we have with someone or something, the more difficult it is for our brains to switch from automatic thinking to deliberate thinking. We will notice that a stranger's dog is behaving oddly and might be on the verge of biting us but might not notice that same behavior in our own dog. Because we only have a limited, general frame of reference for a stranger's dog, our brains are more likely to engage the deliberate mode of thinking in assessing that dog's mood and behavior. In contrast, since we instinctively know and trust our own dog, it is hard to turn that trust off – even when our dog shows signs of becoming agitated.

When we deal, in our City capacities, with people with whom we have pre-existing or ongoing outside relationships, it can be difficult for us to ditch automatic thinking and

switch into the deliberative mode. Thus, we tend to develop blind spots when we view those people and things: we don't scrutinize them closely because we already know them. Because of these blind spots, when we are asked to make determinations regarding those people and things, we can have difficulty applying the same deliberative diligence to them that we would give to a stranger. And this can be true even when we are aware of that difficulty.

In its mission to protect the integrity of City government, the conflict of interest law prohibits City employees from making certain kinds of decisions where these blind spots tend to occur. Here are a couple of ways:

1) City employees are prohibited from taking any official action that could provide a benefit to themselves or their close family members or financial associates.

A Health Inspector, for example, may not inspect a restaurant where he moonlights as a sous-chef, or one owned by his spouse. Nor could a Benefits Specialist consider her brother's application for public assistance.

Remember: it's a violation of the law to take an official action that might benefit you or an "associate." "Associate" is a legal term that, in this context, means a spouse, domestic partner, child, parent, sibling, or any person or firm with whom or which you have a business or financial relationship. This means it's probably not a violation to take an official action that affects the interest of a friend from college, or a neighbor, as long as you don't have a business or financial relationship with that person. Could we imagine having a bit of a blind spot for an old friend? Sure. Talk to your agency counsel or your supervisor if you feel like an outside friendship or other relationship might make it hard for you to make an unbiased decision. Maybe sometimes a recusal is that right answer, if only because it's easier than the appearance

problems that might otherwise get created.

2) City employees cannot own businesses (nor may their spouses) nor have an outside job with a private entity that does business with the City (without a waiver from the Conflicts of Interest Board). It's hard to see how I wouldn't have at least a little bit of a blind spot regarding the business I own. Now, a waiver might be possible, if a credible case can be made that my outside business or job in no way conflicts with my City duties, but one of the conditions of that waiver will necessarily preclude taking any action as a City employee that would affect that business. Also, a written waiver from the Board will remind me that I can never use City time or resources in pursuit of this outside business or job.

3) There are prohibitions regarding City employees appearing before the City in a private capacity. I, as a current City employee, cannot appear before any part of City government on behalf of any private interest. For example, if my brother had a problem with the Department of Buildings, I couldn't go to DOB to help him fix it. Or, if I own a bar, and it receives a citation from the Health Department, I cannot, as a City employee, represent the bar when I try to get the ticket dismissed at a hearing. (Someone else – a business partner, a representative, etc. – must represent the bar at the hearing.) Like in 2) above, a waiver MIGHT be granted for cer-

tain situations where the kind of representation before City agencies seems far enough removed from your City duties, but that will depend on the facts.

If you have any doubt at all about whether your action would create a conflict of interest, call COIB at 212-442-1400 and ask for the "attorney of the day." You can also e-mail us through our website (<http://www.nyc.gov/ethics>) by clicking on "Contact COIB." All calls and e-mails are confidential, and you may contact us anonymously. You should also ask your agency's personnel or counsel's office about your own agency's rules, which may be stricter than the COIB rules.

Clare Wiseman is a Trainer at the New York City Conflicts of Interest Board

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Lior Zvi, Staff Analyst at the Administration for Children's Services.

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