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Ethics lights the way to good government

THE ETHICAL TIMES

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Starting an Outside Practice

Question: *I work for the City as an industrial hygienist. I have been thinking of opening a part-time private practice to supplement my income. Of course I would only work on my private practice during evenings and weekends since my City job is 9-5 Monday through Friday. Aside from making sure that my City and private practice hours don't overlap, and that I don't use City equipment, personnel, supplies, or other City resources, is there anything else I need to worry about?*

Answer: Many City workers seek at one time or another to start outside businesses, such as a consulting practice, tax preparation service, outside law practice, and the like. Generally, Chapter 68 of the City Charter, the City's "Conflicts of Interest Law," does not prohibit you from pursuing such endeavors, although there are some potential conflicts issues to avoid.

Unfortunately it's not just Chapter 68 compliance issues you'll need to sort out before starting a private practice. There are two other areas you'll need to check as well. First, depending on your agency, you may have to **seek permission** from your agency to participate in **any** outside financial activities. Check with your agency counsel or personnel officer to see if this applies to you. Second, licensed professionals--industrial hygienists, lawyers, doctors, architects, accountants, auditors, etc.--have a code of professional responsibility. Check with the website of your licensing organization.

Now, while it not a violation of Chapter 68 to start an outside business, there are plenty of things you could do with that business that **could** put you in violation. They span several different parts of the law, but basically all come back to one central idea: as public servants, we are bound to protect the integrity of our City positions. That integrity can be compromised if we get into situations where it looks like our official duties get mixed with our private interests. You've already avoided one of the biggest ones when you said you were keeping your City hours distinctly separate from your private practice hours, and weren't using City equipment, personnel, supplies, or other City resources. There are a few other things to consider:

Money between Supervisors and Subordinates:
Quite simply, money (and anything else of value) shouldn't change hands between supervisors and subordinates; they can't get into any financial relationship. It tends to cast suspicion on the motivation of a boss, particularly at evaluation time: Is your boss giving you a stellar review for your performance, or is he doing it because he owes you thousands of dollars in consulting fees? You **could**, however, get into a financial relationship with a co-worker who is not a supervisor or subordinate, but you'd still want to do that off the clock and away from the workplace.

Soliciting Business from City Contacts:
Likewise, you could throw some serious suspicion onto your professional integrity if you start soliciting your City contacts for private work. Say you're in the middle of dealing with a City vendor. It's your job to evaluate this vendor's performance and make recommendations for any necessary changes. During this evaluation you tell the City vendor that you've also got an occupational therapy practice on the side (or, say, your brother does) and that he'd do well to come in for a visit. That person, and anyone who becomes aware of this solicitation, may feel like you're trying to poach clients from your City contacts. This throws the integrity of your City work into question: is the assessment you're giving of the vendor's performance a product of your professional opinion, or a product of what you think might drum-up more business for your private practice?

Representing Clients Before City Agencies:
Another thing to watch out for is the kinds of work you do for your private clients. Anytime they need something from the City—licenses, audits, or inspections, or, say, they want to sue the City—you can't be their representative. It's a bit unseemly to have City employees to be seen as serving as a "man on the inside" for private entities seeking a competitive advantage in their City dealings.

Furthermore, you should be careful if any client of yours has business dealings with the City, as you are prohibited by Chapter 68 from having a second job with any firm or company that has business dealings with the City. This may seem a bit draconian, but the City has a serious interest in making sure that its contracting processes, licensing processes, etc. aren't one huge "old boy" system, where success is based on who's got a City worker on their payroll. However, if your private clients have business dealings with the City, but that business has nothing to do with YOUR City job, you may be eligible for a special dispensation from the Conflicts of Interest Board in the form of a ***waiver***, which basically allows you to go ahead and have those private clients as long as you don't get involved in their business dealings with the City.

In general, if you want to start this or any business, you should take advantage of the Board's Legal Advice Unit and get some free confidential advice about the do's and don'ts in writing. They're available 9-5, Monday through Friday. Just call 212-442-1400 and ask for the "Attorney of the Day." You can also email us through our website

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(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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(This article originally appeared in The Chief Leader.)

Recent Enforcement Cases

1) The COIB issued a public warning letter to an FDNY official who accepted two dinners for himself and his wife from Verizon, a company he was dealing with in his capacity as a Fire Department employee.

2) The COIB and HRA have concluded a three-way settlement of a case involving an HRA civil service caseworker who used her HRA cell phone to make excessive personal calls. The caseworker acknowledged that from November 2003 to March 2004 she made a substantial number of calls on her HRA cell phone, totaling approximately $2,422. Of that, the caseworker had previously agreed to repay HRA $924, which she represented to be the amount she owed HRA for personal calls. Nevertheless, at the time of the signing of the disposition in this matter, the caseworker had repaid HRA only $450.
The caseworker also acknowledged that from April 2004 to June 2004 she made a substantial number of calls on her HRA cell phone totaling approximately $1,829, but failed to identify or reimburse HRA for the personal calls she made during that period. The caseworker was suspended for 45 workdays, which suspension has the approximate value of $6,224.

3) The COIB fined two former DOE employees, one a former principal and one a former teacher. The principal, while at a DOE middle school, recommended his wife, a retired teacher, for a position with a DOE vendor, which hired her. The former teacher then appeared before DOE on behalf of the vendor within one year of terminating her employment with the DOE and provided services for the vendor at her husband's school, under the supervision of one of her husband's subordinates. The principal was fined $4000 and the former teacher was fined $1000.

4) The COIB fined a former DDC Deputy Director who had a financial relationship with a vendor that had business dealings with DDC. The former Deputy Director asked her subordinate to arrange for a loan for a person with whom she had a financial relationship. The source of the loan was a principal of a company that had business dealings with DDC, which business dealings were handled by the former Deputy Director's subordinate. In addition to arranging for the loan, the former Deputy Director also solicited the lender to purchase her associate's business. She also failed to report the resultant income on her financial disclosure form. The Board fined the former Deputy Director $4,500.□

Recent Advisory Opinions

2006-3: 1. City employees may attend their own union's conventions, on their own time, and receive free food and accommodation paid for by that union.
2. City employees may attend a convention of a union of which they are not members, on their own time, and receive free food and accommodation paid for by that union.
3. City employees who attend a union convention in connection with their official duties may attend the convention on City time and receive free food and accommodation paid for by that union, provided they have received prior approval from their Agency head or the Agency head's designee and otherwise meet the requirements of Board Rules Section 1-01(h) as to length of stay and appropriateness of the accommodations and meals.
4. City employees who attend union conventions may attend cocktail parties, dinners, and similar events which are part of the regular agenda of the convention and are open to all attendees, even if those events are sponsored by City vendors.
5. City employees may not accept any gift worth $50.00 or more, or a series of gifts during any twelve-month period with a cumulative value of $50.00 or more, from a City vendor while attending these conventions, including in particular invitations to private dinners or recreational events which are not part of the convention program, and also including the aggregate value of gifts of such items as hats, t-shirts, and coffee mugs.
6. Notwithstanding the foregoing, at no time may any City employee accept any benefit, no matter the value, in exchange for taking, or refraining from taking, some future action in his or her official capacity, or as a reward for having taken, or having refrained from taking, some official action.

2006-4: A City employee may accept a discount offered to government employees by a hotel chain, a car rental agency, a cellular service provider, or other similar vendor, for the City employee's private use, where the discount is available generally to all government employees and the vendor has been made aware that the City employee is not on official City business.

2006-5: It would not be a violation of Chapter 68 for City employees to accumulate and use for personal travel frequent flyer miles earned while traveling on official business. A City employee must not, however, make a flight selection at additional expense to the City in order to receive frequent flyer benefits. This opinion should not be read, however, to restrict a City agency from determining to require that miles earned on City travel be used only for City travel. □

Interested in more information?
Contact COIB's Training & Education Unit to arrange a class in Chapter 68 for you and your staff.
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