

# the Ethical Times

## Great Expectations Why We Should Welcome Ethical Dilemmas

By Alex Kipp

Here's a crazy idea: **ethics rules are not meant to make us all the same.** Rather, ethics rules are meant to help us be as creative and resourceful and talented and interesting as we can be, while preserving the public's trust in the government work we've chosen to do.

The standard should not be, "keep your head down and just do what's required of you" but, rather, "as you get more creative and resourceful in both your private life and the way you do your City job, you will know more people in your field, will become more recognized as an authority in your field, will have more to give to your field, and will have bigger and brighter ideas. More opportunities are going to come your way, and you will need to keep the separation of public and private in mind as you navigate them."

Tough sell, I know, especially considering you only hear the word "ethics" when somebody has already gotten into trouble. And there are so many ways to get into trouble. Conduct that we wouldn't think twice about in the private sector can be prohibited or considered unethical in the public sector.

Here's a second crazy idea: **when we read an enforcement case about someone getting into trouble for mixing public duties and their private side hustle, maybe our first reaction should not be "tsk, tsk" but, rather, applause.** That person managed to have a successful City career AND still have a second job on the side! (And, many times, after paying their fine, that public servant will continue to do both things successfully.)

Now, to be sure, there are people who don't put the public's trust first, who willfully refuse to keep public duties and private interests separate, who seem to

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think that the powers of public office are to be used to obtain every personal benefit imaginable. Consider former EPA Administrator Scott Pruitt, who used his government staff to get him fancy lotion, hotel mattresses, and a Chick-fil-a franchise for his wife.

But while some small number of public servants engage in this sort of outright abuse, a quick survey of the Board's [enforcement case summaries](#) reveals that they are the exception, not the rule. It's far more common for an enterprising public servant to engage in creative, interesting, rewarding outside activities, and slip in an all-too-human way by fielding a business call on their City phone, or using a City vehicle to get to and from the little league game they're coaching, or selling their subordinate a car or house that the subordinate was only too happy to buy.

Don't get me wrong: all of those things are and should be violations. The conflicts of interest law prohibits City employees from using City phones for an outside business, using City vehicles for non-City purposes, or getting into any sort of financial relationship with a superior or subordinate, even if both parties



## FAST FACTS

- Ethics violators are usually public servants who are doing interesting, commendable things, but trip up by mixing their public duties and private interests.
- Ethics laws shouldn't be a reason to avoid doing interesting things.
- Supervisors and policymakers can create an ethical workplace culture that supports and validates their workers, rather than scaring them into compliance.
- Avoiding all ethical dilemmas is not the goal; resolving them is.

think the financial relationship is a good idea. My point is that ethics problems often (but not always) occur when people are trying to do good things: for themselves, for their communities, for their families. And because of this, we should be careful about how we think & talk about ethics and our duties as public servants.

Too often, ethical dilemmas are seen as things best to be avoided. And what's the best way to avoid an ethical dilemma? Keep your head down, do your job exactly as your told, don't innovate, and don't have a life outside of your City work. Want to avoid an ethical dilemma involving your City job and an outside private job? Easy! Don't have an outside private job! Want to avoid an ethical dilemma about benefitting old personal friends who have matters before your agency? End your friendships! Want to avoid post-City employment violations? Work for the City for the REST OF YOUR LIFE!

As a supervisor, having these kinds of boneheaded, draconian rules certainly would make my life easier. But that's not why I get paid more than my subordinates. And it's not how I get the best work out of my subordinates. My job is to help my subordinates be the best they can be, give guidance when needed, and celebrate them for being creative, for being problem-solvers, and for being invested in the great City where they choose to live and work.

So, what are the practical takeaways from all this cheerleading?

1. Don't be afraid of ethical dilemmas. Just identify them. Embrace them. And call us for advice when you need it.
2. When you read about an enforcement case ([subscribe to our mailing list here](#)), don't be too quick to judge. Lots of ethics problems occur when two good things get inadvisably mixed together.
3. As supervisors and policymakers, we should make sure that we speak about ethics in positive, rather than negative terms. **Ethics helps good people do better.** So let's not use ethics rules as a threat to keep people in line. Enforcement cases do that just fine by themselves.
4. Don't use the ethics law as an excuse not to write that book, or volunteer at that charity, or start that crazy business you want to run on the side. Just do it in compliance with the conflicts of interest law.

And call us to get advice on how to do that. The COIB Advice attorneys can offer you free, confidential, even anonymous advice on your ethics questions, Monday through Friday, 9:00 to 5:00, by calling (212) 442-1400, or visiting our site at [nyc.gov/ethics](http://nyc.gov/ethics).



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## Schedule a Chapter 68 Class

Get in touch with COIB's Education & Engagement Unit to arrange a class in Chapter 68 for you and your staff. Contact Gavin Kendall at [kendall@coib.nyc.gov](mailto:kendall@coib.nyc.gov).

**Phone: (212) 442-1400**

**Fax: (212) 437-0705**



[nyc.gov/ethics](http://nyc.gov/ethics)

## Recent Enforcement Cases

**Moonlighting; Misuse of Position; Misuse of City Resources** A Secretary at the New York City Housing Authority (NYCHA) assigned to Patterson Houses was invited to a “Family Day” event by the President of the Patterson Houses Resident Association. The Secretary proposed to the Resident Association that the catering company where she moonlighted would cater this NYCHA-sponsored event. The catering company was paid \$570 in NYCHA funds, and the secretary misused NYCHA resources—a NYCHA printer, computer, and her email account—for the catering job. In addition, the Secretary regularly used her NYCHA computer and e-mail account for her volunteer activities on behalf of her church. The Board and NYCHA concluded a three-way settlement with the Secretary, who agreed to accept the penalty of a six-workday suspension, valued at approximately \$896.

**Misuse of Position** A Community Associate at the Brooklyn Borough President’s Office (BKBPO) operated a private property management company. A constituent called the BKBPO for help regarding issues she was having with the tenants of her rental property, and the Community Associate helped her resolve these issues. As a result, the constituent proposed that the Community Associate serve as her property manager; the Community Associate agreed and served notices of eviction, attempted to install a security camera, and arranged for the repair of a toilet. The constituent gave him \$400, which the Community Associate claimed was reimbursement for expenses incurred and prepayment for an expense.

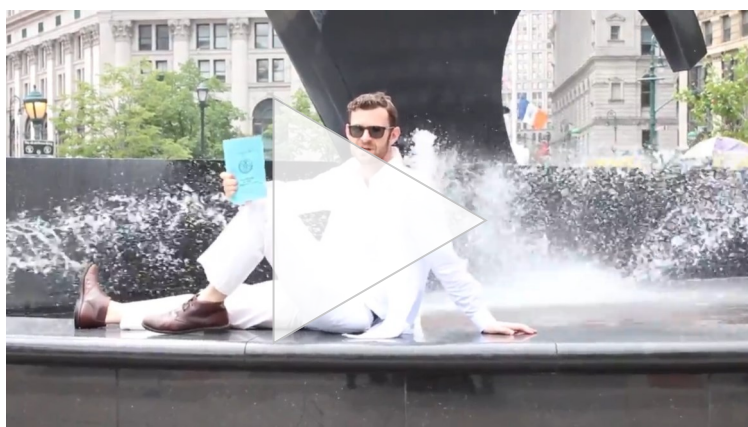
Upon learning of the Community Associate’s private dealings with the constituent, the BKBPO required him to return the \$400 to her. In a joint settlement with the Board and the Borough President’s Office, the Community Associate also paid a \$600 fine to the Board.

**Misuse of Position; Superior-Subordinate Financial Relationship; Misuse of City Resources** A Plant Chief for the New York City Department of Environmental Protection (DEP) had a subordinate perform plumbing jobs at cut-rate prices at the Plant Chief’s rental properties. Additionally, the Plant Chief used his DEP cell phone to exchange numerous text messages to coordinate the repair work. The Plant Chief paid a \$6,000 fine to the Board.

**Confidentiality; Misuse of Position** The Director of Fleet for the NYC Department for Homeless Services (DHS) accessed a confidential NYS Department of Motor Vehicles database to view her boyfriend’s confidential records for personal reasons and had her subordinate issue a DHS parking permit to her boyfriend without proper documentation. In a three-way settlement between the Board, DHS, and the Director of Fleet, DHS determined that the appropriate penalty to resolve the related DHS disciplinary matter was a 20-day pay fine, valued at approximately \$7,572, and a 10-day annual leave deduction, valued at \$3,786, as well as imposition of a six-month probationary period. The Board accepted the DHS penalty as sufficient to resolve the Director of Fleet’s Chapter 68 violations and imposed no additional penalty.

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

## New Video

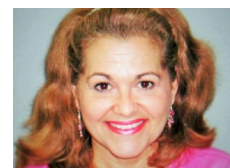


A [slow-jam musical tribute](#) to the COIB Advice Attorney, who’s ready to take your call and answer *all* your questions (about municipal ethics).

Besides [our YouTube channel](#), many of COIB’s videos can also be [viewed on our website](#).

## Congratulations!

To the winner of our recent Public Service Puzzle, **Diana Herrera** of FISA-OPA.



Read her cartoon caption and solve a crossword in [the current Puzzle!](#) Winner will be selected Sept 7<sup>th</sup>.