

# the Ethical Times

## Ask the Ethicist Q&A Coronavirus Edition

by Isaiah Tanenbaum

Like many of you, The Ethicist is working remotely these days, writing this article from the safety and security of his Ethics Bunker. Fortunately, unlike the virus, sunlight, or the touch of another living being, your questions are still able to reach him via the magic of the Internet. Let's dive in!

**Q:** *With many local grocery stores still struggling to maintain stock, I'm getting a lot of bulk deliveries of essential supplies, like toilet paper and extra-large cases of wine. But carrying all these boxes up to my third-floor walk-up is starting to hurt my back. I bet if I told the UPS guy I work for the City, he'd want to help me out and bring them to my door. Can I?*



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**A:** First of all, congratulations on finding any toilet paper online; The Ethicist hasn't been able to order a single roll since March and has resorted to repurposing his six copies of *The Power Broker* (so far, halfway through the first one). As to your question, the answer is no. We can never use our City positions for any special advantage or favor, whether that is flashing a City ID to get out of a speeding ticket or trying to score to-the-door delivery for our packages. You'll have to keep hefting those packages up the stairs like everyone else in your building; at least afterwards you'll be able to rehydrate with some of that wine.

**Q:** *Now that I work from home, all that time I used to spend commuting can be put to a better purpose than feeding my Candy Crush addiction. I'm using the reclaimed time to sew fabric face masks with inspirational quotes and selling them online. Does the conflicts of interest law have anything to say about this?*

**A:** As far as the conflicts of interest law is concerned, this is just like any other side-hustle: generally fine, but important to keep separate from your City job. That means no mask-making when you're (web) clocked in – just as you couldn't spend your workday in your City office running your private business – and no using City resources like your City email, cell phone,

or any City-issued supplies. You also can't market your masks to people you have official power over, whether they are City employees you supervise or members of the public you interact with in your City position. If I haven't put you off your business plan altogether, put me down for one mask with the most inspirational quote of all, [the preamble of Chapter 68](#).

**Q:** *I had a very special baby shower planned for next week, where 50 of my best friends and relatives would gather in my studio apartment to partake in baby shower games: sharing bowls of ice cream with a single spoon (blueberry for boy, strawberry for girl!), gathering tightly around me to sing "Happy Birthday," and chewing and spitting out gum so the wads can be shaped into little gum babies. Now I'm told that this plan would be "incredibly dangerous" and that I should instead do an "online party" and "stop asking us for baby shower party ideas, that's not what 311 is for." I plan to sue the City to pay for the 28 gallons of ice cream taking up space in my freezer and for emotional distress. A coworker at my City agency, who is a lawyer, wants to represent me. Can she? Can I even sue the City if I'm a public servant?*

**A:** Making babies out of used chewing gum? Is that a thing?

**Q:** *Yeah, [it is](#).*

**A:** Horrifying. As for your questions, even a public servant can still sue the City if she feels she's been wronged by it. We don't give up our right to seek redress just because we are City employees! (More typically, you might see a suit like this when someone gets injured in a City-owned building, or experiences unfair employment practices at their City agency, or watches a City garbage truck scrape a line down the side of their parked car). However, your City colleague can't be your lawyer. Public

servants can't appear as attorneys in any matter against the City – not even *pro bono*. Doing so would place the public servant/attorney in the impossible position of trying to serve the interests of both her employer and her client (who is suing that employer). Hire someone else, and perhaps pay them with all that extra ice cream and gum -- unchewed, please.

**Q:** *I left City government three months ago to take a position at a major construction firm. I know that for one year I can't "appear" before my former City agency, but thanks to the coronavirus, all construction bids are being evaluated via videoconference. What if I just turn my camera off? Then I'm not appearing before anyone, right? Did I just become the Neo of the conflicts of interest Matrix?*

**A:** Nice try, Mr. Anderson, but being physically visible has never been the key to that provision of the law. Former City employees have "appeared" before their old City agencies by sending emails or writing good old-fashioned letters – both violations. The issue is the impropriety of seeking (or appearing to seek) special treatment from the people alongside whom you recently worked, not whether they can actually see your cat photobomb your Zoom session. So while you can do other work at that construction firm, you can't represent your new firm before your former agency within one year of leaving that agency, even over a video chat with the video disabled (which older folks might just call "a phone call" – apparently, these used to be all the rage).



What's the takeaway from all these questions & answers? Our circumstances may have changed, but the law has not; fortunately, its principles are broad enough to apply to our lives even in this time of great disruption. If you are in need of ethics advice, whether it is coronavirus-related or not, you can call the Attorney of the Day at (212) 442-1400 during business hours or fill out the "Get Advice" webform at [nyc.gov/ethics](http://nyc.gov/ethics). All advice is confidential.

The Ethicist's smartwatch is reminding him that it's once again been 17 hours since he's moved any muscle besides his mouse hand, so it's time to close this column so he can do calisthenics to [his favorite pulse-pounding workout video](#).



Stay safe, friends, and stay ethical.

Isaiah Tanenbaum is an Education & Engagement Specialist at the New York City Conflicts of Interest Board.

## COIB and COVID-19

COIB remains operational and is here for you. The Attorney of the Day is 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.

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## Recent Enforcement Cases

**Misuse of City Resources.** The Associate Director of Hospital Safety for NYC Health + Hospitals (H+H) / Elmhurst was responsible for overseeing all Elmhurst Police staff. Under H+H policy, official agency parking placards must be issued through the H+H Transportation Office; the H+H Police do not have authority to issue placards. In or around March 2016, the Associate Director received a counterfeit parking placard with the H+H Police shield from a member of the Elmhurst Police staff. For approximately ten months, the Associate Director displayed this placard in his personal vehicle when he parked in metered spaces on the street near Elmhurst without paying the meter. He paid a \$2,500 fine to the Board. In determining the appropriate penalty, the Board considered that the Associate Director was a high-level employee and a member of law enforcement with a particular responsibility to comply with the conflicts of interest law.

**Misuse of City Resources.** In or around 2013, a Social Worker/Care Coordinator at H+H / North Central Bronx found a counterfeit parking placard with the H+H Police shield inside of an office cabinet at the hospital. Over three to four years, the Social Worker occasionally displayed this placard in her personal vehicle when she parked illegally on the street near North Central Bronx. The Social Worker paid a \$2,000 fine to the Board.

**Misuse of City Resources.** Once in 2018, a Supervising Special Officer at H+H / Coney Island displayed a counterfeit parking placard with the H+H Police shield in his personal vehicle while parking within 15 feet of a fire hydrant near his personal residence. The Officer paid a \$550 fine to the Board.



## Recent Enforcement Cases

**Misuse of City Position; Prohibited Superior-Subordinate Financial Relationship.** A H+H employee used the Amazon.com account of one of his subordinates on seven occasions to make personal purchases totaling \$1,960. When making those purchases, the H+H employee paid his subordinate in cash; the cost was charged to the subordinate's personal VISA card; the items were shipped to the subordinate's home; and the subordinate often delivered the items to the H+H employee. The H+H employee had that same subordinate drive him to personal errands. For two and one-half years, the H+H employee occasionally had a second subordinate drive him from work to the neighborhood in which he lived. The H+H employee did not reimburse either subordinate for the cost of driving him in their personal vehicles. The Board imposed a \$4,500 fine, partially forgiven to \$1,200 based on the H+H employee's documented financial hardship.

**Misuse of City Position.** A Deputy Chief Inspector for the NYC Fire Department (FDNY) taught a training class required for all Fire Prevention Inspectors. During a class, the Deputy Chief Inspector asked his students to buy a religious self-help book he had self-published. Five students purchased the book for \$5 each. During that same class, the Deputy Chief Inspector encouraged his students to visit Facebook and YouTube pages where he advertised his life coaching business. In a joint settlement with the Board and FDNY, the Deputy Chief Inspector paid a \$3,200 fine to the Board.

**Misuse of City Resources.** On 164 occasions over the course of approximately one year, a Geologist at the NYC Department of Environmental Protection (DEP) used a DEP vehicle to drive between work and his home without a City purpose for doing so. In a joint settlement with DEP and the Board, the Geologist agreed to retire from

### From Our Archives



## Recent Enforcement Cases

DEP and forfeit the 171 hours and 45 minutes of compensatory time, valued at approximately \$8,811, that he earned on the days when he misused a DEP vehicle.

**Misuse of City Resources.** A Sanitation Worker at the NYC Department of Sanitation (DSNY) used a DSNY sanitation truck to collect and dispose of construction debris, also known as trade waste, from a handyman who was renovating the Sanitation Worker's parents' home. On seven occasions, the Sanitation Worker drove the sanitation truck to meet the handyman away from his parents' house; transferred debris from the handyman's truck to the sanitation truck; and drove the sanitation truck to the DSNY garage where he off-loaded the debris to another DSNY sanitation truck. The Sanitation Worker paid a \$3,000 fine to the Board.

**Misuse of City Resources.** A Captain of Emergency Medical Services Operations at FDNY used her assigned "take-home" FDNY vehicle to make three personal trips unrelated to her commute or any City purpose: to a doctor's office, to a pharmacy, and to a bakery. In a joint settlement with the Board and FDNY, the Captain agreed to a four-day pay fine, valued at approximately \$1,233.

**Misuse of City Resources.** Two DSNY Sanitation Enforcement Agents were assigned a DSNY vehicle to respond jointly to 311 complaints. While on a lunch break, one of the Sanitation Enforcement Agents received a call from her cousin, asking for help to retrieve the license plates from the cousin's personal vehicle. The Sanitation Enforcement Agents used the DSNY vehicle to pick up the cousin, drive the cousin to her personal vehicle to get the license

plates, and drop her off a few blocks away. In a joint settlement with the Board and DSNY, each of the Sanitation Enforcement Agents agreed to serve a five-workday suspension, valued at approximately \$661 for the first Sanitation Enforcement Agent and at approximately \$736 for the second Sanitation Enforcement Agent.

**Misuse of City Position & City Resources.** A Housing Manager for the NYC Housing Authority (NYCHA) directed his subordinate, a NYCHA Maintenance Worker, to install brakes in the Housing Manager's personal vehicle during the subordinate's NYCHA work hours. In a joint disposition with the Board and NYCHA, the Housing Manager agreed to serve a five work-day suspension, valued at approximately \$1,810.

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, **Scott Ritter** of NYC Parks, who always wanted to be a bullpen catcher for the Yankees.



In this month's [contest](#), we're looking for reports of possible ethics violations by your "coworking" pet. Photos welcome! Entries are due Friday, July 10<sup>th</sup>.