

CHAPTER 8

Conflict of Interest: How to Detect and Resolve Conflicts of Interest

The problems of conflict of interest arise in many different forms. Failure to anticipate them can lead to serious consequences. Yet, in training young professionals, we place little or no emphasis on this problem. Conflict of interest is probably one of the most frequently debated ethics issues in our professional societies.

WHAT IS A CONFLICT OF INTEREST?

It is a situation in which a specific personal interest of your own – usually financial – is in actual or potential conflict with an interest of your employer or client. A conflict of interest can lead you to place personal concerns or interests ahead of or in competition with those of your employer, client, or others you are charged to serve.

The situation of concern need not be a current one – it could be a past client engagement. It may relate to an *appearance* rather than an actual conflict. It may not even relate to yourself, but to a close family member.

EXAMPLES AND DISCUSSION

A classic forestry example is that of a forester working in wood procurement for a paper company who also offers forest management and timber sales services to clients. If the forester is on both the buying and selling sides of the transaction, how can either be certain that their best interests are being looked after?

A related example is the financial planner who sells you a real estate partnership. Later, you hear that he went on an all-expense paid Caribbean fishing trip because he sold the most units in that deal.

A fishery biologist doing consulting work for a private client might want to let them know that they also serve on the Board of an organization that actively challenges some of the client's activities.

In another instance, in bidding on a consulting project in another state, their attorney general's office asked to see my entire client list for a considerable previous period of time to satisfy themselves that I had no material conflicts of interest.

I have reviewed research proposals for a nonprofit scientific research organization. They asked that we not review any proposal that included principal investigators with whom we had worked professionally for three previous years.

Does a past client have the right to require you to decline work based on a conflict of interest? This may be a matter of judgment. It may be wise for you to give heavy weight to a past client's opinion.

Yet in many instances past relationships are what give your work value – you know what's going on.

It has often been asked "Can I do appraisal work for the IRS and also for private clients?" In principle there is no reason why not, so long as there is no involvement on the same cases, and disclosure and other proprieties are observed.

There are physicians who only work for plaintiff's attorneys. Rightly or wrongly, a suspicion may arise as to their objectivity . . . and not only among insurance company lawyers.

Much in the news lately is the situation of some high-level National Institutes of Health scientists who have been allowed to take honorariums, often substantial, consulting for drug companies. Critics wonder aloud how they can be expected to serve government policy at the same time as their private paymasters.

My consulting firm performs occasional market research projects for lumber and wood products companies. Lumber is a highly

competitive field. There is no conflict of interest based on the mere fact that my clients compete with one another. On the other hand, if I were to work on a product for which there are only two producers, there would likely be a conflict of interest – or at least an appearance of conflict – if I were to shortly thereafter work for the other competing supplier.

When being asked to provide services by a client, I like to pause and think if I can see any potential conflicts of interest that would concern the client. I have more than once disclosed a situation that some might view as a material conflict, yet the client felt it did not concern them and hired me anyway. On other occasions I have declined work due to conflicts.

When being asked to provide services by a client, I like to pause and think if I can see any potential conflicts of interest that would concern the client.

FINANCIAL CONFLICTS

As a public official, or even a private employee, ownership of stock in a particular firm could create conflicts of interest. For most of us, these are not material. If, as a public lands forester, your 401(k) plan holds Amalgamated Paper Co. stock, and Amalgamated is an occasional bidder on timber sales you administer, this would not be considered material unless you were a major shareholder (and then again, why would you be working as a forester for a public agency instead of sitting on a beach someplace?)

In many positions of public service, such as legislative bodies or appointive positions, members must comply with stringent financial disclosures to guard against conflicts.

INTERESTS OR ATTITUDES?

Conflicts of *interest* are not the same as conflicts of *loyalties or attitudes*. I may not approve of every individual management decision made by some multi-national corporation for which I work. This is not a conflict of *interest*. *It would be a different matter if I were an officer of a group campaigning against that company's practices.*

I may choose not to work for clients whose activities I dislike. But this is not, strictly speaking, a conflict of interest. It may not be a matter of professional ethics, either.

I may choose not to work for clients whose activities I dislike. But this is not, strictly speaking, a conflict of interest. It may not be a matter of professional ethics, either.

PERSONAL RELATIONSHIPS

Personal relationships can create conflicts, or at least the appearance of a conflict.

I was once asked by the Maine Public Utilities Commission to perform certain economic projections. I let them know that at the time my wife was working in the regulatory department of the state's largest utility. This was considered a material conflict and I was unable to do the work, appropriately so. Had I done the work, questions as to my objectivity would have been inevitable. Questions as to both my judgment and the client's judgment would properly have been raised.

This may be where the expression "purer than Caesar's wife" arises. (Julius Caesar's wife was an unusually virtuous individual at a time when this was very rare.)

Romantic relationships short of marriage can also create appearances of conflicts, as in the real-world case of a paper company forester administering large planting projects who became involved with a contractor. Large organizations may have policies concerning interoffice dating, for similar reasons.

ACCEPTING GRATUITIES

Organizations have rules on what you can accept from outside groups with an interest in what your organization does. You may be a purchasing agent or have purchasing authority. You may choose or recommend contractors or vendors for outside work of many kinds. Your organization should have clear rules on this.

Some rules say that you can accept anything as long as you can eat it at one sitting. Or they place a dollar maximum on the kinds of

things companies often pass out as promotional items. In some cultures, accepting small gratuities like this is an important protocol matter.

In many industries, a culture of giveaways exists. Fortunately, this is uncommon in the natural resource field.

While serving in an appointive position in state government, I was once asked by a private company to give a speech at a sales meeting. It was held at a very nice New England resort, a five hour drive away. This company had major public policy issues. I was an adviser to the director of my agency, and indirectly the Governor, on some of these matters. I asked my boss if it would be OK if they paid my mileage and lodging. I did not receive an honorarium. I was unwilling to cover the costs myself, and did not see why the State should pay for such an excursion. The question I asked myself was “What would my boss have thought if I had just done this and he found out indirectly at a later time?” On an informal occasion some time later, I was talking with the state Attorney General, and asked him what he thought, and he said he had no problem with it so long as I sought approval from the boss.

“REVOLVING DOOR” SITUATIONS

The “revolving door” is common in the defense industry, Washington D.C. lobbying firms, and in regulated industries. Here, the question is how can a government official evenhandedly perform their duties at the same time as they are being offered employment by a law firm or contractor doing a large volume of business with their department? What if they hope to receive such an offer of employment in the future? Several top employees of Boeing, a leading defense contractor, recently lost their jobs and may suffer criminal penalties for violating rules of this kind.

Top officials are regularly hired by D.C. law firms and lobbying firms. Ethics rules prevent them from practicing before or representing clients with the former agencies for a period of time.

WAYS TO RESPOND TO CONFLICTS

1. **Identify them.** The only way to do this is to understand the many different ways conflicts can arise, exercise foresight, and think carefully.

2. **If in doubt, ask for time and seek advice.** If you are uncertain about something, ask for time and consult your associates or even an attorney. You have to decide if it is necessary to consult the other party to the conflict. It may not be.
3. **Disclose to the other party.** Disclosure might not fully eliminate conflict, but for minor situations it may be adequate if the other party approves. If a conflict arises from a past engagement, there is usually no burden on you to inform the previous client.
4. **Decline the assignment.** This may be a tough business choice for a consultant. But it is even tougher for an employee. On disclosure, your employer may compel you to continue working on the project despite your concerns.
5. **Recuse yourself.** This is a lawyer's word for withdrawing from an individual decision process in which you have a conflict. Top government officials occasionally must do this, as unavoidable conflicts can arise unpredictably.
6. **Place your assets in a blind trust controlled by someone else.** Financial conflicts can be handled this way, if you are lucky enough to have this problem (given that most members of the U.S. Senate are millionaires, this ought to be more common than it is).