CHAPTER 19

Recognizing and Resolving Conflicts of Interest\(^6\)

Although conflict of interest is a common area of professional concern, good guidance on how to handle it is difficult to find. In several recent books on ethics the term does not even appear in the index. And the extreme cases of conflict of interest we read about offer little help for dealing with more subtle situations encountered in daily life.

For consultants, being careful about conflict of interest can cost money in the short run – in assignments declined. But conflicts are not just a concern for private consultants. Public land managers also deal regularly with significant sums of money; their judgments about timber values and interpretations of regulations may have significant financial and environmental consequences. Conflicts of interest can also arise in science and academia. And occasionally, one’s family and social relationships can cause conflicts of interest on the job.

This article offers a few general observations on the subject, provides some example scenarios of conflicts of interest, summarizes information that professional ethics codes offer, notes questions for discussion, and makes suggestions to help the professional forester handle potential conflict of interest situations.

WHAT IS CONFLICT OF INTEREST?

A conflict of interest arises in any situation that may bias a professional’s judgment or impair a professional’s loyalty to an employer or client. Professional ethics codes mandate that the client’s

or employer's interest be placed above one's own (see SAF Canons 5 and 9, “Other Organizations’ Conflict-of-Interest Canons”). Ethics codes usually do not provide specific definitions of conflict of interest, however. Even fully developed institutional policies often define it only by listing examples.

In order to know when conflicts of interest occur, it is important to understand some of the basic misconceptions about them. First, a conflict of interest should not be confused with the conflict that can arise between a client’s need and a professional’s personal views about policy or loyalty to the public interest. This situation is a personal conflict. Also, a conflict of interest does not necessarily occur when consultants work at different times for clients whose interests are opposed. Appraisers, for example, work for buyers and for sellers; they may work for taxpayers and also for the Internal Revenue Service. Such a pattern of work is not in itself a conflict of interest, although it naturally creates a need for caution.

In commenting on the canons related to conflict of interest, the Discussion Guide for the SAF Code of Ethics (1989) observes:

“Loyalty to the employer refers to the responsibility of the member to render high-quality advice and service, as free as possible from personal bias. Loyalty, however, does not mean a blind loyalty that is oblivious to the larger interests of society and other canons of the Code of Ethics. It was for this reason that the term “unqualified loyalty” was stricken when the Canon was revised by the referendum in 1986. The Canon requires that members faithfully perform professional services to the full extent of their ability. Where a member is unable to reconcile loyalties to self, the employer, the profession, and society, it may be wise to disengage from service.

A conflict of interest implies a relationship or situation where one’s judgment may be influenced by potential personal gain. It may also imply serving two masters where the gain of one will adversely affect the other.”
OTHER ORGANIZATIONS’ CONFLICT-OF-INTEREST CANONS: HOW DO THEY COMPARE WITH SAF’S?

Society of American Foresters

Canon 5. A member will perform services consistent with the highest standard of quality and with loyalty to the employer.

Canon 9. A member must avoid conflicts of interest or even the appearance of such conflicts. If, despite such precautions, a conflict of interest is discovered, it should be promptly and fully disclosed to the member’s employer, and the member must be prepared to act immediately to resolve the conflict.

Association of Consulting Foresters

Canon 10. ACF Consulting Foresters will be loyal to their employers and to the organization in which they are employed, and will faithfully perform their work and assignments.

Canon 13. An ACF Consulting Forester must avoid conflicts of interest or even an appearance of such conflicts.

Ecological Society of America

Certified members only:

Canon 3. Will inform a prospective or current employer or client of any professional or personal interests which may impair the objectivity of their work, and provide their clients with access to the provisions of this Code.

Publication:

Canon 7. Will not serve as editor or reviewer of a manuscript if present or past connections with the author or the author’s institution may prevent an objective evaluation of the work.

Canon 8. Will not purposefully delay publication of another person’s manuscript to gain advantage over that person.

American Society for Public Administration

Canon 3. Avoid any interest or activity which is in conflict with the conduct of official duties.
Code of Ethics for Government Service (PL 96-303, 1980)

Canon 5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed as influencing the performance of governmental duties.

Canon 7. Never engage in any business with the government either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

Canon 8. Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.

CONFLICT OF INTEREST SITUATIONS

Situations involving conflicts of interest are numerous and best illustrated through examples.

Conflicting client interests. The classic case involving conflicting client interests occurs when a forest professional is required to serve a client whose interests directly clash with those of another current client. Obviously, a forester representing a landowner in a timber-trespass case cannot also work for the logger who allegedly committed the trespass, but many more subtle situations can also present conflicts.

For example, suppose that two years ago you did a large project for a government agency. Today, the phone rings and an attorney for an environmental group asks if you would work for them in litigation against the government involving the work you did. Can you accept? Does the answer depend on whether you agree with the group’s position or not?

Here is another situation that might arise. You are at a meeting in which a former client of yours is being discussed. You must now consider whether more loyalty is owed to your past client than to those at the meeting. Although this matter could be resolved using sound business judgment, it should also be considered from an ethical standpoint. Is it permissible to speak in public against a past client?
On the other hand, are there situations in which you must speak against a past client (Howard, 1995)?

Or, consider what you would do in this case. You have just finished a wood supply evaluation for a local wood products firm that is considering expanding its production. A month later, another company in your town that uses the same raw material asks you to conduct a similar study. Wood markets are very competitive in your area, and you know that two such plant expansions could lead to overcutting and drive log prices so high that both plants lose money. Therefore, the new client’s interests may conflict with those of the past client. The past client may also be concerned that confidential data about them in your files might be disclosed to future clients. Should you conduct the study?

Financial conflicts. Financial conflicts of interest are not always as clear-cut as one might assume. For example, when a forester who owns a partial interest in a wood-using manufacturing plant sells wood on behalf of a forest landowner, the forester has an obligation to make the landowner aware of this other business interest.

Some consulting foresters believe that charging for services by asking for a percentage of gross timber sale receipts also creates a financial conflict of interest. They feel that this arrangement can create an incentive to remove too much high-value wood, or keep a forester from recommending thinnings or handling low-value wood that needs to be removed to improve the stand. To avoid this situation, some consultants charge by the hour (Steigerwaldt and Hittle, 1994). Foresters often serve as vendors of related services like planting, in addition to providing advice to landowners; their dual role may cause conflicts of interest. In this situation, the client can never be certain the best source of service has been recommended. Also, a forester’s judgment about the need for the service may be affected by a desire to sell other services.

Professional and other outside activities. Occasionally, an employee’s activities in professional organizations, such as policy advocacy groups, can lead to conflicts with an employer’s views. One example, in this case involving an employee’s abuse of an employer’s trust, is the leaking of information to outside groups.

Another conflict may occur when foresters serving on local planning or zoning boards have to rule on proposals made by their
employers. In such cases, it is best for the employee to withdraw from all consideration of that proposal, a practice known as “recusal.”

**Family or personal loyalties.** Especially in small communities, family and personal relationships can overlap with business relationships or interfere with public duties in unexpected ways. At times, clients have good reasons to wonder if a forestry professional’s decisions will be influenced by undisclosed relationships of this kind, and we should be sensitive to this concern. For example, I once was unable to participate in an assignment for the Maine Public Utilities Commission because my wife worked for the state’s largest electric utility.

The potential for conflicts when making referrals is also great. At times, in efforts to be helpful, we casually refer a client to a relative or friend for a needed service. Usually the family or personal connection is disclosed, and it always should be. It is important to be certain that the client’s interests are foremost in these referrals.

**Science and academia.** In the scientific research setting, conflicts of interest can arise when scientists or faculty members hold directorships on boards of outside organizations or corporations, or when they accept research grants or consulting assignments from them. Scientific institutions have rules regarding outside activities, and most universities have detailed conflict of interest policies. When scientists publish articles on research that could affect companies they serve as officers, or those in which they have large stockholdings, disclosure is crucial (Barinaga, 1992). In addition, scientists managing or serving on peer-review panels that award research grants can face many kinds of conflicts of interest (Marshall, 1992; Sigma Xi, 1993; Swazey, et al., 1993; Anon., 1995).

Conflicts of interest can also arise in academia. The University of Maine System’s (1991) Conflict of Interest Policy lists 19 examples in several categories, such as personal gain from university position, contracting and leasing, outside commitments, use of university name and resources, and nepotism. Other conflicts of interest involving the professor, the student, and the goals of the university may arise. For example, professors’ standards are occasionally tested when they face subtle pressures to alter the grades of star athletes.

**Conflicts of interest in government.** Conflicts of interest may affect members of the executive, legislative, or judicial branches of
government. State and federal statutes and regulations govern official conduct. Issues addressed by federal laws include disclosure of assets and business relationships, limits to service on outside boards of directors; limits on acceptance of gifts, meals, and honoraria and on use of government staff and property; and rules restricting post employment dealings with the government (US Department of Justice, 1989; US General Accounting Office, 1992). By studying these rules, a forester who works for the government can be armed to make better decisions in conflict of interest situations.

Suppose, for example, you are an official in a state forestry agency who is supervising the development of regulations implementing a Forest Practices Act. You are asked to give a presentation on this topic to executives of the state’s largest forest landowner who are meeting at a posh resort. Should you accept their offer to cover your lodging and travel costs? Should the state pay those costs? May you accept an honorarium? If you give a talk at a university on the same topic, may you accept an honorarium? Under what conditions?

AVOIDING CONFLICTS OF INTEREST

Now that you have seen where conflicts of interest generally occur, you will want to anticipate and avoid them. Because there are numerous approaches to avoiding conflicts of interest, this subject warrants more discussion than a single article can provide. However, by following a certain thought process, anyone can learn to resolve most such conflicts wisely.

The first step you and your colleagues should take in avoiding conflicts of interest is to build awareness of situations that might cause them. Early detection of potential problems is essential. Good ways to build awareness are to read frequently on the subject of ethics and raise questions. If you work for a large organization, obtain and study the organization’s ethics codes, its conflict of interest policy, and any of its applicable laws and regulations. When a potential conflict arises, decisions should not be made without considering the situation from every angle.

In deciding if a perceived conflict is real and how to handle it, ask yourself the following questions:
• Is this decision about the conflict based solely on a regard for the client’s interests, or is it based on my own interests?
• Would I be completely comfortable discussing this conflict and disclosing any related information to all affected parties?
• If a contractor working for me failed to disclose information about a similar conflict to me, would I ever hire that contractor again?
• Would I be comfortable if the full story of this conflict were printed in tomorrow’s newspapers?
• Would I be comfortable discussing my decision about the situation with my 13-year-old son?

When you are faced with a difficult ethical decision, discussing it with a third party often helps clarify your thinking (Kennedy and Mohai, 1987). Therefore, you should develop a relationship with one or more mentors whom you can trust. When choosing a mentor, especially one from your own place of business, be aware of any conflicts that might exist even between you and that individual. Conflicts between employees of the same organization are often not examined and brought out into open until it is too late, so potential conflicts in your working relationships should be disclosed to your supervisor.

Often, the best remedy for perceived conflicts is disclosure. In many borderline cases, consulting affected parties will lead them to give their consent for you to move ahead. Also, be aware that a significant conflict can be overlooked in the rush of events. I know from experience. Even if a conflict is discovered late in the process of a business transaction, it still should be disclosed.

In some situations, you will have to deal with a conflict situation by withdrawing from the decision process involved. The final resolution is to decline the assignment, withdraw from the committee or group entirely, sell the stock, or otherwise end the ongoing situation creating the conflict. Of course, it’s a lot easier for a consultant to decline a small assignment from a client than for a salaried employee with five years left until retirement to side-step a direct order from a supervisor. It’s nothing new that our life circumstances, such as a need for job security, can force us to do things we would rather not do.
professionally, but simple awareness of this fact can go far in preventing serious mistakes.

In the end, you have to accept responsibility for your decisions. The decision-making process will force you to weigh competing commitments, and determining which are most important won’t always be easy.

Finally, especially in large organizations, you should support and encourage discussions of ethical issues arising in day-to-day work. More importantly, you should support associates who make the right decisions, especially when they are costly.

IN CLOSING

Frequently, your loyalty to client or employer will be tested by your financial interests, or by other interests of your own, your family, or others important to you. Conflicts of interest of the most extreme kinds are usually obvious and easy to address. Many of them, however, require a more refined awareness, discussion with colleagues or mentors, and special efforts to avoid or to resolve. Since you may encounter the larger conflicts only rarely, your reputation for ethical judgment will depend on how you handle the more routine matters. As Thomas (1993: 36) notes, “…tests come in small packages and quiet ways – and they do come often. For most professionals, it is these small and personal tests that determine a person’s reputation for integrity and ethical behavior . . . or lack of same.”

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