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Ethics and Conflict of Interest

by Michael McDonald

You've seen the headlines, "Politician caught in conflict of interest " or "professional denies conflict of interest allegations. " You probably were thankful that you were not the subject of the newspaper story. But you also may have wondered what exactly is a conflict of interest, why such conflicts are ethically significant, and what you can do to avoid being in one.

Definition

I define a conflict of interest as "a situation in which a person, such as a public official, an employee, or a professional, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. " There are three key elements in this definition. First, there is a private or personal interest. Often this is a financial interest, but it could also be another sort of interest, say, to provide a special advantage to a spouse or child. Taken by themselves, there is nothing wrong with pursuing private or personal interests, for instance, changing jobs for more pay or helping your daughter improve her golf stroke.

The problem comes when this private interest comes into conflict with the second feature of the definition, an "official duty" -- quite literally the duty you have because you have an office or act in an official capacity. As a professional you take on certain official responsibilities, by which you acquire obligations to clients, employers, or others. These obligations are supposed to trump private or personal interests.

Third, conflicts of interest interfere with professional responsibilities in a specific way, namely, by interfering with objective professional judgment. A major reason clients and employers value professionals is that they expect professionals to be objective and independent. Factors, like private and personal interests, that either interfere or appear likely to interfere with objectivity are then a matter of legitimate concern to those who rely on professionals -- be they clients, employers, professional colleagues, or the general public. So it is also important to avoid apparent and potential as well as actual conflicts of interests. An apparent conflict of interest is one which a reasonable person would think that the professional's judgment is likely to be compromised. A potential conflict of interest involves a situation that may develop into an actual conflict of interest.

Leading examples

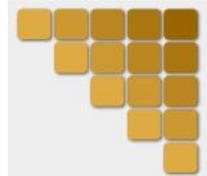
With this in mind, consider the following types of typical conflicts of interest listed by Canadian political scientists Ken Kernaghan and John Langford in their book, *The Responsible Public Servant*. They list seven categories:

[1] Self-dealing. For example, you work for government and use your official position to secure a contract for a private consulting company you own. Another instance is using your government position to get a summer job for your daughter.

[2] Accepting benefits. Bribery is one example; substantial [non token] gifts are another. For example, you are the purchasing agent for your department and you accept a case of liquor from a major supplier.

[3] Influence peddling. Here, the professional solicits benefits in exchange for using her influence to unfairly advance the interests of a particular party.

[4] Using your employer's property for private advantage. This could be as blatant as stealing office supplies for home use. Or it might be a bit more subtle, say, using software which is licensed to your employer for private consulting work of your own. In the first case, the employer's permission eliminates the conflict; while in the second, it



doesn't.

[5] Using confidential information. While working for a private client, you learn that the client is planning to buy land in your region. You quickly rush out and buy the land in your wife's name.

[6] Outside employment or moonlighting. An example would be setting up a business on the side that is in direct competition with your employer. Another case would be taking on so many outside clients that you don't have the time and energy to devote to your regular employer. In combination with [3] influence peddling, it might be that a professional employed in the public service sells private consulting services to an individual with the assurance that they will secure benefits from government: "If you use my company, I am sure that you will pass the environmental review."

[7] Post-employment. Here a dicey situation can be one in which a person who resigns from public or private employment and goes into business in the same area. For example, a former public servant sets up a practice lobbying the former department in which she was employed.

Some tests

How do you determine if you are in a conflict of interest, whether actual, apparent, or potential? The key is to determine whether the situation you are in is likely to interfere or appear to interfere with the independent judgment you are supposed to show as a professional in performing your official duties. A good test is the 'trust test': would relevant others [my employer, my clients, professional colleagues, or the general public] trust my judgment if they knew I was in this situation. Trust, in my opinion, is at the ethical heart or core of this issue. Conflicts of interest involve the abuse, actual or potential, of the trust people have in professionals. This is why conflicts of interest not only injure particular clients and employers, but they also damage the whole profession by reducing the trust people generally have in professionals.

In fact, the 'trust test' suggests one very good way of dealing with a conflict of interest: reveal your private interest in the matter to relevant parties. Often if we let others know what might be influencing our judgment, they can be on their guard and not caught unaware.

But sometimes it isn't enough to know that there is a particular private interest influencing a professional's judgment; the client, employer, etc. expects that the professional will stay out of such situations. So the second way to avoid conflicts of interests is to absent yourself from decision making or advice giving if you have a private interest. So in the case of potential self-dealing, the conscientious professional will say that she can't be involved in a situation where she is both bidding on a government contract and deciding as a public servant who is awarded the contract. She will either step aside and completely [and, I mean, completely] absent herself from determining who gets the contract or refrain from bidding on such contracts in the first place -- which is probably the wisest course of action.

A final word

It may take some skill and good judgment to recognizing that you are in a conflict of interest situation. This is because private and personal interests can cloud a person's objectivity. So it may be a lot easier to recognize when others are in a conflict, than when you are. This suggests that it may be useful to talk to a trusted colleague or friend when you are in doubt.

But once you recognize that you are in or are headed into a conflict of interest situation, the ethical responses are straightforward: get out of the situation, or, if you can't, make known to all affected parties your private interest. These responses will preserve the trust essential to professional objectivity.

It is important to realize that avoiding conflicts of interest is only one part of being a conscientious professional. Another part is the difficult task of making choices when the ethics of the situation aren't clear or when there are good moral reasons for acting in diametrically opposing ways. This is typical in the case of whistle blowing, in which a duty of loyalty to a client or employer counsels confidentiality but this conflicts with a duty to warn the public of a serious harm or danger.