

Joseph Ellin's Commentary on "Hospitality from a Vendor"

Commentary On
Hospitality from a Vendor

I

May Paul accept Duncan's invitation to play golf at Duncan's club? Duncan is a vendor from whom Paul makes purchases. So there is a potential for corruption in a friendship relationship. All things considered, however, I don't see why not. Duncan is a potential good contact for Paul. There are all sorts of opportunities at the golf club. And Paul has a right to his private life and his golf games. However Paul should be aware of the potential conflict of interest. There's no reason to worry about anything yet, but he ought to be alert to dangers.

II

Play for money? Why not? No reason to suspect a plot! Is he getting drawn into something? Maybe, but he's a grown-up and can take care of himself, one hopes, which means he isn't yet at the point where he wonders if he's being compromised in some way by betting with his suppliers. Presumably playing for money is illegal. But this does not seem to prevent everybody from doing it, and why should Paul set himself up as holier than thou, unless he has real scruples about gambling? If he does, then of course he shouldn't accept. What he has to be wary about is getting too deeply into debt, either financially or through friendship, with Duncan. At this point, he might protect himself by making it his business to remind Duncan from time to time that their relationship is purely golfing, which won't affect Paul's business decisions.

II

Things seem to be going along very nicely. Paul's golf game is flourishing and so is his sporting life. Several hundred dollars won over "years" is not really a lot of money. Paul has no reason to fear he's putting himself in a compromising situation with regard to the money. However his evidently close friendship with Duncan might compromise his judgment with regard to contract awards, so he'd better look carefully at his business dealing with Duncan. Perhaps he might have another person in his office look over some of his contract decisions, just to make sure he's not letting something slip by because of his friendship. And perhaps he ought to inform his superiors of his golfing relationship, so that there's no appearance of deception. And perhaps Bluestone Ltd. routinely reviews its contract procedures, in which case Paul can safely assume that such reviews would identify any problems. In any case, if Paul is prudent he's made it clear to Duncan that their relationship is purely golf and nothing in the way of business can come of it.

So Paul might be clear in his own mind that there is nothing amiss in his relationship with Duncan, but if there are competing vendors, they might raise the question of conflict of interest. Mere friendship without financial connection is however at best a flimsy ground for making conflict of interest accusations stick. Perhaps Paul should be sure that his superiors at Bluestone are aware of his golfing relationship, so they can assign Duncan's business to another contract officer, if they wish. If the superiors approve the golfing relationship, and Paul is happy with it in his own mind, there's no reason to suspect a problem before one arises.

IV

It is now necessary to cut back on vendors and the engineers must decide which ones will be dropped. At this point there is a potential problem since Paul might be expected to be biased in Duncan's favor. The other engineers should be told about Paul's golfing relationship with Duncan, if they haven't already. Were Paul not to reveal the relationship and then participate in the cut-back decision, he's be in the position of either having to vote against Duncan, or face the possibility that his favorable vote might some day be questioned.

V

Ideally Paul should not participate in the cut-back decision. However if the other two engineers are comfortable with it, accepting his word that he will appraise the situation without favoritism, it does not seem wrong for him to continue. On the contrary, the principle that no one should make decisions regarding friends might render all decisions impossible, since the other engineers might also have friends among the vendors. Making adverse decisions against those you are friends with is something that might have to happen, not only in business but any institution. If not a vendor, then a fellow employee, subordinate, or job candidate. The alternative to learning to live with this would be never to make friends with anyone within your business community.

Paul reluctantly concludes that Duncan should be the vendor who is dropped. He doesn't want to propose this himself, however. He thinks he will keep his view to himself, so that either Duncan will be spared or it will be the others who will decide to cut him. This contemplated strategy is clever but not entirely fair to the others, since they too may have friends whom they might be loathe to vote against. Furthermore by not speaking his mind he is biasing the discussion in favor of Duncan, since potentially persuasive adverse comments could be made about the other vendors. Paul by considering this strategy is covering himself and avoiding the problem rather than facing it.

At the same time, if Paul thinks he owes Duncan something, he's perfectly free to try to make the best case he can for Duncan in the committee. It's only fair that every vendor have someone on the committee who makes his case; perhaps Paul could convince the committee to set up such a procedure, or informally ask the other members to make the strongest case for each of the vendors in turn. Once this is done, however, Paul owes it to the other members and the other vendors that he state his mind frankly.

VI

The other two engineers recommend against Duncan. It's not clear why Paul doesn't oppose the other two engineers, unless he thinks the case against Duncan is so clear that counter-arguments would be not only useless but antagonistic. Since he

feels he has a duty to protect Duncan, at least to a certain extent, he might at the least assure himself that every point in Duncan's favor has been made and considered by the committee. His failure to say anything therefore is puzzling.

Paul decides to give Duncan the bad news himself, and Duncan wants to know what Paul said in the committee. Since Duncan has asked Paul what he said, Paul might consider confessing that he didn't say anything. But first he should reflect whether the deliberations with the other two engineers are supposed to be confidential, and whether he might compromise their positions if he tells Duncan that it was they and not him who voted against him. If so, then he has to decline D's request. If there's no question of confidentiality, then he has to tell Duncan that the best he could do for him was not vote, since if he had voted he'd have voted against. This may be difficult to say to Duncan, but presumably Paul is confident that the decision was correct.

However his position with regard to Duncan is cloudy, since he knows he really did not do his best to put Duncan's case in the best possible light. He's probably going to want to evade any precise discussion with Duncan of what was said at the meeting. Vague reference to confidentiality is not out of order at this point.

VII

Paul tells the truth to Duncan, whose reaction is not pleasant. Given that Paul apparently thinks he ought to have done more on Duncan's behalf, his admission that he said nothing is courageous. Duncan's outburst is childish and contemptible, and Paul should ignore it, though further friendship between them is going to be difficult unless Duncan apologizes. Duncan's admission that he has been craftily letting Paul beat him will probably poison any future relationship however, since Duncan reveals himself as untrustworthy and manipulative.

Answer: Paul's judgement may be influenced perhaps, but that doesn't mean that his judgement is determined or irrevocably altered by his friendship. As long as Paul can take steps to control or minimize the influence when necessary, there is no actual conflict of interests or roles. If Paul does take the right steps, there's no problem. If Paul doesn't take steps to control the influence, he is morally guilty of bad judgement, or giving in to temptation, etc. In other words, any moral problem is a problem about Paul's choices rather than about any conflict of roles. Hence there

isn't any significant way in which Paul is morally compromised by the situation itself (i.e., by his playing several roles).

This example can be generalized. Cases where it is claimed that persons are involved in conflicts of interest (when these are not based on contractual considerations) are really just cases of moral temptation, when one is tempted to do something that one knows one should not do. 'Two-hat' cases naturally give rise to temptations, since often factors belonging to one could (physically rather than morally) be used to apply additional leverage to another. However, if one does give in to such temptations, it simply is a case of immoral action in convenient circumstances. It doesn't show that there was a real conflict of interests, or that there was anything inherently morally compromising about the combination of roles.

In order to be fair to the other side, let us consider a more extreme example in which Paul's business judgement is so influenced by his friendship with Duncan that psychologically he cannot be objective, no matter how hard he tries. (Note again that it is not the interests or roles which conflict, but rather that Paul is unable to think about the situation without mixing them up or confusing them.) First, if Duncan realizes he cannot be objective, he can take suitable action such as to inform his fellow committee members at Bluestone of this, and let them make the decision about Duncan's company.

Second, even if Paul does not specifically realize he cannot be objective in this case, it is part of his general duty as an engineer or manager to learn about the kinds of situations in which his decisions might be judged by others to be biased, and so to withdraw himself from making a decision in such cases. In other words, there are always things which Duncan could do to prevent any moral harm occurring because of his confusion and general inability to 'handle' such situations. Hence he is not morally compromised by his roles in such cases. If Paul does allow himself to be swayed by undue influence from a friend, the blame is his alone.

It remains to relate my general view that 'roles don't really conflict' to my initial view that social rules or regulations prohibiting some specific conflicts can be legitimate. For example, it would be reasonable to prohibit a businessperson from submitting a bid on behalf of company B to a company C, while at the same time he himself is the individual at C who judges all bids submitted (this is a factually possible situation if he holds both jobs).

The reason for having a regulation against such a 'conflict' is because of the very strong temptations to bias in such a case, through a mixing or conflation of the person's role as advocate for B with his role as impartial judge for C. That is, as before it is the strong temptations to moral backsliding or failure which are our legitimate concerns here, not any conflicts between the roles themselves.

Such cases are closely analogous to other potential moral temptations or failings which regulations address, such as those preventing a manager from depositing corporate funds in his personal bank account with the intention of repaying it shortly. In such a case it is very clear that the rule seeks to remove the temptations, and no-one would say that the rule is really seeking to prevent a 'conflict of interest' between his roles as private depositor and as corporate depositor in his own bank account. In other words, talk about 'conflicts of interest' is at best a metaphor, and often a very unhelpful metaphor, for talking about moral temptations.