

The logo for Astrachan Gunst Thomas features a stylized, swirling blue graphic to the left of the firm's name. The name "astrachan gunst thomas" is written in a lowercase, sans-serif font, with "astrachan" and "thomas" in a darker blue and "gunst" in a lighter blue.

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Sweeten the Pot on the Stove, Not in the Office

By: Julie R. Rubin

Flour was all over the floor. Not in piles, but sprinkled as though by fairies. My sister had given me a pasta making attachment for my Kitchen Aid mixer and I'd become obsessed with the little darling. My first foray was spaghetti. But I'd gone big time since then. Hand-cut pappardelle with boar ragu (meat grinder attachment: check). Wide, silken ribbons of eggy goodness smothered in the unctuous perfection that only comes from hours of stovetop percolation. But I was moving on to pumpkin ravioli in a sage butter sauce with just a dusting of chopped toasted hazelnuts. Savory, sweet. A true classic. As I was trying to make sense of the Italian-only instructions that came with the ravioli press, I heard my cell phone ring.

I fumbled to get my phone, getting flour all over my black leather purse in the process. "Hello?" It was my good friend, Janet. Janet heads an ad agency in town. She's grown the agency to about 50 employees over the years and has developed an impressive collection of regional accounts, including some colleges and banks. Janet wasn't calling to ask me to divulge my secret to toothsome tortellini; she was calling with a serious problem.

She had stayed late at the office to work on an RFP. Just as she was about to pack it in for the night and head home, an employee tapped on her office door. After much hemming and hawing, the employee whom shall not be named finally revealed the purpose of his visit. He told Janet that he had known for some time that the creative director had been taking gifts from a production house, including fancy meals, movie passes, wine and other small-scale gifts. The employee explained that he hadn't given it much thought, because the gifts didn't seem that big a deal, but a recent discovery caused him to reconsider. The employee had been looking for a document on the creative director's desk and came across a printed email that had been forwarded from the production house to the creative director. The email contained a travel itinerary in the director's name: two round-trip tickets to San Francisco and a room at the Nob Hill Ritz Carlton.

Janet relayed the conversation to me with absolute incredulity. She couldn't believe the director's arrogance and greed. More than that, Janet was irate that the creative director had harmed agency clients by paying more money for production than necessary. She was also terrified that news media would disembowel the agency if the story leaked.

This discovery presented several serious legal issues and there was no telling if the creative director was the only employee taking kick backs. To begin, the creative director had breached her duty of loyalty to the agency. Every Maryland employee owes her employer a duty to act solely in the employer's interests in matters within the scope of employment. That had gone out the window the moment the creative director began accepting gifts in exchange for funneling the production house business at higher-than-standard rates. Who was she working for, anyway?

Second, the creative director's conduct breached the agency's duties to its clients. To be sure, the agency had breached its contractual obligations to any client on whose behalf it purchased media production services when it knowingly acquired those services at above-market rates in exchange for a kick back. Add to that the agency's breach of its fiduciary duty to its clients. Just as the creative director owed a duty to the agency, the agency owed a fiduciary duty to every client for which it served as an agent in the purchase of vendor services. When a business acts as a client's agent to contract for the purchase of goods or services on the client's behalf, a fiduciary relationship exists between the business and the client. As its client's agent, Janet's agency owed a fiduciary duty to act in the sole interests and for the benefit of its principal, the client. Right there, grounds for a major law suit. Breach of contract and breach of fiduciary duty. In addition to these legal problems, the creative director faced possible extortion or bribery charges depending on the allegations. It's a safe bet the production house would assert the creative director had threatened to harm its reputation or standing in the industry unless cash or gifts were provided in exchange for business.

Outside of the legal arena, if word got out, the agency's good will and reputation would be destroyed. In already tough times, the thought of negative exposure and losing her hard-earned accounts was more than Janet could handle. But what about the duty the agency owed to its clients to make good on what might have been a long running kick-back scheme? Janet was in a bad way and there were no easy answers. The first thing I asked Janet was whether she had a written conflict of interest policy. At the very least, this would help demonstrate that the agency was clean and that the media director was likely one bad apple acting alone. But Janet's agency did not have a conflict of interest policy.

Janet and I scheduled a meeting for the next morning to drill down these complex and very worrisome problems. During our meeting, the mail was delivered. It

included a letter from one of Janet's clients asking for an account audit and inquiring about costs that the client described as "out of line." An attorney had been copied on the letter. Janet was beside herself. I geared up for serious damage control.

A conflict of interest policy is an absolute necessity in any business where employees are purchasing goods or services on behalf of customers. Daily business transactions on behalf of customers are rife with opportunities to exploit an employee's influence over which vendors will get the business and which ones won't. A written conflict of interest policy should be distributed to every employee without exception and signed copies should be kept in every personnel file. The Council on Foundations reports that 82% of private foundations have written conflict of interest policies for staff. I'm surprised the numbers aren't higher. It's also standard for non-profit and for-profit boards alike to require that its members disclose or refuse gifts from sources who stand to benefit from or are connected in some way to the business of the entity. Your business should be no different. Effective internal controls to protect your business from financially needy or greedy employees are particularly important in a depressed economy. Desperate people to desperate things. Don't wait until your business finds itself in a desperate situation like Janet's to get your house in order.

Characters and stories are fictional and similarities to actual events are coincidental; or, where necessary, names and identifying information has been changed to protect the privacy of those involved.
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