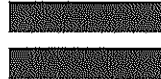


**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

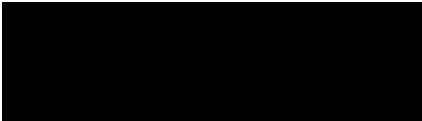


Office of Government Ethics



IN RE: Kenneth Crosswhite,

Respondent



CASE No.: 19-0003-F

NOTICE OF VIOLATION

Pursuant to the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01), the Director of Government Ethics completed a preliminary investigation and presented evidence to the Board of Ethics and Government Accountability (the “Ethics Board”) that there is reason to believe the Respondent named above violated the District’s Code of Conduct.

The Ethics Board has reason to believe you violated one section of the District’s Code of Conduct based on the following facts and evidence uncovered during the preliminary investigation and presented to the Ethics Board:

1. Respondent was the Deputy Fire Chief (“DFC”) in the Risk Management Division for the Fire and Emergency Medical Services Department (“FEMS”) from September 18, 2016 until November 10, 2018.

2. Respondent was a “public official” as defined in D.C. Official Code § 1-1161.01(47)(I) and Section 1806.2(a) of Title 6B of the District of Columbia Municipal Regulations (hereinafter referred to as the District Personnel Manual (“DPM”)).¹
3. Respondent’s direct supervisor was Assistant Fire Chief David Foust.
4. As the DFC for the Risk Management Division, Respondent was responsible for the health and safety of FEMS service members; which included accident and injury investigations, oversight of the Police and Fire Clinic, purchasing and distributing personal protective equipment (“PPE”), and maintenance and oversight of service members’ uniform and gear.
5. In September 2017, Respondent assembled a team of firefighters to assist the Office of Risk Management with obtaining PPE inventory, sizing, decommissioning, cleaning and the distribution of structural firefighting gear and PPE throughout the department.
6. A total of seventeen (17) firefighters were recruited to work on the team on an overtime basis.
7. Respondent’s supervisor, Assistant Fire Chief Foust, did not authorize overtime for the PPE program, but approved overtime for a single instance for the distribution of PPE to single role providers, which was completed over a two-day period.

¹ D.C. Official Code § 1-1161.01(47)(I) defines “public official” as a “District of Columbia Excepted Service employee, except an employee of the Council, paid at a rate of Excepted Service 9 or above, or its equivalent, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest; and any additional employees designated by rule by the Board of Ethics and Government Accountability who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest.”

DPM § 1806.2(a) states that for purposes of Section 1806 of the DPM a “Public official” is “an officer, employee, or any other individual in whom authority by law, rule, or regulation is vested, or to whom the authority has been delegated to select, appoint, employ, promote, reassign, demote, separate, or recommend individuals for any of these actions.”

8. Respondent's son, Firefighter Jeffery Crosswhite, was recruited to work on team by Firefighter Jordan Wiley.
9. Respondent was aware that his son joined the team, but did not report it to his superior, or remove his son from the team.
10. Firefighter Jeffery Crosswhite and the other team members reported directly to Respondent.
11. Firefighter Jeffery Crosswhite had previously worked in the Risk Management Division, while on light-duty, and was trained on PPE sizing and the PPE computer software, but there was not an experience requirement to work on the PPE team.
12. During Firefighter Jeffery Crosswhite's light-duty assignment his company officer entered and approved the hours that he worked.
13. As a member of the PPE team, Firefighter Jeffery Crosswhite would size members for PPE; inspect, collect, and/or distribute PPE; and tracked member's PPE serial numbers and dates.
14. Respondent was responsible for the time and attendance for the team.
15. Respondent kept a record of each team member's overtime hours by writing the amount of hours on his desk calendar.
16. During the course of the PPE program, and on separate occasions, Respondent entered and approved overtime hours for ten of the seventeen team members, including Firefighter Jeffery Crosswhite.
17. Respondent entered and approved Firefighter Jeffery Crosswhite's overtime hours on forty-six occasions using PeopleSoft.

18. Respondent entered and approved 251.5 overtime hours for Firefighter Jeffery Crosswhite, which amounted to \$6,678.53.
19. Firefighter Jeffery Crosswhite received the third highest amount of overtime of all of the team members.
20. Firefighter Jordan Wiley received the largest amount of overtime hours and Respondent did not enter or approve those hours.
21. In fiscal year 2018, Firefighter Jeffery Crosswhite received a total of 361 overtime hours, which amounted to \$9,586.29.
22. Firefighter Jeffery Crosswhite's assigned company officer would normally enter and approve his regular work hours and overtime hours.
23. Respondent could have sent Firefighter Jeffery Crosswhite's overtime hours to his assigned company officer for time entry and approval.
24. With respect to Respondent's conduct in entering and approving his son's overtime, Respondent violated the following provision:

- a. Count 1: Directly or Indirectly Making a Hiring Decision² Regarding a Position within his Own Agency with Respect to a Relative.

DPM § 1806.3³ in that Respondent, a public official, advocated a personnel action⁴ by entering his son's overtime hours into PeopleSoft on forty-six occasions, which amounted to 251.5 overtime hours and \$6,678.53.

² DPM § 1806.2(b) states that a "hiring decision" means "selecting, appointing, employing, promoting, reassigning, advancing, or advocating a personnel action."

³ DPM § 1806.3: "A public official may not directly or indirectly make a hiring decision regarding a position within his or her own agency with respect to a relative."

⁴ 5 U.S.C. § 2302(a)(2)(A) (ix) defines "personnel action" as "a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph." Similar to DPM § 1806.3, 5

b. Count 2: Directly or Indirectly Making a Hiring Decision Regarding a Position within his Own Agency with Respect to a Relative.

DPM § 1806.3 in that Respondent, a public official, advocated a personnel action by approving his son's overtime hours within PeopleSoft on forty-six occasion, which amounted to 251.5 overtime hours and \$6,678.53.

c. Count 3: Taking Actions Creating The Appearance That He Violated The Law or The Ethical Standards.

DPM 1800.3(n)⁵ in that Respondent created the appearance that he advocated a personnel action on behalf of his son by entering 251.5 hours of overtime into PeopleSoft on forty-six occasions.

d. Count 4: Taking Actions Creating The Appearance That He Violated The Law or The Ethical Standards.

DPM 1800.3(n) in that Respondent created the appearance that he advocated a personnel action on behalf of his son by approving 251.5 hours of overtime within PeopleSoft on forty-six occasions.

Respondent shall file with the Ethics Board, and serve a copy upon the Director of Government Ethics, a written response that states in short and plain terms his defenses to each violation alleged and shall admit or deny the averments, set forth in each numbered paragraph

U.S.C. § 2302 (b) (7) prohibits "any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official."

⁵ DPM § 1800.3(n) states "employees shall not take actions creating the appearance that they are violating the law or the ethical standards set forth in this chapter. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."


above, upon which the notice of violation relies. Respondent shall serve his response within (15) days after the service of the Notice of Violation upon him. Accordingly, Respondent shall submit his response, either electronically or in hard copy, no later than the close of business on Friday June 28, 2019. If submitted in hard copy via U.S. mail, Respondent must allow sufficient time for mailing delays in that the written response must be received by the Ethics Board and the Director of Government Ethics no later than close of business on Friday, June 28, 2019. Responses submitted via U.S. mail or in person shall be addressed to Norma B. Hutcheson, Chairperson, Ethics Board, and Brentton Wolfingbarger, Director of Government Ethics, at the address indicated below. If submitted electronically, Respondent may email his responses to rochelle.ford@dc.gov and brentton.wolfingbarger2@dc.gov.

Once Respondent has submitted his response or failed to submit a response by the due date provided, the Board shall send a Notice of Hearing to Respondent. The Notice of Hearing will provide the time, date, and location of the hearing; reference applicable statutes, rules, or regulations; state the purpose of the hearing; advise Respondent that he may be represented by counsel or other representative of his choosing; and advise Respondent that he may bring witnesses. Evidence at the hearing shall be taken in conformity with D.C. Official Code § 2-509(b) (2011 Repl.).

A copy of the Ethics Board rules, 3 DCMR Section 5500 *et. seq.*, which provide a description of Respondent's right to a hearing, all procedural rights available to Respondent at the hearing, and a description of the applicable law and regulations that govern the disposition of the Notice of Violation should Respondent choose not to file a response or fail to appear at a scheduled hearing, is attached to this Notice of Violation and herein incorporated by reference.

This Notice of Violation is effective upon approval of the Board of Ethics and Government Accountability, as demonstrated by the signatures of the Chairperson below, as of the date indicated below.

APPROVED:



Norma B. Hutcheson
Chairperson, Board of Ethics and Government Accountability



Date

Enclosure: 3 DCMR 5500 *et. seq.*