

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



Office of Government Ethics

February 28, 2013

VIA EMAIL TO:

Adrian T. Jordan
Analyst
Office of Councilmember Kenyan R. McDuffie, Ward 5
AJordan@dccouncil.us

Dear Mr. Jordan:

This responds to your request for advice concerning whether there are any ethical conflicts between working on the Council and serving as an Advisory Neighborhood Commission (“ANC”) Commissioner.

You state that you currently serve as a Commissioner for ANC 5A, elected to represent Single Member District 5A03. This is a non-partisan office. You are also a staff member for Councilman Kenyan R. McDuffie, who represents Ward 5. As of Council Period 20, your office has been assigned the Committee on Government Operations, which has the Office of Advisory Neighborhood Commissions (“OANC”) under its purview. As a mitigation step, the Committee on Government Operations drafted special committee procedures that address this issue.

I have reviewed the memorandum you sent as an attachment to your request for an advisory opinion. The memorandum, titled *Committee Procedures re: Advisory Neighborhood Commissions*, is the proposed screening methodology to avoid conflicts for Councilmembers, committee employees, and personal Council staff who wish to run for or serve as an ANC Commissioner for a single-member District.

The Committee Procedures memorandum provides that the following procedures must be followed when any matter relating to oversight of the ANCs comes before a Council committee:

1. Only committee or personal staff who are not Advisory Neighborhood Commissioners will be assigned any duties related to oversight of the ANCs.

2. Any staff member assigned duties related to ANCs may not discuss the matter with committee or personal staff who are elected Commissioners¹.
3. The ANC master file will be kept in my personal office away from the master files for the other agencies under our purview.
4. Matters regarding ANC oversight will not be discussed at staff meetings with any staff member who is a Commissioner present.
5. Copies of the memorandum regarding the 'Propriety of a Council employee serving as an ANC Commissioner' from the General Counsel's Office, dated August 15, 2012 will be redistributed to all committee and personal staff.

The Council Code of Official Conduct (the "Code") provides that, "No employee shall engage in outside employment or private activity that conflicts or would appear to conflict with the fair, impartial, and objective performance of the employee's official duties and responsibilities or with the efficient operation of the Council." (Code, Section II(a)(1)). Although your proposed activity technically is not private insofar as a Commissioner is a government official, Section II(a)(1) nonetheless is applicable because serving as an ANC Commissioner is outside the scope of your duties and responsibilities as a Council staff member. Moreover, simply because both functions – ANC Commissioner and Council employee – are governmental does not mean that conflicts are automatically avoided. Indeed, this is somewhat akin to attorneys who move successively from government practice to other employment and, as a result, are disqualified from matters concerning their previous government employer. The attorney ethics rules make clear that for conflicts purposes the successive employer need not be private, but could also be governmental.² This is consistent with more general conflict of interest government ethics principles that recognize the potential for conflicts even within the government, especially where, as here, one governmental entity has oversight responsibilities over another. The remedy in the case of an attorney is the same as you suggest here -- screening of the employee. In fact, the need for screening is even more compelling under your circumstances because, unlike the example of *successive* employment, the activities here are *concurrent*. Therefore, you must ensure that you abide by the guidelines set forth in the Committee Procedures Memorandum dated January 16, 2013 (attached hereto).

Based on the information provided in the memorandum, the proposed screening methodology seems adequate to avoid conflicts of interest that may arise while serving as both a Council staff member and an ANC Commissioner. The memorandum allows for Council staff to recuse themselves from any oversight matters that may directly conflict with their duties as ANC Commissioners. This is an appropriate remedy unless such recusal becomes necessary so frequently that it interferes with your ability to perform your duties as a Council staff member or requires so many of those duties to be performed by other staff that you are, effectively, no longer satisfying the requirements of

¹ "In cases where exercising proper due diligence in the oversight of ANCs requires discussing the issue with a Commissioner who is a member of the Committee or Personal staff those conversations will be documented and recorded in the form of minutes, and those minutes will be kept with the ANCs file." (Committee Procedures Memorandum dated January 16, 2012).

² District of Columbia Rules of Professional Conduct, Rule 1.11 ("Successive Government and Private or Other Employment"), Comment [10].

