

Board of Ethics and Government Accountability

Post Employment ETHICS TRAINING



Darrin P. Sobin
Director of Government Ethics
(Updated June 12, 2014)

BEGA



- **BEGA Statute:**
 - ✦ **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 (2013 Supp.)).**

- **BEGA Structure:**
 - ✦ **Three-member Board**
 - ✦ **Director of Government Ethics**
 - ✦ **Office of Government Ethics**
 - **Investigators and attorneys**

What we do



- **Training**
 - General Ethics training
 - Specialized training - - FDS, Hatch Act, Topic Specific
- **Advice**
 - Informal Advice - - oral & email, Ethics Manual
 - Formal Advice - - written Advisory Opinions
 - Role of Ethics Counselors
- **Investigations**
 - Initiation – complaints or any other source.
 - Preliminary Investigations - Confidential
 - Formal Investigations – Subpoena authority.

What we do



- **Enforcement Proceedings**
 - Open and adversarial hearings
 - Standard of Proof: Substantial Evidence
 - Fifth Amendment rights and representation
- **Financial Disclosure Filings**
- **Lobbyist Registration and Activity Reports**
- **Ethics Manual**
- **Annual Best Practices Report**

Penalties



- **Penalties**

- Director may impose:

- ✦ Ministerial fines (appealable to the Board)
- ✦ Non-public informal admonition, period of probation (with possibility to expunge) (appealable to the Board).

- Board may impose:

- ✦ Fines of up to \$5,000 per violation
- ✦ Fines of up to 3 times the amount of unlawful contribution, expenditure, gift, honorarium, or receipt of outside income for each violation
- ✦ Remedial action
- ✦ Public Censure
- ✦ Period of Probation (with possibility to expunge)
- ✦ Negotiated Disposition, offered by Director with approval by Board

Penalties Cont'd



- Although this is not yet in place, it is anticipated that at some point in the future, for violations of the Code of Conduct that substantially threaten the public trust, the Board will be authorized to impose:
 - ✦ A fine of up to \$25,000, **or** imprisonment of up to one year (but not both)
 - ✦ Public censure for elected officials + recommendations for removal

**REMEMBER MANY OF OUR ETHICS PROVISIONS
HAVE FEDERAL COUNTERPARTS APPLICABLE TO
DISTRICT EMPLOYEES AND THEY CARRY
CRIMINAL PENALTIES**

Update



- Chapter 18 of Title 6B of the District of Columbia Municipal Regulations (Responsibilities of Employees)
 - ✦ Also known as the District Personnel Manual or DPM
 - ✦ Revised
 - ✦ Published in the D.C. Register on April 11, 2014
 - ✦ Effective for all conduct that occurred on or after April 11, 2014

Employee Cooperation



- **Reporting**

- Employees shall immediately and directly report credible violations of the District Code of Conduct to the District of Columbia Office of Government Ethics, the District of Columbia Office of the Inspector General, or both.

- **Interference**

- An employee shall not interfere with or obstruct any investigation conducted by a District or federal agency.

- **Cooperation**

- An employee shall fully cooperate with any investigation, enforcement action, or other official function of the Office of Government Ethics.

- **Retaliation**

- Coercive, harassing, or retaliatory action shall not be taken against any employee acting in good faith under this section.

■ 6B DCMR §1801 ■

Post-Employment Conflicts of Interest



- Three Categories of Post-Employment:
 - Permanent Prohibition
 - 2 –Year Prohibition
 - 1 – Year Prohibition

Always ask: ***Does my new job overlap at all with my former agency or duties?***

Post-Employment Conflicts of Interest



- **Permanent Prohibition**

- A former government employee who *participated personally and substantially* in a *particular government matter* involving a *specific party*:

- Shall be **permanently prohibited** from knowingly acting as an attorney, agent, or representative in any formal or informal appearance before an agency.
- Shall be permanently prohibited from making any oral or written communication to an agency with the intent to influence that agency on behalf of another person.

Bottom line: No Communications or Appearances

■ 6B DCMR §§ 1811.3, 1811.4, 1811.8, and 1811.9■

“Particular matter” includes:



- investigation
- application
- request for a ruling or determination
- contract
- controversy
- claim
- charge
- accusation
- arrest or
- judicial or other proceeding

“Particular matter” excludes:



- General legislation
- General policy-making
- General rule-making

Requires case-by-case analysis

“Participate personally & substantially”



action taken as an employee through

- decision
- approval
- disapproval
- **recommendation**
- **the rendering of advice**
- **Investigation** or
- other such action

Post-Employment Conflicts of Interest



- “Communications” or “Appearances”
 - ✦ In person;
 - ✦ Telephone call;
 - ✦ Email;
 - ✦ Facebook; or
 - ✦ Twitter, Tumblr, Instagram, etc.

Post-Employment Conflicts of Interest



- **Two (2) Year Prohibition: 2 Types**
 - ✦ **Behind the Scenes Advice-Giving**
 - ✦ **Managers**

Post-Employment Conflicts of Interest



- **Two (2) Year Prohibition (Behind the scenes)**
 - Employee prohibited for **two years** from engaging in behind-the-scenes assistance in representing another person before an agency (the two-year period is measured from the date of termination of employment).
 - But can never use non-public/confidential government information

Post-Employment Conflicts of Interest



- **Two (2) Year Prohibition (Managers)**
- A former government employee who previously had *official responsibility* for a matter:
 - Shall be prohibited for **two years** from knowingly acting as an attorney, agent, or representative in any formal or informal matter before an agency.
 - ✦ The two-year period shall be measured from the date when the former employee's responsibility for a particular matter ends.

Post-Employment Conflicts of Interest



Official Responsibility for a Matter:

- ✦ A matter for which the former government employee had official responsibility is any matter that was actually pending under the former employee's responsibility within a period of one (1) year before the termination of such responsibility.
 - E.g. – Manager has oversight or responsibility for a project but *DID NOT* get involved in a way that might be considered “personal and substantial” (see definition).

“Official Responsibility”



The direct administrative or operating authority

- whether intermediate or final
- either exercisable alone or with others
- personally or through subordinates
- to approve, disapprove, or otherwise direct governmental action

Post-Employment Conflicts of Interest



- **One (1) Year Prohibition (cooling off period)**
- A former government employee shall be prohibited for **one (1) year** from having ***any transactions*** with the former agency ***intended to influence the agency***, in connection with any particular government matter pending before the agency as to a ***particular matter*** pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party.
 - This restriction is intended to prohibit the possible use of personal influence based on past governmental affiliations to facilitate the transaction of business.
 - Therefore, the restriction shall apply without regard to whether the former employee had participated in, or had responsibility for, the particular matter, and shall include matters which first arise after the employee leaves government service.
 - This restriction shall apply whether the former employee is representing another or representing him or herself (unless it is a personal matter), either by appearance before an agency or through communications with that agency.

Post-Employment Conflicts of Interest



- **Exceptions to the One (1) year Cooling Off Period:**
 - ✦ To furnish scientific or technological information to agency.
 - ✦ To give testimony under oath.
 - ✦ Exempted by Mayor (or designee).
 - Consultation with Federal OGE.
 - Certification issued (interests of the District will be served).
 - Published in D.C. Register
 - ✦ If new job is state or federal government.
 - ✦ Personal matters, i.e., income taxes or pension benefits.
 - ✦ Litigation or Administrative Proceeding (i.e. wrongful termination).

Post-Employment Conflicts of Interest



- Returning to work for the District as a contractor.
 - ✦ Must Only work “*on behalf*” of the District.
 - Can’t represent anyone else;
 - Can’t work for an entity doing business with the District;
 - If an attorney, District must be your client under legal ethics rules.
 - ✦ Must never become “adverse” to the District in anyway.
 - Must have separate representation if:
 - Payment dispute develops;
 - Performance issues arise;
 - Contractual dispute; or
 - Seek to renegotiate, modify, renew or get a new contract.

Test Your Knowledge



- **Question:** I left the District government approximately two months ago and went into business for myself. One of my clients has a payment issue with my former agency and wants me to see if I can work with the agency to get the payment approved. My client assures me that he did not have any dealings with my former agency during the time that I worked there. Can I contact my former co-workers for assistance?
- **Answer:** No. Because you left your former agency less than one year ago, you are prohibited from having any transactions, appearances, or communications with your former agency with the intent to influence the agency in a matter in which it has a direct and substantial interest. It doesn't matter that the issue did not arise until after you left the agency.
- **Reason:** This restriction is intended to prohibit the possible use of personal influence based on past governmental affiliations to facilitate the transaction of business.

Test Your Knowledge



- During my time with the District I spent a majority of my time working on multiple projects involving a single outside entity. Am I prohibited from being hired by that entity after I leave government?
- Answer: No. As long as your new duties do not overlap with your previous governmental duties. I.E., New employer may want you to start an office in Beijing.

Test Your Knowledge



- I left District Government and, a few days later, my former boss contacted me asking me to come back to work on the same project I was working on before I left. He said I would be paid as a contractor. Can I accept?
- Yes, as long as you are working solely on behalf of the District and you do not become adverse to your agency you can do so.

Questions



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&

A

Where to go for ethics advice



Free Post-Employment Ethics Advice Forever!!!!

- BEGA
 - ✦ Darrin P. Sobin
 - Director of Government Ethics
 - (202) 481-3411
 - BEGA Hotline - - (202) 535-1002
 - Email - - bega@dc.gov

- Agency Ethics Counselor

- D.C. Ethics Counselor
 - Irvin Nathan
Attorney General
 - David Hyden
(202) 724-5386