

Updates in the World of Ethics



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AGENDA

1. Comprehensive Code of Conduct: “The CCC”
2. BEGA Opinions
3. Federal Updates
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Comprehensive Code of Conduct

HISTORY

- District of Columbia Election Code of 1955 (established Board of Elections)
- District of Columbia Campaign Finance Reform and Conflict of Interest Act (1974; established Office of Campaign Finance within Board of Elections and Ethics)
- Merit Personnel Act (1979; authorized Mayor to promulgate personnel rules affecting District government employees)
- District Personnel Manual (rules to implement Chapter 18 (employee conduct) of MPA first promulgated in 1981; amended in 1986)
- BEGA Act (2012; intended to “clarify existing law by including all applicable ethics laws in one location”)
- DPM amended in 2014 by DCHR to “reflect changes resulting from” BEGA Act
- Comprehensive Code of Conduct and BEGA Amendment Act of 2014 (directed Ethics Board to submit “proposed legislation to consolidate the Code of Conduct”)
- *Comprehensive Code of Conduct and BEGA Amendment Act of 2017 (Under Council Review)*

Comprehensive Code of Conduct *Overview*

Section	Section Heading	Source
223a	Definitions	Twenty-two defined terms. All new except “affiliated organization”
223b	Applicability and standards of conduct	BEGA Act sections 201a and 221; Rule 202 of Council Rules; 6B DCMR §§ 1800 and 1801
223c	Conflicts of interest	BEGA Act section 223 and Rule I of the Council Code; reflects standards of 18 USC § 208
223d	Contingent fees	Section 416 of the Procurement Practices Reform Act of 2010
223e	Personal and financial interests and disclosures	6B DCMR § 1805
223f	Restrictions on hiring and employment (nepotism)	Section 1804 of the MPA and 6B DCMR § 1806; reflects standards of 5 USC § 3110

Comprehensive Code of Conduct

Overview

223g	Outside activities	Rule II of the Council Code; 6B DCMR § 1807 and 8-A DCMR § 208; reflects standards of 18 USC § 201
223h	Gifts from outside sources	Rule III of the Council Code and 6B DCMR § 1803
223i	Conferences, widely attended events, and training	Rule IV of the Council Code; 6B DCMR § 1803; 5 USC § 4111; 5 CFR § 410.503
223j	Gifts between covered individuals	Rule V of the Council Code; 6B DCMR § 1804; DoD Joint Ethics Regulation 2-203; 5 CFR § 950.102
223k	Use of government resources, prestige of office, and letters of recommendation	Rule VI of the Council Code; 6B DCMR §§ 1805 and 1808; section 336 of the Campaign Finance Act of 2011; reflects standards of 18 USC § 1913
223l	Use of privileged, confidential, protected, and non-public information	Rule VII of the Council Code

Comprehensive Code of Conduct *Overview*

223m	Post-government conflicts of interest	Rule VIII of the Council Code and 6B DCMR § 1811; reflects standards of 18 USC § 207
223n	Political activities	Local Hatch Act
223o	Financial disclosures	BEGA Act sections 224 and 225
223p	Limitations on honoraria and royalties	BEGA Act section 226
223q	Ethics training and ethics counseling	BEGA Act section 219; Rule XI of the Council Code; section 1801 of the MPA
223r	Lobbyists	BEGA Act sections 227, 228, 229 and 221
223s	Additional agency standards	6B DCMR § 1809

Comprehensive Code of Conduct

Applicability

- Parallels section 201a of the BEGA Act to make the Comprehensive Code applicable to the ethical responsibilities of all employees and public officials serving the District
- Resolves any doubt about inclusion of ANCs and members of some boards and commissions, who currently are not subject to the DPM
- By amending definition of “public official,” extends applicability to members of other bodies, including the Not-for-Profit Hospital Board of Directors, the Real Property Tax Appeals Commission, the Retirement Board, etc.

Comprehensive Code of Conduct

Lobbyist Gift Giving

- Prohibits any and all gifts to officials in the legislative and executive branches and their staffs.
- The prohibition is read together with all the exclusions and exceptions to the definition of “gift,” including the exception for pre-existing bona fide personal friendships.
- Change from BEGA Act, which currently permits gifting from registrants up to a calendar year aggregate of \$100.
- Similar ban in other jurisdictions (e.g., Arkansas, Colorado, Minnesota).

Comprehensive Code of Conduct

Lobbyist Registration

- New provision: Prohibits the filing of an annual lobbyist registration form if registrant owes the Ethics Board unpaid fines, penalties, or fees, or any past due activity reports.
- Operates in similar fashion to the “clean hands” provision of D.C. Official Code § 47-2862, which prohibits the District from issuing licenses or permits to applicants who owes more than \$100 to the District for certain fines, penalties, and past due taxes.

Comprehensive Code of Conduct

Gift Defined

- Definition of “**gift**”
- As amended, retains general meaning of “[anything] having monetary value,” *but draws on a number of sources, including Council Rule III, to expand the list of those items, benefits, and services to be excluded.*
- **One new exclusion, for elected officials, is for admission to and the cost of food and beverages consumed at events sponsored by a trade association or a civic, charitable, or community organization, provided that the invitation to the event is extended directly by the event sponsor.**

Comprehensive Code of Conduct

Gifts Between Covered Individuals

- Caps at **\$20** the aggregate market value of gifts (other than cash) that a subordinate can occasionally give to an official superior.
- Reasonable compromise between the \$10 limit in the DPM and the \$50 limit in Council Rule V.
- *Standardizes practice* in the legislative and executive branches.

Comprehensive Code of Conduct

Gifts Between Covered Individuals

- New provision: Caps at \$300 the aggregate market value of gifts that official superiors may receive from a group of subordinates regardless of the number of contributing individuals.
- Applies to gifts appropriate to certain occasions, such as marriages and retirements.
- Based on Department of Defense Joint Ethics Regulation 2-203(a) (November 17, 2011).

Comprehensive Code of Conduct

Nepotism

- New provision: Nepotism prohibitions **apply to both paid and unpaid positions** in an agency in which the hiring official serves or exercises jurisdiction or control.
- Hiring official's actions include interviewing, selecting, appointing, employing, evaluating, promoting, demoting, reassigning, advancing, disciplining, or separating, or otherwise advocating for or taking any personnel action.
- Follows practice in Florida, which has a very similar statute.

Comprehensive Code of Conduct

Fundraising

- Authorizes certain public/private partnerships.
- An agency may promote, endorse, co-sponsor, and collaborate with charitable organizations whose sole mission is to support the agency.
- An agency may participate with (but not promote or endorse) other charitable organizations to raise funds for programs that assist the agency constituents and that are consistent with the agency's mission.

Comprehensive Code of Conduct

Widely Attended Gatherings

- All covered individuals are authorized to accept an unsolicited invitation of free attendance for an accompanying guest to participate in all or part of a conference or widely attended gathering.
- Authorization may be granted only when others in attendance will generally be accompanied by a guest, and the invitation must be extended by the same person who invited the covered individual.
- The market value of the gift of free attendance is capped at \$350 for both the covered individual and his or her guest.
- *Standardizes practice* across the government.

Comprehensive Code of Conduct

Post-Employment Cooling-Off Period

- One-year cooling-off period once again applies to *senior employees only*.
- Longstanding practice changed by DCHR rulemaking in 2014 to make the cooling-off period applicable to all employees in the executive branch.
- However, the prohibition on using personal influence based on past governmental affiliations applies more readily to former senior employees than to all employees generally.

BEGA Advisory Opinions

- Advisory Opinion 1009-014: Concludes that certain statehood-related activities, including the creation of an online portal by OCTO employees to match District residents to U.S. Senators, would not violate relevant provisions of the Code of Conduct.
- Advisory Opinion 1249-002: Provides guidance on the restrictions that apply (e.g., outside employment, conflicts of interest, and posting of notices) to a non-supervisory employee's selling products to colleagues.

BEGA Advisory Opinions

- Advisory Opinion 1559-001 “Social Media Opinion”: Provides general guiding principles regarding the effect of the Code of Conduct on the use of personal social media accounts. Also provides illustrative scenarios (e.g., maintaining Facebook and Twitter accounts, writing blogs, and creating websites) to which the guiding principles can be applied.
- The Opinion advises employees that:
 - They should be careful not to give the impression that the District endorses or supports their posts on social media;
 - They should also avoid giving the impression that they speak on behalf of the District;
 - And they should not capitalize on their District employment to the benefit of the Employee’s outside activities.

Federal Opinions

- LA-17-04: Identifying a “Sponsor” under the Gift Rules for Purposes of the Free Attendance Exclusion and the Widely Attended Gatherings Exception
 - This Legal Advisory assists agencies in identifying a “sponsor” of an event for purposes of the Free Attendance Exclusion and the Widely Attended Gatherings (WAG) Exception to the gift rules in the Standards of Ethical Conduct at 5 C.F.R. 2635.203(b)(8) and 5 C.F.R. 2635.204(g).
- LA-17-07: Increased Gifts and Travel Reimbursements Reporting Threshold for Financial Disclosure Reports and Nonsponsor Widely Attended Gatherings Gift Exception Ceiling
 - This Legal Advisory discusses the recent amendments to the gifts and travel reimbursements reporting threshold at 5 C.F.R. §§ 2634.304 and 2634.907(g) and the widely attended gathering (WAG) gift exception ceiling for nonsponsor gifts of free attendance at 5 C.F.R. § 2635.204(g)(3).

Federal Opinions

Federal Office of Government Ethics Memo to Federal Agency Heads

- Demonstrate personal ethical behavior by modeling a “Should I do it?” mentality (versus a “Can I do it?” mentality)
- Talk about the importance of ethics to your organization by including ethics themes in speeches, communicating ethics priorities in memos, and recognizing the support that ethics officials provide.
- Get to know your ethics program, and ensure that it is staffed by qualified personnel and has sufficient resources
- Include ethics officials in meetings of senior leaders
- Recognize and praise honorable service by employees in your agency
- Underscore the consequences to the organization and its mission of unethical behavior
- Promote a safe culture for reporting misconduct

Global Ethics Cases

- Brazil - “Operation Car Wash”
- What began as an investigation into black market money dealers who used small businesses, such as car washes, to launder profits of crime led to the uncovering of a massive bribery ring. Police discovered that the dealers were working on behalf of an executive of Petrobras, one of the largest companies in Latin America.
 - Investigation revealed illegal payments of over \$5 billion to company executives and political parties in exchange for lucrative contracts. Those connected to the deals received cash bribes, luxury cars, expensive art works, Rolex watches, \$3,000 bottles of wine, yachts and helicopters.
 - Implicated more than: 1,000 politicians, 16 companies, 50 congressmen. Four presidents under investigation.

Global Ethics Cases

- Sweden/Uzbekistan - Swedish company Telia agreed to pay total penalties of \$965 million to resolve foreign bribery offenses in Uzbekistan. Telia built a telecommunications business in Uzbekistan by paying more than \$331 million in bribes to an Uzbek government official who was a close relative of a high-ranking government official and had influence over the Uzbek governmental body that regulated the telecom industry.
- See also: Amsterdam-based VimpelCom Limited and its Uzbek subsidiary, Unitel LLC, also entered into resolutions with the Department of Justice and admitted to a conspiracy to make more than \$114 million in bribery payments to the same Uzbek government official between 2006 and 2012.

Federal Ethics Cases

Abuse of Position

Department of Interior Official Supervisory Agent violated Federal ethics rules when he:

- Used his influence with Burning Man officials to obtain three sold-out tickets and special passes for his father, girlfriend, and a family friend" and
- "Intervened in the hiring process by increasing the number of candidates that would be interviewed," resulting in the hiring of the Supervisory Agent's friend as a BLM special agent.

Conflicts of Interest

DC Water employee Londra Watson started a company named ARDNOL of DC, LLC (ARDNOL is "Londra" spelled backwards). Applicants seeking permits from DC Water provided checks totaling \$141,066.00 to ARDNOL to assist them with DC Water "permit expediting" services. Once a client paid the required fee to ARDNOL, Mr. Watson would prepare the complete permit package and return it to the client, who would then submit the package to DC Water for approval. In his official capacity with DC Water, Mr. Watson approved, directly or indirectly through his subordinates, permit applications and issued DC Water permits to a number of applicants who were ARDNOL clients. He was sentenced in 2016 to 12 months' probation.

Federal Ethics Cases

Misuse of Government Property/ Resources

- HHS employee used government to purchase \$16,000 worth of sporting goods, electronics, and gift cards for personal use.
- Army General extended official travel time and claimed unauthorized travel expenses in order to go to job interviews.
- A civilian employee received a letter of reprimand for her excessive use of her Government telephones for personal calls. The employee had been warned about the issue before, and an investigation revealed that she had spent approximately twenty-one hours of duty time on personal telephone calls to her friends and family over a five month span

Hatch Act Violations

- According to the federal Office of Special Counsel, U.S. Ambassador to the United Nations Nikki Haley violated the law by retweeting President Donald Trump's endorsement of a South Carolina congressional candidate.