

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



**IN RE: David Deboer,**

**Respondent**

**Case No. 23-0006-F**

**FINAL DECISION**

**I. Introduction**

The Office of Government Ethics (“OGE”) charged David Deboer (“Respondent”) with thirty-nine violations of the Code of Conduct.<sup>1</sup> Count 1 of the Amended Notice of Violation (“NOV”)<sup>2</sup> alleges that Respondent failed to file a full and complete financial disclosure statement when he failed to disclose his employment with Enlightened, LLC (“Enlightened”) in violation of D.C. Official Code § 1-1162.24(a)(1). Count 2 alleges that Respondent failed to file a full and complete financial disclosure statement in 2023 in violation of D.C. Official Code § 1-1162.24(a)(1). Counts 3-39 allege that Respondent violated 6B DCMR § 1807.1(b) of the District Personnel Manual by engaging in any outside employment or other activity incompatible with the full and proper discharge of his duties and responsibilities, including using government time and resources for other than official business or government approved or sponsored activities by working for both the District’s Department of Employment Services (“DOES”) and as a contractor for the Criminal Justice Coordinating Council (“CJCC”), through Enlightened, LLC from April 2020 through January 2023.

Although not charged in the NOV, OGE in its closing argument at the hearing argued that Respondent violated 6B DCMR § 1808.1 by using his government-issued laptop for unauthorized purposes and that Respondent represented an outside entity before the District

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<sup>1</sup> The Board has the power to, among other things, “[a]dminister and enforce the Code of Conduct. Section 202(a)(1) of the Governmental 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 § 1-1162.02(a)(1)). The Code of Conduct is defined by section 101(7)(E) and (F) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(E) and (F)) to include “Parts C, D, and E of subchapter II” and “Chapter 18 of Title 6B of the District of Columbia Municipal Regulations,” which includes the statutes and regulations that form the bases of the charges against Respondent.

<sup>2</sup> The original NOV was amended to provide for electronic mail service of Respondent, who has no longer employed by the District at the time of service. The original NOV and amended NOV are otherwise substantially the same. Respondent did not submit a response to either the original NOV or the Amended NOV.

government in violation of 6B DCMR § 1807.1(h). In OGE’s post hearing Memorandum Regarding Recommended Sanctions, OGE asserts that it is immaterial that the NOV failed to charge Counts 40 and 41 and thereby did not provide Respondent with notice and an opportunity to respond to these charges. We disagree and address only the allegations charged in the NOV.<sup>3</sup>

Respondent did not submit a response to the NOV. The Board treats his failure to provide a response as a general denial.<sup>4</sup>

Pursuant to notice, an evidentiary hearing was held on January 11, 2024. Respondent did not appear at the hearing and did not designate a representative to appear on his behalf. The Board elected to proceed with the hearing<sup>5</sup> and OGE presented testimony, introduced exhibits, and offered argument. At the direction of the Board, OGE also submitted a post-hearing briefing on sanctions.

The Board has had an opportunity to review the record in its entirety and, after careful consideration, finds substantial evidence that Respondent committed thirty-three (33) separate violations of the Code of Conduct as alleged in the NOV. Accordingly, the Board assesses a maximum civil penalty of \$5,000 for each count for a total civil penalty of \$165,000, and refers this matter to the United States Attorney for the District of Columbia to consider whether additional enforcement or prosecution is warranted.

As required by 3 DCMR § 5512.2, the Board’s findings of fact, conclusions of law, and analysis are set forth below.

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<sup>3</sup> The District’s Administrative Procedure Act requires that parties in contested cases “shall be given reasonable notice of the afforded hearing... [and the] notice shall state the time, place, and issues involved...” and the parties have an opportunity to respond to the charges against them. D.C. Official Code § 2-509(a). *See also*, Hedgman v. District of Columbia Hackers' License Appeal Bd., 549 A.2d 720 at 723-724 (D.C. 1988) (“A respondent is entitled to fully be aware of the scope of the charges in order to have an effective opportunity to be heard and to explain his conduct.”), *citing* M.B.E. v. Minority Business Opportunity Commission of the District of Columbia, 485 A.2d 152, 158 (D.C. 1984)). The Board’s regulations also provide that the notice of hearing shall “[r]eference the applicable statutes, rules, or regulations. 3 DCMR § 5502(b).

<sup>4</sup> *See* 3 DCMR §5509.6.

<sup>5</sup> The hearing was noticed for 2:00 p.m. and the Board did not commence the hearing until 2:15 p.m. *See* 3 DCMR § 5403.4 (“if any person or party...fails to appear at a hearing, the Board may proceed ex parte, unless the Board extends the time of the hearing or unless the person’s appearance is required by statute.”); *see also id.* at § 5514.1(a) (providing that if a noticed party has not appeared after a reasonable time, the Board Chair “may proceed with the hearing, obtain the testimony of those persons present, and, on the basis of the testimony and the record, the Board may issue a decision in the case.”)

## II. Findings of Fact

The facts in this case can be summarized as follows:

Respondent was employed by the District as an Information Technology Specialist with the Department of Employment Services ("DOES") from April 13, 2020, through March 31, 2023. Respondent, a Career Service grade 14 employee, received total compensation in the amount of \$446,681.97 from the District for his work at DOES from 2020-2023.<sup>6</sup> (OGE Exhibits 74-78)

Respondent's District tour of duty as an employee of DOES was 8:30 a.m. to 5:00 p.m., Monday through Friday, working onsite on Monday, Wednesday, and Thursday. (Testimony of Sean Josiah; Testimony of Chris Tonjes)

Although Respondent maintained a full-time schedule at DOES, there were times when he did not adhere to his in-office days and was not in the office as expected. (Testimony of Sean Josiah; Testimony of Yvonne Liser)

Enlightened, LLC provided technical support services to the Criminal Justice Coordinating Council ("CJCC") under a series of contracts with CJCC beginning in or around 2010. The terms of the contracts, which did not vary from 2020-2023, state that Enlightened would provide a "BizTalk SME" to CJCC at an hourly rate of \$160 per hour with a maximum of 2,080 hours and a maximum total price of \$332,800 per contract year. (OGE Exhibits 3-4, 40-41; Testimony of Robin Jackson)

Respondent began working as a contractor under CJCC's contract with Enlightened prior to October 2011, serving as a "Biz Talk SME" with CJCC. (Testimony of Robin Jackson; Testimony of Marc Irlandez)

Respondent worked core hours of 8:00 a.m. to 5:00 p.m., Monday through Friday as part of the CJCC IT team, including working onsite in the CJCC offices beginning in or around July 2021. Respondent attended regular meetings as a contractor with CJCC including a weekly IT meeting on Tuesdays at 10:00 a.m., daily team meetings on Mondays and Thursdays at 10:30 a.m., and a weekly IT check-in meeting on Fridays at 9:30 a.m. In 2021, as part of a project, Respondent also attended a weekly Friday afternoon meeting. (Testimony of Marc Irlandez)

Respondent regularly communicated with his CJCC supervisors regarding his work via emails sent between 8:00 a.m. and 5:00 p.m., Monday through Friday. (OGE Exhibits 44-73; Testimony of Marc Irlandez).

Enlightened submitted 35 invoices to CJCC for services that Respondent provided as a "BizTalk SME" from April 13, 2020, through December 31, 2022. Respondent provided 5,279 hours of

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<sup>6</sup> The total compensation paid to Respondent includes paid administrative leave and paid terminal leave in 2023. Although Respondent's last official date of District employment was March 31, 2023, with the payout of accrued leave upon the termination of his employment, his last day on payroll was April 22, 2023.

services at a rate of \$160 per hour resulting in a total of \$844,840 billed to CJCC for Respondent's services, which CJCC paid. (OGE Exhibits 5-39, 42; Testimony of Robin Jackson)<sup>7</sup>

In or around December 2022, Chris Tonjes, the incoming Chief Information Officer at DOES, was alerted to Respondent's employment at DOES. Mr. Tonjes previously worked as the Chief Information Officer at the Office of the Attorney General for the District of Columbia and was familiar with Respondent's work as a contractor for CJCC. (Testimony of Chris Tonjes)

Respondent's supervisors at DOES state that they did not approve, and were not notified that anyone else approved, Respondent working for both DOES and as a contractor for CJCC. (Testimony of Sean Josiah; Testimony of Christ Tonjes)

In or around January 2023, Yvonne Liser an employee at DOES observed Respondent in the DOES offices, using his DOES laptop, on a Microsoft Teams call that did not relate to his work for DOES. Ms. Liser heard him say "let me switch over to my Teams account – switch over to my other Teams account" and noted the presence of individuals on the call who were not members of the DOES IT team. (Testimony of Yvonne Liser)

DOES instituted proceedings to remove Respondent from his position and his last official day as a District government employee was March 31, 2023. (Exhibit 74)

DOES designated Respondent as a Financial Disclosure Filer which required that he submit a Financial Disclosure Report in 2022 reporting on activity in 2021. On Respondent's Public Financial Disclosure Report for calendar year 2021, Respondent answered "No" to the question "Did you have any non-District employment or engage in any outside business or other activity during the previous calendar year for which you received compensation of \$200 or more?" (OGE Exhibit 80; Testimony of ShaQuana Carter)

Respondent was designated as a Financial Disclosure Filer in 2023, which required him to report on 2022 activity. (OGE Exhibit 81; Testimony of ShaQuana Carter)

There is no record of Respondent filing a 2023 Financial Disclosure Report reporting on 2022 activity. (Testimony of Shaquana Carter)

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<sup>7</sup> OGE Exhibit 16, unlike the other 35 Enlightened invoices admitted as exhibits, does not include supporting documentation that establishes that Respondent provided services charged on the invoice. Instead of referencing the number of hours provide by a BizTalk SME, the invoice references "9 documents received out of 19." There is no supporting documentation attached that references Respondent.

### III. Conclusions of Law and Analysis

The question before the Board is whether OGE has met its burden of proving that Respondent violated the provisions of the Code of Conduct underlying the thirty-nine counts of the NOV by substantial evidence.<sup>8</sup>

The Board finds that OGE satisfied the burden with respect to thirty-three of the alleged violations (Counts 3-35) of 6B DCMR § 1807.1(b), but not as to remaining six counts (Counts 1-2 and 36-39).

#### A. Count 1 (Failure to file a full and complete financial disclosure statement)

Count 1 of the NOV alleges that Respondent failed to file a full and complete financial disclosure statement in violation of D.C. Official Code § 1-1162.24(a)(1) when he did not disclose his employment with Enlightened on his financial disclosure statement filed in 2022.

D.C. Official Code § 1-1162.24(a)(1) requires “public officials” to file with the Board a “public report containing a full and complete statement” that includes, among other requirements, the “the name if each business entity... in or from which the public official...[r]eceives honoraria and income earned for services rendered in excess of \$200 during the calendar year.”<sup>9</sup> The Ethics Act defines a “public official” to include 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” whose official duties “may create a conflict of interest or the appearance of a conflict of interest...”<sup>10</sup> The implementing regulations provide that “public officials” includes a “District of Columbia employee, except an employee of the Council, paid at a rate of Excepted Service 9 or above, or its equivalent” whose official duties “may create a conflict of interest or the appearance of a conflict of interest...”<sup>11</sup>

Respondent provided services to CJCC through Enlightened’s contract with CJCC throughout 2021. Respondent filed a Public Financial Disclosure Statement in 2022, reporting on 2021 activity and did not disclose his employment with Enlightened on his financial disclosure statement. Respondent, however, was employed by the District as a Career Service employee and not as Excepted Service employee and therefore did not meet the definition of a “public official”

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<sup>8</sup> See 3 DCMR § 5518.1 (“In all cases involving a notice of violation, the Director [of Government Ethics] has the burden of persuading the Board that a violation has occurred by substantial evidence.”); see also *id.* at § 5521.4 (“A decision shall be support by substantial evidence on the record. Pursuant to the substantial evidence rule, courts shall uphold an administrative determination of fact if on the entire record the determination is rationally supportable and could have been arrived at reasonably.”).

<sup>9</sup> D.C. Official Code § 1-1162.24(a)(1)(A)(ii).

<sup>10</sup> *Id.* at § 1-1161.01(47)(I). Employees who are designated as confidential financial disclosure filers are required to report the same information as public filers, but those reports are not publicly available. See D.C. Official Code § 1-1162.25(a)(1).

<sup>11</sup> 3 DCMR § 5700.2(h); see also *id.* at § 5701.1(a)(ii), which requires public officials to report the source of earned income of \$200 or more during the calendar year.

under the Ethics Act. While the regulation's definition of public officials required to file public financial disclosure statements include "any District employee" paid at or above Excepted Service 9, or its equivalent,<sup>12</sup> OGE, charged Respondent with a violation of the Ethics Act and not a violation of the regulations.

Accordingly, we find that OGE has failed in its burden to produce substantial evidence that Respondent violated § 1-1162.24(a)(1) as alleged in Count 1 of the NOV.

**B. Count 2 (Failure to file a full and complete financial disclosure statement)**

Count 2 of the NOV alleges that Respondent failed to file a full and complete financial disclosure statement in violation of D.C. Official Code § 1-1162.24(a)(1) when he failed to file a financial disclosure statement in 2023.

DOES designated Respondent as a financial disclosure filer in 2023, requiring him to report on 2022 activity. Although the list DOES provided to OGE does not distinguish between public and confidential filers and the testimony did not address whether Respondent was a confidential or public filer, the record is clear that he was required to submit a financial disclosure statement and there is no record that he filed any statement.

Count 2 of the NOV, however, has the same charging defect as Count 1. OGE has charged Respondent with failure to file the financial disclosure statement required for public officials. As a Career Service employee, Respondent, is not a "public official" under the Ethics Act.

Accordingly, we find that OGE has failed in its burden to produce substantial evidence that Respondent violated § 1-1162.24(a)(1) as alleged in Count 2 of the NOV.

**C. Counts 3 – 39 (Engaging in outside employment or other activity incompatible with the full and proper discharge of official duties and responsibilities)**

Counts 3-39 of the NOV allege that Respondent violated 6B DCMR § 1807.1(b) by engaging in outside employment or other activity incompatible with the full and proper discharge of his duties and responsibilities, including using government time and resources for other than official business or government approved or sponsored activities. The NOV alleges that Respondent worked for DOES and Enlightened, LLC at the same time, collecting payment both as a vendor to CJCC and his District government paycheck from April 2020 through January 2023. Respondent is alleged to have provided services to CJCC on behalf of Enlightened during his DOES tour of duty. The NOV alleges that Enlightened submitted 36 monthly invoices for the hours Respondent worked on its behalf at CJCC and the timesheets submitted show that Respondent worked anywhere from 20-40 hours per week at a rate of \$160 per hour. Section 1807.1 provides that District government employees "shall not engage in any outside employment or other activity incompatible with the full and proper discharge of his or her duties

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<sup>12</sup> 3 DCMR § 5700.2(h).

and responsibilities.”<sup>13</sup> Among the “[a]ctivities or actions that are not compatible with government employment,” subsection (b) includes “[u]sing government time or resources for other than official business, or government approved or sponsored activities.”<sup>14</sup>

We find that Respondent’s work for Enlightened serving as a contractor for CJCC was incompatible with his position as a District government employee at DOES. From April 13, 2020 through December 31, 2022, Respondent effectively held two full time positions with overlapping hours, thereby depriving DOES, and the District government, of the full benefit of his time and attention. Respondent’s outside employment was therefore not compatible with his work for the District.

We find that Respondent used District time when he should have been working for DOES to provide services to CJCC under its contract with Enlightened, attending at least four regularly scheduled weekly meetings, producing work product for CJCC, and regularly communicating with officials at CJCC during his duty hours for DOES. Additionally, we find that Respondent used District resources, including DOES space and equipment, to provide services to CJCC, performing services for CJCC in the DOES office on days he was required to work in person at DOES. We also find that Respondent used a DOES-issued laptop for non-DOES authorized work when he participated in a Microsoft Teams meeting that did not relate to his work for DOES.

Respondent did not submit a response to the NOV and did not appear at the hearing. Despite Respondent declining to participate in this process, the record in this matter is clear.<sup>15</sup>

While we conclude that there is substantial evidence that Respondent violated 6B DCMR § 1807.1(b), we next address the extent of the violation. In the NOV, OGE alleged 37 counts (Counts 3-39) of violating 6B DCMR § 1807.1(b) based on 36 invoices Enlightened submitted to CJCC for services provided by Respondent. As one of the invoices does not name Respondent and references documents and not services,<sup>16</sup> we are left with 35 invoices that list services Respondent provided to CJCC through Enlightened. Further review of the invoices that underlie these charges reveals that the 35 invoices cover 33 months, as the change in contract years resulted in two invoices each for both April 2021 and April 2022. As the extent of the violation remains the same, whether billed on a single invoice or multiple invoices for the same period, we conclude that a more appropriate accounting of the violations should be based on the amount of time Respondent’s work for Enlightened overlapped with his District employment. The

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<sup>13</sup> 6B DCMR § 1807.1.

<sup>14</sup> *Id.* at § 1801.1(b).

<sup>15</sup> We note that the fact that Respondent was a contractor to another District agency does not address the potential violation of the District Personnel Manual at issue since Respondent was an employee of Enlightened, a private company, and not CJCC. Indeed, with limited exceptions not applicable here, the District Personnel Manual also prohibits District government employees from holding a second District government position where the employee would receive pay for more than an aggregate of forty hours of work in one calendar week. *See* 6B DCMR § 1147.3.

<sup>16</sup> *See* OGE Exhibit 16.

evidence establishes that the overlap between Respondent’s work for DOES and his work as a contractor for CJCC amounted to 33 months – from April 2020 through December 2022.

Accordingly, we find there is substantial evidence that Respondent engaged in thirty-three separate violations of 6B DCMR § 1807.1(b), but that OGE has failed to produce substantial evidence that Respondent violated 6B DCMR § 1807.1(b) as to the remaining four counts charged in the NOV.

#### **IV. Disposition**

For the foregoing reasons, the Board finds that Respondent violated the Code of Conduct by engaging in outside employment or other activity incompatible with the full and proper discharge of his official duties and responsibilities in violation of 6B DCMR § 1807.1(b). Accordingly, the Board assesses a civil penalty of \$5,000 for each of the thirty-three separate violations, for a total of \$165,000.<sup>17</sup>

In assessing the maximum civil penalty for each violation of the Code of Conduct, the Board considered the seriousness of the underlying charges as well as the length of time that the violations continued. The Board also considered that there is no information Respondent took responsibility for his actions; indeed, Respondent’s dual employment ended only after it was discovered by his employing agency. Although Respondent’s supervisors at DOES and CJCC did not allege that Respondent failed to perform his duties, a mitigating factor, the District did not receive the full benefit of the hundreds of thousands of dollars that it paid Respondent for his service, either directly through DOES or indirectly through CJCC’s contract with Enlightened.

Given the egregious nature of Respondent’s violations and the amount of District funds involved, along with levying the maximum civil penalty for violation of the Code of Conduct, the Board is also referring this matter to the United States Attorney for the District of Columbia as the prosecutorial authority with jurisdiction over enforcement or prosecution of this matter.<sup>18</sup>

An appropriate Final Order accompanies this Final Decision. Pursuant to 3 DCMR § 5494, Respondent may appeal the Final Order to the Superior Court of the District of Columbia within twenty (20) days of the date the Final Order is served upon him.

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<sup>17</sup> D.C. Official Code § 1-1162.21(a)(1) provides that the Board “may assess a civil penalty for a violation of the Code of Conduct of not more than \$5,000 per violation.... Each occurrence of a violation of this subchapter...shall constitute a separate offense.”

<sup>18</sup> See D.C. Official Code § 1-1162.15(a) (“the Board may take one or more of the following actions: (1) Levy a penalty in accordance with § 1-1162.21; (2) Refer the matter to the prosecutorial authority with jurisdiction for enforcement or prosecution....”).



In re David Deboer  
Case No. 23-0006-F  
Final Decision

The foregoing is the Final Decision of the Board, as demonstrated by the signature of the Chairperson below.



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Norma Hutcheson  
Chairperson, Board of Ethics and Government Accountability

February 1, 2024

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Date