

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



Office of Government Ethics

In Re: A [REDACTED] Hayes
Case No.: 1401-001

NEGOTIATED DISPOSITION

Pursuant to section 221(a)(4)(A)(v) of 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 et seq., the Office of Government Ethics (the “Office” or “OGE”) hereby enters into this public negotiated settlement agreement with the Respondent, A [REDACTED] Hayes.¹ Respondent agrees that the resulting disposition is a settlement of the above-titled action, detailed as follows:

I. FINDINGS OF FACT

Respondent works as a [REDACTED], for the Office of the State Superintendent of Education (“OSSE”), Department of Transportation. Respondent’s duties include overseeing the daily operations at the OSSE Southwest school bus terminal. Respondent has official responsibility over the supervisory terminal managers, who provide immediate supervision to school bus drivers and bus attendants.

According to the evidence, beginning in 2015, Respondent assisted several OSSE bus drivers and attendants with having their income tax returns prepared. On several occasions, Respondent provided those OSSE employees with the contact information for [REDACTED], a non-District government employee, who owns a tax preparation service and has prepared Respondent’s personal income tax returns. Respondent served as the “middle man” between Mr. Lee and the employees by sending and receiving messages and information regarding the employees’ tax returns. When an employee had questions or concerns about their taxes and could not reach Mr. Lee, or vice versa, Respondent relayed their questions and provided answers. Respondent also sent employees’ personal identifying information, such as social security numbers, dates-of-birth, and the number of dependents to Mr. Lee so that he could prepare the employees’ income tax returns. Those transactions occurred within Respondent’s office, while he was on duty. Many of those employees received large tax refunds, but did not sign or receive

¹ Section 221(a)(4)(A)(v) of the Ethics Act provides, in pertinent part, that “[i]n addition to any civil penalty imposed under this title, a violation of the Code of Conduct may result in the following: . . . Any negotiated disposition of a matter offered by the Director of Government Ethics, and accepted by the respondent, subject to approval by the Ethics Board.”

copies of their income tax returns. At least three employees were audited because fraudulent information was allegedly submitted on their income tax returns.

From December 2016 until February 2018, Respondent used his government issued cellular phone to send and receive numerous text messages from OSSE employees and one, non-District government employee regarding tax information. In a March 3, 2017 text message, Respondent sent a text to an OSSE employee which stated: “The tax preparer sent me your numbers: Federal \$6025, State \$2584, His fee \$1721.” On January 4, 2017, an OSSE employee texted Respondent, “the state of Maryland sent me a notice about my 2013, 2014, 2015 taxes[,] I am being audit for the 3 years . . . could you text me and let me know when you come to work so I can have the info for you, so that Mr. Mike can go over it with me. I need to have this info to the state with 45 days.” Respondent replied, “Mike said he would be calling me this afternoon with an update of what are the next steps.” In September 2017, Respondent received a text message from a non-District employee stating that he had not yet received his income tax refund and inquiring about the amount of the refund. Respondent replied by informing the person that he should contact the Internal Revenue Service and provide additional information so that his refund could be released. Respondent also texted to that person, “the tax preparer just sent me your numbers for this year: Federal \$6096 [and] State \$2245.”

During two interviews with OGE staff, Respondent admitted to providing income tax return preparation assistance to OSSE employees by passing along information between the employee and tax preparer, while on duty and using government resources. Respondent contends that he was only providing helpful information to persons who asked for his assistance. Respondent argues that he did not receive any compensation for his involvement. Respondent states, which was also confirmed by some of the employees, that he did not solicit a tax preparing business to the employees at any point in time and that all of the employees in question approached him inquiring about information of the tax preparer to utilize his services.

II. NATURE OF MISCONDUCT

Respondent violated at least two sections of the District Personnel Manual (“DPM”), as set forth below:

- ❖ **One:** Chapter 18, § 1807.1(b), which provides: employees shall not use “government time or resources for other than official business, or government approved or sponsored activities;”
- ❖ **Two:** Chapter 18, § 1808.1, which states: “[a]n employee has a duty to protect and conserve government property and shall not use such property, or allow its use, for other than authorized purposes.”

III. TERMS OF THE NEGOTIATED SETTLEMENT



Respondent acknowledges that his conduct violated the District Code of Conduct. Respondent agrees to pay a total fine in the amount of **\$2,000.00** to resolve his violations of the District Code of Conduct, in accordance with the following terms and conditions:

1. Respondent agrees to authorize the District of Columbia Office of Pay and Retirement Services ("OPRS") and/or the D.C. Treasurer to deduct payments of **\$200.00** from his bi-weekly paycheck and transfer such funds to the Board of Ethics and Government Accountability, commencing immediately and continuing until the entire fine amount is fully satisfied;
2. Respondent agrees that, in the event that his employment with the District government ceases prior to complete satisfaction of the fine amount, any outstanding fine amount will be satisfied by deduction in full from Respondent's final paycheck and/or any payment to the Respondent for unused annual leave;
3. Respondent agrees that, whether or not OPRS completes these deductions as described herein, Respondent is nonetheless solely responsible for satisfying the fine amount. Payment will be accepted by certified check or money order, made out to the D.C. Treasurer, delivered to and received by OGE at 441 4th Street NW, Suite 830 South, Washington, DC 20001;
4. All outstanding amounts not paid against the fine will be due in full on or before February 1, 2019 (the "Maturity Date").

Respondent promises not to engage in such conduct in the future, and further agrees to attend an ethics training offered by OGE within six months of the full execution of this Negotiated Disposition Agreement, or no later than March 6, 2019.

In consideration of Respondent's acknowledgement and agreement, OGE will seek no further remedy and will take no further action related to the above misconduct.

Respondent acknowledges and understands that this Negotiated Disposition is only binding upon himself and OGE in resolution of his alleged violations of the Code of Conduct that applies to District government employees and public officials. Respondent acknowledges and understands that OGE does not have the authority to bind any other District or federal government agency to this agreement, including but not limited to the Metropolitan Police Department, the District of Columbia Office of the Attorney General ("OAG"), the Internal Revenue Service ("IRS"), the United States Attorney for the District of Columbia ("USAO") or the United States Department of Justice ("DOJ"). Respondent further acknowledges and understands that notwithstanding the terms of this Negotiated Disposition, his conduct described hereinabove may also subject him to the imposition of civil and/or criminal penalties by other government agencies who are not bound by the terms of this agreement whatsoever.


A  Hayes
Respondent


9/5/18
Date


Respondent also understands that if he fails to pay the \$2,000.00 fine in accordance with the terms set forth hereinabove, pursuant to Section 221 (a)(5)(A) of the Ethics Act (D.C. Official Code § 1-1162.21 (a)(5)(A)), the Ethics Board may file a petition in the Superior Court of the

District of Columbia for enforcement of this settlement and the accompanying Board Order assessing the fine. Respondent agrees that this Negotiated Disposition is not just an admission of wrongdoing, but constitutes various factual admissions by him that may be used in any subsequent enforcement or judicial proceeding that may result from his failure to comply with this agreement.


Respondent further understands that if he fails to adhere to this agreement, the Office may instead, at its sole option, recommend that the Ethics Board nullify this settlement and hold an open and adversarial hearing on this matter, after which the Board may impose sanctions up to the full statutory amount (\$5,000 per violation) as provided in the Ethics Act for each violation.² Because the Office is, at this time, foregoing requesting that the Ethics Board hold an open and adversarial hearing on this matter, Respondent agrees to waive any statute of limitation defenses should the Board decide to proceed in that manner as a result of Respondent's breach of this agreement.

The mutual promises outlined herein constitute the entire agreement in this case. Failure to adhere to any provision of this agreement is a breach rendering the entire agreement void. By our signatures, we agree to the terms outlined herein.



A  Hayes
Respondent

9/5/18
Date

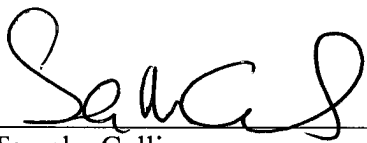


Brentton Wolfingbarger
Director of Government Ethics

9-6-2018
Date

This agreement shall not be deemed effective unless and until it is approved by the Board of Ethics and Government Accountability, as demonstrated by the signature of the Chairman below.

APPROVED:



Tameka Collier
Chairperson, Board of Ethics and Government Accountability

9-6-2018
Date

² Section 221 (a)(1) (D.C. Official Code § 1-1162.21 (a)(1)).