

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



Office of Government Ethics

VIA EMAIL

March 9, 2017

Rob Hawkins
Of Counsel
Nelson Mullins Riley & Scarborough LLP
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Washington, DC 20001
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Dear Mr. Hawkins:

This responds to your request of February 9, 2017, for guidance regarding the post-employment restrictions that will apply to you, now that you have left District government service. Based on a discussion we had on February 10, and follow-up emails in which you provided additional information, I can provide the following advice.

You state that you served as Deputy General Counsel and Special Counsel in the Executive Office of the Mayor ("EOM"), from January 2015 to June 2016, then as Communications Director and Deputy Chief of Staff from June 2016 through January 20, 2017. As Deputy Chief of Staff and Communications Director you oversaw executive communications staff, communications functions and products for the Mayor, including message development, speechwriting, press engagement, and social media. You also assisted with shaping strategy for the Mayor's public relations and provided policy advice on a variety of communications and legislative initiatives. You left your position as Communications Director and Deputy Chief of Staff in the Executive Office of the Mayor ("EOM") to work for a law firm, and your last day of work was Friday, January 20, 2017.

Post-Employment Restrictions

Although there are several post-employment restrictions that apply to District employees, the primary one that concerns you is the One-Year Cooling-Off Period. The two-year official responsibility and permanent prohibitions would not be of particular concern unless you participated personally and substantially in particular matters involving specific parties during your tenure.¹ You have represented to us that you do not recall working on any such matters.

¹ The discussion of post-employment restrictions that follows is based on 6B DCMR Chapter 18, which became effective on April 11, 2014 (61 DCR 3799).

One-Year Cooling-Off Period

A former District employee is prohibited, for one year, from having any transactions with the employee's agency that are **intended to influence the agency** in connection with any particular government matter pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party.²

This restriction is "intended to prohibit the possible use of personal influence based on past government affiliations to facilitate the transaction of business," which explains why the one-year prohibition is sometimes referred to as a cooling-off period. This prohibition applies regardless of whether the particular government matter involves a specific party and regardless of whether you participated in or had responsibility for that particular matter when you were employed in the EOM. The prohibition also applies whether the former employee represents him or herself or someone else, either by appearance before the former agency or through communications with the agency.³

While the foregoing restrictions may appear to be clear enough, what, for you, as the former Deputy General Counsel, Communications Director and Deputy Chief of Staff, constitutes your former agency is not. We previously opined on the meaning of "agency" for purposes of former EOM employees in BEGA Advisory Opinion No. 1229-001, dated September 25, 2014. In that opinion, we noted that the determination of an employee's former "agency" was difficult for former EOM employees because the District Personnel Manual ("DPM") does not define the EOM, and, as an operational matter, each Mayor configures the EOM to suit his or her particular official needs.

We looked to section 3(3) of the Government Reorganization Procedures Act of 1981 ("Reorganization Procedures Act"), effective October 17, 1981 (D.C. Law 4-42; D.C. Official Code § 1-315.02(3)), where the statutory definition of the term "Executive Office of the Mayor" means "those offices or agencies expressly established to provide managerial, budgetary, personnel, secretarial, planning, informational, and special assistance to the Mayor in carrying out the Mayor's administrative functions in the management of the District government."⁴

We previously verified that the only time a Mayor submits an organization chart to the Council is as part of the annual budget proposal and that this would be the appropriate place to determine the organizational components of the EOM for post-employment purposes. The organization

² 6B DCMR § 1811.10.

³ 6B DCMR § 1811.12.

⁴ Section 3(1) of the Reorganization Procedures Act (D.C. Official Code § 1-315.02(1)) expressly excludes the EOM from the definition of the term "agency." That exclusion, however, is understandable for purposes of the Reorganization Procedures Act itself. Section 4 of the Act (D.C. Official Code § 1-315.03) defines reorganization generally as an "action which results in the transfer, consolidation, abolition, or authorization with respect to functions and hierarchy, between or among agencies, and which affects the structure or structures thereof." (Emphasis added.) On the other hand, the Mayor's configuring (or reconfiguring) agencies and offices within the EOM represents a realignment, rather than a reorganization accomplished pursuant to the Reorganization Procedures Act. See Mayor's Order 2009-90 (dated June 2, 2009) (explaining that the Order "applies to realignments within a District government department or agency that affect the internal structure or functions of the department or agency but do not constitute a reorganization") (emphasis added).

chart for Fiscal Year 2017, can be accessed at: <https://tinyurl.com/zrbbyjx>,⁵ and it lists the Office of the Chief of Staff and the Office of Communications as two of several offices comprising the EOM.⁶

Based on the foregoing, for purposes of the one-year post-employment cooling off period, your former agency is the EOM. More specifically, your former agency is the Office of the Mayor and the agencies and offices designated by the Mayor, including the Office of the Chief of Staff and the Office of Communications, as comprising the EOM in the Fiscal Year 2017 budget submission to the Council. Neither the subordinate agencies of the District, the offices of the various Deputy Mayors, nor the Office of the City Administrator fall within the definition. That said, you are prohibited for one year from January 20, 2017, from having any transactions with the EOM that are intended to influence the agency on any particular government matter pending before it or in which it has a direct and substantial interest.

Other Post-Employment Restrictions

A former District government employee shall be prohibited for two (2) years after terminating District government employment from knowingly acting as an attorney, agent, or representative in any formal or informal matter before any District agency if he or she previously had official responsibility for that matter.⁷ Official responsibility is generally defined to mean “the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, personally or through subordinates, to approve, disapprove, or otherwise direct governmental action.”⁸ You have represented to us that during your tenure you did not have official responsibility over any particular matter, take any actions affecting such matters, and none were pending when you left government service.

Finally, a former District government employee is also “permanently prohibited from knowingly acting as an attorney, agent, or representative in any formal or informal **appearance** before an agency as to a particular matter involving a specific party if the employee participated personally

⁵ FY 2017 Proposed Budget and Financial Plan (Congressional Submission) at A-16.

⁶ The other offices listed in the chart and elsewhere in the Fiscal Year 2017 budget materials as making up the EOM include the, Office of the Chief of Staff, Office of the General Counsel, Office of Partnerships and Grants, Office of Communications, Mayor’s Correspondence Unit, Office of Talent and Appointments, Office of Scheduling and Advance, Office of Community Affairs, Clean City Office, Office of Community Relations and Services, Youth Advisory Council, ServeDC, Office of African Affairs, Office of Asian and Pacific Islander Affairs, Office of LGBTQ Affairs, Office of Latino Affairs, Office of Religious Affairs, Office of Veteran Affairs, Office of Returning Citizens Affairs, the Office on Women’s Policy and Initiatives. Note that the Office of the Senior Advisor (OSA), which includes the Office of Policy and Legislative Affairs, were listed as being a part of EOM in the FY16 budget. However, these offices were removed from EOM in the FY17 budget. Under 5 CFR §2641.204 (g)(2), with which District employees must comply, an employee’s former agency is defined, in pertinent part, to “ordinarily be considered to be the whole of any larger agency of which his former agency was a part on the date he terminated senior service.” (Emphasis added.)

⁷ 6B DCMR § 1811.6, provides that “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.”

⁸ 6B DCMR § 1899.1.

and substantially in that matter as a government employee.”⁹ You have similarly represented that you did not handle these types of matters during your tenure.¹⁰

In conclusion, for one year after leaving the District government, you are prohibited from having any transactions with the Executive Office of the Mayor that are intended to influence the agency in connection with any particular government matter pending before the agency or in which it has a direct and substantial interest. This includes in-person appearances, phone calls, emails or signing your name on letters or correspondence intended to influence any employee of the EOM. Further, to the extent you may have participated personally and substantially with particular government matters involving specific parties, you may not make appearances or communications with respect to those matters for the life of the matter.

In the event you may wish to nonetheless engage in otherwise restricted conduct, please be aware that a former District government employee may be exempted from the restrictions on post-employment practices pursuant to 6B DCMR § 1811.15, if the Mayor (or designee), in consultation with the federal government’s Director of the Office of Government Ethics, executes a certification published in the D.C. Register. The certification must state:

1. That the former government employee has outstanding qualifications in a scientific, technological, or other technical discipline;
2. Is acting with respect to a particular matter which requires such qualifications; and
3. The interest of the District of Columbia would be served by such former government employee’s participation.

This office is available to assist you should you decide to pursue an exemption.

Conclusion

This advice is provided to you pursuant to section 219 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 § 1-1162.19), which empowers me to provide such guidance. As a result, no enforcement action for a violation of the District’s Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

⁹ 6B DCMR § 1811.3.

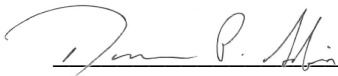
¹⁰ Although the term "particular government matter" is not defined in 6B DCMR § 1899 .1, matters such as contracts, leases, and other projects involving specific parties are clearly included in it. Ordinarily, matters of general rulemaking, policymaking, and legislation are not particular matters. Your description of your employment duties and responsibilities while at EOM include participating in legislative initiatives. In some limited situations, legislative matters may be so narrowly focused on discrete and identifiable classes of persons, even if they do not involve specific parties, that they may nonetheless meet the prohibition. See, Memorandum from Robert I. Cusick, Dir., U.S. Office of Government Ethics, to Designated Agency Ethics Officials on "Particular Matter Involving Specific Parties," "Particular Matter," and "Matter," at 8 (DO-06-29; Oct. 4, 2006) ("Essentially, the term [particular matter] covers two categories of matters: (1) those that involve specific parties ... , and (2) those that do not involve specific parties but at least focus on the interests of a discrete and identifiable class of persons, such as a particular industry or profession."). On the other hand, "consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons" does not fall within this category of matters. Id. at 9.

Letter to Rob Hawkins

You are also advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that your identity will not be disclosed unless you consent to such disclosure in writing. We encourage individuals to so consent in the interest of greater government transparency. Please, then, let me know your wishes about disclosure.

Pursuant to section 219(c)(1) of the Ethics Act (D.C. Official Code § 1-1162.19 (c)(1)), you may appeal this determination to the Ethics Board. If you wish to do so, please send a written appeal to: Board of Ethics and Government Accountability, Attn: John Grimaldi, Esq., 441 4th Street, N.W. Suite 830 South, Washington, D.C. 20001, or email to bega@dc.gov.

Sincerely,



DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

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