

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

Office of Government Ethics



In Re: Jack Evans  
Case No. 18-0006-P

**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, effective April 27, 2012, D.C. Law 19-124, D.C. Code § 1-1161.01 et seq., (“Ethics Act”), the Office of Government Ethics (the “Office” or “OGE”) hereby enters into this public negotiated settlement agreement with the Respondent, Jack Evans. Respondent agrees that the resulting disposition is a settlement of the above-titled action, detailed as follows:

**FINDINGS OF FACT**

Respondent served as the representative for Ward 2 on the D.C. Council from May 1991 until his resignation in January 2020. As a Councilmember, Respondent was both a “public official” and an “employee” of the District of Columbia government required to comply with the District’s ethics laws, specifically including the Council of the District of Columbia Code of Official Conduct (“Council Code of Conduct”).

In January of 2018, OGE initiated an investigation into allegations that the Respondent’s outside employment activities conflicted with his official position and that he used his official position for private gain. The agency’s fact-finding efforts were comprehensive and included reviewing the Respondent’s financial disclosure filings, issuing document requests and subpoenas, reviewing documents produced by the Council’s Office of General Counsel (“OGC”) and the Respondent, and conducting witness interviews. In August of 2018, at the request of District law enforcement agencies, and consistent with BEGA practice, OGE deferred its inquiry into the Respondent’s alleged misconduct while a criminal matter was pursued.

In July of 2019, in Resolution 23-175, the Council commissioned a private law firm, O’Melveny & Myers LLP, to address whether the Respondent’s outside activities relating to NSE Consulting LLC and the clients of NSE Consulting (“NSE”), violated the Council Code of Conduct and Council Rules between 2014 and 2019. In the course of its investigation on behalf of the Council, the law firm reviewed over 60,000 documents (many of which had already been

obtained and reviewed by OGE), interviewed 22 witnesses, including four separate interviews with the Respondent, and consulted with this agency and the Council's OGC.<sup>1</sup>

On November 4, 2019, the law firm presented its findings to the Council in a 97-page "Report of Investigation of Councilmember Jack Evans Pursuant to July 9, 2019 D.C. Council Resolution 23-175, dated November 4, 2019" ("the Report").<sup>2</sup> On November 5, 2019, Respondent, through counsel, submitted a written response to the Council to address the Report's findings and Respondent requested that his response to the Report be made available to the public.<sup>3</sup>

OGE carefully reviewed the Report and the underlying exhibits, which includes documents and interview transcripts, and also reviewed Respondent's response to the Report.<sup>4</sup> The Report provided an extensive and detailed recitation of the facts related to Respondent's activities in connection with his consulting firm, NSE Consulting, and its clients that is well-supported. While Respondent's response disagrees with the Report's ethics analyses, it does not contest the description of the underlying facts regarding his conduct.

Considering the extensive and thorough nature of the Report's underlying investigation, the extensive media coverage and publicly available information relating to Respondent's activities, and the information that OGE gathered in the course of its initial inquiry, OGE finds the Report's description of the Respondent's activities in connection with his employment at a law firm and his work for NSE Consulting to be credible and reliable, and adopts the factual findings contained in the Report.<sup>5</sup>

Based on the totality of the evidence, OGE relies on the following factual determinations regarding Respondent's outside employment and consulting activities in deciding whether the Respondent's conduct violated the Code of Conduct.

#### **Employment with Manatt, Phelps & Phillips, LLP**

Respondent joined Manatt, Phelps & Phillips, LLP ("Manatt") on October 5, 2015 as a Counsel in the firm's Government Division. Respondent received a salary of \$60,000 while at Manatt. In the spring of 2016, Respondent sought ethics advice regarding when he would be required to recuse from matters given his outside employment with Manatt from both OGC and BEGA.

In response to his inquiries, he was advised that under Rule 1 of the Council's Code of Conduct, he could not personally and substantially participate in a particular matter before the Council that is likely to have a direct and predictable effect on the financial interests of his outside employer. He was also advised specifically that because he was an employee of the firm, Manatt's financial

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<sup>1</sup> See Report of Investigation of Councilmember Jack Evans Pursuant to July 9, 2019 D.C. Council Resolution 23-175, dated November 4, 2019, at p. 5-8.

<sup>2</sup> The Report and the underlying supporting documents and interview transcripts can be viewed on the Council's website. [https://dccouncil.us/wp-content/uploads/2019/11/Final-Report-of-Investigation-of-Councilmember-Jack-Evans-Nov.-4-2019\\_redacted.pdf](https://dccouncil.us/wp-content/uploads/2019/11/Final-Report-of-Investigation-of-Councilmember-Jack-Evans-Nov.-4-2019_redacted.pdf)

<sup>3</sup> [https://dccouncil.us/wp-content/uploads/2019/11/Evans\\_Response\\_to\\_OMelveny-Myers.pdf](https://dccouncil.us/wp-content/uploads/2019/11/Evans_Response_to_OMelveny-Myers.pdf)

<sup>4</sup> The comprehensive nature of the Report's factual findings and absence of meaningful factual disputes makes it unnecessary to duplicate the law firm's investigative efforts. Moreover, OGE remains vigilant of its responsibility not to jeopardize any pending criminal investigation.

<sup>5</sup> Although OGE adopts the factual findings of the Report, it makes an independent assessment as to whether the Respondent's conduct violated the Code of Conduct.



interest were imputed to him. Moreover, he was advised that if he knew that Manatt was providing services for a client or otherwise representing a client in a particular matter – even if he was not working in a capacity relating to the client – that he could not participate in that particular matter. Lastly, he was advised that should he find himself presented with a conflict of interest, under Council Rule 1(c)(1), that he should make full disclosure of the financial interest by preparing a written statement describing the matter and the nature of the potential conflict of interest and deliver the statement to the Council Chairman.

The evidence also demonstrates that the Respondent took steps to follow the ethics guidance that he was provided by informing his employees of his ethical obligations and directed them to assist him in ensuring that he recused himself from particular matters involving Manatt's clients. For example, on April 6, 2016, his Chief of Staff emailed the firm and relayed the General Counsel's guidance that the Respondent would need to recuse himself from matters before the Council involving clients of Manatt.

The evidence in this matter also establishes that between January 14, 2015, when he first submitted his business plan and resume to the firm, and October 2015, after starting with the firm, the Respondent personally and substantially participated in particular matters that involved Manatt's clients, and thus, could have a direct and predictable effect on Manatt's financial interest. The Respondent did not recuse himself from these matters nor did he notify the Council Chair of his potential financial conflicts.

#### **NSE Consulting, LLC Consulting Services.**

In July of 2016, the Respondent created a consulting business, NSE Consulting, LLC ("NSE"). The Respondent's intent was to provide services similar to those that he had provided while employed at a law firm, but through his own consulting business. The Respondent was the sole proprietor of NSE although his Council staff occasionally performed administrative tasks for NSE. NSE's clients retained the Respondent to be on available on short notice if he could be helpful and for advisory services such as providing "advice regarding the Washington, D.C. business community, with a particular focus on economic trends and general policy initiatives in Washington, D.C. and the surrounding jurisdictions."

NSE's clients were mostly local businesses whose activities were generally subject to regulation by the District government and Council, or who had historical or future interests in issues before the Council, regulatory agencies, or the District government. Until its termination in July 2019, NSE entered into service agreements with at least eight entities and accepted almost \$400,000 in client payments. NSE's clients included, but were not limited to, Willco, the Forge Company, EastBanc Inc., EastBanc Technologies, Squash on Fire, EagleBank. RDP Management, Inc., and Fischer Holdings. Evans deposited NSE client payments into NSE's business banking account, and then would transfer the funds into his personal checking account.

As with his employment with Manatt, the Respondent sought ethics guidance on his consulting business from the Council's OGC. On September 21, 2016, the Respondent requested a formal advisory opinion on his outside employment. Given that he had recently started the entity, his request did not mention any specific clients, but indicated that he was putting the General



Counsel on notice that he would be providing similar services as he did while employed at law firms. He also stated that he was fully aware that BEGA's and the Council's ethical prohibitions continued to apply to him and would apply to his work through NSE as well. In a response dated September 22, 2016, OGC confirmed that the ethics rules applied to the Respondent's outside consulting activities and advised that if the Respondent had "questions about specific representations as your practice evolves, please feel free to discuss such matters with us on a case by case basis."

The Respondent did not seek guidance from BEGA regarding NSE consulting. In addition, there is no evidence that the Respondent ever sought additional guidance with respect to any specific NSE client or matter from OGC or BEGA, nor did he disclose the identity of his clients to Council staff, as it had been his practice to keep the identify of his clients confidential.<sup>6</sup>

The Report presents credible evidence that details the Respondent's retention of individual NSE clients and several specific instances in which the Respondent participated in particular matters that could have had a direct and predictable effect on his clients' financial interests. Respondent did not recuse himself from any these matters nor did he notify the Council Chair of any potential financial conflicts.

### **NATURE OF VIOLATIONS**

**The Respondent's conduct as described above violated the following provisions of the District's Code of Conduct:**

- ❖ **Count One:** D.C. Official Code § 1-1161.01(7)(A), the Council Code of Conduct Rule I(a), which specifically states in relevant part that:<sup>7</sup>

No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee.

Respondent failed to recognize that his official actions in the particular matters described below could have a direct and predictable effect on the financial interests of his employer or consulting clients in violation of the Council Code of Conduct. Respondent also did not disclose his client relationships or seek approval of, or recuse himself from, his involvement in the particular matters described below.

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<sup>6</sup> Although the Report emphasizes that the Respondent did not identify his clients to his staff, we do not conclude that this decision was improper. Official staff should be not be closely involved in a Member's outside business activities to eliminate any appearance of improper motivation or preferential treatment in carrying out their official duties. The Respondent is responsible for ensuring that his conduct does not run afoul of the Code of Conduct and he is responsible for putting safeguards in place to prevent inadvertent conflict, but it is not a Member's staff's responsibility to monitor outside private business activity.

<sup>7</sup> Rule I of the Council Code of Conduct is modeled on D.C. Official Code § 1-1162.23.



- In 2015, Respondent took official actions to influence or attempt to influence support for the Pepco-Exelon merger while negotiating for employment (and later after gaining employment) with the law firm Manatt, who actively represented Pepco and Exelon in connection with the merger.
- In November and December 2016, while Squash on Fire and EastBanc, Inc. were NSE clients, Evans twice voted in favor of the West End Parcels Development Omnibus Amendment Act of 2016, which included funds to maintain buildings associated with, or nearby to, the Squash on Fire facility.
- In early 2017, while EastBanc Technologies was an NSE client, Evans personally and through his staff, arranged a meeting between EastBanc Technologies and senior officials at the Office of the Chief Technology Officer where they could pitch software initiatives that might lead to city contracts.
- In early 2017, while EastBanc was an NSE client, Evans personally and through his staff, arranged a meeting between the President of EastBanc and another Councilmember to discuss a potential development project.
- In 2017, while Willco was an NSE client, Evans introduced the Relieve High Unemployment Tax Incentives Act of 2017, which included financial incentives for film, television, and digital media production facilities that Willco was actively developing; Evans and his staff arranged a meeting for Willco's President and CEO, and a Councilmember to discuss Willco's proposal for a public-private partnership for a sound studio facility; Evans and his staff provided assistance to Willco in trying to influence the District Department of Transportation to stop work on a curb installation that would prevent Willco from gaining access to a public alley; Evans spoke with a senior official in the Mayor's office to determine the validity of a rumor about the government not renewing a lease on a Willco property; and, Evans and his staff provided assistance to Willco in obtaining an expedited plumbing permit for a Willco development project.
- In May and June 2017, at a time when the Forge Company (a holding company for Colonial Parking, Inc.) was an NSE client, Evans took official actions through the Finance and Revenue Committee and through votes on the Fiscal Year 2018 Budget Support Act of 2017 to preserve the commercial lot parking tax rate at 18 percent.

❖ **Count Two:** D.C. Official Code § 1-1161.01(7)(A), the Council Code of Conduct Rule II(a), which specifically states in relevant part that:<sup>8</sup>

No employee shall engage in outside employment or private activity that conflicts or would appear to conflict with the fair, impartial, and objective performance of the employee's official duties and responsibilities or with the efficient operation of the Council.

Since its inception in 2016, NSE had clients with financial interests in both legislation and contracts with the District government. Respondent failed to disclose these client relationships, and thus, ignored the appearance concerns inherent when engaging in Council business that could be perceived as being influenced by his outside consulting. Respondent also failed to recognize that the broad nature of his advisory consulting engagements (which merely required him to be available) appeared to be dependent upon the prestige of office that he had established

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<sup>8</sup> Rule II (a) (1) of the Council Code of Conduct is modeled on D.C. Official Code § 1-618.02.



through decades of public service as a District Councilmember. As a result of the Respondent's conduct, District residents have ample reason to question whether he performed his official duties in a fair, impartial, and objective manner.

**None of the above-referenced actions were authorized by the District of Columbia.**

### **Mitigating Factors**

The Respondent identified the following factors as mitigating circumstances to be considered by OGE in deciding upon an appropriate remedy in this matter:

- Respondent asserts that he believed his involvement in the Pepco-Exelon merger was not subject to the Code because he would not receive any benefit from the prospective merger as an employee, rather than a partner, of the law firm, and that he believed albeit mistakenly, that the conflict of interest provision did not apply.
- Respondent asserts that he believed that providing ongoing constituent services to clients did not implicate his consulting contracts, which only required him to provide general business consulting advice on an as needed basis. He believed, and at all times intended, that ongoing constituent services were separate and apart from the consulting arrangement. He now recognizes that his misunderstanding should have been clarified through seeking ethics advice.
- Respondent asserts that he believed that his ongoing long-time support for particular legislative or executive issues, including parking tax issues and real estate development issues in particular, where his action benefitted the general public, or an entire industry, rather than a particular person or entity, did not trigger the Code's conflict-of-interest provisions.
- Respondent asserts that the violations described above were due to his misunderstandings of the rules, rather than any intentional disregard for them, and that they could have been avoided had he sought advice more regularly than he did from the Council's General Counsel or OGE. It is important to note that, absent the outside employment arrangements, some or all of these actions were squarely within his legitimate role as Councilmember and consistent with his long held legislative platform and positions.
- Respondent asserts that he believed that where his action benefitted the general public, or an entire industry, rather than a particular person or entity, the Code's conflict-of-interest provisions were not triggered. He also believed that having a financial interest in a matter before the Council was not problematic under the ethics rules unless the Councilmember altered his position after acquiring the financial interest.

Respondent has been cooperative with OGE and has publicly accepted responsibility for his actions. In addition, as the facts demonstrate, Respondent did seek ethics guidance on his outside activities; however, he never sought specific guidance as directed by the Council's OGC on an ad-hoc basis as would be needed when providing services to multiple entities. In his public response to the Report, the Respondent expressed regret for not submitting each of his client relationships to OGC for further review. His response to the Report also acknowledged that he could have made more complete disclosures about his own consulting clients. OGE assesses the mitigating factors offered by the Respondent along with consideration of the



Respondent's extensive tenure on the Council, legal training, original support for the Ethics Act, and his obligation to take "full responsibility for understanding and complying with the letter and spirit of all laws and regulations governing standards of conduct for District public officials and employees."<sup>9</sup> OGE has taken all of these factors into consideration and given them such weight as OGE believed is warranted:

By agreeing to settle this matter via a negotiated disposition, OGE will avoid expending significant time and resources on a contested hearing regarding the conduct described above, which will allow the Office to focus its finite resources on other investigations.

### **TERMS OF THE NEGOTIATED SETTLEMENT**

Based on the above described factual determinations, OGE concludes that Respondent's conduct violated the Code of Conduct based on his mistaken understanding of Code provisions regarding conflicts of interest. Respondent failed to seek specific ethics advice as guided, failed to maintain a high level of integrity in connection with the performance of his official duties, and adversely affected the confidence of the public in the integrity of the District government. Respondent acknowledges these findings and accordingly agrees to pay a total fine of \$35,000 by June 30, 2021. Respondent further promises not to engage in such conduct in the future. Respondent attended an ethics training conducted by OGE in October of 2019, and agrees to pay an initial payment of \$2,000 of the \$35,000 by June 30, 2020.

All payments will be submitted by certified check or money order, made out to the D.C. Treasurer, and delivered to and received by OGE at 441 4<sup>th</sup> Street N.W., Suite 830 South, Washington D.C. 20001.

**Respondent acknowledges and understands that this Negotiated Disposition is only binding upon himself and OGE in resolution of the specific violations described hereinabove of the Council Code of Conduct. 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 Federal Bureau of Investigations, the District of Columbia Office of the Attorney General ("OAG"), 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 Settlement, 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.**

Respondent understands that if he fails to pay the full \$35,000.00 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 Negotiated Disposition and the accompanying Board Order assessing the fine. Respondent agrees that this Negotiated Disposition constitutes

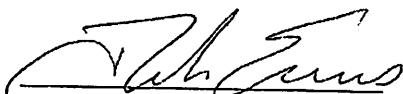
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<sup>9</sup> Council Rules of Organization and Procedure, Sessions 21 and 22, Section 202(b).

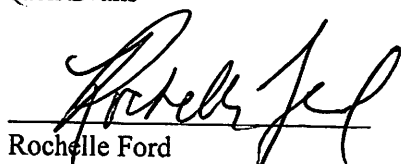
various facts that may be used in any subsequent enforcement or judicial proceeding that may result from his failure to comply with this agreement. Respondent also understands that, pursuant to section 217 of the Ethics Act (D.C. Official Code § 1-1162.17), he has the right to appeal any order or fine made by the Ethics Board. Nonetheless, the Respondent knowingly and willingly waives his right to appeal the accompanying Board Order assessing the \$35,000.00 fine in this matter in exchange for the concessions made by this Office in this Negotiated Disposition.

Respondent further understands that if he fails to adhere to this agreement, OGE 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 Ethics Board may impose sanctions up to the full statutory amount as provided in the Ethics Act for each violation.<sup>10</sup> Because the Office is, at this time, foregoing requesting that the Ethics Board hold an open and adversarial hearing on this matter, Respondent waives any statute of limitation defenses should the Ethics Board decide to proceed in that matter 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 therein.

  
Jack Evans


Date 5/21/20

  
Rochelle Ford  
Acting Director of Government Ethics

Date 5/22/20

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 Chairperson below.

APPROVED:

  
Norma B. Hutcheson  
Chair, Board of Ethics and Government Accountability

Date 5/22/20

<sup>10</sup> Section 221(a)(1) (D.C. Official Code § 1-1162.21(a)(1)).