

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



Office of Government Ethics



Wednesday, May 3, 2023



**ADVISORY OPINION**

Pursuant to D.C. Official Code § 1-1162.19(a-1)(1), the Director of Government Ethics issues this opinion, *sua sponte*, to provide guidance on when a recusal is warranted and how employees should properly recuse themselves to avoid violating the ethics rules.

**A. What is recusal?**

The term “recuse” means to refrain from participation in an official act.<sup>1</sup> In order to achieve proper recusal, an employee must: (1) recognize the conflict of interest; (2) remove themselves from the matter by making full disclosure of the conflict and submitting a written statement describing the matter and the nature of the potential conflict of interest to their superiors and BEGA; and (3) take no action in the ethically problematic matter.<sup>2</sup> In the case of a Council member the written statement should be submitted to the Council Chairman.<sup>3</sup> For other elected officials the written statement should be submitted to BEGA.<sup>4</sup>

**B. When is recusal required?**

Generally, an employee is required to recuse themselves when an employee’s personal or financial interests may impact the performance of their official duties for the District; for example, when issues such as nepotism and financial conflicts of interest arise. In these circumstances, recusal is expressly required by the ethics rules to avoid violating the Code of Conduct. Recusal may also be necessary to avoid general conflicts of interests, such as situations where an employee’s conduct appears to violate an ethics rule or a situation that would cause a reasonable person to question the employee’s integrity.

Employees are prohibited from participating personally and substantially or attempting 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 their financial interests or the financial interests of a person closely affiliated with the employee.<sup>5</sup> The phrase “person closely affiliated with the employee” means a spouse, dependent child, general partner, a member of the employee’s household, or an affiliated organization,<sup>6</sup> including a person with whom the employee is negotiating or has an

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<sup>1</sup> U.S. Office of Government Ethics Memorandum dated April 26, 1999, from Stephen D. Potts, Director, to Designated Agency Ethics Officials Regarding Recusal Obligation and Screening Arrangements (June 1, 2004).

<sup>2</sup> D.C. Official Code § 1-1162.23(c)(2).

<sup>3</sup> *Id.* at § 1-1162.23(c)(1).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at § 1-1162.23(a).

<sup>6</sup> D.C. Official Code § 1-1161.01(43).

arrangement concerning prospective employment.<sup>7</sup> Adherence to this statute is accomplished by recusal from the particular matter.

Employees are prohibited from seeking or negotiating for employment that conflicts with their official government duties and responsibilities.<sup>8</sup> If there is there a possible conflict, and an employee has interest in employment with a person or entity whose financial interests maybe affected by the performance of his or her official duties, the employee must recuse from participating in any matters involving that person or entity before beginning the process of seeking employment.<sup>9</sup>

When an agency contemplates making a hiring decision concerning a relative of an employee within the same agency, the employee is prohibited from participating in the hiring decision. The employee must file a written recusal, which shall be included in the relative's official personnel file along with the subject personnel action.<sup>10</sup> A recusal is also necessary to avoid violating the prohibition on providing preferential treatment to any organization or individual, as well as to avoid a conflict concerning an outside activity<sup>11</sup> and the appearance of an ethics violation.

The Ethics Act requires that certain District government employees make annual disclosures regarding their personal financial interests.<sup>12</sup> If the employee's supervisor believes that the disclosures submitted by the employee identify financial interests or outside activities that pose a conflict of interest or the appearance of a conflict of interest, the supervisor must reassign the job duties that pose a conflict<sup>13</sup> and the employee must submit a written recusal regarding the matter<sup>14</sup>. Recusal is a useful tool that should be used when possible to prevent an employee from committing an ethics violation. Recusal, however, is not the proper solution when it would cause an employee to become ineffective in their District government work because they would be required to recuse constantly or recuse from a large portion of their work duties.

### ***C. What should the written recusal statement include?***

A written statement should include the employee's name and job title, a full disclosure of the employee's financial interests or the ethical conflict, and a statement of recusal (the employee explicitly states that they will take no action in the matter). The employee should also request that management or the agency head acknowledge or accept the recusal and create a plan to remove the matter from the employee's work duties. In the case of a nepotism recusal, the employee

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<sup>7</sup> See BEGA Advisory Opinion, Seeking or Negotiating Employment, which discusses the recusal requirement when engaging in seeking or negotiating for employment that violates District Personnel Manual § 1800.3(j) and the Conflicts of Interest Statute.

<sup>8</sup> DPM § 1800.3(j); see also Council Code of Conduct Period 24, Rule II. Outside Activities.

<sup>9</sup> See, supra, footnote 7.

<sup>10</sup> DPM § 1806.6.

<sup>11</sup> See BEGA Advisory Opinion, Outside Employment and Private Representation (explaining that recusal is required when presented with matters that involve an outside employer).

<sup>12</sup> See D.C. Official Code § 1-1162.24 and § 1-1162.25.

<sup>13</sup> D.C. Official Code § 1-1162.23(c)(5); DPM § 1810.28.

<sup>14</sup> DPM § 1810.29.

should request that management acknowledge or accept the recusal, and that the relative is not placed in the employee's chain of command.

**D. What happens after the written statement is submitted?**

Once the employee's supervisor and BEGA receive the written recusal statement it must be reviewed, and acknowledgement of receipt is provided to the employee. The agency should also issue a written notice to the employee stating the steps the agency will take to minimize the potential conflict with the employee's official duties. A copy of the recusal should be made part of the employee's personnel file. If the agency does not agree with the basis for recusal, they should contact BEGA. Ultimately, our office is in the best position to determine whether an ethics issue exists and requires recusal.

For elected officials, the Chairman must read the written statement in the record of the proceedings and excuse the official from votes, deliberations, and other actions on the matter.

After the recusal is in place, the employee or elected official has safe harbor from ethics prosecution. However, that safe harbor is only available if the employee adheres to the terms of the written recusal. If an employee or elected official takes action in the matter they are recused from, their recusal no longer serves as safe harbor and they will be subject to investigation and penalties.

**Illustrative Examples**

**Scenario A**

An employee's spouse owns Garden Grow, Inc, a local business in the District. The employee's agency manages grants and programs specifically geared toward local and small businesses in the District. The employee's spouse has applied for a grant, which is managed by the employee.

What should the employee do?

The employee has a financial conflict of interest because his spouse has a financial interest in a matter under the employee's official responsibility. The employee should recuse himself immediately by filing a written statement and sending it to his direct supervisor and BEGA. Once the written recusal is in place, the employee should act in accordance with the recusal.

**Scenario B**

An employee's first cousin has applied for a position with his agency. As a member of the hiring panel for the position, the employee must review the resumes of all eligible candidates. While reviewing resumes, the employee comes across his cousin's resume.

What should the employee do?

Under the nepotism rule, the employee is prohibited from making a hiring decision regarding his relative for a position within his agency. Much like the first scenario, the employee should recuse himself immediately by filing a written statement and sending it to his direct supervisor and BEGA.

Once the written recusal is in place, the employee should act in accordance with the recusal. The employee should not participate in the hiring process for this position.

**Scenario C**

An employee who conducts alcohol control inspections in Ward 4 is married to the owner of a restaurant group. The employee's spouse owns several restaurants and bars in Ward 4 where the employee is assigned.

**What should the employee do?**

The employee has an actual conflict of interest because he could use official duties in a manner that the employee knows would affect his spouse's financial interests. The scenario also presents a situation in which the employee's ability to remain impartial is in question. Here again, the employee should recuse herself immediately by filing a written statement and sending it to his direct supervisor and BEGA. Once the written recusal is in place, the employee should act in accordance with the recusal. However, in this scenario, the employee would have to continuously recuse or recuse from a large portion of his work since he is assigned to work in the area where his spouse owns several restaurants and bars. Recusal does not remedy this conflict if the recusal would render the employee ineffective in his District government job. The agency should consider reassigning the employee to a different Ward.

**Pursuant to Chapter 3 of the D.C. Municipal Regulations § 5405.7 this proposed advisory opinion shall be published in the District of Columbia Register for a 30 day public-comment period during which time a person may submit information or comment to [bega@dc.gov](mailto:bega@dc.gov).**

Sincerely,

A handwritten signature in black ink, appearing to read 'Ashley', written over a horizontal line.

ASHLEY D. COOKS  
Director of Government Ethics  
Board of Ethics and Government Accountability