

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



Office of Government Ethics

February 1, 2024

Cooperation and Retaliation 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 employees' obligations and protections during ethics investigations. This advisory opinion discusses the obligation of District employees to cooperate with Office of Government Ethics' ("OGE") investigations and the prohibition against retaliating against employees who report unethical conduct and cooperate with investigations.

Considering that the District of Columbia Government enacted the Code of Conduct to deter unethical and unlawful activity that damages the public's trust,¹ that objective would be difficult to achieve if employees simply abstained from participating or were allowed to punish subordinates or coworkers who participated in OGE investigations. The cooperation and retaliation provisions of the Code of Conduct are strictly enforced to effectively address concerns that may arise in OGE's efforts to ensure compliance.

A. Employee Cooperation

Ethics Counselors are often the first employees to accept reports of ethical issues within their agencies, and OGE relies on Ethics Counselors to fulfill their obligation to report those ethics violations. Many Ethics Counselors also serve as general counsels, attorney advisors, or human resource specialists. OGE works with Ethics Counselors within the District's agencies to facilitate OGE's programs, such as financial disclosure, training, advice, and investigative matters.

District Personnel Manual ("DPM") § 1801.1 requires all employees to immediately and directly report credible ethics violations of the Code of Conduct to OGE, the Office of the Inspector General ("OIG"), or both.² When employees fail to report ethical violations that they witness, they are in violation of the Code of Conduct.³ DPM §1801.3 mandates that employees fully cooperate with any investigation, enforcement action, or other official function of OGE. Therefore, employees are required to respond to OGE's request for documents and evidence, as well as requests for interview participation. Should an employee fail to participate in an ethics investigation or fail to provide truthful statements during an investigation, the employee will be subject to civil penalties. In addition,

¹ Council of the District of Columbia, Committee on Government Operations Report, Bill 19-511, the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (December 5, 2011) at pg. 2.

² 6B DCMR § 1801, *et seq.* (hereinafter DPM).

³ *See* DPM §1800.3(k) which also requires that employees report credible ethics violations.

employees are prohibited from interfering with or obstructing any investigation conducted by a District or federal agency.⁴

B. Retaliation

Pursuant to DPM § 1801.4 employees are prohibited from coercing, harassing, or taking retaliatory measures against other employees, including subordinates, who report alleged ethics violations to OGE or OIG in good faith.⁵ If an employee penalizes another for filing a complaint or participating as a witness in an ethics investigation, then the employee is retaliating against the reporting employee. Actions such as harassment, demotion, transfer, the removal of accommodations, the disapproval of leave, and write-ups should not be used as retaliation for reporting an ethics violation or cooperating with an ethics investigation.

Notably, OGE’s retaliation protections only extend to those who are retaliated against because of their cooperation with an ethics investigation or reporting an alleged ethics violation. This is true even if an employee files an ethics complaint with their agency ethics counselor. For instance, if an employee’s outside activity or employment was investigated by OGE, and the employee who reported the potential violation was retaliated against, then OGE could take enforcement action against the employee who engaged in retaliation in this manner. However, if the retaliation complaint arises from some other type of complaint that is filed with another agency, such as a complaint of waste, unprofessional conduct, or discrimination then OGE cannot investigate the retaliation allegations. OGE takes retaliation very seriously.

Example 1

Gerri is an auditor for the Alcoholic Beverage Control Board (“ABC Board”), and his friend owns several nightclubs throughout the District of Columbia. Sometimes Gerri stops by his friend’s nightclubs for a moment while checking for compliance and licensing issues at other nightclubs in the area. Another ABC Auditor, Samuel, sees Gerri at a nightclub which is on his list to audit. Samuel observes Gerri getting a glass of a colorful drink while at the bar. Samuel also notices that Gerri did not pay for the drink. Samuel observes Gerri shake hands with the owner and then leave the nightclub.

What should Samuel do?

In this instance, Samuel noticed Gerri take a free drink from his friend, who is a prohibited source under the gift rules section of the Code of Conduct, and he believes that the interaction Gerri and his friend is potentially a violation of the Code of Conduct. Samuel is required to report his concerns to OGE.

Example 2

Gerri is well liked within the office. He was recently questioned by OGE investigators concerning his relationship with the nightclub owner. Gerri explained that the owner is his close friend who he sometimes partners with on events or other business ventures, and that because of his relationship with the owner he is recused from matters concerning the

⁴ DPM § 1801.2.

⁵ DPM § 1801.4.

owner's business. He knows that only Samuel could have seen him on the night in question. Gerri is angry that he had to deal with an OGE investigation concerning this incident. He expresses this anger with his supervisor, Manning, who is also annoyed that Samuel would tell BEGA about this incident and not him first. Manning adds more compliance visits to Samuel's caseload and requires that he submit reports of the compliance visits much sooner than usual. Samuel now has more work, which must be reported sooner. He ultimately falls behind on his caseload. His quality of work suffers, and he is faced with corrective action. None of the other auditors are required to work under such conditions.

What should Samuel do?

Taking measures to punish or negatively impact an employee in the workplace, such as changing shifts, changing workplace sites, or increased scrutiny may be considered retaliatory conduct. District employees are prohibited from taking such measures against employees acting in good faith regarding a Code of Conduct complaint. Samuel should submit a retaliation complaint to OGE.

Example 3

BEGA initiated an investigation concerning Mannings's alleged retaliation. BEGA reviewed the ABC office policy concerning case assignments. OGE reached out to three other auditors that reported to the supervisor to gather more facts. Auditor Thomas did not wish to participate in the investigation and did not want to provide statements regarding the office's case assignment policies. Auditor Thomas declined to give any statements to OGE.

May Auditor Thomas simply refuse to participate in the OGE investigation?

No, Auditor Thomas must cooperate with OGE's investigation. Failure to cooperate with an OGE investigation is a violation of the Code of Conduct. The DPM requires employees to fully cooperate with an OGE investigation. Should an employee refuse to participate in an OGE investigation, the employee subjects themselves to civil penalties and potential personnel action from their agency.⁶

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 beqa@dc.gov.

Sincerely,



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

⁶ See negotiated disposition #1019-009 In re E. Moody, in which the Respondent left an interview and failed to report for an alternative interview after several attempts to engage the Respondent. Respondent was fined \$1,500.

AC/ME