

Board of Ethics and Government Accountability

ETHICS TRAINING



Darrin P. Sobin
Director of Government Ethics

Brian K. Flowers, General Counsel
Cristina Patzelt, Attorney Advisor
Ashley Cooks, Attorney Advisor
(Updated: 3/22/16)

BEGA



- **BEGA Statute:**

- ✦ **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 (2014 Supp.)).**

- **BEGA Structure:**

- ✦ **Three-member Board**
- ✦ **Director of Government Ethics**
- ✦ **Office of Government Ethics**
 - **Investigators and attorneys**

What we do



- **Training**
 - General Ethics training
 - Specialized training - - FDS, Hatch Act, Topic Specific
- **Advice**
 - Informal Advice - - oral & email, Ethics Manual
 - Formal Advice - - written Advisory Opinions
 - Role of Ethics Counselors
- **Investigations**
 - Initiation – complaints or any other source.
 - Preliminary Investigations - Confidential
 - Formal Investigations – Subpoena authority.

What we do



- Enforcement Proceedings
 - Open and adversarial hearings
 - Standard of Proof: Substantial Evidence
 - Fifth Amendment rights and representation
- Financial Disclosure Filings
- Lobbyist Registration and Activity Reports
- Ethics Manual
- Annual Best Practices Report

BEGA's Authority



- Statute of Limitations
 - 5 years
- Imposition of Sanctions
 - For conduct that occurred January 29, 2012, or later (enactment of emergency legislation)
- Jurisdiction
 - BEGA has jurisdiction over the entire District government and its instrumentalities, including:
 - ✦ Executive branch agencies
 - ✦ Legislative branch agencies
 - ✦ Independent agencies
 - ✦ Boards & Commissions

Penalties



- Penalties

- Director may impose:

- ✦ Ministerial fines (appealable to the Board)
 - ✦ Non-public informal admonition, period of probation (with possibility to expunge) (appealable to the Board).

- Board may impose:

- ✦ Fines of up to \$5,000 per violation
 - ✦ Fines of up to 3 times the amount of unlawful contribution, expenditure, gift, honorarium, or receipt of outside income for each violation
 - ✦ Remedial action
 - ✦ Public Censure
 - ✦ Period of Probation (with possibility to expunge)
 - ✦ Negotiated Disposition, offered by Director with approval by Board

Penalties Cont'd



- Although this is not yet in place, it is anticipated that at some point in the future, for violations of the Code of Conduct that substantially threaten the public trust, the Board will be authorized to impose:
 - ✦ A fine of up to \$25,000, **or** imprisonment of up to one year (but not both)
 - ✦ Public censure for elected officials + recommendations for removal

**REMEMBER MANY OF OUR ETHICS PROVISIONS
HAVE FEDERAL COUNTERPARTS APPLICABLE TO
DISTRICT EMPLOYEES AND THEY CARRY
CRIMINAL PENALTIES**

Remedial Action



- Penalties imposed by BEGA are separate and apart from any corrective or disciplinary action taken by the employing agency.
 - If you are disciplined by your agency, such as with a suspension, paid or unpaid, that is **completely separate** from any sanction, such as a fine, imposed by BEGA.

■ 6B DCMR §1802.3■

Code of Conduct



- “Code of Conduct” means those provisions contained in the following:
 - (A) The Code of Official Conduct of the Council of the District of Columbia, as adopted by the Council;
 - (B) Sections 1801 through 1802 of the Merit Personnel Act;
 - (C) Section 2 of the Official Correspondence Regulations, effective April 7, 1977 (D.C. Law 1-118; D.C. Official Code § 2-701 *et seq.*);
 - (D) Section 415 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-354.16);
 - (E) Chapter 18 of Title 6B of the District of Columbia Municipal Regulations (Responsibilities of Employees);
 - (F) Conflict of Interest Provisions of the Ethics Act; and
 - (G) Local Hatch Act.
 - (H) Donations Act.

Update



- Chapter 18 of Title 6B of the District of Columbia Municipal Regulations (Responsibilities of Employees) -- Also known as the District Personnel Manual or DPM
 - ✦ Revised & published in the D.C. Register on April 11, 2014
 - ✦ Effective for all conduct that occurred on or after April 11, 2014
 - ✦ Many changes make the DPM easier to understand, more logical, and more practical

Role of Agency Ethics Counselors



- The D.C. Ethics Counselor and Agency Ethics Counselors can:
 - Provide non-binding advice
 - Provide advice on settled principles of government ethics law
- They often touch base with BEGA to discuss issues
- If the issue is not well-settled, they should:
 - Refer questions re: possible violations to BEGA if:
 - ✦ Question cannot be answered simply by reciting applicable rule/regulation or referral to Ethics Manual
 - ✦ Question has not been answered by prior written opinion
 - ✦ Question and issues involve interpretation of ethics statute or regulation

Employee Cooperation



- **Reporting**

- Employees shall immediately and directly report credible violations of the District Code of Conduct to the District of Columbia Office of Government Ethics, the District of Columbia Office of the Inspector General, or both.

- **Interference**

- An employee shall not interfere with or obstruct any investigation conducted by a District or federal agency.

- **Cooperation**

- An employee shall fully cooperate with any investigation, enforcement action, or other official function of the Office of Government Ethics.

- **Retaliation**

- Coercive, harassing, or retaliatory action shall not be taken against any employee acting in good faith under this section.

■ 6B DCMR §1801■

Basic Employee Obligations



- Employees *shall*:
 - Understand that government service is a **public trust**
 - Put forth honest effort
 - **Report** credible violations to appropriate authorities
 - **Act impartially** and not give preferential treatment
 - ✦ **Social Media:** Be cautious about making recommendations on a professional social media networking site like LinkedIn. For example, writing a recommendation for, or liking, or endorsing, a government contractor could create the appearance of preferential treatment for that contractor.
 - Adhere to all federal, state, and local **laws and regulations**

Basic Employee Obligations



- **Employees shall not:**

- Hold **financial interests that conflict** with performance of duty
- Use nonpublic information improperly
 - ✦ **Social Media:** This includes sharing nonpublic information or pictures of confidential information via social media
- Make unauthorized commitments
- Use public office for private gain
- Use **government property** for other than authorized activities
- Engage in **outside activities** that conflict with official duties
- Seek or **negotiate for employment** that conflicts with official duties
- Take actions creating **appearance** they are violating the law or these ethical standards
 - ✦ Standard: viewed from perspective of a reasonable person with knowledge of the relevant facts

Social Media



- Definition: Umbrella term referring to internet based services that permit users to share, re-purpose, and publish informational content. Social Media websites require users to affirmatively join, and typically require users to create a uniquely identifiable profile.
 - Ex. Facebook, Twitter, LinkedIn, blogs, YouTube, SnapChat, and Google+
- The provisions of the Code of Conduct are applicable to Social Media in many contexts, even where it is used in your personal capacity and not your official capacity.

Disclaimer: Reference to any commercial products or services in this presentation is not an endorsement or Government sanction of those non-District government entities, its services or products.

Gifts



- **Gift means any:**
 - Gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.
 - Services and gifts of training, transportation, local travel, lodgings, meals.
 - This includes gifts provided:
 - ✦ In-kind;
 - ✦ By purchase of a ticket;
 - ✦ Payment in advance; or
 - ✦ Reimbursement after the expense has been incurred.

Gifts



- **Gift does NOT include:**

- Modest items of food and refreshments offered other than as part of a meal (i.e., coffee and donuts);
- Greeting cards;
- Items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
- Unsolicited advertising or promotional items of nominal value (i.e., pens and notepads);
- Food and beverages, of nominal value, consumed at hosted receptions where attendance is related to the employee's official duties;
- Admission to and the cost of food and beverages, of nominal value, consumed at civic, charitable, government, or community organizations;
- Discounts available to ALL District government employees;
- Rewards or contest prizes open to the public;
- Anything for which market value is paid by the employee.

Test Your Knowledge



- Question: I work in the procurement unit of my agency and often am assigned to accept sealed bids from bidders and provide them with a receipt for their submission. I keep on my work station a mug with the logo of one of my agency's contractors, which I got before I started working here when the contractor was giving them out free to members of the public. Is this a gift? Do I have to return it? Is there any reason I shouldn't have it on my work station where members of the public can see it?
- Answer: No, it's not a gift, as it is of nominal value. No, you don't have to return something you received as a member of the public. Yes, there is a reason why you should NOT keep it in a visible place at your work station. It creates at least the appearance to bidders and potential bidders that you favor this particular District government contractor. Therefore, it creates the appearances that you are giving that contractor preferential treatment (not to mention, free advertising).

Gifts From Outside Sources



- Employees shall not, directly or indirectly, solicit or accept a gift:
 - From a **Prohibited Source**
- A **Prohibited Source** is any person or entity who:
 - Is seeking official action by the employee's agency
 - Does business or seeks to do business with the employee's agency
 - Conducts activities regulated by the employee's agency
 - Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
 - Is an organization in which the majority of its members are described in the items above.

Test Your Knowledge



- Question: A not-for-profit organization I dealt with previously when it had grants from my agency, recently contacted me and offered me free tickets to an event they are having. The tickets are expensive and I'd really like to go. By the way, the person who called mentioned that they are in the process of putting together their application for a grant in the up-coming year. Can I accept the tickets?
- Answer: No. The not-for-profit organization is a prohibited source because it seeks to do business with your agency. Therefore, you cannot accept the tickets.

Gifts From Outside Sources



- **Gifts given because of the Employee's Official Title or Position**
- Employees shall not, directly or indirectly, solicit or accept a gift from anyone (prohibited source or otherwise):
 - Given because of the employee's official position or duties.
 - ✦ A gift is accepted or solicited because of the employee's position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee held the status, authority or duties associated with his position.
 - ✦ **Social Media:** Be careful in your use of personal social media accounts where you list your DC government position. Companies or other outside entities, including prohibited sources, may try to contact you this way to solicit you or offer you gifts due to your District employment.
- This includes gifts accepted or solicited indirectly:
 - With the employee's knowledge or acquiescence to a family member because of that person's relationship to the employee
 - To another person or entity, such as a charity, on the basis of designation, recommendation, or other specification by the employee.

Gifts - Exceptions to Prohibited Source Rule

- **Employees may accept (even from a prohibited source):**
 - Unsolicited gifts, \$10 or less (\$20 aggregate in calendar year) except when the offer of a gift would appear to a **reasonable person** to be intended to influence the employee in his or her official duties.
 - Gifts clearly motivated by family or personal relationships.
 - Meals, lodgings, & transportation (*when clearly not because of the employee's official position*):
 - ✦ Spouse - Resulting from the business or employment activities of a spouse or domestic partner (i.e., annual conference or business related, not special leisure trip just for employee).
 - ✦ Outside Business - Resulting from the employee's authorized outside business or employment activities.

Gifts From Outside Sources



- 18 U.S.C. § 209 (Salary Supplementation)
 - It is a federal crime to accept any compensation from a source other than the District government for performing your job/providing services as a District government employee
 - ✦ You, therefore, are prohibited from accepting money, a gift (i.e. tickets to a sporting event, jewelry, perfume, etc.), stocks or bonds, promise of a future job, or anything else of value (whether or not a prohibited source).

Gifts From Outside Sources



- **Free Attendance at Events**
- Employees may accept – Free Attendance at Events:
 - **Speaker at Event**
 - ✦ When the employee is a speaker or panel participant, on behalf of the agency.
 - ✦ Assignment must be made in writing by employee's agency head or other designee
 - **Widely Attended Events (50 persons or more)**
 - ✦ **By Sponsor of Event (official capacity only)**
 - Attendance is in the interest of the agency – further agency programs and operations;
 - As determined in writing by the Mayor or his designee.
 - ✦ **By someone other than Sponsor of Event (personal or official capacity)**
 - \$350 or less admission fee;
 - Attendees must share a diversity of views or interests
 - Event must be open to members from throughout an interested industry or profession.
 - If personal capacity, employee must take annual leave;
 - If authorized by the agency (in writing), no charge to employee's leave account.
 - For the above-listed, the agency shall maintain records for two years.

Gifts From Outside Sources



- What to do if you are offered or receive a gift that cannot be accepted:
 - Inform the person offering the gift; and
 - Return the gift, donate the gift to a non profit charity, donate it to the District; or reimburse the donor the market value of the gift;
 - If the gift is perishable and returning it would be impractical:
 - ✦ share it with office staff;
 - ✦ Donate to charity;
 - ✦ destroy it.
- Note: Sharing with office staff or donating to a charity, is a one time only option with respect to any donor.

Happy Birthday and Retirement and
Congratulations on the Wedding and...



ETHICS
GIFT ACCEPTANCE

Gifts Between Employees



- **General Rule:**

- Supervisor/Employee – an employee may NOT:
 - Give a gift or make a donation toward a gift for an official superior; or
 - Solicit a contribution from another employee for a gift to their official superior.
- Higher/lower salary
 - ✦ An employee may not, directly or indirectly, accept a gift from an employee receiving less pay than themselves unless:
 - The two employees are not in a subordinate-official superior relationship;
 - There is a personal relationship between the two employees that would justify the gift; and
 - The gift was not given or solicited to gain or induce any professional advantage.
- An official superior shall not coerce a subordinate to make or contribute to a gift.

Gifts Between Employees



- **Exceptions:**

- **Holidays and Birthdays** - On an occasional basis, including *any occasion on which gifts are traditionally given or exchanged*:
 - ✦ Items, other than cash, with an aggregate market value of \$10 or less per occasion;
 - ✦ Items such as food and refreshments to be shared in the office among several employees;
 - ✦ Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends; and
 - ✦ Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions.

Gifts Between Employees



- Exceptions cont'd – **Very Infrequent Occasions**
 - Direct Gift - A gift **appropriate to the occasion**:
 - ✦ In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or
 - ✦ Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.
 - Soliciting - up to \$10.00 from fellow employees for an appropriate gift to an official superior:
 - ✦ On a special, very infrequent occasion (see above); or
 - ✦ On an occasional basis, for items such as food or refreshments to be shared in the office among several employees.

Test Your Knowledge



- Question: An employee wants to give a holiday gift costing \$20.00 to his supervisor? Is this permissible?
- Answer: No, \$10 dollar, non cash gift is the limit.
- Reasons: Holiday gifts are now considered permissible because it is an occasion on which gifts are traditionally given.
- Question: Can I ask others to contribute to the holiday gift for our boss?
- Answer: No – Solicitation not permitted for occasional events

Test Your Knowledge



- Question: An employee wants to ask their co-workers to chip in and buy their supervisor a retirement gift. Is this permissible?
- Answer: Yes, it is permissible if:
 - The contributions toward the gift are voluntary
 - The amount of each contribution is nominal (up to \$10)
- Reasons: A retirement is a special, infrequent occasion.

Fundraising & Solicitation in the Office



- **General Rule:**
 - Donation boxes, sign-up sheets, and other fundraising materials are permissible. They must be posted or placed in a common area or public place in the office, so as to avoid the appearance of employees giving the items or funds as gifts to a specific employee.
 - The initiator of the fundraising cannot be in a management position – important to avoid the appearance that items or funds being collected are expected from employees.
 - Names of outside entities, whether sponsoring or benefitting from the fundraising, cannot be placed on the donation boxes.
 - An employee cannot solicit donations to a fundraiser or purchases from a fundraising catalog of items from each individual employee. The sign-up sheets and boxes must be placed in a common area to avoid the possibility of a superior soliciting a subordinate for donations or purchases.

- **Social Media:** An employee fundraising in a personal capacity via social media may engage in a fundraising event *not* sponsored by the government but may not allow his or her title, position, or any authority connected with the District government to further the fundraiser.
 - Also, the employee may not solicit funds or other support from a subordinate, or a prohibited source.

Nepotism



- Restrictions on the employment of relatives:
 - Any employee involved in the hiring process may not directly or indirectly make a **hiring decision** regarding a position within his or her own agency with respect to a relative.
 - ✦ **Hiring decision** means selecting, appointing, employing, promoting, reassigning, advancing, or advocating a personnel action.
 - ✦ The employee also may not evaluate, interview, or advance or advocate for such actions, any individual who is a relative in an agency in which the public official serves or exercises jurisdiction or control.
- RECUSAL - When an agency contemplates making a hiring decision concerning a relative of an employee involved in the same agency's hiring process, the employee must file a written recusal, which shall be included in the relative's official personnel file.

Nepotism



- Violations

- Hiring Official

- ✦ Disciplinary action, up to, and including removal; and
 - ✦ Restitution to the District of Columbia for any gains received by a relative (i.e. salary, health benefits, etc. paid to the relative while they worked for the District).
 - ✦ BEGA Penalties.

- New employee – immediately fired (no discretion).

Nepotism



- Definition of “Relative”

Father	mother	Son	daughter
Brother	sister	uncle	aunt
first cousin	nephew	niece	husband
Wife	father-in-law	mother-in-law	son-in-law
daughter-in-law	brother-in-law	sister-in-law	stepfather
stepmother	stepson	stepdaughter	stepbrother
stepsister	half-brother	half-sister.	

Test Your Knowledge



- Question: I am the Deputy of a unit within DCRA. I occasionally sit on interview panels, review resumes for hiring, or make recommendations as to who should be selected for a position. My niece applied for a position with DCRA, and told me she had applied. I did not end up participating in any of the hiring process for the position she applied for, and she was eventually chosen for the position. Have I violated the Nepotism restrictions?
- Yes. Because you are a “hiring official,” as soon as you knew your niece was applying for a position within your agency you were required to file a written recusal, ensuring your recusal with your agency, recusing you from the hiring process for the position and ensuring that you would not be in a position to make personnel decisions regarding your niece in the future such as promotion or other advancement.

Wearing too many hats?



ETHICS
OUTSIDE ACTIVITIES

Outside Employment & Private Representations



- A District government employee shall not engage in any outside employment or other activity incompatible with the full and proper discharge of his or her duties and responsibilities, such as:
 - Those that are reasonably likely to **interfere with the employee's ability to perform his or her job**;
 - Those which may **impair the efficient operation of the District government**.
 - Using **government time or resources for other than official business**, or government approved or sponsored activities.
 - Maintaining a **financial or economic interest** in or serving (with or without compensation) as an officer or director of an outside entity if there is any likelihood that such **entity might be involved in an official government action or decision taken or recommended by the employee**.
 - **Capitalizing** on the employee's official **title or position**.
 - **Divulging official government information** to any unauthorized person.
 - **Serving in a representative capacity** as an agent or attorney for any outside entity **involving any matter before the District** (except acting without compensation as an agent or attorney for another District employee who is the subject of a personnel action, if not inconsistent with the employee's duties; and representing a parent, spouse, child, etc., in accordance with D.C. Rules of Professional Conduct & if not a matter in which the employee participated personally and substantially as a government employee).
 - Engaging in any outside employment, private business activity, or other interest which is in **violation of federal or District law**.

Outside Employment & Private Representations



- **Divulging official government information** to any unauthorized person.
 - ✦ **Social Media:** It is very easy to disclose nonpublic information with one stray click, but nearly impossible to retrieve and delete that information once it is released.
- **Serving in a representative capacity** as an agent or attorney for any outside entity **involving any matter before the District.**
 - ✦ Representation includes personally appearing before the District, submitting a document with your signature, making telephone calls or sending emails to the District on your client's behalf, etc.
 - ✦ Permissible Exception: acting without compensation as an agent or attorney for another District employee who is the subject of a personnel action, if not inconsistent with the employee's duties; and representing a parent, spouse, child, etc., in accordance with D.C. Rules of Professional Conduct & if not a matter in which the employee participated personally and substantially as a government employee.
- Engaging in any outside employment, private business activity, or other interest which is in **violation of federal or District law.**

Teaching, Writing & Speaking



- Generally permitted if outside regular working hours or while on leave
- Waivable ban on using nonpublic information
- If paid, then can't be devoted substantially to:
 - Your job
 - Your agency
 - Information obtained from your government employment
- **Social Media:** Keep these restrictions in mind in the context of social media as well.
 - If someone wants to pay you to write a guest post for their blog about any of the topics noted above, that could be a violation of the Code of Conduct.
 - You may also get paid advertising offers if you maintain a personal blog of your own, due to your District employment. You can list your position or title on your blog, but only as one of several biographical details, and your blog should include a disclaimer that the views represent your personal views and not those of the District or your agency.

Test Your Knowledge



- Question: I am a District government employee who also owns a house cleaning business. My business is called “District Cleaners” and I use the D.C. Flag on the flyer. I don’t identify my position with the District government on the flyer, but I do identify myself as a District government employee. Have I violated the outside employment restrictions?
- Answer: Yes.

Test Your Knowledge



- Question: I am a District government employee who has a second job as an overnight security guard. After working an overnight shift, I am only able to sleep for one or two hours before I am scheduled at my District government job. Sometimes I doze off at my desk during my tour of duty for the District due to lack of sleep. Does this outside activity violate the outside activity restrictions?
- Answer: Yes.

Test Your Knowledge



- Question: I sometimes do volunteer work for my neighborhood civic association, which is a non-profit entity. The association has asked me to prepare and sign a grant application requesting grant funds from a District Government agency. I work for another agency and there is no overlap with my governmental duties and the civic association. Can I do as they ask?
- Answer: No.
- Reason: Your signature on the grant application amounts to you serving in a representative capacity for the neighborhood civic association (an outside entity) in a matter before the District government, which is prohibited.

Government Property



- An 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.
 - Government property includes:
 - ✦ Any form of real or personal property in which a federal, District, state, or local government agency or entity has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with government funds, including the services of contractor personnel.
 - ✦ Government property includes office supplies, telephone and other telecommunications equipment and services, the government mails, automated data processing capabilities, printing and reproduction facilities, government records, and government vehicles.
 - Authorized purposes are those purposes for which government property is made available to members of the public or those purposes authorized by an agency head in accordance with law or regulation.
 - **Social Media:** Typically a limited use of government computers and electronic devices is allowed for personal purposes. However, this use should occur at times that do not interfere with an employee's duties, do not trigger more than a nominal increase in cost, and do not violate applicable laws or regulations.
 - ✦ For example, if you spend two hours a day updating your personal Twitter, Facebook, LinkedIn, etc. pages on a government electronic device, that could be a violation of the Code of Conduct.

Test Your Knowledge



- Question: My church is having an event this weekend. I used my office email account to respond to the invitation and then printed out 200 flyers for the event. Have I violated the restrictions on use of government property or resources?
- Answer: Yes.

Additional Standards



- Each agency may prescribe additional standards of ethical conduct and reporting requirements that are appropriate to the particular functions and activities of the agency, which are not inconsistent with law or this chapter.
- Additional standards of ethical conduct must be approved prior to implementation as follows:
 - Proposed standards shall be submitted to the Director of Government Ethics in writing for comment, if any;
 - Following receipt of any comments from the Director of Government Ethics, or the expiration of no fewer than 15 business days, the proposed standards shall be submitted to the Department of Human Resources electronically for approval;
 - Once approved, the proposed standards shall be transmitted to any implicated labor organization for review; and
 - Following approval by the Department of Human Resources and any appropriate review by a labor organization, the standards shall be published to the impacted employees.

Before you walk out of the door...



ETHICS
POST-EMPLOYMENT

Post-Employment Conflicts of Interest



- **Permanent Prohibition**
- A former government employee who participated personally and substantially in a particular government *matter* involving a specific *party*:
 - Shall be **permanently prohibited** from knowingly acting as an attorney, agent, or **representative** in any formal or informal appearance before an agency.
 - Shall be permanently prohibited from making any oral or written **communication** to an agency with the intent to influence that agency on behalf of another person.
 - **Bottom Line: No Communications or Appearances**

■ 6B DCMR §§ 1811.3, 1811.4, 1811.8, and 1811.9■

“Particular matter” includes:



- investigation
- application
- request for a ruling or determination
- contract
- controversy
- claim
- charge
- accusation
- arrest or
- judicial or other proceeding

“Participate personally & substantially” means



action taken as an employee through

- decision
- approval
- disapproval
- **recommendation**
- **the rendering of advice**
- **Investigation** or
- other such action

Post-Employment Conflicts of Interest



- **Two (2) Year Prohibition**
- A former government employee who previously had *official responsibility* for a matter:
 - Shall be prohibited for **two years** from knowingly acting as an attorney, agent, or representative in any formal or informal matter before an agency.
 - ✦ 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.
 - ✦ The two-year period shall be measured from the date when the former employee's responsibility for a particular matter ends.

Post-Employment Conflicts of Interest



- **Two (2) Year Prohibition**

- Shall be prohibited for **two years** from engaging in **behind-the-scenes assistance** in representing another person before an agency (the two-year period is measured from the date of termination of employment).

Post-Employment Conflicts of Interest



- **One (1) Year Prohibition (cooling off period)**
- A former government employee shall be prohibited for **one (1) year** from having any transactions with the former agency intended to influence the agency, in connection with any particular government matter pending before the agency as to a particular matter pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party.
 - Therefore, the restriction shall apply without regard to whether the former employee had participated in, or had responsibility for, the particular matter, and shall include matters which first arise after the employee leaves government service.

Post-Employment Conflicts of Interest



- **One (1) Year Prohibition (cooling off period)**
 - 18 U.S.C. § 207 applies (federal criminal restrictions on post-employment)
 - Post-employment trainings - - BEGA does special, one-hour, trainings through DCHR on post-employment conflicts of interest. Sign up through PeopleSoft. Also, we are happy to schedule one for your agency - - just contact us directly.
 - You are eligible for free post-employment advice **forever**. Call us anytime if you have a question or if your circumstances change.

Express Exceptions



- Exceptions to the One (1) year Cooling Off Period (specific times you CAN appear in front of your agency):
 - ✦ To furnish scientific or technological information to agency.
 - Specifically Exempted by Mayor (or designee).
 - Consultation with Federal OGE.
 - Certification issued (interests of the District will be served).
 - Published in D.C. Register
 - ✦ If former employee's new job is with state or federal government.
 - ✦ To give testimony under oath.
 - ✦ On Personal matters, i.e., income taxes, licensure, or pension benefits.
 - ✦ Litigation or Administrative Proceeding (i.e. wrongful termination).

Test Your Knowledge



- Question: I left the District government approximately two months ago and went into business for myself. One of my clients has a payment issue with my former agency and wants me to see if I can work with the agency to get the payment approved. My client assures me that he did not have any dealings with my former agency during the time that I worked there. Can I contact my former co-workers for assistance?
- Answer: No. Because you left your former agency less than one year ago, you are prohibited from having any transactions, appearances, or communications with your former agency with the intent to influence the agency in a matter in which it has a direct and substantial interest. It doesn't matter that the issue did not arise until after you left the agency.

Test Your Knowledge



- Question: I left the District government, specifically the Department of Motor Vehicles (“DMV”), 6 months ago. My license expires this month, am I prohibited from going to the DMV to get my license renewed?
- Answer: No. There is a special exception for matters of a personal nature such as taxes, pension and licensure for yourself (but not others).

Test Your Knowledge



- Question: I left the District government 7 months ago, specifically the Department of Small and Local Business Development (“DSLBD”). I own a small business and now want to apply for a grant from DSLBD. Am I prohibited from doing so?
- Answer: Yes, unlike the previous DMV example, in this example, you are contacting your former agency with the intent to influence a decision about awarding money. This is tantamount to seeking to contract with your former agency and you may not do so for at least a year.

Financial Conflicts of Interest



- District Law
 - Shall not
 - ✦ Use official title or position
 - ✦ Or personally and substantially participate
 - ✦ Through decision, approval, recommendation, etc.
 - ✦ Or attempt to influence the outcome
 - ✦ Of a particular matter
 - ✦ That the employee knows is likely to have a direct & predictable effect
 - ✦ On the financial interests of the employee or a person closely affiliated with the employee

■ Ethics Act, Sec. 223, D.C. Official Code § 1-1162.23 ■

Financial Conflicts of Interest



- **Person closely affiliated with the employee –**
 - a spouse, dependent child, general partner, a member of the employee's household, or an affiliated organization.

Financial Conflicts of Interest



- Federal Law – Consistent with D.C. Law
- Penalties for violations include:
 - Civil penalties pursuant to the Ethics Act
 - ✦ \$5,000 per violation
 - Criminal Penalties pursuant to 18 U.S.C. § 216:
 - ✦ If not willful, 1 year in prison and fines of \$50,000 per violation or the amount of compensation the person received or was offered, whichever is greater.
 - ✦ If willful, 5 years in prison and fines of \$50,000 per violation or the amount of compensation the person received or was offered, whichever is greater.

Expose & Disclose



Financial Disclosure Filings



- Public Financial Disclosure Statements
- Confidential Financial Disclosure Statements
- Public Financial Disclosure Certifications
- Due Date
 - **May 15th***
 - *(Because May 15th, 2016 is a Sunday, the FDS filing deadline for 2016 is Monday May 16th, 2016)*

Who files a Public Financial Disclosure Statement?



- **Public Officials**
- **Statutory Authority:**
 - ▶ D.C. Official Code § 1-1162.24(a)(1) “Public officials, except Advisory Neighborhood Commissioners, shall file annually with the Ethics Board a public report...”
- **Who is a “public official?”:**
 - The Mayor, Chairman, & each Member of the District Council
 - The Attorney General
 - A Representative or Senator elected pursuant to § 1-123
 - A Member of the State Board of Education
 - A Member of the Boards & Commissions found in § 1-523.01(e)
 - A subordinate Agency Head in an Executive Service Position
 - Any employee who makes \$101,296 or above (for the calendar year 2015) and who makes decisions or participates substantially in areas that could create a financial conflict of interest including, but not limited to, contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing
- **In April, every Public filer will receive a letter and email from BEGA. The letter will:**
 - *Explain the process for filing the form electronically*
 - *Include the necessary log-in information to file electronically*
- **However, you are still required to file if you are a Public Official even if you do *not* receive a letter or email from BEGA.**

Who files a Confidential Financial Disclosure Statement?



- **Determined by your Agency Head**
- **Statutory Authority:**
 - ▶ D.C. Official Code § 1-1162.25(a) “Any employee, other than a public official, who advises, makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, policy-making, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, **as determined by the appropriate agency head**, shall file... with that agency head a report containing a full and complete statement of the information required by § 1-1162.24.”
 - ▶ Agency heads must notify **designated employees** who are required to file Confidential Financial Disclosure Statements on or before April 15th of every year.

■ D.C. Official Code § 1-1162.25(c) ■

Questions about Financial Disclosure?



○ Contact:

- ✦ Cristina Patzelt
- Attorney Advisor, BEGA
- (202) 741-2130
- Email - - Cristina.Patzelt@dc.gov

Local Hatch Act – Political Activity



- The Local Hatch Act became effective on March 7, 2013 and came under BEGA's jurisdiction.
- The Local Hatch Act establishes restrictions on the ***political activity*** of D.C. government ***employees***.

Definition of “Employee”



- The Local Hatch Act defines a D.C. government “**employee**” as:
 - Any individual **paid by the D.C. government** from grant or appropriated funds for his or her services.
 - Any member of a Board or Commission nominated pursuant to § **2(e)** of the Confirmation Act of 1978; (D.C. Official Code § 1-523.01(2)(e))
 - Unpaid members of a Board or Commission who is nominated pursuant to § **2(f)** of the Confirmation Act of 1978 when the member is engaged in political activity that relates to the subject matter that the member’s board or commission regulates. (D.C. Official Code § 1-523.01(2)(f))

Not an “Employee”



- The Local Hatch Act does ***not*** include the following as D.C. government employees:
 - Employees of the courts of the District of Columbia;
 - The Mayor;
 - The members of the Council;
 - Advisory Neighborhood Commissioners;
 - Members of the State Board of Education;
 - Members of the District of Columbia Statehood Delegation; and
 - The Attorney General (after November 2014).

Definition of “Political Activity”



- ***“Political Activity”*** means:
 - Any activity that is directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.
- ***“District Regulated Political Activity”*** means:
 - Any election, ballot initiative, or referendum **regulated by the D.C. Board of Elections**

Prohibited Political Activity (District Campaigns)



- When engaging in **District campaigns or elections**, D.C. government employees cannot:
 - Knowingly solicit, accept, or receive a political contribution from any person (**except** if the employee has filed as a candidate for political office);
 - ✦ **Social Media:** This fundraising restriction applies in the social media world as well. You cannot fundraise through your Twitter, Facebook, or other personal social media pages, for a candidate in a District regulated campaign or election. This includes providing links to the contribution pages of any of those entities' websites.
 - File as a candidate for election to a D.C. **partisan** political office.
 - ✦ Democrat, Republican, Libertarian, Statehood Green Party (i.e., Mayor, Councilmember).
 - ✦ ANC is NOT a partisan office.

Prohibited Political Activity (THINGS YOU CAN NEVER DO)



- **ALL** D.C. government employees are prohibited from engaging in **ALL** Political Activity, regardless of whether it is District Regulated Political Activity or not, while:

- On duty;
- In any room or building occupied in the discharge of official duties in the D.C. government, including any agency or instrumentality thereof;
- Wearing a uniform or official insignia identifying the office or position of the employee;
- Using any vehicle owned or leased by the District, including an agency or instrumentality thereof.

■D.C. Official Code § 1-1171.03(a)■

- In addition, a D.C. government employee may not coerce, explicitly or implicitly, any subordinate employee to engage in political activity.

■D.C. Official Code § 1-1171.03(b)■

○ or

- Use their official authority or influence for the purpose of interfering with or affecting the result of an election.

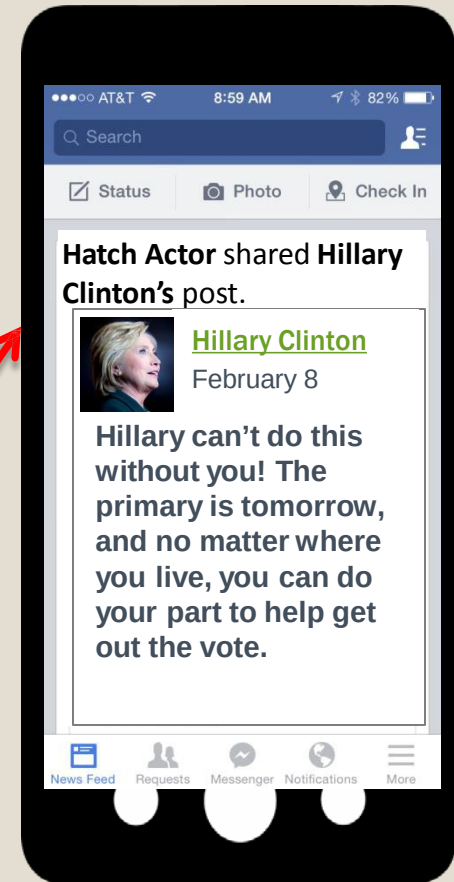
■D.C. Official Code § 1-1171.02(a)(1)■



May I use a smartphone or other personal device to post or share political content on Facebook or Twitter while I am on duty or in the workplace?



You log on to your Twitter or Facebook app on your smartphone and post political comments, or share, like, or retweet political content posted by others.



NO. This is NOT OKAY. You may not engage in political activity via social media at any time when you are on duty or in the workplace, regardless of the method used to access your social media sites.

So What CAN I Do?



- When engaging in political activity that is ***NOT part of a District campaign or election***:
 - A D.C. government employee is permitted **to solicit, accept, or receive political contributions (fundraise)** from any person for elections outside the District (i.e., MD, VA, etc.)
 - A D.C. government employee **may file as a candidate** to a partisan political office in elections outside the District (in MD, VA, etc.) without restriction by the Local Hatch Act.
- When engaging in **ANY** political activity a D.C. Gov't employee may:
 - Take an active part in political management or in political campaigns (but DON'T fundraise for District campaigns).
 - Contribute financially to any political activity.
 - Attend any political event, rally, or other activity.
 - Voice support for or endorse a candidate, but only in your private capacity (First Amendment).

“Meet and Greet” Events



- A **“Meet & Greet”** event is an event where attendees can meet and greet a candidate.
 - Organizing a “Meet and Greet” event is a permissible “Political Activity” because the Local Hatch Act permits District employees to take an active part in political management & campaigns.
 - **BUT -**
 - District employees are **prohibited** from fundraising for the **District Regulated** campaign of another person.
 - **THEREFORE –**
 - If the Meet & Greet is **District Regulated** and for **fundraising** purposes, District employees are prohibited from taking an active part in the event (**other than attending**).

Test Your Knowledge



- Question: I am a District government employee paid entirely with District funds. I reside in the District, but my childhood friend is running for office in Maryland, on a partisan ticket. Am I permitted to campaign for my friend?
- Answer: Yes
- Question: I am permitted to fundraise for my friend?
- Answer: Yes.

Test Your Knowledge



- Question: I received an email from a partisan political candidate in my District government email inbox. Have I violated the Local Hatch Act?
- Answer: No
- Question: I forwarded the email to my coworkers. Have I now violated the Local Hatch Act?
- Answer: Yes.

The Federal Hatch Act



- Although all D.C. government employees are now covered by the Local Hatch Act, those employees whose salaries are paid ***in whole or in part*** with federal funds (“covered District employees”) are also covered by specific provisions in the federal Hatch Act.
- Your agency head is required to inform you if you are a covered District employee.
- Covered District employees must comply with the federal Hatch Act, the Local Hatch Act, and the Ethics Act. For the most part, the prohibitions are substantially the same.
- The biggest difference between the federal Hatch Act and the Local Hatch Act is that the federal Hatch Act prohibits D.C. government employees who are paid ***entirely by federal funds*** from running for ***any*** partisan office.

■ 5 U.S.C. § 1501(4) (defining who is covered) ■

Questions



Q

&

A

Where to go for ethics advice



- BEGA
 - ✦ Darrin P. Sobin
 - Director of Government Ethics
 - (202) 481-3411
 - BEGA Hotline - - (202) 535-1002
 - Email - - bega@dc.gov
 - www.bega-dc.gov
- Your Agency Ethics Counselor