



# Ethics and Open Government in a Virtual World

Ethics Week 2020  
Board of Ethics and  
Government  
Accountability

# “BEFORE YOU WALK OUT THE DOOR”

Negotiating for employment and post-employment restrictions for District  
government employees

Presented by

Director Rochelle Ford and Attorney Advisor Asia Stewart-Mitchell

A red speech bubble with a white outline and a small tail pointing downwards. The text 'THE RULES' is written in white, uppercase, sans-serif font in the center of the bubble. The background features a pattern of thin, light gray concentric circles and dashed lines.

THE RULES

THE  
NEGOTIATING  
RULE -  
DPM § 1800.3(j)

- Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with their official government duties and responsibilities.

Seeking and  
Negotiating both  
require recusal.  
5 C.F.R. §  
2635.603(b).

- An employee is **seeking** employment once they have, directly or indirectly, engaged in negotiations for employment with any person; made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment; or made a response, other than rejection, to an unsolicited communication from any person regarding possible employment. See
- The term **negotiations** means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person and is not limited to discussions of specific terms and conditions of employment in a specific position. See *id.*

THE CONFLICT OF  
INTEREST RULE -  
D.C. Official Code  
§ 1-1162.23(a)

- 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.

18 U.S.  
Code § 208.  
Acts affecting a  
personal financial  
interest

- Whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, **or an officer or employee of the District of Columbia**, including a special Government employee, participates personally and substantially as a Government officer or employee, 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 in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, **or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest**— Shall be subject to the penalties set forth in section 216 of this title.

THE POST-  
EMPLOYMENT  
PERMANENT  
PROHIBITIONS –  
DPM § 1811.3-4

- **DPM § 1811.3** - A former government employee shall be permanently prohibited from knowingly acting as an attorney, agent, or representative in any formal or informal appearance before an agency as to a particular government matter involving a specific party if the employee participated personally and substantially in that matter as a government employee.
- **DPM 1811.4** - A former government employee 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 as to a particular government matter involving a specific party if the employee participated personally and substantially in that matter as a government employee.



A red callout box with a white text area. The box has a solid red top bar and a white bottom section with a red pointer pointing downwards. The text is centered in the white section.

THE POST-EMPLOYMENT TWO YEAR  
PROHIBITIONS –  
DPM § 1811.5-9

## TWO YEAR PROHIBITIONS - DPM § 1811.5

- A former government employee shall be prohibited for two (2) years after terminating District government employment from knowingly acting as an attorney, agent, or representative in any formal or informal matter before an agency if he or she previously had official responsibility for that matter.

**TWO YEAR  
PROHIBITIONS  
CONT'D –  
DPM § 1811.6**

- For purposes of Subsection 1811.5 of this section, 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.

**TWO YEAR  
PROHIBITIONS  
CONT'D –  
DPM § 1811.7**

- **The two-year (2-year) restriction period in Subsection 1811.5 of this section shall be measured from the date when the former employee's responsibility for a particular matter ends, not from the termination of government service, unless the two (2) occur simultaneously.**

**TWO YEAR  
PROHIBITIONS  
CONT'D – DPM §  
1811.8**

- **A former employee shall be prohibited for two (2) years from knowingly representing or aiding, counseling, advising, consulting, or assisting in representing any other person (except the District of Columbia) by personal appearance before an agency as to a particular government matter involving a specific party if the former employee participated personally and substantially in that matter as a government employee.**

**TWO YEAR  
PROHIBITIONS  
CONT'D – DPM §  
1811.9**

- **The two-year (2-year) period in Subsection 1811.8 of this section shall be measured from the date of termination of employment in the employee position held by the former employee when he or she participated personally and substantially in the matter involved.**

THE POST-  
EMPLOYMENT  
ONE YEAR  
PROHIBITIONS –  
DPM § 1811.3-4

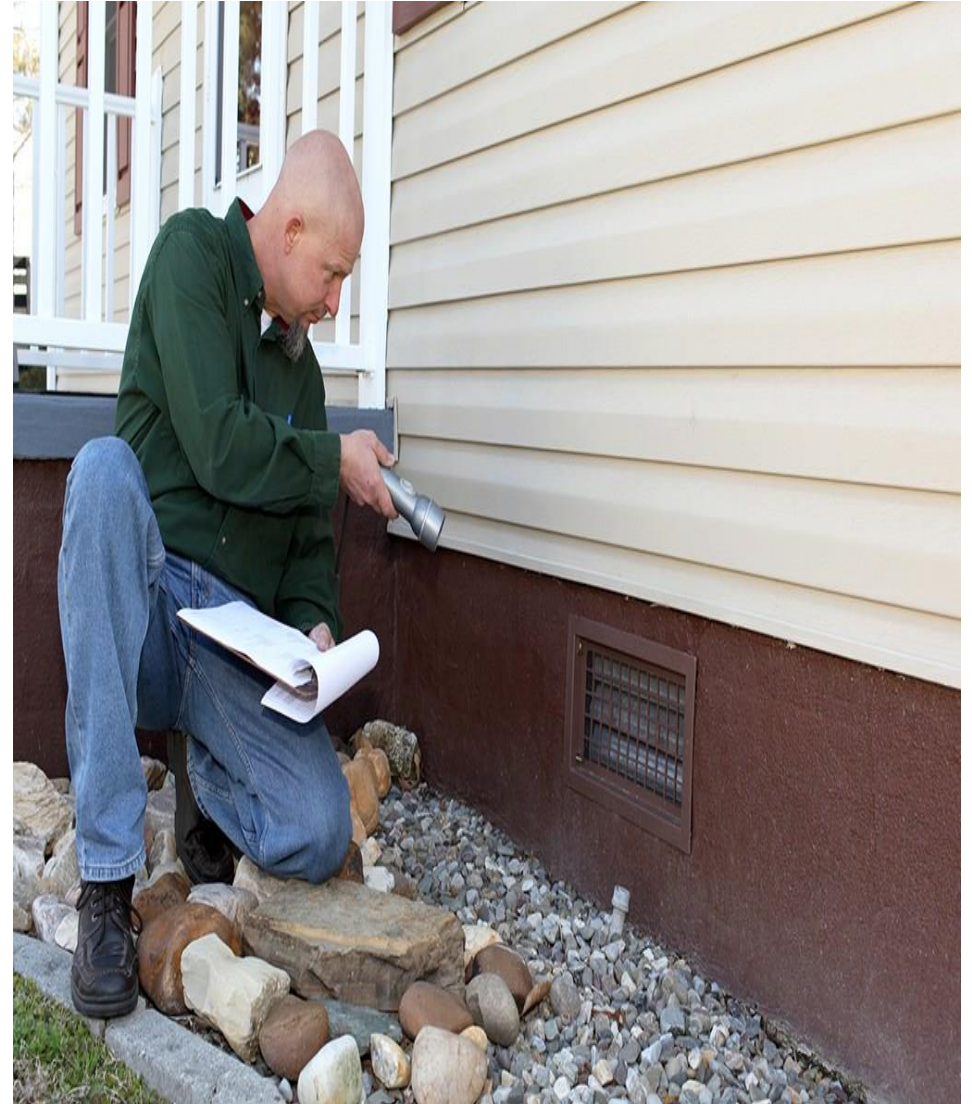
- **DPM § 1811.10** - A former employee (other than a special government employee who serves for fewer than one-hundred and thirty (130) days in a calendar year) shall be prohibited for one (1) year from having any transactions with the former agency intended to influence the agency in connection with any particular government matter pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party.
- **DPM § 1811.11** - The restriction in Subsection 1811.10 of this section is intended to prohibit the possible use of personal influence based on past governmental affiliations to facilitate the transaction of business. 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.
- **DPM § 1811.12** - The restriction in Subsection 1811.10 of this section shall apply whether the former employee is representing another or representing him or herself, either by appearance before an agency or through communications with that agency.



THE HYPOS



Mac is a Supervising Inspector with DCRA. Recently, Mac was contacted by a real estate company who would like Mac to work for the company as an inspection consultant. Per the discussed agreement, Mac would work as a consultant for the real estate company for at least 16 hours a week at a rate of \$60 per hour. Mac continues inspecting properties and signing off on inspection reports during his employment discussions with the real estate company. Many of the properties Mac has inspected during this time are owned by the real estate company.





Is there anything else we would want to know  
before we decide whether Mac's actions are  
permissible?



Which of the relevant rules are implicated?

# KAHOOT QUESTION!

PLEASE GO TO [www.kahoot.it](http://www.kahoot.it) on your cell phone and enter the game PIN

Answer on KAHOOT: Is this permissible? Yes or no?

Now **STOP**. We will go through the next hypo together before we do the next KAHOOT Question.



Victor is the Deputy Mayor of Education and has served in this position since August 13, 2014. Victor has been facilitating a licensing deal with Google, on behalf of District, for the past eighteen (18) months. Victor recently began employment discussions with Google. Once Victor believed his employment discussions to be serious, he stopped working on the licensing deal.



Is there anything else we would want to know before we decide whether Victor's actions are permissible?



Which of the relevant rules are implicated?

# KAHOOT QUESTION!

PLEASE GO TO [www.kahoot.it](http://www.kahoot.it) on your cell phone

Answer on KAHOOT: Is this permissible? Yes or no?

Now **STOP**. We will go through the next hypo together before we do the next KAHOOT Question.



The General Counsel for the Department of Behavioral Health (“DBH”) contacted our office because the agency would like to bring back a previous employee, Tricia, as a contractor. Tricia left the agency on April 6, 2020. Tricia developed community outreach programs as a DBH employee, and the agency would like her to continue her work on a part-time, contractual basis.





Is there anything else we would want to know  
before we decide whether the agency's actions  
are permissible?



Which of the relevant rules are implicated?

# KAHOOT QUESTION!

PLEASE GO TO [www.kahoot.it](http://www.kahoot.it) on your cell phone

Answer on KAHOOT: Is this permissible? Yes or no?

Now **STOP**. We will go through the next hypo together before we do the next KAHOOT Question.



**Genise separated from the Department of Energy and the Environment (“DOEE”) on January 22, 1999. Genise previously worked as an Environmental Engineer for DOEE. Genise was largely responsible for developing the District’s carbon-neutral policies. Genise has contacted our office because she now works for Tierra, Inc. She would like to work with the District, on behalf of Tierra, Inc., to update the District’s carbon-neutral policies.**

The image features a central red speech bubble with a white question inside. The background is white with several concentric circles and lines, some solid and some dashed, radiating from the center. The speech bubble has a rectangular body and a triangular tail pointing downwards.

Is there anything else we would want to know  
before we decide whether the Genise's actions  
are permissible?



Which of the relevant rules are implicated?

# KAHOOT QUESTION!

PLEASE GO TO [www.kahoot.it](http://www.kahoot.it) on your cell phone

Answer on KAHOOT: Is this permissible?  
Yes or no?



## QUICK TIPS FOR NEGOTIATING FOR EMPLOYMENT AND POST- EMPLOYMENT

- 1. When seeking and negotiating for employment with a private sector company, recuse yourself, in writing ASAP.
- 2. If you are confused about whether you are negotiating for employment, contact BEGA.
- 3. The District's post-employment restrictions only apply to the private sector; if you transition to the federal government or government work in another jurisdiction, you need not adhere to the post employment rules.
- 4. The post-employment rules are complicated, call BEGA for assistance when in doubt.
- 5. The post-employment rules apply to the past employee, not the company; your new employer will not be restricted if they hire you (except, they won't be able to have you work on certain matters you worked on as a District employee).
- 6. You are entitled to free post-employment advice FOREVER.
- 7. There are exceptions to the post-employment rules, including one that allows an agency to bring back a past employee on a contract.
  - There are rules surrounding this as well, of course. Call us for guidance!

**CONTACT US!**  
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