



# Ethics and Open Government in a Virtual World

Ethics Week 2020  
Board of Ethics and Government Accountability

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Ethics Week 2020

***The Dos and Don'ts of Engaging in  
Outside Employment & Activities***



# Learning Objectives



- To learn how District employees can ethically engage in outside activities and employment, and what restrictions apply while working remotely.
- To identify some best practices with respect to engaging in outside activities.
- To recognize, and avoid, some common ethics pitfalls related to outside activities.

# *What are Outside Activities?*



- Outside activities and employment includes any form of employment, business relationship or activity involving the provision of personal services, whether **paid or unpaid**, that you engage in while off duty.
  
- Almost all District employees participate in some sort of outside activities or organizations as a matter of personal choice.
  - ✦ As a general matter, mere membership in an organization does not pose a problem.

# ***What are the rules regarding outside activities and employment?***



**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.**

# Limitations on Outside Activities & Employment



- **Interfere** with the employee's ability to perform his or her job.
- **Impair** the efficient operation of the District government.
- Use **government time or resources for other than official business**, or government approved or sponsored activities.
- Maintain 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.**

# Limitations on Outside Activities & Employment



- **Capitalize** on the employee's official **title or position**.
- **Divulge official government information** to any unauthorized person.
- **Serve in a representative capacity** as an agent or attorney for any outside entity **involving any matter before the District**
- Engage in any outside employment, private business activity, or other interest which is in **violation of federal or District law**

# Teaching, Speaking, Writing, and Consulting



- Permitted if outside regular working hours or while on leave
- Waivable ban on using nonpublic information
- If paid, then the work can't be “devoted substantially” to:
  - Any ongoing responsibility, program, or operation of your agency
  - Any of your official duties, including any matter to which you have been assigned during the previous one year period
  - Information obtained from your government employment
- Consulting
  - Involves the provision of services, including giving advice and procuring other services.
  - It involves use of knowledge or skills generally acquired through specialized or advanced instruction or years of experience



## ***Am I required to get approval to participate in outside employment or activities?***



- As a general matter, you do not need to seek approval to engage in outside activities or employment (except for when requesting to use non-public information for teaching, speaking, and writing).

# **Best Practice**



## **DO** – Seek approval

- Employees considering engaging in outside employment or activities, should consult with their ethics advisor or BEGA before they start.
- Also, check with your agency, because your agency may require that you seek written approval before engaging in certain activities even if you are not required to do so under the Code of Conduct.
- If the nature of the employee's outside activity or employment changes OR if the employee's District job duties change, the employee should inform their ethics advisor or BEGA.

***Why does the District care about what employees do  
on their own time?***



***Public Service is a Public Trust!***

# ***Which types of outside activities raise the most ethics concerns***



## **➤ Outside activities that are regulated or do business with your agency**

- Because employees have developed expertise in their fields, their outside activities and employment can often overlap with their official duties. Special care must be taken in vetting these activities since they tend to raise appearance concerns even when the employee is following the rules.

## **➤ Outside activity related to politics**

- Because of the Hatch Act, employees must take special care to follow not only the Code of Conduct, but also ensure that they are not violating the Hatch Act.

# Why should I care?



- You can be sanctioned!
- Chapter 1807 of the District Personnel Manual governs outside employment and private representations.
- Each violation can subject you to a fine of up to \$5000.

# Quiz time!



# Scenario 1



- You are a high school teacher with DCPS. You are interested in tutoring students outside of your DCPS tour of duty (after 3:30 PM).
- Which of the following is permissible?
  - A. Providing your current students information about your upcoming tutoring services during a Zoom lesson.*
  - B. Listing your years of teaching experience in “local public schools” on your tutoring company’s webpage.*
  - C. None of the above.*

## Scenario 2



- As a committed civil servant, you decide to work as a poll watcher at an in-person voting site. You are assigned a poll watching shift between 12-8 pm. Your District tour of duty is 8-4 pm. You use annual leave from your District employment, and are compensated \$350 for your poll watching.
- Is this permissible?
- Yes.



## Scenario 3



- You perform home inspections for DCRA. Due to the health pandemic, you have been unable to complete most of your primary duties. Your agency has detailed you to the Board of Elections to assist them with their increased workload. You just heard that your friend received \$350 for the same activity that you've been assigned. May you accept compensation?
- No!

# ***Scenario 4***



**Q:** A District employee, an attorney, was recently asked to serve on her church Board of Directors. She has come to you for advice on whether accepting a seat on the Board would raise an ethics issue?

**What do you want to know?**

**A:**

- ✦ What is her position with the District? What are her duties?
- ✦ What will be her Board duties? Why was she asked?
- ✦ Will she be asked to serve as the Board's counsel before the District?
- ✦ Can you foresee a situation where she could divulge official information?

# **Best Practice**



## **DO** – Intake matters!

- Once an employee provides initial information about an ethics issues, be sure you fully understand both the nature of their work with the District and their role in the outside activity (especially Board positions).
- Employees should provide information about their outside activity in writing so that there is a record and all of the facts are clearly stated.
- Ask questions that will help you to assess the risk that the employee's activity could potentially be incompatible with their District work. This will enable you to fully explain how the outside activities limitations apply in each situation.

# **Potential Pitfall**



## **DON'T** – Intake matters !

- Don't give advice or act without full information. Ethics advice is fact specific. Employees aren't trying to hide information, they often just haven't thought the matter all the way through.
- If the employee cannot supply missing information, then advise that you cannot make a determination and that the employee may not be able to participate in the activity.

## ***Scenario 5***



**Q:** Jack works in the General Counsel's office at DPW. He has been engaged in an urban turf war over trash cans with neighbors from across the alley. A few months ago, both Jack and his next door neighbor received trash ticket violations. He can't believe it. Both Jack and his neighbor decide to contest the ticket and plan to plead their case in court. His day in court is coming up. Since he is a DPW employee, he calls ethics to confirm that he can fight the ticket in court, can he?

# Scenario 5 (Cont.)



A: He cannot represent his neighbor, but he can represent himself.

- Subsection 1807.7 states that “[n]othing in this chapter shall prevent an employee from acting, with or without compensation, as agent or attorney for his or her parent(s), spouse, domestic partner, child, or any person for whom, or for any estate for which, he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary *except in those matters in which he or she has participated personally and substantially as a government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of the employee's official responsibility...*”.
- He should not use his official title or position while representing himself in this matter.
- He should also provide written notice of recusal to his supervisor, explaining that he is recusing himself from his own matter and is appearing in his personal capacity as a resident of the District.

# ✔ Best Practice ✔



## ✔ DO – Ethics plus.

- Advising on participation in outside activities is rarely a simple yes. *Every time* you provide outside activities advice, you should not only describe the limitations that apply to all outside activity but ensure that the employee understands how they relate to the specific activity involved.
- Think prospectively about the potential for conflicts, misuse of position/resources, appearance concerns, or other ethics issues and advise the employee or agency to take steps to address those concerns before they arise.

# ***Scenario 5***



**Q:** Mark, A Department of Health (DOH) employee who works as a program assistant in the Division of Medical Marijuana and Integrative Therapy, wants to start up his own business to work on evenings and weekends advising entities on how to become certified Medical Marijuana Program providers. He figures that since he doesn't approve any applications and his work is primarily administrative, he should be allowed to provide this service in his off duty hours. He comes to you for ethics advice. Can he?



## ***Scenario 5 (cont.)***



**A: No. Mark may not operate a business advising entities on how to become certified Medical Marijuana providers. Even though his work is administrative, the business would relate substantially to his official duties, so he may not accept compensation for providing such services.**

# **Potential Pitfall**



## **DON'T – Forget to check with Ethics**

- Don't assume that just because something was once cleared by ethics, that related activity is automatically okay.
- Ethics advice is usually fact specific and dependent upon the nature of an employee's duties, so it makes sense to seek out your own confirmation.
- Depending on the employee's position or the nature of the outside activity, you should advise the employee to seek advise directly from BEGA.

# ***Scenario 6***



**Q:** Sandra is a Department of Energy and Environment (DDOE) employee who worked to get the Green Building Act of 2006 passed. She is a nationally known expert on environmentally friendly building efforts. She has recently been approached by a publisher to write a book chapter about the passage of the Green Building Act back in 2006 for a book about the history of green building laws in the U.S. The publisher offers her \$5000. Sandra figures that it was a long time ago, so it should be okay.

Sandra comes to you for ethics advice, can she write the chapter?

## ***Scenario 6 (cont.)***



**A: Sandra cannot write the chapter for compensation because it is devoted substantially to an ongoing program of her agency. She is correct in that it occurred a long time ago, however, the subject still relates to her agency's responsibilities and she would be writing about information that she obtained through her government employment.**

# **Best Practice**



## **DO – Look for the Ethical Yes**

- **When an employee is prohibited by the ethics rules from engaging in a specific outside activity, perhaps there is a way to get to a different yes.**
- **In the previous example, perhaps Sandra could write an introduction or a foreword in which she shares her general expertise on enacting green building codes.**

# Takeaways



- Mere membership in an outside activity is fine, but if you are assuming a leadership role or beginning new employment, seek ethics approval.
- Take special care when engaging in activities regulated by your agency or political activity and obtain ethics approval beforehand.
- Ensure that you are fully informed about the nature of an employee's outside activity and their official duties before providing ethics advice.
- Stay up to date – check in periodically with employees who you know are engaging in outside activity or employment to see if anything has changed. Employees should also check with ethics if their duties or the nature of their outside activity changes.
- If possible, find a way to get to a different yes.

# ***Where to go for ethics advice***



- **BEGA**
  - Office of Government Ethics
  - (202) 481-3411
  - BEGA Hotline - - (202) 535-1002
  - Email - - [bega@dc.gov](mailto:bega@dc.gov)
  - [www.bega-dc.gov](http://www.bega-dc.gov)
- Your Agency Ethics Counselor

Dear Government Employee,  
Some things are more precious than  
others; the public's trust is one  
example. Government service with  
integrity requires your special attention.



Thanks, Ethics

**SERVE WITH  
INTEGRITY**

When in doubt, give Ethics a shout!