

OFFICE OF THE GENERAL COUNSEL
COUNCIL OF THE DISTRICT OF COLUMBIA

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MEMORANDUM

To: Separating Employee
From: V. David Zvenyach, General Counsel
Re: Ethical and Legal Obligations of Employees
Separating from the Council

Thank you for your service to the Council of the District of Columbia. As you depart the Council, you should be aware of that your ethical and legal obligations do not cease upon separation. This memorandum provides a brief summary of these obligations but should not be regarded as a substitute for legal advice.

FINANCIAL DISCLOSURE

If you are leaving the District Government and your annual salary at the Council exceeded \$92,700, you are very likely required to file a financial disclosure statement (“FDS”) with the Board of Ethics and Government Accountability (“Ethics Board”).

If your separation occurs between January 1st and January 31st, you must file your FDS for the prior calendar year. If your separation occurs between February 1st and May 15th, you must file your FDS form for the prior calendar year *and* the current calendar year by May 15th. If your separation occurs after May 15th, you must file your FDS for the current calendar year within 90 days after separation.

To help you determine when you must file a FDS, I have prepared a chart that sets forth the filing deadlines. That chart is found below:

Separation Date	Filing Deadline	Filing Requirement
January 1 — January 31	May 15 th	Prior Calendar Year
February 1 — May 15	May 15 th	Prior & Current Calendar Year
May 16 — December 31	Within 90 days of separation	Current Calendar Year

Table 1. Post-employment FDS filing deadlines

POST-EMPLOYMENT CONFLICTS

Although a former Council employee may work for any employer, there are a few substantive restrictions on your activities for a new employer. These restrictions are summarized below.

Bans on Representation

The main post-employment conflict-of-interest provisions are found in 18 U.S.C. § 207(a) and Code of Official Conduct Rule VIII, which prohibit a former Council employee from “switching sides” in a particular matter involving specific parties.

Permanent Ban

18 U.S.C. § 207(a)(1) and Rule VIII(a) generally prohibit a former Council employee from knowingly making, “with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the District of Columbia, on behalf of any other person (except the District of Columbia) in connection with a particular matter: (1) in which the District of Columbia is a party or has a direct and substantial interest; (2) in which the person participated personally and substantially as such officer

or employee; and (3) which involved a specific party or specific parties at the time of such participation.”

Under this rule, if while working at the Council, you worked on a certain type of matter—such as a contract, grant, property transaction, or lawsuit—you may not attempt to influence any District agency or court on behalf of anyone else regarding that matter. It is important to note that you do not need to be a “lobbyist” to qualify for this rule. *Any* communications or appearances made on behalf of a specific party with the intent to influence a District agency or court would constitute a post-employment conflict.

2-Year Ban on Representation

Under 18 U.S.C. § 207(b) and Rule VIII(b), a Council employee is also prohibited from knowingly making, with the intent to influence, a communication or appearance before a District agency or court for 2 years with respect to particular matters involving specific parties in which the District is a party or has a direct and substantial interest if the employee “knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of one year before the termination of his or her service or employment with the Council.”

In other words, if you supervised other employees who worked on a particular matter involving specific parties—even if you did not have any personal involvement with the matter—there is a 2-year ban on your communicating or appearing before a District agency or court regarding the particular matter. This restriction does *not* apply if you did not have a supervisory role in the matter during the last year of Council service.

Restriction on profit-Sharing from Representation

The other major restriction to be aware of is found in 18 U.S.C. § 203, which prohibits current and former Council employees

from accepting any fee for representational services rendered by the employee before the government during the employee's government service. This applies to shares of profits that your new employer earned as a result of representing clients during your employment by the Council even if you were not involved in the matter during your District service.

This restriction is of particular concern to a former Council employee who becomes a partner in a law firm, accounting firm, or consulting firm that appeared before District agencies or courts when the employee was employed by the District. If this situation is likely to apply, you should ensure that your compensation does not include income that the firm earned by representing parties before the District government during the time that you were employed by the Council.

USE OF CONFIDENTIAL INFORMATION

Under Rule VII of the Code of Official Conduct, current and former Council employees are prohibited from disclosing or using confidential or privileged information acquired by reason of their position without authorization, or unless authorized or required by law to do so. Additionally, current and former employees are prohibited from divulging information in advance of the time prescribed for its authorized issuance or otherwise make use of or permit others to make use of information not available to the general public.

LIMITS ON ATTORNEYS

In addition to the restrictions set forth in federal and District laws and rules, a former Council employee who is an attorney may be subject to additional rules of professional conduct in the jurisdictions in which they are licensed.¹ Accordingly, attorneys

¹ See, e.g., D.C. Rule of Professional Conduct 1.11 (Successive Government and Private Employment); D.C. Opinion No. 279 (1998) ("Availability of Screening as Cure for Imputed Disqualification").

should be sure to independently determine whether any rules of professional conduct affect their post-employment plans.

CONCLUSION

The foregoing is intended to be a summary of the ethical and legal obligations that may apply to you upon separation from the Council. If you have any questions, please feel free to call my office at (202) 724-8026 or contact the Board of Ethics and Government Accountability (<http://bega.dc.gov>). Thank you again for your service to the Council and the District of Columbia Government.

ATTACHMENTS

- Code of Official Conduct Rule VII
- Code of Official Conduct Rule VIII
- 18 U.S.C. § 203
- 18 U.S.C. § 207
- D.C. Official Code § 1-1162.24
- Financial Disclosure Statement Form