

**REPORT OF INVESTIGATION OF COUNCILMEMBER JACK EVANS
PURSUANT TO JULY 9, 2019 D.C. COUNCIL RESOLUTION 23-175**

O'MELVENY & MYERS
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I. EXECUTIVE SUMMARY

Pursuant to the Council's July 9, 2019 resolution, O'Melveny has conducted an investigation of ethical issues associated with Councilmember Jack Evans' outside employment over the last five years. Outside employment for councilmembers (other than the Council Chairman) has long been permitted in the District, as it is in many other state and local legislative bodies across the country. Advocates of part time legislative models often point to the advantages of a system that allows legislators to stay more closely connected to the experiences of their constituents. But outside employment, particularly where it may relate to the business of the Council or the executive branch that the Council funds and oversees, brings with it increased risks of potential conflicts of interest and other ethical issues. Adherence to an effective ethics program is a critical element in mitigating those risks.

Employment by a law firm or consulting business that represents clients with financial interests in pending Council legislation or whose business is regulated by an agency of the District government exemplifies the type of outside employment that would raise potential ethics issues. It is not impossible to manage the increased risks of outside employment that is affected by the actions of government, but it can be challenging to do so in a manner that complies with the Council's Code of Official Conduct and maintains public confidence in the integrity of the Council and the District's government.

O'Melveny's investigation found that Evans made some efforts to avoid ethical issues associated with his outside legal and consulting activities, but his overall approach was inadequate and based on a "I know it when I see it" standard, rather than adherence to the actual provisions of the Code of Official Conduct. Based upon a flawed interpretation of his ethical obligations, he failed to disclose the names of any of his consulting clients in his public financial disclosure statements and did not disclose the identity of most of his consulting clients even to his own staff. He repeatedly participated in his official capacity in "particular matters" in which his outside employers or his personal clients had direct financial interests, failing to recognize the inherent conflict that should have been disclosed and addressed. He failed on several occasions to recuse himself from matters involving financial interests of a prospective employer. He received over \$400,000 for doing little or no documented work for consulting clients most, if not all, of whom were also "prohibited sources" under the Code of Official Conduct. He made occasional, albeit not substantial, use of his Council staff and office email account to support his outside employment, including the preparation of engagement agreements and invoices. All of these ethical lapses (including those that arguably created mere appearances of improprieties) could have been avoided if Evans had more diligently and regularly sought ethics advice from either the Office of the General Counsel ("OGC") or Board of Ethics and Government Accountability ("BEGA").

O'Melveny's review of Evans' publicly filed financial disclosure forms revealed that although he disclosed his employment with Squire Patton Boggs and Manatt, Phelps & Phillips, LLP ("Manatt") and his ownership of NSE Consulting, LLC ("NSE"), he failed to disclose any of NSE's clients in any of the applicable years. Evans completed

seven financial statements between May 2017 and May 2019, covering the duration of NSE's existence. Two of the forms had printing or formatting mistakes that created potential confusion around what information Evans was required to provide for two disclosure periods at issue. But on five other occasions, Evans completed financial disclosures using forms without the formatting mistakes, and those forms clearly required him to disclose the identity of any NSE clients who stood to gain direct financial benefit from legislation that was pending before the Council during the period covered by the disclosure. Because so many NSE client witnesses asserted their right not to provide testimony under the Fifth Amendment to the Constitution or declined to cooperate with the Council's investigation for other reasons, we were unable to complete a comprehensive assessment of all examples of legislation before the Council that created direct financial interests for any NSE client. But it is clear, at a minimum, that Digi Outdoor Media, Inc. and Digi Media Communications, LLC; The Forge Company; Willco; EastBanc, Inc.; and Squash on Fire were all NSE clients during a reporting period in which they also had a financial interest in legislation before the Council.

Evans' failure to disclose the identity of his clients through NSE violated financial disclosure rules, and it also had a collateral impact of hindering his informal system of relying on his Council staff for assistance in identifying potential conflicts of interest. The secrecy that Evans maintained around his client relationships made it difficult, if not impossible, for his staff to help him effectively manage his ethical obligations.

O'Melveny identified the following eleven particular matters affecting the financial interests of employers (or prospective employers) and clients for which Evans took official action in violation of the conflict of interest provisions of Rule I of the Code of Official Conduct. It is important to note that, absent the outside employment arrangements Evans had with the clients involved, some or all of these actions may have been squarely within his legitimate role as a councilmember. However, once these clients employed him, he had the obligation to disclose their interests, and seek either approval of, or recusal from, his involvement in particular matters involving them.

1. In 2015, Evans, on three occasions, took official actions to influence or attempt to influence support for the Pepco-Exelon merger while negotiating for employment (and later after gaining employment) with the law firm Manatt, who actively represented Pepco and Exelon in connection with the merger.
2. In August 2016, shortly after the two Digi entities entered into service agreements with NSE, Evans' staff (with Evans' knowledge) contacted the Washington Metropolitan Area Transit Authority to help Digi arrange special after-hours access to the Metro Center station to facilitate Digi's overnight construction of digital signs after the District government ordered Digi to halt its operations.
3. In November and December 2016, while Squash on Fire and EastBanc, Inc. were NSE clients, Evans twice voted in favor of the West End Parcels Development Omnibus Amendment Act of 2016, which included funds to maintain buildings associated with, or nearby to, the Squash on Fire facility.

4. In early 2017, while EastBanc Technologies was an NSE client, Evans personally and through his staff, arranged a meeting between EastBanc Technologies and senior officials at the Office of the Chief Technology Officer where they could pitch software initiatives that might lead to city contracts.
5. In early 2017, while EastBanc was an NSE client, Evans personally and through his staff, arranged a meeting between Anthony Lanier, President of EastBanc, and Councilmember Kenyan McDuffie, to discuss a potential development project in Ward 5.
6. In March 2017, while Willco was an NSE client, Evans introduced the Relieve High Unemployment Tax Incentives Act of 2017, which included financial incentives for film, television, and digital media production facilities that Willco was actively developing.
7. In March 2017, while Willco was an NSE client, Evans and his staff arranged a meeting for Jason Goldblatt, Willco's President and CEO, and Councilmember McDuffie's office to discuss Willco's proposal for a public-private partnership for a sound studio facility in Ward 5.
8. In May 2017, while Willco was an NSE client, Evans and his staff provided assistance to Willco in trying to influence the District Department of Transportation to stop work on a curb installation that would prevent Willco from gaining access to a public alley.
9. In May and June 2017, at a time when Forge (a holding company for Colonial Parking, Inc.) was an NSE client, Evans took official actions through the Finance and Revenue Committee and through votes on the Fiscal Year 2018 Budget Support Act of 2017 to preserve the commercial lot parking tax rate at 18 percent.
10. In June 2017, while Willco was an NSE client, Evans, at the request of Jason Goldblatt, spoke with a senior official in the Mayor's office to determine the validity of a rumor about the government not renewing a lease on a Willco property.
11. In June 2017, while Willco was an NSE client, Evans and his staff, at the request of Willco executive Gary Cohen, provided assistance to Willco in obtaining an expedited plumbing permit for a Willco development project.

The Council's ethical rules contain a general prohibition on employees taking gifts from a "prohibited source," e.g., a person or entity that is regulated by the District government or stands to benefit from official actions that may be taken by the employee. O'Melveny's investigation found that Evans entered into agreements with multiple prohibited sources that, in the aggregate, paid him several hundred thousand dollars largely for merely being available. Availability pay of that magnitude even for a highly skilled government employee is ethically suspect—in the same way that any other sweetheart deal with a prohibited source is questionable. We saw no evidence that Evans' retainer payments were fair market value. And the fact that all but one of the principals of NSE's clients asserted their Fifth Amendment privilege or otherwise declined to cooperate with our investigation certainly does not increase our confidence in the ethical propriety of the NSE retainer payments. Nevertheless, because of the sparsity of the factual record and the lack of ethical guidance specific to availability pay

issues, O'Melveny believes this issue should be further explored and considered by the Council and BEGA.

It is important to note that O'Melveny did not attempt to assess the extent to which any of Evans' personal or attributed financial interests had an actual impact on any legislative or other official business of the Council or the District government. It may well be that many of the conflicts of interest described in the report ultimately did not change Evans' behavior. And it may well be that the actions that Evans took were in the public interest. In his interview, Evans assured us that was always the case. But ethics violations do not require an actual distortion of decisionmaking. The Council's Code of Official Conduct was designed to avoid the intertwining of public duties with personal financial interests in a way that undermines public confidence in our institutions of government. O'Melveny's investigation found multiple instances where Evans' mismanagement of his ethical obligations did just that.

O'Melveny believes it is possible to maintain public confidence in the District's institutions, while preserving the option of outside employment for councilmembers. Our investigation made clear that the following would be of critical importance to that end, ensuring councilmembers meet their ethical obligations consistent with the Council's Code of Official Conduct:

1. Knowledge of the ethics rules and processes: Get ethics training, know and understand applicable ethics rules, and seek independent expert advice and guidance on potential ethical issues from the Council's General Counsel or officials at BEGA, as needed. Do so in writing, including all relevant facts, so that the request and guidance are both appropriately documented.
2. Disclosure: Disclose all applicable financial interests associated with any outside employment, in a manner sufficient to allow the councilmember, his or her staff, and the public at large to know what matters might create conflicts of interest.
3. Potential conflicts with employers and clients: Screen all matters to avoid not only actual conflicts of interest but also actions that could create an appearance that a councilmember is using his or her official position for private gain or could otherwise appear to conflict with the fair, impartial, and objective performance of the employee's official duties and responsibilities, or with the efficient operation of the Council. Consult with staff, OGC and BEGA about what constitutes an appearance of a conflict.
4. Potential conflicts with prospective employers or clients: If negotiating for potential employment or consulting work, screen matters to avoid involvement in matters that could affect the financial interests of any prospective employers or clients.
5. Prohibited gifts: Avoid "sweetheart deals," i.e., compensation for outside employment at a rate that is in excess of market value of the work or services provided.
6. Use of government resources: Avoid using Council employees or Council computer systems or other resources in connection with private employment.

II. INTRODUCTION

A. **Scope of Mandate**

On July 9, 2019, the D.C. City Council (“D.C. Council” or “Council”) issued the “Council Period 23 Rules and Investigation Authority Amendment Resolution of 2019” (“Resolution”).¹ The Resolution authorized the Chairman to appoint O’Melveny & Myers, LLP (“O’Melveny”) to investigate the conduct of Councilmember Jack Evans, describing the investigation’s scope as follows:

whether, from January 1, 2014 to the present, the official and outside activities of Councilmember Jack Evans relating to NSE Consulting LLC (including the establishment of that entity), any client of NSE Consulting LLC, or any other entity by which Councilmember Evans was employed or for which he consulted, violated the Code of Conduct or Council Rules.²

(“Investigation”). The Resolution delegated to O’Melveny the Council’s authority to issue subpoenas under Council Rule 611. Rule 611 authorizes the issuance of subpoenas to compel the attendance of witnesses, to obtain witnesses, and to require the production of documents and other items.

III. THE INVESTIGATIVE PROCESS

A. **Scope**

O’Melveny’s investigative approach was informed by initial consultations with appropriate oversight authorities, including the Office of the General Counsel (“OGC”) and the Board of Ethics and Government Accountability (“BEGA”), the governing law of the District of Columbia, and applicable rules and regulations, including the D.C. Council Rules, Code of Conduct, and advisory opinions and guidance from BEGA and the Council. O’Melveny took precautions to help ensure it did not impede or frustrate any parallel governmental investigations.

The Resolution, in accord with the weight of legal authority concerning the ethical duties of District officials, focused the Investigation on Evans’ activities that tended to implicate entities in which he, or persons with whom he was closely affiliated, had financial interests.³ Preliminary fact development suggested that Evans, at various

¹ Council of the District of Columbia, Resolution 23-175, “Council Period 23 Rules and Investigation Authority Amendment Resolution of 2019” (July 9, 2019), <http://lims.dccouncil.us/Download/43023/PR23-0434-Enrollment.pdf>.

² *Id.* at 2.

³ Public reporting and other sources suggested a significant number of outside entities and individuals with potential relevance to the Resolution. The investigation examined these relationships, including, but not limited to, entities and individuals associated with the D.C. Lottery contract process—William Jarvis, Emmanuel Bailey, Intralot, and DC 09 LLC. The investigation did not find evidence sufficient to establish that these relationships were likely to present a direct and predictable effect on Evans’ personal financial interests within the meaning of the Code of Conduct or Council Rules during the relevant time period.

times during the period covered by the Resolution, held direct and indirect financial interests in a number of outside entities. His direct financial interests were most concretely exemplified by his closely held business NSE Consulting, LLC (“NSE”). The Investigation also examined his financial interests while employed at the law firms of Manatt, Phelps & Phillips, LLP (“Manatt”) and Squire Patton Boggs (“Squire”).⁴ His activities while at NSE, Manatt, and Squire are the primary focus of this report.

B. Investigation Metrics

Over the course of an approximately ten-week fact-gathering exercise, O’Melveny issued nineteen subpoenas for documents, eight subpoenas for testimony, and conducted twenty-two witness interviews.

1. Documentary Evidence

In addition to the nineteen document subpoenas, many witnesses and custodians voluntarily produced responsive materials without legal compulsion. Entities and individuals fully cooperated with requests for documents and information and produced a large volume of data and email correspondence related to a number of individuals and organizations O’Melveny identified. OGC also provided relevant copies of the Council’s responses to the more than 40 Freedom of Information Act (“FOIA”) requests related to the subject areas at issue in the Investigation.

The document subpoenas were tailored to each recipient. In general, the subpoenas sought documents relating to the financial interests⁵ of Evans and his staff attributable to private employment or other outside activities and to efforts to lobby or advocate on particular matters before the District government, particularly the Council, on behalf of private interests.

The Investigation collected and reviewed nearly 60,000 documents, totaling more than 240,000 pages of responsive materials.

2. Witness Interviews

O’Melveny conducted more than twenty interviews, including interviews of

- John Hoellen, former Deputy General Counsel and Legislative Counsel of D.C. Council
- Ellen Efros, former General Counsel of D.C. Council
- Nicole Streeter, current General Counsel of D.C. Council

⁴ O’Melveny did not investigate potential violations or alleged conduct concerning Evans’ tenure as a WMATA board member.

⁵ The subpoenas defined the term ‘Compensation’ to mean money, real property, commodities, or any other thing of value—including, but not limited to, salary, contribution to salary, gratuities, stocks, or bonds—that were held individually or jointly by the subpoena recipient or affiliates.

- William (“Bill”) Jarvis, President and Chief Operating Officer of Lockhart Companies, and owner of The Jarvis Company
- Chad Copeland, Deputy Attorney General, Office of Attorney General for the District of Columbia
- Fernando Rivero, Assistant Attorney General, Office of Attorney General for the District of Columbia
- Greg Miller, former Chief Operating Officer, Digi Outdoor Media, Inc.
- Mark Scott, former Chief Financial Officer, Digi Outdoor Media, Inc.
- John Ray, Partner, Manatt, Phelps & Phillips, LLP
- Tina Ang, Senior Legislative Advisor, Manatt, Manatt, Phelps & Phillips, LLP
- Russell (“Rusty”) Lindner, Executive Chairman, Colonial Parking Inc. and Executive Chairman and CEO, The Forge Company

O’Melveny also interviewed Evans four times over the course of four weeks, totaling a dozen hours of interview time. Evans and his counsel were cooperative throughout the Investigation and promptly responded to requests for documents and information. Additionally, O’Melveny interviewed the following current and former members of Evans’ staff, who were equally cooperative with the Investigation:

- Schannette Grant, Chief of Staff
- Sherri Kimbel, Director of Constituent Services
- Ruth Werner, Director of Legislative Affairs
- Adam Gutbezahl, former Legislative Counsel

The following individuals declined to cooperate with the Investigation, choosing to assert their Fifth Amendment right against self-incrimination:

- Richard (“Ritchie”) Cohen, Chairman, Willco
- Jason Goldblatt, former President and CEO, Willco
- Anthony Lanier, President and CEO, EastBanc Inc.
- Robert (“Bob”) Pincus, former Vice Chairman of the Board of Directors of Eagle Bancorp, Inc. and EagleBank
- Steven Fischer, Owner, Fischer Holdings

Additionally, Ronald D. Paul, President of RDP Management, Inc. and former Chairman of the Board of Directors and CEO of Eagle Bancorp, Inc. and EagleBank, declined to cooperate with the Investigation, and as of the date of this report has yet to comply with O'Melveny's subpoena. Notwithstanding that Paul has extensive business interests in the District, Paul asserts that as a Maryland resident he was not within the Council's jurisdiction. He has also represented through counsel that he has health issues that would prevent him from sitting for an interview.

IV. **ETHICS REGIME APPLICABLE TO COUNCILMEMBERS**

In 2011, the Council enacted the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act ("Ethics Act").⁶ The Ethics Act was the Council's response to a series of ethical and criminal misdeeds by elected officials in the District and dissatisfaction with the existing legal framework, which, at the time, involved a fragmented system of ethics laws and rules.⁷ As the Committee report accompanying the Ethics Act noted, the absence of a uniform, comprehensive code of conduct created an atmosphere conducive to "actual misconduct in the form of outright corruption, of diverting public resources for private gain, and of waste and fraud."⁸

The Ethics Act was designed to address these failures and "restore the public's trust in its government."⁹ It established BEGA—charging it with exclusive authority to create a plain language guide to the code of conduct, and to administer and enforce the new and enhanced laws and code of conduct—and instructed that "all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council of the District of Columbia, boards and commissions, and Advisory Neighborhood Commissions, but excluding the courts," must adhere to the Ethics Act and the Code of Conduct.¹⁰ As defined by the Ethics Act and § 1-1161.01(7) of the D.C. Official Code, the Code of Conduct encompasses the Council's Code of Official Conduct, as adopted by the Council ("Code of Official Conduct" or "Code"),¹¹ as well as several provisions of the D.C. Official Code.¹²

⁶ Effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.01).

⁷ Report of the Committee on Government Operations on Bill 19-511, the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics Act Committee Report"), at 2, 9 (Council of the District of Columbia, Dec. 5, 2011), <http://lims.dccouncil.us/Download/2560/B19-0511-COMMITTEEREPORT.pdf>; see also Martin Austerhuhle, *A Brief History Of Legal And Ethical Misdeeds By Some D.C. Lawmakers*, WAMU (July 9, 2019), <https://wamu.org/story/19/07/09/a-brief-history-of-legal-and-ethical-misdeeds-by-d-c-lawmakers/> (describing the ethical misdeeds of at least a half-dozen Council members in the last decade).

⁸ Ethics Act Committee Report, *supra* n.7 at 17.

⁹ *Id.* at 31.

¹⁰ D.C. Official Code § 1-1162.01(a); D.C. Official Code § 1-1162.02(a)(1),(7).

¹¹ Council of the District of Columbia, Code of Official Conduct ("Code" or "Code of Official Conduct"), <https://dccouncil.us/wp-content/uploads/2017/05/PR22-0001b.pdf>.

¹² D.C. Official Code §§ 1-618.01-1-618.02; § 2-701 *et seq.*; § 1-1171.1 *et seq.*; § 1-1162.24; §§ 1-1162.24–1-1162.26; §§ 1-1162.27–1-1162.32; and § 1-1163.38.

Pursuant to the Resolution, the Investigation focused on potential violations of the Code, as well as violations of the Rules of Organization and Procedure for the Council of the District of Columbia (“Council Rules”).¹³ The relevant provisions of the Code of Official Conduct and Council Rules are discussed in Section IV(C).

A. Ethics Training/Advice

Generally, councilmembers must refrain from conduct “which would adversely affect the confidence of the public in the integrity of the District government.”¹⁴ To ensure that councilmembers refrain from such conduct, the General Counsel to the Council of the District of Columbia (the “General Counsel”) conducts “mandatory training on the conflict of interest and ethics laws and regulations.”¹⁵ Councilmembers must “certify on an annual basis that they have completed at least one ethics training program within the previous year.”¹⁶ And they must take “full responsibility for understanding and complying” with the Code of Official Conduct.¹⁷

Councilmembers may seek confidential ethics advice from the General Counsel. If a councilmember makes full disclosure of all relevant facts, receives advice from the General Counsel, and acts in accordance with such advice, later conduct by the councilmember that is found to constitute a violation of the Code of Official Conduct, will enjoy safe-harbor protections.¹⁸ The safe harbor provision is not applicable if the councilmember “knows or has reason to know that the General Counsel’s advice was based upon fraudulent, misleading, or otherwise incorrect information provided by the [councilmember].”¹⁹

In addition to seeking ethics advice from the General Counsel, councilmembers can also seek advisory opinions from BEGA. Under § 1-1162.19(a) of the D.C. Official Code, councilmembers may request advice on specific ethics questions from BEGA’s Director of Government Ethics in the Office of Government Ethics (“OGE”). The Director of Government Ethics shall then “provide an advisory opinion as to whether [the] specific transaction inquired would constitute a violation of a provision of the Code of Conduct.”²⁰ A safe harbor provision also attaches here, so long as the

¹³ Council of the District Columbia, Resolution 23-1, “Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 23, Resolution of 2019” (“Council Rules”) (Jan. 2, 2019) <https://dccouncil.us/wp-content/uploads/2019/01/PR23-0001a.pdf>.

¹⁴ D.C. Official Code § 1-618.01(a). See also Council Rules, *supra* n.13 Rule 202(a).

¹⁵ Code of Official Conduct, *supra* n.11 Rule XI(b)(2). See also Council Rules, *supra* n.13 Rule 202(d)(2) (the General Counsel shall “periodically conduct training on the conflict of interest and ethics laws”).

¹⁶ D.C. Official Code § 1-618.01(a)(2)-(3).

¹⁷ Council Rules, *supra* n.13 Rule 202(b). Ethics training materials, including “summary guidelines to all applicable laws and regulations” are readily available online for councilmembers to consult. Code of Official Conduct, *supra* n.11 Section XI(b)(3).

¹⁸ Code of Official Conduct, *supra* n.11 Section XI(d)(2)(A).

¹⁹ *Id.* Section XI(d)(2)(B).

²⁰ D.C. Official Code § 1-1162.19(a).

councilmember provides “specific, actual facts” from which BEGA can make a determination.²¹

B. Financial Disclosure Forms

Councilmembers must file an annual financial disclosure statement with BEGA, publicly disclosing financial interests.²² The financial disclosures are due on May 15 each year, and cover the previous calendar year.²³ Under § 1-1162.24(a)(1)(A)(i)-(iii) of the D.C. Official Code, the disclosure must contain, in relevant part, the name of each business entity the councilmember:

- “Has a beneficial interest, including, whether held in such person’s own name, in trust, or in the name of a nominee, securities, stocks, stock options, bonds, or trusts, exceeding in the aggregate \$1,000, or that produced income of \$200”;
- “Receives . . . income earned for services rendered in excess of \$200 during a calendar year, as well as the identity of any client for whom the official performed a service in connection with the official’s outside income if the client has a contract with the government of the District of Columbia or the client stands to gain a direct financial benefit from legislation that was pending before the Council during the calendar year”; or
- “Serves as an officer, director, partner, employee, consultant, contractor, volunteer, or in any other formal capacity or affiliation.”

A councilmember’s public report must also include information regarding:

- “Any outstanding individual liability in excess of \$1,000 for borrowing by the [councilmember] . . . from anyone other than a federal or state insured or regulated financial institution.”²⁴
- “All real property located in the District . . . in which the [councilmember] . . . has an interest with a fair market value in excess of \$1,000 or that produced income of \$200; provided, that this provision shall not apply to personal residences occupied by the [councilmember].”²⁵

²¹ “There shall be no enforcement of a violation of the Code of Conduct taken against an employee or public official who relied in good faith upon an advisory opinion requested by that employee or public official; provided, that the employee or public official, in seeking the advisory opinion, made full and accurate disclosure of all relevant circumstances and information.” D.C. Official Code § 1-1162.19(d); BEGA, *Advisory Opinion - Constituent Services by Elected District of Columbia Government Officials* (“Constituent Services AO”), Aug. 29, 2013, at n.32, https://bega.dc.gov/sites/bega/files/publication/attachments/Advisory_Opinion-Constituent_Services.pdf.

²² D.C. Official Code § 1-1162.25.

²³ *Id.*

²⁴ *Id.* § 1-1162.24(a)(1)(B).

²⁵ *Id.* § 1-1162.24(a)(1)(C).

- “All gifts received . . . by a public official from a prohibited source in an aggregate value of \$100 in a calendar [year].”²⁶

With the public report, a councilmember also must submit an affidavit stating, *inter alia*, that he/she has “[n]ot received or been given anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that the [councilmember’s] official actions or judgment or vote would be influenced.”²⁷

C. Relevant Code Of Official Conduct Provisions

Evans’ outside employment primarily implicated five provisions of the Code of Official Conduct.

1. Rule I - Conflicts Of Interest

Code of Official Conduct Rule I(a) provides that:

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*.²⁸

The following key terms in Rule I(a) dictate the scope and applicability of the prohibition:

Personally Or Substantially Participate. “To participate ‘personally’ means to participate directly.”²⁹ “To participate ‘substantially’ means that the employee’s involvement is of significance to the matter.”³⁰ Substantial participation requires

²⁶ *Id.* § 1-1162.24(a)(1)(E).

²⁷ *Id.* § 1-1162.24(a)(1)(G)(vii).

²⁸ Code of Official Conduct, *supra* n.11 Rule I(a) (emphasis added); D.C. Official Code § 1-1162.23; see also 18 U.S.C. § 205(b) (prohibiting any “officer or employee of the District of Columbia” from acting “as an agent or attorney for anyone before any department, agency, court, officer, or commission in connection with any covered matter in which the District of Columbia is a party or has a direct and substantial interest”).

²⁹ 5 C.F.R. § 2640.103(a)(2); Exhibit 2 at RECORD - 0002003 (Sept. 6, 2017 Email from K. Westcott to R. Werner) (relying on code of federal regulations to define personal and substantial participation).

³⁰ 5 C.F.R. § 2640.103(a)(2); see also Exhibit 2 at RECORD - 0002003 (OGC memorandum citing code of federal regulations to define personal and substantial participation under the Code); see also BEGA,

more “than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.”³¹ However, “[p]articipation may be substantial even if it is not determinative of the outcome of a particular matter.”³² “Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.”³³

Person Closely Affiliated With The Employee. Person closely affiliated with the employee reaches “a spouse, dependent child, general partner, a member of the employee’s household, or an affiliated organization.”³⁴

Affiliated Organization. Affiliated organization means an organization or entity “(1) [i]n which the [councilmember] serves as officer, director, trustee, general partner, or employee; (2) [i]n which the [councilmember] or member of the [councilmember’s] household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more fair market value; or (3) [t]hat is a client of the [councilmember] or member of the [councilmember’s] household.”³⁵ An affiliated organization also includes “a person with whom the employee is negotiating for or has an arrangement concerning prospective employment.”³⁶

Particular Matter. A “[p]articular matter is limited to deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.”³⁷ Legislation of general applicability that is presented to the Council (e.g., legislation that deals with all qualifying stores rather than a single store or subset of stores) does not give rise to a conflict of interest.³⁸ Legislation that is focused on a “particular industry or profession,”

Ethics Manual (“Ethics Manual”), Nov. 1, 2014 Ed.,

https://bega.dc.gov/sites/bega/files/publication/attachments/Ethics_Manual_-_11.1.14.pdf.

³¹ 5 C.F.R. § 2635.402(b)(4); see also Exhibit 2 at RECORD - 0002003 (OGC memorandum citing code of federal regulations to define personal and substantial participation under the Code); see also *Ethics Manual*, *supra* n.30.

³² 5 C.F.R. § 2635.402(b)(4).

³³ 5 C.F.R. § 2635.402(b)(4); see also Exhibit 2 at RECORD - 0002003-4 (“Arguably, a hearing may be solely for the purpose of receiving testimony on a measure that has been referred to that committee and ostensibly no Councilmember is making a decision or recommendation on the measure or any issue raised by a witness or approving, disapproving, investigating, or rendering advice on the measure. Nevertheless, BEGA would likely consider a hearing an action that is focused upon the interests of those specific person[s] or discrete and identifiable group or entity; thus, recusal would be required.”).

³⁴ Code of Official Conduct, *supra* n.11 Rule I(e)(5).

³⁵ *Id.*, Rule I(e)(1)(A)(1-3).

³⁶ *Id.*, Rule I(e)(1)(B).

³⁷ *Id.*, Rule I(e)(4) (quotation marks omitted); see also D.C. Official Code § 1-1161.01(41).

³⁸ Exhibit 2 at RECORD - 0002003; Exhibit 1 (April 13, 2016 OGC Memorandum) at RECORD - 0000002-3; 5 C.F.R. § 2640.103(a)(1) (stating that “particular matter” does not cover “consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons”); see also BEGA, OGE, *Advisory Opinion* 06 x 9, Oct. 4, 2006, at 7, [https://www.oge.gov/web/oge.nsf/All%20Advisories/624E14B0D710694B85257E96005FBE7E/\\$FILE/06x9_.pdf?open](https://www.oge.gov/web/oge.nsf/All%20Advisories/624E14B0D710694B85257E96005FBE7E/$FILE/06x9_.pdf?open) (an example of legislation focused on a discrete and identifiable class would be one

however, can create a conflict of interest.³⁹ Determining whether a matter before the Council is a “particular matter” typically requires a case-by-case analysis.⁴⁰

Direct and Predictable Effect. Direct and predictable effect means there is “a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest; and a real, as opposed to a speculative possibility, that the matter will affect the financial interest.”⁴¹ Because “a person closely affiliated with the employee” includes an organization “in which the [councilmember] serves as . . . [a]n employee,” the financial interests of an organization are imputed onto its employees.⁴² This is true even if the employee is not directly involved with the organization’s specific matter that is before the Council.⁴³

Relevant here, the Code offers two specific examples of “conflict situations”:

“A[] [councilmember] shall not receive any compensation, salary, or contribution to salary, gratuity, or any other thing of value from any source other than the District government for the [councilmember’s] performance of official duties.”⁴⁴

“No [councilmember] or member of the [councilmember’s] household may knowingly acquire:

(A) Stocks, bonds, commodities, real estate, or other property, whether held individually or jointly, the acquisition of which could unduly influence or give the appearance of unduly influencing the [councilmember] in the conduct of his or her official duties and responsibilities; and

(B) An interest in a business or commercial enterprise that is related directly to the [councilmember’s] official duties, or which might otherwise be involved in an

“applicable only to meat packing companies or a regulation prescribing safety standards for trucks on interstate highways”).

³⁹ Exhibit 1 at RECORD - 0000002-3; see also OGE, *Advisory Opinion 06 x 9*, Oct. 4, 2006, at 7, [https://www.oge.gov/web/oge.nsf/All%20Advisories/624E14B0D710694B85257E96005FBE7E/\\$FILE/06x9_.pdf?open](https://www.oge.gov/web/oge.nsf/All%20Advisories/624E14B0D710694B85257E96005FBE7E/$FILE/06x9_.pdf?open) (an example of legislation focused on a discrete and identifiable class would be one “applicable only to meat packing companies or a regulation prescribing safety standards for trucks on interstate highways”).

⁴⁰ Exhibit 4 (Apr. 13, 2016 OGC Memorandum) at RECORD - 0000008.

⁴¹ Code of Official Conduct, *supra* n.11 Rule I(a), (e)(2)(A-B).

⁴² *Id.*, Rule I(e)(1) and (5); see also Exhibit 5 (Excerpt from Jan. 30, 2017 Ethics Training Presentation).

⁴³ Exhibit 4 at RECORD - 0000007; see also BEGA, AA-009-13, *Advisory Opinion – Outside Employment – ANC Commissioner/Law Firm Associate Must Recuse Him/Herself When Has Knowledge Law Firm’s Client Has Matter Before ANC* (“Outside Employment AO”), at 3 (Apr. 19, 2013), http://bega.dc.gov/sites/bega/files/publication/attachments/AA-009-13_0.pdf.

⁴⁴ Code of Official Conduct, *supra* n.11 Rule I(d)(1); see also D.C. Official Code § 1-1162.23(d)(1).

official action taken or recommended by the [councilmember], or which is in any way related to matters over which the [councilmember] could wield any influence, official or otherwise.”⁴⁵

Additionally, a councilmember with outside employment at a law firm would have to recuse him/herself whenever he knew that his/her law firm represented a client in a matter before the Council; the councilmember need not specifically work for that client at the law firm for recusal to be required, as the law firm’s financial interest in the matter is imputed to the councilmember.⁴⁶ However, “if a [law firm] client comes before [the Council], represented by lawyers other than [the councilmember’s law firm] or without legal representation . . . [the councilmember] would not need to recuse [him/herself].”⁴⁷ In such a scenario, “neither [the law firm], through client fees, nor [the councilmember], as a salaried employee of [the law firm]” would benefit financially from the matter before the Council.⁴⁸ “Without [the] potential for gain,” there would be no direct and predictable effect.⁴⁹

Where a conflict arises under Rule I(a), councilmembers are required to “make full disclosure of the financial interest, prepare a written statement describing the matter and the nature of the potential conflict of interest, and deliver the statement to the Council Chairman.”⁵⁰ The Chairman then would excuse the councilmember from “votes, deliberations, and other actions on the matter.”⁵¹ When triggered, this provision prohibits the councilmember from “in any way participat[ing] in or attempt[ing] to influence the outcome of the particular matter in a manner that 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.”⁵²

a. Appearance of Conflict

Although the Code of Official Conduct does not separately address appearances of conflict,⁵³ the Council Rule 202(a) provides as follows:

In connection with the performance of official duties, Councilmembers and staff shall strive to act solely in the public interest and not for any personal gain or take an official action on a matter as to which they have a conflict of interest created by a personal, family, client, or business interest,

⁴⁵ Code of Official Conduct, *supra* n.11 Rule I(d)(2)(A-B); *see also* D.C. Official Code § 1-1162.23(d)(2)(A-B).

⁴⁶ Exhibit 4 at RECORD - 0000007; *see also* Outside Employment AO, *supra* n.43.

⁴⁷ Outside Employment AO, *supra* n.43 at 5.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Code of Official Conduct, *supra* n.11 Rule I(c)(1); *see also* D.C. Official Code § 1-1162.23(c).

⁵¹ Code of Official Conduct, *supra* n.11 Rule I(c)(3); *see also* D.C. Official Code § 1-1162.23(c).

⁵² Code of Official Conduct, *supra* n.11 Rule I(c)(3); *see also* D.C. Official Code § 1-1162.23(c).

⁵³ Although Rules 1(d) and II(a) reference appearances of conflict, the Code does not define the term or provide any guidance regarding its meaning or application.

avoiding both actual and perceived conflicts of interest and preferential treatment.⁵⁴

2. *Rule II - Outside Activities*

Code of Official Conduct Rule II(a) prohibits councilmembers from engaging in outside employment or private activity if such employment conflicts, or gives the appearance of conflicting, “with the fair, impartial, and objective performance of the [councilmember’s] official duties and responsibilities or with the efficient operation of the Council.”⁵⁵ A councilmember must “obtain the approval of his or her supervisor,” before engaging in outside employment.⁵⁶ The Code specifically permits councilmembers to engage in “consultative activities” if such activity complies with Rule II(a), is conducted “at a minimal level during work hours in a manner that does not interfere with the employee’s official duties,” and does not “draw on official data or ideas that are not public information” absent “written authorization from the employee’s supervisor to use such information.”⁵⁷

3. *Rule III - Gifts From Outside Sources*

Code of Official Conduct Rule III generally prohibits councilmembers from “solicit[ing] or accept[ing], either directly or indirectly, any gift from a prohibited source.”⁵⁸ A prohibited source is any person or entity that:

(A) Has or is seeking to obtain contractual or other business or financial relations with the District of Columbia; (B) Conducts operations or activities that are subject to regulation by the District government; or (C) Has an interest that may be favorably affected by the performance or non-performance of the employee’s official responsibilities.⁵⁹

Gift means “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. Gifts may also consist of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has incurred.”⁶⁰

⁵⁴ Council Rules, *supra* n.13 Rule 202(a).

⁵⁵ Code of Official Conduct, *supra* n.11 Rule II(a)(1).

⁵⁶ *Id.*, Rule II(a)(2).

⁵⁷ *Id.*, Rule II(b).

⁵⁸ *Id.*, Rule III(a); *see also id.* Rule III(b) (requiring councilmember to return prohibited gifts or reimburse the donor for the value); *see generally* 18 U.S.C. § 201(c) (prohibiting the giving, offering, or promising of anything of value to a public official or demanding, seeking, or receiving anything of value as a public official in turn of any “official act”); 18 U.S.C. § 203(b) (prohibiting compensation for “representational services”).

⁵⁹ Code of Official Conduct, *supra* n.11 Rule III(f)(2); *see* Exhibit 6 (Excerpt from Jan. 30, 2017 Ethics Training Presentation, providing that the “[b]asic presumption is that a person or entity offering a gift is a prohibited source, even if there’s nothing associated with the source that is directly before the Council”).

⁶⁰ Code of Official Code, *supra* n.11 Rule III(f)(1).

The Code also exempts certain situations from Rule III's gift's prohibition,⁶¹ including:

- Loans from banks and other financial institutions on terms generally available to the public;
- Pension and benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;
- Unsolicited gifts having an aggregate market value of \$50 or less per source per occasion, provided that the aggregate market value of individual gifts received from any prohibited source under the authority of this paragraph shall not exceed \$100 in a calendar year. This exception does not apply to gifts of cash, stock bonds, or certificates of deposit; and
- Gifts given to an employee under circumstances that make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors for determining whether this exception is applicable include the history of the relationship and whether the family member or friend personally pays for the gift.

4. *Rule VI(a) - Use Of Government Resources*

Code of Conduct Rule VI prohibits employees from misusing government resources. As relevant here, councilmembers shall not:

(1) Use Council time or government resources for purposes other than official business or other government-approved or sponsored activities . . . ; [or]

(2) Order, direct, or request subordinate employees to perform during regular working hours any personal services not related to official Council functions and activities[.]⁶²

Here, the term "government resources" includes "*any property, equipment, or material of any kind . . . and the personal services of an employee during his or her hours of work.*"⁶³

Rules VI(a)(1), (2) exempt from their reach "de minimis" or "incidental" use—that is, "use that does not interfere with an employee's official duties and responsibilities[,]" such as the "use of Council time or resources for purposes of scheduling."⁶⁴ Rule VI(a)(3) contains no de minimis or incidental use exemptions. Even incidental use of

⁶¹ *Id.*, Rule III(c).

⁶² *Id.*, Rule VI(a).

⁶³ *Id.*, Rule VI(e)(1) (emphasis added).

⁶⁴ Code of Official Conduct, *supra* n.11 Rule VI(a)(1-2); see also 18 U.S.C. § 607.

Council time or resources to support or oppose a candidate for elected office violates Rule VI(a)(3).⁶⁵

5. *Rule VI(c) - Use Of The Prestige Of Office*

Code of Conduct Rule VI(c) prohibits councilmembers from knowingly using the prestige of office or public position for the councilmember's "private gain or that of another."⁶⁶ Councilmembers "shall not use or permit the use of their position or title or any authority associated with their public office in a manner that could reasonably be construed to imply that the Council sanctions or endorses the personal or business activities of another."⁶⁷

a. *Constituent Services*

Notwithstanding Rule VI(c), the Code does not prohibit the "performance of usual and customary constituent services" so long as there is no additional compensation."⁶⁸ Constituent services include a councilmember's "representational activities, such as advocacy, communications, inquiry, oversight, and other actions, made on another person's behalf; provided, that the employee does not, directly or indirectly . . . [t]hreaten reprisal or promise favoritism for the performance or nonperformance of another person's duties."⁶⁹

6. *Rule VII - Use Of Confidential Information*

Code of Conduct Rule VII prohibits councilmembers from misusing confidential information. The rule has two subparts. First, councilmembers may not "[w]illfully or knowingly disclose or use confidential or privileged information acquired by reason of their position."⁷⁰ Second, councilmembers may not "[d]ivulge 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."⁷¹

The General Counsel's office broadly interprets the terms "confidential or privileged" information to cover not only "various legal privileges" but also "information acquired by reason of a person's position with the Council."⁷²

⁶⁵ See 18 U.S.C. § 607.

⁶⁶ *Id.*, Rule VI(c)(1).

⁶⁷ *Id.*, Rule VI(c)(3).

⁶⁸ *Id.*, Rule VI(c)(2).

⁶⁹ *Id.*, Rule VI(e)(2).

⁷⁰ Code of Official Conduct, *supra* n.11 Rule VII(a)(1) (recognizing a limited exception where the Member of the Council has authorization or is required by law to disclose the information).

⁷¹ *Id.*, Rule VII(a)(2).

⁷² Exhibit 7 (Aug. 28, 2019 Email from N. Streeter).

V. FACTUAL FINDINGS AND ETHICS ANALYSIS

A. **Evans' Ethics Process and Financial Interest Disclosures**

1. *Factual Findings*

The Investigation found that Evans lacked an understanding of the Code of Official Conduct's specific requirements to which he was subject. For example, Evans incorrectly understood the recusal requirement to apply exclusively to voting,⁷³ and to exempt other actions taken in his official capacity, such as convening a hearing or making a recommendation on a specific policy or initiative, or intervening with an agency of the District government on behalf of a constituent.⁷⁴ He also stated that he believed that having a financial interest in a matter before the Council is not problematic under the ethics rules unless the councilmember alters his position after acquiring the financial interest.⁷⁵ Evans' failure to comprehend the ethical rules that applied to him caused Evans to fail to identify for himself or the resources available to him—including OGC and BEGA—the relevant facts that would have informed proper decision-making as to actual or potential conflicts of interest.

The Investigation further found that Evans and his office lacked any formal process for identifying and evaluating potential conflicts of interest and ensuring compliance with the Council Rules and Code of Official Conduct. Councilmembers are not required to implement formal, intra-office processes for ethics reviews, nor are staff members independently obligated to assume an ethics compliance role for their respective councilmember. But the absence of a structured approach to ethics compliance in Evans' Council office is relevant as it exacerbated Evans' subjective misunderstandings; proactive monitoring or objective safeguards would have done much to prevent the circumstances that gave rise to the allegations against Evans.

Evans gave contradictory explanations for his approach to ethics compliance. He first stated that he relied on his staff to monitor and bring to his attention any matters presenting potential conflicts or concerning his ethical duties; at the same time, he never designated any individual in his Council office with responsibility for evaluating potential conflicts or monitoring compliance with the ethics rules.⁷⁶ Evans then explained that he did not disclose his clients' identities to his Council staff because, in

⁷³ Exhibit 8 (Sept. 3, 2019 J. Evans Interview Tr. ("Evans Tr. I")) at 138:17-20 ("I mean I've always viewed it as you cannot vote on a matter in which your firm has a client involved.").

⁷⁴ *Id.* at 114:16-19: "I do not believe it is a conflict issue, no. The matter of that merger was a public service commission issue. It was not a council issue, and the Council had no role in it."

⁷⁵ Exhibit 11 (Sept. 23, 2019 J. Evans Interview Tr. ("Evans Tr. IV")) at 10:6-13 ("So if I have a longstanding position and someone shows up that I happen to have a relationship with, a friendship with or a client to testify, that can't put me in a position to have to recuse myself from something that I have been involved in long before I even knew this person or had a relationship with this person.").

⁷⁶ Exhibit 8, Evans Tr. I at 81:21-82:1-5 (In answering whether his office had a formal conflicts process, Evans stated, "[t]he answer would be yes and no. No, because people didn't know who my clients were . . . so the answer would be no. But if there was a potential conflict, both Ruth and Schannette . . . would have said something, especially Ruth, who does my legislation.").

his view, the identities of his law firm and consulting clients were confidential.⁷⁷ Although he explained that he expected Grant, as his Chief of Staff, and Werner, as his Legislative Director, to advise him when recusal was necessary, he could not explain how they were to fulfill that function without access to even the most rudimentary information to inform their analysis or recommendations.

His staff's interview statements make clear that they were not aware of Evans' purported reliance on them for ethics compliance. Werner explained that she was unaware of Evans' clients, and Grant said that "[she] figured Jack would do what was necessary" to prevent conflicts.⁷⁸ When asked to identify the specific circumstances that would trigger a conflict of interest, Evans stated:

'I'll know it when I see it.' I mean that. That's one of the most famous quotes in the Supreme Court of the United States. . . . And I use that because that's the answer to your question. . . . 'I'll know it when I see it.'⁷⁹

a. Evans' Financial Interest Disclosure

Evans' financial disclosures were incomplete. He failed one year to disclose the existence of NSE, and at no time did he disclose the identity of NSE's clients. Although Evans sought general ethics advice from OGC and BEGA on three occasions,⁸⁰ he never sought advice for any specific client engagement, nor did he disclose his NSE clients to OGC or BEGA at a subsequent date.⁸¹ Evans explained that his lack of transparency owed to his "practice to keep [his] clients secret at the law firm as law firms do, and so [NSE] was my firm."⁸² Nonetheless, Evans agreed that NSE did not provide legal services and that he did not share a privileged relationship with his NSE clients.

Evans' financial disclosure forms failed to accurately represent his financial interests in multiple ways. *First*, from 2014 to 2018, Evans affirmatively answered "No" on his annual financial disclosure form when asked if he has "a beneficial interest in or hold[s] any security" that exceeds "\$1,000 or that produced income of \$200 or more."⁸³ Despite answering in the negative, Evans represented that he owned 2,047 shares in

⁷⁷ *Id.* at 90:3-6 ("I was using the law firm model. Okay. . . . They died before they disclosed clients.").

⁷⁸ Aug. 9, 2019 R. Werner Interview (explaining she was unaware of his clients until recent press reports); Sept. 5, 2019 S. Grant Interview ("In general, sure, yeah, it's something that I thought about. But, you know, for the most part I wasn't worried about it. I figured Jack would, you know, do what was necessary to make sure that wasn't a factor.").

⁷⁹ Exhibit 10 (Sept. 16, 2019 J. Evans Interview Tr. ("Evans Tr. III")) at 178:17-179:8.

⁸⁰ Exhibit 14 (Sept. 21, 2016 Letter from J. Evans to E. Efros); Exhibit 15 (Mar. 28, 2016 J. Evans Memorandum); Exhibit 16 (May 9, 2016 Email from E. Efros to B. Flowers and D. Sobin); Exhibit 17 (May 20, 2016 Letter from J. Evans to S. Darrin).

⁸¹ Exhibit 8, Evans Tr. I at 183:5-185:21.

⁸² *Id.* at 183:15-16.

⁸³ See e.g., Exhibit 22 (Evans' 2018 Financial Disclosure Form) at RECORD - 0000838, Question 7.

Eagle Bancorp, Inc. that he purchased in 2005 for \$49,990.50.⁸⁴ From 2013 to the present, Evans' equity in Eagle Bancorp ranged from approximately \$37,460 to \$139,298, well above the forms' \$1,000 disclosure requirement. *Second*, in 2015, Evans' reported income from Manatt was "None (or less than \$1,001)" even though other sources confirm he received \$14,501 from Manatt that year.⁸⁵ *Third*, Evans omitted NSE clients from his forms for calendar years 2016 to 2018. *Fourth and finally*, Evans failed to disclose the existence of NSE itself in response to a question requesting sources of his outside income on his disclosure covering May to November 2017.⁸⁶

As explained *supra* at Section IV(B), councilmembers annually file a financial disclosure statement, disclosing the official's various financial interests and sources of outside income. Evans stated that the filing's main purpose was to monitor conflicts of interest.⁸⁷ Grant completed and filed the forms on Evans' behalf and at his direction.⁸⁸

Although the language has evolved over the years, the forms for calendar years 2016 to 2018, contained the following requirement:

If you answered '[yes to outside employment],' because you were paid by a client (as opposed to an employer) please identify which, if any, client had or has a contract with the District or who stands to gain direct financial benefit from legislation that was pending before the Council in between [start of term] and present day[.]⁸⁹

For his calendar year 2016 filing, Evans disclosed NSE, but did not disclose the identity of his clients.⁹⁰ NSE, however, had clients with financial interests in both legislation and contracts with the District government in 2016.⁹¹ The form BEGA issued that year had a typographical error—instead of requesting the source of Evans' own outside income, the form asked:

If you answered "[yes to outside employment]," because *your spouse, registered domestic partner, or dependent child(ren)*

⁸⁴ Exhibit 23 (Sept. 12, 2016 Email from J. Cornett at EagleBank informing Pincus that "[p]er Computershare, [Evans] has 2,047 [Eagle Bancorp] shares") at EDC-001-000001527; Exhibit 11, Evans Tr. IV at 117:17.

⁸⁵ Exhibit 18 (Evans' 2015 Financial Disclosure Form) at RECORD - 0000808; Exhibit 24 (Aug. 23, 2019 Letter from P. Bresnahan to S. Bunnell) at RECORD - 0000840.

⁸⁶ For his May 2017 to November 2017 disclosure, Evans omitted NSE as a source of outside income. The form itself only had space for one outside job for which he identified Manatt. See Exhibit 20 (Evans' November 2017 Financial Disclosure Form) at RECORD - 0000823. He later amended this form in May 2018 to include NSE.

⁸⁷ Exhibit 8, Evans Tr. I at 84:2-85:8.

⁸⁸ *Id.*

⁸⁹ See Exhibits 19-22 (Evans Financial Disclosure Forms for calendar years 2016 through 2018) (emphasis added).

⁹⁰ Exhibit 8, Evans Tr. I at 90:11-19.

⁹¹ See *infra* at Sections V(D), (E), (F), (G), (H).

were paid by a client (as opposed to an employer) please identify which, if any, client had [. . .]⁹²

The typographical error does not explain Evans' failure to comply. While later forms corrected the error,⁹³ Evans continued to omit NSE clients from his calendar year 2017 and 2018 filings, even though NSE had clients with financial interests in legislation and contracts with the D.C. government in those years. Evans explained that, in his view, "NSE is paying [him], not the clients. . . So this [requirement] doesn't apply."⁹⁴ Evans further stated that he could not recall an instance where any client "had a direct financial benefit of something pending before the Council."⁹⁵

2. Ethics Analysis

The Code of Official Conduct and Council Rules do not specifically require councilmembers to establish a formal process to identify and address conflicts. However, Evans' lack of formal process and understanding of his ethical obligations contravenes OGC guidance, BEGA advisory opinions, and the Ethics Act's legislative purpose, producing circumstances where actual violations were overlooked and remained unaddressed.

As explained *supra* at Section IV, the Ethics Act aimed to promote a culture of high ethical standards, advancing an ethics framework that emphasized transparency, objectivity, and public trust.⁹⁶ To that end, BEGA and OGC encourage councilmembers to vigilantly monitor potential conflicts and affirmatively seek ethics advice on a case-by-case basis.⁹⁷

Rather than designate someone in his Council office to monitor compliance with the Code of Official Conduct and Council Rules, Evans assumed that responsibility himself. He did not seek ethics advice from BEGA or OGC concerning the vast majority of his actions as a councilmember, even when there was a concurrent financial interest.⁹⁸ Rather, he based his process on a subjective assessment of the rules and a belief that he would "know [a conflict] when [he] see[s] it." By hiding the identity of his consulting clients, he prevented his Council staff from being able to identify potential ethics issues. His approach also disregarded the need for objective criteria and undercut the Ethics Act's overriding transparency goals.

⁹² See Exhibit 19 (2016 J. Evans Public Financial Disclosure Statement) at RECORD - 0000840.

⁹³ This provision should have corresponded with question two on the form, which asked, "Was your spouse, registered domestic partner, or dependent child(ren) employed by a private entity or did they engage in any business endeavors during 2016 for which they received compensation of \$200 or more?"

⁹⁴ Exhibit 8, Evans Tr. I at 83:16-19.

⁹⁵ *Id.* at 83:2-4 ("I can't think of any [NSE clients] that had a direct financial benefit of something pending before the Council.").

⁹⁶ Ethics Act Committee Report, *supra* n.7 at 2, 9.

⁹⁷ Constituent Services AO, *supra* n.21 at 18; Exhibit 14 at JE-SPE-000206.

⁹⁸ See *supra* at Section V(A)(1)(a); see also *infra* at V(E)(1)(e), (h); V(F)(1)(b); V(G)(2)(b), (c).

a. Evans' Financial Disclosure Statements Were Deficient

Evans' financial disclosure filings from 2014 to 2018 violate §§ 1-1162.24 and 1-1162.25 and Rule XI(c)(1) of the Code of Official Conduct, failing to provide a "full and complete statement of the information" requested therein. Evans did not disclose his shares in Eagle Bancorp, failed to accurately report his income from Manatt, excluded the identity of his NSE clients, and in one instance, omitted NSE altogether.

Evans did not attempt to seek guidance from either BEGA or OGC on his disclosure obligations.⁹⁹ With respect to Eagle Bancorp, Evans represented to O'Melveny that he did not need to disclose his Eagle Bancorp shares because the company was not doing business within the District.¹⁰⁰ Evans' interpretation is unsubstantiated by the D.C. Official Code. Section 1-1162.24(a)(1)(A) explicitly states that stock must be disclosed "whether or not [the business in which the stock is held is] transacting any business with the District of Columbia government." The financial disclosure forms themselves likewise contain no exemption for companies that are not conducting business with the District.¹⁰¹ Finally, even if Evans' understanding of the requirements were correct, he would still be wrong as a factual matter: Eagle Bancorp, by virtue of its subsidiary Eagle Bank, has multiple banking offices within the District's jurisdiction.

In response to our investigative inquiry, BEGA opined on Evans' explanations for the various omissions in his annual filings. BEGA explained that Evans could not properly assert client confidentiality as a basis to withhold disclosure of his NSE clients.¹⁰² While BEGA recognizes "attorney-client privilege" assertions in evaluating disclosure obligations, this privilege does not extend to consulting agreements, like that of Evans with his NSE clients, where there is no attorney-client relationship.¹⁰³ BEGA also rejected Evans' additional explanation for why he need not disclose clients with interests or contracts with the District government. Evans explained that the disclosure requirements did not apply in this context because he did not receive direct payments from the NSE clients, but instead was paid by NSE, as his employer.¹⁰⁴ Evans, however, was the sole proprietor of NSE, which had no other employees or affiliates.¹⁰⁵ He transferred his clients' payments from NSE's bank account into his personal account.¹⁰⁶ Under these circumstances, "NSE is Evans," and his failure to disclose NSE's clients constitutes a failure to provide a "full and complete" statement of his financial interests as required by §§ 1-1162.24 and 1-1162.25.

⁹⁹ Exhibit 11, Evans Tr. IV at 121:15-122:2.

¹⁰⁰ *Id.* at 119:6-120:3 (stating that it was his understanding "that you didn't have to disclose it unless they were doing business with the city").

¹⁰¹ See e.g., Exhibit 22 at RECORD - 0000838, Question 7.

¹⁰² Oct. 17, 2019 BEGA Interview.

¹⁰³ *Id.*

¹⁰⁴ See Exhibit 8, Tr. I at 83:16-19.

¹⁰⁵ *Id.* at 16110-12.

¹⁰⁶ See Exhibit 26 (NSE Bank Records 2016-2018).

B. Law Firm Practice – Squire Patton Boggs

1. Factual Findings

Evans began working at Squire (then called, Patton Boggs) in 2000. He started as a securities lawyer but his practice evolved to include “projects that were asked of” him, including “public policy” matters.¹⁰⁷ Evans could not recall any specific matters on which he worked,¹⁰⁸ nor could he recall any other lawyers with whom he worked.¹⁰⁹ He did not record billable hours; Evans’ salary from Squire was approximately \$112,000 in 2014, and for the month he worked there in 2015, he received \$15,833.34, plus a \$23,750.01 severance.¹¹⁰

Evans identified one client that he personally originated for the firm: The Forge Company affiliated with Lindner.¹¹¹ He could not describe the services Squire provided to Forge, explaining his job was to “bring[] in a client” and “other lawyers in the firm [would] service the client.”¹¹²

Evans officially left Squire on January 31, 2015,¹¹³ shortly after Patton Boggs merged with Squire Sanders to form Squire Patton Boggs.¹¹⁴ Evans left the firm because “Squire Sanders was a very corporate-oriented law firm where most of the lawyers, if not all, were billable hour lawyers That was not the culture at Patton Boggs.”¹¹⁵ Evans and thirteen other Squire lawyers later joined Manatt.¹¹⁶

2. Ethics Analysis

Pursuant to the Resolution, the Investigation evaluated Evans’ final year at Squire, omitting his work from before 2014 as outside the scope of the mandate. For that year, the Investigation did not uncover any evidence of ethical violations as a result of Evans’ employment at Squire.

¹⁰⁷ Exhibit 8, Evans Tr. I at 12:16-18; Exhibit 9 (Sept. 9, 2018 J. Evans Tr. (“Evans Tr. II”)) at 11:2-13:21, 20:5-22:18.

¹⁰⁸ Exhibit 8, Evans Tr. I at 12:16-13:21 (A: Initially I went there as a securities lawyer, and over the period of time being there would do maybe projects that were asked of me to do. Q: Okay. Can you give an example of what you're referring to? A: No. I can't remember what they were to be honest with you. It was a long time ago.).

¹⁰⁹ *Id.* at 21:2-12.

¹¹⁰ Exhibit 27 (Sept. 6, 2019 Letter From C. Talisman to S. Bunnell) at RECORD – 0000928-29.

¹¹¹ Exhibit 8, Evans Tr. I at 107:7-108:8.

¹¹² *Id.* at 19:20-22.

¹¹³ The January 31, 2015 date was provided by Squire’s Counsel. Evans stated he left Squire at the end of 2014. See Exhibit 8, Evans Tr. I at 22:3, 24:4-14, (“I left [Squire] at the end of 2014”).

¹¹⁴ Exhibit 27 at RECORD - 0000915.

¹¹⁵ Exhibit 8, Evans Tr. I at 23:2-9; John Ray stated that Evans “lost his job at the new law firm and he needed a job.” See Exhibit 28 (Oct. 2, 2019 J. Ray Interview Tr.) at 13:7-10.

¹¹⁶ Exhibit 8, Evans Tr. I at 31:9-10.

C. Law Firm Practice - Manatt, Phelps & Phillips, LLP

1. Factual Findings

Evans joined Manatt's D.C. office on October 5, 2015,¹¹⁷ following nine months of a job search and negotiations.¹¹⁸ He stated that Manatt Partner John Ray was the "number one" reason he chose Manatt for employment.¹¹⁹ The two first met as associates at the law firm BakerHostetler in the 1980s; Ray considers Evans a "very good friend," and supported his employment at Manatt.¹²⁰

Evans received a salary of \$60,000 while at Manatt.¹²¹ He left the firm on November 17, 2017 with a severance payment of \$30,000.¹²²

a. Conflict Of Interest Risks

Ray and Senior Legislative Aide Tina Ang led Manatt's City Council practice. Ray is a former D.C. City Councilmember, and Ang is a former Deputy Budget Director in the Council's Office of the Budget Director. Manatt's City Council practice is extensive, with clients spanning multiple businesses and industries, and as Ang described it, "lobby[ing] anything and everything that is controversial."¹²³

Given Manatt's substantial D.C. Council lobbying activities, Evans' employment with Manatt raised conflict of interest concerns for his staff. Gutbezahl, the Legislative Counsel of Evans' Finance & Revenue ("F&R") Committee, stated in his "Exit Memorandum[:]"

Councilmember Evans maintains a part-time job with the law firm Manatt, Phelps & Philips, LLP. Manatt represents clients that conduct business in the District of Columbia. This raises the possibility of a conflict of interest. . . . It is imperative that you remain cognizant of whether John Ray or Tina Ang make requests upon Councilmember Evans.¹²⁴

In another instance, Chief of Staff Grant emailed Evans' assistant at Manatt:

¹¹⁷ Exhibit 29 (Sept. 28, 2015 Letter from M. Lemann to J. Evans) at DCI000004; Exhibit 24 at RECORD - 0000840.

¹¹⁸ Exhibit 9, Evans Tr. II at 23:6-18; Exhibit 28 at 15:6-10.

¹¹⁹ Exhibit 8, Evans Tr. I at 31:5-8.

¹²⁰ Exhibit 28 at 11:17; *id.* at 18:8-10.

¹²¹ Exhibit 24 at RECORD - 0000840; Exhibit 30 (Sept. 13, 2019 Letter from S. Gardner to S. Bunnell) at RECORD - 0001085 (while Evans' contract included incentives and bonuses, Evans never received these).

¹²² Exhibit 31 (Nov. 13, 2017 Letter from J. Gallagher to J. Evans) at DCI000007; Exhibit 8, Evans Tr. I at 36:11-13 (Evans left the firm because "there wasn't enough work at Manatt for me to do securities work and/or anything of that nature, and that I wasn't generating business").

¹²³ Exhibit 32 (Oct. 9, 2019 T. Ang Interview Tr.) at 7:12-13.

¹²⁴ Exhibit 33 (May 20, 2016 Exit Memorandum) at RECORD - 0001220.

We have been advised by our General Counsel that Jack would need to recuse himself from matters before the Council involving clients of Manatt. I'm attempting to be put in contact with the person who would be responsible for ensuring there are no conflicts for Members of the firm.¹²⁵

Manatt had no formal process for identifying and preventing conflicts arising from Evans' employment. Ray stated, "[T]he protocol was that[,] in terms of the clients that Jack brought to the law firm[,] or in terms of an issue that we had before the D.C. government, that Jack would talk to me about it."¹²⁶ Ray and Evans, accordingly, monitored their own conflicts. Ray could recall only one specific time during Evans' two years at the firm where he discussed a potential conflict with Evans.¹²⁷

b. Request For Ethics Advice From OGC And BEGA

The documentary record reflects two occasions on which Evans sought ethics advice during his tenure at Manatt. In March 2016, he asked then-General Counsel Ellen Efros whether he should recuse himself from signing a letter requesting legislative action since Manatt lobbied on the same issue for its clients.¹²⁸ Efros explained that Evans must recuse himself because Manatt's financial interests would be imputed to Evans as if the interests were his own.¹²⁹

Two months later in May 2016, Darrin Sobin, the Director of BEGA, emailed Efros stating, "CM Evans has reached out to us on an issue and I wanted to get your read."¹³⁰ According to Sobin, Evans wanted "blanket assurance that if any Pepco Exelon matter comes before the Council[,] he will not have to recuse." Manatt represented the utility providers Exelon and Pepco on "many issues," including lobbying for a merger in 2015.¹³¹ Efros told Sobin that Evans' request for blanket assurance was "out of the question."¹³²

2. *Particular Matters Investigated*

Ang explained that Manatt did not change its lobbying practice as a result of hiring Evans.¹³³ Ray and Ang exchanged hundreds of emails with Evans' staff before

¹²⁵ Exhibit 34 (Apr. 7, 2016 Email from S. Grant to C. Garret).

¹²⁶ Exhibit 28 at 56:8-17.

¹²⁷ *Id.* at 60:1-18.

¹²⁸ Exhibit 15.

¹²⁹ Exhibit 4.

¹³⁰ Exhibit 16 at RECORD - 0000805. See also Exhibit 35 (May 2, 2016 Councilmember Evans' office schedule, showing "CE MEETS WITH DARRIN SOBIN, DIR BOARD OF ETHICS [¶] Re: Discuss CE's potential conflicts of interest with Manatt and Council").

¹³¹ Exhibit 28 at 41:15-20.

¹³² Exhibit 16 at RECORD - 0000803.

¹³³ Exhibit 32 at 22:21 - 23:3 (Q: Did [Evans' employment] in any way affect what you could and couldn't do with the Council? A: No. No. I still lobb[ie]d the Council like usual, yeah.").

and after he joined the firm,¹³⁴ and Ray and Evans met regularly while Evans was at the firm.¹³⁵ Ang stated she represented ten to twenty clients from when Evans started negotiating for employment to the present, but only recalled lobbying the Council on less than five issues.¹³⁶

In most instances, the Investigation could not determine whether Ang's and Ray's interactions with Evans and his staff led to a violation. Manatt's legal counsel refused to confirm whether a list of entities and individuals O'Melveny compiled were Manatt clients during Evans' tenure at the firm, and Ray declined to answer some questions during his interview with O'Melveny on privilege grounds.¹³⁷ Thus, while the Investigation found evidence of three violations of Rule I of the Code of Official Conduct related to Evans' tenure at Manatt, other unidentified issues may remain.

a. Manatt's Representation of Exelon and Pepco

Evans stated that his support and work on the Exelon-Pepco merger predated his employment at Manatt.¹³⁸ Evans appears to have discussed the merger with Ray as early as September 2014 when Evans was still at Squire;¹³⁹ a draft pitch from Squire to Exelon in October 2014 identified Evans as the leader of a proposed "Advocacy Team" to assist with the merger;¹⁴⁰ Evans met with Exelon's general counsel the same

¹³⁴ See, e.g., Exhibit 37 (May 30, 2017 Email from T. Ang to R. Werner); Exhibit 38 (Apr. 28 Email from R. Werner to T. Ang); Exhibit 39 (Apr. 17, 2015 Email from T. Ang to R. Werner); Exhibit 40 (May 17, 2016 Email from R. Werner to T. Ang); Exhibit 41 (Apr. 24, 2015 Email from T. Ang to R. Werner); Exhibit 42 (May 19, 2015 Email from R. Werner to T. Ang); Exhibit 43 (Nov. 28, 2017 Email from R. Werner to T. Ang); Exhibit 44 (Oct. 16, 2018 Email from R. Werner to T. Ang); Exhibit 45 (May 29, 2014 Email from T. Ang to R. Werner).

¹³⁵ Exhibit 46 (Aug. 23, 2017 Email from C. Garrett to J. Evans); Exhibit 47 (July 8, 2016 Email from C. Garrett to J. Evans); Exhibit 48 (June 20, 2016 Email from W. Rahim to C. Garrett); Exhibit 49 (May 17, 2016 Email from C. Garrett to J. Evans); Exhibit 50 (Mar. 16, 2016 Email from W. Rahim to C. Garrett); Exhibit 51 (Meeting Invitation for Mar. 29, 2016); Exhibit 52 (Feb. 17, 2016 Councilmember Evans' office schedule); Exhibit 53 (Feb. 5, 2016 Email from C. Garrett to J. Evans); Exhibit 54 (Meeting invitation for Jan. 22, 2016); Exhibit 55 (Meeting invitation for Jan. 12, 2016); Exhibit 56 (Nov. 16, 2015 Email from J. Evans to W. Rahim); Exhibit 57 (Meeting invitation for Oct. 26, 2015).

¹³⁶ Exhibit 32 at 9:12-18, 125:1-127:15.

¹³⁷ Exhibit 28 at 43:8-10, 44:5-6, 45:2-6, 87:20-22; Exhibit 58 (Sept. 30, 2019 Letter from P. Bresnahan to S. Bunnell) at RECORD – 0001260.

¹³⁸ Exhibit 8, Evans Tr. I at 117:3-7. Note, Exelon announced its plans to acquire Pepco on April 29, 2014, a deal that would eventually result in the nation's largest investor-owned public utility provider. See Thomas Heath & Aaron C. Davis, *D.C. regulators green-light Pepco-Exelon merger, creating largest utility in the nation*, Wash. Post (Mar 23, 2016), https://www.washingtonpost.com/local/dc-politics/in-a-surprise-move-dc-regulators-give-green-light-to-pepco-exelon-merger/2016/03/23/4ace2bc0-f10e-11e5-89c3-a647fcce95e0_story.html.

¹³⁹ Exhibit 59 (Sept. 17, 2017 Email from C. Garrett to W. Rahim); Exhibit 60 (Meeting invitation for Oct. 2, 2014).

¹⁴⁰ Exhibit 61 (Oct. 20, 2014 Email from J. Evans); Exhibit 62 (Oct. 27, 2017 Email from J. Evans); Exhibit 63 (Squire Proposed Scope of Services, Exelon Corp.) at RECORD – 0001268 (The pitch reads, "Squire Patton Boggs believes we can effectively utilize our relationship capital to help accelerate the acquisition of Pepco Holdings, Inc. ("Pepco") to create a leading Mid-Atlantic electric and gas utility and become one of the largest investor-owned public utilities in the United States.").

month;¹⁴¹ he arranged a meeting with Exelon's vice president of corporate relations and Mayor Muriel Bowser in December 2014;¹⁴² invited Exelon's GC to Squire's holiday party;¹⁴³ and a draft letter to Exelon's general counsel proposed that the company hire Squire in December 2014.¹⁴⁴ By January 2015, Evans had left Squire and was negotiating employment with Manatt; he identified Exelon in his business plan as a potential client he might be able to bring to Manatt.¹⁴⁵

Evans' actions to attempt to influence the Pepco/Exelon merger from January 2015 to October 2015 violated the Code's conflict of interest provisions, even though he did not begin his employment at Manatt until October 1, 2015. Under Rule I(e)(1), the financial interests of a prospective employer are treated the same for purposes of the conflict of interest rules as those of a current employer. Thus, Manatt's financial interests were attributed to Evans for conflict of interest purposes from at least January 14, 2015 until his employment there ended in late 2017. During this time, Evans personally and substantially participated on several occasions in issues related to Manatt's representation of Exelon and Pepco.

The relationship with Manatt, as his prospective employer or then-current employer, created the requisite financial interest under Rule I(e)(1). During this time, Evans "personally and substantially" participated in particular matters, concerning Manatt's representation of Exelon and Pepco, in a manner that had a "direct and predictable" effect on Manatt's financial interests.

(1) Evans' Support Of Merger At January 2015
Committee Hearing

On January 27, 2015, Ang emailed Evans' Director of Constituent Services Kimbel, "Can I stop by and talk Pepco merger? Time sensitive. Thxoxoxo!"¹⁴⁶ A day later Ang emailed Evans' staff an "opening statement" for Evans to read at a hearing on

¹⁴¹ Exhibit 64 (Nov. 3, 2014 Email from W. Rahim to D. Bradford); Exhibit 65 (Nov. 3, 2014 Email from W. Rahim to D. Bradford); Exhibit 66 (Oct. 2014 J. Evans Strategic Plan) (Evans' "Strategic Plan" for October 2014 states, "I have met with the President of Exelon, Christopher Crane. Mary Powers is preparing a report for me and we will proceed to put a team together [from] SPB to meet with representatives of Exelon.").

¹⁴² Exhibit 67 (Dec. 5, 2014 Email from M. Sherrod to W. Rahim) at RECORD - 0001286; Exhibit 68 (Nov. 18, 2014 Email from S. Grant to M. Sherrod); Exhibit 69 (Nov. 21, 2014 Email from W. Rahim to M. Sherrod); Exhibit 70 (Dec. 5, 2014 Email from W. Rahim to M. Sherrod).

¹⁴³ Exhibit 71 (Nov. 13, 2014 Email from M. Powers to S. Grant); Exhibit 72 (Nov. 12, 2014 Email from H. Davis to J. Burlingame); Exhibit 73 (Attachment to Nov. 12, 2014 Email from H. Davis to J. Burlingame).

¹⁴⁴ Exhibit 74 (Dec. 16, 2014 Letter from J. Evans to D. Bradford); Evans also appears to have shared the draft Exelon letter and proposal with Ang and Ray in December, notwithstanding that Evans still worked at Squire at the time. (Exhibit 75 (Dec. 17, 2014 Email from S. Grant to T. Ang)); According to Lobbyist Activity Reports provided by BEGA, Ray and Ang registered to lobby on behalf of Exelon on January 6, 2015 regarding "Application to the Public Service Commission." See Exhibit 76 (Jan. 2015 Lobbyist Report).

¹⁴⁵ Exhibit 77 (Business Plan of J. Evans) at RECORD - 0001302.

¹⁴⁶ Exhibit 78 (Jan. 27, 2015 Email from T. Ang to S. Kimbel).

the merger held by the Business Consumer & Regulatory Affairs Committee.¹⁴⁷ Evans read the talking points at the public hearing on January 29, 2015, stating, “Pepco is doing a good job in improving electric reliability here in the District, but I believe that the improvements will be further accelerated if the merger of Pepco and Exelon is approved.”¹⁴⁸

(2) Evans’ June 2015 Vote Against Funding For Study On Government Takeover of Electric Utilities

In the summer of 2015, Councilmember Mary Cheh proposed a budget amendment that would finance a study to determine if District residents should purchase utilities from locally owned municipal providers over private utility providers.¹⁴⁹ As Evans’ employment negotiations with Manatt continued, Ray and Ang strategized with Evans’ office about introducing a new budget amendment that would divert funds from the study.¹⁵⁰ On June 3, 2015, Ray’s assistant emailed Evans’ staffer, Windy Rahim, requesting a meeting between Ray and Evans to discuss Councilmember Cheh’s proposed study, stating “We hope that Councilmember [Evans] will have time this week to take this time sensitive meeting.”¹⁵¹ Rahim and Ray’s assistant scheduled the meeting for June 5, 2015,¹⁵² which Evans’ office schedule confirms.¹⁵³ On June 12, 2015, Ang emailed Grant that Manatt intended to have Councilmember Anita Bonds move the new amendment “for obvious reasons,” and requested that Grant arrange a “team meeting” with Bonds.¹⁵⁴

Ang and Ray both stated that Manatt lobbied the Council on behalf of Pepco on this issue, successfully causing Bonds to propose an amendment that would redirect the study’s funding to focus on low income and elderly residents regarding energy efficiency practices.¹⁵⁵ Bonds introduced the amendment during a public hearing on

¹⁴⁷ Exhibit 79 (Jan. 28, 2015 Email from T. Ang to R. Werner) at RECORD - 0001305; Exhibit 80 (J. Evans Merger Hearing Opening Statement).

¹⁴⁸ Committee on Business, Consumer & Regulatory Affairs Video Archive, http://dc.granicus.com/ViewPublisher.php?view_id=31; Jan. 29, 2015, Business Consumer & Regulatory Affairs Hearing at 29:30.

¹⁴⁹ Council of the District Columbia, Engrossment of Bill 21-158 – Fiscal Year 2016 Budget Support Act of 2015, Subtitle VI-K Competitive Grants, Sec. 6102, <http://lms.dccouncil.us/Download/33645/B21-0158-Engrossment.pdf> (“In Fiscal Year 2016, the Office of the People’s Counsel shall award a grant, on a competitive basis, in an amount not to exceed \$250,000, for a study to evaluate the cost and benefits and feasibility of establishing a municipally owned public electric utility in the District.”); see also Exhibit 32 at 44:10-22 (Ang said the study concerned “whether the D.C. government should be running the electric for the citizens.”).

¹⁵⁰ See, e.g., Exhibit 81 (June 12, 2015 Email from T. Ang to S. Grant).

¹⁵¹ Exhibit 82 (June 3, 2015 Email from C. Garrett to W. Rahim) (“John is requesting a meeting with Councilmember Evans to discuss Councilmember Cheh’s proposed study language in the BSA regarding Pepco.”).

¹⁵² Exhibit 83 (June 4, 2015 Email from W. Rahim to C. Garrett).

¹⁵³ Exhibit 84 (June 5, 2015 Councilmember Evans’ office schedule) (stating, “11:00am CE MEETS WITH JR”).

¹⁵⁴ Exhibit 81.

¹⁵⁵ Exhibit 28 at 41:7-20; Exhibit 32 at 30:13-16 (“we did an amendment in the budget for PEPCO where the Council wanted to direct 250,000 for a study whether the electricity should be owned by locally in a

June 30, 2015, stating, “[I] therefore have to assume that one of the intentions of the study is to impact the ongoing merger.”¹⁵⁶ Evans attended the hearing, and voted in favor of the amendment.¹⁵⁷

(3) Letter in Support Of Merger October 16, 2015, Days After Starting At Manatt

Evans and six other councilmembers signed and submitted a letter to the D.C. Public Commission in support of the merger on October 16, 2016—days after Evans started at Manatt. The first sentence of the letter states: “We write to express our hope that the Public Service Commission (the “Commission”) will approve the merger of Pepco and Exelon.”¹⁵⁸

Evans stated in his interview that he did not know who drafted the letter; “someone” brought it to his Council office for him to sign.¹⁵⁹ It did not occur to Evans that he “should in any way, shape or form recuse [himself]” because discussions regarding signing the letter “happened long before [he] started at Manatt.”¹⁶⁰ Ray declined to state whether he or Manatt played any role in drafting the letter, responding: “anything that I have done on [Pepco’s] behalf is privileged.”¹⁶¹

b. Ethical Analysis

Evans engaged in negotiations for prospective employment with Manatt starting in early 2015. On January 14, 2015, Evans submitted a business plan and resume to Ray for Manatt’s consideration.¹⁶²

Based on the documentary evidence, the Investigation identified three instances in which Evans personally and substantially participated in particular matters that would have a direct and predictable effect on Manatt’s financial interest:

- On January 27, 2015, Evans, in his official capacity as a councilmember, spoke at a public Council hearing in favor of the merger, using the script Manatt employees had drafted. His advocacy for the merger was clearly “an attempt to influence” the approval of the merger, which would have a

municipal ownership.”); June 30, 2015 Amendment No. 1 to Bill 21-158, the Fiscal Year 2016 Budget Support Act of 2015, Subtitle VI-K. Competitive Grants, <http://lms.dccouncil.us/Download/33645/B21-0158-Amendment51.pdf>.

¹⁵⁶ June 30, 2015, 12th Legislative Meeting at 1:33:58,

http://dc.granicus.com/ViewPublisher.php?view_id=3.

¹⁵⁷ Council of the District of Columbia, B21-0158 - Fiscal Year 2016 Budget Support Act of 2015, <http://lms.dccouncil.us/Legislation/B21-0158>.

¹⁵⁸ Exhibit 85 (Oct. 16, 2015 Letter from the Council of the District of Columbia to Public Service Commission of the District of Columbia) at RECORD - 0001315.

¹⁵⁹ Exhibit 8, Evans Tr. I at 119:17-22.

¹⁶⁰ *Id.* at 120:13-19.

¹⁶¹ Exhibit 28 at 43:8-10. It is not clear how Ray’s interactions with third parties, including lobbying activity, would be attorney-client privileged.

¹⁶² Exhibit 183 (Jan. 14, 2015 Email from S. Grant to J. Ray).

significant financial impact on Manatt's client, Pepco, on an issue for which Pepco had retained Manatt's services.

- On June 5, 2015, Evans voted for Bond's budget amendment, which diverted funds from research that challenged private utility ownership. Evans appears to have met with Ray about this issue and heard testimony that confirmed a vote for the amendment would stifle opposition to the merger. Evans' vote was likely to have a direct and predictable effect on Manatt's interests, as Manatt had lobbied for the vote on behalf of its clients.
- On October 16, 2015, Evans used his official position and title to attempt to influence the outcome of an agency's approval of the merger. The letter was likely to have a direct and predictable effect on Manatt's financial interests, given that Manatt lobbied for the merger for its client. Evans was a Manatt employee when he signed the letter.

Each of these instances constitutes a violation of Rule I of the Code of Official Conduct.

D. Consulting Services - NSE Consulting, LLC

1. *Factual Findings*

Sometime in June or July 2016 Eagle Bancorp's CEO Ronald D. Paul and Vice Chairman Robert Pincus suggested to Evans that he form his own consulting firm. Evans had known Paul for many years and considered him a good friend. In a conversation with Paul and Pincus, Evans initially raised the possibility of his leaving Manatt to join EagleBank.¹⁶³ Evans had not previously worked for a bank and was not sure whether an employment relationship with EagleBank would make sense.¹⁶⁴ In response, Paul recommended that Evans instead start his own company, and that EagleBank could then hire him as a consultant.¹⁶⁵ Paul suggested that Evans use a retainer business model where his clients would pay an annual retainer fee—not for any particular services, but, as Evans characterized it, to be “available to do what they needed me to do when they contacted me.”¹⁶⁶ Evans could not recall any particular reason for exploring additional outside employment at that time, other than general financial benefits.¹⁶⁷ The income from his own consulting business would exceed the \$60,000 annual salary he was making from Manatt.¹⁶⁸

¹⁶³ Exhibit 8, Evans Tr. I at 36:15-37:22.

¹⁶⁴ *Id.* at 40:12-41:20.

¹⁶⁵ *Id.* at 37:12-22.

¹⁶⁶ *Id.* at 41:10-11. See also Exhibit 277 (July 15, 2016 Email from J. Evans) (Paul shared a consulting contract from ██████████, which Evans would then use as a template for his NSE agreements).

¹⁶⁷ Exhibit 8, Evans Tr. I at 44:4-9.

¹⁶⁸ Exhibit 24 at RECORD - 0000840.

Evans formed NSE shortly after meeting with Paul and Pincus, naming the company after his late wife Noel Soderberg Evans.¹⁶⁹ His longtime friend and political supporter, William Jarvis, offered to help Evans with the formalities of establishing an LLC for the business.¹⁷⁰ Jarvis is a licensed lawyer, but both he and Evans told us that at no time was he functioning as an attorney in connection with anything he did for Evans or NSE.¹⁷¹ Whatever advice or assistance he provided was as a friend.¹⁷² The Investigation found no evidence that Jarvis received any compensation for his assistance with NSE or that he had any other financial interest in the company.

On July 18, 2016, Jarvis registered NSE as a District of Columbia LLC, using the D.C. government online registration process.¹⁷³ He used Evans' home address in Georgetown as the company's location, and listed himself as the company's registered agent (being a registered agent is a largely ministerial role, principally involving the acceptance of subpoenas or other legal process that may be served on the company).¹⁷⁴ Evans explained that he requested Jarvis' help because he was "not good at computers" and had poor eyesight.¹⁷⁵

From July 2016 to July 2019 (when it was terminated),¹⁷⁶ NSE entered into service agreements with ten entities and received approximately \$430,000 in client payments. Evans deposited NSE client payments into NSE's business banking account, and then shortly thereafter typically transferred the funds into his personal checking account.¹⁷⁷ The Investigation identified no evidence in NSE's bank statements of any business expenses or other expenditures.¹⁷⁸ When Evans first started NSE, he did not issue invoices.¹⁷⁹ Over time, he began issuing invoices (sometimes with assistance from his Chief of Staff Schannette Grant).¹⁸⁰ NSE had no bookkeeper or accountant, aside from the accountant who prepared Evans' personal tax returns.¹⁸¹

Evans described himself as the sole proprietor of NSE; NSE did not have any employees, and did not use any contractors.¹⁸² Evans' Council staff occasionally performed administrative tasks for NSE. Evans and Grant both told O'Melveny that

¹⁶⁹ Exhibit 8, Evans Tr. I at 163:18-22.

¹⁷⁰ Aug. 29, 2019 W. Jarvis Interview (Jarvis and Evans worked together as attorneys at BakerHostetler LLP in the late 1980s until Jarvis left in 1990).

¹⁷¹ *Id.*; Exhibit 8, Evans Tr. II at 141:4-13.

¹⁷² Aug. 29, 2019 W. Jarvis Interview ("[T]he things that I have done for [Evans] in my capacity as his friend, frankly didn't really take that much time. So I did them.").

¹⁷³ See *generally* Exhibit 94 (NSE Consulting LLC DCRA Records).

¹⁷⁴ Exhibit 95 (NSE Consulting LLC DCRA Records) at JE-SPE-000117.

¹⁷⁵ Evans Interview Part I at 158:13-19 ("I'm not good at computers. I can't see that well. So it's hard for me to even see the screen.").

¹⁷⁶ NSE Consulting LLC, Corporate Information, *supra* n.179; Exhibit 26 at RECORD - 0000873 (receiving last NSE check deposit in September 2018).

¹⁷⁷ See, e.g., Exhibit 26 at RECORD - 0000897, 901, 910, 912.

¹⁷⁸ *Id.* at RECORD - 0000842-914.

¹⁷⁹ Exhibit 8, Evans Tr. I at 175:5-9; Exhibit 11, Evans Tr. III at 114:12-21.

¹⁸⁰ Exhibit 8, Evans Tr. I at 175:14-176:18.

¹⁸¹ *Id.* at 161:8-162:20.

¹⁸² *Id.* at 161:11-12.

Grant prepared NSE invoices and made minor revisions to client agreements at Evans' direction.¹⁸³ She occasionally printed NSE documents for Evans.¹⁸⁴ Evans also represented that Grant drafted and printed agreements for NSE's clients.¹⁸⁵

a. Advisory Opinion From Office Of General Counsel On NSE's Formation

Jarvis suggested that Evans seek approval from OGC about NSE's formation.¹⁸⁶ Jarvis wrote a letter for Evans to send to Efos, the Council's then-General Counsel, on September 21, 2016, formally requesting an advisory opinion on his outside employment.¹⁸⁷ Jarvis' letter did not specify any particular NSE clients.¹⁸⁸ It did, however, indicate Evans would "provide the same kinds of consulting services to private-sector clients that [he] [had] been providing for years."¹⁸⁹ Evans stated that the goal of this letter was to "put[] the General Counsel on notice that [he was] setting up a company."¹⁹⁰

Jarvis understood that OGC requested a proposed draft response from Evans, which he also drafted for Evans to send.¹⁹¹ In relevant part, it stated, "If [Evans] engage[s] in any outside employment, [he] nevertheless must adhere to the applicable policies and regulations of the DC Board of Ethics and Government Accountability . . . and to the applicable rules set forth in the Council of the District of Columbia with regard to conflicts of interest."¹⁹² Efos copied Evans' draft response nearly verbatim in her reply memorandum, adding only a single sentence: "If you have questions about specific representations as your practice evolves, please feel free to discuss such matters with us on a case by case basis."¹⁹³

b. Scope Of NSE Services

At the time of NSE's formation, Evans said he had no specific expectation of the type of services he would provide.¹⁹⁴ The NSE service agreements varied slightly from client to client and year-to-year, but each contained a general description of advisory services, including, for example, that Evans would offer "advice regarding the

¹⁸³ Sept. 5, 2019 S. Grant Interview.

¹⁸⁴ *Id.*

¹⁸⁵ Exhibit 97 (Mar. 6, 2017 Email from S. Grant to W. Jarvis); Exhibit 98 (Mar. 10, 2017 Email from S. Grant to W. Jarvis).

¹⁸⁶ Aug. 29, 2019 W. Jarvis Interview.

¹⁸⁷ Exhibit 14 at JE-SPE-000205; Aug. 29, 2019 W. Jarvis Interview.

¹⁸⁸ Exhibit 14 at JE-SPE-000205.

¹⁸⁹ *Id.*

¹⁹⁰ Exhibit 8, Evans Tr. I at 180:7-8.

¹⁹¹ Aug. 29, 2019 W. Jarvis Interview ("[The draft response] was requested, yes. By the general counsel, is my understanding.").

¹⁹² Exhibit 14 at JE-SPE-000206.

¹⁹³ *Id.*; Exhibit 99 (Sept. 19, 2016 Draft Letter from W. Jarvis to E. Efos).

¹⁹⁴ Exhibit 8, Evans Tr. I at 171:1-4 ("Q: [W]hat type of services [did you think] NSE would be providing. A: To be honest, we had no idea.").

Washington, D.C. business community, with a particular focus on economic trends and general policy initiatives in Washington, D.C. and the surrounding jurisdictions.”¹⁹⁵

Most of the service agreements obligated Evans to provide up to five hours of his time per month for the term of the agreement.¹⁹⁶ If the client did not utilize the full five hours in any given month, the time commitment would expire and no refund or offsets would be provided.¹⁹⁷ These agreements further provided that if the client requested additional services in a given month in excess of the five hour time commitment, Evans would, at his discretion, provide those additional services at a rate of \$250 per hour.¹⁹⁸ So for a client with a \$50,000 annual retainer, even if Evans worked his full base time commitment of five hours every month for a year, his hourly compensation for those services would be \$833 per hour (multiplied by 60 hours over the course of the year), far more than the \$250 per hour that Evans would charge for work in excess of the base commitment.

Evans neither sought nor received payments for services beyond the five hour per month base time commitment for any of his clients. Evans told O’Melveny that he viewed all of the service agreements as primarily retainer agreements.¹⁹⁹ He performed little or no traditional consulting work for most of his clients.²⁰⁰ The Investigation identified no evidence of “deliverables”—*e.g.*, written reports to clients on business or political trends or developments, advice on specific projects, or introductions to landlords or other business partners. According to Evans, his clients were mostly paying for the value of having him available on short notice if he could be helpful.²⁰¹ Evans recalled that he had some general conversations with most of his clients regarding strategic business issues and economic policy, but he could not describe the specific services he provided.²⁰²

Unfortunately, the Investigation was unable to get the perspective of most of the NSE clients on the value they received under these consulting agreements and, thus, O’Melveny cannot present the Council with a more granular description of what NSE clients received for the money they paid. With the exception of Russell Lindner, the Chairman of Forge, who cooperated with the Investigation, most of the other witnesses affiliated with NSE’s other clients refused to speak with O’Melveny. Paul, the former CEO of EagleBank, raised technical objections to the Council’s subpoena authority and also represented through counsel that he has health issues that would preclude him from being interviewed. Pincus, the former Vice Chairman of EagleBank; Anthony Lanier, the President of Eastbanc Inc., Eastbanc Technologies, and Squash on Fire; Steven Fischer, the owner of Fischer Holdings; Richard Cohen, the Chairman of Willco; and Jason Goldblatt, the former President of Willco, all represented through counsel

¹⁹⁵ Exhibit 100 (Nov. 1, 2016 NSE Agreement with Eastbanc) at JE-SPE-000055.

¹⁹⁶ *See, e.g., id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Exhibit 8, Evans Tr. I at 41:9-15; Exhibit 10, Evans Tr. III at 11:19-22.

²⁰⁰ Exhibit 10, Evans Tr. III at 12:13-17 (stating there were not “pen-to-paper services”).

²⁰¹ Exhibit 8, Evans Tr. I at 41:9-15.

²⁰² Exhibit 10, Evans Tr. III at 137:5-17.

that if compelled to testify they would assert their right to remain silent under the Fifth Amendment to the Constitution. Don MacCord, the chairman of Digi Outdoor Media, Inc., who is serving a federal prison sentence in Arkansas for fraud related to Digi, also declined to cooperate with the Investigation without immunity from criminal prosecution, which the Council cannot provide. Document productions from NSE clients revealed little or no evidence that they received actual traditional consulting services.

Lindner, the only principal of an NSE client who cooperated with the Investigation, said he understood that by retaining NSE he was purchasing “greater license for [him] to take Jack’s time” and to “use him as a sounding board,” something Evans had done informally as a friend over the years. According to Lindner, the engagement gave Lindner the “opportunity . . . to have someone . . . who could help [him] kind of sort out where the city was, on a fairly casual basis, an irregular basis . . . and [it] ultimately proved of great value to [him].”²⁰³

Evans stated that he did not personally provide constituent services to NSE clients, instead referring such requests to Kimbel, his Director of Constituent Services.²⁰⁴ The documentary record, however, includes several occasions when Evans personally responded to his clients’ constituent services requests. Evans maintains that he would have provided constituent services regardless of the NSE contracts, explaining that the retainer payments were unrelated to the constituent services he or his office provided.²⁰⁵

c. Conflict Of Interest Provision

The majority of the NSE contracts included a conflict of interest provision. Jarvis initially drafted this language on August 23, 2016 following a conversation with Evans about MacCord—a then-NSE client in a dispute with the District government—and concerns from prospective NSE client Lindner, who suggested including a conflict of interest provision due to his unfamiliarity “with the laws affecting elected officials and compensation paid to them,” and “wanting to make 100% sure that [the] agreement [was] legitimate in every regard.”²⁰⁶ Jarvis spent little time drafting the conflict of interest provision, and did not consult or incorporate the applicable ethics rules.²⁰⁷ The provision instead reflected his general understanding of conflicts of interest.²⁰⁸ Evans reviewed and approved Jarvis’ proposed language.²⁰⁹

²⁰³ Exhibit 101 (Oct. 1, 2019 R. Linder Interview Tr.) at 24:3-11, 25:17.

²⁰⁴ Exhibit 9, Evans Tr. II at 16:1-18:18.

²⁰⁵ *Id.* at 20:13-22.

²⁰⁶ Exhibit 102 (Aug. 23, 2016 Email from W. Jarvis to S. Grant) (“Per our conversation yesterday about Don McCord, and in light of a recent communication that I had with Rusty, in addition to you getting an authorization for NSE Consulting from the Council’s General Counsel, I think you should add the following provision to your NSE Consulting Agreement.”); Exhibit 103 (Aug. 17, 2016 Email from R. Lindner to W. Jarvis) at FC-DC-0000040; Exhibit 104 (Sept. 15, 2016 Email from R. Lindner to W. Jarvis) at FC-DC-0000642; Exhibit 105 (Mar. 4, 2017 Email from R. Lindner to W. Jarvis).

²⁰⁷ Aug. 29, 2019 W. Jarvis Interview.

²⁰⁸ *Id.* (Jarvis based the language on the “[b]asic general principles of conflict of interest.”).

²⁰⁹ *Id.* at 25 (“[Evans] read [the language] and thought it was okay.”).

The first iteration of the “Conflict of Interest Process” provision provided that:

CLIENT hereby acknowledges that Jack Evans, the principal of NSE, currently serves as a member of the Council of the District of Columbia (the “Council”) and is subject to the ethics rules and regulations associated with such service. CLIENT hereby further acknowledges that Evans will recuse himself from any vote of the Council that involves a matter on or about which NSE is providing or may provide services to CLIENT. In addition, NSE will immediately notify CLIENT in the event that CLIENT would like to utilize NSE’s services on any matter that would create or might create a conflict of interest or might violate applicable ethics rules and regulations for Evans.²¹⁰

Later iterations include additional language such as, “The Office of the General Counsel of the Council has approved Evans’ provision of services as the principal of CONSULTANT,” and that NSE would notify the clients of matters that “(i) would create or might create a conflict of interest; (ii) might violate applicable ethics rules and regulations for Evans or for CLIENT; or (iii) might constitute lobbying, which is not an activity that either CONSULTANT or CLIENT intends by entering into and performing under this Agreement.”

Evans stated that he never needed to exercise this provision, either through recusal or notifying clients of impending conflicts.²¹¹ By implication, the clause also suggests Evans need not recuse himself (or inform his clients of potential conflicts), if his clients keep him on retainer without requesting any specific consulting services.

d. NSE Clients

In its three-year existence, NSE contracted with the ten entities identified below. NSE’s clients were mostly local businesses owned by Evans’ close friends or acquaintances. Their business activities were generally subject to regulation by the District government and Council, and most had historical or future interests in issues before the Council, regulatory agencies, or the District government. As explained further below, some clients provided testimony at Council hearings supporting or opposing legislation. Evans and his Council staff regularly interfaced with many clients before and during the NSE engagement, either by providing constituent services or working on legislation. Often, Evans’ official actions appeared to benefit his NSE clients. Two of these clients had previously retained Evans and his law firms for lobbying, legal, or other services.

²¹⁰ Exhibit 100 at JE-SPE-000055-56.

²¹¹ Exhibit 10, Evans Tr. III at 47:3-48:22 (“Well, [the conflict of interest provision] never came up in a sense. But if it were to have come up, then I would not have participated in [the] matter.”)

NSE Clients And Contracts			
<u>Client</u>	<u>Contract Dates</u>	<u>Contract Value</u>	<u>Affiliated Person</u>
Digi Outdoor Media, Inc.	August 1, 2016 - August 1, 2017 (Agreement suspended Aug. 25, 2016)	\$25,000/year	Donald MacCord
Digi Media Communications, LLC	August 1, 2016 - August 1, 2017 (Agreement suspended Aug. 25, 2016)	\$25,000/year	Donald MacCord
Willco	December 1, 2016 - November 30, 2017 (original agreement)	\$50,000/year	Richard Cohen
	December 1, 2017 - November 30, 2018 (extension of services agreement)	\$50,000/year	
The Forge Company	October 1, 2016 - September 30, 2017 (original agreement)	\$25,000/year	Russell Lindner
	February 20, 2017 - January 2019 (extension of services agreement)	\$50,000/year	
EastBanc Inc.	November 1, 2016 - December 31, 2017 (original agreement)	\$5,000/year	Anthony Lanier
	January 1, 2018 - June 28, 2018 (extension of services agreement)	\$5,000/year	
EastBanc Technologies	November 1, 2016 - December 31, 2017 (original agreement)	\$15,000/year	Philippe Lanier
	January 1, 2018 - June 28, 2018 (extension of services agreement)	\$15,000/year	
Squash on Fire	November 1, 2016 - September 30, 2017 (original agreement)	\$5,000/year	Anthony Lanier
	November 1, 2017 - September 30, 2018 (extension of services agreement)	\$5,000/year	
	July 1, 2018 - June 28, 2019 (second extension of services agreement)	\$25,000/year	
EagleBank	August 1, 2016 - July 31, 2017 (original agreement)	\$37,500/year	Ronald Paul
	August 1, 2017 - July 31, 2018 (extension of services agreement) ²¹²	\$50,000/year	
RDP Management, Inc.	August 1, 2016 - July 31, 2017 (original agreement)	\$25,000/year	Ronald Paul
	August 1, 2017 - July 31, 2018 (extension of services agreement) ²¹³	\$50,000/year	
Fischer Holdings	March 1, 2018 - February 28, 2019	\$50,000/year	Steven Fischer

2. Ethics Analysis

The Code and Council Rules do not impose a blanket ban on outside consulting for councilmembers. Rather, as BEGA has explained, elected officials should actively take steps to ensure their sources of outside income do not conflict, or appear to

²¹² The extension of services agreement renewed automatically on an annual basis. The Investigation did not identify documentation regarding the precise end date for the agreement with EagleBank.

²¹³ The extension of services agreement renewed automatically on an annual basis. The Investigation did not identify documentation regarding the precise end date for the agreement with RDP Management, Inc.

conflict, with their official duties.²¹⁴ Subsections V(E)-(X) detail entity-specific violations stemming from Evans' employment with NSE. There are, however, a few global issues worth discussing at the outset.

First, there is a significant possibility that the large availability payments that Evans received from his NSE clients constituted "gifts" from a prohibited source under Rule III of the Code. With limited exceptions, the Code prohibits all employees from soliciting or accepting, directly or indirectly, any gift from a prohibited source. "Gift" is defined broadly to include any "gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value." And a "prohibited source" includes any person or entity whose operations are regulated by the District government or who have financial interests that could be influenced by the activities of a councilmember—which would appear to include all of Evans' NSE clients.

If prohibited sources were essentially paying Evans (or any other Council employee) for doing nothing, or grossly over paying for minimal services, the fact that they did so pursuant to written "service agreements" would not necessarily make them fair market payments for services or otherwise ethically compliant. Gift issues of this type usually arise in the context of a government employee who engages in a private business transaction with a prohibited source for the sale of property or a service.²¹⁵

The Investigation was unable to find any ethical opinions or guidance at either the District or federal level that have addressed the prohibited gift rule in the context of availability pay for a part time government employee. Moreover, because all but one of the key witnesses from Evans' NSE clients pled the Fifth Amendment or otherwise refused to cooperate with the Investigation, O'Melveny does not have a full picture of the value Evans actually provided his clients and why those clients were prepared to pay such large amounts just to ensure Evans was available to them. Nor did the Investigation have available any data on the fair market value of a D.C. councilmember merely being available for five hours a month of strategic consulting (unrelated, of course, to his official position). The Investigation further recognizes that the possibility that above-market compensation might be considered a violation of the Code's gift prohibitions is not specifically discussed in the Code of Official Conduct, nor was it mentioned in the general ethical guidance that Evans received when he started NSE. At some point, however, sufficiently excessive pay from prohibited sources for outside employment "would appear to conflict with the fair, impartial, and objective performance of the employee's official duties."²¹⁶ Given the factual and legal uncertainties around the propriety of Evans' availability retainers, the Investigation is unable to make a

²¹⁴ Constituent Services AO, *supra* n.21 at 18.

²¹⁵ See, e.g., U.S. Office of Government Ethics, *Employee Acceptance of Commercial Discounts and Benefits* (Jan. 5, 1999), [https://www.oge.gov/web/oge.nsf/All%20Advisories/2DC58902B6AA552F85257E96005FBD5D/\\$FILE/D O-99-001.pdf?open](https://www.oge.gov/web/oge.nsf/All%20Advisories/2DC58902B6AA552F85257E96005FBD5D/$FILE/D O-99-001.pdf?open) (discussing analogous ethical issues involving commercial discounts and benefits) (while government employees generally may enter into bona fide private negotiated business transactions with prohibited sources outside the government, their transactions may be subject to considerable scrutiny because a negotiated price that reflects a discount below fair market value could prove to be a prohibited gift).

²¹⁶ See *supra* n.11; Code of Official Conduct Rule II(a)(1).

definitive finding that he violated the Code, and therefore flags this issue for potential further consideration by the Ad Hoc Committee and the Council as a whole.

Second, the NSE engagement potentially implicates Rule VI(a)'s prohibition against directing subordinate employees to perform tasks unrelated to official Council functions and activities during work hours. NSE had no staff, and Evans told us he doesn't type and has limited word processing skills.²¹⁷ Whatever administrative support he needed was provided by his Council office staff, principally his Chief of Staff Grant. But as noted above, NSE apparently did little or no traditional consulting work. There were no regular written client updates on economic or political developments, analyses of business proposals, drafting of strategy papers, or arrangement of meetings or events with key business or political leaders. Grant's support for NSE consisted primarily of helping to edit some of the form service agreements and later preparing invoices for Evans to send his clients.²¹⁸ She also worked with Jarvis in 2016 on the administrative aspects of adding a conflict of interest provision to the form NSE service agreement and on requesting ethics guidance relating to NSE's formation.²¹⁹ To the extent that Grant's assistance related to Evans ethical duties under the Code of Official Conduct, O'Melveny views that as a legitimate part of her official duties, even though it also benefited NSE. A certain amount of coordination between official and outside activities is inherent in any system that allows councilmembers to have outside employment.

The Investigation also found no indication that the limited amount of time Grant spent on purely NSE-related tasks (some of which were performed outside of regular business hours) ever interfered with her ability or availability to fulfill her official duties. Based on the available records and the recollections of witnesses, the limited amount of administrative support Grant provided NSE was not, in O'Melveny's view, sufficiently substantial to constitute a violation of Rule VI(a).

Third, while Evans obtained approval from OGC to form NSE, he did not seek guidance with respect to any specific NSE client or matter, nor did he disclose the identity of his clients to Council staff. As explained *supra*, he had no official process to monitor and address conflicts of interest, and his general lack of disclosure made complying with the Code and other Council ethics rules difficult at best. Had Evans heeded Efros' encouragement to seek more specific and regular guidance from OGC and BEGA, he might have avoided many of the ethical issues discussed in this report.

²¹⁷ Exhibit 8, Evans Tr. I at 158:21-22, 159:1-2, 161:8-17.

²¹⁸ September 5, 2019 S. Grant interview.

²¹⁹ Exhibit 25 (Aug. 25, 2016 Email from S. Grant to W. Jarvis); Exhibit 96 (Sept. 22, 2016 Email from S. Grant to W. Jarvis).

E. NSE Client - Digi Outdoor Media Inc. & Digi Media Communications LLC

Digi Outdoor Media, Inc. (“Digi”)²²⁰ is a digital advertising company, whose primary business consisted of installing and operating digital advertising signs on real property in the District.²²¹ Digi gained rights to install and operate its signs by entering lease agreements with landowners.²²² Digi’s viability as a business depended on two things: its ability to enter leases with property owners and a regulatory environment that would not frustrate its business model.²²³

Donald MacCord exercised functional control over Digi at all times relevant to the investigation.²²⁴ Under MacCord’s leadership, Digi and its corporate affiliate (the entity now styled “Lumen Eight”) were among Evans’ first clients at NSE.²²⁵ MacCord is currently incarcerated in a federal correctional facility in Arkansas. He refused to be interviewed without immunity from further criminal prosecution, which the Council cannot provide.²²⁶

The Investigation found that, from 2014 through 2016, MacCord offered Evans a number of benefits, and Evans voluntarily assumed a financial interest in Digi while he was aware of existing disputes between Digi and the District. During the same period, Evans used his official position to advance Digi’s financial interests, including by circulating emergency legislation intended to benefit Digi’s position in an active dispute with the District.

These findings are based on analyses of responsive records and witness statements. The investigation collected responsive documents from, among other sources, the D.C. Attorney General’s Office, the Council’s records, and Digi records preserved in Lumen Eight’s files. The most probative of these records were presented to Evans and former Digi officers during substantive interviews.

²²⁰ Digi Outdoor Media, Inc. was an out-of-state corporation primarily doing business in Washington, D.C. See MacCord Indictment at 7, *United States of Am. v. MacCord*, 3:17-cr-592 (N.D. Cal. Nov. 28, 2017), ECF No.1. During the period relevant to the Council’s investigation, Digi Outdoor Media, Inc. undertook a number of changes to its corporate form, most of which are irrelevant to the investigation of Evans’ activities. *Id.* Throughout the relevant period, Donald MacCord primarily controlled the operations of Digi Outdoor Media, Inc. Digi Media Communications LLC (now Lumen Eight), comprised of an investor group which financed MacCord’s operations.

²²¹ Aug. 27, 2019 G. Miller Interview.

²²² *Id.*

²²³ *Id.*

²²⁴ MacCord’s control extended to Digi’s bank accounts held at, among other places, EagleBank.

²²⁵ Evans signed contracts with two entities: Digi Media Communications, LLC and Digi Outdoor Media Inc. Exhibit 107 (Aug. 1, 2016 Agreement with Digi Media Communications LLC); Exhibit 108 (Aug. 1, 2016 Agreement with Digi Outdoor Media Inc.).

²²⁶ Exhibit 109 (Sept. 30, 2019 Internal Email).

1. *Factual Findings*

a. Digi's Business Plans In The District

Unlike the principals of some of NSE's other clients, Evans did not have a pre-existing personal friendship with Digi's Chief Executive Officer, MacCord.²²⁷ MacCord's first professional interactions with Evans occurred in the early 2000s and concerned advertising signage in the District.²²⁸ Evans and MacCord collaborated on legislation that prevented the District from removing building-sized, traditional (i.e., non-digital) billboards that MacCord's business had installed throughout the District.²²⁹ Communications from MacCord claim that Evans personally endorsed and advocated for MacCord's project.²³⁰

After the billboard legislation in the 2000s, Evans had no interaction with MacCord until 2014.²³¹ In April 2014, MacCord emailed Evans and Grant:

I hope you are doing well. Saw some old friends of ours the other Day Bob Pincus and Ron Paul²³² and we were talking about the old days and it made me realize I had not brought you up to speed on our DC project. If you have some time next week I would like to meet and discuss our very cool project.²³³

Digi's "project" sought to exploit an ambiguous provision in the District's regulations that governed which types of infrastructure constituted an interior sign versus an exterior sign.²³⁴ The former did not require permits. The latter were subject to an extensive permitting process that some businesses concluded generally negated the financial incentive to install exterior billboards.²³⁵ The District of Columbia's Department of Consumer and Regulatory Affairs ("DCRA") superintends this regulatory scheme.²³⁶

²²⁷ Exhibit 9, Evans Tr. II at 62:3-6. MacCord's title changed to "Principle and Founder" in March 2016. See Praeipe, *District of Columbia v. Lumen Eight Media Grp. LLC*, 2016 CA 006471 B (D.C. Super. Ct. Apr. 16, 2019).

²²⁸ *Id.* at 60:9-62:22.

²²⁹ *Id.*; Exhibit 110 (D. MacCord, Evolution of the Special Sign Permits in Washington DC); Steve Thompson, *D.C. Council member Jack Evans received stock just before pushing legislation that would benefit company*, Wash. Post (Dec. 20, 2018), https://www.washingtonpost.com/local/dc-politics/dc-council-member-jack-evans-received-shares-of-stock-just-before-pushing-legislation-that-would-benefit-company/2018/12/20/b2a3b320-ffc8-11e8-83c0-b06139e540e5_story.html.

²³⁰ Exhibit 110.

²³¹ Exhibit 9, Evans Tr. II at 62:8-10 ("[MacCord] vanished for a long time and then reappeared in 2014.").

²³² Ron Paul is the former CEO of Eagle Bank and owner of RDP Management, both clients of Evans' Consulting Firm.

²³³ Exhibit 111 (Apr. 26, 2014 Email from D. MacCord to J. Evans).

²³⁴ Aug. 27, 2019 G. Miller Interview.

²³⁵ *Id.* See generally D.C. Mun. Regs. tit. 12-A § 10; DCRA, Outdoor Advertising Signs (Special Signs), <https://dcra.dc.gov/service/outdoor-advertising-signs-special-signs>.

²³⁶ See generally D.C. Mun. Reg. tit. 12-A § 10; DCRA, Outdoor Advertising Signs (Special Signs), *supra* n.235.

Digi interpreted the key regulation to mean that an exterior-facing sign qualified as an interior sign, and was thus exempted from the cost-prohibitive regulatory scheme, if it was contained within 18 inches of the footprint of the building.²³⁷ In other words, a sign hung on the outside of a building that does not protrude more than 18 inches beyond the building's proprietary footprint was an "interior sign" under the regulation.²³⁸ In Digi's view, these "interior signs" would function as more-profitable, exterior billboards that nonetheless avoided the permitting requirements for exterior billboards.²³⁹

Digi was aware that regulators could oppose its interpretation.²⁴⁰ To ensconce and strengthen its position, Digi sought to execute as many leases to install its signs as possible before DCRA could react.²⁴¹ Once these rights were secured, Digi would pursue policy solutions to grandfather Digi's leaseholds and close the interior sign "loophole" for its competitors—that is, to create for Digi an effective monopoly on the District's multi-million dollar digital sign market.²⁴²

b. MacCord's Attempts To Benefit Evans From 2014 To Early 2016

Starting in April 2014, MacCord began a persistent campaign to enlist Evans' support of and involvement in Digi's digital sign project.²⁴³ Evans' office schedule reflects five meetings with MacCord throughout 2014, 2015 and 2016.²⁴⁴ MacCord also regularly exchanged emails with Evans' staff about sign regulations in the District.

²³⁷ Aug. 27, 2019 G. Miller Interview.

²³⁸ *Id.*

²³⁹ *Id.* The legal sufficiency of this interpretation is the subject of ongoing litigation with Digi's Investor Group, Digi Media Communications LLC (Now Lumen Eight) and the Office of the Attorney General for the District of Columbia's ("OAG").

²⁴⁰ *Id.* A Digi executive testified during OAG's lawsuit that Digi was concerned the "exemption . . . the project was going to be developed under might get changed." See Exhibit 115 (Jan. 31, 2019 T. Kennedy Tr. Excerpts) at 61:21-62:11.

²⁴¹ See Exhibit 112 (Feb. 14, 2019 D. Beaumont Tr. Excerpts) at 62:13-19. The company operated discretely out of concern that DCRA would move quickly to revise the regulatory loophole once Digi's plan became clear. See Exhibit 113 (Apr. 17, 2019 Lumen Eight Media Grp., LLC Tr. Excerpts) at 201:5-203:22 ("[W]e were concerned all along how embedded competitors were with the CCCB and we had heard rumors as well, had a close relationship with DCRA as well. So our concern was this was sort of widely known within the outdoor advertising industry" and "[w]e did not want the project to be widely known."); Exhibit 114 (Sept. 5, 2014 Email from D. MacCord to S. Boggs et al.) at RECORD - 0001522; Exhibit 112 at 112:11-17 ("Q: So you had a concern that the competitors would communicate with the DCRA? A: Yes . . . [w]ith misrepresenting what we were doing and trying to do, and trying to use the DCRA to shut us down."); Exhibit 115 at 292:21-293:3 ("we were concerned once the competitors found out about the project, they would go to take all action to have the exemption changed."); Exhibit 116 (Sept. 25, 2015 Email from S. Grant to D. MacCord) ("I didn't realize your project was top secret. Let me know how we can help.").

²⁴² See Aug. 27, 2019 G. Miller Interview; Oct. 18, 2019 M. Scott Interview (stating Digi's strategy was to pursue "aggressive" legislative solutions to grandfather its rights to install and operate its signs and prevent enforcement actions).

²⁴³ Exhibit 9, Evans Tr. II at 62:8-10.

²⁴⁴ Exhibit 86 (Jan. 30, 2015 Email from K. Stogner to S. Grant); Exhibit 87 (May 14, 2015 Councilmember Evans' office schedule); Exhibit 88 (Aug. 25, 2015 Councilmember Evans' office

MacCord interspersed offers of various benefits to Evans and his staff during this time. On August 27, 2015, for example, MacCord offered Evans and Schannette Grant seats at the “Jazz Fest Gala.”²⁴⁵ In October 2015, he offered seats to Evans and Grant to the “Blue Gala.”²⁴⁶ In 2016, MacCord offered Evans and Grant tickets to an opening game for the Washington Nationals and seats at MacCord’s table for the World Tennis Foundation Ball.²⁴⁷ Evans denied attending any events with MacCord.²⁴⁸

MacCord also aimed to maximize Digi’s contributions to Evans’ Constituent Services Fund (“CSF”). On March 12, 2015, MacCord notified Grant that he was “collecting a significant amount of contributions for [Evans’] Constituent Services Fund.”²⁴⁹ After Grant followed up on MacCord’s offer two weeks later, MacCord replied that he had \$10,000 in checks to contribute.²⁵⁰ On April 14 2015, MacCord emailed Grant on the same chain and inquired as to Digi’s maximum allowable contribution.²⁵¹ Grant answered with “OMG....you are literally doing this. WOW....we really appreciate you.”²⁵² MacCord replied, “Looking forward to knocking this out of the park for Jack and the Team.”²⁵³

c. MacCord 2015 Solicits Evans’ Assistance To Delay Sign Regulations In 2015

In 2015, DCRA proposed sweeping changes to the District’s sign regulation scheme that clarified that the interior-sign permitting exemption excluded any sign that

schedule); Exhibit 89 (Feb. 2, 2016 Councilmember Evans’ office schedule); Exhibit 90 (Feb. 3, 2016 Councilmember Evans’ office schedule); Exhibit 117 (June 16, 2014 Councilmember Evans’ office schedule); Exhibit 118 (Feb. 27, 2015 Councilmember Evans’ office schedule); Exhibit 119 (June 2, 2015 Email from D. MacCord to S. Grant).

²⁴⁵ Exhibit 120 (Aug. 27, 2015 Email from D. MacCord to J. Evans) (MacCord wrote to Evans “I have attached the link to the Gala we discussed. I would love to have you and a guest sit at our table. We will have a great time listening to some great music”).

²⁴⁶ Exhibit 121 (Oct 13, 2015 Email from D. MacCord to S. Grant) (MacCord wrote to Grant, “You are the best. Let me know if you and Jack and a second would like to sit at our table on Nov 9th. Blue Gala. Love to have you guys”).

²⁴⁷ Exhibit 122 (May 5, 2016 Email from S. Grant to D. MacCord) at RECORD - 0001542; Exhibit 123 (Apr. 4, 2016 Email from D. MacCord to S. Grant).

²⁴⁸ Exhibit 9, Evans Tr. II at 83:8-84:15, 87:17-88:1 (“I own my own Nationals’ tickets and Wizards’ tickets and baseball tickets. And the [C]ity [C]ouncil is also given tickets in the box at the baseball game at the Verizon Center, Capital One Arena . . . I don’t need to get a ticket from anybody to go to any sporting event, and I don’t.”).

²⁴⁹ Exhibit 119 at RECORD - 0001535.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.* at RECORD - 0001534.

²⁵³ *Id.*

was fully visible from the outside of a building.²⁵⁴ The revisions would have subjected Digi's signs to permitting requirements.²⁵⁵

MacCord brought DCRA's proposed rule revisions to Evans' staff at the same time he was making clear his efforts to collect and donate thousands of dollars to Evans' CSF. On May 7, 2015, MacCord proposed to Grant that they "chat about delaying the responses to the proposed DCRA changes."²⁵⁶ Grant instructed two other Evans' staffers, Director of Communications, Thomas Lipinsky, and Director of Constituent Services Kimbel, to ask DCRA about the proposed rule changes, but cautioned them "not [to] share the email/letter from Don with DCRA."²⁵⁷ Grant then forwarded DCRA's response—which said the agency had no plans to extend the comment period—to MacCord and offered to write the agency a letter requesting a delay of the rulemaking.²⁵⁸

MacCord's emails to Evans' office continued throughout the summer of 2015. On August 12, 2015, MacCord emphasized to Grant that delaying implementation of the new sign regulations was critical to Digi's business.²⁵⁹ On August 19, 2015, he again inquired with Grant about the new sign rules, and reiterated the need to "keep that zoning at bay[.]"²⁶⁰ In October 2015, Grant forwarded MacCord an internal staff communication to confirm that the new rules would not, as MacCord had hoped, become effective until the next year.²⁶¹

In December 2015, Grant forwarded MacCord a "Notice of Intent" for emergency legislation from Councilmember Vincent Orange that also would close Digi's loophole.²⁶² MacCord replied, "We need this not to happen. Please give me a call."²⁶³ The investigation determined that this legislation was never introduced.

²⁵⁴ The Committee of 100 on the Federal City, *Section-by-Section Comments on Proposed Sign Regulations* at 6, (Apr. 28, 2015), <http://committeeof100.net/download/transportation/2015-04-28%20C100%20Annotated%20Comments%20on%20Second%20Title%2013%20Rulemaking%20Notice.pdf>.

²⁵⁵ These revisions are codified in "Title 13" of the District's Municipal Regulations. DDOT Compendium - Signs, DDOT, <https://comp.ddot.dc.gov/SitePages/Signs.aspx>.

²⁵⁶ Exhibit 119 at RECORD - 0001532.

²⁵⁷ Exhibit 124 (July 9, 2015 Email from T. Lipinsky to S. Grant & S. Kimbel) at RECORD - 0001545.

²⁵⁸ Exhibit 116 at DC00000021.

²⁵⁹ *Id.* at DC00000020 ("How are things coming on the new sign regulations and can we please get these pushed out until early next year. This is vital to our business.").

²⁶⁰ *Id.* at DC00000019.

²⁶¹ Exhibit 121 at RECORD - 0001537 ("[i]t looks like the chance of something being in place before the end of the year is slim to NONE!").

²⁶² Exhibit 125 (Dec. 10, 2015 Email from D. MacCord to S. Grant).

²⁶³ *Id.* at DC00000047.

d. Digi Investors' Due Diligence Of Evans' Purported Support In 2016

MacCord presented his business plan for digital signs in the District to a group of Australian investors in late 2015 and early 2016.²⁶⁴ MacCord touted his relationship with Evans and Evans' role as a potential fixer for any issues the business encountered in the District.²⁶⁵ Evans' support of Digi's operations was of such critical importance to Digi's investors that they "would not have gone forward with the [investment]" without it.²⁶⁶ To resolve skepticism about Evans' backing, Digi's investors orchestrated a personal meeting with Evans to (1) confirm MacCord's access to Evans and (2) get a sense of Evans' ability to resolve municipal issues the project encountered.²⁶⁷ The meeting occurred on February 3, 2016 in Evans' office.²⁶⁸

A Digi investor testified during the Office of the Attorney General for the District of Columbia's ("OAG") later legal action²⁶⁹ that, in connection with the investment group's due diligence on Digi, he drafted a memorandum "immediately after the meeting" detailing "exactly what was mentioned."²⁷⁰ The memorandum confirms the meeting satisfied the investors that Evans had known MacCord for an extended period, MacCord had briefed Evans several times on the project, and Evans fully understood and supported Digi's plans to operate under the interior sign loophole.²⁷¹ MacCord also expressly broached Digi's strategic hopes for legislation that would codify DCRA's interpretation of the permitting-exemption, but grandfather Digi's existing signs to grant it an effective monopoly on the exterior-facing digital sign market.²⁷² MacCord secured funding from the investment group to finance Digi's operations a few days after the meeting with Evans.²⁷³

²⁶⁴ Praeipce, *District of Columbia v. Lumen Eight Media Grp. LLC*, 2016 CA 006471 B (D.C. Super. Ct. Apr. 16, 2019).

²⁶⁵ See Exhibit 110; Exhibit 127 (BlueSky Alternative Thinking, Legal Due Diligence Paper) at RECORD – 0001554; Aug. 27, 2019 G. Miller Interview.

²⁶⁶ Exhibit 112 at 58:7-59:3, 62:9-13 ("Q: Was it important to you that Councilmember Evans was supportive of keeping the exemption open? A: I mean obviously our investment case, it was absolute.")

²⁶⁷ Exhibit 112 at 59:16-62:13.

²⁶⁸ Exhibit 128 (Feb. 3, 2016 Councilmember Evans' office schedule); Exhibit 129 (Feb. 3, 2016 Digi Meeting with D.C. councilmembers).

²⁶⁹ The D.C. Attorney General's office brought suit to enjoin Digi in 2016. Motion for Preliminary Injunction, *District of Columbia v. Lumen Eight Media Grp. LLC*, 2016 CA 006471 B (D.C. Super. Ct. Aug. 31, 2016).

²⁷⁰ Exhibit 113 at 167:1-11, 174:5-175:12. See Exhibit 129 at DCC00016895 "[Evans] [r]aised question of reaction from public – 'will I receive phone calls?' JE currently dealing with negative public reaction in Georgetown to flight changes." See also Sept. 5, 2019 S. Grant interview (corroborating Evans' concerns that Ward 2 constituents overwhelmingly opposed public advertising platforms).

²⁷¹ Exhibit 129 at DCC00016895.

²⁷² At the investor meeting, Evans expressed concerns that his constituents would strongly oppose the installation of digital signs in certain areas within Ward 2. MacCord responded that Digi would work with the Council to enact legislation that would prevent the proliferation of digital signs after Digi installed its network. *Id.*

²⁷³ Praeipce, *District of Columbia v. Lumen Eight Media Grp. LLC*, 2016 CA 006471 B (D.C. Super. Ct. Apr. 16, 2019).

e. Internship Offer For Evans' Son From March To June 14, 2016

In March 2016, Grant, at Evans' request, proposed to MacCord that Digi provide an internship for Evans' college age son.²⁷⁴ Evans' son was financially dependent on Evans during this period. Evans did not consult with the OGC or BEGA before pursuing an internship for his son.²⁷⁵

MacCord was receptive, and solicited Evans' availability to accompany his son to an interview at Digi's offices.²⁷⁶ Digi's former Operating Officer, Greg Miller, could not explain why Digi pursued Evans' son for the internship, but noted that providing paid internships was highly irregular for Digi and only occurred in one other instance.²⁷⁷

In May 2016, Grant pursued the internship solicitation.²⁷⁸ On June 14, 2016, Digi extended to Evans' son a formal offer for an internship that paid \$25/hour.²⁷⁹ Evans son declined the internship on or around the same day he received the offer.²⁸⁰

f. DCRA's Enforcement To Enjoin Digi's Operations In The Summer of 2016

Digi's sign construction commenced in early summer 2016.²⁸¹ Several of Digi's competitors reported Digi's activities to DCRA.²⁸² And, as Digi anticipated, DCRA opposed Digi's operationalization of its interpretation of the interior-sign exemption. Digi first learned of DCRA's scrutiny of Digi's operations on or around July 8, 2016, and immediately notified David Wilmot, who acted as Digi's unregistered lobbyist in matters concerning the District.²⁸³

²⁷⁴ Exhibit 9, Evans Tr. II at 94:1-95:20; Exhibit 130 (Mar. 11, 2016 Email from D. MacCord to S. Grant) ("Please give me a call regarding Jack's son potentially doing an internship/working with you this summer.").

²⁷⁵ Exhibit 9, Evans Tr. II at 96:12-17.

²⁷⁶ Exhibit 130; Exhibit 131 (Mar. 1, 2016 Email from D. MacCord to S. Grant); Exhibit 123; Exhibit 122; Exhibit 132 (Mar. 2, 2016 Email from D. MacCord to S. Grant & J. Evans); Exhibit 133 (May 5, 2016 Email from J. Evans to D. MacCord); Exhibit 134 (May 5, 2016 Email from D. MacCord to J. Evans); Exhibit 135 (May 5, 2016 Email from J. Evans to D. MacCord) at DCC00000100; Exhibit 136 (May 5, 2016 Email from D. MacCord to J. Evans) at DCC00000104; Exhibit 137 (May 6, 2016 Email from J. Grant to D. MacCord); Exhibit 138 (May 6, 2016 Email from D. MacCord to J. Grant).

²⁷⁷ Aug. 27, 2019 G. Miller Interview.

²⁷⁸ Exhibit 122 at RECORD - 0001541 (Grant email to MacCord: "[W]e are still interested in having [Evans' son] intern with you this summer, so be sure to mention that to Jack tomorrow as well.").

²⁷⁹ Exhibit 139 (June 15, 2016 Email from D. MacCord to G. Miller); Exhibit 140 (June 14, 2016 Internship Offer Letter).

²⁸⁰ Exhibit 9, Evans Tr. II at 97:5-13.

²⁸¹ Aug. 27, 2019 G. Miller Interview.

²⁸² Exhibit 141 (June 23, 2016 Email from J. Polis to R. Hawkins) (communication from Capitol Outdoor employee to EOM officials about Digi's signs).

²⁸³ Exhibit 142 (July 9, 2016 Email from G. Miller to D. Wilmot & D. MacCord); Oct. 18, 2019 M. Scott Interview. Wilmot acted as Digi's unregistered lobbyist in matters concerning the District.

On July 12, 2016, DCRA adopted an emergency rule to close the loophole on Digi's signs.²⁸⁴ MacCord received notice and emailed Grant for information relating to the status of DCRA's emergency rule.²⁸⁵ Grant instructed a Council staffer to contact OGC for an update on the status of the emergency rule and to confirm that it was not legislation from the Council. Grant forwarded OGC's response directly to MacCord on July 26, 2016.²⁸⁶ Grant explained OGC's response as suggesting that "there was no emergency legislation passed so DCRA must've done this on their own." She ended her message by noting that "[Evans] would like to meet with you when he returns from the Democratic National Convention sometime next week. Are you in town?"²⁸⁷ MacCord replied, "I am here all [week of August 1, 2016] and would love to meet with Jack."²⁸⁸

g. NSE Solicits Digi As A Client As DCRA Pursues Enforcement Action In August 2016

Effective August 1, 2016, NSE entered into retainer-style consulting relationships with two Digi entities: one with MacCord's operation (Digi), and another with an investor group called Digi Media Communications LLC.²⁸⁹ Evans characterized his office's involvement with Digi up until July 2016 as constituent services,²⁹⁰ even though MacCord lived in Washington State and California,²⁹¹ Digi was a foreign corporation,²⁹² and the overwhelming sentiment of actual Ward 2 constituents opposed digital signs.²⁹³ But, shortly after forming NSE in July 2016, and around the time the DCRA adopted the emergency rule prohibiting Digi's signs, Evans began soliciting MacCord to retain NSE as a paid consultant.²⁹⁴ Despite awareness that Digi intended to operate under a singular and ambiguous regulatory exemption, Evans stated he had no concerns as to the propriety of creating a financial relationship with Digi as of August 1, 2016.²⁹⁵

The NSE-Digi contracts paid Evans \$50,000 per year. The factual record does not establish a definitive date on which this interest terminated, but Evans took steps to "delay" the relationship on August 25, 2016 by returning to Digi the two annual payments. At or around the same time, MacCord offered, and Evans accepted in the

²⁸⁴ Exhibit 144 (Mar. 29, 2019 B. Kreiswirth, DC 30(b)(6) Dep. Tr. at 116:2-118:22).

²⁸⁵ Exhibit 145 (July 20, 2016 Email from D. MacCord to S. Grant) ("Did the attached emergency legislation really happen. We cannot find it in the public record anywhere and a DCRA attorney is sending it to our landlords. Please get back to me. Very important.").

²⁸⁶ Exhibit 146 (July 26, 2016 from S. Grant to D. MacCord) at RECORD – 0001565.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ See generally Exhibit 107; Exhibit 108.

²⁹⁰ Exhibit 9, Evans Tr. II at 15:3-21:20.

²⁹¹ Aug. 27, 2019 G. Miller Interview.

²⁹² *Praecepte, District of Columbia v. Lumen Eight Media Grp. LLC*, 2016 CA 006471 B (D.C. Super. Ct. Apr. 16, 2019).

²⁹³ Sept. 5, 2019 S. Grant Interview ("The constituents in Foggy Bottom were opposed to [the signs]."); Interview with S. Kimbel ("Part of the reason [the signs] never went up is because his constituents did not want them, they were so against them.").

²⁹⁴ Exhibit 9, Evans Tr. II at 64:2-65:21.

²⁹⁵ *Id.* at 122:10-14.

name of NSE, 200,000 shares of Digi stock. The stock issued on October 28, 2016, but Evans subsequently returned the shares shortly after receipt.

Evans attributed the existence of seemingly duplicative contracts to his provision of advice to both Digi entities.²⁹⁶ Evans could not explain the differences between the two entities, or the separate advice required for each.²⁹⁷ Each contract provided that Digi would pay Evans' \$25,000 per year in equal semi-annual installments.²⁹⁸ Evans had no particular valuation to arrive at the \$25,000 annual fee; he simply "thought [his] services were worth" that amount.²⁹⁹

On August 10, 2016, MacCord directed Digi's CFO Mark Scott to issue two checks, each for the full annual amount of \$25,000, to Evans.³⁰⁰ Scott had no prior knowledge of NSE or its contract with Digi before MacCord's instructions to pay it \$50,000.³⁰¹ Scott expressed concerns to Digi's investor group about the propriety of the engagement.³⁰² The investors, after consulting with legal counsel, instructed Scott to authorize the checks.³⁰³ Scott signed two separate checks, each for \$25,000 and dated August 11, 2016.³⁰⁴

While Evans stated that he intended to advise Digi on nationwide business issues,³⁰⁵ each Digi-NSE contract expressly contemplates that Evans would provide services focused on the District:

The Services shall include, but not be limited to, information and advice regarding the Washington, D.C. business community, with a particular focus on the real estate sector, including new leasing opportunities, landlord instructions, counselling regarding leasing matters, and, where requested, liaising with landlords.³⁰⁶

The contracts did not include a conflict of interest provision.³⁰⁷

²⁹⁶ *Id.* at 66:11-17 ("A: . . . [Y]es, there were two separate entities is what I remember. Q: Do you recall [] why it was structured that way? A: Just he had two companies, and I provided advice to both companies.").

²⁹⁷ *Id.* at 66:5-17.

²⁹⁸ Exhibit 107; Exhibit 108.

²⁹⁹ Exhibit 9, Evans Tr. II at 67:12-14.

³⁰⁰ Exhibit 147 (Aug. 11, 2016 Email from M. Scott to D. MacCord & S. Macintosh).

³⁰¹ Oct. 18, 2019 M. Scott Interview.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ Exhibit 148 (Aug. 25, 2016 Letter from J. Evans to D. MacCord) at RECORD - 0001568.

³⁰⁵ Exhibit 9, Evans Tr. II at 101:4-15.

³⁰⁶ Exhibit 107 at DCC00049017; Exhibit 108 at JE-SPE-000012.

³⁰⁷ Exhibit 107; Exhibit 108.

On August 16, 2016, DCRA issued its first “stop work order” to one of Digi’s leased locations.³⁰⁸ MacCord emailed Evans the next day, claiming that “DCRA is out of line, we need to get them to back off.”³⁰⁹ Evans, who was attending a political event in Massachusetts for the Hillary Clinton campaign,³¹⁰ instructed MacCord to contact Grant.³¹¹ Evans returned to the District on or around August 21, 2016; the two checks from Digi remained executory.³¹²

h. Evans Delays Formal Agreement With Digi Because Of Potential Ethical Conflicts On August 25, 2016

Evans recalled that the physical presence of the Digi checks, which he encountered on his return from Massachusetts, caused him to doubt the appropriateness of a paid business relationship with Digi at that time.³¹³ He consulted Grant and Jarvis, both of whom urged him to return the checks.³¹⁴ He did not seek advice from OGC or BEGA. Evans decided to return the checks and end the engagement.³¹⁵ Jarvis advised Evans he should memorialize his decision and drafted a cover letter, dated August 25, to accompany the returned checks.

Evans reviewed and approved the letter,³¹⁶ which reads in full:

Dear Don,

It has very recently come to my attention that your company is currently engaged in a potential dispute with the District of Columbia government regarding the erection of digital displays (electronic signs). This is an issue that may soon come before the Council and is an also an issue that may affect residents and businesses in Ward 2. For that reason, I think that it is best that NSE Consulting should not begin a consulting arrangement with you and your company until this issue is resolved. As I hope that I relayed to you during our initial conversations, I have the ability to recuse myself from Council votes whenever a conflict or a potential conflict exists. However, with an issue such as this — i.e., one that may directly affect my constituents — *I believe that it is in both of our best interests for me to delay the initiation of a business*

³⁰⁸ Exhibit 149 (DCRA Stop Work Orders) at DC_00000996. The next day, Digi’s attorney emailed the DIGI leadership: “The OAG and DCRA have both contacted me to urge Digi to remove the signs at 11 Mass Avenue, and further that if not removed by you that DCRA will do so.” See Exhibit 150 (Aug. 17, 2016 Email from D. MacCord to J. Evans) at DCC00000309.

³⁰⁹ Exhibit 150 at DCC00000309.

³¹⁰ Exhibit 9, Evans Tr. II at 108:21-110:8.

³¹¹ Exhibit 150 at DCC00000309 (“Don. Call Schannette.”).

³¹² Exhibit 9, Evans Tr. II at 118:11-16.

³¹³ *Id.* at 118:11-22.

³¹⁴ *Id.* at 118:11-119:20.

³¹⁵ *Id.* at 118:17-119:20.

³¹⁶ *Id.* at 126:5-128:19.

relationship with your company while this potential conflict exists.

For the foregoing reasons, I am returning the initial payment checks that you provided to NSE Consulting. Both are enclosed with this letter. *We can resume discussions about the need for a consulting arrangement between your company and NSE Consulting as soon as the digital display issue is resolved.*

Thank you for your understanding.³¹⁷

Evans viewed this letter and the return of the checks as sufficient to terminate the NSE-Digi agreement and to prevent conflicts of interest arising from Digi's ongoing dispute with the District.³¹⁸ But Evans also agreed³¹⁹ that the language was not conclusive; the letter used the word "delay," did not expressly state the relationship was terminated, and left open the possibility that he could resume a business relationship with Digi in the future.³²⁰ Scott, who read the letter after Evans delivered it, also believed the relationship was delayed.³²¹ Digi's dispute with the District is ongoing as of the date of this report.

i. MacCord Continues To Provide Indirect Financial Benefits After NSE Termination September Through October 2016

In addition to bundling donations to benefit Evans' CSF and curry favor with his office,³²² MacCord bundled contributions to political campaigns for the candidates Evans supported throughout the 2016 national election period. MacCord's bundling activities included pressuring Digi personnel and investors to contribute to LuAnn Bennett, a Democratic congressional candidate for a northern Virginia district.³²³ MacCord emailed a large group of Digi officers and investors on September 22, 2016, making clear that the solicitation was at Evans' behest and suggested that maximizing

³¹⁷ Exhibit 148 at RECORD - 0001567 (emphasis added).

³¹⁸ Exhibit 9, Evans Tr. II at 128:13-19, 129:3-13.

³¹⁹ *Id.* at 128:13-130:15.

³²⁰ *Id.* at 128:3-129:16; Exhibit 148 at RECORD - 0001567.

³²¹ Oct. 18, 2019 M. Scott Interview.

³²² Office of Campaign Finance, Report of Receipts and Expenditures for a Constituent-Service Program, <https://efiling.ocf.dc.gov/Disclosure/EntireReport/14562>. On September 29, 2016, MacCord informed Evans that he would donate \$6000; Exhibit 151 (Sept. 29, 2016 Email from D. MacCord to J. Evans). A few days later, MacCord emailed Digi personnel, "Thanks to everyone that has gotten me checks . . . this constituency money if [sic] very effective, and we need to make sure we are a top contributor." Exhibit 152 (Oct. 4, 2016 Email from D. MacCord to M. Scott et al.).

³²³ Exhibit 153 (Sept. 22, 2016 Email from S. Doyle) at DCC00052149 ("David Wilmot and Jack Evans have asked that we each personally contribute as much as possible to this campaign. The ask is \$1k and its short notice but really need to make it happen.").

each personal contribution was also in Digi's business interests.³²⁴ Digi has no operations or interests in northern Virginia.³²⁵

MacCord and various Digi affiliates also contributed to Hillary Clinton's presidential campaign on Evans' behalf.³²⁶ MacCord ultimately collected and shared over \$16,000 in Clinton contributions with Evans in August 2016.³²⁷ On August 31, 2016, Evans requested that Digi personnel fill out contribution forms to process the \$16,000 donation checks from earlier that month.³²⁸ MacCord sent an email to Digi employees with the subject line, "Please send me the Hillary Contribution forms asap. Jack is blowing me up and I do not want to aggravate [sic] him in anyway."³²⁹

j. Evans Explores Digi Share Acquisition After NSE Termination From September Through October 2016

In or around early September 2016, Evans and MacCord discussed Evans' acquisition of 200,000 shares of Digi stock.³³⁰ The value of Digi's shares was indeterminate, but largely depended on Digi's ability to operate profitably in the District.³³¹ On September 29, MacCord forwarded an email with the subject line, "Digi Share Issuance Authorization 9/23/16 NSE Consulting[.]" and informed Evans that his "[s]hares [we]re coming my friend."³³²

On October 23, 2016, Evans used an email to MacCord about additional contributions to the Clinton campaign as an opportunity to check the status of his Digi shares, which were still outstanding.³³³ MacCord assured Evans he "should have [his] stock certificates any day now."³³⁴ MacCord emailed the share certificates to Evans on October 31.³³⁵ The stock certificate, issued to NSE, is dated October 28, 2016.³³⁶

Mark Scott believed the stock was payment for NSE's consulting services.³³⁷ Issuing stock as incentive-based compensation to consultants was customary at this

³²⁴ *Id.*

³²⁵ Aug. 27, 2019 G. Miller Interview.

³²⁶ Exhibit 154 (Sept. 7, 2016 Email from D. MacCord to S. Grant); Exhibit 155 (Aug. 9, 2016 Email from D. MacCord to J. Evans).

³²⁷ Exhibit 156 (Aug. 20, 2016 Email from J. Evans to D. MacCord); Exhibit 157 (Aug. 31, 2016 Email from J. Evans to D. MacCord); Exhibit 158 (Aug. 20, 2016 Email from J. Evans to D. MacCord).

³²⁸ See generally Exhibit 157.

³²⁹ Exhibit 159 (Sept. 7, 2016 Email from D. MacCord to S. Grant & J. Evans).

³³⁰ Exhibit 8, Evans Tr. I at 192:3-9.

³³¹ Aug. 27, 2019 G. Miller Interview.

³³² See generally Exhibit 151.

³³³ Exhibit 160 (Oct. 23, 2016 Email from D. MacCord to J. Evans) ("Any chance to get checks Monday. Also, haven't gotten anything on stock.").

³³⁴ *Id.*

³³⁵ Exhibit 160; MacCord copied his then-girlfriend Dawn Gontkovic, whose allegations concerning cash payments from MacCord to Evans were detailed in the District Dig Article, "Second Thoughts[.]" on the email. Gontkovic refused to speak with the Investigation.

³³⁶ Exhibit 161 (Digi Outdoor Media Inc. Stock Certificate).

³³⁷ Oct. 18, 2019 M. Scott Interview.

stage of Digi's business.³³⁸ Scott had recently authorized the issuance of shares for a separate Digi consultant, and followed a similar process to authorize NSE's shares.³³⁹

Evans explained that he intended to purchase the shares as a personal investment in penny stocks.³⁴⁰ Evans did not discuss share price with MacCord.³⁴¹ Evans' goal was to buy the stock at an insider price and eventually profit.³⁴² He could not explain why the stock was issued in the name of NSE if it was a personal investment.³⁴³

Evans did not seek guidance from OGC or BEGA concerning the propriety of holding stock in an entity whose dispute with the District had the potential to come before the Council.³⁴⁴ After discussing the stock with Jarvis and Grant, Evans realized that taking a financial interest in Digi, while Digi was in a dispute with the District—a dispute that had already prompted him to return the payment checks—“had the potential to be a problem” and “the appearance. . . was terrible.”³⁴⁵

Evans explained during his interview that he then “got in the car and drove and gave [MacCord] the stock back.”³⁴⁶ Grant corroborated Evans' description of the manner in which he returned the stock.³⁴⁷ Unlike the checks, Evans did not memorialize the return of stock in writing.³⁴⁸ The Investigation could not determine the present location or status of the stock certificates, or if a corporate registry for Digi shares issued and outstanding exists.³⁴⁹

k. Evans' Official Actions To Benefit Digi from August to November 2016

On August 17, 2016, the same day MacCord alerted Evans to DCRA's stop work order, MacCord approved a new work plan for Digi's employees that included overnight construction and instructed Digi's workers to proceed with the plan as “aggressively as

³³⁸ *Id.*

³³⁹ Exhibit 162 (Mar. 29, 2016 Email from M. Scott to D. MacCord et al.).

³⁴⁰ Exhibit 8, Evans Tr. I at 192:3-18 (“Don said I would like to give you some stock in the company. . . . And being a securities guy, my original response was, well, you can't give me something, but I might be interested in buying stock.”).

³⁴¹ *Id.* at 195:10-22.

³⁴² *Id.* at 192:10-193:5 (“So if you're representing somebody or you're dealing with somebody, if you can get stock at a [sic] insider price, so to speak – [...] it becomes public, and then you can make a fortune.”)

³⁴³ Exhibit 9, Evans Tr. II at 144:7-12 (“Q: Was there a reason [the stock was issued to NSE Consulting]? A: I don't recall one.”); Evans also referenced his background in securities law nine times during the interview. See, e.g., Exhibit 8, Evans Tr. I at 10:8, 12:10, 26:17, 36:12, 94:14, 103:19, 105:2, 171:7, 192:10.

³⁴⁴ Exhibit 9, Evans Tr. II at 139:4-12, 143: 5-8.

³⁴⁵ *Id.* at 194:19-20, 195:4-6.

³⁴⁶ *Id.* at 193:14-22.

³⁴⁷ Sept. 5, 2019 S. Grant interview (explaining that she drove her own vehicle to Digi's offices with Evans following her because he could not operate his GPS to navigate to Digi's office location by himself).

³⁴⁸ Exhibit 9, Evans Tr. II at 150:3-5.

³⁴⁹ Aug. 27, 2019 G. Miller Interview.

possible.”³⁵⁰ On August 18, before Evans returned the Digi checks, Lipinsky assisted Digi’s overnight operation by coordinating with WMATA’s Assistant General Manager to facilitate Digi’s “after hours” work schedule.³⁵¹ Evans was copied on the emails.³⁵²

On August 22, MacCord emailed Digi’s officers, investors, lobbyists, and Evans with the subject line “[e]veryone needs to stay calm and take a breath.” The substance of the email describes then-ongoing efforts, led by David Wilmot, to lobby the City Administrator to stop DCRA’s enforcement.³⁵³

On August 31, 2016, OAG sued in D.C. Superior Court to enjoin Digi’s installation of signs.³⁵⁴ On November 10, the Court ordered Digi to cease all construction and operation of its signs.³⁵⁵ The order did not force Digi to remove its signs.³⁵⁶

I. Evans’ Office Plans To Move “The Signs Appendix Regulation Amendment Emergency Act of 2016” In November To December 2016

On November 18, MacCord and Digi-lobbyists Thorn Pozen and Wilmot discussed a proposal for emergency legislation with Evans and Werner, his Legislative Director.³⁵⁷ The bill, titled “The Signs Appendix Regulation Amendment Emergency Act of 2016,” provided:

where the property owner has either applied to the Department of Consumer and Regulatory Affairs for, or received from the Department of Consumer and Regulatory Affairs, a building permit for support brackets and electrical permit for related power supply outlets to be used in connection with the installation of a sign . . . or installed signs pursuant to such permits, on or before 60 days from the adoption of this amendment and such installations shall be deemed legally conforming.³⁵⁸

³⁵⁰ Exhibit 163 (Aug. 17, 2016 Email from D. MacCord to C. Stewart and T. Kennedy) at RECORD-0001998.

³⁵¹ Exhibit 164 (Aug. 18, 2016 Email from T. Lipinsky to B. Richardson) (“Please allow me to introduce Don MacCord and Greg Miller from Digi Outdoor Media. They are . . . hoping to get in touch with the right person at Metro to access the station entrances overnight to help complete their work on the buildings.”).

³⁵² *Id.*

³⁵³ Exhibit 165 (Aug. 22, 2016 Email from D. MacCord to D. Beaumont et al.).

³⁵⁴ Motion for Preliminary Injunction, *District of Columbia v. Lumen Eight Media Grp. LLC*, 2016 CA 006471 B (D.C. Super. Ct. Aug. 31, 2016).

³⁵⁵ Order Granting Motion for Preliminary Injunction, *District of Columbia v. Lumen Eight Media Grp. LLC*, 2016 CA 006471 B (D.C. Super Ct. Nov. 10, 2016).

³⁵⁶ *Id.*

³⁵⁷ Exhibit 9, Evans Tr. II at 153:6-154:21; Aug. 9, 2019 R. Werner Interview.

³⁵⁸ Exhibit 166 (Draft of Bill to amend, on an emergency basis, Section N101 of title 12 of the District of Columbia Municipal Regulations regarding commercial signs).

The proposed legislation would grant Digi the effective digital sign monopoly it had long sought by grandfathering its rights to operate their signs, freezing out any competition, and mooted OAG's lawsuit.³⁵⁹ Werner explained that the final bill was drafted entirely by Digi's lobbyists.³⁶⁰

The publicity attendant to OAG's lawsuit resulted in heightened scrutiny directed at the emergency legislation, evidenced by multiple inquiries from various government offices and officials to Evans' office.³⁶¹ By November 23, the executive branch's staunch opposition to the emergency legislation was clear to Evans' office.³⁶² On November 28, James Pittman, Legislative Director at OAG, emailed Evans and his staff a memorandum summarizing OAG's opposition to the legislation, and requesting that the legislation not be introduced.³⁶³

Despite the objections of the executive branch, Evans circulated on December 1, 2016, a "Notice of Intent" to introduce Digi's emergency legislation.³⁶⁴ On December 5, 2016, James Pittman's office sent to the entire Council the same email outlining OAG's opposition to the proposed emergency legislation he previously sent to Evans.³⁶⁵ Many of Evans' constituents had already submitted letters opposing the legislation and accusing Digi of circumventing OAG's lawsuit through the Council.³⁶⁶ In the face of opposition from his constituents³⁶⁷ and a dearth of support from other councilmembers,³⁶⁸ Evans withdrew his emergency bill on December 6, 2016—the day he was scheduled to introduce it.³⁶⁹

Evans explained his decision to draft and intent to introduce the emergency legislation:

[T]he question was is Don being treated unfairly. They came to me and said he was that those regulations should not

³⁵⁹ *See id.*

³⁶⁰ Aug. 9, 2019 R. Werner Interview.

³⁶¹ Exhibit 168 (Nov. 21, 2016 Email from R. Werner to J. Pozen) at RECORD - 0001581 ("CMs Bonds and Grosso's office are asking [questions]. And the AG's office has inquired about this. Have you spoken with the AG recently?").

³⁶² Exhibit 169 (Nov. 21, 2016 Email from R. Werner to T. Pozen) at RECORD - 0001586 ("Can you all reach out to James Pittman with the AG's office . . . He is telling me the AG and the Mayor are adamantly opposed to this emergency [bill]").

³⁶³ Exhibit 170 (Nov. 28, 2016 Email from J. Pittman to J. Evans) ("While OAG does not see an emergency situation presented here, we respect that an emergency designation is a matter for the Council to decide. However, we have significant concerns with this legislation and respectfully request that it not be moved").

³⁶⁴ Exhibit 171 (Dec. 5, 2016 Email from T. Pozen to R. Werner et al.) at RECORD - 0001591.

³⁶⁵ Exhibit 172 (Dec. 5, 2016 Email from T. Pozen to R. Werner) at RECORD - 0001593-4.

³⁶⁶ *See, e.g.*, Exhibit 173 (Dec. 5, 2016 Email from T. Pozen to R. Werner) at RECORD - 0001595 (one constituent wrote, "We were told that Digi Media is seeking to circumvent the Superior Court litigation by a legislative amendment that would permit their electronic signs even though they violate DC Code and regulations").

³⁶⁷ Sept. 5, 2019 S. Grant Interview; Aug. 13, 2019 S. Kimbel Interview; Exhibit 173; Exhibit 172.

³⁶⁸ Exhibit 9, Evans Tr. II at 156:5-20.

³⁶⁹ Aug. 9, 2019 R. Werner Interview.

prevent him from [installing signs] because [the] . . . people interested in those regulations have contacts in the OAG's office and DCRA, et cetera. So could we do emergency legislation, and that's what the ask was.³⁷⁰

Evans confirmed that the decision to abandon the proposed legislation did not reflect a change in his view of the emergency legislation's merits.³⁷¹ Evans stated that he continues to believe that the emergency legislation was meritorious in its own right.³⁷²

m. Possible Official Actions To Benefit Digi In 2017

Documents suggest Evans worked with Wilmot in early 2017 to salvage Digi's operations by advocating within the District government after the legislative effort failed. Digi's landlords were growing increasingly impatient with Digi's stalled sign construction.³⁷³ To help placate the landlords, MacCord forwarded Miller a message from Wilmot detailing their efforts to meet with executive branch officials to "secure closure on the proposed rule."³⁷⁴ The same email, from February 10, 2017, states that Evans was actively "working on the [City Administrator]" to "finalize the regulation[.]" and was "confident that the rule will be finalize[d] soon."³⁷⁵

In March 2017, several Digi personnel sent letters to the Mayor's office urging her to support "the Sign Appendix Regulation Amendment Act of 2017 sponsored by Jack Evans[.]"³⁷⁶ which suggests that Evans again attempted to pass legislation benefitting Digi. MacCord wrote Mayor Muriel Bowser "to personally thank [her] for [her] efforts in working with Councilmember Evans to support this proposed rulemaking and for making sure that all businesses and residents of the District are treated fairly."³⁷⁷ Evans' office schedule shows four meetings with Mayor Bowser from January through March 2017.³⁷⁸ The Investigation did not determine whether governmental actions affecting Digi's interests were discussed at any or all of these meetings. Evans acknowledged that his involvement with Digi's interactions with the District government may have continued into 2017, but had no specific recollection of personal involvement after the December 2016 legislative effort.³⁷⁹

³⁷⁰ Exhibit 9, Evans Tr. II at 153:6-154:6.

³⁷¹ *Id.* at 157:6-158:12.

³⁷² *Id.*

³⁷³ See Exhibit 175 (Feb. 10, 2017 Email from D. MacCord to G. Miller) at RECORD - 0001597-99.

³⁷⁴ Digi witnesses O'Melveny interviewed were not able to explain or identify the proposed rule to which MacCord referred. See Aug. 27, 2019 G. Miller Interview; Oct. 18, 2018 M. Scott Interview.

³⁷⁵ Exhibit 175 (Feb. 10, 2017 Email from D. MacCord to G. Miller) at RECORD - 0001597.

³⁷⁶ Exhibit 176 (Mar. 7, 2015 Email from R. Steifert to P. Mendelian) at DCC00001184-222.

³⁷⁷ *Id.* at DCC00001221.

³⁷⁸ Exhibit 177 (Mar. 10, 2017 Councilmember Evans' office schedule); Exhibit 178 (Feb. 8, 2017 Councilmember Evans' office schedule); Exhibit 179 (Jan. 11, 2017 and Jan. 24, 2017 Councilmember Evans' office schedule).

³⁷⁹ Exhibit 9, Evans Tr. II at 165:2-168:20.

2. *Ethics Analysis*

a. Rule I: Conflicts of Interest

(1) Evans' Prospective Financial Interests in Digi

For purposes of the conflict of interest rules, the Code's definition of "affiliated organization" includes an organization or entity "[i]n which the employee serves as officer, director, trustee, general partner, or employee; . . . [or] [t]hat is a client of the employee or member of the employee's household," and it also includes "[a] person with whom the employee is negotiating for or has an arrangement concerning prospective employment."³⁸⁰ The Code thus defines "affiliated organization" to distinguish between employers and clients, at least in the context of the prospective stage of the relationship. Given the variety of possible client relationships—a client relationship could be one of a hundred small such relationships or it could be the only one, and hence the financial and functional equivalent in many respects to a traditional employment relationship—this approach makes sense as a general matter. The Code's coverage of financial interests with respect to prospective employers is also limited to the employee's personal negotiations with prospective employers and does not encompass members of the employee's household.

In the context of Evans' relationship with Digi, there were several prospective financial interests that the Investigation analyzed for possible ethical violations:

- Soliciting an internship for his son with Digi. From March 2016 until late June of 2016, Evans, his Council staff, Evans' son, and various people from Digi had multiple discussions about Digi hiring Evans' son as a paid summer intern with Digi. Evans was personally involved in the negotiations, even accompanying his son to his job interview in Digi's local office, which culminated with Digi making Evans' son a formal offer for a summer internship for which he would be paid \$25 per hour. No evidence exists that any party to the negotiations considered the implications of Evans' son accepting the paid role at Digi. If he had, Digi would have become an "affiliated organization" under the ethics rules and Evans could not have personally or substantially participated in his official capacity in any particular matters involving Digi without likely creating a conflict of interest.
- Negotiating a prospective client relationship. Evans told O'Melveny that, in his mind, his decision to not deposit Digi's retainer checks prevented either of the Digi entities from becoming NSE clients. But Digi became an organization affiliated with Evans for purposes of the Code's conflict rules when it became a client of NSE. Based on the written service agreements and related documents, it is clear that from at least August 1, 2016 until August 25, 2016 (the date on which Evans suspended the Digi

³⁸⁰ Code of Official Conduct, *supra* n.11 Rule I(e)(1).

engagement), the Digi entities were both NSE clients. Any actions that Evans took during that period related to Digi would be subject to Rule I of the Code. Whether Evans' official actions relating to Digi entities after August 25, 2016 violated ethical standards, conflicts of interest or otherwise, because of a "delayed" business relationship is less clear.

- Failing to fully and clearly terminate the client relationship. In his August 25, 2016 letter to MacCord, Evans expressly acknowledged that Digi's dispute with the District and the probability that related issues would come before the Council potentially created a conflict for him. But instead of clearly terminating the existing and prospective business relationship between NSE and Digi, Evans chose "to delay the initiation of a business relationship with your company while this potential conflict exists."³⁸¹ He further told MacCord that "[w]e can resume discussions about the need for a consulting arrangement between your company and NSE Consulting as soon as the digital display issue is resolved."³⁸² Regardless of whether Digi was a current client or not, Evans' suspension of the relationship until the digital display issue was resolved did not eliminate the conflict because it did not end the prospect that Digi might become a client in the foreseeable future.

In the employment context, established ethics principles require that a public employee who wants to terminate negotiations with a prospective employer so as to avoid having the financial interests of the prospective employer attributed to him, must "mak[e] it clear to the prospective employer that he or she has no interest in considering the employment overture at the present time *and has no plans for such consideration in the foreseeable future*."³⁸³ Federal ethics regulations further clarify that "a response that defers discussion until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume [sic] nor rejection of a prospective employment possibility."³⁸⁴

The Investigation finds Evans treated Digi as a prospective client (rather than a former client), in light of his discussions in September and October 2016 about obtaining 200,000 shares of stock in Digi (in the name of NSE Consulting LLC). Evans could not explain why more than two months after he ended his contractual relationship with Digi because of potential conflicts, he was comfortable requesting and receiving

³⁸¹ Exhibit 148 at RECORD - 0001567.

³⁸² *Id.*

³⁸³ Office of Government, *Memorandum to Designate Agency Ethics Officials, General Counsel, and Inspectors Generals* at 4, n.4, (Sept. 20, 2004), [https://www.oge.gov/web/oge.nsf/All%20Advisories/4A8FAF9A3C33BB8185257E96005FBD0D/\\$FILE/04x13_.pdf?open](https://www.oge.gov/web/oge.nsf/All%20Advisories/4A8FAF9A3C33BB8185257E96005FBD0D/$FILE/04x13_.pdf?open) (quoting 57 Fed. Reg. 35006, 35029 (Aug. 7, 1992)) (emphasis added).

³⁸⁴ 5 C.F.R. § 2635.603(b)(3). The federal regulations also provide an example of an employee who informs a prospective employer by saying that she is currently working on a matter that the employer has an interest in, and therefore cannot discuss future employment, but that she would like to discuss employment discussions when the project is completed. The regulations note that because "the employee has merely deferred employment until the foreseeable future, she has begun seeking employment with [the prospective employer]." *Id.*

stock in Digi Outdoor Media, thus re-establishing (or continuing)³⁸⁵ a financial interest in Digi. It is noteworthy that it took Evans a second “epiphany”³⁸⁶ about potential conflicts and Digi (apparently prompted by discussions with Jarvis and Grant) for him to conclude that his ownership of Digi stock would create a potential problem and that the appearance of it “was terrible.”³⁸⁷

Because O’Melveny concludes that an “affiliated organization” as defined in the Code, extends only to a Council employee’s prospective outside employers not his prospective clients, O’Melveny concludes that Evans’ relationship with Digi only constitutes a financial interest within the meaning of Rule I of the Code between August 1, 2016 and August 25, 2016.

(2) Conflicts of Interest Violation in August 2016

Because O’Melveny concludes that Evans had a client relationship with Digi during August 2016, we considered whether any official action by Evans during that month may have violated Rule I of the Code. On August 18, 2016, Evans’ Director of Communications Lipinsky copied Evans on an email to WMATA’s Assistant General Manager to facilitate Digi’s overnight work schedule after the DCRA issued stop work orders.³⁸⁸ This action occurred during the effective period of the NSE agreements—August 1-25, 2016. It was designed to enable Digi to “aggressively” advance its property claims to bolster its defense against the pending DCRA enforcement action. Evans was aware of each of these facts during the relevant time.

In sum, Evans and his office (i) took official actions through Lipinsky’s liaising with WMATA (ii) in a particular matter, manifest in DCRA’s enforcement action focused on the interests of a specific entity, (iii) the outcome of which Evans knew to be likely to directly impact his financial interests and those of his NSE client. The dispositive question is whether Evans “personally and substantially participate[d]” or used his official position or title to intervene in the matter. For involvement to be substantial under analogous federal regulations, it must have some significance or importance to the matter beyond “perfunctory involvement,” and must “not only [be] based on the effort devoted to a matter, but also on the importance of that effort.”³⁸⁹

³⁸⁵ It is not clear whether the stock was tied to the original client relationship between NSE and Digi that was established on August 1, 2016. Mark Scott, Digi Media Communications CFO believed that the stock was part of the original compensation terms (although it was not set forth in the written services agreement), and that delivery of the stock was delayed a couple of months because the issuance of stock through a transfer agent is a slow process. See Oct. 18, 2019 M. Scott Interview. Evans’ memory of the events was unclear, but he suggested during his interview that the stock was a separate transaction, something that originated after he had suspended the relationship and returned the retainer checks. He recalled planning to pay for the stock. See Exhibit 8, Evans Tr. I at 192:3-18. He also said he did not believe the shares had any real value at the time. See *id.* at 193:8-10.

³⁸⁶ Exhibit 9, Evans Tr. II at 118:18.

³⁸⁷ Exhibit 8, Evans Tr. I at 195:5.

³⁸⁸ Exhibit 164.

³⁸⁹ See 5 C.F.R. § 2635.402.

The Investigation supports a finding that Evans did personally and substantially participate by coordinating with WMATA to enable Digi's scheme in violation of Rule I of the Code of Conduct. While the Investigation did not discover documentary evidence that Evans directed or supervised Lipinsky's actions, Evans' continued facilitation of requests from MacCord and Digi, long after the escalating antagonism between Digi and DCRA became apparent, created for his staff an impression of approval for official intervention on Digi's behalf. Evans' inclusion on the WMATA email undoubtedly lent the imprimatur of his office to Lipinsky's request. Taken in context, Lipinsky's email evidences Evans' tacit, if not explicit, guidance, and may be understood as an outgrowth of the permissive atmosphere Evans cultivated in his dealings with Digi as a prospective and/or actual NSE client.

b. Rule II: Outside Activities

As explained above, O'Melveny views Digi as a prospective NSE client from August 25, 2016 until at least the early part of 2017, when according to internal Digi emails, Evans was apparently still actively working with the City Administrator to finalize the regulations Digi wanted. And while being a prospective client is not enough to bring the Digi relationship within the ambit of Rule I's prohibition on conflicts of interest, O'Melveny concludes that the factual context of Evans' relationship with MacCord and Digi—including, the prospective employment of Evans' son by Digi, his solicitation of Digi stock, and the August 25, 2016 letter's explicit prospect of resuming a paid consulting relationship—makes clear that the official actions taken by Evans and his staff to assist Digi were more than sufficient to conflict or appear to conflict with the fair, impartial, and objective performance of Evans' official duties, in violation of Rule II of the Code.³⁹⁰ O'Melveny believes that if Evans had sought, and followed, independent expert ethics advice and guidance from OGC or BEGA, he could easily have avoided the course of conduct that has turned his relationship with Digi and MacCord into the focus of substantial media and law enforcement attention.

Relevant ethics authorities employ a reasonable-person standard to judge whether an apparent conflict exists.³⁹¹ With the benefit of the factual development in this section, the *Ad Hoc Committee* and the full Council have a sufficient basis to determine whether Evans' relationships with Digi and MacCord created the appearance of conflicting, "with the fair, impartial, and objective performance of [his] official duties."³⁹² But the key facts, summarized below, are generally inconsistent with the letter and spirit of Rule II:

- MacCord used offers of tickets and other gifts to try to influence Evans and his Council staff to provide "constituent services" to aid Digi's ambitious project in the District.

³⁹⁰ Council Rules, *supra* n.13 202(a) also provides that councilmembers should avoid perceived conflicts of interest and preferential treatment.

³⁹¹ District Personnel Manual § 1800.3(n), <https://edpm.dc.gov/>; 5 C.F.R. § 2635.101(b)(14).

³⁹² Code of Official Conduct, *supra* n.11 Rule II(a)(1).

- MacCord offered, at Evans' instigation, a paid internship to Evans' son.
- Evans signed consulting agreements worth \$50,000 per year with companies whose success he knew was contingent on its ability to defend a dubious interpretation of a DCRA regulatory provision that was likely to bring that entity into conflict with the District. Evans did this with knowledge that Digi's long-term strategy was to persuade the Council to enact legislation that would enable Digi to corner the digital sign market.³⁹³
- Evans delayed but did not terminate the prospect of a consulting contract with Digi entities
- MacCord funneled thousands of dollars, through Evans, to Evans' preferred national political candidates.
- Evans pursued and accepted, at least temporarily, an equity interest in Digi shortly after he purported to terminate or delay a compensatory private agreement due to what he describes were concerns of a potential conflict.

Against this backdrop of benefits and intermittent financial entanglements, Evans and his Council staff took a number of official actions in a manner that were clearly intended to benefit Digi financially, including:

- Using Council email to procure, at MacCord's request, information from DCRA and then immediately transmit that information to MacCord.
- Meeting with Digi's private investors to discuss, among other things, legislative solutions to benefit Digi's business strategy.
- Inquiring with OGC on MacCord's behalf after he received enforcement notices from DCRA as to whether legal changes to the sign industry were enacted by DCRA or the Council. This information was then shared with MacCord.
- Interceding with WMATA to facilitate Digi's "aggressive" work plan following DCRA's enforcement notice.
- Participating in drafting Emergency Legislation to solely benefit Digi and circulated a Notice of Intent to introduce the same.

Advocating on behalf of Digi's interests within the City government, including with the City Administrator and Mayors' office, following the aborted legislation.

³⁹³ Exhibit 129.

F. NSE Client - The Forge Company

1. Factual Findings

Colonial Parking, Inc. (“Colonial”) is a commercial parking enterprise that operates pay-to-park garages throughout the District of Columbia, Maryland, and Northern Virginia.³⁹⁴ In 2012, Colonial became a wholly-owned subsidiary of The Forge Company (“Forge”). Forge is a private real estate and transportation holding company incorporated and headquartered in Washington, D.C.³⁹⁵ Russell C. “Rusty” Lindner has served as the Executive Chairman of Forge and, derivatively, controlled Colonial during the period relevant to the Investigation.³⁹⁶

Lindner cooperated fully with the Investigation, including sitting for a four-hour interview.

a. Pre-NSE Business Relationships

Lindner first met Evans in or around 1990 at a fundraiser for Evans’ first DC Council campaign.³⁹⁷ Lindner explained that Evans would later describe him as Evans’ “alpha supporter” because Lindner was one of the few individuals to attend the fundraiser and provide early support for Evans’ candidacy.³⁹⁸ Their overlapping social networks have fostered a friendship that has lasted more than twenty years.³⁹⁹

From February 5, 2003 until November 2017—with the exception of an eight-month interlude between January 31, 2015 and October 5, 2015⁴⁰⁰—Evans financially benefitted from his relationship with Lindner through his law-firm employment at Squire⁴⁰¹ and Manatt.⁴⁰² The Squire relationship existed from February 5, 2003 until January 31, 2015.⁴⁰³ After leaving Squire, Evans submitted to Manatt a plan for how the services he offered would generate business for the firm, which highlighted Forge as

³⁹⁴ Company, Colonial Parking, <https://www.ecolonial.com/company/>.

³⁹⁵ Exhibit 180 (Colonial Parking Inc. DCRA Records).

³⁹⁶ Our Leadership, Colonial Parking, https://www.ecolonial.com/team_member/russel-c-lindner/; Search, Bloomberg, <https://www.bloomberg.com/profile/person/1909008>.

³⁹⁷ Exhibit 8, Evans Tr. I at 18:13-19; Exhibit 101 at 17:2-19:1.

³⁹⁸ Exhibit 101 at 17:2-19:1.

³⁹⁹ Exhibit 101 at 19:14-17, 19:18-20:5 (noting that the recent allegations concerning Evans has effectively halted all social interactions); Exhibit 8, Evans Tr. I at 18:16-22; Exhibit 10, Evans Tr. III at 136:5-10.

⁴⁰⁰ During this time period, Evans was employed by neither Squire nor Manatt. See Exhibit 30 (letter from Vorys, Sater, Seymour and Pease LLP verifying that Evans was employed by Manatt from October 5, 2015 until November 17, 2017); Exhibit 27 (Letter from C. Talisman, Assistant General Counsel for Squire, verifying that Evans was employed by Squire until January 31, 2015).

⁴⁰¹ See generally Exhibit 181 (Feb. 5, 2003 Letter from J. Evans to R. Lindner).

⁴⁰² See generally Exhibit 185 (Feb. 18, 2016 Letter from J. Ray to R. Lindner).

⁴⁰³ Exhibit 181; Exhibit 182 (Contracts Timeline); Exhibit 27 (letter verifying that Evans was employed by Squire until January 31, 2015).

a client that he could bring to Manatt.⁴⁰⁴ Forge's Manatt engagement lasted from February 18, 2016 until November 2017.⁴⁰⁵

Through the law firm engagements, Evans provided Lindner with insights into the "general strategic business" landscape in D.C.⁴⁰⁶ Lindner believed Evans was "uniquely equipped" in this area "by virtue of [his position as a councilmember]" and his interactions with "different organizations, different [Advisory Neighborhood Commissions], different landlords, . . . [and] different jurisdictions."⁴⁰⁷ Both law firm agreements operated on a retainer-payment model.⁴⁰⁸

b. NSE Consulting, LLC

Recognizing that his tenure at Manatt was coming to an end, Evans proposed that Lindner retain his services through NSE during the summer of 2016.⁴⁰⁹ Lindner understood NSE to be a vehicle by which Evans could legitimately provide the same valuable strategic services as he did while at Squire and Manatt, but the profits "would run entirely to [Evans]" rather than Evans receiving a "percentage [] of the cut of [Lindner's] fee."⁴¹⁰

Lindner interacted primarily with Jarvis in negotiating the terms of the Forge-NSE agreement.⁴¹¹ Lindner had two main concerns about engaging NSE. One was that he wanted to ensure that Evans could actually enter agreements and perform the services he offered through NSE while he was a councilmember.⁴¹² Lindner's second concern was confidentiality.⁴¹³ He wanted his retention of NSE to remain absolutely confidential. These concerns drove the Forge-NSE drafting process, particularly as to provisions detailing the services, confidentiality, and conflicts of interest requirements of the agreement.⁴¹⁴

⁴⁰⁴ Exhibit 183.

⁴⁰⁵ See Exhibit 185; Exhibit 182.

⁴⁰⁶ Exhibit 11, Evans Tr. IV at 9:10-12.

⁴⁰⁷ Exhibit 101 at 28:2-18.

⁴⁰⁸ Exhibit 181 (Feb. 5, 2003 Letter from J. Evans to R. Lindner); Exhibit 185 (The agreement with Manatt contemplated continued consulting with Evans and a monthly written deliverable detailing "political matters" in the District for a \$4,000 monthly fee).

⁴⁰⁹ Exhibit 101 at 73:4-20, 74:5-75:17; Exhibit 10, Evans Tr. III at 137:3-4.

⁴¹⁰ Exhibit 101 at 74:5-75:17.

⁴¹¹ Exhibit 101 at 81:22-82:3.

⁴¹² Exhibit 103 at FC-DC-0000040 (Aug. 17, 2016 Email from R. Lindner to W. Jarvis stating, "[b]eing unfamiliar with the laws affecting elected officials and compensation paid to them -- and wanting to make 100% sure that our agreement is legitimate in every regard -- do you have any suggested language as to what Jack can (and cannot) do or say?"); see also Exhibit 188 (Mar. 1, 2017 Email from R. Lindner to W. Jarvis stating, "I want to [be] squeaky-clean on this. May be belts-and-suspenders, but I always want to err on the side of caution and propriety").

⁴¹³ Exhibit 101 at 124:14-125:2; Exhibit 188 (Mar. 1, 2017 Email from R. Lindner asking W. Jarvis to "emphasize to Jack the confidentiality element" of the NSE-Forge agreement).

⁴¹⁴ See e.g., Exhibit 103 at FC-DC-0000040; Exhibit 188; Exhibit 191 (Sept. 21, 2016 Email from W. Jarvis to R. Lindner).

Lindner executed the Forge-NSE Agreement on November 10, 2016,⁴¹⁵ with an effective date of October 1, 2016.⁴¹⁶ The operative agreement contained the following relevant provisions:

Services/Compensation Provision. At a cost of \$25,000 per year, payable semi-annually, Evans would provide “information and advice regarding the metropolitan Washington, D.C. business community, including strategic issues relating to jurisdictional competition, transportation, and real estate, including landlord introductions and, where requested, liaising with landlords.”⁴¹⁷ The agreement did not require Evans to produce any deliverables or written reports.⁴¹⁸

Conflicts of Interest Provision. Under this provision, Evans agreed to “recuse himself from any vote of the Council that involves a matter on or about which NSE is providing or may provide services to CLIENT.”⁴¹⁹ Evans also agreed to “notify CLIENT in the event that CLIENT would like to utilize NSE’s services on any matter that would create or might create a conflict of interest or might violate applicable ethics rules and regulations for Evans.”⁴²⁰

Confidentiality Provision. Unless “required by any applicable governmental authority or in connection [with a] legal proceeding,” Evans agreed not to disclose “any confidential or proprietary information of CLIENT.”⁴²¹ Evans also agreed not to “disclose the terms of [the] Agreement to any person who is not a party or signatory to [the] Agreement, unless disclosure thereof is required by law, is in connection with a legal proceeding or otherwise authorized by [the] Agreement or consented to by CLIENT.”⁴²²

Evans viewed the services he would provide through NSE to Forge as similar to those that he provided under the Squire and Manatt retainers—he would be available “as needed” for strategy discussions about the political and commercial environment in the District.⁴²³ Lindner viewed the value of Evans’ services through NSE as two-fold: (1) Evans’ consultations allowed him to assess future opportunities or risks for his businesses;⁴²⁴ and (2) Evans’ perspective made Lindner more valuable to the other organizations with which he was involved—the Federal City Council and the D.C. Policy Center.⁴²⁵

⁴¹⁵ Exhibit 196 (Nov. 10, 2016 Email from R. Lindner to J. Evans); Exhibit 187 (Oct. 1, 2016 Forge Co. Services Agreement).

⁴¹⁶ Exhibit 187 at FC-DC-0000079, § 3.a. (“The term of this Agreement (“Term”) shall be one (1) calendar year commencing on October 1, 2016.”).

⁴¹⁷ *Id.* at FC-DC-0000078, § 1.a.; *id.* at FC-DC-0000079, § 2.a.

⁴¹⁸ *See generally* Exhibit 187; Exhibit 101 at 83:14-22.

⁴¹⁹ Exhibit 187 at FC-DC-0000078-79, § 1.e.

⁴²⁰ *Id.*

⁴²¹ *Id.* at FC-DC-0000080, § 5.a.

⁴²² *Id.* at § 5.b.

⁴²³ Exhibit 10, Evans Tr. III 137:5-17.

⁴²⁴ Exhibit 101 at 97:1-98:10.

⁴²⁵ *Id.* at 97:15-98:10.

Lindner did not recall any discussions involving what Evans could and could not do within the engagement, and Evans never notified Lindner of any actual or potential conflicts.⁴²⁶ Lindner simply “believe[d] [Evans] knew what he had to do.”⁴²⁷ Evans did not have OGC or BEGA review the conflicts of interest provision, and Efros did not recall any discussions with Evans about particular matters involving Forge.⁴²⁸

Lindner made clear to Jarvis his concerns about conflicts and confidentiality when exchanging drafts of the NSE-Forge Extension Agreement.⁴²⁹ Lindner emphasized that he wanted the agreement be “squeaky-clean” and to “err on the side of caution and propriety” in its attention to the legal and ethical restrictions applicable to councilmembers.⁴³⁰ Lindner did not want Evans’ other NSE clients “to know about [him,]”⁴³¹ so he also asked Jarvis to “emphasize to [Evans] the confidentiality element” of the agreement.⁴³² Lindner explained that he was simply being conscious about putting his “private information into the [public] domain” or advertising to his competitors that he hired Evans as a consultant.⁴³³

According to Evans, he modeled his approach to confidentiality on the law firm model, and law firms do not typically place their client list in the public domain.⁴³⁴ Lindner also never considered whether the confidentiality provision would prevent Evans from disclosing the NSE-Forge agreement if Evans needed to recuse himself from a Council matter.⁴³⁵

On March 5, 2017, Forge extended its services agreement with NSE.⁴³⁶ The extension agreement doubled Evans’ compensation to \$50,000 per year⁴³⁷ and it expanded the scope of contemplated services to include the provision of “information and advice about federal matters and opportunities,” to NSE’s tasks, but proscribed “lobby[ing] the federal government on behalf of [Forge].”⁴³⁸

Lindner ended Forge’s arrangement with NSE in January 2019.⁴³⁹

⁴²⁶ *Id.* at 112:18-22, 118:20-119:4.

⁴²⁷ *Id.* at 118:11-17.

⁴²⁸ Exhibit 10, Evans Tr. III at 153:4-8; Sept. 30, 2019 E. Efros Interview.

⁴²⁹ *See, e.g.*, Exhibit 188. This concern was evidenced by the comment he left for Jarvis regarding the conflict of interest provision, which stated “I need for it to be clear that Forge is not lobbying, and if anything ever arises that might test my absolute avoidance of such then Jack or you must advise me of such.” Exhibit 201 (Feb. 20, 2017 Draft Extension of Forge Co. Services Agreement) at FC-DC-0000100.

⁴³⁰ Exhibit 188.

⁴³¹ Exhibit 101 at 124:4-127:22.

⁴³² Exhibit 188.

⁴³³ Exhibit 101 at 124:14-125:2.

⁴³⁴ Exhibit 10, Evans Tr. III at 149:19-150:20.

⁴³⁵ Exhibit 101 at 121:8-123:7.

⁴³⁶ Exhibit 200 (Feb. 20, 2017 Extension of Forge Co. Services Agreement); Exhibit 204 (Mar. 5, 2017 Email from R. Lindner to W. Jarvis).

⁴³⁷ Exhibit 200 at FC-DC-0000116, § 2.a.

⁴³⁸ *Id.* at FC-DC-0000115, § 1.a.

⁴³⁹ Exhibit 182.

2. *Particular Matters Investigated*⁴⁴⁰

Based on the documentary and testimonial evidence, the Investigation found that Evans violated Rule I of the Code of Official Conduct on at least one instance, introducing language into and voting on the Parking Tax Clarification Amendment Act of 2017 to prevent an increase in the tax rate applicable to parking businesses, while NSE had an ongoing consulting relationship with Forge. The violation highlights Evans' mistaken view that he had no obligation to disclose a conflict or recuse himself from a vote for the same or similar legislation if he had expressed longstanding support for a particular policy position, notwithstanding the fact that his policy position now benefits a paying client.⁴⁴¹

The Investigation also found that Evans “personally and substantially participated” in a number of other legislative matters that affected the interests of Lindner and Forge. But, as explained in further detail below in Sections 2.b to 2.e, these instances did not rise to the level of actual conflicts of interest under the Code of Official Conduct because of the specific circumstances of each official act.

a. Parking Tax Clarification Act Of 2017

(1) Underlying Facts

In April 2015, Mayor Bowser—in proposing the next year's budget—recommended that the Council increase the tax rate applicable to commercial parking operations from 18 percent to 22 percent.⁴⁴² Lindner adamantly opposed any increase

⁴⁴⁰ Pursuant to the Council's direction, O'Melveny also investigated the following five particular matters: (1) Transportation and Benefits Equity Amendment Act of 2017; (2) Transportation and Benefits Equity Amendment Act of 2019; (3) Parking Amendment Act of 2015; (4) BID Parking Amendment Abatement Fund Act of 2015; and (5) Vault Rent Amendment Act of 2014. The Investigation did not identify evidence that Evans violated his ethical obligations with respect to any of the legislative matters identified by the Council. For the Transportation and Benefits Equity Amendment Act of 2017, there is no evidence that Evans took an official act with respect to the legislation or that he ever discussed the matter with Lindner. For the remaining four matters, the Investigation discovered no evidence that Evans had a contemporaneous financial interest in Forge or Lindner.

⁴⁴¹ Exhibit 11, Evans Tr. IV at 9:10-10:13 (stating “if I have a longstanding position and someone shows up that I happen to have a relationship with, a friendship with or a client to testify, that can't put me in a position to have to recuse myself from something that I have been involved in long before I even knew this person or had a relationship with this person”).

⁴⁴² Press Release, *Mayor Bowser Presents Fiscal Year 2016 Budget Proposal to the DC Council*, DC Gov't (Apr. 2, 2015), <https://dc.gov/release/mayor-bowser-presents-fiscal-year-2016-budget-proposal-dc-council>; Committee on Finance and Revenue, Report and Recommendations on the Committee on Finance and Revenue on the Fiscal Year 2016 Budget for Agencies Under It's Purview, Tit. VII. Subtitle C, at 37, (May 13, 2015) <http://lirms.dccouncil.us/Download/33645/B21-0158-CommitteeReport3.pdf> (stating that the Mayor's proposed budget would “increase the parking tax rate on commercial lots from 18% to 22%”).

in the tax rate because it would negatively impact his business,⁴⁴³ and persistently urged Evans and his office to prevent the increase.⁴⁴⁴

As Chair of the Finance and Revenue Committee, Evans recommended to the Council that it implement a contingency in the Fiscal Year 2016 Budget Support Act of 2015 (“2016 Budget”) to keep the parking tax rate at 18 percent; Mayor Bowser’s proposed four-percent tax increase would take effect only if the District failed to meet the financial benchmarks prescribed by Evans’ modification.⁴⁴⁵ The Council adopted the F&R Committee’s recommendation, delaying the increase until October 1, 2017, pending data on the financial contingencies.⁴⁴⁶ The Council twice voted on the 2016 Budget—first, on May 27, 2015 and again on June 30, 2015.⁴⁴⁷ Both times, Evans voted in favor of the 2016 Budget, as amended to delay the tax increase.⁴⁴⁸

In May 2017, Evans’ F&R Committee again recommended to the Council that the parking tax rate should be maintained at 18 percent because the financial conditions prescribed under the 2016 Budget had been met.⁴⁴⁹ The Council accepted the F&R Committee’s recommendation and included the Parking Tax Rate Clarification Act of 2017 (“Clarification Act”) in the Fiscal Year 2018 Budget Support Act of 2017 (“2018 Budget”).⁴⁵⁰ Evans twice voted in favor of the 2018 Budget; once on May 30, 2017 and once on June 27, 2017.⁴⁵¹ Evans had financial interests in Forge through both Manatt

⁴⁴³ In an October 2015 email to Evans, Lindner characterized the parking tax as “killing [his] business.” Exhibit 206 (Oct. 21, 2015 Email from J. Evans to R. Lindner).

⁴⁴⁴ Exhibit 208 (May 19, 2015 Email from R. Lindner to J. Evans, attaching data on revenue that the District could obtain if it imposed fines for on-street parking meter and residential permit parking violations in lieu of increasing the parking tax); Exhibit 209 (May 20, 2015 Email from R. Lindner to J. Evans, attaching “Parking Tax Talking Points”); see also Exhibit 210 (May 19, 2015 Email from R. Lindner to J. Evans); Exhibit 212 (Apr. 21, 2015 Email from R. Lindner to J. Evans) at FC-DC-0000738 (Lindner stating, “Here’s what I sent this morning. ‘Play dumb’, and let’s see how they react. Better for you not to contact them, for sake of objectivity.”); see also Exhibit 213 at FC-DC- 0001146 (concurrent text message from Lindner to Evans on 4/21/2015 asking if Evans received his email about the FC2).

⁴⁴⁵ Report and Recommendations of the Committee on Finance and Revenue on the Fiscal Year 2016 Budget for Agencies Under Its Purview, *supra* n.442 Tit. VII. Subtitle C at 37 (recommending rejecting Mayor Bowser’s proposed parking tax rate on commercial lots from 18% to 22% and instead recommending directing the parking tax to the general fund for distribution).

⁴⁴⁶ Committee of the Whole Committee Report, Report on Bill 21-158, the “Fiscal Year 2016 Budget Support Act of 2015”, Tit. VII. Subtitle C, at 16, 168, (May 27, 2015), <http://lirms.dccouncil.us/Download/33645/B21-0158-CommitteeReport1.pdf> (prescribing “a delayed increase to the parking tax, increasing the rate from 18% to 22%, beginning October 1, 2017, unless fiscal year 2015 revenues in the OCFO’s June 2015 quarterly revenue estimate [were] fully sufficient to fund the cost of the FEMS overtime settlement.”).

⁴⁴⁷ D.C. Act 21-148, Fiscal Year 2016 Budget Support Act of 2015 at 135, (Aug. 11, 2015), <http://lirms.dccouncil.us/Download/33645/B21-0158-SignedAct.pdf>.

⁴⁴⁸ *Id.*

⁴⁴⁹ Exhibit 236 (Committee on Finance and Revenue, Report and Recommendations of the Committee on Finance and Revenue on the Fiscal Year 2018 Budget for Agencies under Its Purview, Tit. VII. Subtitle XX, at 46, (May 16, 2017)).

⁴⁵⁰ Committee of the Whole Committee Report, Report on Bill 22-244, the “Fiscal Year 2018 Budget Support Act of 2017”, Tit. VII, Subtitle K, at 22 (May 30, 2017), <http://lirms.dccouncil.us/Download/37853/B22-0244-CommitteeReport1.pdf>.

⁴⁵¹ D.C. Act 22-130, Fiscal Year 2018 Budget Support Act of 2017 at 124, (July 31, 2017), <http://lirms.dccouncil.us/Download/37853/B22-0244-SignedAct.pdf>.

and NSE during his official actions concerning the Clarification Act and the 2018 Budget. The Investigation found no documentary or testimonial evidence indicating that Evans disclosed his then-existing financial interest in Forge to the Council or BEGA.

(2) Ethics Analysis

By using his position as Chair of the F&R Committee to introduce language in the 2018 Budget and then voting in favor of the amended 2018 Budget—preserving the parking tax rate at 18 percent—Evans took official actions in a matter from which he was ethically conflicted, in violation of Rule I of the Code of the Official Conduct. His failure to disclose to the Council his financial interests in the parking tax legislation also violated Rule I(c)(1).

First, as a commercial parking operator, Lindner had a direct and predictable financial interest in preventing the parking tax rate on commercial lots from increasing to 22 percent. Evans, in turn, had a financial interest in Forge through its paid consulting relationship with NSE. *Second*, the Clarification Act was a “particular matter”⁴⁵² under the Code of Conduct because it involved a “discrete and identifiable class of individuals”—parking operators—of which Evans’ client was a member.⁴⁵³ *Third*, Evans’ official vote on the legislation constitutes “personal and substantial participation.”⁴⁵⁴ Evans and his staff members acknowledged in their respective interviews in this Investigation, that participating in an official vote of the Council is the paradigmatic example of official action that could give rise to a conflict for a councilmember.⁴⁵⁵

b. Unpaid Leave Act Of 2015

(1) Underlying Facts

Along with other sponsors, Councilmember Grosso introduced the Universal Paid Leave Act of 2015 (“UPLA”) on October 6, 2015 to establish a system providing up to eight weeks of paid leave for all District residents and for workers who are employed in

⁴⁵² In an October 26, 2019 letter from his counsel, Evans argued that the Clarification Act does not involve a “particular matter” because the increased tax applied to all citizens in the District. Exhibit 197 (Oct. 25, 2019 Letter from M. Tuohey and A. Lowell to S. Bunnell). The Clarification Act, however, did not apply to all citizens of the District; it applied to commercial parking lots, which is a “discrete and identifiable class of persons.”

⁴⁵³ See Code of Official Conduct, *supra* n.11 Rule I(e)(4).

⁴⁵⁴ *Id.* at Rule I(a); 5 C.F.R. § 2635.402(b)(4) (“Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.”).

⁴⁵⁵ Exhibit 8, Evans Tr. I at 138:17-20 (Evans explained to O’Melveny that “you cannot vote on a matter in which your firm has a client involved”); Sept. 5, 2019 S. Grant Interview (stating that voting is certainly an official act).

the District.⁴⁵⁶ To fund its benefit coverage, the UPLA imposed a payroll tax on covered D.C. employers, amounting to 0.62% of all wages paid to eligible individuals.⁴⁵⁷

In contemporaneous emails to Evans, Lindner called the UPLA a “clueless piece of legislation” that “utterly dismiss[ed] the employer community.”⁴⁵⁸ The Washington Parking Association—of which Colonial is a member—publically testified against the measure in December 2015.⁴⁵⁹ Lindner, along with other members of the Federal City Council, met with Evans at least once before the UPLA was voted on to discuss their position on the legislation.⁴⁶⁰

On December 20, 2016, a two-thirds majority of the Council voted to pass the UPLA.⁴⁶¹ Evans voted against the UPLA.⁴⁶² The UPLA was enacted on February 17, 2017.⁴⁶³ On February 21, 2017, Evans introduced an amended version of the UPLA, designated as the Universal Paid Leave Compensation Act of 2017 (“PLCA”).⁴⁶⁴ Among other things, the PLCA sought to significantly lower the payroll tax to which employers were subject.⁴⁶⁵ Evans’ vote against the UPLA and his corresponding introduction of the PLCA occurred while Forge was an NSE client paying Evans \$25,000 per year.

(2) Ethical Analysis

While Evans’ actions with respect to the UPLA and PLCA involved a Manatt and NSE client, his actions did not amount to a conflict of interest. The UPLA and PLCA affected every employer in the District of Columbia—rather than a discrete class of

⁴⁵⁶ Legislation Detail Report, B21-0415 - Universal Paid Leave Act of 2015, <http://lms.dccouncil.us/Legislation/B21-0415>; Committee of the Whole Committee Report, Report on Bill 21-0415, “Universal Paid Leave Amendment Act of 2016, at 9-10 (Dec. 6, 2016), <http://lms.dccouncil.us/Download/34613/B21-0415-CommitteeReport1.pdf>.

⁴⁵⁷ Committee of the Whole Committee Report, Report on Bill 21-0415, “Universal Paid Leave Act of 2016”, *supra* n.456 at 12-13.

⁴⁵⁸ Exhibit 189 at FC-DC-0001127 (June 3, 2016 email from R. Lindner to J. Evans stating, “I can’t support the author of UPL Jackson. Can’t think of a more damaging or clueless piece of legislation, nor one that was crafted in such a way as to utterly dismiss the employer community”); *See also* Exhibit 184 at FC-DC-0001324 (Feb. 10, 2017 from R. Lindner to T. Ang wherein Lindner turns down Ang’s invitation to attend a fundraiser for Councilmember Nadeau. Lindner states, “I cannot in good conscience support Nadeau again this time around, given her anti-employment positions on UPL and other measures”).

⁴⁵⁹ Martin Janis, President of the Washington Parking Association, testified that the bill “failed to include employer perspectives in its drafting. Committee of the Whole Committee Report, Report on Bill 21-0415, “Universal Paid Leave Act of 2016”, *supra* n.456 at 21.

⁴⁶⁰ *See generally* Exhibit 190 (Mar. 12, 2016 Councilmember Evans’ office schedule).

⁴⁶¹ D.C. Act 21-682, Universal Paid Leave Amendment Act of 2016 at 18, (Feb. 17, 2017), <http://lms.dccouncil.us/Download/34613/B21-0415-SignedAct.pdf>.

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ Legislation Detail Report, B22-130, Paid Leave Compensation Act of 2017, <http://lms.dccouncil.us/Legislation/B22-0130?FromSearchResults=true>.

⁴⁶⁵ If enacted, the PLCA would have (1) lowered the payroll tax to 0.2% for large employers and required large employers to administer benefits for their own employees; (2) lowered the payroll tax to 0.4% for small employers while allowing small employers to participate in a government-administered benefit program; and (3) employers with fewer than five employees would have been exempt. *Id.*

persons or entities like, for example, parking operators—which means it was not a “particular matter” under the Code of Official Conduct.⁴⁶⁶

c. Higher Education Tax Exemption Act Of 2015

(1) Underlying Facts

The District exempts from local property taxation certain real properties owned by educational institutions.⁴⁶⁷ The University of Georgia Foundation (“UGF”), a private non-profit organization, applied for an educational tax exemption for its property in the District.⁴⁶⁸ The Office of Tax and Revenue denied the request because UGF, not the University of Georgia (“UGA”), owned the property and, thus, concluded that UGF did not qualify as an educational institution under the tax code.⁴⁶⁹

Lindner learned of the tax exemption denial in his capacity as a Director of UGF on October 28, 2015 and immediately emailed Evans for assistance.⁴⁷⁰ Beginning in November 2015, Evans’ staff worked closely with Lindner and UGF to draft legislation that could fix the problem. On November 20, 2015, Evans introduced the Higher Education Tax Exemption Act of 2015 (“Higher Education Act”).⁴⁷¹ The Higher Education Act amended the District of Columbia Official Code to exempt “from real property taxation any real property leased by a foundation to a college or university that is used by these institutions of higher learning to provide dormitory, classroom, and related facilities for students.”⁴⁷² The Higher Education Act carried by unanimous first and second reading votes on February 2, 2016 and again on March 1, 2016, respectively.⁴⁷³

The activities related to drafting, proposing, and voting on the Higher Education Act all occurred while Evans had a financial relationship with Forge through Manatt.

⁴⁶⁶ 5 C.F.R. § 2640.103(a)(1), Example 4 (“A change by the Department of Labor to health and safety regulations applicable to all employers in the United States is not a particular matter. The change in the regulations is directed to the interests of a large and diverse group of persons.”).

⁴⁶⁷ Committee on Finance and Revenue, Report on Bill 21-0488, the “Higher Education Tax Exemption Act of 2016” at 1, (Jan. 27, 2016), <http://lirms.dccouncil.us/Download/34894/B21-0488-CommitteeReport1.pdf> (noting that exemptions were only available for buildings “belonging to and operated by schools, colleges, or universities which are not organized or operated for private gain, and which embrace the generally recognized relationship of teacher and student”).

⁴⁶⁸ Georgia State law prevents the University of Georgia from owning real property outside of the state of Georgia. The University of Georgia Foundation was, therefore, founded as a nonprofit entity that could purchase and make available real property in the District of Columbia for the University’s “UGA in Washington” program. Exhibit 192(Dec. 21, 2015 Letter from K. Jackson to J. Evans) at COUNCIL 0047932.

⁴⁶⁹ Exhibit 193 (Oct. 29, 2015 Email from R. Werner to S. Grant).

⁴⁷⁰ Exhibit 194 (Oct. 28, 2015 Email from J. Evans to R. Lindner).

⁴⁷¹ Legislation Detail Report, B21-0488, Higher Education Tax Exemption Act of 2015, <http://lirms.dccouncil.us/Legislation/B21-0488>.

⁴⁷² Committee on Finance and Revenue, Report on Bill 21-0488, the “Higher Education Tax Exemption Act of 2016” at 1, (Jan. 27, 2016), *supra* n.467.

⁴⁷³ D.C. Act 21-341, Higher Education Tax Exemption Act of 2016 at 3, (Mar. 16, 2016), <http://lirms.dccouncil.us/Download/34894/B21-0488-SignedAct.pdf>.

(2) Ethical Analysis

Evans' actions with respect to the Higher Education Act did not constitute an actual conflict of interest under the Code of Official Conduct.⁴⁷⁴ Manatt did not represent Lindner/UGF with respect to this piece of legislation. Nor did Lindner have a financial interests in the matter. Under relevant ethics guidance from BEGA, Manatt's financial interest in Forge did not impute to Evans on matters beyond the scope of its representation.⁴⁷⁵ Accordingly, Evans' introduction of the Higher Education Act and his votes on the same did not create actual conflicts.

d. Empowerment Zone Legislation

(1) Underlying Facts

In 1993, Congress began an economic development initiative with the goal of revitalizing deteriorating urban and rural communities.⁴⁷⁶ To accomplish this, Congress designated areas as Empowerment Zones ("EZs"), which would benefit from tax and regulatory relief to attract and retain businesses within the EZs, and incentivize employers to hire EZ residents.⁴⁷⁷ The District was designated an EZ in 1997.⁴⁷⁸ Under the EZ Program, Colonial Parking received between \$200,000 and \$250,000 annually in federal tax benefits.⁴⁷⁹

In 2011, Congress did not renew the District EZ Program, which terminated Colonial's EZ tax benefits. Lindner spent a number of years trying to convince Congress to re-authorize the federal District EZ Program,⁴⁸⁰ but the effort ultimately proved unsuccessful.

⁴⁷⁴ The Higher Education Act was a "particular matter" under the Code of Conduct because it focused on a "discrete identifiable class of individuals"—institutions of higher learning that have property in the District. And Evans participated "personally and substantially" by introducing and voting on the legislation.

⁴⁷⁵ See Outside Employment AO, *supra* n.43 at 3, 5 (advising that an ANC commissioner with outside employment at a law firm only needs to recuse himself if the law firm is representing a client before the ANC; he would not need to recuse if the client is represented by another law firm or if the client represents him/herself).

⁴⁷⁶ Bruce K. Mulock, *Empowerment Zone/Enterprise Communities Program: Overview of Rounds I, II, and III*, EveryCRSReport.com, (Oct. 22, 2002), <https://www.everycrsreport.com/reports/RS20381.html>.

⁴⁷⁷ *Id.*

⁴⁷⁸ Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788; Joint Comm. on Taxation, Incentives for Distressed Communities: Empowerment Zones and Renewal Communities at 11, (Oct. 5, 2009), <https://www.jct.gov/publications.html?func=startdown&id=3587> (listing the economically depressed census tracts as "portions of Anacostia, Mt .Pleasant, Chinatown, and the easternmost part of the District of Columbia" and "all additional census tracts within the District of Columbia where the poverty rate is not less than 20 percent"); Exhibit 214 (WDCEP Excerpt, Summary of Financial Incentive Programs).

⁴⁷⁹ Exhibit 101 at 42:12-17.

⁴⁸⁰ Exhibit 216 (June 9, 2014 Email from K. Clinton at the FCC to R. Lindner) (regarding an update on a failed attempt to include DC empowerment zones in legislation before the Senate); Exhibit 101 at 61:3-15, 130:21-131:12; Exhibit 216 (July 12, 2014 Email from R. Lindner to J. Evans) (discussing the possibility of Squire assisting Lindner with re-creating DC empowerment zones); Exhibit 217 (Aug. 6, 2016 Email from J. Evans to R. Lindner) (asking to arrange a meeting with "some SPB people the week of August 18" to

On May 3, 2018, Evans' F&R Committee recommended that the Council re-enact the District's EZ program through the Fiscal Year 2019 Budget Support Act ("2019 Budget").⁴⁸¹ As stated in the NSE-Forge Extension Agreement, during this time, Lindner/Forge was paying NSE \$50,000 annually for, among other things, "information and advice about federal matters and opportunities."⁴⁸² Lindner represented to O'Melveny that this language in the NSE-Forge Extension Agreement referred to federal attempts to re-instate the District as an EZ.⁴⁸³ The recommendation was ultimately not adopted for the 2019 Budget.

The Investigation did not identify evidence that Lindner discussed with Evans the idea of including EZs in the F&R Committee's report and recommendation. Nor did the Investigation identify evidence that Evans included the EZ legislation in the F&R Committee report at Lindner's request.

(2) Ethics Analysis

Evans' actions in connection with the EZ legislation did not violate the Code's conflict of interest rules. EZ legislation would have impacted all employers in the District of Columbia, not a "discrete and identifiable class of persons."⁴⁸⁴ Therefore, legislation relating to re-instating the District as an EZ would not constitute a "particular matter" under the Code.

G. NSE Client - Eastbanc, Inc./EastBanc Technologies/Squash on Fire

1. Factual Findings

EastBanc Inc. ("EastBanc") was incorporated in the District of Columbia in 1988.⁴⁸⁵ It was founded by Anthony Lanier, and currently operates as a commercial real estate and development company.⁴⁸⁶ In 1999 Lanier expanded EastBanc into the

discuss DC empowerment zones); Exhibit 218 (Jan. 20, 2016 Email from J. Evans to R. Lindner) (asking Lindner to join a call with him and J. Ray on Jan. 21, 2016 to discuss the re-creation of DC empowerment zones); Exhibit 186 (letter from J. Ray to Forge commemorating their agreement regarding reinstating the DC Empowerment Zone); Exhibit 185 (agreement between Forge and Manatt incorporating the Feb. 16, 2016 agreement between Forge and J. Ray); Exhibit 219 (May 31, 2016 Email from R. Lindner to J. Evans) (asking if J. Ray had any updates "on EZ Zone thoughts."); Exhibit 200 (extension of services agreement between Forge and NSE).

⁴⁸¹ Committee on Finance and Revenue, Report and Recommendations of the Committee on Finance and Revenue on the Fiscal Year 2019 Budget for Agencies Under Its Purview at 88-89, (May 3, 2018), https://static1.squarespace.com/static/5bbd09f3d74562c7f0e4bb10/t/5c376a8c8a922d778017d05c/1547135648747/FY19+Committee+Report+%28Finance+%26+Revenue_B22-0754%29.pdf; see also Exhibit 237 (Committee on Finance and Revenue, Draft Report and Recommendations on the Committee on Finance and Revenue on the Fiscal Year 2019 Budget for Agencies Under Its Purview).

⁴⁸² Exhibit 200, at FC-DC-0000115 § 1.a.

⁴⁸³ Exhibit 101 at 130:5-131:12.

⁴⁸⁴ See Code of Official Conduct, *supra* n.11 Rule I(e)(4).

⁴⁸⁵ Exhibit 220 (EastBanc Inc. DCRA Records).

⁴⁸⁶ About, EastBanc, <https://eastbanc.com/about>; Anthony Lanier, EastBanc, <https://eastbanc.com/about/item/id/1>

software development arena when he, along with his daughter's father-in-law—Slavia Arseniev—co-founded EastBanc Technologies LLC (“EastBanc Tech.”).⁴⁸⁷ And in 2011 Lanier incorporated Squash on Fire LLC (“Squash on Fire”), to build a boutique squash gym above the fire station in the West End neighborhood where the District had awarded EastBanc a development project. In addition to serving as Chief Executive Officer of EastBanc, Lanier has served as the President of all three companies (collectively, the “Lanier Companies”) during the period relevant to the investigation.⁴⁸⁸

The Lanier Companies are headquartered in the District of Columbia, perform business within the District, and first entered retainer agreements with NSE in November 2016. Neither Lanier nor his companies were clients of Squire or Manatt.⁴⁸⁹

O’Melveny subpoenaed Lanier, who declined to comply, asserting his Fifth Amendment constitutional right to remain silent. The evidentiary record with respect to Eastbanc thus relies on the documentary record and Evans’ interview statements.

a. NSE Consulting, LLC

Lanier and Evans are neighbors in Georgetown, a Ward 2 neighborhood, and have been long-time friends.⁴⁹⁰ Through his companies, Lanier has been “very active” in the District of Columbia, including in Ward 2,⁴⁹¹ and has had matters before the Council in which Evans has participated since as early as 2007; the two generally have been supportive of one another during the last three decades.⁴⁹²

In the latter half of 2016, Evans informed Lanier that he started NSE, and inquired whether Lanier would be interested in retaining NSE as a client.⁴⁹³ Evans explained that his consulting work would be based on a retainer agreement; if Lanier needed help on a specific project, Evans would be available to assist.⁴⁹⁴ On October 12, 2016, Evans, Jarvis, Lanier, and Lanier’s son, Philippe Lanier, discussed the NSE

⁴⁸⁷ Exhibit 221 (EastBanc Technologies LLC DCRA Records).

⁴⁸⁸ Anthony Lanier, EastBanc, <https://eastbanc.com/about/item/id/1>; About us, EastBanc Techs., <https://www.eastbanctech.com/about/our-leadership>. While the Squash on Fire company website does not list Lanier as President, Lanier signed the Squash on Fire agreements with NSE as President (see e.g., Exhibit 222 (Nov. 1, 2016 Squash on Fire Services Agreement)).

⁴⁸⁹ Exhibit 11, Evans Tr. IV at 37:2-6 (“Q: And was he a client of [Patton] Boggs at any point that you know? A: No. Q: Okay. How about Manatt? A: No”); Exhibit 28 at 21:16-23:7 (J. Ray confirming EastBanc was never a client of his while he was at Manatt); Exhibit 27 (confirming that EastBanc was not a Squire client).

⁴⁹⁰ Exhibit 11, Evans Tr. IV at 32:2-6.

⁴⁹¹ *Id.* at 32:5-10 (stating that Lanier is “very active in the city, in the ward”).

⁴⁹² *Id.* (stating “I’ve been supportive of him and he of me for that long”).

⁴⁹³ *Id.* at 37:15-21 (stating that he “[s]at down with Anthony, told him I started up this company. So I wanted to know if he would be interested in being a client of mine, we talked about it and thought, yeah, that might make some sense”).

⁴⁹⁴ *Id.* at 38:1-6 (stating that he “explained the whole retainer type situation where we’re going to undergo an agreement, would be on a retainer basis, if you need my help call me up and I would help you out on a specific project, things we’ve talked about up till now”).

agreements,⁴⁹⁵ and Jarvis circulated initial drafts of the agreements with the Lanier Companies on October 18, 2016.⁴⁹⁶

By November 1, 2016, NSE had entered into three separate agreements with the Lanier Companies. With the exception of compensation, the three agreements were largely identical, each containing the services and conflicts of interest provisions similar to the other NSE agreements, as well as a confidentiality provision.⁴⁹⁷ As for compensation, the agreement with EastBanc provided for an annual retainer of \$5,000 per year.⁴⁹⁸ The agreement with EastBanc Tech. provided for an annual retainer fee of \$15,000.⁴⁹⁹ And, the agreement with Squash on Fire had an annual retainer fee of \$5,000.⁵⁰⁰

On November 1, 2017, NSE extended its agreement with Squash on Fire.⁵⁰¹ And on January 1, 2018, NSE extended its retainer agreements with EastBanc and EastBanc Tech.⁵⁰² The three extension of services agreements were largely identical and relatively similar to the original agreements. Notably, the Conflicts of Interest clause added a provision that OGC had “approved Evans’ provision of services as the principal of [NSE].”⁵⁰³

Almost two years after the Lanier Companies retained NSE, Evans and Lanier recognized that NSE was not “doing a whole lot” for EastBanc or EastBanc Tech.⁵⁰⁴ Because Squash on Fire “had some potential” to assist in bringing the Squash World Championship to D.C. in 2020, Evans and Lanier decided to “channel . . . everything” into Squash on Fire.⁵⁰⁵ Evans thus terminated the agreements with EastBanc and EastBanc, Tech. on June 28, 2018⁵⁰⁶ and extended the agreement with Squash on Fire for a second time on July 1, 2018.⁵⁰⁷ By this point Evans had a financial interest in only one of the Lanier Companies—Squash on Fire.

The new agreement with Squash on Fire differed from the first two agreements in three noteworthy respects. First, an amended services provision stated that Evans

⁴⁹⁵ Exhibit 223 (Oct. 12, 2016 Councilmember Evans’ office schedule).

⁴⁹⁶ Exhibit 224 (Oct. 18, 2016 Email from W. Jarvis to A. Lanier).

⁴⁹⁷ Exhibit 225 (Nov. 1, 2016 EastBanc Services Agreement); Exhibit 226 (Nov. 1, 2016 EastBanc Tech. Services Agreement); Exhibit 222 (Nov. 1, 2016 Squash on Fire Services Agreement).

⁴⁹⁸ Exhibit 225 at JE-SPE-000068, § 2.a.

⁴⁹⁹ Exhibit 226 at JE-SPE-000056, § 2.a.

⁵⁰⁰ Exhibit 222 at JE-SPE-000080, § 2.a.

⁵⁰¹ Exhibit 227 (Nov. 1, 2017 Squash on Fire Extension of Services Agreement).

⁵⁰² Exhibit 228 (Jan. 1, 2018 EastBanc Tech. Extension of Services Agreement); Exhibit 229 (Jan. 1, 2018 EastBanc Extension of Services Agreement).

⁵⁰³ Exhibit 228 at JE-SPE-000061, § 1.e; Exhibit 229 at JE-SPE-000074, § 1.e; Exhibit 227 at JE-SPE-000085, § 1.e.

⁵⁰⁴ Exhibit 11, Evans Tr. IV at 38:10-22.

⁵⁰⁵ *Id.* at 38:17-22; *id.* at 63:3-4 (stating that the “idea of just having one company made the most sense as things evolved”).

⁵⁰⁶ Exhibit 230 (June 27, 2018 EastBanc termination letter); Exhibit 91 (June 27, 2018 EastBanc Tech. termination letter).

⁵⁰⁷ Exhibit 231 (July 1, 2018 Squash on Fire Extension of Services Agreement).

would provide “information and advice regarding the 2019 Squash World Championships games to be held in Washington, D.C.,” excluding mention of any other services Evans would provide.⁵⁰⁸ According to Evans, these services comprised his participation in conference calls to discuss tournament sponsors and potential locations for the tournament.⁵⁰⁹ While the conference calls did not occur “every Monday,” Evans represented that “it was a lot of Mondays.”⁵¹⁰ Second, the compensation increased from \$5,000 a year to \$25,000 a year.⁵¹¹ Notably, Evans’ net compensation did not decrease despite the termination of NSE’s agreements with EastBanc and EastBanc Tech. Lastly, the new agreement omitted the prior conflict of interest provision.⁵¹² Evans could not explain why the provision was absent, guessing that it was because he used an old template.⁵¹³

The agreement between NSE and Squash on Fire terminated on June 28, 2019,⁵¹⁴ thus ending Evans’ financial interest in Squash on Fire, and derivatively, his financial interest in work on behalf of Lanier.

2. *Particular Matters Investigated*

Based on the documentary and testimonial evidence, O’Melveny identified at least three violations of Code of Conduct Rule I, concerning the West End Development Omnibus Amendment Act of 2016, and various constituent services that Evans provided to the Lanier Companies. Like many of the issues raised above, these violations highlight (1) Evans’ mistaken view that if he expressed long-time support for a particular piece of legislation, always intending to vote in favor of such legislation, he had no future obligation to disclose a conflict or recuse himself from a vote for the same or similar legislation, notwithstanding the fact that the legislation now benefited a paying client;⁵¹⁵ and (2) Evans’ mistaken view that Rule I’s conflict of interest provision cannot be implicated by constituent service activities.

During the course of the Investigation, O’Melveny encountered a number of matters that raised questions but, because of limited documentary and testimonial evidence, did not yield sufficient evidence for the Investigation to conclude definitively whether Evans violated the Code of Official Conduct. Sections 2.d and 2.e below detail these matters.

⁵⁰⁸ *Id.* at JE-SPE-000089, § 1.a.

⁵⁰⁹ Exhibit 11, Evans Tr. IV at 57:8-14.

⁵¹⁰ *Id.* at 56:1-7.

⁵¹¹ Exhibit 231 at JE-SPE-000089, § 2.a.

⁵¹² Exhibit 231.

⁵¹³ Exhibit 11, Evans Tr. IV at 63:5-64:13 (stating “I can’t explain why it’s not in there other than when it got typed up we used an earlier agreement or something of that nature. It should have it in there. If it doesn’t I don’t know why it doesn’t”).

⁵¹⁴ Exhibit 232 (June 28, 2019 Squash on Fire termination letter).

⁵¹⁵ Exhibit 11, Evans Tr. IV at 9:10-10:13 (stating “if I have a longstanding position and someone shows up that I happen to have a relationship with, a friendship with or a client to testify, that can’t put me in a position to have to recuse myself from something that I have been involved in long before I even knew this person or had a relationship with this person”).

a. West End Development Omnibus Amendment Act Of 2016

(1) Underlying Facts

In 2010, the District agreed to sell parcels of land to EastBanc in the West End neighborhood in Ward 2—on which EastBanc intended to develop a high-end condominium building—in exchange for building a new library, fire station, and affordable housing unit.⁵¹⁶ Squash on Fire would later open above the new fire station. The D.C. Council subsequently issued a resolution, known as the West End Parcels Disposition Approval Resolution of 2010, selling certain District property in the West End to EastBanc for purposes of developing the properties.⁵¹⁷

Following the Council’s Resolution, on November 10, 2010, Evans introduced the West End Parcels Development Omnibus Act of 2010 (“2010 Omnibus Act”). The 2010 Omnibus Act granted “the needed legislative authority for [EastBanc] to proceed with the development” of the properties the District sold to EastBanc.⁵¹⁸ Evans voted in favor of the 2010 Omnibus Act twice in December 2010, and the 2010 Omnibus Act was enacted on January 11, 2011.⁵¹⁹

The 2010 Omnibus Act notably implemented a non-lapsing maintenance fund (the “Maintenance Fund”), which would be used

solely to pay the expenses of providing supplemental maintenance service, insurance, and capital replacement for the West End Library and West End Fire Station along with those regularly provided by the District of Columbia Public Library and the Mayor, respectively, and ensuring that both facilities are maintained in a manner that is consistent with the high-quality conditions of the larger buildings of which they are a part.⁵²⁰

Nearing completion of the West End development project in 2016, the Office of the Chief Financial Officer (“OCFO”) examined the law establishing the Maintenance Fund and “concluded that the law needed revision” for the maintenance funds to be

⁵¹⁶ Michael Neibauer, *EastBanc, D.C. forge ahead with West End development*, Wash. Bus. J. (Dec. 15, 2014), https://www.bizjournals.com/washington/breaking_ground/2014/12/eastbanc-d-c-forge-ahead-with-west-end.html.

⁵¹⁷ Resolution 18-553, July 13, 2010, <http://lms.dccouncil.us/Download/25458/PR18-0959-Enrollment.pdf>.

⁵¹⁸ Legislation Detail Report, B18-1076, West End Parcels Development Omnibus Act of 2010, <http://lms.dccouncil.us/Legislation/B18-1076>; D.C. Act, 18-719, West End Omnibus Act of 2010 (Jan. 27, 2011), <http://lms.dccouncil.us/Download/23231/B18-1076-SignedAct.pdf>; Committee on Finance and Revenue Committee Report, Report on Bill 18-1076, the “West End Parcels Development Omnibus Act of 2010” at 1-2, (Dec. 2, 2010), <http://lms.dccouncil.us/Download/23231/B18-1076-CommitteeReport2.pdf>.

⁵¹⁹ D.C. Act 18-719, West End Parcels Development Omnibus Act of 2010 at 6, (Jan. 27, 2011), <http://lms.dccouncil.us/Download/23231/B18-1076-SignedAct.pdf>.

⁵²⁰ D.C. Act 18-719, Jan. 27, 2011, § 4.(a), *supra* n.554.

expended.⁵²¹ In response—and at the request of the Mayor—on September 16, 2016, Chairman Mendelson introduced the West End Parcels Development Omnibus Amendment Act of 2016 (“2016 Omnibus Amendment Act”).⁵²² Under advisement from the OCFO, the 2016 Omnibus Amendment Act would “revise slightly the permitted uses of the non-lapsing Maintenance Fund” that was established in the 2010 Omnibus Act.⁵²³ The adjustments would allow the Maintenance Funds to be expended. According to the OCFO’s September 1, 2016 Fiscal Impact Statement, the financial plan for implementing the 2016 Omnibus Amendment Act included approximately “\$4.5 million in deed and recordation taxes that [would] be dedicated to the West End Library and Fire Station Maintenance Fund.”⁵²⁴

On November 7, 2016, EastBanc Development Manager, Jan Webber, testified before the Committee of the Whole in support of the 2016 Omnibus Amendment Act.⁵²⁵ Although Lanier was unable to attend the public hearing, Webber read Lanier’s prepared statement into the record.⁵²⁶ Lanier’s statement explained that EastBanc “strongly supported the creation of th[e] [maintenance] fund.”⁵²⁷ It emphasized that—from EastBanc’s perspective—the most important issues are:

[t]hat the Maintenance Fund continue[] to be 1) Jointly managed by the District of Columbia Public Library and the Department of General Services for the Fire Station; and 2) used exclusively for supplemental maintenance and operation services, common area maintenance and operation services, insurance, and capital improvements for the West End Library and West End Fire Station.⁵²⁸

On January 6, 2017, the Council enacted the 2016 Omnibus Amendment Act.⁵²⁹ Evans did not recuse himself from the matter, voting in favor twice—once on November 15, 2016 and once on December 6, 2016.⁵³⁰ Throughout this time—when EastBanc testified in support of the 2016 Omnibus Amendment Act and when Evans voted for it—

⁵²¹ Committee of the Whole Committee Report, Report on Bill 21-0848, “West End Parcels Development Omnibus Amendment Act of 2016” at 2, (Nov. 15, 2016), <http://lms.dccouncil.us/Download/36350/B21-0848-CommitteeReport1.pdf>; Letter from Mayor Bowser to Chairman Mendelson (Sept. 16, 2016), <http://lms.dccouncil.us/Download/36350/B21-0848-Introduction.pdf>.

⁵²² Legislation Detail Report, B21-0848, West End Parcels Development Omnibus Amendment Act of 2016, <http://lms.dccouncil.us/Legislation/B21-0848>.

⁵²³ Committee of the Whole Committee Report, Report on Bill 21-0848, *supra* n.521 at 1-4.

⁵²⁴ *Id.* at 14-15, <http://lms.dccouncil.us/Download/36350/B21-0848-CommitteeReport1.pdf>.

⁵²⁵ Notice of Public Hearing, Bill 21-0848, the “West End Parcels Development Omnibus Amendment Act of 2016” at 4, (Nov. 7, 2016), <http://lms.dccouncil.us/Download/36350/B21-0848-HearingRecord1.pdf>; Committee of the Whole Committee Report, Report on Bill 21-0848, *supra* n.521 at 4.

⁵²⁶ Notice of Public Hearing, B21-0848, *supra* n.525 at 4.

⁵²⁷ *Id.*

⁵²⁸ *Id.*

⁵²⁹ D.C. Act 21-605, West End Parcels Development Omnibus Amendment Act of 2016, (Jan. 6, 2017), <http://lms.dccouncil.us/Download/36350/B21-0848-SignedAct.pdf>.

⁵³⁰ *Id.* at 3.

EastBanc and Squash on Fire were paying NSE a combined \$10,000 per year for consulting services.⁵³¹

(2) Ethics Analysis

By voting in favor of the 2016 Omnibus Amendment Act, Evans violated Rule I of the Council’s Code of Official Conduct, proscribing conflicts of interest. *First*, EastBanc and Squash on Fire had a “direct and predictable” financial interest in ensuring the continuation of the Maintenance Fund for the West End Library and Fire Station.⁵³² EastBanc and Squash on Fire were clients of Evans’ through NSE. Evans, therefore, had a concrete personal financial interest as the sole proprietor of NSE.⁵³³ *Second*, the 2016 Omnibus Amendment Act constitutes a “particular matter” under the Code because it involved a discrete subset of individuals—those individuals with an interest in the West End development project.⁵³⁴ *Third*, Evans’ vote on the legislation constitutes “personal and substantial” participation.⁵³⁵

The Investigation yielded no documentary or testimonial evidence that Evans disclosed the conflict of interest to the Council or BEGA regarding his financial interests with EastBanc. The failure to disclose his financial interest to the Council also violates Rule I(c)(1).

Evans stated that recusal from the 2016 Omnibus Amendment Act was not required because NSE did not assist EastBanc/Squash on Fire on this particular matter, and because he was a long-term supporter of the West End development project and thus would have voted in favor of the bill regardless of whether the Lanier Companies were NSE clients.⁵³⁶ Neither basis for declining to recuse himself is substantiated by the Code of Official Conduct.

⁵³¹ See generally Exhibit 225.

⁵³² Because the West End development project was located in Evans’ ward, and Lanier—as the President and CEO of EastBanc—explicitly expressed EastBanc’s strong support for the 2016 Omnibus Amendment Act on the public record, Evans was aware of EastBanc’s financial interest in the 2016 Omnibus Amendment Act.

⁵³³ See Code of Official Conduct, *supra* n.11 Rule I(a) and (e)(2).

⁵³⁴ See *id.* Rule I(e)(4).

⁵³⁵ 5 C.F.R. § 2635.402(b)(4) (“Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.”); Exhibit 8, Evans Tr. I at 138:17-20 (stating that he has “always viewed it as you cannot vote on a matter in which your firm has a client involved. ‘Cause that’s -- you’re taking an official action that would benefit the client”).

⁵³⁶ Exhibit 11, Evans Tr. IV at 78:17-20 (“This falls into the -- that project is a long-term project that I supported over the years.”); *id.* at 77:3 (“I wasn’t consulting on this.”).

b. Meeting Between The Office of the Chief Technology Officer and EastBanc Technologies

(1) Underlying Facts

In an attempt to pitch its technology initiatives, EastBanc Tech. reached out to OCTO officials on April 12, 2016.⁵³⁷ An initial meeting occurred on May 23, 2016 wherein EastBanc Tech. provided a “30-minute introduction” regarding its “[c]apabilities” relating to a “potential identity and Access Management project.”⁵³⁸ EastBanc Tech. then tried to schedule follow-ups with OCTO for July 8, August 26, and November 9. OCTO invariably postponed each of these meetings, and eventually cancelled the follow-up meeting altogether.⁵³⁹ Evans was copied on emails that summarized EastBanc Tech.’s efforts to follow up with OCTO about its technology initiatives.⁵⁴⁰

On February 8, 2017, on behalf of EastBanc Tech.,⁵⁴¹ Windy Rahim, Evans’ Legislative Assistant, emailed OCTO to arrange a meeting.⁵⁴² In the email, Rahim states, “Councilmember Evans is requesting this meeting on behalf of Eastbanc and the suggested date for the meeting is February 21st at 12:00pm here in Mr. Evans’ Council office.”⁵⁴³ Rahim listed the attendees as “Slava Koltovich, CEO, Wolf Ruzicka, Chairman of EastBanc Technology and Mr. Evans.”⁵⁴⁴ The OCTO Program Manager responded two days later on February 10, 2017, confirming a follow-up meeting “with Councilmember Evans, CTO Archana Vemulapalli, and EastBanc” on February 21, 2017 in Evans’ office.⁵⁴⁵ There is no documentary or testimonial evidence that Evans sought advice regarding whether he could arrange and attend the meeting between OCTO and EastBanc Tech., a paying NSE client.

Evans could not recall if the meeting occurred as scheduled, what was discussed, and whether he attended.⁵⁴⁶ He could only surmise that he helped EastBanc Tech. arrange the meeting, as a councilmember providing a constituent service.⁵⁴⁷ Rosalyn McKine, the OCTO administrator who helped arrange the meeting between OCTO and EastBanc Tech., represented to O’Melveny that the meeting, in

⁵³⁷ Exhibit 240 (Meeting Invitation for Feb. 21, 2017).

⁵³⁸ *Id.*

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

⁵⁴¹ The documentary record did not yield further information on whether EastBanc Tech. reached out to Evans or Evans’ staff for assistance on this matter. Because we were also unable to interview Lanier, and because Evans’ recollection on the matter did not provide clarity, we were similarly unable to verify this through testimony.

⁵⁴² Exhibit 240.

⁵⁴³ *Id.*

⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.*

⁵⁴⁶ Exhibit 11, Evans Tr. IV at 83:9-17.

⁵⁴⁷ *Id.* at 86:9-13 (“And what I was trying to do here is to facilitate that meeting because they were looking like they were having a hard time getting this meeting.”); *id.* at 83:22-84:12, 86:14-87:2 (“This would fall into the category of again, the constituent name. And if you remember last time, and they were constituent services like fixing potholes and there were constituent services like me being the traffic cop, when he needs to have a meeting with somebody, and I arranged those things to happen.”).

fact, occurred.⁵⁴⁸ However, because she herself did not attend the meeting, she could not confirm who attended or provide any details about what transpired.⁵⁴⁹ To her knowledge, OCTO did not use any EastBanc Tech. programs after the meeting.⁵⁵⁰

(2) Ethics Analysis

By arranging a meeting between OCTO and EastBanc Tech., Evans violated Rule I's conflicts of interest provision. *First*, EastBanc Tech. had a "direct and predictable" financial interest in meeting with OCTO and pitching its software initiatives in the hopes of receiving a contract. EastBanc Tech. was Evans' client through NSE, thereby qualifying as an "affiliated organization" under the Code of Conduct. EastBanc's financial interests were, therefore, imputed to Evans. Evans also personally had a "direct and predictable" financial interest in his client's interest, as the sole proprietor of NSE. *Second*, by arranging a meeting with OCTO on behalf of his NSE client, Evans personally and substantially participated in the matter. Indeed, before Evans became involved, EastBanc Tech. was unable to arrange a follow-up meeting with OCTO. *Third*, arranging a meeting with OCTO constitutes a "particular matter" under the Code of Official Conduct because it focuses "upon the interests of specific persons"—here that of EastBanc Tech's.

The documentary and testimonial record indicates that Evans did not seek advice from OGC or BEGA regarding whether he could provide constituent services to EastBanc Tech. in arranging a meeting with OCTO while EastBanc was Evans' paying client. Evans' characterization of his actions as constituent services, again underscores his inappropriately narrow interpretation of the scope of the conflicts of interest rules as only covering official votes on matters before the D.C. Council.

c. January 31, 2017 Meeting With Councilmember Kenyan McDuffie Regarding A Development Project In Ward 5

(1) Underlying Facts

On January 31, 2017, Councilmember Kenyan McDuffie met with Evans to discuss a potential project in Ward 5 regarding Philippe Lanier and the "building above the Rhode Island Ave metro station."⁵⁵¹ After the meeting, Rahim emailed Councilmember McDuffie's office saying, "[o]n behalf of Councilmember Jack Evans, I am requesting a meeting with Councilmember McDuffie and Anthony Lanier. . . . The meeting will be held in CM Evans' office."⁵⁵² Evans' schedule shows that he met with Anthony Lanier and Councilmember McDuffie on February 28, 2017.⁵⁵³

⁵⁴⁸ Exhibit 195 (Oct. 24, 2019 Letter from R. McKine).

⁵⁴⁹ *Id.*

⁵⁵⁰ *Id.*

⁵⁵¹ Exhibit 242 (Jan. 31, 2017 Email from S. Grant L. Dougherty, W. Rahim, and R. Gulstone).

⁵⁵² Exhibit 243 (Feb. 6, 2017 Email from W. Rahim to R. Gulstone and L. Dougherty).

⁵⁵³ Exhibit 244 (Feb. 28, 2017 Councilmember Evans' office schedule).

(2) Ethics Analysis

By arranging and attending a meeting with Councilmember McDuffie and Lanier regarding a potential development project in Ward 5, Evans violated Rule I's conflicts of interest provision. *First*, Lanier had a "direct and predictable" financial interest in meeting with McDuffie to discuss a potential development project located above the Rhode Island Avenue metro station. EastBanc was Evans' client through NSE, thereby qualifying as an "affiliated organization" under the Code of Official Conduct. EastBanc's financial interests were, therefore, imputed to Evans. Evans also personally had a "direct and predictable" financial interest in the matter, as the sole proprietor of NSE. *Second*, by arranging and attending a meeting with McDuffie on behalf of his NSE client, Evans "personally and substantially" participated in the matter. *Third*, arranging a meeting with McDuffie constitutes a "particular matter" under the Code because it focuses "upon the interests of specific persons"—here, EastBanc's.

The documentary and testimonial record indicates that Evans did not seek advice from OGC or BEGA regarding whether he could arrange a meeting between McDuffie and Lanier.

d. Gas Station Legislation

(1) Underlying Facts

From September 2015 until October 2016, Lanier/EastBanc was in frequent contact with Evans and his Council staff for assistance in circumventing a law that restricted EastBanc's ability to convert one of its full service gas stations in Georgetown into a mixed-use building.⁵⁵⁴ Despite publicly supporting and voting in favor of the law that Lanier sought to circumvent,⁵⁵⁵ on three separate occasions, Evans introduced, and subsequently voted in favor of, emergency and temporary legislation that granted

⁵⁵⁴ See, e.g., Exhibit 233 (Sept. 17, 2015 Email from R. Werner to J. Evans); Exhibit 234 (Mar. 29, 2017 Emails between R. Werner and Lanier's attorneys at Holland & Knight); Exhibit 235 (Oct. 1, 2015 Email from R. Werner to C. Glasgow); Exhibit 238 (May 13, 2016 Email from K. Westcott to R. Werner).

⁵⁵⁵ D.C. Act 20-481, New Columbia Statehood Initiative, Omnibus Boards and Commissions, and Election Transition Reform Emergency Amendment Act of 2014 at 24, (Nov. 18, 2014), <http://lms.dccouncil.us/Download/32810/B20-0986-SignedAct.pdf>; Exhibit 10, Evans Tr. III at 182:2-7 (stating that a Manatt client was "always trying to tear down gas stations and buildings" but that he "disagreed" and that him and "Mary Cheh . . . did legislation that did not allow that to happen"); Exhibit 11, Evans Tr. IV at 149:15-150:15 ("So myself and Mary and Phil became very concerned about the loss of gas stations. . . . [W]e didn't want them to convert full-service gas stations. . . . [S]o we set up this board, and so you had to go to the board to get the conversion.").

EastBanc an exemption from the restrictive law.⁵⁵⁶ Early in 2018, EastBanc's gas station was demolished to make way for a five-story, mixed-use building.⁵⁵⁷

(2) Ethics Analysis

Evans' action with respect to the gas station did not violate the Code's conflict of interest rule.⁵⁵⁸ During the period when Evans took official actions—June 2015 until October 2016—EastBanc was not an NSE client, and thus there was no predicate for a conflict of interest violation.

e. WMATA Mobile Application

(1) Underlying Facts

On August 3, 2016, Peter Shashkin, an EastBanc Tech. employee emailed Lanier notifying him that EastBanc Tech. had a mobile application that may be of interest to WMATA, and asking Lanier to help him “identify contacts in WMATA who would be interested in looking into [EastBanc Tech.’s] apps.”⁵⁵⁹ Lanier forwarded the message to Evans on August 12, 2016, asking whether Evans could direct EastBanc Tech. to the right WMATA representative, and on September 21, 2016, Lanier and Evans had breakfast to discuss the WMATA initiatives.⁵⁶⁰

(2) Ethics Analysis

In August and September of 2016, EastBanc Tech. was not yet an NSE client. By October 2016, however, Lanier was having conversations with Jarvis about draft agreements between NSE and Lanier's Companies. If the breakfast meeting between

⁵⁵⁶ Legislation Detail Report, B21-0438, Gas Station Advisory Board Temporary Amendment Act of 2015, <http://lms.dccouncil.us/Legislation/B21-0438>; Legislation Detail Report, PR21-0841 - Gas Station Advisory Board Emergency Declaration Resolution of 2016, <http://lms.dccouncil.us/Legislation/PR21-0841>; Legislation Detail Report, B21-0808, Gas Station Advisory Board Emergency Amendment Act of 2016, <http://lms.dccouncil.us/Legislation/B21-0808>; Exhibit 234; Legislation Detail Report, B21-0894, Gas Station Advisory Board Congressional Review Emergency Amendment Act of 2016, <http://lms.dccouncil.us/Legislation/B21-0894>. The Gas Station Advisory Board Congressional Review Emergency Amendment Act of 2016 references B21-0809, Gas Station Advisory Board Temporary Amendment Act of 2016 which has an expiration date of May 26, 2017. Legislation Detail Report, B21-0809, Gas Station Advisory Board Temporary Amendment Act of 2016, <http://lms.dccouncil.us/Legislation/B21-0809>.

⁵⁵⁷ Michelle Goldchain, *Georgetown gas station is demolished, plans for eight-unit mixed-use project*, Curbed Was. D.C. (Feb. 15, 2018), <https://dc.curbed.com/2018/2/15/17016622/georgetown-gas-station-valero>.

⁵⁵⁸ Of note, EastBanc had a financial interest in legislation that allowed it to convert its gas station into a mixed-use building. The various GASB legislation involved a “particular matter” because it focused on the interests of “a discrete and identifiable class of persons”—full-service retail gas station owners. And, Evans “personally and substantially” participated by introducing, and voting in favor of, multiple emergency and temporary amendments that created an exemption solely for EastBanc's benefit so that it could bypass the 2014 New Columbia Act.

⁵⁵⁹ Exhibit 241 (Aug. 3, 2016 Email from P. Shashkin to A. Lanier).

⁵⁶⁰ *Id.* (Aug. 12, 2016 Email from A. Lanier to J. Evans); Exhibit 92 (Sept. 15, 2016 Email from S. Grant to W. Rahim); Exhibit 93 (Sept. 21, 2016 Councilmember Evans' office schedule).

Lanier and Evans led to official action taken by Evans after November 1, 2016, various provisions of the Code of Official Conduct may have been violated. On the existing record, however, there is an insufficient basis on which to conclude that Evans violated any provision of the Code of Official Conduct.

H. NSE Client - Willco

1. Factual Findings

Willco is a family owned real estate company chaired by Cohen. Evans has known Cohen since the 1990's when Evans first ran for City Council, and he described Cohen as an acquaintance and a supporter during his 28 years on the Council.⁵⁶¹

Willco is headquartered in Potomac, Maryland. It primarily operates in the D.C. metropolitan area, with a focus on development, property management, acquisition management, leasing, and construction.⁵⁶² Its operations and activities are subject to regulation by the District government and it has had business and other financial relations with the District government during the relevant period.

O'Melveny subpoenaed two individuals associated with Willco: Cohen, the current Chairman, and Jason Goldblatt, the former CEO. Both parties refused to be interviewed, asserting their Fifth Amendment right to remain silent. The evidentiary record for Evans' conduct with respect to Willco consists of documents, Evans' testimony, and a letter from Willco's attorney, making factual assertions while denying the Investigation the opportunity to test them.

a. Pre-NSE Business Relationships

Evans first pursued a financial relationship with Willco in late 2014 while he worked at Squire. In December 2014, Evans proposed that Cohen engage Squire to assist Willco with securing federal government leases.⁵⁶³ Although the two met and Evans drafted a formal engagement proposal,⁵⁶⁴ the engagement fell through when Evans' tenure at Squire ended.⁵⁶⁵ In January 2015, when negotiating his employment with Manatt, Evans identified Willco in his business pitch.⁵⁶⁶

Willco retained Manatt, specifically Evans and Ray, on December 15, 2015.⁵⁶⁷ The engagement called for Evans and Ray's assistance in obtaining lease extensions between Willco affiliates and the U.S. General Services Administration ("GSA").⁵⁶⁸ In connection with this representation, Evans spoke with the head of the GSA about the

⁵⁶¹ Exhibit 10, Evans Tr. III at 9:7-14.

⁵⁶² Homepage, Willco, <http://willco.com/>.

⁵⁶³ Exhibit 10, Evans Tr. III at 17:16-20.

⁵⁶⁴ Exhibit 245 (Dec. 22, 2014 Letter from J. Evans to R. Cohen); Exhibit 10, Evans Tr. III at 17:16-20.

⁵⁶⁵ Exhibit 10, Evans Tr. III 10:17-22.

⁵⁶⁶ Exhibit 9, Evans Tr. II at 43:2-12; Exhibit 77.

⁵⁶⁷ Exhibit 246 (Dec. 15, 2015 Letter of Understanding).

⁵⁶⁸ *Id.*

possibility of extending the leases.⁵⁶⁹ Evans explained he performed this action as a Manatt lawyer and not in his capacity as a councilmember.⁵⁷⁰ Willco's engagement with Evans at Manatt ended in 2017.⁵⁷¹

b. NSE Consulting, LLC

Willco retained NSE in November 2016, forming Evans' financial interest in Willco.⁵⁷² The contract largely resembles the agreements with other NSE clients. The "Services" provision states, "CONSULTANT, shall provide the 'Services,' which shall include without limitation information and advice regarding the Washington, D.C. business community, with a particular focus on economic trends and general policy initiatives in Washington DC and the surrounding jurisdiction."⁵⁷³ The "Conflicts of Interests" provision, like in other NSE contracts, limits recusal to Council "votes," and only for matters Evans "is providing or may provide services" for⁵⁷⁴. Evans represented no "pen-to-paper" services were provided during the engagement.⁵⁷⁵

Evans shared a draft of the agreement with Cohen on November 4, 2016. Cohen replied that he would like to introduce Evans to Goldblatt, the "new and younger Richie and president of Willco."⁵⁷⁶ Willco proceeded to sign two one-year contracts in total – the first covered December 1, 2016 to December 1, 2017, and the second extended services from December 1, 2017 to December 1, 2018.⁵⁷⁷ Both agreements called for a retainer fee of \$50,000.⁵⁷⁸ According to Evans, the relationship ended at the end of the second term due to a general lack of interest from both parties.⁵⁷⁹ While the engagement was active, Evans took official Council actions that furthered Willco's business interests.

2. *Particular Matters Investigated*

Based on the documentary and testimonial evidence, the Investigation identified multiple conflict of interest violations under Rule I of the Code of Official Conduct, concerning the Relieve High Unemployment Tax Incentives Act 2017 and the provision of constituent services to Willco. These violations yet again highlight Evans' mistaken belief that his long-time support for legislation negated any future obligation to disclose

⁵⁶⁹ Exhibit 10, Evans Tr. III at 27:6-12.

⁵⁷⁰ *Id.* at 27:13-21.

⁵⁷¹ Exhibit 28 at 110:18-111:8.

⁵⁷² Exhibit 10, Evans Tr. III at 39:6-11. The NSE engagement overlapped with Willco's engagement of Manatt.

⁵⁷³ Exhibit 247 (Dec. 1, 2016 Willco Services Agreement) at JE-SEP-000095.

⁵⁷⁴ *Id.*

⁵⁷⁵ Exhibit 10, Evans Tr. III at 12:13-16.

⁵⁷⁶ Exhibit 248 (Nov. 7, 2016 Email from R. Cohen to J. Goldblatt & A. Klinger).

⁵⁷⁷ Exhibit 248; Exhibit 247; Exhibit 249 (Dec. 1, 2017 Willco Extension of Services Agreement).

⁵⁷⁸ Exhibit 247 at JE-SPE-000096; Exhibit 249 at JE-SPE-000100.

⁵⁷⁹ Exhibit 10. Evans Tr. III at 12:2-7 ("[T]hink at the end of the year, year and a half, whenever it was, [Cohen and I] hadn't really done much together . . . we had conversations, but not a lot. And so at that point he decided not to go forward with the [engagement].").

a conflict or recuse himself from a vote for the same or similar legislation, notwithstanding the fact that the legislation now benefited a paying client.⁵⁸⁰

a. Relieve High Unemployment Tax Incentives Act 2017

(1) Underlying Facts

In late 2013, Evans co-sponsored the New York Avenue Gateway Hotel Development and Financial Incentives Act of 2013 (“NY Avenue Legislation”), a tax incentives bill which promoted development along the New York Avenue corridor in the District, in part, by offering incentives for the construction of three soundstages.⁵⁸¹ The bill’s incentives prompted Willco to draw conceptual plans for a sound studio on its newly acquired New York Avenue property.⁵⁸² Cohen also testified in support of the legislation at an F&R Committee hearing Evans chaired in September 2014.⁵⁸³ The bill died in committee in the fall of 2014.⁵⁸⁴

Evans historically supported incentives to entice filmmakers into the District. He likewise advocated for this bill, describing the economic advantages and growth the film and television industry could bring to the District.⁵⁸⁵ There is no evidence of a direct financial relationship between Evans and Willco at or before this time, and Evans maintained his support of film incentives is genuine.⁵⁸⁶

On March 31, 2017, Evans introduced the Relieve High Unemployment Tax Incentives Act of 2017 (“Incentives Act of 2017”), which included incentives for construction of up to three “film, television and digital media production facilities,” echoing the NY Avenue Legislation.⁵⁸⁷ Willco again developed a proposal for a sound studio to capitalize on these incentives, and Cohen again testified in support of the incentives at a May 8, 2017 Council hearing.⁵⁸⁸ Evans was aware of Willco’s sound studio from prior correspondence with Goldblatt.⁵⁸⁹ At the time Evans introduced the Incentives Act of 2017, Willco was several months into its initial agreement with NSE.⁵⁹⁰

⁵⁸⁰ Exhibit 11, Evans Tr. IV at 9:10-10:13 (stating “if I have a longstanding position and someone shows up that I happen to have a relationship with, a friendship with or a client to testify, that can’t put me in a position to have to recuse myself from something that I have been involved in long before I even knew this person or had a relationship with this person”).

⁵⁸¹ Exhibit 250 (Draft of Bill 20-564, New York Avenue Gateway Development and Financial Incentives Act of 2014).

⁵⁸² Exhibit 251 (Aug. 26, 2019 Letter from S. Rosenthal to S. Bunnell) at RECORD - 0001974.

⁵⁸³ Exhibit 250.

⁵⁸⁴ Exhibit 251 at RECORD - 0001974.

⁵⁸⁵ *Id.* at RECORD - 0001972-74; Exhibit 10, Evans Tr. III at 70:4-71:15.

⁵⁸⁶ Exhibit 10, Evans Tr. III at 69:19-70:8.

⁵⁸⁷ Exhibit 251 at RECORD - 0001975.

⁵⁸⁸ *Id.*

⁵⁸⁹ Exhibit 252 (Feb. 19, 2017 Email from J. Goldblatt to R. Cohen).

⁵⁹⁰ Exhibit 251 at RECORD - 0001975-6.

(2) Ethics Analysis

Evans' official action—introducing the Incentives Act of 2017—violated Rule I of the Code of Official Conduct. This violation is particularly noteworthy given the similarities in Evans' conduct with this legislation and its predecessor, the NY Avenue Legislation. In both cases, Evans personally and substantially participated by introducing legislation that supported a specific property class Willco sought to exploit. In both cases, Cohen publicly advocated for the legislation at Council hearings, providing notice to Evans of Willco's interest. Evans' conduct with respect to the NY Avenue Legislation does not violate the conflict of interest provision because Evans had no financial interest in Willco at the time. The same cannot be said for Evans' actions in support of the Incentives Act of 2017, which occurred during the NSE engagement with Willco. Because Willco was an NSE client, Evans had a financial interest in Willco. Given that financial relationship and Evans' personal and substantial participation in the matter, Rule I required that Evans disclose the conflict and recuse himself.

Evans and his attorneys defend his actions as permissible, in part due to his longstanding support for economic development and tax breaks for the film industry.⁵⁹¹ But the recusal requirement is based on the relationship between Evans and Willco; it applies regardless of the duration or sincerity of Evans' support for economic development.

b. March 6, 2017 Meeting With Councilmember McDuffie Regarding Willco's Sound Studio Proposal

(1) Underlying Facts

In February 2017, Grant emailed Councilmember McDuffie's office to arrange a meeting between Evans, McDuffie, and Goldblatt to discuss Willco's "proposal for a public-private partnership for a sound stage in Ward 5."⁵⁹² The meeting was scheduled on March 6, 2017 in McDuffie's office.⁵⁹³ Shortly after the meeting was scheduled, Goldblatt emailed Evans, stating "Got a call from someone in your office about a meeting with you and Councilman McDuffie about the sound studio project (presumably the one we submitted to OP3 two weeks ago?). I'm confused – the project is not in Councilman McDuffie's Ward?? Did you call the meeting?"⁵⁹⁴ In response, Evans explained that McDuffie was the chair of the Economic Development Committee and thus in part responsible for evaluating the proposal.⁵⁹⁵ Although a Willco employee then circulated a calendar notice confirming the meeting,⁵⁹⁶ and Evans' office schedule also

⁵⁹¹ Exhibit 10, Evans Tr. III at 77:2-9. See *a/so* Exhibit 197 at RECORD - 0001627.

⁵⁹² Exhibit 256 (Feb. 8, 2017 Email from L. Dougherty to W. Rahim) at RECORD - 0001980.

⁵⁹³ Exhibit 257 (Feb. 14, 2017 Email from L. Dougherty to W. Rahim); see *a/so* Exhibit 258 (Feb. 14, 2017 Email from L. Dougherty to W. Rahim) ("Confirmed guests: Councilmember Jack Evans, Jason Goldblatt, President and CEO of Willco[.] . . . Purpose: Jason Goldblatt has a proposal for a public-private partnership for a sound stage in Ward 5.")

⁵⁹⁴ Exhibit 252.

⁵⁹⁵ *Id.*

⁵⁹⁶ Exhibit 259 (Meeting Invitation for Mar 6, 2017).

confirms the meeting date,⁵⁹⁷ Evans could not provide any details about the 2017 meeting, stating he did not recall it.⁵⁹⁸

(2) Ethics Analysis

The current record is sufficient to support a violation of Rule I of the Code of Official Conduct. *First*, Evans' actions were both personal and substantial. While Evans had no recollection of this meeting, the documents show that his office scheduled the meeting on his behalf, and identified Evans as a "confirmed guest." Evans' response to Goldblatt's inquiry on the meeting's purpose further evidences Evans' awareness and involvement. *Second*, the meeting qualifies as a particular matter as it relates to a specific Willco proposal. *Finally*, Evans' actions—arranging the meeting with his staff's assistance and attending the meeting—constitute an implicit endorsement of Willco's proposal. This endorsement had a direct and predictable effect on Willco's financial interests.

c. Constituent Services Requests For Government Pavers September 2016

(1) Underlying Facts

In mid-2016, after Willco retained Evans at Manatt, Cohen sought to repair a sidewalk on its property in anticipation of the Presidential inauguration in January 2017.⁵⁹⁹ After expressing dissatisfaction with the pavers he hired, Cohen contacted Evans' office with a request to hire and pay for government pavers to complete the job. On July 28, 2016, Evans' Director of Constituent Services Kimbel relayed Cohen's request to her contact at the District Department of Transportation ("DDOT"), and also added, "I do know that your sidewalk people are beyond busy, as I am sending over probably 10 requests a week."⁶⁰⁰ A month later on August 30, Kimbel followed up, "Can you tell me what's going on with this? Mr. Cohen is meeting with Jack tomorrow morning early and Jack has asked for an update."⁶⁰¹

DDOT could not assist with Cohen's request as the National Park Services ("NPS") controlled the sidewalk.⁶⁰² Kimbel turned to the DC Business Improvement District ("BID") Council for assistance, but could not secure pavers without permission from NPS. A few months later in September 2016, a Willco employee emailed a BID Director to follow up on "the meeting we had the other day with Jack Evans" about replacing Willco's pavers. She replied that she "spoke with Park Service" about "the call

⁵⁹⁷ Exhibit 260 (Mar. 6, 2017 Councilmember Evans' office schedule).

⁵⁹⁸ Exhibit 10, Evans Tr. III at 68:18-19.

⁵⁹⁹ Aug. 30, 2019 S. Kimbel Interview.

⁶⁰⁰ Exhibit 253 (Aug. 30, 2016 Email from S. Kimbel to L. Dormsjo).

⁶⁰¹ Exhibit 254 (Aug. 30 Email from A. Turner to S. Kimbel) at COUNCIL 0061922.

⁶⁰² Aug. 30, 2019 S. Kimbel Interview.

Councilmember Evans had getting you permission to fix the entire sidewalk,” and to expect the BID’s trainees to show up later that day.⁶⁰³

(2) Ethics Analysis

There is no violation under Rule I of the Code of Official Conduct. Although Evans had a financial interest in Willco via his employment at Manatt, there is no evidence that Manatt was involved or working on Cohen’s request for assistance and thus Rule I does not apply.⁶⁰⁴

Rule VI(c)(3) prohibits Evans from using his position or title or any authority associated with his public office “in a manner that could reasonably be construed to imply that the Council sanctions or endorses the personal or business activities of another.” Here, there is an open question whether Evans’ actions—meeting with a BID official to further Willco’s request to hire government pavers, and placing a call to NPS to request permission for Willco to fix the sidewalk—constitutes an endorsement of Willco’s activities in violation of Rule VI(c)(3). O’Melveny identifies this issue for the Council’s further consideration.

BEGA also advises against ex parte communications with government or Council officials in connection with a constituent’s request.⁶⁰⁵ Such conversations can create concerns about exerting undue influence. Although not a clear violation of the Council Rules or Code, Evans’ personal, off-the-record communications with government officials create concerns under BEGA’s guidance.

d. *Requests For Constituent Services During NSE Engagement*

(1) Underlying Facts

Willco’s requests for constituent services increased after it hired NSE, particularly from Willco’s then-CEO Goldblatt, who Evans had not met prior to the NSE agreement.⁶⁰⁶ Another request came from Cohen’s brother, Gary Cohen, Willco’s Executive Vice President. Each request related to Willco’s business activities. In most cases, Evans either directly provided constituent services, or directed Kimbel, his Director of Constituent Services, to fulfill the request.

(a) January 18, 2017 Request to Review Willco Proposal

On January 18, 2017, Goldblatt directly requested services from Evans, sending him an email with the subject line “DC Circulator” and stating, “Following up from our meeting this afternoon. Here is our proposal along with the agency’s request for space.

⁶⁰³ Exhibit 255 (Sept. 12, 201 Email from J. Goldblatt to T. Cook et al.) at Willco-DCCouncil-000258.

⁶⁰⁴ See *supra* n.11 Rule I.

⁶⁰⁵ Constituent Services AO, *supra* n.21 at 11, 16.

⁶⁰⁶ Exhibit 248.

It is for DDOT. Let me know your thoughts/if you can help.”⁶⁰⁷ Evans did not recall providing assistance.⁶⁰⁸ The Investigation found no evidence Evans acted on this request.⁶⁰⁹

(b) May 24, 2017 Request for Assistance With Blocked Alley

On May 24, 2017, Goldblatt asked Evans what could be done to stop “the work/curb installation that would prevent [Willco] from gaining access to the public alley” for a property outside of Ward 2.⁶¹⁰ Evans replied, “Thanks. I’ll get back to u[.]” Evans forwarded the request to Kimbel, who emailed Goldblatt, “Councilmember Evans asked me to look into this for you. I’ll get back to you when I have some answers.”⁶¹¹ Kimble carried out the request by emailing her DDOT contact:

This issue is important to try to get an answer today – the owner of the property at 5501 Connecticut Avenue says that the . . . tenants will no longer be able to access the parking lot behind the building. And it’s supposed to happen today. Can you please check into this and let me know something this morning if possible? It doesn’t make sense to block the entrance to an alley. Councilmember Evans told the owner he would get back to him today.⁶¹²

Kimbel also reached out to Ward 3’s director of constituent services, as the property at issue was in Ward 3. Kimbel explained during her interview that she believed she addressed the request by contacting DDOT and Ward 3’s constituent services director.⁶¹³ The Investigation could not determine the disposition of Willco’s request.

(c) June 1, 2017 Lease Extension Inquiry

After hearing a rumor that the government might not renew a lease on Willco’s property, Goldblatt requested Evans look into the issue as “[Willco] need[ed] some

⁶⁰⁷ Exhibit 264 (Jan. 18, 2017 Email from J. Goldblatt to J. Evans).

⁶⁰⁸ Exhibit 10, Evans Tr. III at 64:11-14.

⁶⁰⁹ See, e.g., Exhibit 10, Evans Tr. III at 64:11-14.

⁶¹⁰ Exhibit 265 (May 24, 2017 Email from J. Goldblatt to J. Evans) at Willco-DCCouncil-000198.

⁶¹¹ Exhibit 198 (May 24, 2017 Email from S. Kimbel to J. Goldblatt).

⁶¹² Exhibit 199 (May 24, 2017 Email from J. Evans to S. Kimbel); Exhibit 207 (May 24, 2017 Email from S. Kimbel to A. Cassillo); Exhibit 198; Exhibit 211 (May 24, 2017 Email from S. Kimbel to T. McIntyre, a DDOT official) (“This issue is important to try to get an answer today – the owner of the property at 5501 Connecticut Avenue says that the curb cut leading to an alley is to be closed off (see the photo attached) so that tenants will no longer be able to access the parking lot behind the building. And it’s supposed to happen today. Can you please check into this and let me know something this morning if possible? It doesn’t make sense to block the entrance to an alley. Councilmember Evans told the owner he would get back to him today.”).

⁶¹³ Aug. 30, 2019 S. Kimbel Interview.

clarity” so it could “make decisions about redeveloping” or “re-tenanting.”⁶¹⁴ Evans replied that he spoke with “Sarosh” and was waiting on a response.⁶¹⁵ Evans later forwarded an email from Sarosh Olpadwala, an official in the Mayor’s office, addressed to “Councilmember Evans” stating the District intended to exercise its option to renew the lease on Willco’s property.⁶¹⁶ Goldblatt replied, “This is great – thank you very much, Jack. Big help!”⁶¹⁷ Evans explained during his interview that he had a personal conversation with this government official regarding Goldblatt’s request.⁶¹⁸ Evans also stated this constituent service had nothing to do with Willco being an NSE client, asserting that he would have performed it regardless of the NSE payment.⁶¹⁹

(d) June 19, 2017 Request For Plumbing Permit

On June 19, 2017, Gary Cohen emailed Evans that a Willco plumber “walked away from the job several weeks ago and is not willing to release his permit,” and that this “prevent[ed] the new plumber from pulling a new permit to finish [construction]” on a property located outside of Ward 2.⁶²⁰ Evans forwarded the request to Kimbel, who replied, “Im working on this – trying to get annswers [sic].”⁶²¹ Kimbel reached out to DCRA for information on Willco’s permit, echoing Cohen’s concerns that the permit was a “critical path item,” and that Willco could not complete its construction without it.⁶²² A DCRA official responded twenty minutes later that he would “look into” the request.⁶²³ Later that day, Kimbel emailed, “Did you find anyone to ask about this? It’s someone the [C]ouncilmember knows so he just asked me again.”⁶²⁴ A DCRA official responded that he would assist Willco with cancelling the old plumbing permit and securing a new one.⁶²⁵ A few days after Kimbel forwarded this message to Cohen, he replied, “Thank you so much for your help. I received the Plumbing Permit today! Please thank Jack for me as well!”⁶²⁶

⁶¹⁴ Exhibit 261 (June 1, 2017 Email from J. Goldblatt to J. Evans) at Wilco-DCCouncil0000192 (“We own a 3 acre parcel on NY Ave, NE which is leased by the City and on which the City parks its school buses. The school bus lease expires 13 months from now, in June 2018. To my knowledge, we have not yet gotten any official indication that the bus tenant would not renew, however, we’ve heard that the City has identified (and perhaps even purchased) another site in NE to move the buses. The only indications I’ve heard have been “hearsay” from others (that the buses would be leaving), but nothing direct or definitive. Can I ask your help in finding out 1) if, in fact, they City has identified another site and 2) if so, where, and what is the likelihood they’re actually moving in 13 months?”); Exhibit 262 (May 22, 2017 Email from J. Goldblatt to J. Evans).

⁶¹⁵ Exhibit 261 at Wilco-DCCouncil-0000192.

⁶¹⁶ Exhibit 263 (June 7, 2017 Email from J. Goldblatt to J. Evans).

⁶¹⁷ *Id.*

⁶¹⁸ Exhibit 10, Evans Tr. III at 85:5-86:22.

⁶¹⁹ *Id.* at 85:5-86:22, 90:17-21 (“[M]y mindset is the same as it was [before NSE]. This is a constituent, just like Ritchie was in 2015, when I was not at a law firm . . . It’s the exact same thing.”).

⁶²⁰ Exhibit 266 (June 19, 2017 Email from G. Cohen to S. Kimbel).

⁶²¹ Exhibit 202 (June 14, 2017 Email from J. Evans to S. Kimbel).

⁶²² Exhibit 203 (June 19, 2017 Email from G. Cohen to S. Kimbel).

⁶²³ *Id.*

⁶²⁴ Exhibit 205 (June 20, 2017 Email from S. Kimbel to G. Cohen) at RECORD - 0001730.

⁶²⁵ *Id.*

⁶²⁶ *Id.*

(2) Ethical Analysis

As an initial matter, there is insufficient evidence to conclude there was a violation under Rule I of the Code of Official Conduct for Willco's January 18, 2017 request for constituent services, as there is no evidence that Evans took any action in response to the request.

Evans' actions, however, in response to Willco's May 24, 2017, June 1, 2017, and June 19, 2017 requests violate Rule I. *First*, Evans' actions in response to these requests were personal and substantial.⁶²⁷ For the May 24 and June 19 requests, Evans directed Kimbel to address Willco's inquiries, and Kimbel accordingly contacted other government agencies (DDOT, DCRA, and another councilmember's office) in response. And for the June 1 request, Evans personally called an executive branch official to determine the status of the lease renewal. *Second*, each constituent request constitutes a particular matter, as each concerns Willco's business interests and properties, specifically, and not matters generally applicable to the public. *And third*, Evans' actions in response to the three requests were "likely to have a direct and predictable effect on [Evans'] financial interests."⁶²⁸ Kimbel's correspondence with DDOT for the May 24 request was designed to prevent the alley closing from going forward; the June 1 request produced information regarding the leasing status that informed Willco's business strategy on whether to redevelop; and the June 19 request was intended to ensure Willco acquired the plumbing permit needed to complete its construction—an issue Gary Cohen himself characterized as "critical" to Willco's development.⁶²⁹ Evans had a financial interest in addressing these requests, as his assistance advanced the financial and business interests (and satisfaction) of his client.

The record shows that before the NSE engagement, Willco requested constituent services from Evans once. That request came from Cohen, Evans' friend. After the NSE engagement, Willco's CEO Goldblatt, whom Evans had never met prior to NSE⁶³⁰, requested constituent services on at least three occasions and Cohen's brother made a fourth request as well. Even where Evans did not personally address the request, his office devoted resources to requests from a company based outside of D.C., and in some instances for properties outside of Ward 2.⁶³¹ These services were provided while Evans received two \$50,000 retainer payments from Willco, and Evans could not identify any services that he provided in exchange for these payments. Evans and his attorneys explained that he would provide constituent services to anyone who requested it, regardless of whether a financial relationship existed.⁶³² This explanation overlooks the plain terms of the Code, which practically foreclose Evans' ability to provide constituent services to entities in which he has a financial interest.

⁶²⁷ See Code of Official Conduct, *supra* n.11 Rule I(a).

⁶²⁸ See *id.*

⁶²⁹ Exhibit 248.

⁶³⁰ *Id.*

⁶³¹ Exhibit 267 (June 14, 2017 Email from G. Cohen to J. Evans).

⁶³² Exhibit 9, Evans Tr. II at 8:2-18. See also Exhibit 197.

I. NSE Client - EagleBank/RDP Management, Inc.

1. Factual Findings

Eagle Bancorp, Inc. (“Eagle Bancorp”) was incorporated in Maryland in 1997,⁶³³ and currently serves as a bank holding company for EagleBank, which operates commercial banking offices in Maryland, Virginia, and the District.⁶³⁴ Ronald D. Paul co-founded EagleBank in 1998.⁶³⁵ Although Paul retired in March 2019, he served as Chairman and Chief Executive Officer for EagleBank during the period relevant to the Investigation.⁶³⁶

Robert Pincus served as Chairman of Fidelity & Trust Bank (“Fidelity”) until EagleBank purchased Fidelity in 2008.⁶³⁷ After the acquisition, Pincus became the Vice Chairman of the Board of Directors for EagleBank, where he served until his retirement on December 31, 2016.⁶³⁸

In addition to founding EagleBank, Paul also founded RDP Management, Inc. (“RDP”) and Ronald D. Paul Companies, Inc. (“RDP Cos.”) in 1987 under the corporate laws of Maryland.⁶³⁹ Both companies “engage[] in the business of real estate development, acquisitions, investments and property management activities” in Maryland, Virginia, and the District.⁶⁴⁰ RDP and RDP Cos. merged in 2008, with RDP as the successor corporation.⁶⁴¹ In 2013, however, RDP Cos. was reincorporated as a stand-alone entity.⁶⁴² The companies remain in good standing, with Paul as the President.⁶⁴³

While headquartered in Maryland, EagleBank and RDP both conduct business in the District, and both first entered into consulting agreements with NSE Consulting, LLC

⁶³³ Eagle Bancorp, Inc., Md. Business Records,

<https://egov.maryland.gov/businessexpress/EntitySearch/BusinessInformation/D04819058>.

⁶³⁴ Eagle Bancorp, Inc., Reuters, <https://www.reuters.com/companies/EGBN.OQ>; Eagle Bancorp, Inc., Md. Business Records, *supra* n.633.

⁶³⁵ Our Story, Eagle Bancorp Inc., <https://www.eaglebankcorp.com/our-story/>; Eagle Bancorp Inc., Reuters, *supra* n.633.

⁶³⁶ Jon Banister, *EagleBank Founder, CEO Ron Paul Retires Suddenly, Citing Health Problems*, Bisnow (Mar. 21, 2019), <https://www.bisnow.com/washington-dc/news/capital-markets/eaglebank-ceo-ron-paul-retires-98101>.

⁶³⁷ Robert P. Pincus, CEO Boardroom, <https://www.ceoboardroom.com/team/robert-p-pincus/>.

⁶³⁸ Press Release, *Robert Pincus, Vice Chair of Eagle Bancorp, to Step Down*, (Dec. 6, 2016), https://www.eaglebankcorp.com/media/filer_public/4b/9d/4b9db006-4d3c-47bd-868c-960e21c0ed33/rpincus_retirement_pressrelease.pdf.

⁶³⁹ RDP Management, Inc. Md. Business Records, <https://egov.maryland.gov/BusinessExpress/EntitySearch/BusinessInformation/D02357507>; Ronald D. Paul Companies, Inc., Md. Business Records, <https://egov.maryland.gov/BusinessExpress/EntitySearch/BusinessInformation/D02299535>.

⁶⁴⁰ Our Work, Ronald D. Paul Companies, Inc., <http://www.ronaldpaulcos.com/our-work.html>.

⁶⁴¹ See Ronald D. Paul Companies, Inc. Articles of Merger, Md. Business Records, <https://egov.maryland.gov/BusinessExpress/EntitySearch/BusinessInformation/D02299535>

⁶⁴² Ronald D. Paul Companies, Inc. Md. Business Records, *supra* n.639.

⁶⁴³ Ronald D. Paul, Ronald D. Paul Companies, <http://www.ronaldpaulcos.com/ronald-d-paul.html>.

“NSE”) on August 1, 2016. EagleBank, RDP, and RDP Cos., were not clients of Squire or Manatt.⁶⁴⁴

O’Melveny subpoenaed Paul and Pincus. Paul declined to cooperate and challenged the legality of the Council’s ability to subpoena a Maryland resident. Pincus also declined to testify, asserting his Fifth Amendment right under the U.S. Constitution to remain silent. As a result of their decisions not to provide testimony, the evidentiary record with respect to EagleBank, RDP, and RDP Cos., relies on the existing documentary record and Evans’ testimony.

a. NSE Consulting, LLC

Evans has known Paul and Pincus for several decades. He first met Pincus approximately forty years ago;⁶⁴⁵ Pincus introduced Evans to Paul when Fidelity and EagleBank merged in 2008.⁶⁴⁶

By the summer of 2016, Evans was aware that his employment with Manatt was coming to an end.⁶⁴⁷ He accordingly arranged to meet with Paul and Pincus for coffee that summer to discuss the prospect of Evans working at EagleBank.⁶⁴⁸ Paul instead recommended that Evans establish his own consulting firm, which Paul could then subsequently hire for consulting services.⁶⁴⁹

(1) Initial Agreements

On July 14, 2016, Paul emailed Evans—addressed to Evans’ personal aol.com account—a contract between EagleBank and SS Government Relations, LLC; Evans then shared the contract with Jarvis to serve as a template for the NSE agreements.⁶⁵⁰

On August 1, 2016, NSE entered into consulting agreements with EagleBank and RDP.⁶⁵¹ Excepting compensation, the two agreements were largely identical, and drew heavily from the template agreement Evans received from Paul. In fact, the two agreements retained extraneous language from the template agreement that were inapplicable to EagleBank or RDP, referencing standards for health care facilities and a

⁶⁴⁴ Exhibit 28, at 21:16-22:22 (J. Ray confirming EagleBank was never his client); Exhibit 11, Evans Tr. IV at 103:8-10 (stating EagleBank and RDP were never Squire Patton or Manatt clients); Exhibit 27 (Sept. 6, 2019 Letter from Squire confirming that EagleBank was not a Squire client).

⁶⁴⁵ Exhibit 11, Evans Tr. IV at 90:18-20.

⁶⁴⁶ *Id.* at 90:17-22.

⁶⁴⁷ Exhibit 8, Evans Tr. I at 35:2-36:14.

⁶⁴⁸ *Id.* at 36:20-37:4 (stating that “[i]n July of 2016, [he] met with . . . Ron Paul and Bob Pincus” to ask Paul “if [he] could come and work for EagleBank”).

⁶⁴⁹ *Id.* at 37:12-22 (“[S]o we met for coffee and the three of us talked, and Ron said rather than hire you at EagleBank, why don’t you set up a consulting firm, and I can hire you as a consultant. That was pretty much the genesis of it.”).

⁶⁵⁰ Exhibit 268 (July 15, 2016 Email from J. Evans to B. Jarvis with attachment); Exhibit 8, Evans Tr. I at 42:1-43:4; Exhibit 12, Evans Tr. IV at 91:12-15, 100:3-101:2.

⁶⁵¹ Exhibit 269 (Aug. 1, 2016 EagleBank Services Agreement); Exhibit 270 (Aug. 1, 2016 RDP Management Inc. Services Agreement).

prohibition against disclosing “patients, costs, or treatment methods.”⁶⁵² The agreements contained the following relevant and operative provisions:

Services Provision: Evans agreed to provide “information and advice, regarding business matters.”⁶⁵³ According to Evans, he was “available to do what [EagleBank and RDP] needed [him] to do when they contacted [him].”⁶⁵⁴

Confidentiality Provision: Except as “required by any applicable governmental authority or in connection with a legal proceeding,” Evans agreed not to disclose “any confidential or proprietary information of CLIENT.”⁶⁵⁵ Evans also agreed not to disclose “the terms of [the] Agreement to any person who is not a party [or] signatory to [the] Agreement, unless disclosure thereof is required by law, is in connection with a legal proceeding or otherwise authorized by this Agreement or consented to by CLIENT.”⁶⁵⁶

Applicable Standards Provision: The draft did not include a conflicts of interest provision; instead this provision provided that Evans would provide all services “in compliance with all applicable standards set forth by law or ordinance or established by the rules and regulations of any federal, state or local agency, department, commission, association or other pertinent governing, accrediting, or advisory body.”⁶⁵⁷

As for compensation, the agreement with EagleBank reflected an annual retainer fee of \$37,000 per year payable semi-annually in the amount of \$18,750.⁶⁵⁸ The agreement with RDP reflected an annual retainer fee of \$25,000 per year payable semi-annually in the amount of \$12,500.⁶⁵⁹ Evans could not explain why he charged EagleBank more than RDP.⁶⁶⁰

Evans could not identify any NSE services that he provided to EagleBank or RDP, besides being generally available if either company needed him.

(2) Extension Of Services Agreement

On August 1, 2017, NSE extended its retainer agreements with EagleBank and RDP.⁶⁶¹ The extension of services agreements were largely identical to one another

⁶⁵² Exhibit 269 at JE-SPE-000019, § 1.c, JE-SPE-000020-21, § 5.a; Exhibit 270 at JE-SPE-000030, § 1.c, JE-SPE-000031-32, § 5.a.

⁶⁵³ Exhibit 269 at JE-SPE-000019, Recital A; Exhibit 270 at JE-SPE-000030, Recital A.

⁶⁵⁴ Exhibit 8, Evans Tr. I at 41:9-15.

⁶⁵⁵ Exhibit 269 at JE-SPE-000020-21, § 5.a; Exhibit 270 at JE-SPE-000031-32, § 5.a.

⁶⁵⁶ Exhibit 269 at JE-SPE-000021, § 5.b; Exhibit 270 at JE-SPE-000032, § 5.b.

⁶⁵⁷ Exhibit 269 at JE-SPE-000019, § 1.c; Exhibit 270 at JE-SPE-000030, § 1.c.

⁶⁵⁸ Exhibit 269 at JE-SPE-000020, § 2.a; Exhibit 270 at JE-SPE-000031, § 2.a.

⁶⁵⁹ Exhibit 270 at JE-SPE-000031, § 2.a.

⁶⁶⁰ Exhibit 11, Evans Tr. IV at 102:2-19.

⁶⁶¹ Exhibit 271 (Aug. 1, 2017 EagleBank Extension of Services Agreement); Exhibit 272 (Aug. 1, 2017 RDP Management, Inc. Extension of Services Agreement).

and eliminated the inapplicable language regarding health care facilities and standards. The changes to key provisions include:

Services Provision: Evans added to the services provision, stating that he would provide “(i) information and advice regarding the metropolitan Washington D.C. business community, including strategic issues relating to jurisdictional competition, transportation, and real estate, including landlord introductions and, where requested, liaising with landlords; and (ii) information and advice about federal matters and opportunities, provided, however, that CONSULTANT will not lobby the federal government on behalf of CLIENT.”⁶⁶²

Conflicts of Interest Provision: Unlike the original, the extension of services agreements included a conflict of interest provision. It provided that Evans would abstain from voting on any matter before the D.C. Council on which NSE “was providing or may provide services,” and required NSE to notify the client in the event its services “would create or might create a conflict of interest,” violate the relevant ethical rules, or constitute lobbying. The provision further provided that the “Office of General Counsel of the Council has approved Evans’ provision of services as the principal of [NSE].”⁶⁶³

The compensation for both agreements also changed; RDP and EagleBank would each pay \$50,000 per year on a semi-annual basis.⁶⁶⁴

2. *Ethics Analysis*

The documentary and testimonial record did not yield sufficient evidence to conclude that Evans—pursuant to his NSE agreements with EagleBank and RDP—violated the Code of Official Conduct with respect to conflicts of interests or his constituent services activities. As explained *supra* at Section V(A)(2)(a), Evans violated Rule XI(c)(1) of the Code of Official Conduct and § 1-1162.24(a)(1)(A)(ii) of the D.C. Official Code when he failed to disclose on his annual financial disclosure forms that he owned stock in Eagle Bancorp exceeding \$1,000.

J. **NSE Client - Fischer Holdings**

1. *Factual Findings*

Fischer Holdings is an atypical NSE client, as Steven Fischer, the presumed owner of Fischer Holdings, did not have an established relationship with Evans. Evans identified Fischer as one of Richard Cohen’s friends, and someone who possibly partnered with Cohen on real estate projects.⁶⁶⁵ According to Evans, both Cohen and lobbyist John Ray suggested Fischer as an NSE client.⁶⁶⁶ Fischer and Evans met just

⁶⁶² Exhibit 271 at JE-SPE-000024, § 1.a; Exhibit 272 at JE-SPE-000034, § 1.a.

⁶⁶³ Exhibit 271 at JE-SPE-000025, § 1.e; Exhibit 272 at JE-SPE-000035, § 1.e.

⁶⁶⁴ Exhibit 271 at JE-SPE-000025, § 2.a; Exhibit 272 at JE-SPE-000035, § 2.a.

⁶⁶⁵ Exhibit 10, Evans Tr. III at 106:7-20.

⁶⁶⁶ *Id.* at 106:16-20.

once in person, and had only a few brief phone conversations throughout Fischer's engagement of NSE.⁶⁶⁷ Evans signed a single one-year consulting agreement with Fischer Holdings that commenced on March 1, 2018.⁶⁶⁸ According to Evans, Fischer ended the relationship after one year, potentially due to a lack of interest.⁶⁶⁹

The evidentiary record for Evans' relationship with Fischer Holdings is sparse, as Evans' knowledge of Fischer and his company was limited and Fischer declined to cooperate with the Investigation, refusing to comply with the Council's subpoena or to provide documents. Evans described Fischer Holdings as a real estate company, but could not identify the type of real estate the company handled.⁶⁷⁰ Evans explained that Fischer was located in California, but had "holdings here in the metropolitan region," which "kind of fit into [his] consulting business."⁶⁷¹ He also stated, however, that he did not know whether Fischer had any buildings in D.C.⁶⁷² Evans believes that Fischer Holdings' operations ceased after a year.⁶⁷³ The Investigation could not corroborate this assertion.

a. NSE Consulting, LLC

NSE's contract with Fischer Holdings described the services as follows:

While this Agreement is in effect, the FIRM will represent the CLIENT by advising and consulting with the CLIENT regarding his interest in the District of Columbia and the surrounding area. The CLIENT's primary interest is in real estate and the FIRM will advise and consult with the CLIENT regarding investment opportunities and regarding the issues that create positive investment opportunities or that may, in fact, present potential investment opportunities, provided, however, that the FIRM will not lobby the federal government, the District of Columbia government, or the governments of surrounding jurisdictions, on behalf of CLIENT.⁶⁷⁴

Evans understood he would provide strategic counsel on economic issues and real estate in the D.C. metropolitan region. He could not recall the substance of the phone conversations he had with Fischer during the NSE engagement, but explained that the conversations generally discussed the business climate in the D.C. region.⁶⁷⁵

⁶⁶⁷ *Id.* at 109:6-18, 111:5-20.

⁶⁶⁸ Exhibit 273 (Mar. 1, 2018 Fischer Holdings, LLC Agreement) at Willco-DCCouncil-000041-44.

⁶⁶⁹ Exhibit 10, Evans Tr. III at 112:13-16.

⁶⁷⁰ *Id.* at 106:1-10.

⁶⁷¹ *Id.* at 108:1-3.

⁶⁷² *Id.* at 106:1-3.

⁶⁷³ *Id.* at 119:4-5.

⁶⁷⁴ Exhibit 273 at Willco-DCCouncil-000041.

⁶⁷⁵ Exhibit 10, Evans Tr. III at 109:6-110:12.

Fischer signed a single one-year contract with NSE that commenced on March 1, 2018. The retainer was \$50,000, with the first \$25,000 installment due in March 2018, and the second due in September. The contract does not contain a conflict of interest provision.⁶⁷⁶ Evans had no explanation for the omitted provision, suggesting that Grant may have prepared the contract from an earlier agreement that did not have it.⁶⁷⁷

b. Fischer's Connection To Cohen And Willco

Willco's production of documents in response to the Investigation's subpoena suggests that Fischer was affiliated somehow with Willco. The exact relationship, however, is unclear. Although Fischer used a Willco email address and communicated with Willco employees internally, it is not clear whether Fischer was a Willco employee. The record also showed that Fischer sought reimbursement from Willco for Fischer Holdings' payments to NSE. In March 2018, after signing the NSE agreement, Fischer emailed two Willco employees:

[P]lease draw a check in the indicated amount payable to Fischer Holdings, LLC from each propert[y] listed on the attached "Consulting Fee NSE." The total amount of the four checks should be exactly \$25,000. Deliver the checks to Mary Moreland who will deposit them in Fischer Holdings, LLC. Mary will then draw a check from Fischer Holdings LLC to NSE Consulting LLC in the amount of \$25,000.⁶⁷⁸

A few months later in June 2018, Fischer again emailed the Willco employees to repeat this process because "Jack needs a second round of \$25,000."⁶⁷⁹ Evans had no knowledge about or explanation for this unusual payment arrangement.⁶⁸⁰

c. Fischer's Interactions With Evans

The Investigation has a single record of correspondence between Fischer and Evans, showing that in June 2018, shortly after NSE received its second \$25,000 check, Fischer emailed Evans, "By the way, I am going to give you a call next week regarding the Estate Tax Clarification Amendment Act which is part of the DC FY2019 budget support act (B22 -0753)."⁶⁸¹ Evans replied, "Ok. Thanks." Evans stated he probably spoke with Fischer about the legislation Fischer referred to, but could not recall the substance of the conversation.⁶⁸²

⁶⁷⁶ *Id.* at 116:3-6.

⁶⁷⁷ *Id.* at 116:6-13.

⁶⁷⁸ Exhibit 274 (Mar. 29, 2018 Email from S. Fischer to C. Codacovi & M. Moreland).

⁶⁷⁹ Exhibit 275 (June 4, 2018 Email from S. Fischer to C. Codacovi).

⁶⁸⁰ Exhibit 10, Evans Tr. III at 121:1-7.

⁶⁸¹ Exhibit 276 (June 8, 2018 Email from J. Evans to S. Fischer).

⁶⁸² Exhibit 10, Evans Tr. III at 128:13-18.

2. *Ethics Analysis*

The limited record with respect to Fischer Holdings raises many questions but does not provide a basis for a violation of the Code or Council Rules. The facts and circumstances around Fischer Holdings' show that Evans received \$50,000 from an individual he did not know, and for a business he could not describe. Fischer's interests in the District remain unclear, especially given that he appears to be a California resident. Although the NSE agreement stated Evans would provide real estate advice for the D.C. Metropolitan area, Evans could not identify any of Fischer Holdings' property interests in the District. Fischer sought reimbursement for NSE's fees from Willco, which was itself a separate NSE client at the time—an arrangement of which Evans represented he was unaware. All parties associated with Willco and Fischer Holdings refused to cooperate with the Investigation, instead choosing to assert their Fifth Amendment right against self-incrimination. O'Melveny directs the Ad Hoc Committee to these facts as an area worth exploring in further investigations.

VI. **Conclusion**

The Investigation found that Councilmember Evans' violations of the Code of Official Conduct largely resulted from his failure to correctly implement and follow the key precepts necessary to an objective ethics compliance model. Evans displayed a generally casual attitude towards the ethical responsibilities of a public official, exemplified by his "I know it when I see it" approach to conflicts of interests, which contributed to his repeated failures to comply with a number of basic ethical duties.

First among these was a lack of transparency in his outside dealings. Evans failed to disclose the identities of his NSE clients to any third party, including his own staff and the OGC, because of his confidentiality concerns. His secretive approach to his consulting relationships, which were not attorney-client privileged, impeded his staff's ability to monitor and assist with his ethical obligations. Similarly, Evans failed to report stock holdings and other direct financial interests on his financial disclosure forms. By precluding the independent monitoring of his financial interests, Evans frustrated any objective safeguards from preventing or mitigating the risk that he would encounter actual or apparent conflicts of interest in the performance of his duties.

Evans made selective use of consulting with OGC and BEGA. He failed to seek or procure guidance concerning any particular matter or outside interest from OGC or BEGA, despite evidence that he was contemporaneously cognizant of ethical ambiguities concerning his outside activities.

Based on his statements during his interviews, Evans operated under multiple and substantial misunderstandings of the ethical rules. For example, his view that "official action" for councilmembers applies only to voting excludes a range of other official actions that can have significant financial impacts on private parties—*e.g.*, introducing matters for a vote, participating in hearings and other proceedings, and intervening with the District's executive branch of government. All of these activities are

clearly encompassed by the ethical provisions of the Code of Official Conduct and the Council Rules.

Evans also said that it was ethically permissible for him to provide constituent service for his paid clients—e.g., to help his clients with regulatory disputes or other issues with the DC government. But there is no safe harbor for “constituent services,” in Rule I of the Code. Constituent services are subject to the same prohibitions on conflicts of interest as any other official action by a Council employee. Evans stated that he believes a conflict violation occurs *only if* a financial interest actually influences his position or actions on a particular matter, which disregards the Code of Official Conduct and Council Rules. And he failed to appreciate the ethical implications of prospective employment and client relationships. In short, we conclude that Evans’ erroneous understanding of the conflict of interest rules significantly undermined his ethical compliance.

Finally, Evans failed to appreciate the ethical implications of above-market availability pay from prohibited sources. All NSE clients, most of whom were personal friends of Evans, were prohibited sources under Rule III. The refusal of most of Evans’ clients to cooperate with the Investigation, even under legal compulsion, prevented the Investigation from exploring the precise value proposition he offered to each NSE client. But Evans acknowledged that he did not, in the case of most NSE clients, provide substantial consulting services, despite receiving hundreds of thousands of dollars in retainer fees. In the absence of a service provided in consideration for fair market value, the availability pay received by Evans through NSE would not only violate the gift rule, but could also create an impression that he had been hired primarily because of his official position and not for his consulting skills.