

COUNCIL OF THE DISTRICT OF COLUMBIA
**AD HOC COMMITTEE IN THE MATTER OF
COUNCILMEMBER JACK EVANS**
MARY M. CHEH, CHAIR

AD HOC COMMITTEE REPORT

To: Members of the Council of the District of Columbia

FROM: Councilmember Mary M. Cheh
Chairperson, Ad Hoc Committee in the Matter of Councilmember Jack Evans

DATE: December 10, 2019

SUBJECT: Findings and recommendations on Council Code of Conduct violations by Councilmember Jack Evans

The Ad Hoc Committee in the Matter of Councilmember Jack Evans, established under PR 23-434, reports its findings to the Council, and recommends that Mr. Evans be expelled from the Council, pursuant to Council Rule 656.

PROCEDURAL HISTORY

A. Authorization to Investigate

On July 9, 2019, Chairman Phil Mendelson introduced Proposed Resolution 23-434, the Council Period 23 Rules and Investigation Authority Amendment Resolution of 2019. This document, and all others related to this committee, can be found at <https://dccouncil.us/ad-hoc-committee-on-cm-evans/>. The resolution amended the Rules of Organization and Procedures for the Council of the District of Columbia, Council Period 23, to authorize an investigation into the official and outside activities of Councilmember Jack Evans, to determine whether Mr. Evans violated the Council's Code of Official Conduct. Under the resolution, the investigation would be limited to Mr. Evans's conduct during the period of January 1, 2014 through July 9, 2019, and to those activities relating to NSE Consulting LLC, clients of NSE Consulting LCC, and any other entity that employed Mr. Evans or for which he consulted. The resolution also authorized the Chairman to appoint O'Melveny & Myers, a private law firm based in the District of Columbia, to conduct that investigation.

At the July 9, 2019 Legislative Meeting, the Council considered PR 23-434. Members voted 10 to 2 to approve the resolution. The Resolution was adopted with Resolution Number 23-175.

B. Formation of the Ad Hoc Committee

On October 8, 2019, Chairman Mendelson sent a letter to Members of the Council to announce the appointment of the Ad Hoc Committee to Investigate Mr. Evans. Pursuant to

the letter, an Ad Hoc Committee made up of all members of the Council, except Mr. Evans, was to be established, with Councilmember Mary M. Cheh serving as Chair. The Chairman's letter noted that, under the Council Rules, the Committee was tasked with reviewing the O'Melveny & Myers report, determining whether further investigation was warranted, and adopting a report with recommendations for sanctions, if any.

On October 21, 2019, Chairman Mendelson introduced Proposed Resolution 23-515, the Ad Hoc Committee Procedures Resolution of 2019. Under the resolution, the Ad Hoc Committee would be composed of all Members of the Council, except for Councilmember Evans. The language also clarified that the Ad Hoc Committee had 90 calendar days after the General Counsel's receipt of the report from O'Melveny & Myers to report its recommendations and findings to the Council. The resolution also authorized the Committee to issue subpoenas on behalf of the Council as part of its investigation.

At the October 22, 2019 Legislative Meeting, members considered PR 23-515. Members voted 13 to 0 to approve the resolution. The Resolution was adopted with Resolution Number 23-244.

C. Organizational Meeting of the Ad Hoc Committee

On October 22, 2019, the Ad Hoc Committee in the Matter of Jack Evans held an Organizational Meeting. At that meeting, the members discussed the Committee's meeting schedule, procedures governing the Committee, and receipt of the O'Melveny & Myers report by the Committee members and the public. The Committee took no votes at this meeting.

The meeting was adjourned.

D. Meeting of the Ad Hoc Committee on the O'Melveny & Myers Report

On November 4, 2019, O'Melveny & Myers transmitted to the Council its Report of Investigation of Councilmember Jack Evans Pursuant to July 9, 2019 D.C. Council Resolution 23-175. The report included 277 exhibits upon which O'Melveny & Myers relied in making its findings. Appended to the report was an October 25, 2019 letter from Abbe David Lowell and Mark Tuohey, attorneys for Mr. Evans, to Steven Bunnell, Partner at O'Melveny & Myers and lead on the firm's investigation, responding to the O'Melveny & Myers investigation.

On November 5, 2019, Chairperson Cheh received a letter from Mr. Evans's attorneys, responding to the O'Melveny & Myers report. Appended to this letter was a November 4, 2019 letter from Michael S. Frisch, Ethics Counsel and Adjunct Professor at Georgetown Law, to Chairperson Cheh on legal ethics.

On November 19, 2019, the Ad Hoc Committee held a meeting on the O'Melveny & Myers Report. All members were present. At the meeting, Steven Bunnell and David Leviss, Partners at O'Melveny & Myers, appeared before the Committee to answer questions about the report.

At the meeting, members considered whether to waive the Council's attorney-client privilege as it applied to a set of exhibits redacted from the O'Melveny & Myers report, to be made available to the public. Those exhibits included correspondence between Mr. Evans and the Council's Office of General Counsel, where Mr. Evans sought legal guidance. Chairperson Cheh explained that the Council as a body held the privilege, not Mr. Evans, meaning a majority of the Members could vote to make the Exhibits available to the public. At the meeting, Councilmember McDuffie asked for clarification from General Counsel Nicole Streeter on how the Council could waive privilege over correspondence between one member and the General Counsel's Office. Ms. Streeter confirmed Councilmember Cheh's interpretation of the privilege as running with the body, not the member.

Chairperson Cheh then moved to waive attorney-client privilege as it applied to exhibits 1, 2, 4, 14, 15, 16, 27, 28, 33, 99, 101, 102, 191, and 197 of the O'Melveny & Myers report. The Committee voted 11-0-1 to approve the motion, with the members voting as follows:

YES: Cheh, Mendelson, Bonds, Grosso, Silverman, Nadeau, Allen, Todd, R. White, Gray, T. White

NO: 0

PRESENT: McDuffie

Through multiple rounds over four and half hours, covering all aspects of the report, all members had an opportunity to ask questions of the attorneys. Those questions covered the full scope of the inquiry, findings of fact, and conclusions of law reached by the attorneys.

The meeting was adjourned.

E. Meeting of the Ad Hoc Committee

On November 13, 2019, the Ad Hoc Committee filed notice of a Meeting In re Councilmember Jack Evans; this meeting was to be held December 3, 2019. The purpose of that meeting was for members to hear from Councilmember Jack Evans about his conduct from January 1, 2014 through July 9, 2019, and to ask Councilmember Evans clarifying questions about the content of the O'Melveny & Myers Report, his response to the law firm's report, and his conduct during the relevant period. However, on November 26, 2019, Mr. Evans sent a letter to the Committee declining to appear. As a result of Mr. Evans' decision not to appear, the Committee revised the notice for its December 3, 2019 meeting to a meeting on Further Independent Inquiry and Committee Recommendations.

On December 3, 2019, the Ad Hoc Committee held its third meeting. All members were present. The purpose of this meeting was to discuss whether the Committee should pursue further independent inquiry regarding Mr. Evans's conduct from January 1, 2014 through July 9, 2019, and to consider its recommendations to the Council for disciplinary action.

i. Additional Independent Investigation

At the meeting, Chairperson Cheh asked whether members believed it necessary for the Committee to engage in additional independent investigation. Chairperson Cheh stated that she did not believe additional investigation was necessary. She noted that the facts governing Mr. Evans’s conduct are not in dispute—merely their applications to Council ethics rules—suggesting that further investigation would do little to clarify or expand the factual record. Chairperson Cheh also stated that the record from O’Melveny & Myers was quite voluminous. Finally, Chairperson Cheh noted that pursuing Mr. Evans’s appearance before the Committee, or other investigation, would add to the high costs of the investigation and likely bear no fruit.

Councilmember Silverman shared that she believed there were gaps in the O’Melveny & Myers report, in particular with regard to Eagle Bank. Councilmember Silverman raised whether additional investigation might uncover instances where Mr. Evans moved tax abatement or relief legislation to favor Eagle Bank or other clients of NSE, Mr. Evans’s consulting firm. Cheh pointed out that the O’Melveny & Myers report did identify Mr. Evans’s failure to disclose stock in Eagle Bank as a breach of Code of Conduct and District law.

Councilmember Grosso asked whether the Committee might consider investigating the conduct of Mr. Evans outside of the timeframe laid out in the Committee’s authorizing resolution—specifically, prior to January 1, 2014. Chairperson Cheh noted that, although the Committee could look into Mr. Evans’s earlier activities, the Council would need to amend the Committee’s authorizing resolution for the Committee to have authorization to do so.

Councilmember Allen stated that he did not believe there was need for additional investigation. He shared that he had identified over thirty violations of the Council’s ethics rules in the O’Melveny & Myers Report, and asked—if that number of violations was insufficient for members to make a decision on sanctions—what else would members need to see.

Chairperson Cheh then moved for the Committee to take up no further independent investigation. The Committee voted 12-0-0 to approve the motion, with the members voting as follows:

YES: Cheh, Mendelson, McDuffie, Bonds, Grosso, Silverman, Nadeau, Allen, Todd, R. White, Gray, T. White

NO: 0

PRESENT: 0

ii. Recommendations

The Ad Hoc Committee then turned to discussion of its findings and recommendations. Chairperson Cheh asked whether any members had qualifications or disagreements with the factual record as provided by O’Melveny & Myers, noting that, absent members raising any such concerns, the Committee would adopt the factual record as provided by O’Melveny &

Myers in the Committee's report. Chairman Mendelson noted that he did not believe that all of the specific violations suggested by O'Melveny & Myers were in fact violations of the Council's ethics rules; however, taken as a whole, the factual record was accurate and the violations could be viewed in the aggregate. No member raised specific qualifications or disagreements with the *factual* record as provided by O'Melveny & Myers, nor did any member object to the factual record being adopted by the Committee in its report.

Chairperson Cheh then opened the floor to discussion of potential sanctions. Chairperson Cheh and Councilmembers Robert White, Nadeau, Allen, Silverman, Bonds, and Trayon White spoke to say they were in support of recommending Mr. Evans's expulsion to the Council. Noting that seven members of the Committee—a majority—had spoken in support of this sanction, Chairperson Cheh moved for the Committee to recommend the expulsion of Mr. Evans to the Council. During the vote, Chairman Mendelson and Councilmembers McDuffie and Gray spoke to say they were in support of recommending Mr. Evans's expulsion to the Council.

The Committee voted 12-0-0 to approve the motion, with the members voting as follows:

YES:	Cheh, Mendelson, McDuffie, Bonds, Grosso, Silverman, Nadeau, Allen, Todd, R. White, Gray, T. White
NO:	0
PRESENT:	0

Following the vote, Chairperson Cheh welcomed members to submit written statements for the record; those statements are appended to the report.

The meeting was adjourned.

FINDINGS & DISCUSSION

Expelling a member of the Council is not something that the Ad Hoc Committee recommends lightly. In most instances, the removal of elected officials is effected by the voters, either in not re-electing them or in recalling them. The Council, however, does have authority to remove one of its own, but that authority should be exercised only in the most extreme cases. Indeed, it is not enough that a member do something that is simply controversial or objectionable. But where, as here, a member demonstrates a pattern and practice of conduct that repeatedly violates the Council's Code of Conduct, expulsion is appropriate and necessary.

As outlined in the factual record established by the O'Melveny & Myers report (attached), Mr. Evans, over the course of the investigative period, took action to trade his Council influence, votes, and prestige of office for hundreds of thousands of dollars in payments from prohibited sources. The facts as developed also show his repeated failure to make the required full and complete financial disclosures.

Mr. Evans's misconduct constitutes a pattern and practice of sustained and repeated violations of the Council's Code of Conduct. His unethical behavior was not isolated or sporadic. Findings from other investigative bodies show that Mr. Evans's misconduct extended into areas beyond the scope of this investigation, such as during his tenure as Chair of the WMATA Board. Additionally, Mr. Evans is currently under investigation by the United States Attorney's Office for the District of Columbia, and the U.S. Attorney has publicly executed a search warrant of his home. His unethical behavior stretches over many years, with multiple employers and clients, and tainted his decisions on numerous matters before the Council, including votes on legislation. Many of the violations were financial, and the failure to disclose the financial relationships compounded the violations. His wrongdoing was not limited to a single ethical lapse, or even a few incidents of unethical behavior. And, in nearly all cases—and validated by the Council's investigative report—there was no question that a violation occurred. Through his conduct, Mr. Evans placed his financial interests above the interests of the residents he was elected to serve. The members of the Ad Hoc Committee conclude that the prolonged and sustained nature of his wrongdoing is egregious.

Many members stated that Mr. Evans betrayed the trust of his staff, his Council colleagues, and above all, the residents of the District of Columbia. Several of his colleagues have noted how they felt that they were unwitting participants in his unethical behavior. By losing the trust of the other members, Mr. Evans significantly impaired his ability to work effectively as a Council colleague. Mr. Evans's staff was used unwittingly as well. As the O'Melveny & Myers report shows, Mr. Evans used his staff to do business that benefitted him personally and financially, and in most cases did not disclose the identities of his clients to his staff, and, thus, they were unable to assist him in navigating potential ethical issues. Other members noted that, through his misconduct, Mr. Evans had embarrassed the body. Indicative of this public embarrassment, at a recent statehood hearing, members of the United States House of Representatives raised Mr. Evans's conduct to argue against the District's ability to self-govern. Mr. Evans betrayal of his public duty and the embarrassment he has brought upon the Council of the District of Columbia will have long-lasting effects on the District.

The misconduct described above not only destroys the public's trust in Mr. Evans, but also erodes the public's faith in all of its leaders and in its government. Once lost, such trust is not easily restored. And although this Committee recognizes that the work of rebuilding trust in government is not complete simply by removing Mr. Evans from office, it also believes that the healing that needs to take place will not commence as long as he continues in the body. Indeed, public confidence in Council actions will continue in crisis as long as Mr. Evans remains here, casting votes and taking official actions.

Finally, the Committee hopes that by pursuing its work in a way that was thorough, transparent, and fair, and that by making a recommendation for sanctions that is proportionate to Mr. Evans's wrongdoing, the public can have faith that the work of good government continues. Though the committee recognizes the remedy it recommends is extreme, the conduct of Mr. Evans was similarly unprecedented and extraordinary in its scope, character, and duration.

RECOMMENDATIONS

The Committee recommends that Mr. Evans be expelled from the Council, pursuant to Council Rule 656.

CHRONOLOGY OF EVENTS

July 9, 2019	Introduction of PR23-434, Council Period 23 Rules and Investigation Authority Amendment Resolution of 2019
July 9, 2019	Consideration and Vote on PR23-434
October 8, 2019	Appointment of the Ad Hoc Committee in the Matter of Councilmember Jack Evans
October 21, 2019	Introduction of PR23-515, Ad Hoc Committee Procedures Resolution of 2019
October 22, 2019	Consideration and Vote on PR23-535
October 22, 2019	Meeting of the Ad Hoc Committee in the Matter of Councilmember Jack Evans – Organizational Meeting
November 4, 2019	Ad Hoc Committee Receipt of O’Melveny & Myers Report of Investigation of Councilmember Jack Evans Pursuant to July 9, 2019 D.C. Council Resolution 23-175
November 19, 2019	Meeting of the Ad Hoc Committee in the Matter of Councilmember Jack Evans – Meeting on O’Melveny & Myers Report
December 3, 2019	Meeting of the Ad Hoc Committee in the Matter of Councilmember Jack Evans – Further Independent Inquiry and Committee Recommendations
December 10, 2019	Meeting of the Ad Hoc Committee in the Matter of Councilmember Jack Evans – Adoption of the Committee’s Report

ATTACHMENTS

- A. O’Melveny & Myers Report (exhibits available at <https://dccouncil.us/exhibits/>)
- B. Councilmember Jack Evans Response to the O’Melveny & Myers Report
- C. Resolution 23-175, the Council Period 23 Rules and Investigation Authority Amendment Resolution of 2019
- D. October 8, 2019 Memorandum from Chairman Phil Mendelson to Members of the Council establishing the Ad Hoc Committee

- E. Resolution 23-244, the Council Ad Hoc Committee Procedures Resolution of 2019
- F. Statement of Councilmember Elissa Silverman
- G. Statement of Councilmember Brianne Nadeau
- H. Statement of Councilmember Charles Allen
- I. Statement of Councilmember Brandon T. Todd
- J. Statement of Councilmember Robert White
- K. Statement of Councilmember Vincent Gray

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