

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, under the current Council Rules, 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 under current Council Rules 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 should 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

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.

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.

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, particularly on matters that favor or disfavor economic activity.

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. It is the accumulation of violations, the totality of factors, that warrant our recommendation for expulsion.

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

COMMITTEE ACTION

On December 10, 2019, the Ad Hoc Committee in the Matter of Councilmember Jack Evans a meeting to consider Adoption of the Committee's Report. Present and voting were Chairperson Mary Cheh, Chairman Phil Mendelson, and Councilmembers Kenyan McDuffie, Anita Bonds, David Grosso, Elissa Silverman, Charles Allen, Brandon Todd, Robert White, and Trayon White. Chairperson Cheh gave a brief opening statement laying out the Committee's agenda for the meeting and thanking the Committee for their work. Councilmember McDuffie requested that additional documents upon which the Committee based its report be included as appendices, to which no member objected. Councilmember Grosso thanked the Chairperson and the Committee for the speed and thoroughness with which it completed its work.

Chairperson Cheh then moved for approval of the Committee Report. The Committee voted 10 - 0 to approve the Committee Report with the members voting as follows:

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

The meeting was adjourned.

ATTACHMENTS

- A. O'Melveny & Myers Report (exhibits available at <https://dccouncil.us/exhibits/>)
- B. Charges Derived from the O'Melveny & Myers Report¹
- C. Councilmember Jack Evans Response to the O'Melveny & Myers Report
- D. Schulte Roth & Zabel WMATA Report
- E. BEGA Negotiated Settlement with Councilmember Evans
- F. Grand Jury Subpoena #GJ2019030453892 USAO#2018R01728
- G. Resolution 23-175, the Council Period 23 Rules and Investigation Authority Amendment Resolution of 2019
- H. October 8, 2019 Memorandum from Chairman Phil Mendelson to Members of the Council establishing the Ad Hoc Committee
- I. Resolution 23-244, the Council Ad Hoc Committee Procedures Resolution of 2019
- J. Statement of Councilmember Kenyan R. McDuffie
- K. Statement of Councilmember Anita Bonds

¹ Note that the charges related to the Use of Government Resources were discounted in the OMM report because the attorneys relied on Council Code of Conduct Rule VI(a)(1) rather than Rule VI(a)(2). The Committee was presented with the language from the correct rule.

- L. Statement of Councilmember David Grosso
- M. Statement of Councilmember Elissa Silverman
- N. Statement of Councilmember Brianne K. Nadeau
- O. Statement of Councilmember Charles Allen
- P. Statement of Councilmember Brandon T. Todd
- Q. Statement of Councilmember Robert C. White, Jr.
- R. Statement of Councilmember Vincent C. Gray

Attachment A

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

O'MELVENY & MYERS
NOVEMBER 4, 2019

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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 Austermuhle, *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 - 00000008.

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 - 00000007; *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 - 00000007; 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-a647fccc95e0_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. Thxoxoxoxo!"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 [REDACTED], 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 Efros, 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 Efros 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. Efros).

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 *Praeipie, 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-linder/; 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 Its Purview, Tit. VII. Subtitle C, at 37, (May 13, 2015) <http://lims.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://lms.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://lms.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://lms.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://lms.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://lms.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://lms.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://lms.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 reinstituting 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://lims.dccouncil.us/Download/36350/B21-0848-CommitteeReport1.pdf>; Letter from Mayor Bowser to Chairman Mendelson (Sept. 16, 2016), <http://lims.dccouncil.us/Download/36350/B21-0848-Introduction.pdf>.

⁵²² Legislation Detail Report, B21-0848, West End Parcels Development Omnibus Amendment Act of 2016, <http://lims.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://lims.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://lims.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://lims.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://lims.dccouncil.us/Legislation/B21-0438>; Legislation Detail Report, PR21-0841 - Gas Station Advisory Board Emergency Declaration Resolution of 2016, <http://lims.dccouncil.us/Legislation/PR21-0841>; Legislation Detail Report, B21-0808, Gas Station Advisory Board Emergency Amendment Act of 2016, <http://lims.dccouncil.us/Legislation/B21-0808>; Exhibit 234; Legislation Detail Report, B21-0894, Gas Station Advisory Board Congressional Review Emergency Amendment Act of 2016, <http://lims.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://lims.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.

Attachment B

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

I. Conflict of Interest

Rule: Code of Conduct Rule I(a); I(f)¹, Council Rule 202(a)²; Code of Conduct Rule II(a)(1)³; Code of Conduct Rule II(c)(1)⁴

Pepco/Exelon

At a January 29, 2015 public hearing held by the Committee on Business, Consumer & Regulatory Affairs, Evans read talking points drafted by Tina Ang, Manatt Senior Legislative Advisor, in favor of the merger (p. 27-28). In the summer of 2015, Evans voted in favor of an amendment to strip funding from the budget for a study on the effects of the District purchasing and administering the local electric utility. Mr. Evans also worked with Pepco lobbyists to strategize on how best to introduce and move this amendment (p. 28-29). On October 16, 2016, Evans was a signatory on a letter sent to the D.C. Public Service Commission, advocating the Commission to approve the Pepco Exelon merger (p. 29).

¹ An employee shall not “use his or her official position or title, or personally and substantially participate” in a “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” either on that employee’s financial interest or the interest of a “person closely affiliated with the employee.” A particular matter is one in which the “deliberation, decision, or action” is “focused upon the interests of specific persons, or a discrete and identifiable set of persons.” A 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.” A person closely affiliated with the employee includes an “affiliated organization,” which is an “organization or entity” in which the employee “serves as officer, director, trustee, general partner, or employee,” in which the employee is “a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value;” or “[t]hat is a client of the employee or member of the employee’s household.” An affiliated organization also includes “a person with whom the employee is negotiating for or has an arrangement concerning prospective employment.”

² 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, avoiding both actual and perceived conflicts of interest and preferential treatment.”

³ “No employee shall engage in outside employment or private activity that conflicts or would 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.”

⁴ An employee shall not “[r]epresent another person, have a financial interest, or provide assistance in prosecuting a claim against the District of Columbia before any regulatory agency or court of the District of Columbia.”

Digi-Media

Evans's staff contacted WMATA 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 (p. 51-52). Evans's relationship with Digi and MacCord created the appearance of conflicting with the fair, impartial, and objective performance of his official duties (p. 58).

Squash on Fire

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 (p. 74-76).

EastBanc Technologies

In early 2017, Evans and his staff arranged a meeting between EastBanc Technologies and senior officials at OCTO, to facilitate EastBanc pitching software initiatives to OCTO that could lead to city contracts for the company (p. 77-78). In early 2017, Evans and his staff arranged a meeting between Anthony Lanier, EastBanc's President, and Councilmember Kenyan McDuffie, to discuss a potential development project in Ward 5 (p. 78-79).

Willco

In March 2017, Evans introduced the "Relieve High Unemployment Tax Incentives Act of 2017", which included financial incentives for private entities to build film, television, and digital media production facilities like those Willco was actively developing in the District (p. 83-84). In March 2017, Evans and his staff arrange a meeting between Jason Goldblatt, Willco's President and CEO, with Councilmember Kenyan McDuffie's office to discuss Willco's proposal for a public-private partnership to establish a sound studio facility in Ward 5 (p. 84-85). In May 2017, Evans and his staff assisted Willco in pressuring DDOT to stop work on a curb installation that, if completed, would prevent Willco from accessing a private alleyway (p. 87). In June 2017, Evans spoke with a senior official in the Mayor's office at the request of Jason Goldblatt, Willco's President and CEO, to obtain information on whether the District government intended to renew a lease on Willco property (p. 87-88). In June 2017, Evans and his staff, at the request of Willco executive Gary Cohen, assisted Willco in obtaining an expedited plumbing permit for one of Willco's development projects (p. 88).

Forge

In 2015, the Mayor proposed increasing the tax rate in certain commercial parking operations from 18 to 22 percent. Evans recommended in the Committee on Finance & Revenue's budget report that the Council maintain the parking tax rate at 18 percent, unless the District met certain financial benchmarks. Evans voted in favor of these recommendations at the Committee level (p. 64-65)⁵. Mr. Evans voted in favor of the FY 2016 budget, including the amendments proposed by the Committee on Finance & Revenue, at both first and second reading (p. 65). In May 2017, the Committee on Finance & Revenue's budget report again recommended maintaining the commercial parking tax rate at 18 percent, as the financial conditions Evans proposed in FY 2016 had not been met. Evans voted in favor of these recommendations at the Committee level (p. 65-66). Mr. Evans voted in favor of the FY 2018 budget, including the amendments proposed by the Committee on Finance & Revenue, at both first and second reading (p. 65-66).

II. Disclosure Violations

Rule: Code of Conduct Rule XI(c)(1)⁶, D.C. Official Code § 1-1162.24

From 2014 to 2018, Evans failed to report his ownership of 2,047 shares of Eagle Bancorp, Inc. (p. 20, 93). In 2015, Evans reported that his income from Manatt was "None (or less than \$1,001) even though other sources confirm he received \$14,501 from Manatt that year" (p. 20). From 2016 to 2018, Evans failed to disclose

⁵ Although Mr. Evans' actions as described under No. 25 and 26 technically occurred during the period when neither Mr. Evans nor his employer represented Forge (these actions occurred after Mr. Evans left Patton Boggs, but before he was able to engage Forge as a client of Manatt), we have listed them here because they provide context for his actions in May 2017.

⁶ "An employee who is covered under section 224 or 225 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011...shall file the required disclosures in accordance with the Government Ethics Act." In turn, that Act requires public officials, including Councilmembers, to disclose the name of each business entity "in or from which the public official...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." D.C. Official Code § 1-1162.24(a)(1)(A)(i). They must also disclose those entities from whom they received "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." D.C. Official Code § 1-1162.24(a)(1)(A)(ii). And, they must disclose entities in which they serve "as an officer, director, partner, employee, consultant, contractor, volunteer, or in any other formal capacity or affiliation." D.C. Official Code § 1-1162.24(a)(1)(A)(iii).

NSE clients (p. 20). In 2017 (for the period running from May to November 2017), Evans failed to disclose the existence of NSE itself (p. 20).

III. Gifts or Gratuities from Prohibited Sources⁷

Rule: Code of Conduct Rule III(a)⁸

Evans received availability retainers in excess of \$400,000 from Digi, Willco/Fischer Holdings, The Forge Company, EastBanc Inc., EastBanc Technologies, Squash on Fire, and EagleBank/RDP Management, Inc. without any tangible work product (p. 36).⁹

IV. Use of Government Resources

Rule: Code of Conduct Rule VI(a)(2)¹⁰

Evans directed or requested his staff to perform duties related to NSE during regular works hours (Exhibit 25).

⁷ From August 2016 through February 2019, Mr. Evans received a total of \$512,500 from clients of NSE, Inc. (p. 36) At least \$400,000 of these payments were from prohibited sources. (p. 1)

⁸ An employee shall not “solicit or accept, either directly or indirectly, any gift from a prohibited source.” A gift means a “gratuity, favor, discount entertainment, hospitality, loan, forbearance, or other item having monetary value.” A prohibited source is a person or entity who “[h]as or is seeking to obtain contractual or other business or financial relations with the District government; [c]onducts operations or activities that are subject to regulation by the District government; or [h]as an interest that may be favorably affected by the performance or non-performance of the employee’s official responsibilities.”

⁹ See the attached chart.

¹⁰ Employees shall not: “[o]rder, direct, or request an employee to perform during regular working hours any personal services not related to official Council functions and activities, with the exception or incidental use of Council time or resources for the purposes of scheduling.” Note that it is subsection 1, related to the use of Council time or government resources, that includes an exception for *de minimis* activity. Subsection 2, quoted above, does not include such an exception.

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

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

Attachment C

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November 5, 2019

VIA HAND DELIVERY AND EMAIL (mcheh@DCcouncil.us)

Councilmember Mary Cheh
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 108
Washington, D.C. 20004

Dear Councilmember Cheh:

As attorneys for Councilmember Jack Evans, we are submitting and asking the Council to review this response to its outside counsel's report. We also request that you make our submission equally available to the Council and the public, as has been done with its own counsel's submission. We also appreciate the opportunity for Mr. Evans and his counsel to address these issues with the Council when it takes up the report as soon as can be arranged.

I. EXECUTIVE SUMMARY

This Executive Summary presents some initial responses to the report submitted yesterday by O'Melveny & Myers ("OMM"), lawyers for the D.C. Council. The final version of that Report was given to us just an hour or so ago, even though it had been given to all Councilmembers yesterday and leaked to the media about the same time. The articles written from the unauthorized leak and now the formal conference you and others have had necessitate as rapid a response as we can make. Therefore, some of the page citation in the long form

response are not to the correct page in the final report (as they are based on a preliminary draft we received last Friday).

In addition, each of the issues in the Report is addressed in detail after this summary. We also are enclosing an October 25, 2019 letter we wrote to OMM that we had hoped they would address (but they did not) and the formal opinions of an ethics expert we retained to provide experienced perspective to the Council and public.

1. As an Ethics Expert Confirms, the Report's Conclusions of Rule Violations Are Simply Wrong, Misapply the Law, Make Up New Requirements and Reflect a Total Misunderstanding of the Permissibility of Legislators with Outside Employment

The Executive Summary of the Report identifies eleven alleged violations of the Code and also faults him for various entries on his financial disclosure forms. The alleged violations are organized here into relevant subject areas with the OMM numbers from the Executive Summary. To begin with, it should be noted that the Report attributes what it concludes as violations to Mr. Evan's "misunderstanding" of the rules versus a deliberate attempt to violate them:

A. Mr. Evans' Financial Disclosures

Financial disclosure forms were inadequate

- He failed to disclose his NSE clients
- He failed to disclose his income from Manatt
- He improperly omitted NSE as a source of income on one disclosure form

Response

The plain language of the instructions does *not* require the listing of individual clients (only an "employer") and the alleged violation is based on an after-the-fact creation of new requirements by OMM. The other alleged "omissions" were simply clerical errors where other submissions in the same form demonstrated there was *no* intent to conceal his outside employment or income. These clerical omissions were corrected when discovered.

B. Mr. Evans' support for Pepco-Excelon while employed at Manatt

OMM 1 Evans spoke at a public council meeting in favor of Pepco-Excelon merger; voted for the budget amendment that diverted funds away from research challenging private utility ownership; Evans used his position and title to influence agency approval of the merger.

Response

The Report ties Evans' actions in favor of the Pepco-Excelon merger to a law firm's (where he ended up working) relationship with Pepco. They do so by starting the clock *before* Mr. Evans worked there, despite the fact that it is not clear when Mr. Evans became aware of the relationship, even though Mr. Evans never worked on the matter at the firm, even though Mr. Evans' support for the merger pre-dated any conversations with the firm, and despite the fact that when he learned of the relationship with the firm he disclosed it to the Board of Government Ethics and Accountability.

C. Mr. Evans' provision of routine constituent services

OMM 2 Evans' Deputy Chief of Staff connected Don MacCord of Digi Media with WMATA's assistant GM to facilitate overnight sign installation after there was the possibility of MacCord's company becoming a client.

Response

All of the alleged violations arising from the issues with Digi Media fall away because Mr. Evans decided *not* to accept Digi as a client and did so quickly, on his own, without anyone raising a question or concern, and when there were no inquiries or investigation or media questions. It shows how he tried to adhere to ethics rules, not violate them.

Moreover, the alleged violation amounts to an email from MacCord to Evans' staff requesting assistance in connecting with WMATA officials who could grant after-hours access to government facilities to perform overnight work, a routine request and matter. Since Evans was out of town, his staff passed on the request and copied him on the emails. This is one of many examples of Evans or his staff playing "traffic cop" to connect his constituents to the right government agency or information, and nothing more.

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OMM 4 Evans' Legislative Assistant emailed the D.C. Office of the Chief Technology Officer to arrange a meeting for EastBanc Tech.

OMM 5 & 7 Evans Arranged a meeting between two clients at NSE (EastBanc and Willco) and Councilman McDuffie.

OMM 8 Evans and his staff provided assistance to Willco in trying to influence the District Department of Transportation to stop work on a curb installation.

OMM 10 & 11 Evans and his staff answered constituent services requests from Willco to obtain information from the Mayor's office and to inquire about a delayed plumbing permit

Response

This group of alleged violation is a "catch-all" that casts constituent services as improper. But as Mr. Evans repeatedly explained, and as ethics experts have opined, outside employment that is allowed under the Code does not extinguish a legislator's responsibilities to his constituents. Issues as mundane as road pavers, delinquent permits, and forwarded emails do not constitute conflicts of interest. They are among the many routine services that councilmembers provide all constituents, regardless of any other relationships that may exist.

One of the OMM Report's fundamental flaws is its conclusion that a public official may no longer help a constituent with a problem, as he or she did before and as he or she does for thousands of others, if that person becomes a client. That contradicts ethics doctrine. The work done was just that sort of routine constituent service.

And as fundamental is the fact that the Report shows that Mr. Evan's helping with these constituent services were consistent with his office practices to non-clients, consistent with his assistance to these individuals before they were clients, and consistent with the positions he has taken for nearly three decades in office.

D. Mr. Evans' consistent, disclosed and well known policy positions that remained unchanged before and after establishing his consulting relationships

OMM (3) Evans voted in favor of the 2016 Omnibus Amendment Act that would involve his NSE client Squash on Fire.

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Response

The 2016 legislation were merely a technical amendment that was necessary to properly implement existing legislation that Mr. Evans did before in 2010, and that predated NSE's existence entirely. The amendment was requested by the D.C. CFO in order to effectuate the previously-approved expenditure of maintenance funds for the West End Library and Fire Station. There is no basis to connect this technical correction to NSE's later relationships.

OMM (6) Evans supported the 2017 tax incentive legislation that incentivized development of film production activities in the District which a principal of one of his clients (Willco) testified in support of.

Response

As Mr. Evans repeatedly explained in his interviews with OMM, he has always considered himself the "film guy" on the Council. In 2013, before NSE even existed, Mr. Evans publicly supported nearly identical legislation to the bill implicated in this alleged violation. The Report takes his consistent policy position on this subject as a conflict of interest while disregarding his prior public support and then erroneously concludes that the Willco official appearing at a hearing required Mr. Evans to abandon his long-standing role on D.C. development.

OMM (9) Evans introduced and subsequently voted for the 2018 Parking Tax legislation that kept rates at 18%, as they had been previously, which could benefit a subsidiary to his client The Forge Company.

Response

The Report implies this vote was connected to NSE's relationship with Forge. However, that innuendo disregards Evans' long-standing public position that D.C.'s high tax rate was detrimental to the business community at large, that he had voted against similar measures before any client signed on with him, and that this opposition benefited lots of businesses and was never directed to assist a single client.

2. Nevertheless, the Report Confirms That Mr. Evans' Errors Were Not Intentional, Resulted Only from a "Misunderstanding" Of The Rules, and There Was No Evidence That Any Official Act Was Ever Tied to his Consulting Relationships

The Report itself concedes that where its application of the Code differed from that of Mr. Evans, that difference came as a result of "misunderstanding" and "failure to correctly implement" a compliance model that was never clearly established in the first place. There was no evidence or conclusion of tying financial gain to official acts or Mr. Evans *changing* a position to benefit a client. In fact, the Report unfairly ignores completely the examples of when Mr. Evans opposed the interests of clients.

3. The Report Reached its Flawed Conclusions as a Result of an Unrealistic Deadline, Selective and Incomplete Use of Interview Testimony, and Improper Inferences from Various Witnesses who were Unavailable for Interviews

The Report flagrantly misrepresents Mr. Evans' testimony pertaining to issues at the very heart of its allegations. Some selected quotes in the Report are exactly the opposite of what he told OMM. For example, the Report grabs onto one snippet of testimony out of four days while disregarding several minutes' worth of detailed explanation.

The Report implies that Mr. Evans was cavalier about his obligation to monitor for conflicts of interest. But to explain his decision-making process, Evans gave detailed explanations about each issue in the report, as well as several other ethical dilemmas he has faced in his decades-long career. The Report conveys none of this detail, and instead holds up a single unartful phrase – "I know it when I see it" – as though that was all Evans had to say on the matter.

The Report leaps to the conclusion that Evans' constituent services were tied to his consulting business, when the evidence shows that he provided the same services to everyone. The Report finds violations in issues as mundane as forwarded emails, loose pavers, and a slow-to-issue plumbing permit.

The Report ties Evans' actions in favor of the Pepco-Exelon merger to his employer's client relationship with Pepco, even though the firm represented Pepco before Mr. Evans was employed there, and he raised the issue with BEGA when he learned about the relationship.

4. The Report Completely Fails to Address the Contradictions in the Code, Financial Disclosure Form Instructions, Lack of Ethics Training and Lapses by D.C. Ethics Offices

OMM counsel stated that applying the Code is “a somewhat technical exercise, because it has technical language in it” and that “there may be a difference between a technical violation and a more substantive violation.” OMM counsel conceded that in some cases, interpreting disclosure requirements is a “quasi-philosophical question about the form,” which is so complicated and poorly drafted that he “went back and looked at this since [he] was sort of confused by it” and had trouble reading it correctly. Before coming up with its own interpretations of rules and instructions as it seems to have done, OMM should have been given the time to consult with ethics experts.

They did not do that, but we did. Attached to this document is an opinion letter from Michael Frisch, noted ethics expert, Ethics Counsel and Adjunct Professor at Georgetown University Law Center, which provides crucial context that the Report leaves out. We offered to make Professor Frisch available to OMM but they did not accept the invitation.

Moreover, the Report itself shows that BEGA and the Council failed at multiple critical junctures to provide the clarity, training, and guidance needed to avoid problems inherent in permissible outside employment.

The Report’s Executive Summary by setting out six suggestions for improvement of the Council’s ethics regime finally addresses what we requested in our meetings – the fundamental systemic issues that this matter involving Mr. Evans has uncovered. They did not, however, address the contradictions in Code of Conduct provisions and financial disclosure form instructions, changed rules that were not flagged to Councilmembers, and the inherent tensions that exist when a government body permits outside employment for its officials. Instead, while acknowledging the need for change, they apply the changes they request to Mr. Evans retroactively.

II. OVERVIEW AND INTRODUCTION

On July 9, 2019 the Council voted to conduct its own investigation into allegations concerning Mr. Evans. While the Council, and more importantly, the citizens of Washington, D.C., have every right to understand Mr. Evans’ conduct, the timing of the effort was and is problematic. To begin with, there were and are other investigations, especially one by the U.S. Attorney, that made it predictable that a Council inquiry would not be able to get at all the

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important facts because various witnesses had to keep the other inquiries as priorities. In addition, the Council then placed an unrealistic deadline on OMM to go over multiple issues that require more analysis and context than the time allowed. And then, this investigation was commissioned after the Council concluded that Mr. Evans had committed ethical violations, reprimanded him for one, had a hearing over others, and after many of the Council had already made statements indicating they had already concluded Mr. Evans had violated the rules.

“Confirmation bias” is *“the seeking or interpreting of evidence in ways that are partial to existing beliefs, expectations, or a hypothesis in hand.”* Raymond S. Nickerson, Ph.D., Tufts University, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 R. Gen. Psych. 175 (1998).

The Report submitted to the D.C. City Counsel by its outside law firm demonstrates the application of this phrase.¹ As we lay out in the remainder of this letter, and as is confirmed by an experienced, reputable ethics expert, the Report does so with (a) a combination of selective presentation of facts, (b) rewriting of the Code of Conduct with definitions and clarifications it does not contain and ones inconsistent with precedents, and (c) a constant after-the-fact, 20/20 hindsight approach to issues that have never been addressed by the Council, but which the events surrounding Mr. Evans indicate should be discussed for future rules. For example, on October 25, 2019, we submitted a letter to OMM asking it to consider a number of issues before writing its report. Among these were the inherent tensions of outside employment with full-time legislators, the lack of important definitions in the Code of Conduct (such as what is and who measures an “appearance” of a conflict), and clear contradictions in the financial disclosure

¹ This letter makes reference to numerous passages in “the Report,” which is actually the draft report provided to us on October 31, 2019. While there may be some differences, e.g.—changes in pagination, we expect the substance of the final Report to remain essentially the same.

forms (reporting stock only when a company transacts business *with* D.C. versus when a company transacts business *in* D.C.) and the lack of real notice and ethics training to all Councilmembers and their staffs. Probably, because of the press of time, the Report addresses none of these, but they are critical to a fair and impartial review of Mr. Evans' conduct.

With all of that, Mr. Evans has stated repeatedly that he regrets a number of the things that he did and did not do. He could have submitted each of his client relationships to the General Counsel for further review (even if the record shows that Office may not have had the resources or background to process that information), he could have made more disclosures of his own consulting clients (even if the rules were unclear as to when or how that should occur), and he could have spent more funds and time having outside accountants and attorneys review his business and disclosure reports. However, *none* of his lapses were intentional; *none* reflected any corrupt agreement with friends and clients; and *none* ever compromised Mr. Evans' positions, votes, support or work on long-standing issues for which he has been consistent for almost 30 years. Indeed, even the OMM Report concludes only that Mr. Evans' lapses resulted not from an attempt to intentionally circumvent the rules but from: "misunderstandings of the ethical rules."²

A careful and fair reading of the OMM Report will note that even with the constraints in which it was done, the outside counsel concluded there were *no* rule violations in so many of the issues that have been raised in the media, a few of which include:

1. The investigation did not find evidence sufficient to establish that these relationships (between Mr. Evans and *inter alia* William Jarvis) were likely to present a direct and

² Report at 91.

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predictable effect on Evans' personal financial interests within the meaning of the Code of Conduct or Council rules during the relevant time period.

2. The investigation found no evidence that Bill Jarvis received any compensation for his assistance with NSE or that he had any other financial interest in the company.
3. The investigation found no indication that the limited amount of time that Evans' staff spent on purely NSE-related tasks (some of which were performed outside of regular business hours) ever interfered with their ability or availability to fulfill their official duties at all.
4. The investigation did not uncover any evidence of ethical violations as a result of Evans' employment at Squire Patton Boggs or BakerHostetler.

And for those violations OMM did find, as an ethics expert concludes³, these conclusions rest on really faulty propositions that either are undercut by reading an entire transcript of an interview or reference to ethics law and commentary. Here are just a few:

1. OMM believes that once a person or company became a client of Mr. Evans' (or presumably a law firm for which he worked), he and his staff could no longer provide that person with normal constituent services as they did before and for the other 630,000+ residents of D.C. *That surely is not the correct interpretation of the rules.*
2. OMM believes that once a person or company became a client of Mr. Evans (or presumably a law firm for which he worked), he had to recuse himself from participating in any official acts that could benefit that client or the firm for which he worked even if his actions were exactly the same as he had done for decades before the person or entity became a client. *That surely is not the correct application of the rules.*
3. OMM makes no distinction between Mr. Evans taking an action or supporting an issue generally – for example promoting development of New York Avenue – versus participating in a bill or action that would award a particular person associated with Evans a contract on New York Avenue. *That surely is not the correct view of ethics prohibitions.*

³ See November 4, 2019 Ethics Letter of Michael Frisch.

4. OMM has equated a law firm or other employer of Mr. Evans having a financial interest in one of its clients – for example when Manatt represented Pepco without Mr. Evans’ participation or knowledge – with that being the same as Mr. Evans himself having that financial gain when Mr. Evans was always on a fixed salary, never had his pay dependent on whether he brought in clients or not and never had a success fee or bonus. *That surely is not the correct definition of what creates a conflict of interest.*

III. ERRORS IN PROCESS IN THE COUNCIL’S INVESTIGATION AFFECTED THE CONCLUSIONS OF THE OMM REPORT

A. The Report rushed to do in two months what should have taken a much longer period.

The Report provides a broad and far-reaching treatment of Mr. Evans’ business, political, and personal relationships spanning many years. It was conducted all while Mr. Evans and several crucial witnesses were simultaneously responding to inquiries in other parallel investigations. Mr. Evans himself sat for four interviews over more than twelve hours and addressed hundreds of pages of documents. However, interview topics were revisited over and over again, as OMM compiled information from various additional sources. Within a week of the final round of interviews, OMM provided a draft of its nearly 100-page report, giving Mr. Evans’ counsel two days to review the Report before it was submitted to the Council. (And then someone in the City decided to leak the final Report to the media nearly a day before Mr. Evans was allowed to get a copy). As previously noted, on October 25, 2019, we provided OMM with a twenty-page submission and a request to address some systemic issues when viewing Mr. Evans’ conduct. The final report does so as an afterthought and makes suggestions for future

improvements but nevertheless criticize Mr. Evans for not failing to know before what they only suggest be changed now. We also requested that OMM meet with outside ethics experts which seemed like a critical step at the time and, given OMM's decision to rewrite the Code of Conduct to criticize Mr. Evans, was even more important. Again, the deadline under which it was working seems to have prevented that from happening.

All in all, the time limits have caused some of the mistakes and questions we raise in this letter.

B. The Report was drafted without the input from outside ethics experts.

Application of a code of conduct, written as D.C.'s has been, requires some thought and analysis. OMM itself notes on various occasions how there were contradictions and ambiguities and "technical" issues in the Code and the disclosure forms. For example, OMM counsel stated that applying the Code is "a somewhat technical exercise, because it has technical language in it" and that "there may be a difference between a technical violation and a more substantive violation."⁴ He conceded that in some cases, interpreting disclosure requirements is a "quasi-philosophical question about the form,"⁵ which is so complicated and poorly drafted that he "went back and looked at this since [he] was sort of confused by it"⁶ and had trouble reading it correctly.⁷ Before coming up with its own interpretations or re-writing of rules and instructions as it seems to have done, OMM should have been given the time to consult with ethics experts.

⁴ Transcript, September 3 Interview with Jack Evans, at 121.

⁵ Transcript, September 16 Interview with Jack Evans, at 181.

⁶ Transcript, September 23, 2019 Interview with Jack Evans, at 187.

⁷ Transcript, September 23, 2019 Interview with Jack Evans, at 190-91.

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For what OMM conceded was the need for case-by-case analysis,⁸ we offered to make a well-reputed ethics expert available to OMM. Among other things, Michael Frisch is current Ethics Counsel at Georgetown University Law Center. He also served as a senior assistant bar counsel to the D.C. Bar and has written and testified extensively about ethics issues. But that meeting did not occur.

Instead, OMM seems to have drafted its report by applying its own view of rules and instructions which they sometimes agreed were subject to different interpretations. For example,

1. OMM concluded that an official filing a disclosure form must include the identity of clients unless the filer has a “privileged” relationship with the client. That is simply a made-up, after-the-fact new requirement that does not exist in the Code or the instructions. On the face of the form’s instruction, the requirement is for the identity of the “employer,” the plain meaning of which is the firm or business that employs the official. If more should be reported, this can be clarified for the future, but it is not right to graft a new requirement on Mr. Evans now.
2. OMM concluded that an official should recuse him/herself for an issue that benefits a client, even as to a general position (versus one specific to a person or business) taken by an official, and even if the position conforms to specific and demonstrable prior actions. This turns the ethics rules on their head by allowing a client to manipulate an official’s recusal when there is no conflict (the official’s position was not affected by any client relationship). For example, OMM was told that Mr. Evans had positions *against* the interests of certain clients. Had he been required to recuse himself simply because he had such a client, the client would have removed an opponent – sometimes the only opponent – of the actions it wanted. The Council cannot want that result.

Having not consulted an independent expert, OMM compounded the error by going to BEGA just two weeks ago to have it opine, after-the-fact,⁹ on what Mr. Evans did and did not

⁸ E.g., Report at 8, (“Determining whether a matter before the Council is a ‘particular matter’ typically requires a case-by-case analysis.”)

⁹ See Report at 18 (“In response to our investigative inquiry, BEGA opined on Evans’ explanations for 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.”) (citing “Oct. 17, 2019 BEGA Interview”).

know when BEGA “had a dog in the race.” The record shows BEGA’s lapses and deficiencies in providing advice and training and clear rules. Going back to an umpire who missed the call during the game to say the player was out was not a proper way to seek ethics advice.¹⁰ And, oddly, OMM often states that Mr. Evans and other Councilmembers should be consulting with ethics experts often in the process of doing their job, and yet did not follow their own advice in preparing its Report.

C. The Report often makes an unfair and unwarranted assumption about the testimony of critical witnesses who were forced to decline to testify because of other ongoing investigations.

The OMM Report claims that the team “took precautions to help ensure it did not impede or frustrate any parallel governmental investigations.”¹¹ Apparently those “precautions” amounted to forcing essential fact witnesses to choose between cooperating with the inquiry or waiving their own legal rights in those parallel investigations or invoking their rights. Then, having done so, OMM speculated on the motives and actions of those it could not interview. For example, OMM refers to emails or interviews of third parties other than Don MacCord of Digi Media to speculate what MacCord intended to achieve in his offering Mr. Evans to be a client or even helping with the Hillary Clinton for President campaign, even though Mr. Evans was not on those emails and MacCord was not available to explain them.

No better example of the flaw in the process exists than OMM’s addressing Mr. Evans’ retainer and on-call agreements with NSE clients. Without any factual basis, and staking out a

¹⁰ For example, without criticism, OMM notes (Report at 27) that when Mr. Evans sought advice from the Council’s General Counsel, the response was, in effect, to follow the rules – nothing more. Rather than point out that the entire advice process was not working well, OMM basically put all the blame on Mr. Evans.

¹¹ Report at 1.

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new theory of a potential problem, OMM raises the specter of whether or not retainers can be “gifts” under the rules.¹² Putting aside how that would impact even lawyers at OMM itself, the

Report notes:

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 Russel Lindner, the Chairman of Forge, who cooperated with this Investigation, most of the other witnesses associated 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.¹³ Pincus, the former Vice Chairman of EagleBank Pincus; 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 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.”¹⁴

However, the one client who did cooperate and provided all the explanation needed was Rusty Lindner. He surely explained the value given by Mr. Evans for the fees earned under the NSE consulting agreement.¹⁵ Rather than using that as the best example, the OMM Report muses as to what the others would say with a negative inference that the retainer did not provide value.

In addition, the Report completely disregards Mr. Evans’ specific testimony about this issue. As he explained, NSE consulting applied a model he had learned from Tommy Boggs, the

¹² Report at 32.

¹³ Apparently in Mr. Bunnell’s estimation, personal jurisdiction is a mere technicality.

¹⁴ Report at 29. It should be noted that MacCord’s conviction for securities fraud was unrelated to Mr. Evans.

¹⁵ Report at 29.

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senior partner of the Patton Boggs firm, who had commonly taken clients on retainer for the sake of availability. He said:

I was on a retainer basis. That's how we set it up. So I was available to do what they needed me to do when they contacted me, if they ever did. So it was a retainer agreement, very similar to the ones that existed at Patton Boggs with many, many people, including Tom [Boggs].

You know, Tom [Boggs] probably had 100 retainer agreements with people who never called, never contacted him ever. So that's kind of the setup that was in place with my clients.¹⁶

This precisely matches the testimony of Rusty Lindner, who stated "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] sort out where the city was, on a fairly casual basis, an irregular basis."¹⁷

Having failed to see the consistency between Mr. Evans' and Mr. Lindner's explanations, OMM then oddly takes it a step further. The Report inserts a back-of-the-napkin calculation to determine Mr. Evans' hourly rate for his basic retainer versus the rate at which additional hours would be charged.¹⁸ This comment, clearly made with a negative implication, is completely inapposite to the recognized concept of a retainer agreement, where the retainer itself is a legal

¹⁶ Transcript, September 3 Interview with Jack Evans, at 41.

¹⁷ Report at 29.

¹⁸ Report at 28 ("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. So for a client with \$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 a year), far more than the \$250 per hour that Evans would charge for work in excess of the base commitment.").

service with independent value.¹⁹ This arrangement was not new to NSE, and is quite common among law firms and consulting shops in D.C., but it is treated as a hint that something wrong occurred.

IV. SELECTIVE PRESENTATION OF FACTS SLANT THE REPORT

A. The Report selectively misquotes Councilman Evans' testimony on multiple subjects.

The Report hangs great importance on Mr. Evans' statement that his process for determining whether a particular matter presented a conflict came down to "I'll know it when I see it."²⁰ The Report quotes Evans making that statement in his third of four in-person interviews. But it completely disregards his lengthy explanation—spanning five uninterrupted pages of testimony transcript—in which Mr. Evans expounds on his understanding of the Code of Conduct conflicts rules and gives examples in great detail.²¹ During *that* section of testimony, even OMM counsel agreed that the issues and process thinking Mr. Evans explained "are important considerations" as to how the Code applies in real life.²² No mention of this detailed thinking made it into the Report, which, instead, casts Mr. Evans' process as cavalier and careless. Yet at the time of the explanation that is not included, OMM counsel conceded that "we may disagree about whether your view of how to approach conflicts is exactly the same as the view and the approach that the code of conduct takes" but that "[i]t's more of a point that

¹⁹ November 4 Ethics Letter of Michael Frisch ("the suggestion that availability retainers to clients might constitute a "gift" is a frivolous suggestion. A fee for any legal service - including availability - is never deemed a gift by the lawyer, client or Internal Revenue Service. Such a fee is entirely consistent with an attorney's ethical obligation. See DC RPC 1.5(a).").

²⁰ Report at 15.

²¹ Transcript, September 23 Interview with Jack Evans, at 7-11.

²² *Id* at 12.

maybe lawyers should debate at the end of this.”²³ Without Mr. Evans’ full explanation, this debate will be one-sided.

The Report also states that “Evans incorrectly understood the recusal requirement to apply exclusively to voting.”²⁴ This is a flat-out mischaracterization of Mr. Evans’ testimony. He stated in clear and simple terms that he understood his recusal requirement to reach conduct beyond voting:

“Q: The question was: Did you understand that what you were barred from was voting and nothing more than voting, I think.

MR. EVANS: No. More than voting.

Q: Then explain it.

MR. EVANS: You’re barred from participating as the Code says—

Q: Okay.

MR. EVANS: -- in a matter, in any matter from, in which you’re a client or yourself can financially benefit.”²⁵

The conclusion that Mr. Evans misunderstood the rules because he thought that they applied only to voting simply misstates what he said.

B. The Report suggests that Mr. Evans’ staff had no process for aiding him in avoiding conflicts, but the record shows they did so on multiple occasions.

Another example of “confirmation basis” and how the OMM Report unfairly holds Mr. Evans accountable for systemic problems is its criticism that he did not have a formalized point-person to systematically screen for conflicts. After its criticism of Mr. Evans, the Report later

²³ *Id* at 11-12.

²⁴ Report at 13.

²⁵ Transcript, September 16 Interview with Jack Evans, at 50-51.

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then concedes, “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.”²⁶ Nor is there any evidence that any such program has ever been promoted in any of the Council’s scant ethics training materials. Nonetheless, the Report asserts that “the absence of a structured approach to ethics compliance in Evans’ Council office is relevant as it exacerbated Evans’ subjective misunderstandings” of the Report’s specific readings of the requirements of the Code.

In reality, the record shows that Mr. Evans’ staff often assisted him in avoiding conflicts, and notwithstanding the Report’s inaccurate assertion to the contrary, they acted to prevent such conflicts on more than one occasion. What this shows is *not* an effort to circumvent any rules, but an intent to comply. For example, the Report subsequently notes that his Legislative Counsel highlighted potential conflicts issues for other members of Evans’ staff,²⁷ and that Mr. Evans’ chief of staff Schanette Grant conferred with his assistant at Manatt for the same purpose.²⁸

When a report makes a criticism that supports its interpretation that a rule violation occurred, and the record undercuts the criticism, the conclusion too is undercut. What should come from this part of the OMM Report are new rules and procedures for the future (e.g., having a designated ethics staff member, requiring more submissions to BEGA), that apply to all Councilmembers and not an after-the-fact singling out of Mr. Evans who, as it turned out, did have staff involved.

²⁶ Report at 14.

²⁷ Report at 20.

²⁸ *Id.*

C. The OMM Report Misstates Mr. Evan's Actions with Respect to the Digi Stock Purchase.

The Report inaccurately states the facts and mischaracterizes the nature of the possible Digi Media stock transaction. Simply stated, when Mr. Evans discussed the possibility of a consultant relationship with MacCord in the summer of 2016, MacCord raised the issue of offering Mr. Evans Digi stock. Mr. Evans told MacCord that he could not receive a gift of stock, but he would consider purchasing stock as an investment. Although MacCord did not quote a specific price at that time, he stated it would be inexpensive, since Digi was a startup. When the stock was delivered in October 2016, Mr. Evans had already decided (and communicated to MacCord) that he would not have a business relationship with Digi, and he immediately returned the stock. Only by ignoring the proper timeline could the Report lodge this criticism.

V. THE SPECIFIC CONCLUSIONS OF RULE VIOLATIONS ARE SIMPLY WRONG UNDER A CORRECT, FAIR AND OBJECTIVE APPLICATION OF EXISTING RULES AND THE ENTIRE RECORD.

A. The Report turns Mr. Evans' relationship with Digi Media—which actually shows his clear intent to avoid conflicts—into the bulk of his alleged violations.

Mr. Evans provided numerous examples of his well-reasoned choices to recuse, abstain, and take other similar actions to avoid conflicts as he engaged in permissible outside employment, almost *none* of which were mentioned in the Report. For example, The Scottish Rite had retained Manatt to represent it in its efforts to redevelop a tract of land adjacent to its temple on 16th Street, Northwest. Mr. Evans had no personal involvement in the Scottish Rite's account at Manatt, and furthermore, as a legislator he was opposed to the Scottish Rite's position before the Council. Nonetheless, he took himself out of any consideration of the matter because

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he wished to avoid any conflict. Additionally, Manatt represented Joe Mammo, a D.C. developer who wished to tear down and redevelop several area gas stations. As a Councilman, Mr. Evans has long been concerned about the shrinking set of options for District drivers to get fuel and repairs. In direct opposition to the desires of his employer's client, Mr. Evans kept true to his long-held position on the issue. When Mr. Evans was employed at Patton Boggs, there were reports that the firm was representing Marriott Corporation for the building of a hotel at the Convention Center. That was not the case but, nevertheless, M. Evans recused himself from the issue. *None* of these episodes which demonstrate an intent to comply with ethics rules are discussed in OMM's analysis.

But then, the OMM Report does something extraordinary. It took the example of Mr. Evans *not* working for a client with D.C. issues and doing so on his own with no outside questions being asked, and turned it into the major conclusion of rules violations in the Report. This is the issue of Digi Media and Don MacCord.

It is true that Mr. Evans approached MacCord as a possible NSE client in July 2016 to provide strategic business advice to MacCord and the Digi companies—but not in connection with a District government issue. It is true that MacCord and Mr. Evans had known each other for several years, and that during 2015 and early 2016, MacCord contacted Mr. Evans' office staff to ask for information about pending DCRA regulations regarding digital signage in the District. It is true that during this time, MacCord had various issues regarding D.C. regulations for digital signage. But it is also true that because of the potential for such disputes to involve the D.C. Council down the road, Mr. Evans decided that he could not and would not have a

business relationship with MacCord or Digi, and he returned the retainer and cancelled the arrangement before it really got started.

The slant of the OMM Report is exemplified by its decision to treat the short time when Mr. Evans was away in August, 2016, during which time the retainer checks to consummate the client relationship with MacCord arrived at Evans' home, as if a real client relationship existed, and that this assumed client relationship caused any actions by Mr. Evans or his staff. Both are not the case. Mr. Evans returned home and, having decided not to undertake the consulting relationship with MacCord, he returned the checks and advised MacCord in writing of his decision. Separate from the client relationship discussions, Mr. Evans also decided not to purchase the stock that was delivered to his home, and he immediately returned it as well.

The *most important* part of the Digi issue is that Mr. Evans made the right decision not to take on Digi as a client and that he did so when there were *no* questions being asked, *no* investigation, *no* outside scrutiny, and *no* reason – other than doing the right ethical thing – to not carry through. Rather than pointing out this obvious and critical fact, the OMM Report does the opposite and elevates some view that Digi was a technical client for NSE during the 20-day period after signing the agreement and deciding not to carry through, into ten separate conclusions of violations.²⁹ Amazing.

The OMM Report spends nearly 20% of the report we received —nearly as many pages as days that even some technical relationship between Mr. Evans and Digi existed —analyzing

²⁹ Report at 53-54.

whether Mr. Evans recognized the potential for a conflict quickly enough. Some of the ‘ethical lapses’ for which the Report excoriates Mr. Evans’ conduct:

- Mr. Evans’ son took an interview for a graphic design internship at Digi, which he chose not to accept.
- Mr. Evans told Digi in writing he could not take them on as a client while there was a potential for a conflict, as the Code requires.
- Mr. Evans considered buying stock in Digi at fair market value. He chose not to consummate the transaction because he perceived the risk of a conflict, as the Code requires.

In short, the Report faults Mr. Evans for doing the right thing and carefully scrutinizing what he determined to be an emergent risk of a conflict. To punish Mr. Evans for thinking the relationship with Digi over and correcting course—which occurred *before* there was one word of protest or scrutiny from the media, his colleagues, or anyone else—would be to punish him for doing exactly what any citizen would expect of a responsible public official.

B. The Report casts Mr. Evans’ consistent positions and commitment to constituent services as indicia of violations with respect to client EastBanc and Willco.

EastBanc

The Report finds violations of the Code’s conflict-of-interest provisions pertaining to NSE’s relationship with EastBanc and Anthony Lanier. In each case, the alleged violation was triggered because Mr. Evans behaved *exactly the same* before and after taking on Mr. Lanier as a client and, therefore, an incorrect view by OMM of what the rules require of an official with outside employment.

First, the Report finds a violation arising from Mr. Evans' vote in support of the 2016 Omnibus Amendment Act. Several years *before* NSE even existed, Mr. Evans not only voted for, but introduced the West End Parcels Development Omnibus Act of 2010, which granted the right to develop certain real estate parcels previously owned by the District Government in the West End neighborhood. In 2016, the District of Columbia Office of the Chief Financial Officer determined that the statute needed a technical revision. Having sponsored the original bill, Mr. Evans voted in favor of the needed technical revision, as anyone would expect.

But the Report concludes that this second vote was sanctionable because of NSE's recently-established relationship with Lanier, notwithstanding the fact that Mr. Evans would of course support a technical correction, requested by the District government, which allowed his prior legislation to work properly.

Second, the Report finds a violation arising because a member of Mr. Evans' staff connected a constituent with a government agency, just as they had done on countless occasions for countless constituents. As he emphasized in multiple interviews, constituent services make up a large majority of his duties as a councilman, and he has played "traffic cop" for individuals and businesses in his district ever since he was first elected in 1991, wholly apart from his work under any consulting agreement.

But the Report concludes that this one-time meeting, in which there is no evidence that Mr. Evans advocated for or against Mr. Lanier's position, or even attended (or knew about), constitutes a violation because of NSE's relationship with EastBanc.

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The OMM Report concludes that “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.” As ethics expert Frisch confirms, it does not. Instead, Mr. Evans’ had a reasonable position that the conflict of interest rules do not end a legislator’s relationship with his constituents or prevent him from rendering the same services he would provide to anyone in the District. Mr. Frisch’s analysis would have been helpful here:

“In *In re Sofair*, 728 A.2d 625 (D.C. 1999), the [D.C. Court of Appeals] admonished a former legal advisor to the Department of State for switching sides by representing Libya as private counsel. The court found his personal and substantial participation as a government attorney in responding to third party subpoenas in a specific matter – litigation brought in connection with the Lockerbie bombing – violated DC [Rule of Professional Conduct] 1.11 (revolving door).

Here, in contrast, there is no showing of such participation on behalf of a private client that in any way resembles special pleading on that client’s behalf. His position on matters of general application to the citizens of the District of Columbia do not constitute a matter on behalf of a specific client as ethics rules prohibit.”³⁰

Third, the Report finds another meeting-based violation when Mr. Evans connected Philippe Lanier with Councilmember McDuffie to discuss a project in McDuffie’s Ward. Both of these supposed violations are based on a flawed premise that a legislator and his or her constituent must choose between a business relationship and a representative one, regardless of whether there is any actual connection between the two in the performance of the legislator’s duties. Here again, the OMM Report concludes an ethics violation solely from the uncontroversial and consistent performance of Mr. Evans’ duties as a Councilmember.

³⁰ November 4, 2019 Ethics Letter of Michael Frisch.

Willco

The Report also finds similar violations in NSE's relationship with Richie Cohen and his company, Willco. As with the "technical violations" that pertain to the NSE-Lanier relationship, Mr. Evans' supposed malfeasance here comes in the form of maintaining consistent policy positions and routine constituent services and then an OMM new and unsupported position that once an official has a private business with clients, he or she may not do the same things he or she did before that client relationship arose. This is not the law.

First, Mr. Evans is faulted for re-introducing the same legislation in 2017 that he had first introduced in 2014. For years before and then in 2014, Mr. Evans supported development in New York Avenue and increasing revenues from film production in D.C. Friends, potential clients, strangers and adversaries knew of his consistent position. No doubt some, knowing this, would make their own plans (whether to participate or not) should such development occur. This is *not* Mr. Evans taking a position for a client; it is a *client* taking a position after it became aware of what Mr. Evans believed. And most important, Mr. Evans' long-standing position occurred before he formed NSE or had any clients.

Then in 2017, the issue of New York Avenue development and the film industry came up again. Mr. Evans maintained his support, and it turns out Mr. Cohen showed up for a hearing on the general issue. According to OMM, that appearance at a public hearing, right then and there, should have required Mr. Evans to remove himself from the issue he had worked on for decades. In fact, the OMM Report says that this episode is "particularly noteworthy given the similarities in Evans' conduct with this legislation and its predecessor, the NY Avenue Legislation." We

enthusiastically concur. It is noteworthy in that it shows that Mr. Evans' actions were based on his sincere and long-held position in favor of the policy, and had nothing to do with his consulting relationship with Willco. To require Evans to recuse here would be a prime example of the problem of over-recusal, which Mr. Frisch discusses in his letter to the Council: "Over-recusal can produce the same result [of undue influence over official acts] through slightly different means when an official is forced to drop her opposition because of some unrelated and ultimately irrelevant association that requires her to recuse. Indeed, the danger of over-recusal in judicial matters is acknowledged in the ABA Model Rules of Judicial Ethics Canons that address the issue by severely limiting the outside activities of a judicial officer. See, e.g. Canon 2 Rules 2.1 2.4 and 2.7 ("a judge shall hear and decide matters assigned to the judge, except where disqualification is required ... "). The dangers of over-recusal are far more evident in the activities of a political actor as opposed to a judge."³¹

Second, the Report indicates that Mr. Evans worked to make his long-favored project successful by connecting Willco, an eager developer whose interest in the project went back to Mr. Evans' initial 2013 (pre-NSE) legislation, and Councilman McDuffie, whose support as chair of the Economic Development Committee was necessary. Mr. Evans not only supported, but conceived of the project long before NSE existed. Willco supported and hoped to participate in the project long before NSE existed. Connecting constituents to their government is at the core of Mr. Evans' duties as a Councilmember, and that is what happened here. The more important point is that Mr. Evans and the Council never had before it a measure to specifically

³¹ November 4, 2019 Ethics Letter of Michael Frisch.

assist Willco in this effort – no bill, no contract, no zoning issue, etc. Mr. Evans supported the general proposition. Mr. Cohen, like any other developer, could try to become involved. There was nothing that Mr. Evans could do to give Cohen any advantage, and Mr. Cohen never asked him to do so. Mr. Cohen's interest was obviously contingent on a whole lot of events than had nothing to do with Evans or the Council: some law passing, some development authorized, some agency taking over, some process delineated, some application made, some application approved, funding secured, permits achieved, etc. There was nothing that required Mr. Evans' recusal from a general proposition he had supported for years.

Finally, the Report makes a violation out of several instances of what even OMM concedes are constituent services. This shows the extent to which the Report strains to find violations, again by adopting an unprecedented ethics rule – an official has to stop providing the basic services of his or her office to a constituent if that constituent is either an actual (or as OMM concludes with respect to others, a prospective) client of that official. From that faulty premise, Mr. Evans is found to have violated the rules for fielding calls about street repairs and pavers, forwarding an email from one of the Mayor's staffers about a lease, and shaking loose a delinquent city plumbing permit. These are down-the-middle constituent services; the kind of things schoolchildren are taught about in classes about local government. Because they were requested by individuals then connected to NSE, the Report concludes that they represent a sanctionable conflict of interest. But forwarding an email or allowing staff to refer a constituent to other government officials for routine requests are not "personal and substantial" involvement. And more importantly, these supposed violations are found in the performance of utterly

mundane government functions. Simply stated, public officials are not barred from providing people or companies with basic constituent services, consistent with their past practices, when the person or entity is a friend or client.

The Report's theory of the case here simply contradicts good government and ethics practice. One does not become a client in order to *diminish* what they are already entitled to as a citizen. To the contrary, the Code empowers each legislator to engage in good-faith, case-by-case analysis and strike the appropriate balance. As BEGA's own August 29, 2013 Advisory Opinion on the subject notes, "Describing the various types of services that elected officials can provide to their constituents is one thing. Defining the ethical limits of providing those services is quite another, much more difficult matter, if only because each instance of constituent services is based on its own facts. [. . .] Clearly, though, there must be limits, and, to the extent possible, those limits should not be so strict as to prevent officials from doing the work they were elected to do."³² Even Mr. Evans' fiercest critics should reject the Report's claim that the Code "practically forecloses" a legislator's ability to provide routine services to a constituent with whom he or she also has a business relationship.

C. The Report finds violations over the Digi Media and other relationships based on a standardless application of the Code's faulty "appearance-of-a-conflict" rule.

As we explained in our October 25, 2019 letter to OMM, the Code's rule against actions that could potentially create an "appearance of a conflict" are misguided on ethics law and policy grounds, and nearly impossible to apply fairly in practice. There have been numerous critical

³² Advisory Opinion, *Constituent Services by Elected District of Columbia Government Officials*, D.C. Board of Ethics and Government Accountability, August 29, 2013.

analyses of these rules, including that of Mr. Frisch, who wrote a letter on the subject during the WMATA investigation. As Mr. Frisch did not get the chance to meet with OMM, he has written a new letter which is attached to this submission.³³

In that analysis, Mr. Frisch pointed out that the appearance standard “is subject to wide misunderstanding and arbitrary, hindsight and inconsistent application.” This Report is a perfect example. The Report does not allege one single substantive breach of the public trust in any of the issues that it claims have led to an appearance of a conflict. Instead, it purports to apply a ‘reasonable person’ standard to wholly appropriate behavior, based on the idea that public trust is diminished when a person without the full facts, whose impressions may be shaped by zealous critics and rivals, sees something and leaps to conclusions. That standard is too vague and amorphous, and leads to a process that is ripe to be overtaken by politics. Among the supposed events that lead to an “appearance” of a conflict:

1. MacCord used offers of tickets and other gifts to try to influence Evans and his Council staff to provide “constituent services” to aid Digi. But Mr. Evans is not alleged to have accepted any such offer, and he never did. Again, if one wants to focus on “appearance,” the fact that Mr. Evans did not go forward with Digi as a client is a better optic.
2. Mr. Evans inquired about an internship for his son with MacCord. It is not at all clear this was intended by him to be a paying arrangement. Even so, Evans’ son turned it down and did not work a single day for MacCord. When Evans considered the totality of the Digi issues, neither he nor his family went forward.
3. NSE engaged Digi knowing its interests against DCRA regulation when OMM contends Digi “was a client.” But NSE never even deposited Digi’s checks, and Mr. Evans disengaged the relationship within a short time of the written agreement being sent. Again, all of this was Mr. Evans’ decision without any outside questions being raised.

³³ November 4, 2019 Ethics Letter of Michael Frisch.

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4. A particularly unfair allegation of an “appearance” issue is that Mr. Evans delayed but supposedly did not terminate NSE’s relationship with Digi. The fervor to find a violation is evidenced by OMM grabbing on to one sentence in Mr. Evans’ termination letter that suggested that there might be some future possibility of employment. As the ethics expert states, that such a courteous sentence with no real prospect was included in the letter does not make the letter any less a termination.³⁴ This is so picayune to undermine the entire “appearance” conclusion.
5. If the one phrase in the termination letter was not proof enough of confirmation bias, the next criticism is. The OMM Report actually makes Mr. Evans’ political activity for another candidate an issue. MacCord did raise thousands of dollars to the Hillary Clinton for President Campaign and other Evans-backed political campaigns. But the Report cannot point to (and does not even suggest) a benefit that accrued or was intended for Mr. Evans other than his wanting good candidates in office. How is supporting good candidates something that could create an “appearance” of a conflict?
6. By failing to point out that Mr. Evans was clear that he would have paid fair market value for any stock purchase, the OMM Report finds an appearance violation because Evans sought and accepted an equity stake in Digi immediately after acknowledging the potential for a conflict of interest in representing Digi and terminating the relationship before it ever really got started. As a matter of the real facts, Mr. Evans was not going to get the stock as a gift, and he never consummated the transaction and returned the stock certificate because he perceived the same issue of a conflict. Nonetheless, had he decided to go through with a market-rate stock purchase available to others, that too would have been perfectly legal.³⁵
7. In the flawed view that a client or in this case a would be client may not receive constituent services as other do, the OMM Report finds an appearance violation because Evans used his Council email account to pass DCRA information to MacCord. But forwarding an email from a government unit to a constituent is a basic public service for an elected official, and does not even suggest that Mr. Evans attempted to unduly influence any government action. The information was not private or confidential and this is a practice that Mr. Evans and his staff did for all who asked.
8. As to a meeting with Digi investors, the violation accusation is based on the incorrect view that Digi was a client of NSE. Nevertheless, the criticism of the next event is wrong even if that was the case. The Report erroneously concludes that Evans and his staff met with Digi’s investors to discuss legislative solutions to benefit Digi. In reality, the issue was an honest

³⁴ November 4, 2019 Ethics Letter from Michael Frisch (“Mr. Evans fully complied with his obligations under D.C. RPC 1.16(d) in connection with the termination of the engagement. The report’s suggestion that he had present duties to DiGi as a ‘prospective future client’ is a frivolous conclusion.”).

³⁵ See, Council of the District of Columbia Code of Official Conduct, Period 22, at III(b) (stating that an improper ‘gift’ can be ameliorated by “reimburse[ing] the donor the market value of the gift.”)

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dispute between competitors being hamstrung by what was seen as a real bureaucratic disagreement. In any event, nothing came of the investors' concern since the DCRA regulations prevailed.

9. The Report questions Mr. Evans' inquiry to the OGC on whether Digi was correct on new sign regulations being enacted by DCRA or the Council was information gathering. OMM heard Mr. Evans explain the literally hundreds if not thousands of times he or his office have done this same thing for anyone who asked – playing traffic cop for inquiries, sending people to the right agency, getting information that they could get if they knew how, etc. But again, forwarding emails is not substantial involvement, and there is no allegation that Mr. Evans tried to push for any inappropriate favors.
10. As to the allegation concerning emergency legislation, although Mr. Evans' office did not participate in drafting the proposal, he circulated a notice of intent to introduce it, in order to afford the Council the opportunity to correct the regulatory uncertainty created by DCRA's emergency regulation. To have an issue heard on the merits is not an effort to tip the scales. There was not sufficient support by councilmembers to even consider a vote on the matter, due in part to OGC and OAG concerns, and Mr. Evans withdrew the notice of intent.

Most important, *all* of the appearance violations stem from OMM deciding that Digi was a client or would-be client of NSE. The record is clear that Mr. Evans did not let that occur. The actions Mr. Evans or his staff took were in keeping with his positions on pro-business, anti-regulation, etc. They did not reflect a change brought on by a brief consideration of Digi as a client.

One more thing about “appearance.” If no one knew or raised any concerns about Mr. Evans' short contemplation of having Digi as a client and Evans, on his own, decided not to do so, isn't that the *best* example of an appearance to do the right thing?

D. The Report finds technical violations with no suggestion of substantive wrongdoing.

In many cases, the OMM Report applies a ruthlessly mechanical and formalistic reading of the Code's conflict rule. OMM does this even while acknowledging that its application is fraught and often requires complicated analysis by ethical experts. It does this even while

acknowledging that Mr. Evans' positions were never for sale, and never changed based on his client list. Instead, the Report finds fault in numerous episodes in which Mr. Evans specifically *did not* alter his course because of his relationships with his clients, but instead carried forth the same policies that got him elected and re-elected to his seat in the first place:

1. Evans introduced and subsequently voted for the 2018 budget that kept parking taxes at 18%. He voted against all such increases and if that "assisted" a subsidiary of one of his clients (The Forge Company), it also benefited dozens of other businesses.
2. Evans voted in favor of the 2016 Omnibus Amendment Act, which had a direct and predictable financial impact on EastBanc's interest in the West End development project while EastBanc was an NSE client. The 2016 event was merely a technical correction for something that had been done six years before. It is a great example of bias to call him out for this action.
3. Evans' Legislative Assistant Windy Rahim emailed OCTO to arrange a meeting on behalf of NSE client EastBanc Tech. This was a staffer connecting a constituent to a government agency for services, and nothing more.
4. Evans facilitated a meeting with Councilmember McDuffie and Anthony Lanier regarding a potential development project in Ward 5 while Lanier's companies were NSE clients. This is again connecting people to the right government agency based on their needs. It is the definition of constituent services.
5. Evans co-sponsored the 2017 film studio tax incentives legislation, in support of which Cohen (then an NSE client) again testified before the Council, just as he had in 2015 before

NSE existed. When Cohen testified in 2017, Willco was an NSE client. But as was explained in detail above, nothing Mr. Evans did in 2017 was different from years of prior positions, was not done for any client, was a general position and not company-specific, and, as Mr. Frisch explains,³⁶ a Willco person showing up to a public hearing did not require a recusal.

6. Evans arranged a meeting between Councilman McDuffie and Jason Goldblatt to discuss the sound studio project while Willco was an NSE client. This is the same as above, and similarly a nonissue as it was when he merely introduced Mr. McDuffie and Mr. Lanier.

The ethical rules are codified specifically to *prevent* legislators from putting their votes up for sale. The Report's formalistic application of rules which OMM acknowledges should be applied on a case-by-case basis, can only lead to perverse incentives for future legislators.³⁷ OMM's view that, in a system where Councilmembers have outside employment, a Councilmember and his or her staff are then disqualified from helping people who are also clients or might have become clients is untenable. OMM's view that Mr. Evans or any other Councilmember must remove himself or herself from an issue that he or she is identified with and has long supported when a client or a would-be client becomes interested in the issue is equally untenable.³⁸ It would be Mr. Evans *changing* long-standing positions after someone

³⁶ November 4, 2019 Ethics Letter of Michael Frisch.

³⁷ November 4, 2019 Ethics Letter of Michael Frisch ("the Report entirely fails to place the investigation in the proper context of a system that permits a legislator to engage in outside employment. [. . .] Ethics rules are rules of reason").

³⁸ *Id* ("when the standard of what constitutes an actual conflict is defined in an overly broad manner, constituents can be denied representation beyond what is necessary or appropriate to police abuses.").

became a client, not his *keeping* those positions (even those that were against the interests of client) that would create the “appearance” of something being wrong.

E. The Report finds violations based on speculation of facts not in evidence.

The Report leaps to conclusions that are unsupported by the record and the facts as presented. As noted above, this has caused OMM to assume the worst at every turn, but many of the Report’s conclusions do not hold up under scrutiny:

1. The OMM Report concludes that Mr. Evans and his staff answered constituent services requests from Willco more often than before Willco became an NSE client. That attributes this to the client relationship versus Willco having more issues that arose. This is a classic fallacy described in the Latin phrase *post hoc ergo propter hoc*. If something happened after, it has to be caused by what happened before. There is no basis for this conclusion in the record and, in fact, Mr. Evans and his staff explained and are known for their great commitment to constituent services. The only proper inference would have been that and not the confirmation bias that the client relationship caused the help.
2. Mr. Evans spoke at a public Council meeting in favor of the Pepco-Excelon merger and took other actions to support the concept of the merger. Remembering that the Council did not have the authority to approve or vote down the merger, Mr. Evans’ positions were not only consistent with his record, they were widely supported by his colleagues and constituents. OMM’s conclusion of some violation results from the fact that at some point in Mr. Evans’ consistent support for this issue, Manatt, where he would later become affiliated, was working for Pepco. Mr. Evans’ positions pre-date his employment and so the OMM Report finds its violation by now stating that Mr. Evans had a conflict because he was *considering* working for Manatt earlier than the employment actually occurred. Again, this is a fiction that does not stand up to ethics rules and law. In addition, to find a violation here assumes that Mr. Evans was aware of Pepco’s relationship with his employer when he acted in favor of the merger. But Mr. Evans’ testimony, as well as contemporaneous documentary evidence, makes unclear when Evans became aware of this relationship, and the Report ignores the fact that Mr. Evans immediately sought ethics advice when he found out after he became employed.
3. Evans used his position and title to influence the agency’s approval of the merger. This refers to an October 16, 2015 letter on which Mr. Evans became the seventh signatory a few days after he signed an employment agreement at Manatt. But he had already agreed to the letter before he was employed! The Report already concluded that Mr. Evans’ activities at Patton Boggs—where Excelon had previously been a client—were not indicative of any

violation. Like all law firms, Manatt can erect ethical walls around associates for imputation purposes; it's perfectly routine. And when it happens, conflicts are not imputed to the associate, contrary to the Report's capacious misreading of the rule.

As to all of the Report's conclusions of rule violations based on his considering to work and then working at Manatt, this is one area where ethics advice would have been particularly helpful to OMM. Mr. Frisch explains that "The report suggests that Mr. Evans - a salaried employee with no financial stake in the Pepco matter - somehow derived a prohibited financial benefit from the representation. Simply stated, he did not. If the fees paid by a client were deemed a financial benefit to the screened attorney and thus a rule violation, the entire structure of DC RPC 1.10 would collapse and be rendered nugatory. That is not - and could not be - a legitimate interpretation of a rule that is crucial to the ethical operation of a law firm."³⁹

F. The Report finds violations based on disputed and post-hoc applications of ethical rules.

At this point, it gets repetitive to point out that the OMM Report takes its own, unsupported and no precedent-cited reading of the code as the basis for finding violations. A more extended inquiry with input from Mr. Frisch and other ethics experts would have clarified that a good deal of the OMM assumptions are simply not correct and would inhibit good government. Without basis and against Mr. Evans' explanations and the very ambiguities it conceded exist, OMM then makes unnecessary pejorative statements:

1. OMM states that Mr. Evans tried "to hide" his client relations. There is nothing to support that conclusion. His failure to list them was consistent with the plain meaning of the instructions and the past practice of law firms where he worked. He surely agreed that law

³⁹ November 4, 2019 Ethics Letter from Michael Frisch.

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firms and lawyers try not to reveal clients but that is not the same as the negative implication that he tried “to hide” them.

2. OMM then created a new ethics requirement to find a violation by stating that only entities with “privileged” relations might be able to shield their clients from disclosure.⁴⁰ As noted above, this is not the law, the rules, the Code, or the instructions. What OMM uses for their support? The after-the-fact visit with BEGA. Notice that is not an opinion or advisory that BEGA issued before this inquiry where people could have then changed their reporting practices.
3. Mr. Evans provided constituent services to his consulting clients. The Report offers the conclusory statement that the Code “practically forecloses Evans’ ability to provide constituent services to entities in which he has a financial interest.”⁴¹ However, this rule proves far too much. Anticorruption rules should not result in the perverse outcome that a legislator must cease to provide ordinary services. The point of the rule is to prevent special pleading, not run-of-the-mill Council work.⁴²

Moreover, many of the Report’s conclusions invent and then impose standards of conduct, after-the-fact, without sufficient notice of such in advance. For example, the Report faults Mr. Evans for failing to establish a formal conflicts protocol in his office, while conceding that no rule ever required one. The Report faults Mr. Evans for failing to report his ownership of stock in Eagle Bank, but when he purchased the stock in 2005, the financial disclosure form *only* required a member to report when they owned stock in a “business entity transacting any business *with* the District Government.”⁴³ As far as Mr. Evans knew and what the record seems to agree is that Eagle Bank had no such contracts with the District Government, and when the form was later changed, no training was offered to put members on notice against importing their prior years’ reports. Instead, the Report glosses over this change in the form, and treats his

⁴⁰ Report at 18.

⁴¹ Report at 84.

⁴² November 4, 2019 Ethics Letter of Michael Frisch.

⁴³ 2005 Financial Disclosure Statement, Question 1.

reporting obligations as though they were standard the whole time. The OMM Report then somehow changes “transacts business *with*” D.C. to “transacts business *in*” D.C. because it notes that Eagle has no many branches in the city. The plain rule is the plain rule and when it changed, this change was not flagged. It surely explains the omission more than something not in the record.

Finally, the Report ensnares Mr. Evans in a small handful of violations which, while concededly errors on Mr. Evans’ part, are minor oversights that were corrected immediately upon discovery. Elevating these, sometimes typographical, errors to rule violations demonstrate the confirmation bias of this exercise. For instance, the Report complains that Mr. Evans failed to disclose NSE Consulting on a single bi-annual disclosure in 2017. What the Report omits is the detail that in this period, the Council was deploying a new electronic filing system for the first time. In Mr. Evans’ first attempt to file electronically, *he had indeed listed NSE Consulting*. But the system failed. When his staff were later instructed to submit a hard-copy because of the technical failure, they inadvertently copied an earlier submission that omitted NSE. The error was corrected shortly thereafter, and there is no allegation that the omission was intentional, or led to any substantive issues or confusion. It is another picayune conclusion of a violation that exposes the Report’s slant. And in some “gotcha” moment, OMM never even asked about this issue in any of the *four* in-person interviews with Mr. Evans. If they had, the mistake would have been explained easily. Instead, it was sprung for the first time in the Report.

In addition, the Report faults Mr. Evans for mistakenly failing to disclose the amount of money – some \$14,000 – he earned from Manatt in the fourth quarter of 2015. His entries on the

form confirm he had outside employment; it correctly names “Manatt”; and then there was an accidental listing of the word “None” for the amount even though a box showing that there was some income was checked. This could not be an attempt to “hide” his employment as his employer was named. It was a clerical error which was elevated to a violation in a slanted report. And again, it is “gotcha” not to ask about this in 12 hours of interviews and then include it in the Report.

G. The Report inconsistently applies its own standard of what constitutes a “Particular Matter.”

Throughout the Report, violation after violation is predicated on OMM’s interpretation of the rules that Mr. Evans’ participated in a “particular matter” on behalf of his NSE clients. The definition of this term is essential to the core allegations in the Report; if Mr. Evans’ involvement in a matter is not particular to his clients, then there can be no conflict of interest. The Report defines “particular matter” as follows:

A ‘particular 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.’ 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. Legislation that is focused on a ‘particular industry or profession,’ however, can create a conflict of interest. Determining whether a matter before the Council is a ‘particular matter’ typically requires a case-by-case analysis.

Thus, the conflict rules focus on participation in a matter that runs to the benefit of some specific subset of individuals, rather than on policies and acts focused on the good of one’s constituents or society generally. As the Report’s own description concedes, general (rather than particular) matters need not even impact *every single person*; legislation that deals with “all

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qualifying stores” is given as an example of something that is *not* a particular matter. Instead, the rule as defined in the Report deals with special pleading on behalf of some narrow subset.

But the Report applies this standard inconsistently, often accusing Mr. Evans of conflicts because of his participation in matters that benefit his constituents, his clients, and their competitors all the same. It concluded that matters impacting employers are not particular,⁴⁴ but matters impacting higher education are;⁴⁵ that matters impacting large geographical areas are not particular,⁴⁶ but matters impacting smaller geographical areas are.⁴⁷ A more reasonable reading of the “particular matter” requirement for conflict of interest analysis would focus on whether the official’s participation amounted to special pleading for his client. If not, a fair application of the rule would not punish fair consideration of a matter of public concern.⁴⁸ As ethics expert Professor Frisch concluded: “the report purports to interpret key ethics concept relevant here – the “substantial relationship” test and the definition of a “matter” – without reference to the key District of Columbia Court of Appeals opinion interpreting those phrases. [. . .] Here [. . .] there is no showing of such participation on behalf of a private client that in any way resembles a special pleading on that client's behalf. His positions on matters of general application to the

⁴⁴ Report at 62 (regarding the Universal Paid Leave Act).

⁴⁵ Report at 63 (regarding the Higher Education Act).

⁴⁶ Report at 65 (regarding Empowerment Zone legislation).

⁴⁷ Report at 70 (regarding the 2016 Omnibus Amendment Act).

⁴⁸ November 4, 2019 Ethics Letter of Michael Frisch. *See also, Id* (“Over-recusal can produce the same result through slightly different means when an official is forced to drop her opposition because of some unrelated and ultimately irrelevant association that requires her to recuse. Indeed, the danger of over-recusal in judicial matters is acknowledged in the ABA Model Rules of Judicial Ethics Canons that address the issue by severely limiting the outside activities of a judicial officer. See, e.g. Canon 2 Rules 2.1 2.4 and 2.7 (“a judge shall hear and decide matters assigned to the judge, except where disqualification is required...”). The dangers of over-recusal are far more evident in the activities of a political actor as opposed to a judge.”).

citizens of the District of Columbia do not constitute a matter on behalf of a specific client as ethics rules prohibit.”⁴⁹

VI. CONCLUSION

The allegations of wrongdoing against Jack Evans have been reported and repeated and echoed and then the subject of various inquiries and investigations. It is a serious matter, affecting the public service, career, reputation and future of a long-standing, dedicated official. Mr. Evans has always conceded that things he did and did not do are things he wished he had done better. He has always stated that some things appear to be worse than they are. However, the Council deciding to do another inquiry when others were pending that restricted gathering all the facts, its imposing an impossible deadline, and it allowing a process without the considered input of outside, independent ethics experts, raises the concerns we have expressed.

Already the OMM Report has been leaked to the media in an attempt to poison the well and try Mr. Evans in the court of public opinion before a considered review of all that has been addressed can occur. We can only hope that the numerous flaws we have demonstrated in the Report will be considered by the Council and the public as much as it will the mere repetition of old allegations and the sensational headlines the recent leak has engendered. As the Council considers how to handle Mr. Evans’ future as a member, it would only be prudent and fair to scrutinize the Report consistent with the facts and analysis we have provided.

⁴⁹ *Id.*

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Sincerely,



Abbe David Lowell



Mark Tuohey

Enclosures (3)

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October 25, 2019

VIA HAND DELIVER AND EMAIL (sbunnell@omm.com)

Stevan Bunnell, Esq.
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Re: D.C. City Council Inquiry

Dear Mr. Bunnell:

We write to offer additional thoughts on issues we discussed during our various meetings and calls with you and your colleagues concerning our client Councilman Jack Evans, before you write a report to the Council. As you know, Mr. Evans has cooperated fully with your work, for example providing documents and over sixteen hours of interviews over four different days. We hope this cooperation will be noted in your report to the Council.

Before you make any final conclusions, we wanted to address the following:

I. *The Structure of the Council and Outside Employment Should Be Changed*

At the root of the issues that have arisen with Mr. Evans, and more broadly, is the fact that the D.C. Council – whether because it is not yet considered a “full-time” position or otherwise – specifically allows and provides for outside income through other employment. When that is the case, the potential for questions of conflict arise continuously. This is an issue that has received some attention lately. Various commentators point out that this arrangement is fraught with the possibility of conflicts because of the very nature of two employment relationships. Consider Peter Butzin, chair of Common Cause Florida, a government transparency advocacy group, regarding a lobbyist-turned-legislator introducing a bill specifically impacting his employer (as opposed to the allegations raised with Mr. Evans): “Is it a conflict? Yes. Should we be surprised? No. This happens all the time. We have a working legislature.”¹

¹ Jessica Bakeman, *In Part-Time Legislature, Regular Overlap Between Day Jobs and Ed. Policy*, Politico (Oct. 12, 2015) (available at <https://www.politico.com/states/florida/story/2015/10/in-part-time-legislature-regular-overlap-between-day-jobs-and-ed-policy-026574>); *see also* Conflicted Interests: State Lawmakers Often Blur the Lines, Center for Public Integrity (December 7, 2017) (available at <https://publicintegrity.org/...ate-politics/conflicted-interests-state-lawmakers-often-blur-the-line-between-the-publics-business-and-their-own/>)

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A 2017 collaboration between the Center for Public Integrity and the Associated Press raised numerous concerns about state legislators with outside employment, noting that “news organizations found numerous examples in which lawmakers’ votes had the effect of promoting their private interests. Even then, the votes did not necessarily represent a conflict of interest as defined by the state.”² That study noted that “many lawmakers defend even the votes that benefit their businesses and industries, saying they bring important expertise to the debate.” That seems to be the judgment of the D.C. Council in adopting rules permitting outside employment, but now those rules are being used to target Mr. Evans with out-of-context accusations, as has occurred in many other state legislatures around the country.

Underscoring the wide divergence of opinion on this issue, some states not only do not require recusal from matters impacting a legislator’s outside employment, but affirmatively require it. Utah and Oregon require lawmakers to vote *even if they have a conflict*. Pennsylvania requires permission to recuse, leading one State Senator to vote on the nomination of his own mother to a public board.³ In short, the “right way” to deal with conflicts of interest arising from outside employment is far from clear, regardless of the feigned indignity of many of Mr. Evans’ critics.

The problem is exacerbated in certain professions, such as lobbyists, attorneys, and consultants. However, even with other employment, the issues would arise:

- If an official is a real estate agent, do clients come to the agency because they hope to ingratiate themselves for their business on issues that might arise on zoning, permits and the like? If the Council takes up a real estate issue, it will most certainly “affect” the clients of the agency, even if the Council does not take up an issue specifically for a specific client.
- If an official works as a bank official, do people put their accounts there for the same reason? If the Council addresses the issue of zoning for all banks, it surely affects the one the official is working for.
- If an official teaches in a private school, will parents enroll their children there for the same reason? If the Council changes its rule for tax-exemption, it will impact the school for which the official is working as well.

And of course, the issues are pronounced with attorneys, accountants, lobbyists and consultants. In a small business community like Washington, D.C., it will be rare that there will not be some overlap with clients, their issues and matters that come up in the Council or those in

² Conflicted Interests: State Lawmakers Often Blur the Lines, Center for Public Integrity (December 7, 2017) (available at <https://publicintegrity.org/...ate-politics/conflicted-interests-state-lawmakers-often-blur-the-line-between-the-publics-business-and-their-own/>)

³ *Id.*

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agencies in D.C. And what makes that even more complicated is that Mr. Evans and other Councilmembers have the duty to take care of constituent and resident issues, which often involve D.C. agencies and regulations. If a person with a D.C. issue (even if not something specifically before the Council) is also a client of a firm in which a Councilmember works, then the Councilmember has to either risk being accused of a conflict to do what he/she would do for any other D.C. person or entity, or forego helping someone he/she was elected to help. This is especially the case when, as Mr. Evans explained, so much of a Councilmember's job is dealing with these constituent-type issues and not legislation in the traditional sense:

Constituent services take up about 80 percent of our time in the office, all of us. 'Constituent services' is when a constituent – it doesn't necessarily have to be a Ward 2 resident, but a resident of the city contacts my office, myself, my office and my staff members, for help in any fashion. [. . .] And it's the Tip O'Neill [line], obviously. For those who don't know him, he is very famous for saying 'All politics is local. The most important street is the one in front of my house,' you know, that type of thing where you take care of things that people are concerned about rather than the broader issues which in reality they are less concerned about. So constituent services is all-encompassing as far as I'm concerned.⁴

The line between helping someone as a constituent service and helping that same person in some other context can hardly be a clear one in this outside-employment setting and led Mr. Evans to describe the tension as trying to "know it when he sees it." What he explained by that general phrase is that, as long as he was doing what he would do for anyone, did not change long-standing positions, and did not get a reward for doing his job, he could and did continue to do the work he was elected to do. For example, answering a question about his willingness to arrange for a one-time meeting between someone he knew who became a client and people in the D.C. government, Mr. Evans explained that a good portion of his office's work is to direct people to the right agency or official in the D.C. government:

This would fall into the category of again, the constituent [services]. And if you remember last time, there 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. This appears to fall into that category that if a constituency, someone calls me. It doesn't even have to be a constituent. You know, my office does—responds to anybody who calls us for anything, literally. And so they called, they need help with something, we would take care of that.⁵

⁴ Transcript, September 9 Interview with Jack Evans, at 8-10.

⁵ Transcript, September 23 Interview with Jack Evans, at 83-84.

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To the extent this has caused some concerns today, the problem is compounded when there is an attorney or similar professional involved as a Councilmember in that the official would not always know when his/her firm's clients have an issue somewhere in the great bureaucracy of the D.C. government. As you know, Mr. Evans was not a partner in any law firm, and therefore the interests of all a firm's clients cannot practically be imputed to him if there is no mechanism for that client to be flagged. As a non-partner, Mr. Evans is not given the type of reports partners would receive that might identify all a firm's clients. A Councilmember could work on a matter in his or her official capacity, for example, a general rule to change some zoning process, not knowing that a client of his/her firm is dealing with a request for a zoning variance from a D.C. agency on the same issue.

Furthermore, Mr. Evans' critics have unfairly conflated true conflict-of-interest situations in which a public official takes actions that confer direct benefits to an associate or client on the one hand, with the completely appropriate government acts that accrue to the benefit of many of (sometimes all) residents of the District or a ward on the other. There is a difference in the ethics rules between an official taking actions that affect his/her entire constituency than taking an action for a specific individual or entity. For example, Mr. Evans has always supported reducing taxes, whether that be property taxes, business taxes, or parking taxes. That position is based on his almost inarguable view that higher tax burdens strain citizens and businesses in the District of Columbia, put D.C. at a competitive disadvantage with cities or counties in Virginia and Maryland, and reduce opportunity for all. His support for a reduction in the District's parking taxes may (or may not) have led to some incidental benefits to all parking companies operating in the District, including a parking company owned by one of his friends/client, just like its competitors. But Mr. Evans' critics point to this as though it were an improper favor for his consulting client. That simply does not follow. It would be absurd to suggest that such an attenuated benefit or action, that accrues or applies to all the citizens of the District, could constitute special pleading for his client. That position would mean that a member of the Council who works in any industry would have to recuse from any action that promotes the overall business environment in D.C. In reality, Mr. Evans' policies promoting the general welfare indicate the opposite of the corruption his critics are accusing him of.⁶

Mr. Evans worked for three fairly large law firms over the years. If the interests of every one of the firm's clients was imputed to him, whether he worked on a matter at the firm or did not know about it, it becomes an impossible relationship to maintain. And, responsibility for avoiding specific conflicts, especially when an employee is not a partner, has to rest with the law firm as well. Every week law firms erect ethics walls around partners, associates and others who used to

⁶ See Bruce Owen, *"To Promote the General Welfare": Addressing Political Corruption in America*, BR. J. AM. LEG. STUDIES 5, at 5 (2016) ("James Madison and his colleagues were well aware of the problem of corruption. [. . .] It was, and remains, perfectly obvious that if there is an organization that has the power to grant **benefits to one group of citizens at the expense of others**, members of each group will want to influence that organization's policies.") (emphasis added).

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work at another firm or agency with interests coinciding with a current firm's clients. There is no evidence that Mr. Evans worked on any matters at any firm where the client's work involved actions before the D.C. government. Nevertheless, your work going forward should address what employers of government people need to do as well as putting the onus only on Mr. Evans.

It is a bright line for the Councilmember not to work on a matter for a client he/she knows about with an issue before the Council. It is a far more obscure line when the matter is that someone else in the firm is working on it and it is not something directly in front of the Councilmember. This too is made all the more difficult because the disclosure rules are not anywhere close to a model of clarity when it comes to when a Councilmember has to disclose his/her "clients" versus the firm that pays the official. Law firms have not wanted and will not want to disclose the entire list of its clients for ethical and business reasons. Having the Councilmember simply report the client he/she works on may not be enough, as we saw with the issues raised with Mr. Evans. If so, the solution is prospective rule change and/or clarification, not an *ex post facto* interpretation that was never given at the time.

The problem, then, is endemic to the permissibility of outside employment. In a city the size of Washington and with the business community as it is here and the fact that the Council really is a full-time job now, the time may have come to change the rules to prohibit outside income from any trade or business (outside employment). The Council might also then have to revisit the salaries of its Members, but most D.C. residents would likely understand the trade-off between that and the issues of conflicts.

However, the starting point for your and the Council's consideration of the issues raised in the inquiry about Mr. Evans is this issue, and he should not be penalized for the types of inherent problems that arise because of the permissibility of outside employment. Remember as well, that he explained that when he started at the Council, at least half of the members engaged in this type of employment.⁷ That may have changed as of now, but that too is an issue we will address later in this letter (the fact that rules and practices have changed but updating and training did not).

The truth is that since he joined the Council in 1991, Mr. Evans' progressive pro-growth platform has held steady, and no consulting agreements outside jobs have ever changed that:

So what is my political philosophy? So one was to rebuild downtown, because without money you can't run anything. And when the city fails, the people who suffer the most are the people at the low end of the income scale, not the rich people. 'Cause they can buy their way out. The people who don't have any resources are the ones that suffer the most. They're the ones who don't get education or city services.

⁷ Transcript, September 3 Interview with Jack Evans, at 48.

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So rebuilding downtown became our philosophy. And how do you do that? How do you lure businesses back in? How do you create confidence in a city that no one has any confidence in? And that was the approach we took. [. . .] And so we started putting in place a number of economic development drivers to change the District of Columbia. [. . .] So that was an element we used. Tax incentives for people who wanted to locate here. And I can go on and on about how we rebuilt Downtown Washington.⁸

II. *The D.C. Council Code of Ethics must be clarified*

You have said your mandate is to view the matters under review through the prism of the D.C. Council Code of Conduct. Whatever else became clear in the many months Mr. Evans has been answering questions is the fact that the Code of Conduct is far from a model of clarity. Even you acknowledged this reality on various occasions during the interviews. One example is when you said: “we may ultimately disagree about whether [the Councilman’s] view of how to approach conflicts is exactly the same as the view and the approach that the Code of Conduct takes.”⁹

We could not agree more with your observation that applying the Code of Conduct is “a somewhat technical exercise, because it has technical language in it” and that “there may be a difference between a technical violation and a more substantive violation.”¹⁰ But therein lies a very serious problem: the application of the Code’s rules on conflicts of interest should never produce “technical” results that are so far afield from “substantive” ones. It is not fair to hold elected officials to account when after-the-fact critics, political adversaries or an overzealous media can muddy the waters with a “technical violation” that is of no substance.

As just some example, reading through the Code, there are a number of terms that need to be clarified and, again, Mr. Evans should not be held responsible for an interpretation that does not yet exist. For example:

I.(a) defines conflicts as when an official action is done “in a manner that the employee knows is likely to have a direct and predictable effect on the employee’s financial interests. . . .”

Mr. Evans explained repeatedly that he understood that the Code of Conduct restricted him from “participating in a matter [. . .] the employee knows or is likely to have a direct and predictable effect on the employee’s financial interest or the financial interest of a person closely affiliated with their employee” i.e., the client.¹¹ As Mr. Evans was a salaried employee at his law firms and had fixed retainers when he was a consultant, nothing he did or did not do was pegged to

⁸ Transcript, September 3 Interview with Jack Evans, at 56-57.

⁹ Transcript, September 23 Interview with Jack Evans, at 11.

¹⁰ Transcript, September 3 Interview with Jack Evans, at 121.

¹¹ Transcript, Interview with Jack Evans September 16, at 48.

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performance, work brought in, success, failure or the like. Moreover, so many of his employments came about because of long-standing friendships, it is not remotely the case that those hiring him would likely have not done so because of any position he took or did not take. In fact, you heard examples (some are detailed below) of his taking official position contrary to the interests of clients, and that did not affect his employment or income in any fashion. Moreover, the definition that the benefit has to be “direct and predictable” meaning that it has to be *real* and not *speculative* makes it even more remote that any of the situations you are examining with Mr. Evans would reach that threshold. His being hired by the law firms or given consulting contracts at NSE simply did not depend on the positions he took or opposed.

I.(c) that describes recusals speaks of when an elected official . . . would be “required” to act in a manner prohibited in section I.(a).

But, as you saw, Mr. Evans and other Councilmembers routinely avoided such issues coming up by transferring them to other committees or by simply allowing them to lapse. He explained one such example was the transferring of the issue of the Scottish Rite Temple which included other members including the Chairman. Thus, the practice of the Council was to sidestep the need for formal recusals. But much more important were his answers to questions you asked about when and why he would “recuse” himself. As he made clear on the issues of his opposition to various taxes, converting gas stations into some other type of project, the zoning changes for the Scottish Rite Temple, his promotion of a way D.C. could get more film production revenue and the restoration of the New York Avenue corridor, he has maintained long-standing positions before he worked for law firms and before he started his consulting company. At various times during his maintaining these long-held positions, clients of his law firms or his own business may have become involved in the same issues in some manner, even if not directly (e.g. Richie Cohen being one of the people who appeared and merely testified at a hearing on the issue of development or the film industry). If Mr. Evans “recused” himself from any issue where someone he knew as a friend or a client or the client of a law firm was interested or decided to show up or send a letter, he would, as a result, allow that person to take him out of the issue. In effect, people could manipulate him out of his opposition to their positions. The businessman who wanted to convert gas stations would hire Mr. Evans’ law firm and then cause Mr. Evans to cease being the opponent to that client. Sometimes Mr. Evans was the only (or at the least the most effective) official to oppose the interests of a person or business he knew or was a client of his firm. How completely contrary to proper government and the rules of conduct would that be to allow that type of manipulation.

So in the areas you questioned where a client or friend might have an interest, these were *all* areas where Mr. Evans’ positions were well-known and asserted somethings for decades. Of course, it is not an automatic rule that if an official has a long-standing position then it is never a conflict to continue that position which can help a friend or client. But much more than attending a public hearing or reintroducing a bill or opposing all increases in taxes would be needed to raise a red flag. In these areas, conflicts should be identified by the official (in this case Mr. Evans)

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doing something different, or more, that is specific to that friend or client – not just maintaining the stance he had for decades, many of which apply generally across D.C.:

- a. Mr. Evans opposed virtually all new or increased taxes. So, if an issue came up about new or increased parking taxes, this was not a position he took for Rusty Lindner who had a company who owned a parking company.
- b. Mr. Evans was an early and vocal supporter for expanding film production in D.C. and to renovate more of the New York Avenue corridor. If he maintained those positions at a time that Richie Cohen decided to become interested, Mr. Evans' positions had been firm and transparent. This was not Mr. Evans taking a position because one of his friends or clients asked him to. It was the opposite – one of his friends and clients deciding to become involved perhaps knowing Mr. Evans was someone with a record of support for that issue.
- c. Mr. Evans was a long proponent for changes, expansions and better service at PEPCO. If, a few days after he started working for the Manatt law firm, he became the seventh of seven council people to sign a general letter of support consistent with his however many prior expressions of support, that was not done for a Manatt client. (And correspondence seems to suggest that Mr. Evans did not even know that it was a Manatt client at the time he committed to being the last signature or signed that expression of support.)

During the interviews, Mr. Evans said you should look for the opposite—look for a time when Mr. Evans changed his position to be *for* something he had opposed in the past or *against* something he supported in the past to match the interests or position of a client. It never happened.

I.(d) prohibits officials from acquiring stock or other similar investments which could unduly influence or give the appearance of unduly influencing the official.

As with other important phrases in the Code against which Mr. Evans is now being judged, there is no definition or example of what could “unduly” influence. In addition, there is no definition of what is “an appearance” of undue influence and by what measure or whose measure that would be – a political opponent? a community organization? a media after the fact? And then even the gifts prohibition, Section III., specifically allows for “opportunities and benefits” that others could get. This would certainly apply to or be analogous to purchasing stock that others could purchase for fair value.

With specific reference to the phrase that so many have been using in criticizing Mr. Evans – “the appearance of a conflict” – the few examples we have provided make clear what a slippery and unfair term this is to use in the context of a law enforcement investigation or ethics inquiry. The U.S. Supreme Court struck down this ever-expansive attempt to create expanding violations

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in the breach of honest services cases because of the lack of notice and subjectivity of such a concept. *Skilling v. United States*, 561 U.S. 358, 409-412 (2010). For this reason, we had asked Michael Frisch, a recognized legal expert in the courts of the District of Columbia and elsewhere on attorney and government ethics, to review Mr. Evans' activities a few months ago. Mr. Frisch was a senior assistant bar counsel to the D.C. Bar and is Ethics Counsel at Georgetown University Law Center. We asked you to meet or discuss these issues with him and will make him available to you. In the meantime, he did send a letter on July 1, 2019 that is worth quoting here:

Especially, in applying any rule about what constitutes 'the appearance of a conflict of interest,' the current best view is **that standard is subject to wide misunderstanding and arbitrary, hindsight and inconsistent application**. This is even more the case when applied to public officials in jurisdictions that permit outside employment and income, where **almost any position or work with anyone who also does business in that area, can be subject to criticism under that vague standard**. The issues involving Mr. Evans and his work illustrate this problem.

First, the American Bar Association rejected the so-called appearance of impropriety standard when it moved from the Model code of Professional Responsibility to the Model Rules of Professional Conduct several decades ago. The District of Columbia Court of Appeals (along with virtually every state court) replaced former DR 9-101 with rules that now focus on the existence of an actual rather than apparent conflict of interest. State courts – including the District of Columbia – followed the ABA retreat from the standard as too slippery a slope upon which to impose any professional sanction. While the appearance standard retains some vitality for purposes of judicial disqualification, it has been deemed **far too vague to serve as a basis for professional sanction**.

Where such an appearance exists, it can be resolved through recusal. It is my understanding that Mr. Evans specifically apprises potential clients in writing of his recusal in matters which may involve the council or has made it a practice to recuse himself if his clients' issues relate to his official position. To determine if an actual conflict would exist, **one has to identify whether his paid-for work existed at a time when such an issue existed in his official position and whether he acted on that issue.**" (emphasis added throughout).

Another commentator also made this same point when he stated:

But do rules outlawing the appearance of a conflict of interest really bolster citizen confidence? **Proponents offer no evidence to support the claim.** No opinion poll data comparing attitudes before and after the adoption of such a rule nor any comparison of citizen confidence in government between countries with an appearance ban and without one. The argument rests on logic instead. If citizens think when making a decision an

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official has a conflict of interest, no matter whether she does or not, they will lose trust in government.

This is true as far it goes, but the logic breaks down when one asks the critical question: In whose eyes is there an appearance of a conflict? A political opponent? An individual with a personal grudge against the office holder? Someone ignorant of the facts surrounding the alleged appearance of a conflict? **If it is enough to deem a public official “guilty” of an appearance violation if anyone in any of these categories levels a charge, we can expect the spread of appearance laws to produce a glut of charges.** Will a surfeit of charges really bolster citizens’ trust and confidence in government? Or will it, as many argue has happened in the U.S. and fear is about to happen with the ‘ethicization’ of Western Europe, drive it down as **citizens begin to think they ‘are all crooks.’**¹² (emphasis added throughout).

The issues seized upon by Mr. Evans’s critics fail both of Mr. Frisch’s tests. Consider, for example, complaints that Mr. Evans should not have served as the seventh signatory on a letter in favor of the Pepco-Excelon merger. While a disingenuous framing of the episode could create an appearance of impropriety in the mind of an uninformed observer, such an impression crumbles under the facts. Mr. Evans agreed to sign the letter *before* he ever took a position at Manatt, and he put pen to paper on something he agreed to do only a few days into his employment at the firm. Furthermore, in reconstructing the timeline of this event, it seems he was not even aware of the relationship between Manatt and Pepco until months later, in May of 2016, when he drafted a letter to BEGA raising the issue as having just “come to [his] attention that Manatt continues to represent Pepco holdings and Excelon Corp.”¹³ And the council did not even have the authority to officially direct the issues discussed in the letter in the first place. Thus, his paid-for work for Manatt – which *never* involved Pepco – did not exist at the time he committed to signing the letter, nor could he have possibly been acting on behalf of Pepco when he ultimately did sign it, because he was not even aware Pepco was a Manatt client at the time.

There is no doubt that your report will be rapturously received by Mr. Evans’ critics, and we implore you to make this context clear.

II.(a) The prohibition on outside employments speaks of such when it “conflicts or would appear to conflict” with the fair, impartial and objective performance” of the official’s work.

¹² Rick Messick, *Banning the Appearance of a Conflict of Interest: Another Misguided Ethics Rule*, Global Anticorruption Blog (Feb. 6, 2015) (available at <https://globalanticorruptionblog.com/2015/02/06/banning-the-appearance-of-a-conflict-of-interest-another-misguided-ethics-rule/>).

¹³ See Transcript, September 9, 2019 Interview with Jack Evans, at 56.

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Putting aside the same problems with the “appearance of conflict” standard, the Code specifically states that work for “consultative activities” is allowed and then refers back to the general Section I. Conflicts provisions which, among other problems, does *not* have an appearance provision. You pointed out other examples where the code or forms seem to be unclear or actually contradict each other. Please make those same observations in any report you submit.

VI.(a) which restricts use of government resources does not apply to “de minimis” use that does not interfere with official work.

Here too there is no definition of *de minimis* or an example of time (i.e., more than X hours a week). In any event, the help Mr. Evan’s staff gave him after hours to type a few things (like an invoice) or printing out a handful of papers certainly would fit even a common definition of *de minimis*. If an employee logging into her/his private email accounts during work is more than *de minimis*, then thousands of people in D.C. are violating this standard every day.

Financial Disclosure Form

The instructions for the financial disclosure forms filed by Councilmembers are no better. At one point in our discussions, you said that even you were having trouble reading it correctly.¹⁴ You mentioned that you “went back and looked at this since I was sort of confused by it.”¹⁵ We were too.

For example, in 2016 the BEGA public disclosure statement requires disclosure of, *inter alia*, income received from non-district employment and requires that the employee disclose the identity of the employer, the amount of compensation, and descriptions of the work. It only required the name of a client *where the spouse, domestic partner, or dependent were paid by a client* with a contract with the District of Columbia or which stood to gain a direct financial benefit from legislation pending before the Council.¹⁶ You suggested that this might be an error with the drafting of the disclosure form (“It would appear to me that – that sentence belongs under question 1 and the client clarification belongs under question 2”¹⁷), but as Mr. Tuohey pointed out at the time, confusing drafting errors should not be used against Mr. Evans now. Even after the language was changed in 2017, the form only required specific disclosure if the client had a *contract* with the District of Columbia or stood to gain a *direct financial benefit* from legislation pending before the council (see attached BEGA disclosure form of Jack Evans for 2016). No such situation ever occurred.

¹⁴ Transcript, September 23, 2019 Interview with Jack Evans, at 190-91, (“I didn’t write the form [. . .] So, I’m not sure I’m reading it correctly”).

¹⁵ Transcript, September 23, 2019 Interview with Jack Evans, at 187.

¹⁶ 2016 BEGA Financial Disclosure Form of Jack Evans.

¹⁷ Transcript, September 23, 2019 Interview with Jack Evans at 190.

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After years of conforming to the disclosure practice of law firms – who do not provide full lists of their clients – Mr. Evans did the same when he set up his own firm. If the Council wants attorneys or consultants who have outside employment to list their clients, and if that can be done consistent with the rules of client confidentiality and ethics, the Council should make that clear. Until that is done, Mr. Evans should not be held to a requirement that does not exist or, at the very least, is not clearly set out. Even you stated that this issue is a “quasi-philosophical question about the form,”¹⁸ but for Mr. Evans—who is facing a barrage of unfair criticism based on out-of-context accusations—the question is very concrete. There is no indication whatsoever of wrongdoing in his choice to apply the disclosure rule exactly as many other lawyers have before him.

III. *Ethics guidance training for officials and employees has to be improved.*

Practices of Councilmembers with outside employment have changed since Mr. Evans was first elected 28 years ago. In addition, several aspects (i.e., when disclosure of stock ownership is required --- 2005 when Jack bought Eagle Bank and what was then known as Bank of Georgetown stock v. after 2013 amendments) of the Code have gone through substantive revision throughout the Councilman’s decades of service on the D.C. Council. In Section XI., the Code itself speaks of training and counseling, but the reality is that whatever has been provided is few and far between.

Mr. Evans wrote Ellen Efros about the potential pitfalls in setting up NSE Consulting and, as you saw, received what in retrospect was not much of an answer when she replied “you nevertheless must adhere to the applicable policies and regulations of the DC Board of Ethics and Government Accountability (“BEGA”) and to the applicable rules set forth in the Office Code of Conduct for the Council of the District of Columbia with regard to conflicts of interest. Provided that you are in compliance with those policies, rules and regulations, there is no prohibition to you forming a consulting entity through which you will provide consulting services to private sector clients.”¹⁹ In fact, it appears that the Counsel’s office allowed Mr. Evans’ counsel to submit a draft response to the inquiry. This is not a problem or improper, but it underscores that the office did not see its role as being very proactive. Discussing that episode, you rightly observed that “there’s not a whole lot of guidance here at some level.”²⁰

As to initial or subsequent training, that was minimal and inconsistent.²¹ Councilmembers receive at most an hour of training on updates to the Code once per year as some part of a

¹⁸ Transcript, September 16 Interview with Jack Evans, at 181.

¹⁹ Sept. 22, 2016 Letter from Ellen Efros, Office of the General Counsel, Council of the District of Columbia to Jack Evans. *See also* Transcript, September 3, 2019 Interview with Jack Evans, at 179-80 (“Q: [. . .] And then [Efros], she essentially says, not a problem, as long as you follow the rules.”)

²⁰ Transcript, September 3, 2019 Interview with Jack Evans, at 180.

²¹ Transcript, September 23, 2019 Interview with Jack Evans, at 184 *et seq.*

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Councilmembers' retreat.²² Such a sparse training regime is inadequate to prepare officials to navigate rules with "technical" applications that can trigger legal and political investigations in the absence of any "substantive violation." Surely, your report should point out the need for more training.

IV. *Specific examples of issues at his law firms and when he set up a consulting firm indicate Mr. Evans' desire and intent to comply with ethics rules and avoid conflicts.*

1. *Baker Hostetler*

In the 1990's the Council took up the issue of tort reform. At the time, Mr. Evans worked as an attorney at Baker & Hostetler, which represented a trade group of medical professionals who took a position on the proposed legislation. Mr. Evans did not participate in any consideration of the issue in light of the potential conflict.

2. *Patton Boggs*

When the Council was considering taking action to facilitate the construction of the Marriott Hotel and Convention Center in downtown D.C., some in the press began to speculate that Patton Boggs was engaged in lobbying on behalf of Marriott. In fact, Marriott *was not* represented by the firm, but out of an abundance of caution about something that he saw as a concrete example of what could be an "appearance" issue, Mr. Evans removed himself from any consideration of the issue.

3. *Manatt*

The Scottish Rite had retained Manatt to represent it in its efforts to redevelop a tract of land adjacent to its temple on 16th Street, Northwest. Mr. Evans had no personal involvement in the Scottish Rite's account at Manatt, and furthermore, as a legislator he was *opposed* to the Scottish Rite's position before the Council. Nonetheless, he took himself out of any consideration of the matter because he wished to avoid an apparent conflict.

Additionally, Manatt represented Joe Mammo, a D.C. developer who wished to tear down and redevelop several area gas stations. As a Councilman, Mr. Evans has long been concerned about the shrinking set of options for District drivers to get fuel and repairs. In direct opposition to the desires of his employer's client, Mr. Evans kept true to his long-held position on the issue. Any suggestion that he should have recused based on a mistaken application of law firm imputation would have the perverse effect of *enhancing* the client's ability to influence Council business, rather than safeguarding against it.

²² *Id.*

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4. NSE

a. Eagle Bank – Ron Paul

In the summer of 2016, Mr. Evans began to seek outside employment beyond his duties as a councilman to supplement his income, as the rules provide. He approached his longtime friend Ron Paul to inquire about part-time employment with Eagle Bank. Mr. Paul suggested to Mr. Evans that he should instead consider launching his own consulting firm and engage Mr. Paul as a client to provide strategic business advice, similar to a relationship he had with a former Maryland legislator. Mr. Paul also suggested that a similar retainer relationship should be discussed with Richie Cohen (Willco) and Anthony Lanier (Eastbanc). Mr. Evans agreed, and as a result of that conversation, he established his own consulting firm and discussed retainer relationships with Richie Cohen and Anthony Lanier.

b. Forge, Eastbanc/Squash on Fire, and Forge – Cohen, Lanier, and Lindner

In 2016, Mr. Evans approached a number of his longtime friends about the possibility of establishing a consulting relationship based on Mr. Evans' extensive knowledge of the D.C. landscape. Among these potential clients were Ritchie Cohen (Willco), Anthony Lanier (Eastbanc/Squash on Fire), and Rusty Lindner (Forge).

As Mr. Evans repeatedly explained, he provided strategic business advice to Messrs. Cohen, Lanier, and Lindner during the pendency of their various consulting agreements. And as Mr. Lindner himself has explained in other inquiries, when the consulting agreement began, he sought Mr. Evans' advice on specific business issues, as well as introductions with Mr. Evans' local business contacts, above and beyond what had previously been the norm within their friendship. The same was true for all of Mr. Evans' clients. They each agreed to retain Mr. Evans as a consultant for advice and introductions separate and apart from Mr. Evans' position as a Councilman for the District of Columbia.

Some have complained that Cohen's testimony before the Council should have triggered Mr. Evans' recusal from advancing his long-held public position in favor of redevelopment of the New York Avenue corridor. This is a step too far for a number of reasons. First, it does not make sense as a theory of corruption. Taking these bad-faith critiques on their face for the sake of argument, assume that Mr. Cohen was trying to improperly influence Mr. Evans. The entire concept of a conflict of interest is that people may use their private relationships with government officials to create a *non-transparent* influence over government acts. But here, the allegation is not that Mr. Cohen called Mr. Evans on the phone and directed him to take a new position for Mr. Cohen's benefit; it's that Mr. Cohen

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testified *publicly* before the whole Council and that his testimony happened to track with Mr. Evans' long-held position.

Secondly, and more importantly, a rule requiring recusal in these circumstances would *enhance* rather than eliminate the ability of private individuals to influence government acts. If all one had to do was testify at a public hearing, a person with interests opposed to a government official's stated position would not have to pay a bribe, but would merely need to engage that official's law firm or other business in his or her private capacity on some other issue, then testify about that position. The official would be forced to recuse and abandon that position. Under that rule, the undue influence would come cheap.

With respect to NSE's consulting for Anthony Lanier's companies, Mr. Evans told you that at no point then or now did he have any reason to believe that Eastbanc had any business before the Council or with the District of Columbia government. Much of your questioning focused on evolving provisions across iterations of NSE's consulting agreements. As Mr. Evans explained, these provisions were cribbed from other contracts, and evolved just like any other aspect of a new business.²³

Regardless of the inclusion or not of specific conflict of interest language in early versions of NSE's consulting agreement, Mr. Evans never lost sight of his ethical obligations under the Council's Code. While there has never been any serious suggestion of misconduct arising out of these consulting relationships, some of your questioning focused on the fact that Mr. Evans supported a bill that included a technical correction to legislation from *five years earlier* that appropriated funds to maintain the historic fire station below Mr. Lanier's squash facility.²⁴ As Mr. Evans explained, the vote in question occurred very shortly after Mr. Lanier became an NSE client, had very likely been scheduled days or weeks *before* Mr. Lanier became an NSE client. Moreover, the vote in 2016 merely addressed a technical error that had been written into legislation passed *several years* before NSE even existed, and that bill reflected Mr. Evans' long-held development-focused policies. The vote in 2016 did not impact the substance of the earlier bill, and correcting a technical error so that prior legislation operates as intended is routine, not scandalous.

Finally, you asked a single question about whether Mr. Evans' severance pay from Manatt was in any way contingent on the success of a piece of "Empowerment Zone" legislation before the Council. As Mr. Evans explained, it was not.²⁵ Furthermore, the Empowerment

²³ See, e.g., Transcript, September 23, 2019 Interview with Jack Evans, at 65 ("I just want to stress there was no conscious effort to do anything here as far as these. It evolved to a better one and why it's not in that one, I just can't even tell you. I'm surprised as you are to look at it and it's not there, as I was last week.")

²⁴ Transcript, September 23, 2019 Interview with Jack Evans, at 72-79.

²⁵ Transcript, September 16 Interview with Jack Evans, at 194-196

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Zone legislation was never actually funded, which further shows that there was no connection between that legislation and Mr. Evans' pay.

c. Digi Media– Don McCord

Mr. Evans started to engage Don McCord—the President of Digi Media—as a client. Even though Mr. Evans was trying to build a consulting firm to replace the income he relied on to continue to support his three children and other needs, he reconsidered the arrangement before it was fully consummated, returned the retainer payments and did not take on that client because of the controversy surrounding Digi Media's business activities erecting multi-media billboards in downtown D.C. This was done by Mr. Evans *before* there was any attention to him, any question asked, any controversy, or any investigation. It is strong evidence of his intent to avoid conflicts.

Similarly, in 2016, Don McCord offered Councilman Evans stock in Digi. While Councilman Evans believed in Digi Media's business, found the opportunity to own stock appealing, and determined that to purchase the stock would be fully lawful, he ultimately concluded that it was the type of transaction that was, as he called it, something "he knew when he saw it" and turned the offer down. Again, he did this *before* anyone knew the offer existed, before there were any questions or any investigations.

d. Steven Fisher

Mr. Evans' relationship with Steve Fisher was short-lived. Fisher was not a resident of the D.C. area, and Mr. Evans never ascertained the nature of Mr. Fisher's business interests in the District beyond some real estate holdings that largely lie in Maryland. They met one time on the recommendation of Mr. Cohen. Mr. Fisher retained Mr. Evans and the two hoped to build a professional relationship, but after a year with little activity, Mr. Fisher terminated the consulting engagement. That's it. In our meetings, you asked several questions about the language of Mr. Evans' agreement with Mr. Fisher, which had been cribbed from an early draft and inadvertently excluded the conflict-of-interest provisions that made their way into later versions. But there was no suggestion then or now, nor could there be, that Mr. Fisher ever called on Mr. Evans for anything untoward. At most, Fisher is relevant as an example of a less-than-productive consultancy that ended unceremoniously after a year. Mr. Fisher had no business or interests in the D.C. government different from the thousands of other businesses that operate here, and Mr. Evans took no actions for him or depending in any way on his relationship.

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V. *The retainer agreements Mr. Evans had were in keeping with D.C. practice and actually help avoid conflicts.*

Mr. Evans created retainer (“on call”) relationships with all of his consulting clients. By definition, this arrangement does not envision that there will be time sheets or constant activity. In fact, it is often the case that long periods can occur when there is no activity but the right to call upon the consultant when needed. Especially in D.C., this is a common arrangement. Mr. Evans explained that his model, among a few, were the client relationships he saw when he was at Patton Boggs, probably one of the foremost firms with these types of contracts. Mr. Boggs in particular, who Mr. Evans mentioned, was well known for having dozens and dozens of such arrangements with clients where large sums would be paid for what might be a phone call over a long period of time.

A number your questions asked what Mr. Evans did for each of his consulting clients and when. As he explained, there was a wide difference in activity between when he was called on in his agreement with someone like Rusty Lindner who he knew very well for a long period of time and lived in D.C. and saw frequently to someone like Steven Fisher in California who wanted his eyes and ears in D.C. and did not need him much. Whatever the differences and level of activity, there was nothing at all wrong with these agreements. It might be that those close to Mr. Evans wanted to help him and valued his occasional input as such that they were willing to have \$25,000 or \$50,000 yearly retainers. This violates no rules and in fact helps prevent conflicts. In Mr. Evans’ agreements, his payments were not depending on an outcome or performance or success. He did not have to achieve a particular result which might raise more questions concerning how his work interacted with official duties. He just needed to be available and provide advice when called upon. If you determine to criticize or find fault with this type of arrangement, you will be singling Mr. Evans out among what has to be hundreds of others who operate in this manner. Again, your report should address the issue of outside employment and not a retroactive “how could it have been done better” approach.

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The bottom line is that Jack Evans did not engage in any activities that compromised his impartiality as a member of the D.C. City Council, and a fair-minded observer with a view of all the facts would not conclude otherwise. As we have discussed, through nearly three decades on the Council, Mr. Evans of course encountered opportunities where he could have compromised positions he had taken for decades or cater to a friend or client differently than he did for thousands of others who called for help to his D.C. office. He did not do that. The ethics rules allow members to pursue outside employment. Mr. Evans specifically addressed the potential for conflicts of interest and established responsible guidelines with each of his outside clients. In the very few instances where Mr. Evans recognized the risk of a conflict after taking on a particular client or matter, he did not take part or did not take on a client before any of his actions could create such a conflict in fact. And while reasonable people can disagree about the meaning, scope, or clarity of

Stevan Bunnell, Esq.

October 25, 2019

Page 18

the Council's disclosure rules, Mr. Evans disclosed his relationship with NSE Consulting exactly as any other lawyers or consultants would disclose their employer.

As you wrap your investigation, we hope you will pause and consider what is at stake. Mr. Evans has been a hard-working and dedicated public servant in D.C, for three decades. His constituents have approved of his service and returned him to his seat time and time again. He now faces an onslaught of critics on the Council and outside with their own political and other motives. No matter what you write, your conclusions and public statements will have implications beyond the four corners of your mandate as outside counsel; they will very likely determine Mr. Evans' future career, both his ability to serve out his term and someone who still needs to make a living. We urge you to take this into account as you conclude and present your work, and to focus your framing of these issues accordingly.

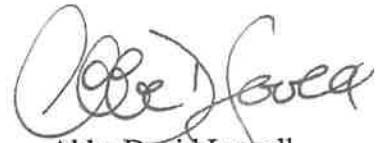
Please do not hesitate to contact us with any questions or concerns you have about this matter.



Mark H. Tuohey

Sincerely,

Counsel for Jack Evans



Abbe David Lowell



GEORGETOWN LAW

Michael S. Frisch
Ethics Counsel and Adjunct Professor

November 4, 2019

Councilmember Mary Cheh
Council of the District of Columbia
1351 Pennsylvania Avenue, N.W.
Suite 108
Washington, D.C. 2004

Dear Councilmember Cheh:

I have been retained as an expert in legal ethics to provide opinions concerning the report of the law firm of O'Melveny & Myers into Councilmember Jack Evans.

As a bar prosecutor and professor teaching professional responsibility, I have over 35 years of experience in the interpretation and enforcement of codes of ethics. I have carefully reviewed the findings and conclusions of the report submitted by the law firm of O'Melveny & Myers to the D.C. City Council. Throughout, and for reasons detailed more fully below, I conclude that the report reflects an inaccurate and flawed understanding of a significant number of ethics rules that govern attorney and non-attorney professional behavior. The flaws in reasoning that I have identified have led to a number of conclusions that cannot be supported when the proper legal analysis is applied to the matters at issue.

First, the Report suggests that the Digi Media representation was not properly terminated and that Mr. Evans owed some present duty to Digi after the representation was terminated through a clear and unequivocal communication that any representation was concluded. The consideration of the Digi Media issues occupies a disproportionate amount of the Report and a great deal of their conclusions about rule violations result from their view of this brief engagement. In my opinion, Mr. Evans fully complied with his obligations under D.C. RPC 1.16(d) in connection with the termination of the engagement. The report's suggestion that he had present duties to Digi as a "prospective future client" is actually a frivolous conclusion. Putting aside whether the allusion to some future possibility was more than a courtesy, O'Melveny's conclusion is wrong as a matter of ethics law. Simply stated, any terminated representation carries the possibility of future employment and create no ethical duty other than to avoid conflicts with the former client. See District of Columbia Rules of

Professional Conduct ("D.C. RPC") 1.9. Indeed, it might well be unethical to foreclose the possibility of future employment. Cf. D.C. RPC 5.4; *In re Hager*, 878 A.2d 1247 (D.C. 2005) (plaintiff's attorney sanctioned for, among other things, agreeing to forego future lawsuits against settling defendant).

Notably, the District of Columbia declined to adopt the provisions of ABA Model Rule 1.11(d)(2)(ii) that limit a present government attorney from negotiating for private employment in matters of personal and substantial responsibility. The court likely recognized the unique obstacles to such a rule in the jurisdiction that more than any other has a revolving door between public service and private practice.

Second, in so many instances, the report twists D.C. RPC 1.10 (imputed disqualification) beyond any recognition. Among the errors is when the Report concludes (a) that if a law firm might benefit from having a client (with an interest in D.C. government issues) that would be the same as Jack Evans as a salaried employee having that same interest; (b) that any client of a law firm (whether Mr. Evans was involved or not) created a bar from Mr. Evans being involved on a matter of interest of that client in D.C. government; and (c) that a law firm's possible attempt to acquire a client in the future created the same conflict to Mr. Evans's. The Rule permits the screening of personally-disqualified attorneys and allows the screen to cure the conflict. The District of Columbia Court of Appeals has recently enacted revisions to the Rule that allow for non-consented screening, thus expanding the use of the device. The report suggests that Mr. Evans - a salaried employee with no financial stake, for example, in the Pepco matter in which the law firm he joined Manatt was involved - somehow derived a prohibited financial benefit from the representation. Simply stated, he did not. If the fees paid by a client were deemed a financial benefit to the screened attorney and thus a rule violation, the entire structure of D.C. RPC 1.10 would collapse and be rendered nugatory. That is not - and could not be - a legitimate interpretation of a rule that is crucial to the ethical operation of a law firm.

Third, the report entirely fails to place the investigation in the proper context of a system that permits a legislator to engage in outside employment. Throughout the report, Mr. Evans is tasked with knowledge of provisions that the report elsewhere acknowledges that there was a significant lack of clarity, guidance and training in the areas of conduct examined here. Ethics rules are rules of reason that judge an actor's conduct in light of the facts and law reasonably known at the time of the conduct. The reports persistent use of post hoc analysis and interpretations that were not extant at the time in question is fundamentally unfair. So much of what the Report addresses results from the inherent tension of public officials being allowed to have outside income by taking on clients (whether for legal or other advice). The Report fails to address this (as Mr. Evans' counsel did in their October 25, 2019 letter to O'Melveny).

Fourth, the standard of "appearance of conflict" has been demonstrated to be unfair and unworkable as a basis for sanction. I addressed this in a letter I wrote concerning the WMATA issues and this too was addressed in the October 25, 2019 letter to O'Melveny.

Fifth, the suggestion that availability retainers to clients might constitute a "gift" is a frivolous suggestion. A fee for any legal service - including availability - is never deemed a gift by the lawyer, client or Internal Revenue Service. Such a fee is entirely consistent with an attorney's ethical obligation. See D.C. RPC 1.5(a). If a lobbyist's, consultant's or attorneys fee structure is allowed to be second-guessed after the fact with no guidelines, there is no end to how the ethics rules can be bent to make a violation where none exists. Especially in this city, where retainer agreements that have people on call and reserved are common, this is an odd suggestion in the Report.

Sixth, the report purports to interpret key ethics concept relevant here – the "substantial relationship" test and the definition of a "matter" – without reference to the key District of Columbia Court of Appeals opinion interpreting those phrases. In *In re Sofaer*, 728 A. 2d 625 (D.C. 1999), the court admonished a former legal advisor to the Department of State for switching sides by representing Libya as private counsel. The court found his personal and substantial participation as a government attorney in responding to third party subpoenas in a specific matter – litigation brought in connection with the Lockerbie bombing – violated DC RPC 1.11 (revolving door).

Here, in contrast, there is no showing of such participation on behalf of a private client that in any way resembles a special pleading on that client's behalf. His positions on matters of general application to the citizens of the District of Columbia do not constitute a matter on behalf of a specific client as ethics rules prohibit.

Seventh, the Report appears to create requirements and instructions that do not exist in the Code of Conduct or financial disclosure forms. For example, the suggestion that an official can consider not identifying individual clients applies only when a privileged relationship exists is not a distinction in the rule. Interpreting that stock ownership disclosure rule that stated the need to disclose when a company transacted business *with* the City had meant more than if there was a specific contract or similar financial arrangement with the City is also not contained in the rule.

Finally, the Report faults Mr. Evans for failing to recuse himself on certain matters in which someone he knew – as a friend and client – had an interest or position. The Report does so whether or not the issues was one Mr. Evans supported in a general manner (opposing all tax increases, supporting development of an entire area) or specifically (a tax break for an individual). The Report does so if a client came to an issue after Mr. Evans' positions were well-

known for years, sometimes decades. Similarly, the Code recognizes that a large part of a Councilmember's job is to provide services to constituents. There are no automatic rules that a person who received such services in the past forfeits the ability to seek them again after he or she becomes a client of the public official.

The Code of Conduct provides that when a Councilmember confronts a conflict of interest, he or she may recuse from consideration or official action on the matter. This is of course a sensible rule, but it must be applied appropriately as in judicial recusal matters. When the mere appearance of a conflict of interest is enough to trigger a recusal, or when the standard of what constitutes an actual conflict is defined in an overly broad manner, constituents can be denied representation beyond what is necessary or appropriate to police abuses. It also can place a would-be client in a position to hire an official with the very notion of having the official recuse himself or herself and remove an opponent to that client's positions.

Appearance issues can arise in many contexts, especially for lawyers, real estate developers, and consultants with clients and interests that are likely to arise over and over again in the daily business of city government. Ethical rules that allow such outside employment, but then overly constrain the performance of an official's duties, can result in an erosion rather than a promotion of public faith in the political system. Furthermore, it feeds partisan cynicism and incentivizes disruption in the day-to-day business of government, as officials face investigations of conduct that is ultimately above-board, and political rivals spend more time lobbying allegations than carrying out their official duties.

Over-reliance on recusal also can be a vector for other forms of undue private influence. An overly rote recusal regime that does not adequately examine individual circumstances creates a mechanism for an official's political opponents to force his or her recusal. Most of the time, attention is focused on undue influences that manifest in the acts of compromised officials. For example, perhaps an official would have voted against a bill, but was paid to drop her opposition. Over-recusal can produce the same result through slightly different means when an official is forced to drop her opposition because of some unrelated and ultimately irrelevant association that requires her to recuse.

Indeed, the danger of over-recusal in judicial matters is acknowledged in the ABA Model Rules of Judicial Ethics Canons that address the issue by severely limiting the outside activities of a judicial officer. See, e.g. Canon 2 Rules 2.1 2.4 and 2.7 ("a judge shall hear and decide matters assigned to the judge, except where disqualification is required..."). The dangers of over-recusal are far more evident in the activities of a political actor as opposed to a judge.

I offered to meet with O'Melveny to raise these points, and I offer to do the same for the Council as it considers these issues.

The views stated herein are my own and are not attributable to any organization with which I am affiliated.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael S. Frisch". The signature is fluid and elegant, with a long horizontal flourish extending to the right.

Michael S. Frisch



GEORGETOWN LAW

Michael S. Frisch
Ethics Counsel and Adjunct Professor

July 1, 2019

Mark Tuohey, Esquire
Baker & Hosteller LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5403

Dear Mr. Tuohey:

You have asked me to review the memorandum written by the law firm of Schulte, Roth & Zabel for WMATA that has been released to and commented in the media. Specifically, you asked me to opine on the actions attributed to your client, Councilperson Jack Evans and the various codes of conduct and ethics cited in the memorandum.

I currently serve as Ethics Counsel to Georgetown Law School. I have been a member of the District of Columbia Bar since 1975. I worked as Assistant and Senior Bar (now Disciplinary) Counsel to the District of Columbia Court of Appeals from 1984 – 2001. I have taught Professional Responsibility as an Adjunct Professor at Georgetown Law School since 1991 and was chosen as its first ethics counsel in 2001. I also serve as co-faculty advisor to the Georgetown Journal of Legal Ethics.

The views stated herein are my own.

In a short summary, I believe the memorandum has completely overstated its conclusions of ethical violations. Especially in applying any rule about what constitutes "the appearance of a conflict of interest," the current best view is that standard is subject to wide misunderstanding and arbitrary, hindsight and inconsistent application. This is even more the case when applied to public officials in jurisdictions that permit outside employment and income, where almost any position or work with anyone who also does business in that area, can be subject to criticism under that vague standard. The issues involving Mr. Evans and his work illustrate this problem.

First, the American Bar Association rejected the so-called appearance of impropriety standard when it moved from the Model Code of Professional Responsibility to the Model Rules of Professional Conduct several decades ago. The District of Columbia Court of Appeals (along with virtually every state court) replaced former DR 9-101 with rules that now focus on the existence of an actual rather than apparent conflict of interest. State courts - including the District of Columbia - followed the ABA retreat from the standard as too slippery a slope upon which to impose any professional sanction. While the appearance standard retains some vitality for purposes of judicial disqualification, it has been deemed far too vague to serve as a basis for professional sanction.

Where such an appearance exists, it can be resolved through recusal. It is my understanding that Mr. Evans specifically apprises potential clients in writing of his recusal in matters which may involve the council or has made it a practice to recuse himself if his clients' issues relate to his official position. To determine if an actual conflict would exist, one has to identify whether his paid-for work existed at a time when such an issue existed in his official position and whether he acted on that issue.

Second, the communications/proposals at issue must be seen and evaluated in context. Rules governing lawyer conduct are rules of reason and permit an attorney freedom to pursue his profession. ABA Model Rules, Preamble at comments 9, 14. The District of Columbia Court of Appeals has explicitly adopted a policy for solicitation of potential clients as expansive as any in the country by declining to adopt any version of Model Rule 7.3. The ABA recognizes (in the context of far more restrictive rules than adopted in DC) that there is no "serious potential for overreaching when the person contacted is a lawyer." ABA Model Rule 7.3, comment 5. It is my opinion as a former disciplinary prosecutor and longtime ethics professor that the business proposal letters I have reviewed do not violate any provision of the D.C. Rules of Professional Conduct.

With respect to specific issues raised in the press, I understand that the Digi Outdoor Media consulting agreement was cancelled within days and before any work was done. No action was taken on any matter in his official position, no work was done and, so, no actual conflict ever arose. Mr. Evans' rejection of the consulting agreement and return of payment negates any suggestion of a forward-looking conflict of interest. This situation is a textbook example of the slippery slope of the appearance of impropriety standard. This is also true with respect to the draft of a business plan with language that can best be characterized as puffing Mr. Evan's contacts and experience as a public official. This was a draft exchanged between attorneys and never was sent to any clients; nor was the position ever finalized or done. Here too, there could be no actual conflict of interest and here too you can see the problem with applying any "appearance" rule in what was a private exchange between attorneys.

On the issue of disclosure, like many jurisdictions, D.C. has rules which require someone filling out financial forms to list her/his employer or sources of income. When such a filer is an attorney or consultant, the rules do not require that the person's clients or customers are also listed. With respect to lawyers, disclosing the names of clients could itself be a violation of ethics rules, that require an attorney to keep client confidences which often involves the identity of clients. Rule 1.6 of the D.C. Rules of Professional Conduct; Opinion 214 of the D.C. Legal Ethics Committee.

Finally, any official acts while with WMATA appear to have taken place prior to the existence of the consulting proposal or involve matters with Colonial Parking. If, as reported, Colonial did not submit to get any and did not intend to pursue the parking business from WMATA, there was nothing for Mr. Evans to recuse himself from.

Again, my review is based on the memorandum written by WMATA's lawyers and the facts and rules they present. The recitation in that memorandum of the ethics rules did not take into account the current application and consideration of those issues.

Sincerely,

A handwritten signature in cursive script that reads "Michael S. Frisch".

Michael S. Frisch

Attachment D

Schulte Roth & Zabel LLP

MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED AND ATTORNEY WORK PRODUCT

To: File **Date:** May 20, 2019

From: Adam Hoffinger
Jeffrey F. Robertson

Re: Summary of WMATA Board Ethics Committee Investigation Regarding Jack Evans Compliance With the WMATA Code of Ethics and Compact

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I. Scope of Investigation

In early March 2019, news reports appeared regarding efforts by Jack Evans to use his positions as a member of the D.C. Council and Chair of the WMATA Board of Directors to obtain outside employment and represent private clients. Following these reports, the Ethics Committee of the WMATA Board retained Schulte, Roth & Zabel (“SRZ”) to conduct an independent investigation. Our mandate from the Ethics Committee was to perform an expedited investigation focused on Evans’s conduct as a WMATA Board Member as governed by the WMATA Code of Ethics and the WMATA Compact. Our investigation did not concern matters related solely to Evans’s service on the D.C. Council (which we understand have been the subject of a separate investigation by “BEGA,” the D.C. Board of Ethics and Government Accountability), or regarding potential criminal activity (which we understand is the focus of a pending investigation by the U.S. Attorneys’ Office for the District of Columbia). Our investigation was conducted over the course of approximately six weeks.

A. Documents Collected and Reviewed

We collected and reviewed documents from relevant custodians. From WMATA, we obtained copies of the Ethics Code and Compact, as well as internal documents such as emails, internal memoranda, Evans’s annual disclosures, WMATA Board materials and presentations, lists of active and approved WMATA vendors, and other materials. From Evans, through his attorney, Mark Tuohey, we obtained documents previously produced to the D.C. U.S. Attorneys’ Office investigation and to the BEGA, as well as copies of consulting agreements and billing records related to NSE Consulting, LLC (“NSE”) the company Evans established in July 2016 to provide consulting services for clients in exchange for annual retainers. Finally, we sought and obtained from the D.C. Council email correspondence involving Evans and his D.C. Council staff. The General Counsel’s Office for the D.C. Council refused to provide documents that overlapped with those produced to the U.S. Attorneys’ Office or BEGA. Although we did not gain access to all D.C. Council documents that likely are relevant to our investigation, we did obtain approximately 700 documents that we believe were sufficient for us to completed our investigation, make the findings we communicated to the Ethics Committee, and to fulfill the mandate we received from the Ethics Committee.

B. Witness Interviews

We interviewed nine witnesses during our investigation:

1. *Jack Evans*¹

¹ Our interview of Evans lasted approximately seven hours, with few brief breaks. Evans brought to the interview and gave us copies of documents concerning the drafting and editing of the 2018 business plan that he submitted to Nelson Mullins. We provided Evans the opportunity to share with us any information he wanted to. At the conclusion of the interview, we asked Evans if there was anything else he wanted to tell us and invited him to have his lawyer, Mark Tuohey, contact us at any time with any additional information, which Tuohey did.

2. *Schannette Grant*, D.C. Council Chief of Staff
3. *Phil Staub*, WMATA Ethics Officer
4. *Jennifer Ellison*, WMATA Board Corporate Secretary
5. *Dennis Anosike*, WMATA Chief Financial Officer
6. *Nina Albert*, WMATA Director of Parking Management
7. *Tim Fitzgibbon*, Head of Nelson Mullins D.C. Office
8. *Rob Hawkins*, former D.C. government lawyer at Nelson Mullins who helped Evans prepare the 2018 business plan
9. *Michael Frisch*, Ethics Counsel, Adjunct Professor of Law: Georgetown Law Center, at Evans's lawyer's request.

In addition, we met separately with Evans's lawyer twice and spoke to him by telephone several times.

II. Relevant Ethics Provisions

Our investigation of Evans's conduct focused primarily on violations of five provisions of the Ethics Code and one provision of the WMATA Compact. These provisions are discussed below.

A. WMATA Code of Ethics

1. Duty to Avoid Conflicts of Interest (Article II.D)

Board Members are required to "avoid conflicts of interest or appearance thereof." Board Members must "place ethical principles and compliance with the law *above private gain and personal* interest inconsistent with their responsibility to WMATA and to their respective Jurisdiction." According to the Code, "regardless of whether specifically prohibited by this Code, Members shall":

- "[E]ndeavor to *avoid conflicts of interest* or the appearance of conflicts of interest";
- "[R]efrain from *using their positions for personal profit or gain*, or for any other personal advantage";
- "[R]efrain from the appearance of *avored treatment* to any person or entity";
- "[A]void *compromising independence or impartiality*"; and

- “[A]void any other action that is likely to *adversely affect the confidence of the public in the integrity of the Board* or of WMATA.”

The Conflicts of Interest provision derives its meaning from definitions included as part of the Ethics Code. Conflicts of Interest include both *Actual Conflicts of Interest* and *Apparent Conflicts of Interest*.

An *Actual Conflict of Interest* arises when “a Member or Household Member has a Substantial Interest or Duty” in: (a) an “Interested Party”; or (b) “any other Business or Property that may realize a reasonably foreseeable benefit or detriment as a result of an action or decision of the Board.” Art. IV.

As relevant here, *Substantial Interest or Duty* (Art. III.L) includes any of the following:

- Ownership of interest in a business;
- Ownership of interest in or employment by a business receiving income from an interested party;
- Income or potential income greater than \$1,000 annually;
- Personal Representation, defined as “personally representing or providing professional services to a Business, including legal ... and consulting services, regardless of the specific subject matter of the representation ...”; or
- Fiduciary duty owned by a director, officer or general partner of a business.

An *Interested Party* “means any Business that has or is seeking a contract or agreement with WMATA or that otherwise has interests that can be directly affected by decisions or actions of WMATA.” Art. III.G.

Apparent Conflicts of Interest include all potential conflicts that fall short of Actual Conflicts. Apparent Conflicts arise whenever a “a Member or Household Member has any other personal interest of which the Member is aware that could reasonably appear to conflict with the fair and objective performance of the Member’s official duties.” Art. IV.

Both Actual and Apparent Conflicts of Interest must be resolved. Board Members with an Actual Conflict “must recuse themselves from Participating in any matter in which they have an Actual Conflict of Interest.” Art. V.A. Board Members with Apparent Conflicts must also recuse themselves from Participating in matters involving Apparent Conflicts, *unless*: (1) the Member publicly declares that he is able to participate “fairly and objectively in the interest of WMATA notwithstanding the Apparent Conflict of Interest”; and (2) such declaration in lieu of recusal is approved by the Ethics Chair. Art. V.A.3 and V.B.

2. Restricted Interests (Article VI)

Board Members are prohibited from being “financially interested, either directly or indirectly, in any” transaction “to which the Board or the Authority is a party,” citing Compact §10. Art. VI.A. Likewise, Board Members “shall not knowingly have a Substantial Interest or Duty in an Interested Party” while serving on the WMATA Board. Art. VI.B.

3. Duty of Loyalty (Article II.A)

Board Members owe a Duty of Loyalty to WMATA. Pursuant to this duty, Members “shall act in the *best interest of WMATA* ... rather than in the Member’s interest or in the interest of another person or organization with which the Members are personally associated.” In addition, Board Members “shall not engage in *conduct that would bring discredit upon WMATA*.” Art. II.A (emphasis added).

4. Prohibition on Seeking WMATA Staff Assistance (Art. IX.A.4)

Board Members may not request assistance directly from WMATA staff for WMATA-related matters. Specifically, the Ethics Code states that Board Members shall not “seek assistance from other WMATA personnel, while in duty status, to assist them in connection with business enterprises (including ... consulting ...).” Art. IX.A.4.

5. Use of Official Position (Article IX.A.1)

Board Members are prohibited from using their official positions for their own gain, or for that of others with whom they are affiliated. Board Members “shall not use, nor give the appearance that they are using, their official position with WMATA in a manner inconsistent with their responsibilities to WMATA.” More specifically, Board Members shall not “[u]se their position with WMATA for”:

- “[T]heir own personal financial gain”;
- “[T]he endorsement of any ... enterprise in which they have a Substantial Interest or Duty”; or
- “[T]he private financial gain of friends, ... or individuals or entities with which they are affiliated, or with which they have or are seeking employment or business relations.” Art. IX.A.1.

B. WMATA Compact

Like the Code of Ethics, the WMATA Compact also governs Board Members’ conduct concerning Conflicts of Interests. Compact Section 10 prohibits Board Members from having “financial interests” in any WMATA transaction and from soliciting or accepting anything of value “in connection with” performing their official duties.

Pursuant to Section 10(a)(1), no Director, officer or employee shall “be *financially interested, either directly or indirectly*, in any contract, sale, purchase ... of real or personal property to which the Board or the Authority is a party.” Compact §10(a)(1) (emphasis added).

Indirect financial interest would include receiving consulting fees from an entity that is doing, or is seeking to do, business with WMATA. That is, Section 10(a)(1) applies where the entity paying consulting fees either (1) has an agreement or other business transaction with WMATA, or (2) would benefit from the termination of an existing agreement or other business transaction between a competitor of the entity and WMATA.

Pursuant to Section 10(a)(2), no Board Member, “*in connection with* services performed within the scope of his official duties, *solicit* or accept *money or any other thing of value* in addition to the compensation or expenses paid to him by the Authority.” Compact §10(a)(2) (emphasis added).

“[I]n connection with” would appear to be broader than “in exchange for” (which would be limited to *quid pro quo* circumstances); that is, “in connection with” would include instances in which consulting fees or other monetary benefits were not the “but for” cause of action taken by the Board member. Likewise, the use of “solicit” means the mere *request* for money or other items of value is prohibited, even if the party from which the thing of value is requested refuses the request, or for whatever other reason the Board Member who solicits the payment does not actually receive it.

III. Factual Findings

Our investigation uncovered evidence of multiple violations of the Ethics Code and WMATA Compact by Evans related to three primary areas: (1) Evans’s efforts regarding WMATA on behalf of Colonial Parking; (2) Evans’s actions at WMATA to assist Digi Outdoor Communications & Digi Outdoor Media (collectively, “Digi”); and (3) Evans’s 2018 business plan used in connection with his efforts to obtain a job with a private law firm.

A. Colonial Parking

As a subsidiary of The Forge Company, Colonial Parking is a parking operator located in Washington, D.C. The CEO of both Colonial and Forge is Rusty Lindner, who has been a close personal friend of Evans’s for many years. Emails between Lindner and Evans and between Lindner and Evans’s D.C. Council staff demonstrate that Lindner and Evans communicated regularly about a range of professional and social matters. During Evans’s tenure with Squire Patton Boggs and Manatt Phelps, Forge/Colonial and/or Lindner were clients of these law firms.

1. Colonial Consulting Agreement

As of October 1, 2016, Colonial’s parent, Forge, became a client of NSE, Evans’s consulting firm. This consulting agreement was signed while a WMATA request for proposal

(“RFP”) to provide parking services for WMATA was pending. Initially, Colonial agreed to pay Evans \$25,000 per year, but the amount was doubled to \$50,000 a few months later, as of February 2017.²

The Colonial consulting agreement added two provisions that were not included in previous NSE consulting agreements. First, the Colonial agreement added a provision saying that Evans would recuse himself from D.C. Council matters involving Colonial. The addition of this provision is significant because it demonstrates that both Colonial and Evans acknowledged that Evans’s work for Colonial presented the possibility of a conflict of interest. A similar provision to address potential conflicts involving Colonial and WMATA was not added, even though, as discussed below, Evans had been actively advocating on Colonial’s behalf at WMATA since at least April 2015.

Second, the Colonial agreement also added a description of the “Services” that Evans would provide pursuant to the agreement. Specifically, Evans agreed to provide Colonial with “information and advice regarding the metropolitan Washington, D.C. business community, including strategic issues relating to jurisdictional competition, *transportation*, and real estate ...” [6C (emphasis added)]. This definition necessarily includes matters related to WMATA.

At no point did Evans disclose to WMATA the existence or subject matter of NSE’s consulting agreement with Colonial. Evans’s annual disclosures identified NSE, but not the names of NSE’s clients, including Colonial. Nor did Evans disclose his consulting relationship with Colonial or his close personal friendship with Lindner at any later point, including when he participated in discussions of parking-related matters at Board meetings or while Evans pursued his campaign against WMATA parking vendor Laz Parking.

Since he rejoined the WMATA Board in 2015, Evans has taken an active role in parking issues at WMATA. Our investigation uncovered evidence of a pattern of conduct by Evans designed to oust Laz as WMATA’s parking vendor. During our interview, Evans acknowledged that these efforts were prompted by Lindner and were based on information that Lindner provided to Evans for the purpose of discrediting Laz, a Colonial competitor. Evans pursued an anti-Laz campaign by, *inter alia*: raising issues concerning WMATA’s RFP processes; criticizing Laz and WMATA management involved in parking decisions; urging three investigations by WMATA’s Office of Inspector General (“OIG”) concerning allegations of fraud and corruption against Laz; and regularly sharing with Lindner updates on parking-related investigations, information and internal WMATA communications, often contemporaneously with the underlying events.

² See Services Agreements dated as of August 1, 2016 between NSE Consulting and Digi, included in SRZ’s binder of Key Documents for WMATA Ethics Committee Investigation (“Key Document Binder”) at Tab 6C. Hereafter, documents that are cited in this memorandum will be referenced by their tab number in this Key Document Binder, which is being maintained as part of SRZ’s files.

2. Evans Raised Concerns About WMATA's 2015 Parking RFP

On March 31, 2015, WMATA issued an RFP to provide a range of parking services that WMATA could (but was not obligated to) request from the vendor, with a response deadline of April 22, 2015. On or about April 21, 2015, Evans raised issues with WMATA General Manager Jack Requa and others concerning the manner in which the RFP was publicized, which he suggested favored the incumbent, Laz. [9A]. WMATA determined that Colonial was among the parking vendors that WMATA notified about the RFP, and was on the bidders list. According to documents we obtained from the D.C. Council, Evans also raised concerns about the RFP with the D.C. Council. [9A]. On April 22, 2015, the deadline to submit bids, the D.C. Department of Transportation requested that WMATA extend the bid deadline by four weeks. WMATA agreed to a one-week extension as “a courtesy to the Board Member who raised this issue” about the RFP. *Id.* WMATA “later determined that the request was on behalf of a WMATA Board Member, rather than an interested party.” [9I].³ During our interview, Evans acknowledged that he had raised concerns on behalf of Colonial and based on information Evans received from Lindner. In addition, Board Secretary Jennifer Ellison shared with WMATA Inspector General Helen Lew the concerns that Evans had raised. [9A]. Colonial did not submit a bid in response to the RFP. Laz ultimately was awarded the four-year contract under which it continues to provide parking services to WMATA.

3. Evans's Efforts Concerning WMATA's 2016 Parking RFP

On September 1, 2016, WMATA issued a broader parking RFP, this one to finance, operate and maintain WMATA's entire parking portfolio. The 2016 RFP was potentially quite lucrative—during 2015, WMATA generated nearly \$50 million in parking-related revenue.

On September 14, 2016, the WMATA OIG received a complaint about the RFP and Lew commenced an investigation. [9B]. Colonial was among the potential bidders that attended a September 15, 2016 informational meeting WMATA held about the RFP for interested bidders. [9H]. Colonial's attendance confirms that it was attempting to business with WMATA and, therefore pursuant to the Ethics Code, Colonial was an “Interested Party” with regard to the 2016 RFP. Colonial clearly was seeking to do business with WMATA.⁴

In November 2016, WMATA canceled the RFP and fired Patrick Schmitt, WMATA Parking Director, for improperly sharing internal WMATA information with Laz Parking. In December 2016, IG Lew issued a report regarding her investigation, which concluded that Schmitt's misconduct created the appearance of a conflict and tainted the 2016 RFP. [9B].

³ Although we do not know for a fact who the “Board Member” was, circumstantial evidence suggests it was Evans.

⁴ Colonial representatives also had at least one meeting with Nina Albert, WMATA Director of Parking, about WMATA's parking operations.

4. Evans Requested a Second Investigation By the New IG

During the first half of 2017, Geoff Cherrington replaced Helen Lew as the WMATA IG. By this time, Evans was a paid consultant for Colonial (\$50,000 year). [6C]. Not satisfied with Lew's 2016 investigation, Evans asked the new IG to conduct his own investigation re: Laz, which he did. In his July 27, 2017 report, Cherrington concluded that no additional action was warranted for two reasons: first, the 2016 RFP had been withdrawn and WMATA had no plans to reissue it; and second, Schmitt had been terminated and replaced as WMATA Parking Director. [9C].

5. Following the OIG Budget Request, Evans Requested Another Investigation

On July 31, 2017 (a few days after issuing his July 27 report), Cherrington requested that WMATA's Board double the OIG's operating budget and change the reporting structure to give the OIG greater independence. Cherrington's request was emailed to Evans. [9D]. During the morning of August 3, 2017, Evans forwarded Cherrington's budget request directly to Lindner. *Id.* That afternoon, Evans again asked Cherrington to investigate Laz. The subject of Evans's email to Cherrington was "WMATA Parking Historical Problems." In it Evans complained about "*inappropriate emails between the Parking Department and Laz representatives while the RFP was underway. To me, where there's smoke, there's often fire.*" *Id.* (emphasis added). Evans concluded his email by requesting a meeting with Cherrington "to discuss this serious matter further." *Id.* Cherrington responded that same day from a family vacation and agreed to meet with Evans after Cherrington returned from vacation. *Id.* Just after midnight (at 12:16 a.m.), Evans forwarded Cherrington's response to Lindner. *Id.*

The following day, Cherrington again responded to Evans's email requesting another OIG parking investigation. In this email, which he sent on August 4, 2017 at 12:25 pm, Cherrington told Evans that he had reviewed the information Evans sent, discussed it with his OIG staff, and would be opening an investigation. *Id.* Twenty minutes later (at 12:46 pm), Evans forwarded Cherrington's email to Lindner. *Id.*

6. May 2018 Board Discussions About Parking Issues

During May 24, 2018 WMATA Board meetings, the Board heard a presentation by an outside consultant regarding its analysis of WMATA's parking portfolio. [9E]. Evans attended and participated in these Board discussions. [9F]. At no time did he disclose his consulting agreement with Colonial, his close friendship with Colonial's CEO, his efforts on behalf of Colonial at WMATA, or any potential conflict of interest.

7. Evans's Efforts On Behalf of Colonial Were Not Limited to RFPs

As noted, Colonial had been a client at Manatt when Evans worked there, including in late 2015, and Evans has been a close friend of Lindner's for many years. In November 2015, Lindner emailed Evans requesting average weekday WMATA ridership, comparing 2013 to 2015. [9G]. In response, Evans's D.C. Council staff (Communications Director Tom Lipinsky) emailed to Lindner what Lipinsky described as "rich data on daily ridership from WMATA from 2011-2014." *Id.* While the response was from Lipinsky, Evans was copied on it. Several days later, Lipinsky forwarded additional and "updated" WMATA daily ridership data to Lindner, in a spreadsheet titled "Rail Ridership by Day and Half Hour – May 2011 – 2015." *Id.* Again, Lipinsky copied Evans on his email to Lindner. Our investigation uncovered evidence that at least some of the information Evans's staff provided to Lindner was not publicly available.⁵

8. WMATA Code and Compact Violations Regarding Colonial

Based on the foregoing conduct, Evans violated the following provisions of the Ethics Code and the WMATA Compact:

- Code Violations
 - Evans violated his Duty to Avoid Conflicts (Art. II.D):
 - Evans did not disclose his consulting agreement with Colonial (i.e., an Actual Conflict of Interest).
 - Colonial was an "Interested Party" under Code Art. III.G as a party "seeking a contract or agreement with WMATA or otherwise has interests that can be directly affected by decisions or actions of WMATA."
 - Evans did not disclose close personal friendship with Lindner (i.e., an Apparent Conflict of Interest).
 - Evans violated his Duty of Loyalty (Art. II.A):
 - By working to benefit his friend Lindner and consulting client Colonial, Evans placed the best interests of these parties above the best interests of WMATA.
 - Evans violated the ban on Seeking Assistance of WMATA Personnel (Art. IX.A.4):

⁵ Had Lipinsky been providing publicly available ridership data, it seems likely that he would have simply provided a link to the data on the WMATA web site.

- By, among other things, waging a campaign against Laz, including repeatedly initiating investigations by WMATA's OIG, and seeking information from WMATA personnel to be shared with Colonial (ridership, etc.).
- Evans used his Official Position for Personal or Private Gain (Art. IX.A.1):
 - By repeatedly and proactively taking action that would benefit Colonial and Lindner, at or during the same time that Evans was being paid \$50,000 per year, Evans improperly used his position at WMATA for his own personal financial gain and/or for the private financial gain of his close friend Lindner and Colonial by virtue of Evans's consulting agreement.
- Evans violated the prohibition regarding Restricted Interests as set forth in the Compact (Art. VI):
 - By being financially interested and having a Substantial Interest in an Interested Party.
- Compact Violations
 - Through his Colonial consulting agreement:
 - Evans had a financial interest in WMATA's existing business relationship with Laz Parking, in violation of Compact Section 10(a)(1).
 - Evans solicited and accepted money "in connection with" his official duties, in violation of Compact Section 10(a)(2).

B. Digi

Our investigation also uncovered evidence of Evans's conduct concerning Digi Outdoor Communications and Digi Outdoor Media (together, "Digi"), related companies affiliated with Don MacCord that were in the business of installing and operating signs to display digital advertisements. In some respects, the Digi situation is similar to Colonial. Both involved undisclosed consulting agreements and efforts Evans undertook directly or indirectly with WMATA on behalf of his consulting client. The primary difference is that the duration of the consulting agreement with Digi and Evans's WMATA-related efforts for Digi were more abbreviated than for Colonial.

1. Digi Consulting Agreements

On or about August 1, 2016, Digi executed two consulting agreements that Evans prepared and under which Digi agreed to pay NSE \$50,000 per year. [6A]. With checks dated August 11, 2016, Digi paid NSE \$50,000. *Id.* Evans departed for vacation on August 12, 2016, and returned on August 21, 2016. On August 18, 2016, Evans's D.C. Council staff emailed Barbara Richardson, a WMATA employee, and requested that WMATA personnel help Digi with after-hours access to Metro property to install signs. Evans was copied on the emails to and from WMATA. [11]. By letter dated August 25, 2016, Evans returned the \$50,000 in checks to Digi without cashing them. [6A].⁶

2. Request For WMATA Assistance For Digi

The timing of the request for assistance on Digi's behalf is significant for two reasons. First, the request was after Digi signed the consulting agreement and issued checks to Evans, but before Evans returned the checks and notified Digi that he would not move forward with a consulting arrangement. Second, we understand that during this same period of time WMATA was taking steps to erect its own digital signs and was competing with Digi for advertising revenue. To the extent Evans's staff was seeking to assist Digi to install its signs, it was placing the interests of Evans and Digi above those of WMATA.

Evans did not disclose to WMATA—on his annual disclosures or otherwise—his consulting arrangement with Digi. For reasons that are not clear, in October 2016 Digi issued to NSE a stock certificate for 200,000 Digi shares. According to Evans, he returned the stock certificate to Digi.

3. WMATA Code and Compact Violations Regarding Digi

Based on the foregoing conduct, Evans violated the following provisions of the WMATA Ethics Code and Compact:

- Code Violations
 - Evans violated his Duty to Avoid Conflicts based on his undisclosed consulting agreement with Digi (Art. II.D).

⁶ Evans's letter claims that he had only recently discovered a controversy involving Digi and the D.C. government, and that dispute created a "potential conflict" that precluded his moving forward with a consulting relationship with Digi. According to news accounts, however, the D.C. government's dispute with Digi had been brewing for much of 2016. *See, e.g.,* "Ethics Officials Examine D.C. Lawmaker's Business Ties to Digital Sign Company," WASH. POST, May 7, 2018; "D.C. Council Member Jack Evans Received Stock Just Before Pushing Legislation That Would Benefit Company," WASH. POST, Dec. 20, 2018. Several days after Evans returned the checks, the D.C. Attorney General filed a lawsuit against Digi in D.C. Superior Court.

- Evans violated the ban on Seeking Assistance of WMATA Personnel by requesting WMATA's assistance on behalf of Evans's client Digi (Art. IX.A.4).
- Evans used his Official Position for Personal or Private Gain (Art. IX.A.1).
- Evans violated his Duty of Loyalty (Art. II.A).
- Evans violated the prohibition regarding Restricted Interests (Art. VI).
- Compact Violations
 - Evans violated Compact Section 10(a)(2) by soliciting or accepting money "in connection with" his official duties through his consulting agreement.

C. Evans's Other Consulting Agreements

According to Evans, in 2016, he asked his friend, Ron Paul, the CEO of Eagle Bank, for a job. At the time, Eagle Bank was an existing vendor of WMATA (and still is to this day). Evans indicated that he was not aware that Eagle Bank had a banking relationship with WMATA, or that WMATA had increased the funds it maintained at Eagle Bank from \$4 million to approximately \$24 million as of 2019.

Paul declined to hire Evans as an employee. Instead, he suggested that Evans become a consultant. In July 2016, Evans formed NSE, through which he intended to provide consulting services. As of August 1, 2016, Eagle Bank and a corporation owned by Paul signed consulting agreements with NSE. [6B]. Pursuant to those agreements, NSE would receive more than \$50,000 per year. *Id.* A year later, the amount was increased to \$100,000 per year. *Id.*

Evans approached other friends/clients and requested they pay him as a consultant. Ultimately Evans had consulting agreements with ten separate entities. Each of NSE's consulting clients was owned by, or affiliated with, one of six individuals with personal, business and/or social relationships with Evans. At least one client (i.e., Eagle Bank) was a WMATA vendor, and others (i.e., Colonial and Digi) sought to do business with WMATA. In total, Evans's consulting clients agreed to pay him \$325,000/year.⁷ [6A-6F]. At no time did Evans disclose any of these consulting agreements to WMATA.

⁷ This amount includes the \$50,000 checks that Evans returned to Digi.

EVANS'S NSE CONSULTING AGREEMENTS			
<i>Key Individual</i>	<i>Entities</i>	<i>Agreement Date(s)</i>	<i>Amount</i>
Don MacCord	Digi Media Digi Comm.	8/1/16	\$50,000
Ron Paul	Eagle Bank RDP Mgmt.	8/1/16 8/1/17	\$100,000
Rusty Lindner	Forge	10/1/16 2/20/17	\$50,000
Anthony Lanier	EastBanc Inc. EastBanc Tech. Squash on Fire	11/1/16 1/1/17 1/1/18 7/1/18	\$25,000
Richie Cohen	Willco	12/1/16 12/1/17	\$50,000
Steven Fischer	Fischer Holdings	3/1/18	\$50,000

D. Consulting Services Provided by Evans

During our interview, Evans was vague about what services he actually provided pursuant to his consulting agreements. According to Evans, the agreements permitted clients to consult with Evans as needed. In some instances, he said the client did not consult him at all, while in others, he regularly provided advice.

Beyond the evidence related to Evans's WMATA-related efforts for Colonial and Digi, our investigation uncovered an email between Evans and his accountant that demonstrates Evans was providing some kind of services to his clients. In connection with Evans's 2016 tax return, Evans's tax preparer asked Evans via email "were there any expenses incurred to offset the [NSE] income"? [7B]. Evans responded, "I believe these expenses could be used to offset NSE income" and listed the following expenses totaling \$34,560:

- Car (\$11,315)
- Chevy Chase Country Club (\$8,427)
- Economic Club (\$3,487)
- Metropolitan Club (\$3,300)
- Gas (\$2,194)
- Travel (\$2,000)
- Restaurant (\$2,000)
- Clothes (\$1,302)
- Papers (\$534)

To the extent that these were legitimate NSE business expenses, this correspondence suggests that Evans must have performed services for clients with whom he had consulting agreements.

Perhaps the best evidence of what Evans intended to do and did for his consulting clients, however, is the business plan he submitted to Nelson Mullins in 2018 in order to obtain employment.

E. Evans's 2018 Business Plan

Since he was first elected to the D.C. Council, Evans has worked part-time at private law firms. From 2002 to 2015, Evans worked at Squire Patton Boggs. From 2015 until 2017, Evans worked at Manatt Phelps. As of November 2017, Evans was no longer employed at Manatt and was searching for a similar position.

In late 2017 or early 2018, Evans attempted to convince Nelson Mullins, a South Carolina-based firm with a D.C. office, to hire him. After Evans's initial discussions with the firm, Nelson Mullins remained uncertain about what Evans would bring to the firm or offer to its clients. As a result, Nelson Mullins asked Evans (as the firm says it typically does for lateral candidates) for a written business plan describing how Evans intended to develop business, attract clients to the firm and help with the firm's existing client base. In essence, the business plan was intended to convince firm management outside D.C., who would not be familiar with Evans, why hiring Evans made sense.

A Nelson Mullins lawyer, Rob Hawkins, was enlisted to help Evans prepare a business plan. Hawkins knew Evans from working at the D.C. Council and for Mayor Bowser. Hawkins prepared a draft entitled "Business Development Strategy," which he forwarded to Evans on January 29, 2018. [3B].

In the email sending the draft to Evans, Hawkins stated:

"the narrative portion is mostly complete but there are some blanks for you to fill out, which are highlighted. Feel free to edit as you please, or to suggest major revisions, if necessary."

Evans reviewed the draft and made edits throughout the document. [3C]. But he did not edit, alter or delete any of the specific statements that on their face are improper under WMATA ethics provisions. During our interview, Evans acknowledged his responsibility for the language in the plan, and with the benefit of hindsight, expressed regret for the language.

1. Improper Statements Contained in Evans's Business Plan

On its face, the 2018 business plan Evans submitted to Nelson Mullins on January 31, 2018 violates the WMATA Ethics Code and Compact. The plan makes clear Evans's intent to use his position at WMATA for his own private gain. For instance, Evans says he intends to "leverage[e] my contacts and relationships" "developed as the Chairman of WMATA." [D3, p. 3]. The plan also claims that Evans was "uniquely positioned" to "cross-market[] my relationships and influence" developed as the Chairman of WMATA. *Id.* Moreover, the plan contemplates that Evans would solicit potential clients including WMATA active and prospective vendors such as Colonial Parking. *Id.* The plan states that Evans planned to develop business by partnering with other law firms including active WMATA vendors Arent Fox, Venable and Holland & Knight. *Id.*

Recently, the D.C. Council reprimanded Evans and found ethics violations on the face of Evans's business plan—without conducting any investigation, and without the benefit of knowing that Evans was invited and had multiple opportunities to modify the facially violative language but did not do so. [18].

2. WMATA Code and Compact Violations Regarding Evans's 2018 Business Plan

Based on the foregoing conduct, Evans violated the following provisions of the Ethics Code and the WMATA Compact:

- Code Violations
 - By offering his services to leverage his WMATA connections for Nelson Mullins, Evans violated the prohibition on using his official position for his financial gain, or the private financial gain of others with whom he was affiliated (Art. IX.A).
 - Evans violated the prohibition regarding Restricted Interests by violating Compact Section 10(a) (Art. VI).
- Compact Violations
 - The business plan violated Compact Section 10(a)(2) by soliciting something of value (a job) "in connection with" Evans's official duties.

F. Evans Knowingly Violated the WMATA Code and Compact

The evidence uncovered through our investigation demonstrates that Evans's ethical violations occurred not by accident, but "knowingly."⁸ Numerous factors support this conclusion about Evans's state of mind. For example, Evans has been a practicing lawyer for nearly 40 years, during which time he has completed regular ethics training courses. After rejoining the WMATA board, Evans has received annual in-person ethics training from 2015 through 2018. Since January 2016, Evans has served as the Chairman of the WMATA Board of Directors, the Executive Committee and the Ethics Committee. Through the Ethics Committee, Evans has been personally involved in WMATA ethics investigations, as he repeatedly noted to us and the Ethics Committee.⁹

In addition, the Ethics Code requires WMATA directors to complete annual disclosure forms reporting "employment, fiduciary positions, and substantial interests." Art. X.A. The WMATA Ethics Officer reviews these disclosures and advises each Director how to monitor and avoid potential Conflicts of Interest and other ethical issues based on the Directors' individual disclosures. Among other things, the Ethics Officer memoranda:

- Remind Directors of their obligations to (i) monitor for potential Conflicts of Interest and (ii) update their disclosures as necessary;
- Note that the Appearance of a Conflict of Interest may arise from "matters unrelated to Substantial Interest or Duties, such as close friendships and past business relationships"; and
- Observe that "[i]nterests that fall just shy of being reportable on your disclosure form" may also create the Appearance of a Conflict of Interest.

⁸ Black's Law Dictionary defines "Knowingly" as "With knowledge; consciously; intelligently; willfully; intentionally. A person acts knowingly with respect to a material element of an offense when: (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result."

⁹ These include a 2016 investigation related to Patrick Schmitt and Laz Parking (regarding sharing WMATA parking information with Laz) and a 2015 investigation concerning Mort Downey (concerning his consulting relationship with Parkinson & Brinckerhoff). Evans was also aware of a highly-publicized ethics investigation concerning former WMATA Board Member and D.C. Council member Jim Graham's efforts to circumvent normal channels and to barter WMATA's Florida Avenue project with a D.C. Lottery project pending before the D.C. Council.

The Ethics Officer memoranda to Evans (which we reviewed) specifically state:

“[T]he Code of Ethics includes personal representation as a type of interest. This means *[any party for which] [anyone for whom]* you provide professional services, regardless of the matter or compensation received, can give rise to a conflict. Please ensure you have reported *[all parties] [all people and businesses]* for which you provide professional services, or, if that is impractical, update your disclosures and recuse yourself whenever such a party *[becomes a prospective party to a WMATA financial transaction] [seeks a contract or agreement with WMATA]*, has interests that can be directly affected by WMATA or may realize a benefit or detriment from Board Action. It is also possible that personal representation will result in the Appearance of a Conflict of Interest.”

Moreover, the Ethics Code and the Ethics Officer memoranda make clear that Board Members have a continuing obligation to update their disclosures as their circumstances change.

During our interview, Evans said he had no recollection of having seen the Ethics Officer’s memoranda regarding his annual disclosures. He surmised that he did not recall these memoranda because they may have sent to him through Diligent, the information-sharing platform WMATA uses to circulate materials to Board Members, which Evans said he rarely used. However, both the WMATA Ethics Officer and Board Secretary told us that the Ethics Officer’s memoranda were delivered to Evans by email, not through Diligent.

Combined with the general guidance already discussed, the discussion of personal representation issues in the Ethics Officer’s memoranda put Evans on notice that:

- Even though Evans was not required to list on his annual disclosures the names of the clients for whom Evans provided legal, consulting or other professional services, those clients nonetheless could give rise to potential Conflicts—Actual or Apparent;
- For conflict purposes, it did not matter whether Evans’s work for a client was related to that client’s WMATA-related interests;
- In light of these possible Conflicts of Interest, Evans could either disclose the names of his individual clients OR update his disclosures and recuse himself whenever a client developed interests that may be impacted by WMATA; and
- The Code requires recusal whenever there is an Actual Conflict or an Apparent Conflict.

Notwithstanding the extensive evidence of his knowledge of his ethical obligations, Evans never recused himself while serving on the WMATA Board.

IV. Conclusion

Our investigation, conducted in accordance with the mandate we received from the Ethics Committee of the WMATA Board, provides a snapshot of Evans's conduct, and how it violated WMATA's ethics rules. His personal representations—of his clients and close personal friends—violated his ethical duties as the Chair of the WMATA Board. He solicited and accepted money to serve the interests of his clients and friends—putting their interests above those of WMATA—like Colonial Parking/Rusty Lindner, Digi and perhaps others (e.g., Eagle Bank/Ron Paul), many of whom were actual or potential WMATA vendors, with business interests that intersected with WMATA's interests, and could be served by certain actions or decisions of WMATA or its Board.

Our investigation uncovered a pattern of conduct in which Evans attempted to and did help his friends and clients and served their interests, rather than the interests of WMATA. For example, he waged an extensive campaign against Laz Parking on behalf of Colonial Parking. He repeatedly urged and caused the WMATA OIG to investigate Laz Parking, for which efforts Colonial was the natural beneficiary. He shared WMATA communications regarding parking issues, ridership data and other information with Lindner, Colonial's CEO, on a regular basis, sometimes virtually contemporaneously with the events themselves. He sought assistance for Colonial and Digi from WMATA personnel.

Any questions about Evans's intentions are answered by his 2018 business plan which he used to try and convince a law firm to hire him. He represented to that firm, Nelson Mullins, that he could generate work for the firm by "leveraging" his contacts and relationships developed as the Chairman of WMATA, and by cross-marketing his "relationships and influence" developed as the Chairman of WMATA.

And any questions about what clients Evans was proposing and intending to bring to that law firm are answered in the business plan where Evans specifically lists these clients, with Colonial Parking at the top, as well as other current and potential WMATA vendors. [*See* 3D, p. 3].

What Evans offered and was selling to Nelson Mullins (and presumably to the law firms he previously worked for) was precisely the type of services he performed for his friends and clients while serving as a WMATA Board Member—as the Chairman of its Board, Executive Committee and Ethics Committee.

Evans did not disclose his consulting and personal relationships, and he did not recuse himself from any WMATA-related transactions, discussions, or issues.

Through this conduct, Evans violated the WMATA Code of Ethics and the WMATA Compact.

Attachment E

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



Office of Government Ethics



In Re: Jack Evans
Case No. 19-0011-P

NEGOTIATED DISPOSITION:

Pursuant to section 221 (a)(4)(A)(v)¹ of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012, D.C. Law 19-124, D.C. Code § 1-1161.01 et seq., (“Ethics Act”), the Office of Government Ethics (the “Office” or “OGE”) hereby enters into this public negotiated settlement agreement with the Respondent, Jack Evans. Respondent agrees that the resulting disposition is a settlement of the above-titled action, detailed as follows:

FINDINGS OF FACT:

The City Council is the legislative body of the District of Columbia government, with the primary function of promulgating laws for the betterment of District residents. According to its website, the mission also includes oversight of multiple agencies, commissions, boards and other instruments of District government. The Council is made up of thirteen members: a representative from each of the District’s eight wards, and five members, including the Chairman, who are elected as District-wide or “at-large” members.²

Respondent currently serves as the representative for Ward 2 on the Council, a position he has held continuously since May 1991, having been re-elected seven times. As a Councilmember, Respondent is both a “public official” and an “employee” of the District of Columbia government required to comply with the District’s ethics laws, specifically including the Council of the District of Columbia Code of Official Conduct (“Council Code of Conduct”).

On March 19, 2019, the Respondent was reprimanded by the Council for directing a Council employee to use government time and resources for purposes other than official Council business, and for using the prestige of the office for his private financial gain.³ The Respondent voted in favor of the Resolution.⁴ The evidence gathered by the Council included two emails sent

¹ Section 221(a)(4)(E) of the Ethics Act provides, “[i]n addition to any civil penalty imposed under this title, a violation of the Code of Conduct may result in the following: ... [a] negotiated disposition of a matter offered by the Director of Government Ethics, and accepted by the respondent, subject to approval by the Ethics Board.”

² <https://dccouncil.us/councilmembers/> (last accessed July 23, 2019).

³ PR23-0179, Council Reprimand of Councilmember Jack Evans Resolution of 2019 as amended and published in DC Register Volume 66 at Page 3233 which is attached hereto as Exhibit 1 and is incorporated herein by reference.

⁴ See *Voting Information for PR23-0179* which is attached hereto as Exhibit 2 and is incorporated herein by reference.

on January 14, 2015 and January 31, 2018 respectively in which the Respondent sought employment with two law firms practicing in the metro Washington, DC region. In both instances, emails were sent from the official District email account assigned to the Respondent's Chief of Staff to local law firms with attached proposals outlining Respondent's business plans. The Resolution concluded these business proposals "outlined how (the Respondent) could use his tenure, accomplishments and stature as Councilmember and Chairman of the Committee on Finance and Revenue. . .to generate business for the law firms."⁵ Respondent expressed confidence in his ability to help those law firms "originate new government relations and legal business" by "contacting (his) network of business relationships developed as an elected official, as the Chairman of WMATA, and through (his) professional and personal affiliations and relationships..." In the Business Plan for Jack Evans attached to his Chief of Staff's January 14, 2015 email and the Business Development Strategy attached to his Chief of Staff's January 31, 2018 email, the Respondent identified at least a dozen companies as potential targets for the law firms' recruiting efforts.

Both emails were sent during Council business hours from the official District email account assigned to the Respondent's Chief of Staff. According to the Business Plan for Jack Evans attached to his Chief of Staff's January 14, 2015 email, it was the Respondent's intention to continue to serve on the Council while devoting his remaining time to developing and serving his law practice. The rules allow Councilmembers to have outside employment.

NATURE OF VIOLATIONS

Specifically, OGE believes evidence exists that demonstrates Respondent, on two separate occasions used government time or resources for other than official business, directed his staff to perform unauthorized personal services, and attempted to use the prestige of his public office for personal gain.

As such, OGE believes substantial evidence demonstrates Respondent violated the following provisions of the Council of the District of Columbia's Code of Official Conduct, Council periods 21 and 22, (hereinafter the "Code") in connection with the events of January 14, 2015 and January 31, 2018:

Using Council time or government resources for purposes other than official business or other government-approved or sponsored activities, in violation of Code Section VI(a)(1). (Business proposals sent by Respondent's Chief of Staff from her official District email account to local law firms.); Requesting his Chief of Staff to perform during regular working hours personal services on his behalf not related to her official government functions and activities, in violation of Code Section VI(a)(2); Knowing use of the prestige of his office or public position for his private gain, in violation of Code Section VI(c)(1). (Respondent expressed his willingness to use his contacts to help the firms recruit business.)

None of the above-referenced incidents were authorized by the District of Columbia.

Respondent admits that he understands the nature of the violations of the provisions of the Code of Conduct identified above by OGE, for which OGE believes substantial evidence exists showing that Respondent's actions violated said provisions of the Code of Conduct.

Respondent admits that he understands the consequences of entering a Negotiated Disposition with OGE in connection with his conduct on January 14, 2015 and January 31, 2018, which OGE asserts violated the provisions of the Code of Conduct, for which OGE believes substantial evidence exists showing that Respondent's actions violated said provisions of the Code of Conduct, including a potential maximum fine of Thirty Thousand Dollars (\$30,000.00) for the violations described hereinabove.

Respondent admits that he understands the rights he is waiving by entering a Negotiated Disposition with OGE in connection with these violations of the provisions of the Code of Conduct, for which OGE believes substantial evidence exists showing that Respondent's actions violated said provisions of the Code of Conduct, including all the substantive and procedural rights established at 3 DCMR §5500, et seq. such as the right to proceed to an adversarial hearing before the Board in this matter; to introduce evidence on his own behalf during that adversarial hearing; to rebut the evidence submitted by OGE during that adversarial hearing; the right to confront and cross-examine any witnesses called by OGE to testify during that adversarial hearing in support of its case against him; and the right to refuse to answer a question during such an adversarial hearing that might tend to incriminate the witness by claiming his or her Fifth Amendment privilege against self-incrimination.

Respondent admits that he has counsel competent in these matters, that he has consulted with and has been advised by his counsel with respect to his substantive and procedural rights in this administrative matter and his waiver thereof in entering a Negotiated Disposition with OGE in connection with these violations of the provisions of the Code of Conduct for which OGE believes substantial evidence exists showing that Respondent's actions violated said provisions of the Code of Conduct, and that he is totally satisfied with the representation and advice he has received from said counsel in this administrative matter.

While Respondent does not admit or deny that his actions described hereinabove violated the Code of Conduct as alleged by OGE, to facilitate a resolution of these alleged violations, the Respondent nevertheless waives his right to proceed to an adversarial hearing in this administrative matter and he voluntarily, knowingly, and understandingly consents to the Board's imposition of a fine against him in this administrative matter.

As described hereinabove, Respondent has accepted full responsibility for his actions and identified the following factors as mitigating circumstances to be considered by OGE in deciding

upon an appropriate remedy in this matter, which factors OGE took into consideration and gave such weight as OGE believed was warranted:

- o Respondent expected and intended that these two letters would be sent on Respondent's or his Chief of Staff's personal email, and he had no knowledge that Council resources would be used.
- o Respondent understood that the Code of Conduct permitted a de minimis use of government resources for personal use, that is, his preparing and sending a personal letter during government hours would not violate the Code.
- o The January 31, 2018 business plan was drafted in large part by the law firm involved and was exchanged between Respondent and the firm but was never used to market or obtain business. The law firm arrangement did not occur.
- o Respondent believes, and has conferred with an outside ethics professor who opined, that the emails of January 14, 2015 and January 31 2018 can be characterized as "puffing" his contacts and experience as a public official in an exchange between attorneys, not clients and as such did not present a conflict of interest or violate *other* general ethics codes.

By agreeing to settle this matter via a negotiated disposition, Respondent will allow OGE to avoid expending significant time and resources to litigate this matter through a contested hearing, and to focus its finite resources on other investigations.

TERMS OF THE NEGOTIATED SETTLEMENT

Respondent acknowledges that OGE believes his actions described hereinabove violated the Code of Conduct and would present substantial evidence that his conduct violated the District Code of Conduct if this matter proceeded to an adversarial hearing. Accordingly, Respondent agrees to:

1. Respondent agrees to pay a total fine of Twenty Thousand Dollars (\$20,000.00) no later than August 8, 2020.
2. Respondent must attend and complete an ethics training conducted by the OGE no later than October 8, 2019.
3. No later than September 1, 2019, the Respondent must provide written notice to all members of his Council staff and Constituent Services office staff that they are directed to attend and complete an ethics training conducted by the OGE, which training must be completed no later than October 8, 2019.
4. No later than September 1, 2019, the Respondent must provide OGE with an updated and accurate list of all individuals who are required to attend the ethics training identified in the preceding paragraph.
5. No later than October 8, 2019, all individuals identified by the Respondent in the list described in the preceding paragraph must attend and complete an ethics training conducted by the OGE.

6. All outstanding amounts not paid against the fine will be due in full on or before August 8, 2020 (the "Maturity Date"). OGE further agrees not to commence collection action against the Respondent until December 8, 2020 if an unpaid balance remains on his fine at the Maturity Date.

Respondent acknowledges and understands that this Negotiated Disposition is only binding upon himself and OGE in resolution of the specific violations described hereinabove of the Council Code of Conduct arising from the two emails identified hereinabove. Respondent acknowledges and understands that OGE does not have the authority to bind any other District or federal government agency to this agreement, including but not limited to the Metropolitan Police Department, the Federal Bureau of Investigations, the District of Columbia Office of the Attorney General ("OAG"), the United States Attorney for the District of Columbia ("USAO") or the United States Department of Justice ("DOJ"). Respondent further acknowledges and understands that notwithstanding the terms of this Negotiated Settlement, his conduct described hereinabove may also subject him to the imposition of civil and/or criminal penalties by other government agencies who are not bound by the terms of this agreement whatsoever.


Jack Evans
Respondent

8/8/19.
Date

Respondent understands that if he fails to pay the full \$20,000.00 fine in accordance with the terms set forth hereinabove, pursuant to section 221(a)(5)(A) of the Ethics Act (D.C. Official Code § 1-1162.21(a)(5)(A)), the Ethics Board may file a petition in the Superior Court of the District of Columbia for enforcement of this Negotiated Disposition and the accompanying Board Order assessing the fine. Respondent agrees that this Negotiated Disposition constitutes various facts that may be used in any subsequent enforcement or judicial proceeding that may result from his failure to comply with this agreement. Respondent also understands that, pursuant to section 217 of the Ethics Act (D.C. Official Code § 1-1162.17), he has the right to appeal any order or fine made by the Ethics Board. Nonetheless, the Respondent knowingly and willingly waives his right to appeal the accompanying Board Order assessing the \$20,000.00 fine in this matter in exchange for the concessions made by this Office in this Negotiated Disposition.

Respondent further understands that if he fails to adhere to this agreement, OGE may instead, at its sole option, recommend that the Ethics Board nullify this settlement and hold an open and adversarial hearing on this matter, after which the Ethics Board may impose sanctions up to the full statutory amount as provided in the Ethics Act for each violation.⁶ Because the Office is, at this time, foregoing requesting that the Ethics Board hold an open and adversarial hearing on this matter, Respondent waives any statute of limitation defenses should the Ethics Board decide to proceed in that matter as a result of Respondent's breach of this agreement.

⁶ Section 221(a)(1) (D.C. Official Code § 1-1162.21(a)(1)).

The mutual promises outlined herein constitute the entire agreement in this case. Failure to adhere to any provision of this agreement is a breach rendering the entire agreement void. By our signatures, we agree to the terms outlined therein.



Jack Evans
Respondent

8/8/19
Date



Brent Wolfingbarger
Director of Government Ethics

8-8-2019
Date

This agreement shall not be deemed effective unless and until it is approved by the Board of Ethics and Government Accountability, as demonstrated by the signature of the Chairperson below.

APPROVED:



Norma B. Hutcheson
Chair, Board of Ethics and Government Accountability

Aug 8, 2019
Date

EXHIBIT 1

ENROLLED ORIGINAL

A RESOLUTION

23-49

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 19, 2019

To formally reprimand Councilmember Jack Evans for violations of the Council of the District of Columbia Code of Official Conduct.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Council Reprimand of Councilmember Jack Evans Resolution of 2019”.

Sec. 2. (a) Inherent in the position of member of the Council of the District of Columbia is the responsibility to act, at all times, with the highest standards of ethical conduct. A Councilmember must act in the public interest. A Councilmember must perform the duties of the office to which he or she is elected in a manner that maintains the confidence of the public and must take no action that violates or threatens the public trust. These governing principles are embodied in the Council of the District of Columbia Code of Official Conduct and are fundamental to holding elected office.

(b) Section VI(a) of the Council of District of Columbia Code of Official Conduct, Council Period 23, adopted pursuant to the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 23, Resolution of 2019, effective January 2, 2019 (Res. 23-1; 66 DCR 272), (“Code of Official Conduct”) provides, in part, that:

“GENERALLY, Employees shall not:

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

(2) Order, direct, or request an employee to perform during regular working hours any personal services not related to official Council functions and activities . . .”

(c) Section VI(c)(1) of the Code of Official Conduct provides that “An employee may not knowingly use the prestige of office or public position for that employee’s private gain or that of another.”

Sec. 3. On several occasions, including in 2015 and 2018, Councilmember Jack Evans directed a Council employee to use government resources to email business proposals seeking employment. The business proposals outlined how Councilmember Evans could use his tenure,

EXHIBIT 1

ENROLLED ORIGINAL

accomplishments, and stature as Councilmember and Chairman of the Committee on Finance and Revenue, and as the Council's appointee to the Board of Directors of the Washington Metropolitan Area Transit Authority, to generate business for the law firms.

Sec. 4. Councilmember Jack Evans's actions constitute a violation of section VI of the Code of Official Conduct, in that he directed a Council employee to use government time and resources for purposes other than official Council business, and, further, he knowingly used the prestige of his office and public position seeking private gain.

Sec. 5. This reprimand does not concern other allegations that have been reported in the public press as those allegations are under investigation by both the Board of Ethics and Government Accountability and the United States Attorney's Office and may or may not lead to other sanctions.

Sec. 6. To maintain the public trust in the integrity of the legislative branch of government, the Council expresses disapproval of the conduct of Councilmember Jack Evans as detailed in this resolution, and hereby reprimands Councilmember Jack Evans for conduct in violation of section VI of the Code of Official Conduct.

Sec. 7. In addition, the Chairman shall refer or re-refer legislation not of general applicability and effect such as tax abatements for specific properties to a committee other than the Committee on Finance and Revenue pending the aforementioned investigations. Further, the Council recommends that jurisdiction over the Commission on Arts and Humanities and also over the Washington Convention and Sports Authority/Events DC be removed from the Committee on Finance and Revenue.

Sec. 8. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to Councilmember Jack Evans.

Sec. 9. This resolution shall take effect immediately.

Description

Final Reading

Date of Vote

Mar 19, 2019

Vote Type

Voice Vote

Vote Result

Approved

Phil Mendelson	Yes	Brianne Nadeau	Yes
Jack Evans	Yes	Mary Cheh	Yes
Brandon Todd	Yes	Kenyan McDuffie	Yes
Charles Allen	Yes	Vincent Gray	Yes
Trayon White	Yes	Elissa Silverman	Yes
Anita Bonds	Yes	David Grosso	Yes
Robert White	Yes		

Voting Summary

Yes	13	No	0
Present	0	Absent	0
Recused	0	Abstained	0
Vacant	0	Other	0

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY



IN RE: Jack Evans

Respondent

CASE No.: 19-0011-P

ORDER

Based upon the mutual representations and promises contained in the Negotiated Disposition approved by the Board herein on July 11, 2019, and upon the entire record in this case; it is, therefore

ORDERED that Respondent pay a civil penalty in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00).

This Order is effective upon approval by the Board of Ethics and Government Accountability, as demonstrated by the signature of the Chairperson below.

The Board commends the work of its staff members who investigated this case, including Attorney Advisor Sonya King, Investigator Ileana Corrales, and Investigator Ralph Bradley.

Norma B. Hutcheson

Norma B. Hutcheson
Chair, Board of Ethics and Government Accountability

Aug 8, 2019
Date

Attachment F



U.S. Department of Justice

Jessie K. Liu
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St. N.W.
Washington, D.C. 20530*

March 5, 2019

VIA EMAIL

Council of the District of Columbia
c/o Nicole Streeter
General Counsel
Email: nstreeter@dccouncil.us

Re: Grand Jury Subpoena #GJ2019030453892
USAO #2018R01728

Dear Ms. Streeter:

Enclosed, please find a federal grand jury subpoena calling for the production of documents and information. In lieu of a personal appearance, you may comply with the subpoena by furnishing all documents requested by the date on the subpoena to:

FBI Washington Field Office
c/o Special Agent Michael L. Wagner
601 4th Street, NW
Washington, DC 20535

We kindly request that, to the extent possible, you produce documents in electronic format on a CD or DVD. Because packages received through regular mail are irradiated and can be damaged, it is further requested that subpoenaed documents be produced through Fed Ex or another commercial carrier. If you have any questions concerning the subpoena or compliance with it, please feel free to contact Special Agent Wagner.

Sincerely,

A handwritten signature in cursive script that reads "J.P. Cooney".

J.P. Cooney
Chief

Derrick Williams
Assistant U.S. Attorney
Fraud & Public Corruption Section

Amanda Vaughn
Trial Attorney
Public Integrity Section
U.S. Department of Justice

UNITED STATES DISTRICT COURT
for the

District of Columbia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: Council of the District of Columbia
c/o Nicole Streeter, General Counsel

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
U.S. Courthouse, 3rd Floor
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Date and Time:
Tuesday, March 26, 2019 at 9:00 AM

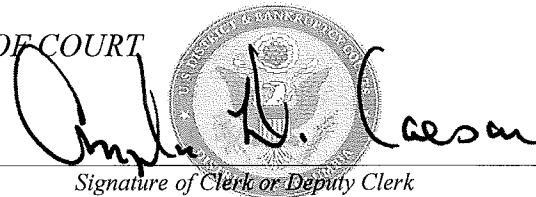
You must also bring with you the following documents, electronically stored information, or objects:

PLEASE SEE ATTACHMENT A

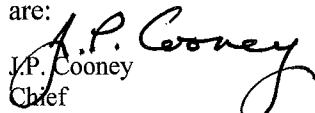
In lieu of personally appearing before the Grand Jury on the date indicated, you may comply with this grand jury subpoena by promptly providing the undersigned Assistant U.S. Attorney with the requested records.

Date: March 5, 2019

CLERK OF COURT


Signature of Clerk or Deputy Clerk

The name, address, telephone number and email of the Assistant United States Attorney, who requests this subpoena, are:


J.P. Cooney
Chief

Fraud & Public Corruption Section
United States Attorney's Office for the District of Columbia
555 4th Street, N.W. Room #5247
Washington, DC 20530
Phone: 202-252-7281 Fax: 202-307-2304
Email: joseph.cooney@usdoj.gov

Subpoena #GJ2019030453892
USAO #2018R01728
Preparer: AROHDE

DECLARATION OF CUSTODIAN OF RECORDS

Pursuant to 28 U.S.C. §1746, I, the undersigned, hereby declare:

My name is _____.
(name of declarant)

I am a United States citizen and I am over eighteen years of age. I am the custodian of records of the business named below, or I am otherwise qualified as a result of my position with the business named below to make this declaration. I have knowledge of the record keeping system used by this business; this includes how records are created and maintained.

I am in receipt of a United States District Court Subpoena #GJ2019030453892 dated March 5, 2019, signed by Assistant United States Attorney J.P. Cooney, requesting specified records of the business named below.

Attached hereto are _____ pages of records regarding _____
(Brief description of type of documents being subpoenaed)

_____ responsive to the subpoena. I understand how these responsive documents were created. Pursuant to Rules 902(11) and 803(6) of the Federal Rules of Evidence, I hereby certify that the records attached hereto:

- (1) were made at or near the time of the occurrence of the matters set forth in the records, by, or from information transmitted by, a person with knowledge of those matters;
- (2) were kept in the course of regularly conducted business activity, in that the records were created and preserved pursuant to established procedures, and were relied upon by an employee or this business; and
- (3) were made as part of the regularly conducted business activity as a regular practice, in that the records were created and preserved as part of routine reflections of the normal operations of this business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(date)

(signature of declarant)

(name and title of declarant)

(name of business)

(business address)

(business address)

Definitions of terms used above: As defined in Fed.R.Evid. 803(6), "record" includes a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses. The term "business" as used in Fed.R.Evid. 803(6) and the above declaration includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

INSTRUCTIONS FOR PRODUCTION OF RECORDS

I. General:

- a. Records existing as **Electronically Stored Information (ESI)** shall be produced in **non-proprietary electronic form** and shall include text data and image data held:
 - i. In your record retention systems; and/or
 - ii. By your technology, data, or other service provider(s).
- b. Records that do not exist as ESI may be produced in paper or other original format and may be converted to image or text data and provided as ESI, unless originals are required.

II. Text Data

- a. Text data relating to transactions shall be produced within a data file:
 - i. Using a delimited ASCII text data format; or
 - ii. Using software that can export to a commonly readable, non-proprietary file format without loss of data.
- b. Text data files relating to transactions shall include field descriptions (e.g., account number, date/time, description, payee/payor, check number, item identifier, and amount).

III. Image Data

- a. Image data shall be produced in graphic data files in a commonly readable, non-proprietary format with the highest image quality maintained.
- b. Image data of items associated with transactions (e.g., checks and deposit slips) shall be:
 - i. Produced in individual graphic data files with any associated endorsements; and
 - ii. Linked to corresponding text data by a unique identifier.

IV. Encryption/Authentication

- a. ESI may be transmitted in an encrypted container (*e.g. flash drive, CD/DVD*). Decryption keys and/or passwords shall be produced separately at the time the data are produced. *Please do not encrypt individual file contents if the container is encrypted.*
- b. Authentication, such as hash coding, may be set by agreement.
- c. Affidavits or certificates of authenticity may be included as part of the electronic production.

ATTACHMENT A

Council of the District of Columbia
c/o Nicole Streeter, General Counsel

Documents to be Produced

1. Any and all documents relating to Donald A. MacCord, including his current or former agents, employees, representatives, or relatives.
2. Any and all documents relating to the following entities, including any of their current or former agents, staffers, employees, contractors, subsidiaries, affiliates, representatives, lobbyists, or related entities:
 - a. Branded Cities;
 - b. Digi Holdings, LLC;
 - c. Digi Media Communications, LLC;
 - d. Digi Outdoor, LLC;
 - e. Digi Outdoor Media, Inc.;
 - f. Digi Urban Northwest;
 - g. Lumen Eight Media Group, LLC.
 - h. NSE Consulting, LLC;
 - i. Signworks, LLC; and
 - j. Monument.
3. Any and all documents relating to lobbying or advocacy directed at the Council of the District of Columbia and any of its members or offices, Mayor Muriel Bowser, the Office of the Mayor of the District of Columbia, the Washington Metropolitan Transit Authority, the District Department of Transportation, or the D.C. Department of Consumer and Regulatory Affairs, including lobbying or advocacy conducted by councilmembers and their staffs, concerning commercial interior and exterior digital signage in the District of Columbia, including but not limited to the below-listed topics:
 - a. Title 12 of the District of Columbia Municipal Regulations;
 - b. The "Sign Regulation Clarification Emergency Amendment Act of 2015";
 - c. The "Sign Regulation Clarification Emergency Declaration Resolution of 2015";
 - d. The "Sign Regulation Clarification Temporary Amendment Act of 2015";
 - e. The "Signs Appendix Regulation Emergency Declaration Resolution of 2016";
 - f. The "Signs Appendix Regulation Emergency Amendment Act of 2016;
 - g. The Signs Appendix Regulation Temporary Amendment Act of 2016;
 - h. Any proposed legislation, emergency or otherwise, related to digital signage;
 - i. Digital advertising at and around Nationals Park;
 - j. Digital advertising on public transportation; and
 - k. The dispute between Digi Outdoor Media and the D.C. Department of Consumer and Regulatory Affairs.

4. Any and all documents relating to the legislative history, including documents related to the listing of legislation and procedural and substantive votes, regarding the below listed pieces of legislation and any legislation related to or arising from it:
 - a. The “Sign Regulation Clarification Emergency Amendment Act of 2015”;
 - b. The “Sign Regulation Clarification Emergency Declaration Resolution of 2015”;
 - c. The “Sign Regulation Clarification Temporary Amendment Act of 2015”;
 - d. The “Signs Appendix Regulation Emergency Declaration Resolution of 2016”;
 - e. The “Signs Appendix Regulation Emergency Amendment Act of 2016”;
 - f. The Signs Appendix Regulation Temporary Amendment Act of 2016; and
 - g. Any proposed legislation, emergency or otherwise, related to digital signage.
5. Any and all documents relating to the following individuals or entities, including any of their current or former agents, staffers, employees, contractors, subsidiaries, affiliates, representatives, lobbyists, or related entities:
 - a. Anthony Lanier;
 - b. Eastbanc, Inc.;
 - c. Eastbanc Technologies;
 - d. Squash on Fire;
 - e. Bill Dean;
 - f. MC Dean;
 - g. Ronald Paul;
 - h. Eagle Bank Corp;
 - i. Eagle Bank;
 - j. RDP Management;
 - k. Russell Linder;
 - l. Colonial Parking;
 - m. The Forge Company;
 - n. Steven Fisher;
 - o. Fischer Holdings;
 - p. Richard Cohen; and
 - q. Willco Construction Co.
6. Any and all documents relating to D.C Council member John K. “Jack” Evans III, including his current and former staffers, agents, employees, and representatives, and any of the following individuals or entities, including any of their current or former agents, staffers, employees, contractors, subsidiaries, affiliates, representatives, lobbyists, or related entities:
 - a. Squire Patton Boggs;
 - b. Manatt, Phelps, and Phillips, LLC;
 - c. John Ray;
 - d. Nelson Mullins;
 - e. Timothy Fitzgibbon;

- f. Venable;
 - g. K&L Gates;
 - h. Exelon;
 - i. Pepco; and
 - j. William Jarvis.
- 7. Any and all documents relating to any advice, guidance, or opinion that D.C. Council member John K. “Jack” Evans III, including his current and former staffers, agents, employees, and representatives, sought from the D.C. Council General Counsel, the Board of Ethics and Government Accountability (“BEGA”), or ethics advisors regarding outside employment or conflicts of interest.
 - 8. Unredacted copies of all documents produced by the D.C. Council to BEGA related to an ethics investigation or investigations of or concerning the conduct of D.C. Council member John K. “Jack” Evans III.
 - 9. Any and all financial disclosure forms, including drafts and amendments, submitted to the D.C. Council or BEGA on behalf of D.C. Council member John K. “Jack” Evans III.
 - 10. The following documents related to D.C. Council member John K. “Jack” Evans III:
 - a. An inventory of ethics training he was expected to complete;
 - b. An inventory of ethics training he did complete;
 - c. All forms that he executed, refused to execute, or failed to execute to acknowledge the completion of ethics training;
 - d. All forms that he executed, refused to execute, or failed to execute to acknowledge that he understood or agreed to abide by ethics rules, conduct standards, disclosure requirements, reporting obligations, or conflict of interest rules for D.C. Council members and D.C. government officials; and
 - e. Oaths of office that he took or executed.

Time Limitations

Paragraphs 1 through 9 call for the production of documents from January 1, 2014, to the present. Paragraph 10 calls for the production of all documents without time restriction.

Definitions

Unless explicitly indicated otherwise, the following words or phrases are used herein as follows:

- 1. The term “documents” refers to any record in your possession, custody, or control, and it includes all drafts or unfinished versions of documents.

2. The term “documents” includes writings or records of every kind or character, conveying information by mechanical, electronic, photographic, or other means, whether encarded, taped, stored or coded electrostatically, electromagnetically, or otherwise.
3. The term “documents” includes, but is not limited to, gifts, flight itineraries, expenses, campaign contributions, constituent fund contributions, things of value, financial records, wire transfers, invoices, receipts, payments, cash payments, checks (front and back), books of account, working papers, check requests, contracts, proposals, reports, calendars, e-mails, text messages, cell phone records, correspondence, notes, photographs, legislation, invitations, fundraisers, campaign contributions, lobbying, work schedules, time cards, notes, quotes, bids memoranda, minutes, summaries, telephone records, telephone message logs or slips, date books, interoffice communications, results of investigations, videotapes, audiotapes, microfiche, microfilm, any electronic media, computer data, and papers similar to any of the foregoing and other writings of every kind or description.
4. A document “relating to” a given subject matter means any document or communication that constitutes, contains, embodies, comprises, reflects, identifies, describes, analyzes, or is in any way pertinent to that subject, including, without limitation, documents concerning the presentation of other documents.

Privileges

This subpoena does not compel production of documents subject to an applicable privilege from disclosure recognized under federal law. If a document demanded by this subpoena is withheld under a claim of privilege, or is otherwise withheld, provide the following information regarding the record: (1) its date; (2) the name and title of its author(s); (3) the name and title of each person to whom it was addressed, distributed and disclosed; (4) the number of pages; (5) an identification of any attachments or appendices; (6) a description of its subject matter; (7) its present location and the name of its present custodian; (8) the paragraph of this subpoena to which it is responsive; and (9) the nature of the claimed privilege or other reason the document is withheld.

Attachment G

A RESOLUTION

23-175

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 9, 2019

To authorize the Committee of the Whole to hold certain hearings and roundtables during the Council's summer 2019 recess and to amend the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 23, Resolution of 2019 to authorize the University of the District of Columbia to submit grant budget modifications during the Council's summer 2019 recess; to authorize the Chairman to appoint O'Melveny & Myers to investigate the conduct of Councilmember Jack Evans; to amend the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 23, Resolution of 2019 to abolish the Committee on Finance and Revenue, assign jurisdiction over certain agencies and matters to other Council committees, provide for an ad hoc committee to be established at the request of the Chairman, and permit an ad hoc committee to proceed in closed session; and to amend the Appointment of Chairperson Pro Tempore, Committee Chairpersons, and Committee Membership Resolution of 2019 to no longer provide for the membership of the Committee on Finance and Revenue.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Council Period 23 Rules and Investigation Authority Amendment Resolution of 2019."

Sec. 2. Recess rules.

(a) The Committee of the Whole is authorized to hold a hearing or roundtable, including a joint hearing or roundtable, on a contract, reprogramming, budget modification, measure, or proposed action by the Mayor during the period from July 15 through September 15, 2019.

(b) The Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 23, Resolution of 2019, effective January 2, 2019 (Res. 23-1; 66 DCR 272), is amended as follows:

(1) Section 306(b) is amended by adding a new paragraph (5) to read as follows:

"(5) A request for a budget modification from the University of the District of Columbia for Fiscal Year 2019 grant funds may be transmitted to the Secretary from July 15 through September 15, 2019."

(2) Section 711 is amended as follows:

(A) The existing text is designated as subsection (a).

(B) A new subsection (b) is added to read as follows:

“(b) Notwithstanding subsection (a) of this section, a request for a budget modification from the University of the District of Columbia for Fiscal Year 2019 grant funds may be submitted, and the time period for the request may be counted, from July 15 through September 15, 2019.”.

(c) This section shall expire on September 16, 2019.

Sec. 3. Authorization of investigation.

(a)(1) The Council authorizes the Chairman to appoint O’Melveny & Myers (the “Law Firm”) to investigate the conduct of Councilmember Jack Evans in accordance with the scope set forth in paragraph (2).

(2) The scope of the investigation authorized pursuant to paragraph (1) of this subsection shall be 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 as that term is defined in section 101(7) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01(7)), or the Rules of Organization and Procedure for the Council of the District of Columbia (“Council Rules”), including those provisions of the Code of Conduct or the Council Rules that relate to conflicts of interest, outside activities, use of government resources, or use of confidential information.

(b) In furtherance of the investigation authorized by subsection (a) of this section, the Council authorizes the Law Firm to issue subpoenas on behalf of the Council to compel the attendance of witnesses, to obtain testimony, or to require the production of documents or other information or tangible items. Notwithstanding Council Rule 612, a report to the Secretary to the Council before issuing a subpoena as part of the investigation shall not be required.

(c) The Law Firm may take testimony of witnesses by oral, written, or videotaped depositions.

(d) Notwithstanding Council Rule 306, the Law Firm may conduct any investigative activities, including transmitting any report to the Council, during a period of Council recess.

(e) Upon completion of its investigation, the Law Firm shall file a report containing findings on the allegations investigated pursuant to subsection (a) of this section with the Secretary to the Council, along with all records obtained during the investigation that support the findings.

Sec. 4. The Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 23, Resolution of 2019, effective January 2, 2019 (Res. 23-1; 66 DCR 272), is amended as follows:

(a) Section 232 is amended as follows:

(1) Subsection (a) is amended by striking the phrase “the operation of business improvement districts (“BIDs”) and oversight of BIDs, but not including the establishment of BIDs” and inserting the phrase “the operation of business improvement districts (“BIDs”) and oversight of BIDs; the establishment of business improvement districts; matters relating to taxation and revenue for the operation of the government of the District of Columbia; industrial-revenue bonds” in its place.

(2) Subsection (b) is amended as follows:

(A) Add the following agencies to the list of agencies that come within the purview of the Committee on Business and Economic Development, to be inserted in alphabetical order within the existing list:

“Combat Sports Commission

“Destination DC

“District of Columbia Lottery and Charitable Games

“Multistate Tax commission

“Office of the Chief Financial Officer (not including the Office of Budget and Planning)”.

(B) Remove the following agencies from the list of agencies that come within the purview of the Committee on Business and Economic Development:

“Commission on Fashion Arts and Events

“District of Columbia Boxing and Wrestling Commission

“Office of Cable Television, Film, Music and Entertainment”.

(b) Section 234 is amended as follows:

(1) Subsection (a) is amended by striking the phrase “and matters regarding returning citizens” and inserting the phrase “matters regarding returning citizens; and the Washington Metropolitan Area Transit Authority” in its place.

(2) Subsection (b) is amended by adding the following agencies to the list of agencies that come within the purview of the Committee on Facilities and Procurement, to be inserted in alphabetical order within the existing list:

“Washington Metropolitan Area Transit Authority

“Washington Metrorail Safety Commission”.

(c) Section 235 is repealed.

(d) Section 236 is amended as follows:

(1) Subsection (a) is amended by striking the phrase “and matters relating to the general operations and services of government” and inserting the phrase “matters relating to the general operations and services of government; general-obligation bond acts and revenue anticipation notes; and tourism and cultural affairs” in its place.

(2) Subsection (b) is amended by adding the following agencies to the list of agencies that come within the purview of the Committee on Government Operations, to be inserted in alphabetical order within the existing list:

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“Board of Review of Anti-Deficiency Violations

“Commission on Fashion Arts and Events

“Office of Cable Television, Film, Music and Entertainment”.

(e) Section 239(b) is amended by adding the following agencies to the list of agencies that come within the purview of the Committee on Housing and Neighborhood Revitalization, to be inserted in alphabetical order within the existing list:

“Real Property Tax Appeals Commission for the District of Columbia”.

(f) Section 651(b) is amended to read as follows:

“(b) An ad hoc committee shall be established:

“(1) If a Councilmember is censured by BEGA;

“(2) By request of any 5 members of the Council; or

“(3) By request of the Chairman.”.

(g) Section 653 is amended as follows:

(1) Subsection (a) is amended by striking the phrase “members of the Council” and inserting the phrase “members of the Council or by the Chairman” in its place.

(2) Subsection (c) is amended by striking the phrase “in executive session in accordance with Rule 504” and inserting the phrase “in a closed session in accordance with Rules 371 through 376” in its place.

Sec. 5. Section 3(4) of the Council Period 23 Appointment of Chairperson Pro Tempore, Committee Chairpersons, and Committee Membership Resolution of 2019, effective January 2, 2019 (Res. 23-2; 66 DCR 398), is repealed.


Sec. 6. This resolution shall take effect immediately.

Attachment H

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Memorandum

October 8, 2019

TO: Members of the Council
FR: Phil Mendelson, Chairman 
RE: Investigation of Councilmember Jack Evans

In July I proposed and the Council adopted a resolution authorizing investigation of Councilmember Jack Evans for alleged violations of the Council's Code of Conduct. I had hoped the investigation by the law firm of O'Melveny & Myers would be completed in two months. On September 16th I announced I would proceed with an investigating committee even though the report is not yet completed. The purpose of this memorandum is to announce the appointment of an Ad Hoc Committee to Investigate Mr. Evans.

The Ad Hoc Committee shall function pursuant to Council Rules 651-653, and shall adhere to those Rules. All councilmembers except Mr. Evans are hereby appointed as members of the Ad Hoc Committee. This recognizes the importance of the Council's need to address the allegations thoroughly. Councilmember Mary Cheh is appointed chair of the Committee.

The scope of what the Ad Hoc Committee considers is set forth in Council Resolution R. 23-175 adopted on July 9th.

The O'Melveny & Myers report must precede the Ad Hoc Committee's work. The investigative phase – conducting interviews and document review – is nearly complete, so the report is expected within a few weeks. Once the report is issued the Committee will need to meet, afford Mr. Evans an opportunity to be heard, and determine whether further investigation is warranted, the matter is to be set for a hearing, and what further action should be taken.

The allegations concerning Mr. Evans' conduct are serious and have affected the public's respect for the Council. They concern: whether Mr. Evans used his public office for private gain; whether he violated disclosure requirements applicable to councilmembers; whether he failed to recuse himself on matters before the Council for which Council rules require recusal; whether there was a quid pro quo for certain votes; and other possible violations. If any of these allegations are substantiated by the O'Melveny & Myers investigation, that report will contain the charges on which proposed sanctions may be based.

As you know, the Council's Rules specify three types of sanction: (1) reprimand; (2) censure; (3) expulsion. The gravity of the allegations, if sustained by the investigation, warrant consideration of all of these. The Ad Hoc Committee may propose additional or alternative sanctions. The Committee shall report its recommendation and findings to the Council within 90 days of the O'Melveny & Myers report.

Attachment I

A RESOLUTION

23-244

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 22, 2019

To set forth the purview of the ad hoc committee established for the purposes of considering evidence of a violation of the Code of Conduct, policy, or law by Councilmember Evans, to provide that the ad hoc committee shall be composed of 12 members, to provide that the ad hoc committee shall have 90 days from the date the General Counsel to the Council provides the report of O'Melveny & Myers LLP to the Secretary to the Council to report its recommendation and findings to the Council, to authorize the ad hoc committee to issue subpoenas, and to authorize the filing of a petition or petitions in the Superior Court of the District of Columbia to compel witnesses to provide testimony to the ad hoc committee.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Ad Hoc Committee Procedures Resolution of 2019".

Sec. 2. The ad hoc committee appointed by the Chairman of the Council on October 8, 2019 ("Committee") is an ad hoc committee established for the purposes of considering evidence of a violation of the Code of Conduct, policy, or law by Councilmember Evans, as provided for in Council Rule 651(a) and consistent with the scope of the investigation set forth in section 3(2) of the Council Period 23 Rules and Investigation Authority Amendment Resolution of 2019, effective July 9, 2019 (Res. 23-175; 66 DCR 8288). Consistent with Council Rule 651(a), it may make recommendations for further action by the Council with respect to Councilmember Evans, including the potential sanctions of censure or expulsion pursuant to Council Rule 651(d).

Sec. 3. Notwithstanding Council Rule 651(c), the Committee shall be composed of all Councilmembers, except for Councilmember Evans, who is the subject of the request for an ad hoc committee.

Sec. 4. Notwithstanding Council Rule 653(e), if the Committee does not report its recommendation and findings to the Council within 90 calendar days after the General Counsel to the Council provides the report required by section 3(e) of the Council Period 23 Rules and Investigation Authority Amendment Resolution of 2019, effective July 9, 2019 (Res. 23-175; 66

ENROLLED ORIGINAL

DCR 8288), to the Secretary to the Council, the matter shall be sent to the Council for its consideration.

Sec. 5. In furtherance of the Committee's work, as described in the Chairman's October 8, 2019 memorandum appointing the Committee, the Council authorizes the Committee to issue subpoenas on behalf of the Council to compel the attendance of witnesses, to obtain testimony, or to require the production of documents or other information or tangible items. Notwithstanding Council Rule 612, a report to the Council before issuing a subpoena shall not be required.

Sec. 6. Pursuant to section 413(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 789; D.C. Official Code § 1-204.13(b)), the Council authorizes its General Counsel to file a petition or petitions in the Superior Court of the District of Columbia to compel witnesses who have refused to obey subpoenas issued by the Committee, or otherwise not cooperated with the Committee's work, as described in the Chairman's October 8, 2019 memorandum appointing the Committee, to appear and testify on topics relevant to the investigation, under penalty of contempt.

Sec. 7. This resolution shall take effect immediately.

Attachment J

COUNCIL OF THE DISTRICT OF COLUMBIA
OFFICE OF COUNCILMEMBER KENYAN McDUFFIE, WARD 5
MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

TO: Councilmember Mary M. Cheh, Chairperson, Ad Hoc Committee in the Matter of
Councilmember Jack Evans
FROM: Councilmember Kenyan R. McDuffie
RE: Statement for the record from Committee Meeting on December 3, 2019
DATE: December 6, 2019

Please find below, for the committee record, a full transcript of my remarks from the Meeting of the Ad Hoc Committee in the Matter of Councilmember Jack Evans on December 3, 2019.

“I’m going to vote but I’m going to say a couple words before I do so.

I’ve sat by and I’ve listened to my colleagues who have decided to speak at this point.

I tell you.... I don’t know that I, in my more than seven and a half years as a member of the Council of the District of Columbia have ever been placed in a position to make something that I think as significant as this.

And I think I’ve gotten to know you all quite a bit since I’ve been down here and perhaps you all have gotten to know me as a colleague. And I take these matters – as I’m sure we each do – very seriously. My training as a lawyer has a habit of kicking in even when the politics says it shouldn’t.

I look at and weigh facts, weigh evidence, I weigh the law, and I make decisions based on conclusions that I draw from that process. Admittedly, that process doesn’t always lend itself to a political environment.

You all have made, I think, a compelling case as to expulsion for Councilmember Evans. As compelling as the case that’s been made, I don’t know that it really takes any individual member or several members of this body to make that case. I think the case was made by Councilmember Evans himself.

I think that when he decided to engage in a pattern of behavior that essentially used government resources, used his colleagues, used his staff, it amounts to one of the most – if not the most – egregious abuse of power that I have witnessed, not only on my time on the Council, but in my time looking at politics in the District of Columbia.

And I know there are some who might look at other instances of misconduct by members of the Council and say “you know what? They broke the law, it was criminal in nature, and they took money.” And I see those instances as equally as egregious.

But what we have before us is a conscious, concerted, deliberate, and intentional effort to get as close to the line as possible and not to cross it. But I think in the process, there was a crossing of the line. Multiple times. And I think the evidence has demonstrated, clearly, a conscious disregard for the public's trust and the impact that it's had, not only on our institution but to the ability of residents across the District of Columbia to have faith in their political leaders. And it's damning. Perhaps irreparable harm to this body.

I was not prepared to vote today, in fact, I didn't make a statement. I jotted down some notes and perhaps I'll look back on whatever I'm saying right now and wish I had said some things differently.

But ultimately, I think what Mr. Evans has done epitomizes a level of privilege that cannot go unpunished. We have already taken some steps to punish him and while we're left with options outside of what you listed, Madame Chair, I see why we've gotten to a place where expulsion has to be on the table and I think is justifiable by the facts, the evidence, the rules, and the laws that we have before us.

So, I would vote 'yes' to that."

Attachment K



COUNCIL OF THE DISTRICT OF COLUMBIA

OFFICE OF COUNCILMEMBER ANITA BONDS

Friday, December 6, 2019

Councilmember Bonds Votes to Expel Councilmember Jack Evans

The current circumstances surrounding my colleague Jack Evans' conduct are egregious and irreconcilable, and they lead me to vote to expel him from the D.C. Council. The process of investigating and reviewing the findings regarding his actions was painful to accept. However, the findings are critical in the uncovering of what has been a series of deliberate misuses of power, a severe breach of public trust, and a woeful abuse of his elected position.

Over his nearly 30-year tenure, Councilmember Evans has made many contributions to the economic and cultural vitality of this city, and many will continue celebrating his accomplishments. However, we have learned that during some of those years, he also used his public post for financial gain on behalf of his friends and clients, and to enrich himself.

While outside employment is permitted and current law stipulates that Councilmember's public service is part-time, it would be a gross misinterpretation of ethics rules to fathom that members of the Council would perform lobbyist duties leading to a favorable vote benefitting a client.

There are instances where Mr. Evans did not perform his due diligence by disclosing those professional relationships as required by DC law. In fact, as outlined in the investigative report compiled by the O'Melveny & Meyers law firm, Mr. Evans has, on numerous occasions, acted on a "flawed interpretation of his ethical obligations" by failing "to recognize the inherent conflict that should have been disclosed and addressed."

Furthermore, when queried about services he provided for the payments he received, his answer was simply "I do not know what I was paid for." Mr. Evans was paid \$800.00 an hour for services that he could not identify.

As of late, some questions about the potential for Mr. Evans to remain a member of the Council until the expiration of his term on January 2, 2021, seem to misunderstand the reasons for expulsion. Mr. Evans broke the trust of his colleagues and took official action in favor of his paying clients. Mr. Evans' lack of full disclosure of the positions in which he functioned on behalf of clients and friends may have also misled his colleagues, and perhaps even the public, through his votes on measures before the body. His actions far exceed reprimand or censure.

As an elected official, I have a duty to the people to uphold the Official Code of Conduct, and residents should expect nothing less. I stand by my decision in good faith to vote for expulsion. The Council's unanimous vote offers Councilmember Evans the opportunity to resign immediately.

As the Council moves forward on the path towards a new start, we must work together for healing and the restoration of the full faith and trust in our government. We must also continue to subscribe to the mission of providing good government on behalf of and with the people of the District.

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Attachment L



COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20004

David Grosso
Councilmember At-Large
Chairperson, Committee on Education

Committee Member
Government Operations
Health
Human Services
Labor and Workforce Development

**Statement for the Record from Councilmember David Grosso, Member of the
Ad Hoc Committee in the Matter of Councilmember Jack Evans**

December 6, 2019

The matter of Councilmember Jack Evans has captured the attention of the public, the media, and this government for nearly two years now. It is a lamentable position to be in. Media reports, an outside investigation, and now our own investigation have all reached the same conclusion: Councilmember Evans has used his position, entrusted to him by the residents of Ward 2, to benefit himself financially.

The Council of the District of Columbia engaged the law firm O'Melveny & Myers to investigate Councilmember Evans. The O'Melveny & Myers report found numerous egregious violations of the Council Code of Conduct, including Rule I, which governs conflicts of interest; Rule II, which governs outside activities; Rule III, which prohibits gifts from outside sources; Rule VI, which governs the use of government resources; and Rule XI, which governs financial disclosure. Councilmember Evans' violation of Rule XI is also a violation of D.C. Law under §1-1162.24 and 1-1162.25.

We must now take a course of action that is not easy but is necessary to hold our colleague accountable in order to protect the integrity of our decisions and repair the public's trust in our institution. The most serious punishment for the most egregious violations of our rules is expulsion from this body.

For those with concerns about Ward 2 not having a representative on the Council temporarily, I highlight that there are five At-Large members who represent Ward 2 every day on the Council of the District of Columbia, and we will continue to work on your behalf.

This is an unfortunate situation of our own making—it simply has taken the Council far too long to reach this point. The Council failed to take the allegations against our colleague and the concerns of fellow members seriously from the first report by *DistrictDig* in February 2018 about Councilmember Evans' conflicted relationship with Donald MacCord and his companies

with business before the District of Columbia. Shortly thereafter I spoke privately with Chairman Mendelson and urged him to consider appointing an ad hoc committee. Later, when the *Washington Post* reported he had accepted stock from the company, my call for an ad hoc committee went unheeded. Instead, we abdicated our responsibility to conduct an investigation into one of our own to outside entities, including the media, BEGA, and WMATA.

Over the next seven months, a cycle repeated itself. A news story alleging some new wrongdoing. Questions from our constituents and the media about what we thought and what we planned on doing. Lies, denials, and obfuscation by Councilmember Evans to delay the process. Consideration of another incremental punishment that would only look inconsequential and ill-considered as soon as the cycle started again.

Our failure to take ownership of this situation from the outset has damaged the Council's reputation, compounding the damage done to it already by Councilmember Evans' transgressions. Further, it distracted from the important work we and our staff do here every day on behalf of the people of the District of Columbia.

Had we appointed an ad hoc committee to investigate fully, I believe we would have reached this conclusion much sooner. I believe we would also have a fuller picture of just how far back our colleague's corruption reaches.

I would like to applaud Councilmember Cheh for her leadership of the ad hoc committee. She was by every measure the right Councilmember to lead this effort. I appreciate the time, dedication, and thoroughness of her and her staff on this issue.

Going forward, Councilmember Evans will again be afforded a final opportunity to present a defense. The first time we gave him this opportunity it was not under oath. The second time, he declined because he would be under oath. Our experience over the past two years tells us we can no longer trust anything that Councilmember Evans has told us since this ordeal began. Unless placed under oath, nothing Councilmember Evans says could sway my decision to recommend expulsion to the full Council.

I look forward to finality on this matter so that the Council can get back to working on behalf of the residents of the District of Columbia on issues impacting their daily lives.

Attachment M



COUNCIL OF THE DISTRICT OF COLUMBIA
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004
SUITE 408

Elissa Silverman
Councilmember, At-Large
Chair, Committee on Labor and Workforce Development

Office: (202) 724-7772
Fax: (202) 724-8087
esilverman@dccouncil.us

December 5, 2019

Councilmember Mary M. Cheh, Ward 3
John. A Wilson Building
1350 Pennsylvania Ave. NW, Suite 108
Washington, D.C. 20004

Dear Councilmember Cheh,

Please accept the submission of my statement for the Ad Hoc Committee's final report attached.

Sincerely,

A handwritten signature in black ink, reading "Elissa Silverman".

Elissa Silverman
Councilmember, At-Large

Statement from Councilmember Elissa Silverman

I think it is easy to get lost in the long list of ethical violations, or in the technical details of how Councilmember Evans violated our Code of Conduct and our laws. Instead I'd like to take a step back and say: What really happened here?

We have a group of powerful business leaders and lobbyists who wanted to help their ally on the D.C. Council by giving him a job, giving him more income. Tommy Boggs gave Jack a job at Patton Boggs. John Ray gave Jack a job at Manatt. And when Jack asked Ron Paul, the head of Eagle Bank, for a job, Paul said that he had a better idea: Jack should set up an LLC and that way Paul could give Jack money not only through Eagle Bank but through his own development company.

Other big business leaders signed up too. And when those business leaders needed something – whether it be a law to help their business or needed DDOT to fix a sidewalk or DCRA to fast-track a permit – Jack was their fixer. And what really became apparent to me by reading all the exhibits in our investigation is that this wasn't just about Jack: WE ALL BECAME UNWITTING CO-CONSPIRATORS to this scheme.

Every councilmember sitting here has voted for bills of his, without knowing that he was getting paid by clients who benefitted from them. Some of us have moved amendments or bills for him, not knowing that he had clients who would benefit from the actions, clients paying him tens of thousands of dollars.

And I'm just as guilty here as anyone, since I voted for the Finance Committee budget report that stripped out the parking tax increase, without knowing that Councilmember Evans was being paid by the largest parking operator in the District. In an email exchange in our exhibits, Rusty said we need to get rid of that tax and Jack said: Done.

They hired him to be their D.C. government fixer. And he delivered. Even worse, he enrolled us and we delivered for them too. So when Willco needed a sidewalk fixed at 5501 Connecticut Ave in Ward 3, Jack said: Done. 5501 Connecticut is in Ward 3, of course. So Jack enrolled his ward colleague and constituent services director to help.

And when Pepco wanted to quash a study on public utilities, which they thought would be damaging to their business, they got Jack to "arrange a 'team'" of councilmembers, that's the now infamous "Hey Grrrl" email from Tina Ang of Manatt. And not only did Jack arrange the team of us, but he, along with his Manatt law firm colleagues, got one of us to move an amendment that would help their client.

There were efforts to make all this look kosher, and I'll get to that in a minute. But there were times when Jack and business partners knew the optics were bad. When the Masons wanted a tax

abatement in his own ward, Jack knew it wouldn't pass the smell test. So he enrolled one of us in his cause....and in Manatt's cause. Because they were a client of his firm.

I could go on and on, and reading our investigation we can all look back and realize that when Jack persuaded us to do something he wasn't just wearing his councilmember hat – at the same time he was wearing his business consultant hat too.

That should make all of us mad: Where's the ethics violation of making all of us co-conspirators, essentially, of this business scheme that funneled money to a colleague of ours and in exchange he was their fixer, sharing information, about us and in the end USING US for their financial benefit? He used us, he used his staff, and he used his prestige of office to enrich himself and help his clients. I can't get out of my mind an email from one of Jack's clients telling him to "play dumb" with us, like we are some marionettes who can be manipulated at will.

There were efforts to make this look kosher. In fact, many efforts were made by Bill Jarvis, Rusty Lindner, and Jack's staff to make it look on paper like he was complying with our ethics law. Rusty Lindner called it "belts and suspenders." Yet it was clear this was just to provide a paper trail but there was little interest in taking this advice to heart. In April of 2016, we know our general counsel advised him against doing anything that would benefit his paying clients. In September of that year, he was told he couldn't chair a hearing on a bill that benefitted them. Nevertheless, just six months later, and two months after taking on Willco as a client, Councilmember Evans introduced a bill that benefitted Willco directly, held a hearing on it, marked it up, and passed it through the Council. Again, this is despite the explicit advice from our general counsel not to do that.

And that's just one of the many violations. Together, they are about as bad as it gets, short of taking money from a Redskins cup on camera. What Councilmembers Evans did infected this entire body, and it corroded the public's trust in our government.

If we don't expel Councilmember Evans for this, then I honestly don't know what would rise to the level of expulsion. If we settle for a slap on the wrist in the form of a censure, we're saying to our constituents that this behavior is acceptable, that we're okay with this violation of the public trust. That this is business as usual at the Wilson Building. We've already taken away his greatest source of power, the chairmanship of the Finance Committee, for a far lesser infraction. Taking him off the other committees, where he has little if any power, is honestly a minor, trivial punishment. In fact, both Anita and I have been deprived of a committee because of this mess and we didn't even do anything wrong.

I know Councilmember Evans' lawyers have made the argument that we shouldn't expel him, and that we should let the voters decide, either in the upcoming recall or the primary. I couldn't disagree more. We shouldn't pass the buck. Don't make the voters do our work for us. Previous Councils didn't have this power to expel when they were dealing with Michael Brown or Harry Thomas. I wasn't here at that time, but I imagine it was put in place so we could act in a case

like this. Madame Chair, I am voting in favor of expulsion. And I encourage my colleagues to join me in using it.

Attachment N



Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Brianne K. Nadeau
Councilmember, Ward 1

Chairperson
Human Services Committee

Committee Member
Housing and Neighborhood Revitalization
Government Operations
Health

AD HOC COMMITTEE IN THE MATTER OF COUNCILMEMBER JACK EVANS

STATEMENT OF BRIANNE K. NADEAU

Early in this process I remarked that Councilmember Evans should step down as a Councilmember. I continue to carry this sentiment and I am profoundly disappointed in the actions of Councilmember Evans and the amount of time we, as a legislative body, have had to take away from our other important work in order to provide due process.

That is what we have provided and that is also why I waited to express an opinion about the appropriateness of a further reprimand until both sides had been heard. I believe Councilmember Evans' voice has been heard throughout this entire process. It is his words that are quoted and relied upon throughout the O'Melveny report to demonstrate multiple violations of our code of ethics. It was his words over hundreds of pages of transcripts that provide even more damning context. It was his words, and the words of his attorneys and experts that we considered when reviewing the written response to the report as well as in various letters.

We offered Councilmember Evans the opportunity to be heard, in front of his colleagues, and he decided not to come. I do not blame him for this decision, but I want to make clear on the record that he was afforded the opportunity. So, after all of this process, what do we know?

The investigation found at least eleven thematic instances in which Councilmember Evans violated our rules of ethics. We know that Councilmember Evans was paid by, had a financial interest in, or was working to acquire the business of private companies that had important issues before the Council. And we know that on many occasions, Councilmember Evans took various actions that supported the interests of these private companies. We also know, and this is very important to me personally, that every Councilmember and their staff are required to take the same ethics trainings and are subject to the same rules of ethics.

What this really comes down to for each of us is what do we believe. Or said another way, how do we view and interpret these facts.

I see a Councilmember that demonstrated a pattern and practice of unethical behavior. He systematically pursued personal profit and business opportunities that were available because of and were directly related to his position as an elected public official.

I believe that as elected officials, each one of us on this body are required to meet the highest standards of personal and professional conduct. I believe that Councilmember Evans' actions demonstrate a gross failure to meet these most basic expectations and that unfortunately, the damage is already done. Councilmember Evans' actions have substantially breached the public trust and every single day that he continues to serve results in an additional blow to the credibility of this body.

In November, all members of this Council received an impassioned letter from some District residents advocating for Councilmember Evans. The title of the letter was "The Jack We Know." I would like to have served with the Jack Evans depicted in this letter. And I think at some points in my time on this body, the man depicted in that letter is exactly who I

was able to work with. But the findings uncovered during this process show that the contents of that letter are not the full story.

Sadly, what we are doing here today is not about extoling all of the great things Councilmember Evans has done for this city nor is it about tarnishing his legacy. Furthermore, it is outside the scope of this committee to decide whether Councilmember Evans acted criminally as well as to determine his intent when violating our rules of ethics. Criminality never has been and never should be the only standard against which we measure a councilmember's fitness to serve. As people that hold the public trust, we are held to a higher standard. Accordingly, criminality is not the standard that O'Melveny was asked to investigate. O'Melveny's report and their subsequent testimony in front of this body also made clear that they did not try to determine Councilmember Evan's intent because our code of ethics does not demand it.

Still, a clear picture emerged of a Councilmember who used his position of public trust to personally profit. Councilmember Evans' actions or inactions have weighed heavily on this body for too long. We have the necessary information and it is now time for us to take action. Madam Chair, given that we have already reprimanded him and removed him as chair of the Committee on Finance, I don't see much point in a Censure recommendation. I believe this committee should vote to expel Mr. Evans.

Although I am not able to attend the fourth Ad Hoc Committee meeting on December 10, 2019, I support the decision to expel Councilmember Evans, as well as the report prepared by the Ad Hoc Committee.

Attachment O



COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004

Charles Allen
Councilmember, Ward 6
Chairperson
Committee on the Judiciary and Public Safety

Committee Member
Business and Economic Development
Education
Transportation and the Environment

December 3, 2019

Thank you Chairwoman Cheh for your leadership in chairing this Ad Hoc Committee. It's a job and role that no one would ask for, but one that is integral to operations of this Council when facing the current crisis in confidence.

When it comes to this committee's actions against Councilmember Jack Evans, intent is irrelevant as to *whether* a violation was committed, but it's entirely relevant in considering *discipline*. And here we have a pattern of misconduct that reaches into every area of the Council and stretches back years. There is no other way to see the volumes of evidence that has come before us.

And in not appearing before the Ad Hoc Committee today, Mr. Evans is avoiding sworn testimony. I don't fault him for trying to protect himself, given the pending criminal inquiry by USAO, but this is yet another way in which he's avoided taking responsibility for his actions.

In that vein, I believe deeply in taking responsibility for harms. In other words, "accountability". And I can't help but juxtapose the people I work with every day as Chair of the Judiciary Committee – those who commit harms and those they harm – with Councilmember Evans' pattern of intentional avoidance. I find it deeply disturbing that he would fight so hard to continue to criminalize people who can't afford a \$2 Metro fare yet spend hundreds of thousands of dollars (and spend hundreds of thousands of taxpayer dollars – and that's without the potential recall and special election) trying to get off scot free, while those who commit crimes of poverty "must be held accountable" – or as he put it during that debate, are akin to thieves who steal a \$2 gallon of milk.

Let's break this rule down into its component parts and discuss whether the evidence supports each element.

- The standard for expulsion under Council Rule 656 for expulsion is "egregious wrongdoing." That threshold has been met by the facts this committee has received.
- The next standard is where "the violation of law is of the most serious nature, including those violations that substantially threaten the public trust". There is no question the public trust has not just been threatened, it has been broken.

- Expulsion is our highest form of sanction and should be entered into only as a last resort. And in the Committee of the Whole, we have to find, based on “substantial evidence”, that CM Evans “took an action that amounts to a gross failure to meet the highest standards of personal and professional conduct”. The facts outlined in the reports demonstrate this.

It is clear that the standard for expulsion has been met.

We have to set politics aside here as much as possible. This is about Councilmember Evans, yes, but it’s really about the integrity of the Council as an institution, of its future. Who are we going to be? What values do we represent? What example are we setting for each other, our staff, the District government, and for the residents if we allow Mr. Evans to continue to operate – claiming he did nothing wrong – when he so very clearly has been compromised.

I’ve been at the Council – either as a staffer or a Councilmember – for more than a decade. I’ve seen people led out in handcuffs. I’ve seen families torn apart by wrongdoing. I’ve seen the body struggle to rehabilitate itself after blow upon blow upon blow. But we did. But ethics are a constant work in progress. *Ethics are a practice*. The Council’s future depends on us each engaging in this practice, always guided by law, counsel we receive, and our sworn oaths to our constituents. If we refuse to do that, then the body must act.

I’ve also given a lot of thought to what censure means. We are guided by precedent, but I’m also aware that everything we do sets further precedent. In that light, I look to a recent time this body censured a member – former Councilmember Marion Barry. In that case, Mr. Barry self-reported, admitted, and cooperated in a review of gifts he’d received from a prohibited source that totaled about \$6,000. He cooperated with the Ad Hoc Committee and sought to repair the harm he’d caused. This body censured him for his actions and removed him from chairing a Council committee. Now I look at the facts surrounding Mr. Evans, the documented pattern and practice of ethical violations of the law and self-interest. Censure cannot be a limitless range and I think this is important in recognizing censure is not enough in the case of Mr. Evans and that this has moved to grounds for expulsion.

We have two duties here. One to the public, and one to the Council as an institution. To the public, the trust has clearly been broken by Mr. Evans and we must act to repair it. To the Council, how can any of us trust any legislation, issue, or action by Councilmember Evans at this point?

On both accounts, the facts of this case are clear and undisputed. And the Council needs to act. I will support and recommend Mr. Evans be expelled.

A handwritten signature in blue ink, appearing to read "Charles Allen", with a stylized, flowing script.

Charles Allen, Ward 6 Councilmember
Chairperson, Committee on the Judiciary and Public Safety

Attachment P



Brandon T. Todd
Councilmember, Ward 4
Chairman, Committee on Government Operations

Committee Member
Health
Human Services
Transportation and the Environment

Statement for the Ad Hoc Committee Report
Submitted to Councilmember Mary Cheh, Chair, Ad Hoc Committee

I voted to recommend the expulsion of Councilmember Jack Evans because anything short of expulsion sends the wrong message to residents and undermines the credibility of the Council of the District of Columbia.

Last month, the investigation into Councilmember Evans revealed at least 11 violations of ethics rules, and demonstrated a clear and undeniable pattern of willful violations of both the government ethics laws and the Council of the District of Columbia's Code of Conduct.

Previously I publicly called on Councilmember Evans to resign. I believed then, as I believe now, that Councilmember Evans' misconduct was egregious, and that he could no longer dutifully serve the residents of Ward 2 and the District of Columbia.

Councilmember Evans' actions have betrayed the trust of his colleagues, and most importantly, the residents. It would be impossible for the Council to move forward if Councilmember Evans remains in office. When the public trust is eroded, all efforts must be undertaken to restore it.

Councilmember Evans has served on the Council since 1991. I appreciate Councilmember Evans' nearly thirty years of public service, and to avoid the ignominy of expulsion, I hope that Councilmember Evans will resign before the Council votes on his expulsion.

Councilmembers must uphold a high standard of honesty and integrity. Councilmember Evans has fallen woefully short in his duty to uphold that standard. Accordingly, he is no longer fit to serve the residents of Ward 2 and the District of Columbia on the Council.

Corruption threatens democracy, and the perception of corruption weakens the public's trust in democracy. The reputation of the Council is at stake, and I will make every effort to protect that reputation. I believe that expelling Councilmember Jack Evans is necessary to ensure public confidence in the integrity of the Council. It is my sincere and profound hope that once this matter is behind us, we can restore the public trust and get back to the business of our government.

Sincerely,

Brandon T. Todd,
Councilmember, Ward 4

Attachment Q



The purpose of today's meeting of the Ad Hoc Committee was to give Councilmember Evans the opportunity to respond to questions about his ethical conduct. But last week, Councilmember Evans decided he would not appear before the Committee. Councilmember Evans' decision not to appear reinforces that he fails to understand the severity of his actions and how they affect the residents of the District of Columbia and this Council. It also illustrates a lack of respect for his colleagues.

Members of this Council have taken significant criticism for efforts to give Evans an opportunity to make his case, and at every turn, Councilmember Evans has made the Council look silly; from convening a July meeting of the Council where he would choose which questions he wanted to answer, to voting on his own investigation and sanctions, including casting the deciding vote against a sanction, to refusing to come before the Ad Hoc Committee that was convened for the specific purpose of giving him an opportunity to make his case. This has been an exercise of extreme privilege.

Councilmember Evans doesn't argue that he didn't break the law and Council rules. Instead, he argues that he had a good reason— the reason, he says, is that he didn't understand the law and the Council rules. In November 2018,



Councilmember Evans argued that, if there is no punishment for breaking the rules, then no one will follow the rules. That was during the Council's debate on decriminalizing fare evasion. A year later, in November 2019, in a letter from his attorneys, Councilmember Evans argues that the Council should not punish him for breaking the law because he didn't understand the law and Council rules. This philosophy on crime and punishment is inconsistent.

But more important, both the law and the rules are clear. DC Code SS 1-1162.23 states that Councilmembers may not participate in or attempt to influence a matter that will likely have an effect on his financial interest. The Council Rules SS 202 (a) states in pertinent part, "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 person, family, client, or business interest, avoiding both actual and perceived conflicts of interest and preferential treatment." Section (b) reads, "Councilmembers and staff shall take full responsibility for understanding and complying with the letter and spirit of all laws and regulations governing standards of conduct..."

Based solely on the information we have from a limited investigation in which only one former client cooperated with our investigators, it is clear that



Councilmember Evans had business clients who were subject to our laws and regulations, and that he used his position as a councilmember for personal gain. It is clear that Councilmember Evans used his position to assist paying clients. It is clear that Evans had significant conflicts of interest that he chose to ignore. And it is clear that ignorance or a lack of understanding of the law and Council rules does not exonerate him.

To make matters worse, Councilmember Evans' actions continue to hurt the city and adversely affect the public's confidence in the integrity of our government. Everywhere I go; at community events, at the grocery store, at church, people want to know what the Council is going to do about Jack Evans. The majority of people insist that the Council has acted too timidly. I agree.

Many of us watched the historic congressional hearing on the DC Statehood bill. And instead of standing proudly in this historic moment, we cringed when a single official, Jack Evans, was called out by name over 20 times because of the actions at issue here. Our government was belittled in full view of the nation during one of the most significant steps in our fight for equal representation and autonomy.



I appreciate Councilmember Evans' years of service to our city. As elected officials, though, we know that we fill our seats not by entitlement, but public trust. We hold public office to serve in the best interest of our fellow residents. But when our representation begins to work against residents, rather than for them, we have the responsibility to vacate our seats. After many years of service, Councilmember Evans has unfortunately crossed this threshold.

Right now, the only person in this city who doesn't know that Mr. Evans must resign is Mr. Evans. If he cannot bring himself to resign, then we must vote to expel him. We have no choice based on what we know.

The investigation found not one or two violations, but a pattern of violations of the law and the Council rules. As members of the Council, we have a duty to uphold the integrity of this body and restore the public's trust. Our actions here will be the difference between the public's judgment of the integrity of Councilmember Evans and its judgment of the integrity of the entire Council.

Attachment R



COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20004

VINCENT C. GRAY
Ward 7 Councilmember
Chair, Committee on Health

Committee Member
Business and Economic Development
Finance and Revenue
Judiciary and Public Safety

Statement of Councilmember Vincent C. Gray Re Jack Evans

First, I want to thank Ad Hoc Committee Chair Mary Cheh for taking on this unenviable responsibility and my fellow Committee Members for their dedicated service.

I want to begin by recognizing the many positive contributions to the District of Columbia that Mr. Evans has made as a councilmember for almost three decades. I have known and worked with him for many productive years. I recall when I was the Director of the D.C. Department of Human Services in the 1990s, I worked closely with him when he was already a councilmember representing Ward 2, to address the issues regarding individuals experiencing homelessness in his Ward. To make sure that our approach was reflective of what human services should be about in the District, he demonstrated an enormous amount of compassion for the families and individuals affected and worked with me and my staff to ensure that they were treated with the dignity and respect that they were due. He has contributed substantially to the rejuvenation of downtown D.C., the healthy economy the District is enjoying, and the return of Major League Baseball to the Nation's Capital.

Today, however, what is paramount is the preservation of the integrity and reputation of the Council and the District of Columbia Government. We must protect the confidence that our citizens have in our government institutions, particularly the Council, and those who serve in those institutions. This is particularly important as we pursue full Home Rule and Statehood for the District.

From the beginning of this process, I have strived to ensure that Mr. Evans has received due process. It was for that reason that I did not join the others who prematurely called for his resignation. I am now satisfied that Mr. Evans has been accorded full due process. He had multiple opportunities to meet with the investigators from the law firm of O'Melveny & Myers, LLP to answer their questions, to make his case and to provide supplemental information. He was given the opportunity to present his case to the Ad Hoc Committee but declined, on the advice of his counsel, to appear before us and answer questions. He and his able attorneys had ample opportunity to provide exculpatory or explanatory information in his defense to our committee.

I have participated in this process from the outset. I read both the O'Melveny report and the responses from Mr. Evans' attorneys. I attended the hearing with the lawyers from O'Melveny and heard their responses to our questions about their findings and the multiple ethics violations that they uncovered.

Mr. Evans' recent consulting business was ill-advised. His claim that he relied on his staff to advise him of potential conflicts of interest is unpersuasive as an explanation for his ethical lapses. As stated in the O'Melveny report, he neither informed anyone on his staff that it was his or her responsibility to advise him of conflicts; nor, more importantly, did he identify his clients to the staff or make any public disclosure of those clients, as required by the financial disclosure forms. Mr. Evans had the opportunity to seek the advice of the Council's General Counsel and the Board of Ethics and Government Accountability, but according to the O'Melveny report, rarely sought their guidance. The uncontested record shows that Mr. Evans repeatedly took votes and actions favorable to those clients that at the very least gave the appearance of impropriety to any objective observer. Many of the actions that Mr. Evans and his lawyers describe as constituent services do not meet my definition of constituent services.

Moreover, the assertion that many of Mr. Evans' ethical and reporting violations were the result of misunderstandings and mistaken views of our Code do not comport with Mr. Evans' training as a lawyer, his service as an enforcement attorney at the Securities & Exchange Commission, nor decades as a councilmember. I believe he understood the Rules and should have understood the importance of his adherence to them for the benefit of this institution.

In analyzing the sanctions available to us under the Rules of the D.C. Council, I believe neither a reprimand nor a censure would be adequate to deal with the magnitude and scope of the ethical violations. Particularly in light of the previous sanctions imposed by WMATA and BEGA, I believe the violations enumerated by the O'Melveny Report establish "egregious wrongdoing," the requirement for expulsion. I am satisfied that these violations "substantially threaten the public trust" and therefore meet the standard established in our Rules for expulsion.

Therefore, it is with a heavy heart but a clear mandate that I vote yes in support of the Ad Hoc Committee's recommendation of expulsion.