

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

5100 ESTABLISHMENT AND AUTHORITY OF THE BOARD

- 5100.1 The Board of Ethics and Government Accountability (Board) is established pursuant to the authority and purposes set forth in the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (Act), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*).
- 5100.2 The Board is vested with authority to administer and enforce the provisions of the Government Ethics Act of 2011, Title II of the Act.
- 5100.3 The Board is composed of three (3) members, no more than two (2) of whom shall be members of the same political party, who are appointed by the Mayor and confirmed by the Council of the District of Columbia.
- 5100.4 The Mayor shall designate the Chairperson of the Board.
- 5100.5 The Board shall act by affirmative action of a majority of members present.
- 5100.6 In the event of a tie vote by the Board on a proposed action, including any proposed enforcement action, the proposed action will not take effect unless the tie vote can be resolved pursuant to the procedures of §§ 5506.6 or 5506.7.

SOURCE: Final Rulemaking published at 60 DCR 739 (January 25, 2013).

5101 DIRECTOR OF GOVERNMENT ETHICS

- 5101.1 There is established the position of Director of Government Ethics pursuant to Section 206 of the Act.
- 5101.2 The Board shall select, employ, and fix the compensation of the Director of Government Ethics (Director) and such staff as the Board considers necessary to carry out the powers and duties assigned to the Director pursuant to Subtitle B of Title II of the Act.
- 5101.3 The Director shall serve at the pleasure of the Board.

SOURCE: Final Rulemaking published at 60 DCR 739 (January 25, 2013).

5102 BOARD MEETINGS

- 5102.1 Except as provided otherwise by the Act, a quorum of the Board shall consist of no less than two (2) members of the Board and shall be necessary to conduct official Board business.
- 5102.2 At the beginning of each calendar year, a preliminary schedule of regular meetings for the year, which the Board has discretion to change, shall be published in the D.C. Register.
- 5102.3 Regularly scheduled Board meetings shall be held on the first Thursday of each month, or at least once each month, at a time to be determined by the Board. Additional meetings may be called as needed by the Board.
- 5102.4 Notice of all regular and additional meetings of the Board shall be published on the Board's web site at least forty-eight (48) hours, or two (2) business days, in advance, whichever is greater, except in the case of emergency.
- 5102.5 The Board may exercise its discretion and reschedule a regular meeting or call special meetings when necessary with reasonable notice to the public.
- 5102.6 The Board encourages comments on any issue under the jurisdiction of the Board that is considered at its regular meetings. The Board shall permit the submission of written comments either in advance or within a time set after the regular meeting. The Board may also provide the public with a reasonable opportunity to appear before the Board and offer such comments. No public comment will be accepted when the Board is considering enforcement actions or is conducting an adversarial hearing.
- 5102.7 To ensure the orderly conduct of public Board meetings, public comments may be limited with respect to the number of speakers permitted and the amount of time allotted to each speaker; however, the Board shall not discriminate against any speaker on the basis of his or her position on a particular matter.
- 5102.8 Any member of the public who intends to comment regarding any agenda item or any issue under the jurisdiction of the Board is encouraged to notify the Board in advance of his or her intent to do so, providing his or her name and the topic on which he or she wishes to speak. Such notification may be provided by e-mail to the Board's email address, by telephone, or by mail or in person at the Board's office. No person shall be prevented from speaking at a Board meeting simply because he or she has not provided advance notice of his or her intent to do so.
- 5102.9 Members of the public who wish to submit items for consideration by the Board shall do so in writing one (1) week in advance and the Board may in its discretion include the submitted items on the agenda if it determines that the items' subject matter is within the Board's jurisdiction and there is sufficient time to address the item at the meeting. Any item that was properly submitted to the Board but was not

included on the agenda shall be included on the agenda of the next regularly scheduled meeting. Failure to submit an item in advance as required may, within the Board's discretion, result in the matter being continued until the next regularly scheduled meeting.

- 5102.10 The Chairperson shall conduct the meetings of the Board. In the absence of the Chairperson, the senior member of the Board shall conduct the meeting.
- 5102.11 Each meeting shall begin with the adoption of the agenda, followed by the adoption of any outstanding minutes of previously conducted Board meetings.
- 5102.12 The Director of Government Ethics shall present a report of the activities of that position at each regularly scheduled meeting.
- 5102.13 Each Board member may properly make any and all motions.
- 5102.14 All meetings of the Board shall be open to the public and conducted in compliance with the Open Meetings Act (Open Meetings Act), effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.*) (2011 Repl.), unless governed by Sections 405(b) and 406 of the Open Meetings Act (permissible closed meetings).
- 5102.15 The proposed agenda for each Board meeting shall be posted and made available for public inspection in the Board's office and on its website at least twenty-four (24) hours prior to a meeting.
- 5102.16 Copies of the agenda shall be available to the public at the meeting.
- 5102.17 Nothing in this section shall preclude the Board from amending the agenda at the meeting.
- 5102.18 Meetings may be adjourned from time to time and resumed at the Board's discretion so long as the time of resumption is announced to the public. Where the meeting is adjourned and resumed in less than forty-eight (48) hours or two (2) business days, the Board will provide notice of the date and time of its resumption on its website and by posting notice in the Board's office. Where a meeting is adjourned to a time longer than forty-eight (48) hours or two (2) business days, the Board shall provide notice of the new day and time as required by the Open Meetings Act.
- 5102.19 Any individual who is deemed by the Board Chairman to be disruptive to the meeting may be removed therefrom.

SOURCE: Final Rulemaking published at 60 DCR 739 (January 25, 2013).

5103 CLOSED MEETINGS

5103.1 The Board may conduct closed meetings for the purposes described in Section 405(b) of the Open Meetings Act, including the following:

- (a) Personnel matters, including the recruitment, appointment, employment, assignment, promotion, discipline, compensation, removal, or resignation of employees, or other individuals over whom it has jurisdiction;
- (b) Employee disciplinary actions;
- (c) Legal counsel briefings on litigation strategy;
- (d) Quasi-judicial deliberations;
- (e) Matters which would result in the disclosure of information specifically exempted from disclosure by statute;
- (f) Matters which would result in the disclosure of trade secrets and commercial or financial information;
- (g) Matters which would involve a clear and unwarranted invasion of privacy, an accusation of a crime, or formal censure; and
- (h) Matters which would result in the disclosure of investigatory records compiled for law enforcement purposes.

SOURCE: Final Rulemaking published at 60 DCR 739 (January 25, 2013).

5104 ORDERS OF THE BOARD

5104.1 The Board shall issue all final orders in writing, signed manually or electronically by each member of the Board participating in the final order.

5104.2 Any Board member participating in a final order may issue a concurring or dissenting opinion to the final order, and such opinion shall be attached to the Board's final order.

SOURCE: Final Rulemaking published at 60 DCR 739 (January 25, 2013).

5105 MINUTES OF MEETINGS AND OTHER BOARD RECORDS

5105.1 Pursuant to the Open Meetings Act, D.C. Official Code § 2-578, all meetings of the Board, whether open or closed, shall be recorded by electronic means; provided that if a recording is not feasible, detailed minutes of the meeting shall be kept.

5105.2 Copies of meeting records shall be made available for public inspection according to the following schedule; provided, that a record, or a portion of a record, may be withheld under the standard established for closed meetings pursuant to D.C. Official Code § 2-575(b):

(a) A copy of the minutes of a meeting shall be made available for public inspection as soon as practicable, but no later than three (3) business days after the meeting.

(b) A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than seven (7) business days after the meeting.

5105.3 Disclosure of all Board records, including meeting minutes or transcripts, shall be governed by the District of Columbia Freedom of Information Act, D.C. Official Code § 2-531 *et seq.* The Board shall, by Office Order, issue a schedule of fees, not to exceed the actual cost of searching for, reviewing, and making copies of records, consistent with the provisions of D.C. Official Code § 2-532(b-1) through (b-3).

SOURCE: Final Rulemaking published at 60 DCR 739 (January 25, 2013).

5200 PURPOSE AND SCOPE

5200.1 The purpose of this chapter is to establish standards of conduct for members and employees of the Board of Ethics and Government Accountability (Board) for their official activities in order to maintain public confidence in the integrity of those persons responsible for the administration of the ethics laws and the Code of Conduct, as that term is defined in Section 101(7) of the Act.

5200.2 The provisions of this chapter shall solely govern the political and ethical conduct of the members and employees of the Board and are not intended to be exclusive of rules governing the ethical conduct of all District of Columbia Government employees.

SOURCE: Final Rulemaking published at 60 DCR 747 (January 25, 2013).

5201 POLITICAL ACTIVITY OF MEMBERS OF THE BOARD

5201.1 Except as provided in this section, nothing in this chapter shall be construed as prohibiting the members or employees of the Board from doing any of the following:

- (a) Exercising the right to vote at any election conducted in the District of Columbia or elsewhere;
- (b) Signing any nominating, initiative, referendum, or recall petition; or
- (c) Attending candidate forums.

5201.2 No member of the Board shall do any of the following:

- (a) Act as a leader or hold any office in a District political organization;
- (b) Make speeches for a District political organization or candidate, or publicly endorse or oppose a District of Columbia candidate for public office;
- (c) Solicit funds for, pay an assessment to, or make a contribution to a District political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a District of Columbia political organization or candidate; or
- (d) Be a lobbyist.

SOURCE: Final Rulemaking published at 60 DCR 747 (January 25, 2013).

5202 ETHICAL CONDUCT

5202.1 A member or employee of the Board shall not directly or indirectly give any person who is not a member or employee of the Board access to official information obtained through or in connection with his or her employment which has not been released to the general public or which is not a matter of public record.

5202.2 A member or employee of the Board shall not solicit or accept, either directly or through the intercession of others, any fee, gift, gratuity, favor, loan, entertainment, or other thing of monetary value from any person, organization or entity which has done or is doing any of the following:

- (a) Has obtained, or is seeking to obtain, contractual or other business or financial relationships with the Board;
- (b) Conducts operations or activities that are regulated or examined by the Board; or
- (c) Has interests that may be favorably affected by the action or inaction of the member employee in the performance of his or her official duties.

- 5202.3 The restrictions set forth in § 5202.2 shall not apply to any of the following:
- (a) Bona fide personal relationships, such as those that exist between an employee or member and his or her parents, children, or spouse;
 - (b) The acceptance of loans from financial institutions on customary terms to finance the acquisition of a car, home, appliance, or other personal items; or
 - (c) The acceptance of unsolicited advertising or promotional materials such as pens, pencils, note pads, calendars, and like items of nominal intrinsic value.
- 5202.4 A member or employee of the Board shall not use his or her status as a member to directly or indirectly attempt to influence any decision of the District government relating to any action that is not within the Board's purview.
- 5202.5 A member or employee of the Board shall not directly or indirectly use or allow the use of government property of any kind, including office machines, motor vehicles, materials, supplies, or funds, for other than officially approved activities.
- 5202.6 Without prior approval of the Board, a member or employee of the Board shall not accept any reimbursement for expenses or receive any other honorarium or fee for any service, speech, or other activity which is rendered as a result of his or her official duties with the Board, whether or not such activities were performed during official working hours.
- 5202.7 Board members and employees shall not engage in any employment or outside activity which is incompatible with the full and proper discharge of their government responsibilities.
- 5202.8 No Board member or employee shall do indirectly (by, through, or with other persons) those acts or actions which the Board member or employee are prohibited from doing directly under the restrictions set forth in this chapter.
- 5202.9 No Board member may serve if, during the member's tenure on the Board, he or she is convicted of having committed a felony in the District of Columbia, or if the crime is committed elsewhere, convicted of an offense that would have been a felony if it had been committed in the District of Columbia.
- 5202.10 An employee shall promptly report to his or her immediate supervisor any attempt to direct or otherwise unlawfully influence the discharge of that employee's official duties.
- 5202.11 A member of the Board or employee of the Board must refrain from acting on or discussing, formally or informally, a matter before the Board if the matter relates

to, or may personally or financially benefit, that Board member or employee, their immediate family, or a business with which they are associated.

5202.12 A member of the Board or employee of the Board must refrain from acting on or discussing, formally or informally, a matter before the Board if his or her impartiality might reasonably be questioned, including but not limited to circumstances where the Board member or employee:

- (a) Personally and substantially participated in the matter;
- (b) Is a material witness concerning the matter;
- (c) Has material, personal knowledge about the matter;
- (d) Has a personal bias or prejudice concerning a party or party's lawyer or representative; or
- (e) Has made a public statement, other than in a Board proceeding or opinion, that commits or appears to commit the Board member or employee to reach a particular result or rule in a particular way in the matter.

5202.13 If a member of the Board must withdraw from a matter before the Board, that member shall make a statement at a public meeting of the Board identifying the reason or reasons for the withdrawal. If the matter relates to a preliminary investigation, the name of the individual who is the subject of the investigation shall not be disclosed without the individual's consent.

5202.14 If an employee of the Board must withdraw from a matter before the Board, that employee shall notify the Director of Government Ethics, in writing, of the reason or reasons for the withdrawal.

5202.15 If the Director of Government Ethics must withdraw from a matter before the Board, the Director shall notify the Chairman of the Board, in writing, of the reason or reasons for the withdrawal.

SOURCE: Final Rulemaking published at 60 DCR 747 (January 25, 2013).

5300 GENERAL PROVISIONS

- 5300.1 The provisions of this chapter shall establish the procedures for the conduct of all investigations by the Director of Government Ethics (Director) and the Board of Ethics and Government Accountability (Board) pursuant to the authority set forth in the Government Ethics Act of 2011 (Act), Title II 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 *et seq.*) (2012 Supp.).
- 5300.2 Investigations shall be conducted:
- (a) Fairly and professionally;
 - (b) So as to protect the rights and reputations of public employees and officials; and
 - (c) In accordance with due process.
- 5300.3 Investigations shall be identified as one (1) of the following:
- (a) Preliminary Investigation; or
 - (b) Formal Investigation.

5301 PRELIMINARY INVESTIGATIONS

- 5301.1 The Director shall conduct a preliminary investigation of a possible violation of the Code of Conduct or of the Act brought to the attention of the Director by any source including but not limited to the following:
- (a) The media;
 - (b) A tip received through the hotline; or
 - (c) Documents filed with the Ethics Board.
- 5301.2 If during or after the preliminary investigation, the Director of Government Ethics has reason to believe that a violation of the Code of Conduct or of the Act may have occurred, the Director shall present evidence of the violation to the Board.
- 5301.3 Upon presentation of evidence, the Ethics Board may authorize a formal investigation and the issuance of subpoenas if it finds reason to believe a violation has occurred.

5301.4 A preliminary investigation may be dismissed at any time by the Director or Board if insufficient evidence exists to support a reasonable belief that a violation has occurred.

5301.5 The identity of an individual who is the subject of the preliminary investigation shall not be disclosed without the individual's consent unless or until the Board finds reason to believe that the individual has committed a violation and that disclosure would not harm the investigation.

5301.6 In conducting a preliminary investigation, the Director shall have the authority to gather evidence using any of the powers and procedures described in § 5303.

5302 FORMAL INVESTIGATIONS

5302.1 A formal investigation shall be initiated upon:

- (a) Receipt of a written complaint transmitted to the Board;
- (b) A finding by the Office of the Inspector General or District of Columbia Auditor that suggests a violation of the Code of Conduct, including but not limited to findings of waste, fraud, or abuse of government resources; or
- (c) A finding by a court of competent jurisdiction of liability in a civil proceeding, indictment, or information in a criminal proceeding with respect to acts or offenses that may constitute violations of the Code of Conduct or of the Act.

5302.2 A written complaint shall include:

- (a) The full name and address of the complainant and the respondent;
- (b) A clear and concise statement of facts that are alleged to constitute a violation of the Code of Conduct or of the Act;
- (c) The complainant's signature;
- (d) A verification of the complaint under oath; and
- (e) Supporting documentation, if any.

5302.3 No complaint may be made later than five (5) years after the discovery of the alleged violation.

5302.4 An individual making a complaint shall be afforded all available protections from adverse employment action or retaliation in accordance with the Comprehensive Merit Personnel Act and Title II of the Whistleblower Reinforcement Act of

1998, effective October 7, 1998 (D.C. Law 12-160; D.C. Official Code § 2-223.01 *et seq.*) (2011 Repl.).

5302.5 Within fourteen (14) days of the initiation of a formal investigation, the Director shall cause evidence concerning the complaint to be presented to the Board. If the Board decides that there is reasonable belief that a violation has occurred, the Board may authorize the issuance of subpoenas.

5302.6 The Superior Court of the District of Columbia may, upon petition by the Board through the Director, in case of refusal to obey a subpoena or order of the Ethics Board issued under § 5302.5, issue an order requiring compliance; and any failure to obey the order of the court may be treated by the court as contempt.

5302.7 The identity of an individual who is the subject of a written complaint transmitted to the Board, other than pursuant to § 5302.1(b) and (c), shall not be disclosed without the individual's consent unless or until the Board finds reason to believe that the individual has committed a violation and the Board finds that disclosure would not harm the investigation.

5302.8 Notwithstanding § 5302.7, the Board may, in its discretion, publicly disclose the existence of any investigation.

5303 DIRECTOR OF GOVERNMENT ETHICS AUTHORITY TO OBTAIN INFORMATION

5303.1 The Director of Government Ethics (Director) shall have the authority to obtain documents, written reports, and answers relating to the enforcement of the Government Ethics Act of 2011 (Act), Title II 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 *et seq.*) (2012 Supp.).

5303.2 The Director's authority includes the power to:

- (a) Require any person to submit, within a reasonable period and under oath or otherwise as the Director may determine, documents, written reports, and answers to questions that the Director of Government Ethics may propound relating to the administration and enforcement of the Act;
- (b) Administer oaths;
- (c) Require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of the Ethics Board's duties; provided, that a subpoena issued under this paragraph shall be issued by the Director of Government Ethics only upon approval of a majority of the Ethics Board and served either personally or

by certified or registered mail on the individual named in the subpoena, or by other means agreed to by the witness named in the subpoena;

- (d) Order testimony to be taken by deposition in a proceeding or investigation before any person who is designated by the Director and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under the Act;
- (e) Pay witnesses the same fees and mileage as are paid in like circumstances in the Superior Court of the District of Columbia; and
- (f) Retain, on a temporary basis, consultants, including attorneys or others, on a paid or pro bono basis.

5303.3 If an employee or official of the District government has been properly served a request for information or documents, or notice of deposition and any applicable witness fee, and that employee or official fails to respond to such a request or appear or participate in a deposition, then the Director or the Board may notify the supervisor or superior of that employee or official and recommend that appropriate personnel action be commenced for such failure. Nothing in this section shall affect the ability of the Board to seek enforcement of a subpoena before the Superior Court of the District of Columbia.

CHAPTER 54 BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY: ADVERSARIAL HEARINGS, APPEALS, AND ADVISORY OPINIONS

5400 GENERAL PROVISIONS

5400.1 The provisions of this chapter shall establish general procedures for the conduct of all adversarial hearings and appeals, and the issuance of advisory opinions by the Director of Government Ethics (Director) and the Board of Ethics and Government Accountability (Board) pursuant to the authority set forth in the Government Ethics Act of 2011 (Act), Title II 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 *et seq.*) (2012 Supp.).

5401 ADVERSARIAL HEARING

5401.1 After determining that there is reason to believe a violation has occurred based upon the presentation of evidence by the Director pursuant to § 5301.2 or § 5302.5, the Board shall conduct an open and adversarial hearing at which the Director of Government Ethics shall present evidence of the violation. The Director may delegate the presentation of evidence to the General Counsel or other lawyer employed by the Board.

- 5401.2 A hearing need not be conducted if a matter is dismissed pursuant to § 5403.
- 5401.3 If the Director fails to present a matter, or advises the Board that insufficient evidence exists to present a matter or that an additional period of time is needed to investigate a matter further, the Board may nonetheless order the Director to present the matter as provided in § 5401.1.
- 5401.4 Any hearing under this section shall be on the record and shall be held in accordance with the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*) (2011 Repl.).
- 5401.5 Any witness has a right to refuse to answer a question that might tend to incriminate the witness by claiming his or her Fifth Amendment privilege against self-incrimination.
- 5401.6 Any person who has been assessed fees pursuant to § 5403.2 may file a request for an adversarial hearing with the Board.

5402 DISPOSITION

- 5402.1 Following the presentation of evidence to the Board by the Director in an adversary hearing, the Board may:
- (a) Levy a civil penalty in accordance with the Act;
 - (b) Refer the matter to the United States Attorney for the District of Columbia for enforcement or prosecution;
 - (c) Refer the matter to the Attorney General for the District of Columbia for enforcement or prosecution; or
 - (d) Dismiss the action.
- 5402.2 The Board may not refer information concerning an alleged violation of the Code of Conduct or of the Act to the United States Attorney for the District of Columbia or the Attorney General for the District of Columbia without the presentation of evidence by the Director as provided in § 5401.1
- 5402.3 In addition to an action taken pursuant to § 5402.1, the Board may take any other remedial action pursuant to authority granted it by the Act.

5403 DISMISSAL OF MERITLESS CLAIM, COMPLAINT, OR REQUEST FOR INVESTIGATION

- 5403.1 The Board may dismiss, at any stage of the proceedings, any claim, complaint, request for investigation, investigation, or portion of an investigation that the Ethics Board finds to be without merit.
- 5403.2 The Ethics Board may require a person who made or caused to be made a claim, complaint, or request for investigation in bad faith and without merit to pay reasonable fees for time spent reviewing or investigating the claim, complaint, or request for investigation including reasonable attorney's fees for the individual wrongfully named in the claim, complaint, or request for investigation.

5404 APPEALS

- 5404.1 Appeals of any final order issued or fine levied by the Board in accordance with the Act or regulations promulgated pursuant to the Act shall be made to the Superior Court of the District of Columbia within twenty (20) days of the date the Board or Director's final order or fine is served upon a person subject to the final order or fine.

5405 ADVISORY OPINIONS

- 5405.1 Upon application made by an employee or public official subject to the Code of Conduct, the Board or the Director shall, within a reasonable period of time, provide an advisory opinion as to whether a specific transaction or activity inquired of would constitute a violation of a provision of the Code of Conduct over which the Board has primary jurisdiction.
- 5405.2 An advisory opinion shall be published in the District of Columbia Register within thirty (30) days of its issuance; provided, that the identity of a person requesting an advisory opinion shall not be disclosed in the District of Columbia Register without the person's prior consent in writing. Where consent is not obtained, the name of the requester shall be removed prior to publication.
- 5405.3 If issued by the Director or an individual Board member, an advisory opinion may be appealed for consideration by the full Board. 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 and substantially complied with the advice or recommendation given in the advisory opinion; provided, that the employee or public official, in seeking the advisory opinion, made full and accurate disclosure of all relevant circumstances and information.
- 5405.4 A request for an advisory opinion shall be in writing, signed by the requestor, and filed with the Director. The Director may accept email requests for advisory opinions.
- 5405.5 A request for an advisory opinion shall contain the following:

- (a) The full name, residence address, and telephone number of the requestor; and
- (b) A clear and concise statement of the facts relating to the specific transaction or activity which is the subject of the inquiry.

5405.6 Nothing in this Chapter shall prevent the Director from providing informal advice or guidance to an employee or public official by referring that employee or official to a published advisory opinion or established guidance contained in the District's Ethics Manual or other reference source. Such informal advice or guidance need not be published in the District of Columbia Register and does not provide the employee with protections described in § 5405.3.

CHAPTER 55 BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY: HEARING PROCEDURES

5500 GENERAL PROVISIONS

5500.1 The provisions of this chapter shall govern the procedures of the Board of Ethics and Government Accountability when conducting adversarial hearings and other meetings pursuant to the authority set forth in the Government Ethics Act of 2011 (Act), Title II 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 et seq.) (2012 Supp.).

5500.2 In any conflict within this chapter between general and specific provisions, the specific provisions shall govern.

5500.3 In any conflict between this chapter and the D.C. Administrative Procedure Act, D.C. Official Code §§ 2-501 *et seq.* (2011 Repl.), the D.C. Administrative Procedure Act shall govern.

5500.4 The Director of Government Ethics (Director) shall issue, and from time to time revise, complaint forms and instructions to ensure presentation of adequate information required for the understanding and processing of complaints. All such materials shall be available on the Board's website.

5500.5 The Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

SOURCE: Final Rulemaking published at 60 DCR 747 (January 25, 2013).

5501 COMPUTATION OF TIME

- 5501.1 In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included.
- 5501.2 The last day of the computed period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- 5501.3 When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation unless an applicable statute expressly provides otherwise.
- 5501.4 For the purposes of this chapter, "legal holiday" includes the following:
- (a) New Year's Day;
 - (b) Martin Luther King's Birthday;
 - (c) President's Day;
 - (d) District of Columbia Emancipation Day;
 - (e) Memorial Day;
 - (f) Independence Day (4th of July);
 - (g) Labor Day;
 - (h) Columbus Day;
 - (i) Veterans Day;
 - (j) Thanksgiving Day;
 - (k) Christmas Day; and
 - (l) Any other day designated a legal holiday by the President of the United States or the District of Columbia government.
- 5501.5 When an act is required or allowed to be done at or within a specified time, the Board may at any time in its discretion and for cause shown, do either of the following:

- (a) With or without motion or notice, order the period enlarged, if a request for enlargement of time is made before the expiration of the period originally prescribed or as extended by a previous order; or
- (b) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

5502 NOTICE OF HEARINGS

5502.1 The parties shall be given sufficient opportunity to prepare for the hearing.

5502.2 The Board shall send a notice of hearing to the party or parties involved which shall:

- (a) Provide the time, date, and location of the hearing;
- (b) Reference applicable statutes, rules, or regulations;
- (c) State the purpose of the hearing;
- (d) Advise the party or parties that they may be represented by counsel or other representative of their choosing; and
- (e) Advise the party or parties that they may bring witnesses.

5503 APPEARANCES AND REPRESENTATION

5503.1 In a proceeding before the Board, any person or party may appear on his or her own behalf.

5503.2 Any person or party may be represented by any other person duly authorized in writing to do so.

5503.3 The authorization shall be on a form prescribed by the Board and shall state either that the individual is an attorney duly licensed to practice law in the District, or if not an attorney, that the authorization includes the power of the agent or representative to bind the person in the matter before the Board.

5503.4 If any person or party waives the right to be present at a hearing or fails to appear at a hearing, the Board may proceed ex parte, unless the Board extends the time of the hearing or unless the person's appearance is required by statute.

5504 SERVICE OF PAPERS

- 5504.1 Any paper required to be served upon a party shall be served upon him or her or upon the representative designated by him or her, or on any person otherwise designated by law to receive service of papers.
- 5504.2 When a party has appeared through an attorney or representative, service shall be made upon the attorney or representative of record.
- 5504.3 Service may be made by personal delivery, by mail, by email, or as otherwise authorized by law.
- 5504.4 Service upon a party shall be completed as follows:
- (a) By personal delivery, on handing the paper to the person to be served, or leaving it at his or her office with his or her administrative assistant or time clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, by leaving it at his or her usual place of residence with some person of suitable age and discretion then residing in that place;
 - (b) By email, by sending the paper electronically to his or her District Government email address or to the email address of his or her attorney or representative as listed on the written appearance submitted pursuant to § 5503.
 - (c) By mail, on deposit in the United States mail, properly stamped and addressed; or
 - (d) Upon being served in the specific manner prescribed by an order of the Board made in any proceeding.
- 5504.5 Where there are numerous parties to a proceeding, by written order the Board may make special provisions regarding the service of papers.
- 5504.6 Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document served.
- 5504.7 Proof of service may be made by any of the following means:
- (a) Written acknowledgment of the party served or his or her attorney of record;
 - (b) The certificate of the attorney of record if he or she has made the service; or
 - (c) The certificate of the person making the service.

5504.8 For the purposes of this chapter, the phrase "filing with the Board," means the actual delivery to, and physical receipt by, the Board of pleadings and other papers.

5504.9 All documents filed with the Board relating to a hearing or formal investigation shall bear a caption which identifies the subject of the investigation, the Board's case or reference number, and the title of the pleading or document.

5504.10 All documents filed with the Board shall be printed on letter-sized paper using a font no smaller than 12 point.

5505 RECORD OF MEETINGS AND HEARINGS

5505.1 All meetings whether open or closed shall be recorded by electronic means; provided, that if a recording is not feasible, detailed minutes of the meeting shall be kept.

5505.2 For all open meetings or hearings, copies of records shall be made available for public inspection according to the following schedule;

- (a) For a meeting, a copy of the minutes of a meeting shall be made available for public inspection as soon as practicable, but no later than 3 business days after the meeting.
- (b) For an adversarial hearing, a copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.
- (c) At the discretion of the Board, electronic recordings of the hearing may be posted on the Board's website.

5505.3 The minutes of Board meetings shall include the vote of each member of any ruling of the Board.

5505.4 Copies of the official transcript shall be available to parties and to the public upon payment to the Board of the charges fixed for the copies.

5505.5 Changes in the official transcript may be made only when they involve errors affecting substance and upon the filing of a motion by a party to correct a transcript with the Board.

5505.6 Copies of the motion to correct a transcript shall be served simultaneously on all opposing parties or legal representatives.

5505.7 Objections to the motion to correct a transcript shall be filed with the Board within five (5) days and served upon the parties.

5505.8 The transcript may be changed by the Board at a public meeting to reflect any corrections.

5506 MEETINGS AND HEARINGS

5506.1 Hearings shall be scheduled as needed for the purpose of receiving evidence and testimony on specific matters.

5506.2 Meetings and hearings shall be held at the time and place the Board or the Chairperson designates.

5506.3 A member absent at the decision meeting on any matter may cast an absentee vote only if the member attended all other of the meetings or hearings on a matter before Board.

5506.4 A member attending the decision meeting and having read the transcript and reviewed the complete record may vote even though that member may not have attended any or all of the prior meetings or hearings on a matter before the Board.

5507 EVIDENCE

5507.1 Evidence shall be taken in conformity with D.C. Official Code § 2-509(b) (2011 Repl.).

5507.2 The Board may permit rebuttal evidence.

5507.3 Any party objecting to the admissibility of evidence shall state the grounds of the objection(s) relied upon.

5507.4 A party may place on the record a statement summarizing any evidence excluded by the Board.

5507.5 If excluded evidence consists of documentary evidence, a copy of the evidence shall be marked for identification and shall constitute the offer of proof.

5507.6 The Board, in its discretion, may receive into evidence certified copies of documents in place of the originals.

5507.7 If a party is offering materials contained in a book or larger document, that party shall plainly designate the relevant portions. The remaining material contained in that book or document shall be excluded.

5507.8 No document or other writing shall be accepted for the record after the close of the hearing, except with the consent of the Board after due notice to the opposing

parties and only when the receipt of the document will not unfairly affect the interest of a party.

5507.9 During an adversarial hearing under § 5517, witnesses may be examined or cross-examined by the Board, the Director, respondent, or any party so designated by the Board pursuant to this chapter.

5507.10 During a meeting to consider a rulemaking conducted under § 5520, witnesses may be examined only by the Board.

5507.11 The Board may admit hearsay evidence during an adversarial hearing if it determines it will be relevant and material to the resolution of any factual issue in dispute in the matter before the Board.

5508 COMMENCEMENT OF ADVERSARIAL HEARING

5508.1 An adversarial hearing before the Board shall be commenced by the filing of a written notice of violation in the name of the Board, which shall be signed by the Chairperson.

5508.2 The employee(s) or official(s) that is (are) the subject of the notice of violation shall be referred to as the Respondent(s) in the notice of violation.

5508.3 The Board may consolidate notice of violations if they relate to the same actions or events or raise common questions of law or fact.

5509 GENERAL RULES OF PLEADING

5509.1 A notice of violation shall contain the following:

- (a) A short and plain statement of the grounds upon which the Board's jurisdiction depends;
- (b) The full names, residence addresses, position, title, agency, and telephone numbers of the respondent;
- (c) A clear and concise statement of facts which are alleged to constitute a violation of the law;
- (d) A description of the respondent's right to a hearing and all procedural rights available to the respondent at the hearing;
- (e) A description of the applicable law and regulations that govern the disposition of the notice of violation should the respondent choose not to file a response or fail to appear at a scheduled hearing; and

(f) The deadline for filing a response.

5509.2 A respondent shall file with the Board, and serve a copy upon the Director and any other respondents identified in the notice of violation, a response that states in short and plain terms his or her defenses to each violation alleged and shall admit or deny the averments upon which the notice of violation relies. A respondent shall serve his or her response within fifteen (15) days after the service of the notice of violation upon him or her.

5509.3 If a respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, he or she shall so state. This statement shall have the effect of a denial.

5509.4 When a respondent intends in good faith to deny only a part of an allegation, he or she shall specify so much of the allegation as is true and shall deny only the remainder.

5509.5 A respondent may, unless he or she intends in good faith to controvert all the allegations of a pleading, deny as specific denials of designated allegations or paragraphs, or the respondent may generally deny all the allegations except the designated allegations or paragraphs as the respondent expressly admits.

5509.6 When a respondent intends to controvert all the allegations of the preceding pleading, including allegations of the grounds upon which the Board's jurisdiction depends, the respondent party may do so by general denial. If a respondent chooses not to file a response, the Board shall treat such action as a general denial.

5509.7 A respondent shall raise any of the following defenses at the time he or she files a response:

- (a) Lack of jurisdiction over the subject matter;
- (b) Lack of jurisdiction over the person;
- (c) Insufficiency of process; or
- (d) Insufficiency of service of process.

5509.8 The Director shall file any opposition to a § 5509.7 defense raised by a respondent within ten (10) days after service of a response on the Board.

5509.9 No technical forms of pleadings or motions shall be required.

5509.10 The Board or respondent may set forth two (2) or more statements of a charge, challenge, or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses.

5510 SIGNING OF PLEADINGS

5510.1 Each pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his or her individual name, and the attorney's address, email address, and telephone number shall be stated.

5510.2 A party who is not represented by an attorney shall sign each pleading and state his or her address, email address, and telephone number.

5510.3 Except when otherwise specifically provided by law, pleadings need not be verified or accompanied by affidavit.

5510.4 The signature of an attorney shall constitute a certificate by that attorney that he or she has read the pleading; that to the best of his or her knowledge, information, and belief there are grounds to support it; and that it is not interposed for delay.

5511 PRE-HEARING CONFERENCES AND DISCOVERY

5511.1 Prior to any scheduled adversarial hearing, the Board may require that the respondent or his or her attorney or representative appear for a pre-hearing conference with the Director to consider the following:

- (a) Simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining the admission of facts and documents which will avoid unnecessary proof;
- (d) Limitation of the number of witnesses; and
- (e) Other matters which may aid in the disposition of the notice of violation.

5511.2 The Board may require the Director and the respondent(s) to submit a pre-hearing statement to the Board which recites the action taken at the conference, the amendments allowed to the pleadings by agreement of the parties, and the agreements made by the parties as to any of the matters considered which limit the issues for hearing to those issues not disposed of by admissions or agreements of counsel or parties.

5511.3 Upon the request of the respondent, the Director must disclose to the respondent and make available for inspection, copying, or photographing any relevant written

or recorded statements made by the respondent and any books, papers, documents, photographs, tangible objects, or other evidence which is in the possession of the Director and which:

- (a) The Director intends to introduce at the hearing; or
- (b) Are material to the preparation of the respondent's defense.

5511.4 Upon the request of the Director, the respondent must disclose to the Director and make available for inspection, copying or photographing any evidence that the respondent intends to introduce at the hearing.

5511.5 The Director and the respondent shall exchange a list of expected witnesses that may be called at the hearing.

5511.6 The disclosures required by §§ 5511.3, 5511.4, and 5511.5 shall be completed no later than ten (10) days in advance of the adversarial hearing.

5511.7 In its discretion, the Board may exclude the introduction of evidence or the testimony of witnesses that a party failed to disclose as required by §§ 5511.3, 5511.4, and 5511.5.

5511.8 The Board may issue a pre-hearing order concerning the timing and manner of discovery and any pretrial motions or orders.

5512 STIPULATIONS

5512.1 Apart from stipulations reached during or as a result of the pre-hearing conference, the parties may stipulate in writing at any stage in the proceeding or orally during the hearing any relevant fact or the contents or authenticity of any document.

5512.2 Post-conference stipulations may be received as evidence.

5512.3 Parties may also stipulate the procedure to be followed in the proceeding and such stipulation may, on motion of all parties, be approved by the Board and govern the conduct of the proceeding.

5513 CONTINUANCES

5513.1 A hearing scheduled to be conducted before the Board shall not be delayed by a continuance unless a motion for the continuance is made not less than five (5) days before the scheduled hearing date.

5513.2 A continuance shall not be granted unless the motion for continuance, in the Board's opinion, sets forth good and sufficient cause for the continuance.

5513.3 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel shall not be regarded as sufficient cause for continuance unless set forth in a motion filed promptly after notice of the hearing has been given.

5514 NONAPPEARANCE OF PARTIES AND DEFAULTS

5514.1 The Board may wait a reasonable length of time for a party to appear before beginning a proceeding. After a reasonable time, however, if a party who has received notice has not appeared, the Chairperson may proceed as follows:

- (a) The Chairperson may proceed with the hearing, obtain the testimony of those persons present, and, on the basis of the testimony and the record, the Board may issue a decision in the case; or
- (b) The Chairman, for good and sufficient cause, may postpone the hearing without taking testimony.

5515 RESERVED

5516 INTERPRETERS

5516.1 The Board shall ascertain before the hearing whether an interpreter will be required and make appropriate arrangements.

5516.2 An oath or affirmation shall be administered to the interpreter orally or in writing.

5517 SPECIFIC RULES OF HEARING PROCEDURE

5517.1 All parties shall have the right to produce evidence and witnesses on their behalf and to rebut or explain testimony or evidence against them.

5517.2 All parties have the right to cross-examine other parties and witnesses and to offer argument or explanation in support of their positions or contentions.

5517.3 A party may cross-examine any other party or person, except that the Board, through the Chairman, may rule a question out of order when it is irrelevant, immaterial, or unduly repetitious.

5517.4 Witnesses shall be examined and cross-examined orally under oath or affirmation.

5517.5 The order of procedure for presenting evidence at the hearing shall be as follows:

- (a) Call to order and opening statements by the Chairperson and members of the Board;

- (b) Introductory statement by Director or staff;
- (c) Consideration of pending motions and procedural matters;
- (d) The Director's case;
- (e) The respondent's case; and
- (g) Any rebuttal offered by the Director.

5517.6 If there is more than one respondent, the respondents shall stipulate their order of presentation. If the respondents are unable to agree, the Chairperson shall set the order.

5517.7 In an adversarial hearing no decision or order of the Board shall be made except upon the exclusive record of the proceedings before the Board.

5518 BURDEN OF PROOF

5518.1 In all cases involving a notice of violation, the Director has the burden of persuading the Board that a violation has occurred by substantial evidence.

5518.2 The Director has the burden of producing evidence of a prima facie case that a respondent has committed a violation. Whenever a respondent asserts an affirmative defense to a notice of violation, the respondent will bear the burden of producing sufficient evidence to establish the affirmative defense.

5519 POST-HEARING PROCEDURES: GENERAL

5519.1 The record shall be closed at the end of the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs, as directed by the Board.

5519.2 Prior to filing the final decision, the Board may, on its own motion, reopen the record and require further hearing or briefing on designated issues before the Board.

5519.3 Notice of a further hearing along with a designation of issues shall be forwarded to any party who participated in the earlier proceedings, or his or her legal representative. Notice shall be given at least fourteen (14) days prior to the date set for further hearing.

5520 PROPOSED FINDINGS

5520.1 The Board may request parties to submit proposed findings of fact and conclusions of law for the consideration of the Board within the time as the Chairperson may direct.

5520.2 Copies of proposed findings and conclusions shall be served by each party upon all other parties.

5521 FINAL DECISION

5521.1 Within a reasonable time after the conclusion of the hearing, the Board shall render its decision setting forth findings of fact and conclusions of law and giving the reasons for the decision.

5521.2 There shall be a written decision setting forth findings of fact and conclusions of law and giving the reasons for the decision.

5521.3 The conclusions or opinion in the decision shall be governed by and based upon all the evidence adduced at the hearing.

5521.4 A decision shall be supported by substantial evidence on the record. Pursuant to the substantial evidence rule, courts shall uphold an administrative determination of fact if on the entire record the determination is rationally supportable and could have been arrived at reasonably.

5521.5 The decision shall include a description of any action(s) the Board takes pursuant to § 5402 (Disposition).

5521.6 The decision shall include an instruction that the respondent shall refer to § 5404 to determine the respondent's right to appeal.

5521.7 The decision shall be served promptly on all parties or their attorneys or representatives. In its discretion, the Board may announce its decision at a public hearing.

5522 RECONSIDERATION

5522.1 A motion for reconsideration, rehearing, or re-argument of a final decision in a contested case proceeding pursuant to § 5517 shall be filed by a party within ten (10) days of the order having become final. The motion shall be served upon all other parties. The Board shall not receive or consider any motion for reconsideration, rehearing, or re-argument of a final decision in a contested case proceeding that is filed prior to the order having become final.

5522.2 A motion for reconsideration, rehearing, or re-argument shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought.

- 5522.3 Within seven (7) days after a motion has been filed and served, any other party may file a response in opposition to or in support of the motion.
- 5522.4 Neither the filing nor the granting of the motion shall stay a decision unless the Board orders otherwise.
- 5522.5 A motion for reconsideration, rehearing, or re-argument shall not be a prerequisite to judicial review.

5523 SUBPOENAS AND DEPOSITIONS

- 5523.1 The Board may require by subpoena the attendance and testimony of witnesses and the production of documentary evidence.
- 5523.2 Each subpoena issued by the Board shall include the following:
- (a) The name of the respondent;
 - (b) The title of the action;
 - (c) A specification of the time allowed for compliance with the subpoena;
 - (d) A command to the person to whom it is directed to attend and give testimony at a time and place specified in the subpoena; or
 - (e) A command to the person to whom it is directed to produce and permit inspection and copying of the books, papers, documents, or tangible things designated in the subpoena.
- 5523.3 Any party may, by a written motion, request the Board to subpoena particular persons or evidence.
- 5523.4 A request for subpoena shall state the relevancy, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, the identification of all documents desired and the facts to be proven by them in sufficient detail to indicate materiality and relevancy.
- 5523.5 Any person to whom a subpoena is directed may, prior to the time specified in the subpoena for compliance, request the Board to quash or modify the subpoena.
- 5523.6 Any application to quash a subpoena shall be accompanied by a brief statement of the reasons supporting the motion to quash.
- 5523.7 The Board may quash or modify the subpoena upon a showing of good cause.

5523.8 Upon written notice the Board may order testimony to be taken by deposition, before any person who is designated by the Board to administer oaths.

SOURCE: Final Rulemaking published at 60 DCR 747 (January 25, 2013).

5524 SERVICE OF SUBPOENA OR NOTICE OF DEPOSITION

5524.1 A subpoena or notice of deposition may be served by any person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena or notice upon a person named therein shall be made by delivering a copy of the subpoena to the person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or the District of Columbia or an officer or agency thereof, fees and mileage need not be tendered.

5524.2 Witnesses are entitled to a witness fee of forty dollars (\$40) per day and the cost of public transportation to the proceeding or a mileage fee calculated at seventeen cents (17¢) per mile.

5524.3 Service of a subpoena or notice and fees to an individual may be made by any of the following means:

- (a) Handing the subpoena or notice to the person;
- (b) Leaving the subpoena or notice at the person's District Government office with the person in charge of the office;
- (c) Leaving the subpoena or notice at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing in that dwelling place or abode; or
- (d) Mailing the subpoena or notice by registered or certified mail to the person at the person's last known address.

5524.4 When the person to be served is not an individual, a copy of the subpoena or notice of the deposition and fees shall be delivered by one (1) of the following ways:

- (a) Handing the subpoena or notice to a registered agent for service;
- (b) Handing the subpoena or notice to any officer, director, or agent in charge of any office of that person; or
- (c) Mailing the subpoena or notice by registered or certified mail to the representative at his or her last known address.

- 5524.5 The individual serving a subpoena shall file with the Board a return of service setting forth the facts establishing proper service.
- 5524.6 The Board may, upon the failure by any person to obey a subpoena served upon that person, apply to the D.C. Superior Court for an order requiring the person to appear before the Board to give testimony, produce evidence, or both. If a person fails to obey the order without an adequate excuse, the Board may apply for an order that the person be held by the court for contempt.

SOURCE: Final Rulemaking published at 60 DCR 747 (January 25, 2013).

5525 RULEMAKING HEARINGS

- 5525.1 At its discretion, the Board may from time to time schedule public hearings to obtain comment on a proposed rulemaking. The rules of procedure set forth in this section shall apply to rulemaking hearings.
- 5525.2 Any person may appear at a rulemaking hearing and may present, within the time limits determined by the Board, evidence, testimony, or argument that is relevant and not unduly repetitious.
- 5525.3 No person shall have the standing of a party in a rulemaking hearing.
- 5525.4 In those instances in which a petition for rulemaking has been filed with the Board by a member of the public pursuant to the District of Columbia Administrative Procedure Act, and where the Board in its discretion schedules a public hearing, the order of procedure at the hearing shall be as follows:
- (a) Call to order and opening statement by the Chairperson and Board members;
 - (b) Introductory statement by the Director, General Counsel, or other staff designated by the Board;
 - (c) Consideration of pending motions and procedural matters;
 - (d) Petitioner's case;
 - (e) Persons in support of the petition; and
 - (f) Persons in opposition to the petition.

SOURCE: Final Rulemaking published at 60 DCR 747 (January 25, 2013).

**5530 INFORMAL HEARING FOR ALLEGED VIOLATIONS OF
 THE CODE OF CONDUCT**

5530.1 The Director may institute or conduct an informal hearing, including an order to show cause, on alleged violations of the financial reporting and disclosure requirements, or any other violation of the Code of Conduct.

5530.2 Notice of an informal hearing shall be issued in writing at least ten (10) days prior to the hearing; provided that the ten (10)-day period may be waived for good cause shown as long as the party is given a sufficient opportunity to prepare for the hearing.

5530.3 In the notice, an alleged violator of the financial reporting and disclosure requirements or of the Code of Conduct shall be informed of:

- (a) The nature of the alleged violation;
- (b) The authority on which the hearing is based;
- (c) The time and place of the hearing;
- (d) The right to be represented by any other person duly authorized in person to do so;
- (e) The fact that the alleged violator's failure to appear may be considered an admission of the allegation; and
- (f) The fact that service of process shall be by electronic or regular mail.

5530.4 The Director shall regulate the course of the informal hearing and the conduct of the parties and their counsel.

5530.5 The respondent, or his or her counsel, may present the respondent's case and evidence to the Director, either in person or in writing.

5530.6 The Director may wait a reasonable period of time for the respondent to appear before beginning the informal hearing.

5530.7 If the respondent fails to appear after a reasonable period of time, the Director may elect to reschedule the informal hearing, issuing notice of the same and serving the

respondent both by certified and regular mail. However, the Director is not obligated to reschedule the informal hearing if the respondent fails to appear after a reasonable period of time, and may elect to proceed with the informal hearing by making a record of the proceeding.

- 5530.8 Following the conduct of each informal hearing, the Director shall:
- (a) Determine whether a violation has occurred; and
 - (b) Issue a written order with findings of facts and conclusions of law.
- 5530.9 Any party adversely affected by any order of the Director may obtain review of the order by filing, with the Ethics Board, a request for a hearing in accordance with D.C. Official Code § 1-1162.21(a)(3).
- 5530.10 The request for a hearing pursuant to § 5530.9 shall be filed within fifteen (15) days from the Director's issuance of an order.

SOURCE: Final Rulemaking published at 65 DCR 7038 (June 29, 2018).

5535 SCHEDULE OF FINES

- 5535.1 Upon a determination, pursuant to § 5530.8, that a violation has occurred, the Director may ministerially impose a fine upon the respondent with each allegation constituting a separate violation.
- 5535.2 Fines shall be imposed as follows:
- (a) Failure to follow the process for accepting gifts and donations established in D.C. Official Code § 1-329.01: not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) per violation;
 - (b) Participating personally and substantially in a particular matter that could affect the employee's own financial interests, in violation of D.C. Official Code § 1-1162.23 (a): not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per violation;
 - (c) Participating personally and substantially in a particular matter that could affect the financial interests of the employee's spouse or registered domestic partner, in violation of D.C. Official Code § 1-1162.23(a): not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per violation;
 - (d) Participating personally and substantially in a particular matter that could affect the financial interests of the employee's dependent children, in

violation of D.C. Official Code § 1-1162.23(a): not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per violation;

- (e) Participating personally and substantially in a particular matter that could affect the financial interests of any entity or organization in which the employee serves as an officer, director, trustee, general partner, or employee, in violation of D.C. Official Code § 1-1162.23(a): not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per violation;
- (f) Participating personally and substantially in a particular matter that could affect the financial interests of anyone with whom the employee is negotiating or has any arrangement concerning prospective employment, in violation of D.C. Official Code § 1-1162.23(a): not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per violation;
- (g) Working on a matter that involves a nongovernmental organization in which the employee or a family member has a financial interest, in violation of D.C. Official Code § 1-1162.23(a): not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per violation;
- (h) Using his or her official position or title in a manner that the employee knows is likely to have a direct and predictable effect on the employee's own financial interests, in violation of D.C. Official Code § 1-1162.23(a): not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per violation;
- (i) Using his or her official position or title in a manner that the employee knows is likely to have a direct and predictable effect on the financial interests of a person or entity that is closely affiliated with the employee, in violation of D.C. Official Code § 1-1162.23 (a): not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per violation;
- (j) Using his or her official position or title to personally and substantially participate in any particular matter that the employee knows is likely to have a direct and predictable effect on the employee's own financial interests, in violation of D.C. Official Code § 1-1162.23(a): not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per violation;
- (k) Using his or her official position or title to personally and substantially participate in any particular matter that the employee knows is likely to have a direct and predictable effect on the financial interests of a person or entity that is closely affiliated with the employee, in violation of D.C. Official Code § 1-1162.23(a): not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per violation;
- (l) Performing an official duty, as a District government employee, if the employee or a member of the employee's household has real property, stocks, bonds, commodities, or other property that could unduly influence or give the appearance of unduly influencing the employee in the conduct of his or her official duties and responsibilities, in violation of D.C. Official

Code § 1-1162.23(a) and § 1-1162.23(d)(2)(A): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;

- (m) Member(s) of an employee's household acquiring stocks, bonds, commodities, real estate, or other property, the acquisition of which could unduly influence or give the appearance of unduly influencing the employee in the conduct of his or her official duties and responsibilities, in violation of D.C. Official Code § 1-1162.23(d)(2)(A): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (n) Acquiring an outside business or business interest that is related directly to the employee's official duties, official action, recommendation, or which is related to matters over which the employee could wield any influence, official or otherwise, in violation of D.C. Official Code § 1-1162.23(d)(2)(B): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (o) Member(s) of an employee's household acquiring an outside business or business interest that is related directly to the employee's official duties, official action, or recommendation, or which is related to matters over which the employee could wield any influence, official or otherwise, in violation of D.C. Official Code § 1-1162.23(d)(2)(B): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (p) Acquiring stocks, bonds, commodities, real estate, or other property, the acquisition of which could unduly influence or give the appearance of unduly influencing the employee in the conduct of his or her official duties and responsibilities, in violation of D.C. Official Code § 1-1162.23(d)(2)(A): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (q) Using official authority or influence for the purpose of interfering with or affecting the result of an election, in violation of D.C. Official Code § 1-1171.02(a)(1): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (r) Knowingly soliciting, accepting, or receiving a political contribution from any person, in violation of D.C. Official Code § 1-1171.02(a)(2): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (s) Filing as a candidate for election to a partisan political office in a District-regulated election, in violation of D.C. Official Code § 1-1171.02(a)(3): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (t) Knowingly directing, or authorizing anyone else to direct, any subordinate to participate in an election campaign or requesting a subordinate to make

a political contribution, in violation of D.C. Official Code § 1-1171.02(a)(4): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;

- (u) Knowingly directing, or authorizing anyone else to direct, that any subordinate participate in an election campaign or requesting a subordinate to make a political contribution, in violation of D.C. Official Code § 1-1171.02(a)(4): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (v) Working on any political campaign or engaging in any other type of political activity while at work or otherwise on duty, in violation of D.C. Official Code § 1-1171.03(a)(1): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (w) Engaging in any political activity during work hours, in violation of D.C. Official Code § 1-1171.03(a)(1): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (x) Engaging in political activity in a D.C. government building as prohibited by D.C. Official Code § 1-1171.03(a)(2): not less than one hundred dollars (\$100) nor more than two thousand five dollars (\$2,500) per violation;
- (y) Engaging in political activity while in a District government uniform or official insignia, in violation of D.C. Official Code § 1-1171.03(a)(3): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (z) Engaging in political activity in a D.C. government vehicle, in violation of D.C. Official Code §§ 1-1171.03(a)(4): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (aa) Using District government resources to coerce, explicitly or implicitly, any subordinate employee to engage in political activity, in violation of D.C. Official Code § 1-1171.03(b): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (bb) Serving as an officer or director of an outside entity when there is a reasonable likelihood that such entity might be involved in the employee's District work, in violation of District Personnel Manual (DPM) § 1807.1(d): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (cc) Serving as an officer or director of an outside entity or organization when there is a reasonable likelihood that such entity will be involved in an official government action or decision that the employee would take or recommend, in violation of DPM § 1807.1(d): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;

- (dd) Using information that is not available to the public for personal benefit, in violation of DPM § 1800.3(c): not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per violation;
- (ee) Using information that is not available to the public for any non-governmental purpose, in violation of DPM § 1800.3(c): not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per violation;
- (ff) Permitting others to use information that is not available to the public for personal benefit, in violation of DPM § 1800.3(c): not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per violation;
- (gg) Permitting others to use information that is not available to the public for any non-governmental purpose, in violation of DPM § 1800.3(c): not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per violation;
- (hh) Engaging in outside activities that conflict with the employee's official government duties and responsibilities, in violation of DPM § 1800.3(j): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (ii) Failure to report waste, fraud, abuse of authority, violations of law, or threats to public health or safety, in violation of DPM § 1801.1: not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (jj) Being employed by the District government and failing to report credible violations of the District Code of Conduct, in violation of DPM § 1801.1: not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (kk) Interfering with or obstructing any investigation conducted by a District or federal agency, in violation of DPM § 1801.2: not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per violation;
- (ll) Failure to fully cooperate with any investigation, enforcement action, or other official function of the Office of Government Ethics, in violation of DPM § 1801.3: not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per violation;
- (mm) Taking coercive, harassing, or retaliatory action against any employee acting in good faith, in violation of DPM § 1801.4: not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per violation;
- (nn) Coercing, harassing, or retaliating against any employee who reasonably believes there has been a violation or misuse of resources and discloses that to a supervisor or a public body, in violation of DPM § 1801.4: not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per violation;

- (oo) Accepting a gift from a prohibited source, in violation of DPM § 1803.2 (a): not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (pp) Soliciting a gift from a prohibited source, in violation of DPM § 1803.2 (a): not less than two thousand dollars (\$2,000) nor more than four thousand dollars (\$4,000) per violation;
- (qq) Soliciting or coercing the offering of a gift, in violation of DPM § 1803.2 (b): not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000) per violation;
- (rr) Accepting a gift in return for being influenced in the performance or nonperformance of an official act, in violation of DPM § 1803.3 (a): not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000) per violation;
- (ss) Taking any action to pressure or coerce other District government employees into contributing monetarily to a private cause, in violation of DPM § 1803.3 (b): not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) per violation;
- (tt) Accepting a salary or anything of monetary value from a private source as compensation for services to the government, in violation of DPM § 1803.8: not less than one thousand five hundred dollars (\$1,500) nor more than three thousand five hundred dollars (\$3,500) per violation;
- (uu) Soliciting a salary or anything of monetary value from a private source as compensation for services to the government, in violation of DPM § 1803.8: not less than two thousand dollars (\$2,000) nor more than four thousand dollars (\$4,000) per violation;
- (vv) Accepting, directly or indirectly, a gift from a District employee who earns a lower salary, in violation of DPM § 1804.3: not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) per violation;
- (ww) Coercing a gift from a District employee with a lower salary, in violation of DPM § 1804.4: not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) per violation;
- (xx) Acquiring any stocks, bonds, commodities, real estate, or other property, the possession of which could unduly influence or give the appearance of unduly influencing the employee in the conduct of his or her official duties and responsibilities, in violation of DPM § 1805.8(a): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (yy) Acquisition by members of the employee's household of any stocks, bonds, commodities, real estate, or other property, the possession of which could unduly influence or give the appearance of unduly influencing the employee in the conduct of his or her official duties and responsibilities, in violation

of DPM § 1805.8(a): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;

- (zz) Acquiring an interest in or operating any business which is in any way related to the employee's official duties, official action, recommendation, or which is in any way related to matters over which the employee could wield any influence, official or otherwise, in violation of DPM § 1805.8 (b): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (aaa) Acquisition by members of an employee's household of an interest in or operating any business which is in any way related to the employee's official duties, official action, recommendation, or which is in any way related to matters over which the employee could wield any influence, official or otherwise, in violation of DPM § 1805.8(b): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (bbb) Directly or indirectly making a hiring decision regarding a position within his or her own agency with respect to a relative, in violation of DPM § 1806.3: not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (ccc) Taking any action to appoint, employ, promote, evaluate, interview, or advance any individual who is a relative, in violation of DPM § 1806.3: not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (ddd) Engaging in any outside employment, private business activity, or other interest that is reasonably likely to interfere with the employee's ability to perform his or her job, or which may impair the efficient operation of the District government, in violation of DPM § 1807.1(a): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (eee) Gambling while on duty and while on District government owned or leased property (other than as permitted), in violation of DPM § 1807.1(b): not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) per violation;
- (fff) Using District government time to raise money for a private cause, in violation of DPM § 1807.1(b): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (ggg) Using District government property to raise money for a private cause, in violation of DPM § 1807.1(b): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (hhh) Ordering, directing, or requesting subordinate officers or employees to perform during regular working hours any personal services not related to official District government functions and activities, in violation of DPM §

1807.1(c): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;

- (iii) Maintaining financial or economic interest in or serving as an officer or director of an outside entity if there is any likelihood that such entity might be involved in an official government action or decision taken or recommended by the employee, in violation of DPM § 1807.1(d): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (jjj) Engaging in outside employment, private business activity, or other interest which permits an employee to capitalize on his or her official title or position, in violation of DPM § 1807.1(e): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (kkk) Engaging in outside employment, private business activity, or other interest which permits others to capitalize on his or her official title or position, in violation of DPM § 1807.1(e): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (lll) Divulging any official government information to any unauthorized person or in advance of its authorized issuance, or making use of or permitting others to make use of information not available to the general public, in violation of DPM § 1807.1(f): not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (mmm) Engaging in any outside employment, private business activity, or other interest which might impair an employee's mental or physical capacity that he can no longer carry out his duties and responsibilities in a proper and efficient manner, in violation of DPM § 1807.1(g): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (nnn) Serving in a representative capacity, agent, or attorney for any outside entity involving any matter before the District government, in violation of DPM § 1807.1(h): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (ooo) Contracting through an organization that the employee controls or substantially owns with the District government, in violation of DPM § 1807.1(h): not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) per violation;
- (ppp) Engaging in any outside employment, private business activity, or other interest which is in violation of federal or District law, in violation of DPM § 1807.1(i): not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per violation;
- (qqq) Misusing District government property for other than authorized purposes, in violation of DPM § 1808.1: not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) per violation;

- (rrr) Permitting others to misuse District government property for other than authorized purposes, in violation of DPM § 1808.1: not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) per violation;
- (sss) Failure to comply with all applicable Financial Disclosure Statement filing requirements, in violation of DPM § 1810.4 (e) or Council Code of Conduct XI (c): not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) per violation;
- (ttt) Knowingly acting as an attorney, agent, or representative, at any time after leaving District employment, in any formal or informal appearance before an agency as to a particular matter involving a specific party or parties in which the employee personally and substantially worked on while a District government employee, in violation of DPM § 1811.3: not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) per violation;
- (uuu) Making any oral or written communication to an agency, at any time after leaving District employment, with the intent to influence that agency on behalf of another person as to a particular matter involving a specific party or parties on which the employee personally and substantially participated while a District government employee, in violation of DPM § 1811.4: not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) per violation;
- (vvv) Knowingly acting as an attorney, agent, or representative, within two years of leaving District employment, in any formal or informal matter before an agency if he or she previously had official responsibility for that matter during the last year the employee worked for the District, in violation of DPM § 1811.5: not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) per violation; and
- (www) Knowingly representing or aiding, counseling, advising, consulting, or assisting in representing any other person, within two years of leaving District employment, by personal appearance before an agency as to a particular government matter involving a specific party if the former employee participated personally and substantially in that matter during the last year the employee worked for the District, in violation of DPM § 1811.8: not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) per violation.
- (xxx) Failing to act impartially and giving preferential treatment to any private organization or individual in violation of DPM § 1800.3(h): not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) per violation.

5535.3

The aggregate set of the penalties imposed against each person under the Director's authority pursuant to §§ 5535.1 and 5535.2 may not exceed **five thousand dollars (\$5,000)**.

- 5535.4 Any fine imposed by the Director, pursuant to §§ 5535.1 and 5535.2, shall become effective on the sixteenth (16th) day following the issuance of a decision and order; provided, that, the respondent does not request a hearing pursuant to § 5530.11.
- 5535.5 The Director may modify, rescind, dismiss, or suspend any fine imposed, pursuant to §§ 5535.1 and 5535.2, for good cause shown.
- 5535.6 Fines imposed pursuant to this chapter shall be paid within ten (10) days of the effective date of the issuance of an Order of the Director. Payment by check or money order shall be payable to the D.C. Treasurer, and directed to the Board of Ethics and Government Accountability, 441 4th Street N.W., Suite 830 South, Washington, D.C. 20001.

SOURCE: Final Rulemaking published at 65 DCR 7038 (June 29, 2018).

CHAPTER 57 FINANCIAL DISCLOSURES AND HONORARIA

5700 APPLICABILITY

- 5700.1 The provisions of this chapter shall establish the procedures for filing financial disclosure forms and the limitations on honoraria pursuant to the authority set forth in the Subtitle D of the Government Ethics Act of 2011 (Act), Title II 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 *et seq.* (2012 Supp.)).
- 5700.2 The Financial Disclosure Statement (FDS) form, prescribed by the Director of the Government Ethics (Director), shall be filed by the following public officials:
- (a) A candidate for nomination for election, or election, to public office;
 - (b) The Mayor, Chairman, and each member of the Council of the District of Columbia holding office under the Home Rule Act;
 - (c) The Attorney General;
 - (d) A Representative or Senator elected pursuant to Section 4 of the

District of Columbia Statehood Constitutional Convention Initiative of 1979, effective March 10, 1981 (D.C. Law 3-171; D.C. Official Code § 1-123 (2006 Repl.));

- (e) A member of the State Board of Education;
- (f) A person serving as a subordinate agency head in a position designated as within the Executive Service;
- (g) A member of a board or commission listed in Section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code §1-523.01(e)(2006 Repl.)); and
- (h) A District of Columbia Excepted Service employee, except an employee of the Council, paid at a rate of Excepted Service 9 or above, or its equivalent, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest; and any additional employees designated by rule by the Ethics Board who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest.
- (i) An employee of the Council paid at a rate equal to or above the midpoint rate of pay for Excepted Service 9.

5701 DISCLOSURE REQUIREMENTS

5701.1 The public official shall list on the FDS the following:

- (a) The name of each business entity, including sole proprietorships, partnerships, trusts, nonprofit organizations, and corporations, whether or not transacting any business with the District of Columbia government, in or from which the public official or his or her spouse, domestic partner, or dependent children:
 - (i) 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 in a calendar year;
 - (ii) Receives honoraria and 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. The report required by this subtitle shall include a narrative description of the nature of the service performed in connection with the official's outside income;

- (iii) Serves as an officer, director, partner, employee, consultant, contractor, volunteer, or in any other formal capacity or affiliation; or
 - (iv) Has an agreement or arrangement for a leave of absence, future employment, including date of agreement, or continuation of payment by a former employer;
- (b) Any outstanding individual liability in excess of \$1,000 for borrowing by the public official or his or her spouse, domestic partner, or dependent children from anyone other than a federal or state insured or regulated financial institution, including any revolving credit and installment accounts from any business enterprise regularly engaged in the business of providing revolving credit or installment accounts, or a member of the person's immediate family;
- (c) All real property located in the District (and its actual location) in which the public official or his or her spouse, domestic partner, or dependent children, 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 public official, his or her spouse, or domestic partner;
- (d) All professional or occupational licenses issued by the District of Columbia government held by a public official or his or her spouse, domestic partner, or dependent children; and
- (e) All gifts received by a public official from a prohibited source in an aggregate value of \$100 in a calendar year. The term "prohibited source" shall have the meaning ascribed to it in Section 101(46) 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 *et seq.* (2012 Supp.)).

5701.2

The FDS shall include a signed affidavit from the public official stating that the public official has not caused title to property to be placed in another person or entity for the purposes of avoiding the disclosure requirements of the Act or these regulations.

- 5701.3 The FDS shall include a signed certification that the public official has:
- (a) Filed and paid his or her income and property taxes;
 - (b) Diligently safeguarded the assets of the taxpayers and the District;
 - (c) Reported known illegal activity, including attempted bribes, to the appropriate authorities;
 - (d) Not been offered or accepted any bribes;
 - (e) Not directly or indirectly received government funds through illegal or improper means;
 - (f) Not raised or received funds in violation of federal or District law; and
 - (g) Not 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 public official's official actions or judgment or vote would be influenced.
 - (h) Complied with all conflict of interest recusal and reporting requirements as set forth in Section 223 of the Ethics Act.
- 5701.4 Neither the Mayor, the Attorney General, the Chairman of the Council of the District of Columbia, any member of the Council, nor any member of the State Board of Education shall earn royalties in excess of ten thousand dollars (\$10,000) during the year in which the right to receive the royalty accrues, except that any amounts paid to a charitable organization, on behalf of the public official, shall not be calculated as part of the aggregate total.

5702 FILING AND PUBLICATION REQUIREMENTS

- 5702.1 The FDS shall be filed electronically at the Board of Ethics and Government Accountability (Board) website. The FDS shall be deemed timely filed electronically as follows:
- (a) For public officials, except the Chairman and each member of the Council, no later than 11:59 pm May 15th of each year for the prior calendar year in which the public official served.
 - (b) Reports required by this section for the Chairman and each member of the Council of the District of Columbia shall be filed semiannually no later than 11:59 pm on May 15th and November 15th of each year.

- 5702.2 A public official may request a waiver of the requirement to file electronically. Waiver requests shall be submitted in writing, to the Director, no later than midnight on May 5th of each year. The Director may grant a waiver of the requirement to file electronically on good cause shown as to why the public official is unable to file electronically as follows:
- (a) A waiver granted by the Director shall be in writing and provided to the requestor.
 - (b) If the waiver is granted, the FDS shall be filed in hard copy, in person or by first class mail. The FDS shall be deemed timely filed if received in the Office of Government Ethics no later than 5:00 pm on May 15th.
 - (c) A denial of the waiver of the requirement to file electronically is appealable to the Board. An appeal is timely filed if submitted to the Board Chairperson and the Director, in writing, in hard copy or electronically, no later than two (2) business days after the date of the Director's decision. The decision of the Board is final and shall be provided in writing to the requestor.
- 5702.3 A public official shall submit an amended FDS thirty (30) days after changes in any information represented on the FDS.
- 5702.4 A public official may request the Director, in writing, for an extension of up to thirty (30) days in which to submit the FDS.
- 5702.5 The Director may extend the period of time for submission of the FDS by a public official, for good cause shown.
- 5702.6 The Ethics Board shall publish, in the *District of Columbia Register*, before June 15th of each year, the name of each public official who has:
- (a) Filed a report under this section;
 - (b) Sought and received an extension of the deadline filing requirement and the reason for the extension; and
 - (c) Not filed a report and the reason for not filing, if known.
- 5702.7 The Ethics Board shall publish, in the District of Columbia Register, before December 15th of each year, the name of each member of the Council who has:
- (a) Filed a report under this section;
 - (b) Sought and received an extension of the deadline filing requirement and the reason for the extension; and

- (c) Not filed a report and the reason for not filing, if known.

SOURCE: Final Rulemaking published at 60 DCR 2852 (March 8, 2013); as amended by Final Rulemaking published at 62 DCR 11866 (August 28, 2015).; as amended by Final Rulemaking published at 65 DCR 0904 (February 2, 2018).

5703 EXEMPTION

- 5703.1 The Board may, on a case by case basis, exempt a public official from this requirement or some portion of this requirement for good cause shown.

SOURCE: Final Rulemaking published at 60 DCR 2852 (March 8, 2013).

5704 CONFIDENTIAL FINANCIAL DISCLOSURE FILINGS

- 5704.1 Confidential Financial Disclosure statements shall be filed as follows:

- (a) Any employee, other than a public official or Council employee, who advises, makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, policy-making, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interests, as determined by the appropriate agency head, shall file, before May 15th of each year, with the agency head a report containing a full and complete statement of the information required by Section 5701.
- (b) Each Council employee who acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, as determined by that employee's personnel authority, shall file a confidential report containing a full and complete statement of the information required by Section 5701 of the Ethics Act with the General Counsel to the Council no later than May 15 of each year.

- 5704.2 Each personnel authority shall compile a list of all employees required to submit a confidential financial disclosure statement within its agency or the Council and shall supply the list to the Ethics Board by 11:59 p.m. on March I of each year. The list required by this subsection shall include the name, title, position, and grade level for each employee. Notice to and designation of required FDS filing employees shall be done in a manner consistent with 6 DCMR § 1810.

- 5704.3 Upon review of the confidential report, a personnel authority shall immediately forward to the Ethics Board any violation of the Code of Conduct whenever there is reason to believe that such a violation has occurred.

- 5704.4 [REPEALED].

5704.5 In addition to any sanctions that may be available for a violation of the Code of Conduct, the Director of Government Ethics may also impose a late fee at the rate of ten dollars (\$10.00) per day (excluding Saturdays, Sundays, and holidays), up to a maximum of three hundred dollars (\$300.00), on any filer who fails to timely file a true, accurate and fully completed report.

SOURCE: Final Rulemaking published at 60 DCR 2852 (March 8, 2013); as amended by Final Rulemaking published at 61 DCR 6200 (June 20, 2014); as amended by Final Rulemaking published at 62 DCR 22866 (August 28, 2015); as amended by Final Rulemaking published at 64 DCR 5842 (June 23, 2017); as amended by Final Rulemaking published at 65 DCR 0904 (February 2, 2018).

5705 FINANCIAL DISCLOSURE FILINGS BY ADVISORY NEIGHBORHOOD COMMISSIONERS AND CANDIDATES

5705.1 An Advisory Neighborhood Commissioner in office for at least thirty (30) days of the preceding year, or candidate as defined in D.C. Official Code § 1-1161.01(6), shall electronically file a public financial disclosure certification required by Section 224(a)(1)(G) of the Act for the preceding year.

- (a) The certification shall be due no later than midnight of May 15th of each year;
- (b) The certification shall be filed electronically with the Board at the Board website;
- (c) The certification shall be publicly filed; and

5705.2 An Advisory Neighborhood Commissioner, or candidate as defined in D.C. Official Code § 1-1161.01(6), may request a waiver of the requirement to file electronically. Waiver requests shall be submitted in writing, to the Director, no later than midnight on May 5th of each year. The Director may grant a waiver of the requirement to file electronically for good cause shown as to why the public official is unable to file electronically.

- (a) A waiver granted by the Director shall be in writing and provided to the requestor.
- (b) If the waiver is granted, the public financial disclosure certification shall be filed in hard copy, in person or by first class mail. The public financial disclosure certification shall be deemed timely filed if received in the Office of Government Ethics no later than 5:00 pm on May 15th.
- (c) A denial of the waiver of the requirement to file electronically is appealable to the Board. An appeal is timely filed if submitted to the Board Chairperson and the Director, in writing, in hard copy or electronically, no later than two (2) business days after the date of the Director's decision.

The decision of the Board is final and shall be provided in writing to the requestor.

SOURCE: Final Rulemaking published at 62 DCR 22866 (August 28, 2015).

CHAPTER 58 REGISTRATION OF LOBBYISTS

5800 REGISTRATION REQUIREMENTS

5800.1 The provisions of this chapter shall establish the procedures for the filing of registration forms for lobbyists pursuant to the authority set forth in the Subtitle E of the Government Ethics Act of 2011 (Ethics Act), Title II 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 *et seq.* (2012 Supp.)).

5800.2 A person shall register as a lobbyist with the Director of Government Ethics (the Director) by filing the Lobbyist Registration Form if that person, under the following circumstances:

- (a) Receives compensation of two hundred fifty dollars (\$250) or more in any three (3) consecutive calendar month period for lobbying;
- (b) Receives compensation from more than one (1) source which totals two hundred fifty dollars (\$250) or more in any three (3) consecutive month period for lobbying; or
- (c) Expends funds of two hundred fifty dollars (\$250) or more in any three (3) consecutive calendar month period for lobbying.

5800.3 The registration for lobbyists shall be two hundred fifty dollars (\$250).

5800.4 The registration for lobbyists who lobby solely for nonprofit organizations shall be fifty dollars (\$50).

5800.5 The Lobbyist Registration Form shall include the following information:

- (a) Registrant's name, permanent address and temporary address, if any, while lobbying;
- (b) Name and address of each person designated to lobby on behalf of the registrant;
- (c) Name, address, and nature of the business of any person who compensates the registrant and the terms of the compensation;

- (d) Identification, by formal designation if known, of matters on which the registrant expects to lobby; and
- (e) Registrant's verification under oath of the required information; provided, that if the registrant is not an individual, an authorized officer or agent of the registrant (other than the lobbyist retained by contract to provide lobbying services) shall sign the form.

5800.6 A lobbyist shall file a separate registration form for each person from whom he or she receives compensation for lobbying.

SOURCE: Final Rulemaking published at 60 DCR 2852 (March 8, 2013); as amended by Final Rulemaking published at 60 DCR 11954 (August 16, 2013).

5801 EXEMPTION FROM REGISTRATION REQUIREMENTS

5801.1 A person shall be exempt from the registration requirements of § 5800 if that person is any of the following:

- (a) A public official, or an employee of the United States acting in an official capacity;
- (b) A publisher or working member of the press, radio, or television who, in the ordinary course of business, disseminates news or editorial comment to the general public;
- (c) Any candidate, member or member-elect of an Advisory Neighborhood Commission; or
- (d) Any entity specified in D.C. Official Code § 47-1802.01(4) whose activities do not include lobbying, the result of which shall inure to the financial gain or benefit of the entity.

5801.2 Lobbying activities shall not include:

- (a) Appears or presents written testimony, on his or her own behalf, or is represented by an attorney, in an informal or formal rule-making, rate making or adjudicatory hearing before an executive agency or the Tax Assessor;
- (b) Supplies information in response to written inquiries by an executive agency, the Council of the District of Columbia or any public official;

- (c) Inquires only as to the status of specific actions by an executive agency or the Council of the District of Columbia;
- (d) Testifies before, or submits written testimony to, a committee of the Council of the District of Columbia, or the Council, in a proceeding for which there is a public record or testimony submitted for inclusion in the public record;
- (e) Communicates through a newspaper, television, or radio of general circulation or a publication whose primary audience is the organization's membership; or
- (f) Conveys communications, indirectly or directly, by a bona fide political party, as defined in Section 101 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 *et seq.* (2012 Supp.)).

5801.3 A person, who may be exempt from the registration requirements of this chapter, may be a registrant for other purposes pursuant to the Act; provided, that the activity of the person shall not constitute a conflict of interest as described in Section 223 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 § 1-1162.23).

SOURCE: Final Rulemaking published at 60 DCR 2852 (March 8, 2013).

5802 ACTIVITY REPORTS

5802.1 Each registrant shall file an activity report, on a form prescribed by the Director, for each person from whom compensation is received during the reporting period.

5802.2 Each activity report shall include the following:

- (a) A complete and current statement of the information required to be supplied pursuant to § 5800;
- (b) Total expenditures on lobbying broken down into the following categories:
 - (i) Office expenses;
 - (ii) Advertising and publications;

- (iii) Compensation to others;
 - (iv) Personal sustenance, lodging, and travel, if compensated; and
 - (v) Other expenses;
- (c) Each expenditure of \$50 or more shall also be itemized by the date, name, and address of the recipient, and the amount and purpose of the expenditure;
- (d) Each political expenditure, loan, gift, honorarium, or contribution of \$50 or more made by the registrant or anyone acting on behalf of the registrant to benefit an official in the legislative or executive branch, a member of his or her staff or household, or a campaign or testimonial committee established for the benefit of the official, shall be itemized by date, beneficiary, amount, and circumstances of the transaction, including the aggregate of all expenditures that are less than \$50;
- (e) Each official in the executive or legislative branch and any member of the official's staff, including personal and committee staff, who has a business relationship or a professional services relationship with the registrant shall be identified by name and the nature of the business relationship with the registrant;
- (f) Each official in the executive or legislative branch with whom the registrant has had written or oral communications, including electronic mail, text messages, or any other form of communication, during the reporting periods related to lobbying activities conducted by the registrant shall also be included in the report, identifying:
 - (i) The official with whom the communication was made;
 - (ii) The specific date on which the communication was made to a specific official;
 - (iii) The type of communication; and
 - (iv) The nature and purpose of communication;
- (g) Each person to whom the registrant has given compensation to lobby on his or her behalf shall also be listed in the report; and
- (h) All bundled contributions, as defined in D.C. Official Code § 1-1161.01, forwarded or arranged to be forwarded from one or more persons, including:
 - (i) The name of each contributor;

- (ii) Address, and employer of each person from whom the contributions were received, and
- (iii) The name of the candidate or committee for whom the contributions were collected.

- 5802.3 Each registrant shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the activity reports required to be made pursuant to this section for five (5) years from the date of filing of the report containing these items. These materials shall be made available for inspection upon requests by the Director after reasonable notice.
- 5802.4 Each registrant who does not file a report required by this section for a given period is presumed not to be receiving or expending funds that are required to be reported under this section.
- 5802.5 A registrant shall exclude from activity reports any transactions related to the registrant's exempt status, if any, under § 5801.
- 5802.6 No later than ten (10) days after a registrant files a registration form with the Director he or she shall publish on the Board's website a summary of all information required to be submitted under this section.

SOURCE: Final Rulemaking published at 60 DCR 2852 (March 8, 2013); as amended by Final Rulemaking published at 62 DCR 11870 (August 28, 2015).

5803 FILING DEADLINES

- 5803.1 Each registrant shall file a Lobbyist Registration Form at the following times:
- (a) No later than fifteen (15) days after becoming a lobbyist; and
 - (b) On or before January 15th of each year thereafter.
- 5803.2 Each registrant shall file Lobbyist Activity Reports of the previous six (6) month period each year on the following dates:
- (a) January 10th, for the period covering July 1st through December 31st; and
 - (b) July 10th, for the period covering January 1st through June 30th.
- 5803.3 Lobbyist Activity Reports shall be filed in electronic format at the Board website and shall be considered timely if filed by midnight on the date due.

- 5803.4 Lobbyist Registration forms filed on or before January 15th of each year shall be filed in electronic format on the Board website and will be considered timely if filed by midnight on the date due.
- 5803.5 First-time Lobbyist Registration forms filed pursuant to Subsection 5803.1(a) of this section shall be filed electronically at the Board website and shall be considered timely if filed by midnight on the date due.
- 5803.6 A lobbyist may request a waiver of the requirement to electronically file a Lobbyist Registration form or a Lobbyist Activity Report. Waiver requests shall be submitted in writing, to the Director, no later than midnight on January 1st for January Lobbyist Registration and Lobbyist Activity report filings and July 1st for July Lobbyist Activity Report filings.
- 5803.7 The Director may grant a waiver of the requirement to file electronically for good cause shown as to why the Lobbyist is unable to file electronically as follows:
- (a) A waiver granted by the Director shall be in writing and provided to the requestor.
 - (b) If the waiver is granted, the filings shall be filed in hard copy, in person or by first class mail. The filing shall be deemed timely filed if received in the office of the Board no later than 5:00 pm on the date due.
 - (c) A denial of the waiver of the requirement to file electronically is appealable to the Board. An appeal is timely filed if submitted to the Board Chairperson and the Director, in writing, in hard copy or electronically, no later than two (2) business days after the date of the Director's decision. The decision of the Board is final and shall be provided in writing to the requestor.

SOURCE: Final Rulemaking published at 60 DCR 2852 (March 8, 2013); as amended by Final Rulemaking published at 62 DCR 11866 (August 28, 2015).

5804 LIMITATIONS ON LOBBYING AND PROHIBITED ACTIVITY

- 5804.1 No registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift or service to an official in the legislative or executive branch or a member of his or her staff that exceeds \$100 in value in the aggregate in any calendar year. This limitation shall not be construed to restrict in any manner contributions authorized in Sections 333, 334, and 338 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 §§ 1-1163.33, 1-1163.34 and 1-1163.38 (2012 Supp.)).

- 5804.2 No official in the legislative or executive branch or a member of his or her staff shall solicit or accept anything of value in violation of Subsection (a) of this section.
- 5804.3 No person shall knowingly or willfully make or cause to be made any false or misleading statement or misrepresentation of the facts relating to pending administrative decisions or legislative actions to any official in the legislative or executive branch.
- 5804.4 No person shall, knowing a document to contain a false statement relating to pending administrative decisions or legislative actions, cause a copy of the document to be transmitted to an official in the legislative or executive branch without notifying the official in writing of the truth.
- 5804.5 No information copied from registration forms and activity reports required by this title or from lists compiled from such forms and reports shall be sold or utilized by any person for the purpose of soliciting campaign contributions or selling tickets to a testimonial or similar fundraising affair or for any commercial purpose.
- 5804.6 No public official shall be employed as a lobbyist while acting as a public official, except as provided in Section 228 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 § 1-1162.28 (2012 Supp.)).
- 5804.7 No lobbyist or registrant or person acting on behalf of the lobbyist or registrant, shall provide legal representation, or other professional services, to an official in the legislative or executive branch, or to a member of his or her staff, at no cost or at a rate that is less than the lobbyist or registrant would routinely bill for the representation or service in the marketplace.
- 5804.8 Notwithstanding § 5804.7, a nonprofit organization that routinely provides legal representation or other services to clients at no cost may provide such representation or services to such client when doing so serves the purposes for which such services are routinely provided, and the representation and services are not provided by a lobbyist or registrant.

SOURCE: Final Rulemaking published at 60 DCR 2852 (March 8, 2013).

5805 FINES AND PENALTIES

- 5805.1 The Director of Government Ethics may refer to the United States Attorney for prosecution any person who willfully and knowingly violates Subtitle E of the Ethics Act. Penalties for violations include a fine of not more than \$5,000, or imprisonment for not more than 12 months, or both.

5805.2 In addition to any penalty available under 5805.1, any person convicted of a violation under that subsection may, at the discretion of the Board, be prohibited from serving as a lobbyist for a period of three years from the date of the conviction.

5805.3 Any person who files a lobbyist report or registration form in an untimely manner shall be assessed a civil penalty of \$10 per day up to 30 days (excluding Saturdays, Sundays, and holidays) that the report or registration form is late. This civil penalty shall be imposed as a ministerial matter by the Director of Government Ethics. Upon petition, the Ethics Board may waive the penalty for good cause shown.

SOURCE: Final Rulemaking published at 60 DCR 2852 (March 8, 2013).

5900 APPLICABILITY

5900.1 The provisions of this chapter shall establish the procedures for non-public, informal admonitions and for negotiated dispositions, authorized by Section 221(a)(4) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective February 22, 2014 (D.C. Law 20-75; D.C. Official Code § 1-1162.21(a)(4)).

5901 NON-PUBLIC ADMONITIONS

5901.1 The Director of Government Ethics may impose a non-public, informal admonition for low-level violations of the Code of Conduct, including or similar to the following:

- (a) A one-time, minor misuse of government property;
- (b) A time and leave issue, where it is not habitual and did not have a specific harmful impact;
- (c) A non-uniform application of a regulation or policy by a supervisor, where it is not a regular occurrence and was not for an unlawful purpose;
- (d) A relatively minor action based, at least in part, on advice or guidance sought in good faith from another, such as a supervisor, and given in good faith, though erroneous; or
- (e) Any minor, incidental ethics violation where the person made amends and rectified the situation.

5901.2 Respondents who receive a non-public, informal admonition imposed by the Director of Government Ethics may request the Director to reconsider the

imposition of a non-public, informal admonition by submitting a written application therefore within fifteen (15) days of being served with the admonition. Except for good cause shown, the Director shall not review any late-filed application.

- 5901.3 An application for reconsideration shall include the following items and information:
- (a) A detailed statement that respondent did not commit the conduct at issue or a detailed statement explaining why the conduct at issue does not violate the Code of Conduct;
 - (b) Any evidence supporting respondent's statement; and
 - (c) The names and contact information of any fact witnesses who may be able to provide relevant and material evidence regarding the conduct at issue or the circumstances surrounding the conduct.
- 5901.4 All the materials required by § 5901.3 shall be submitted with the application for reconsideration. The Director of Government Ethics is not required to accept materials submitted subsequent to the filing of the application except upon a showing of good cause by respondent. The decision of the Director not to review items and information submitted by respondent is not appealable to the Ethics Board.
- 5901.5 The Director of Government Ethics shall respond, in writing, with a determination on the request for reconsideration within thirty (30) days of the receipt of the application; provided, that, if the Director accepts any late-filed item or piece of information as provided in § 5901.4, he or she shall determine the request for reconsideration within thirty (30) days of the receipt of the last-filed item or piece of information.
- 5901.6 If the Director of Government Ethics requires additional time to determine a request for reconsideration for any reason other than as provided in § 5901.5, he or she shall notify respondent, in writing, of the need for an additional thirty (30) to ninety (90) days to reach a determination of the request.
- 5901.7 Respondent may appeal the denial of a request for reconsideration to the Ethics Board. The appeal shall be in writing, set forth the specific reasons why the respondent disagrees with the denial, and shall be filed with the Ethics Board within fifteen (15) days of service of the denial on respondent.
- 5901.8 The Ethics Board shall consider on appeal only the items and information that were part of the Director of Government Ethic's final determination of the request for reconsideration.

5901.9 Within sixty (60) days after the filing of the appeal, the Ethics Board shall render its decision, which shall set forth the reasons for the decision and, if the Director's denial of reconsideration is upheld, shall also instruct respondent to refer to § 5404 to determine his or her right to appeal.

SOURCE: Final Rulemaking published at 61 DCR 12222 (November 28, 2014).

5902 NEGOTIATED DISPOSITIONS

5902.1 A violation of the Code of Conduct may result in the negotiated disposition of a matter offered by the Director of Government Ethics, and accepted by respondent, subject to approval by the Ethics Board.

5902.2 The Director of Government Ethics or respondent can initiate a negotiated disposition at any point after an investigation has been opened by the Director and prior to the issuance of a final Order of the Ethics Board.

5902.3 A negotiated disposition shall be drafted by the Director of Government Ethics, who may, in his or her sole discretion, share the draft with respondent for any comments or suggested revisions. The decision of the Director of Government Ethics not to share a draft negotiated disposition with respondent for comments and changes is not appealable to the Ethics Board.

5902.4 The Director of Government Ethics and respondent may engage in discussions, including face-to-face meetings, telephone conversations, email exchanges, and other methods of communication, as often as necessary to negotiate a disposition.

5902.5 In the event that discussions between the Director of Government Ethics and respondent do not lead to a finalized negotiated disposition, the following shall be inadmissible as evidence in an open and adversarial hearing before the Ethics Board in the same matter:

- (a) The fact that a negotiated disposition had been initiated or discussed; and
- (b) Any oral statements of fact or admissions made by respondent to the Director solely during the discussions related to a negotiated disposition.

5902.6 In the event that discussions between the Director of Government Ethics and respondent do not lead to a finalized negotiated disposition, any documents provided by or on behalf of respondent to the Director shall not satisfy respondent's discovery obligations in the event that a hearing notice is issued to respondent by the Ethics Board in the same matter.

5902.7 In the event that discussions between the Director of Government Ethics and respondent do not lead to a finalized negotiated disposition, any documents

provided by or on behalf of respondent to the Director may be used by the Director in an open and adversarial hearing before the Ethics Board in the same matter.

5902.8 A negotiated disposition of a matter shall be subject to approval by the Ethics Board.

5902.9 Prior to the Ethics Board's approval of a negotiated disposition, respondent shall not communicate with the Ethics Board *ex parte* on any substantive matters related to the negotiated disposition, or appear before the Ethics Board in closed session regarding the negotiated disposition without the express leave of the Ethics Board.

5902.10 Prior to the Ethics Board's approval of a negotiated disposition, the Ethics Board may, in its sole discretion, grant respondent's request to appear before it in open session on any substantive matter related to the negotiated disposition; provided, that respondent specify, in writing, the reason for the appearance request. The decision of the Ethics Board to deny respondent's request to appear before it in an open session on any substantive matter related to the negotiated dispositions is not a final order of the Ethics Board and is not appealable to D.C. Superior Court.

5902.11 The document memorializing a negotiated disposition shall include the following:

- (a) A summary of the facts that show, by substantial evidence, respondent's violation of those provisions of the Code of Conduct set forth in the negotiated disposition;
- (b) All penalties agreed upon by the Director of Government Ethics and respondent;
- (c) A provision that any fine or restitution payable by respondent shall be due and owing at the time the negotiated disposition is approved by the Ethics Board; provided, that the Director of Government Ethics and respondent may agree that any fine or restitution be paid in certain installments over a period not to exceed one (1) year from the date of the Board's approval; and
- (d) The terms of any expungement provision; and
- (e) Any other provisions as may be agreed upon by the Director of Government Ethics and respondent so as to fully and fairly reflect the terms of the negotiated disposition.

5902.12 A negotiated disposition may include, but not be limited to, one or more of the following sanctions:

- (a) Fines of not more than \$5,000 per violation or three (3) times the amount of an unlawful contribution, expenditure, gift, honorarium, or receipt of outside income for each violation;

- (b) Fines of not more than \$25,000 for a violation of the Code of Conduct that substantially threatens the public trust;
- (c) Public censure;
- (d) Public reprimand;
- (e) Public admonition;
- (f) Non-public, informal admonition;
- (g) Community service; provided, that the nature of the community service, the required number of service hours, the time period in which the required service hours are to be performed, and the location at (or the entity through which) the service is to be performed shall be specified in the negotiated disposition and that the information provided by respondent to show completion of the community service be verifiable by the Director of Government Ethics;
- (h) Restitution; provided, that the amount of restitution, the identity of the recipient of the restitution, and the form of respondent's proof of payment shall be specified in the negotiated disposition;
- (i) Remediation; or
- (j) Any other sanction or penalty, as agreed to by the Director of Government Ethics and respondent.

5902.13 Respondent may request the Director of Government Ethics to include a provision in the negotiated disposition that respondent may be eligible to apply for expungement of the negotiated disposition after a specified period of time.

5902.14 The decision to include an expungement provision in the negotiated disposition and the establishment of the period of time for respondent's expungement application rest solely in the discretion of the Director of Government Ethics, is not appealable to the Ethics Board, and may be based upon one or more of the following factors:

- (a) The seriousness of respondent's conduct;
- (b) The impact of respondent's conduct on members of the public;
- (c) The deterrent value to other District government employees;
- (d) Respondent's prior and subsequent conduct;

- (e) Respondent's efforts at rehabilitation; or
- (f) Any other factors, as determined by the Director of Government Ethics.

5902.15 Where an expungement provision is included in the negotiated disposition, the Director of Government Ethics shall specify a period between six (6) months and one (1) year from the effective date of the negotiated disposition as the time after which respondent may apply for expungement.

5902.16 After the specified period, respondent may apply, in writing, for the negotiated disposition to be expunged; provided, that respondent includes with the application a written certification, signed under oath, that all of the following have occurred:

- (a) Respondent has satisfactorily fulfilled all the terms of the negotiated disposition;
- (b) There are no new or pending allegations of ethical misconduct against respondent; and
- (c) There have been no additional findings of ethical misconduct against respondent between the effective date of the negotiated disposition and the date of the expungement application.

5902.17 The Director of Government Ethics shall respond, in writing, to respondent's expungement application within fifteen (15) days of its receipt. The Director shall specify the reasons for denying an expungement application.

5902.18 Respondent may appeal the decision of the Director of Government Ethics to deny the expungement request to the Ethics Board. The appeal shall be in writing, set forth the specific reasons why respondent disagrees with the denial, and shall be filed with the Board within fifteen (15) days of service of the denial on respondent.

5902.19 Within sixty (60) days after the filing of the appeal, the Ethics Board shall render its decision, which shall set forth the reasons for the decision and, if the Director's denial of expungement is upheld, shall also instruct respondent to refer to § 5404 to determine his or her right to appeal.

5902.20 Where the Director of Government Ethics, or the Ethics Board on appeal, grants respondent's expungement application, the document memorializing the negotiated disposition shall be removed from the Ethics Board's website and, along with any other documents in the possession of the Director or the Board concerning the expunged matter, shall be retained by the Director of Government Ethics, but treated as non-public confidential documents.

- 5902.21 Except as provided in §§ 5902.22 and 5902.23, responses to inquiries for, or concerning the existence of, records that have been expunged will be: “No records are available.”
- 5902.22 Expunged records will be available, upon written request, to any court, prosecutor, or law enforcement agency for any lawful purpose concerning the investigation or prosecution of any offense.
- 5902.23 Expunged records will not be available to any person, entity, or government agency for the purpose of making employment decisions, unless the records are demanded by a lawfully issued administrative, grand jury, or court-ordered subpoena.
- 5902.24 The Director of Government Ethics will take no action to remove references to, or records concerning, an expunged matter that are in the possession of other persons, entities, government agencies, or the news media, from private or public access.
- 5902.25 A negotiated disposition, except where the result is a non-public, informal disposition, shall be made available to the public by posting on the Ethics Board’s website within thirty (30) days after the Board’s approval.
- 5902.26 The Director of Government Ethics, in his or her sole discretion, may redact any negotiated disposition before posting to prevent the public disclosure of confidential or protected information, such as respondent’s home address, the full names of persons other than respondent, Social Security numbers, and medical information. The decisions of the Director of Government Ethics regarding redactions are not appealable to the Ethics Board.
- 5902.27 A negotiated disposition that has been approved by the Ethics Board shall operate as a final order of the Ethics Board.
- 5902.28 Respondent’s acceptance of a negotiated disposition shall be deemed a waiver of the right to appeal the negotiated disposition upon its approval by the Ethics Board.
- 5902.29 Upon a determination that respondent has breached the terms of a negotiated disposition, the Director of Government Ethics may do the following:
- (a) Allow respondent to cure the breach and continue with the terms of the negotiated disposition;
 - (b) Recommend that the Ethics Board nullify the negotiated disposition and hold an open and adversarial hearing on the matter; or
 - (c) Seek authorization from the Ethics Board to file, on the Board’s behalf, a petition in the Superior Court of the District of Columbia for enforcement of any civil penalty provided for in the negotiated disposition.

5902.30 The Director of Government Ethics' determination that respondent has breached the terms of the negotiated disposition is appealable to the Ethics Board:

- (a) Respondent shall file such appeal with the Ethics Board within 30 days of notification that Respondent is in breach of the negotiated disposition; and
- (b) Respondent may provide any pertinent materials for review by the Ethics Board.

5902.31 Respondent's acceptance of a negotiated disposition shall be deemed a waiver of any statute of limitation defenses in the event that the Ethics Board decides to hold an open and adversarial hearing on the matter as a result of respondent's breach.

SOURCE: Final Rulemaking published at 61 DCR 12222 (November 28, 2014).

5999 DEFINITIONS

5999.1 The terms and phrases used in this chapter shall have the meanings set forth in the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics Act"), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01), and this section, unless the text or context of the particular section, subsection, or paragraph provides otherwise.

Ethics Board – the Board of Ethics and Government Accountability, established by Section 202 of the Ethics Act (D.C. Official Code § 1-1162.02).

Expunged - records of a particular matter retained by the Director of Government Ethics and that are closed against the inspection of their contents.

Document – writings, drawings, graphs, charts, photographs, electronic records, and any other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form.

Respondent – the person who is the subject of an investigation, enforcement action, non-public, informal admonition, or a negotiated disposition.

SOURCE: Final Rulemaking published at 61 DCR 12222 (November 28, 2014).

9900 DEFINITIONS TO DCMR TITLE 3

9900.1 The terms and phrases used in this title shall have the meanings set forth in the ... Ethics Act ... unless the text or context of the particular chapter, section, subsection, or paragraph provides otherwise. [Definitions promulgated by the Board of Elections have been omitted]

Administrative action – the execution of policies relating to persons or things as previously authorized, or required by official action of the agency, adopted at an open meeting of the agency. The term does not include the deliberation of agency business or taking official action. Examples of administrative action include the review of an agenda, setting witness testimony time limitations, and other such procedural discussions.

Candidate – one who qualifies and seeks election for public office in the District of Columbia.

Days - calendar days, unless stated otherwise.

Domestic partner – the same meaning as provided in D.C. Official Code § 32-701(3).

Elected officials - the following local public officials:

- (a) The Delegate to the United States House of Representatives from the District of Columbia, as provided for in the District of Columbia Delegate Act of 1970, effective September 22, 1970, as amended (84 Stat. 848, Pub. L. No. 91-405; D.C. Official Code § 1-401, *et seq.*);
- (b) The Mayor of the District of Columbia, as provided for in D.C. Official Code §§ 1-204.21 and 1-204.22;
- (c) The Chairperson and Members of the Council of the District of Columbia, as provided for in D.C. Official Code § 1-204.01;
- (d) The Members of the State Board of Education, as provided for in D.C. Official Code § 38-2651;
- (e) Electors of President and Vice President of the United States and the officials of political parties as provided for in D.C. Official Code § 1-1001.01; and
- (f) Members of Advisory Neighborhood Commissions, as provided for in D.C. Official Code § 1-309.06, and § 1-1001.02(13).

Employee - unless otherwise apparent from the context, a person who performs a function of the District of Columbia government and who receives compensation for the performance of such services, or a member of a District of Columbia government board or commission, whether or not for compensation.

Executive agency - includes:

- (a) A department, agency, or office in the executive branch of the District of Columbia government under the direct administrative control of the Mayor;
- (b) The State Board of Education or any of its constituent elements;
- (c) The University of the District of Columbia or any of its constituent elements;
- (d) The Board of Elections; and
- (e) Any District of Columbia professional licensing and examining board under the administrative control of the executive branch.

Expenditure – the meaning provided in D.C. Official Code § 1161.01(21)(A).

Fair market value - the fair and reasonable cash price for which the property can be sold in the market at the time of alleged violation, or at the time of filing of the financial statement.

Gift - a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is received.

Household - a public official or employee and any member of his or her immediate family with whom the public official or employee resides.

Immediate family - the spouse or domestic partner of a public official or employee and any parent, grandparent, brother, sister, or child of the public official or employee, and the spouse or domestic partner of any such parent, grandparent, brother, sister, or child.

Legislative action - includes any activity conducted by an official in the legislative branch in the course of carrying out his or her duties as such an official, and relating to the introduction, passage, or defeat of any legislation in the Council.

Office – the Office of Mayor, Attorney General, Chairman or member of the Council, President or member of the Board of Education, or an official of a political party in the District of Columbia.

Official in the executive branch - includes:

- (a) The Mayor;
- (b) Any officer or employee in the Executive Service;
- (c) Persons employed under the authority of D.C. Official Code §§ 1-609.01 through 1-609.03 (except § 1-609.03(a)(3)) paid at a rate of DS-13 or above in the General Schedule or equivalent compensation under the provisions of Subchapter XI of Chapter 6 of this title designated in § 1-609.08 (except paragraphs (9) and (10) of that section); or
- (d) Members of boards and commissions designated in § 1-523.01(e).

Official in the legislative branch - any candidate for Chairman or member of the Council in a primary, special, or general election, the Chairman or Chairman-elect or any member or member-elect of the Council, officers, and employees of the Council appointed under the authority of §§ 1-609.01 through 1-609.03 or designated in § 1-609.08.

Ordinary course of business - transacting business according to customary and reasonable business practices.

Particular matter - a deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.

Partnership – an association of two (2) or more persons acting as co-owners of a business for profit.

Party – a person or group of persons directly involved in, or having an interest at stake in the outcome of a transaction, which is the subject of a legal proceeding as a litigant.

Person – an individual, partnership, committee, corporation, limited liability company, labor organization, or any other organization.

Political Party – an association, committee, or other organized group of individuals who share a similar ideology concerning government policy, and which nominates a candidate for election to office in the District of Columbia.

Prohibited source - any person that:

- (a) Has or is seeking to obtain contractual or other business or financial relations with the District of Columbia government;

- (b) Conducts operations or activities that are subject to regulation by the District of Columbia government; or
- (c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

Public official - includes:

- (a) A candidate for nomination for election, or election, to public office;
- (b) The Mayor, Chairman, and each member of the Council of the District of Columbia holding office under Chapter 2 of this title;
- (c) The Attorney General;
- (d) A Representative or Senator elected pursuant to D.C. Official Code § 1-123;
- (e) An Advisory Neighborhood Commissioner;
- (f) A member of the State Board of Education;
- (g) A person serving as a subordinate agency head in a position designated as within the Executive Service;
- (h) A member of a board or commission listed in D.C. Official Code § 1-523.01(e); and
- (i) A District of Columbia Excepted Service employee paid at a rate of Excepted Service 9 or above, or its equivalent, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest; and any additional employees designated by rule by the Ethics Board who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest.
- (j) A District of Columbia employee paid, regardless of pay schedule, at a rate equivalent to an Excepted Service employee paid at a rate of Excepted Service 9 or above, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or

auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest.

SOURCE: Final Rulemaking published at 45 DCR 3161, 3214 (May 22, 1998); as amended at Final Rulemaking 53 DCR 3243-3244 (April 21, 2006); as amended by Emergency and Proposed Rulemaking published at 57 DCR 7725 (August 20, 2010)[EXPIRED]; as amended by Final Rulemaking published at 57 DCR 11169 (November 26, 2010); as amended by Final Rulemaking published at 60 DCR 1402 (February 8, 2013); as amended by Final Rulemaking published at 60 DCR 11864 (August 16, 2013); as amended by Final Rulemaking published at 61 DCR 6201 (June 20, 2014).