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

September 26, 2016

Via email: vorange@dcchamber.org

Vincent B. Orange, Sr.
President and CEO
D.C. Chamber of Commerce
506 9th Street, N.W.
Washington, D.C. 20004

Dear Mr. Orange:

This responds to your request for a formal opinion concerning your employment with the District of Columbia Chamber of Commerce ("Chamber") as its President and Chief Executive Officer, effective August 15, 2016.

Introduction and Background

Your request was initially addressed by email to the Director of Government Ethics on August 2, 2016, a time when you anticipated completing your term as an at-large member of the Council of the District of Columbia and as Chairman of the Council's Committee on Business, Consumer and Regulatory Affairs. The request sought guidance on "what limitations and/or restrictions, if any, will occur while serving in these positions, when [you] would need to seek recusal on matters and any post Council employment restrictions."[1] However, you resigned from office on August 15, and we understand that, in a conversation with the Director of Government Ethics that day, you asked that the guidance be limited to post-Council employment restrictions.[2]

While your resignation may have rendered moot some of the issues that we would have been required to address had you served until the end of your term, we will not confine ourselves in this opinion to post-employment considerations. The need to provide guidance that is useful not only to you, but to others in your position in the future, warrants a broader discussion. That said,

[1] A copy of the initial request is attached as Exhibit 1.

[2] We also understand that, during the conversation, the Director advised you that the guidance would be provided directly by this Board.

and in order to provide a relevant context for that discussion, a chronology of certain events that occurred both before and after your request for an opinion must first be established.[3]

The first contact regarding possible employment with the Chamber came on July 8, when you received an unsolicited telephone call from a member of the Chamber's Executive Search Committee. You were advised that the search to fill the position of President and Chief Executive Officer had been reopened and that you were on a list of potential candidates. You were also told that, if interested, you could attend one of several upcoming interviews.

You interviewed with the Search Committee on July 12. Two days later, you followed-up with a letter, formally expressing interest in being considered for the position.

The Council recessed for the summer on July 15. The Committee on Business, Consumer and Regulatory Affairs met the day before for the last time before the recess, when it held a public hearing on a number of bills.

You had a second interview with the Search Committee on July 22, which was followed by several days of active negotiation. On July 27, you accepted the position, entering into a written contract for employment to commence on August 15. In a position specification incorporated into the contract, the Chamber is described as "provid[ing] Washington businesses with advocacy on business matters, valuable networking opportunities and enlightening educational programs."[4] The specification also lists several key responsibilities of the President and Chief Executive Officer, including "identifies priority public policy issues and position" and "ensures effective representation before relevant local government bodies to achieve desired outcomes."

On July 28, in a telephone conversation, you informed the Council's General Counsel that you had accepted the position. The General Counsel followed-up that conversation by sending you an email, confirming the conflict of interest provisions of Rule I of the Council's Code of Official Conduct. She sent you another email the following day.

On August 1, you met with the General Counsel in person to discuss all the relevant provisions of the Code of Official Conduct. The next day, you emailed the Director of Government Ethics to request a formal opinion.

On August 12, after some discussion with the Council Chairman and the Council's General Counsel during the previous days, you announced your resignation from the Council. The

[3] The chronology that follows in the text is based on discussions that you had with this Board's Senior Attorney Advisor, documents that you made available to him for inspection, his discussions and communications with Council staff, as well as information generally available to the public.

[4] The Chamber is a nonprofit organization. *See* https://www.dcchamber.org/the-chamber/chamber-opportunities (last visited Sept. 16, 2016) (stating that the Chamber is "a 501(c)(6) non-profit organization dedicated to promoting economic, commercial, industrial and general civic welfare of the District of Columbia").

resignation became effective on August 15, when you also began your employment with the Chamber.

Discussion

I. Applicable Law (Generally)

In providing any guidance, we rely on both federal and District government ethics laws. We reference them generally in this section.

On the federal side, provisions of several criminal conflict of interest laws apply to present and former District government employees alike.[5] For example, 18 U.S.C. § 208(a), which prohibits financial conflicts of interest, applies to an individual who is "an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee."[6] While this Board does not have the authority to enforce these federal laws, we do look to them for guidance, along with their implementing regulations and OGE's interpretive materials.

In terms of District law, section 202(a)(1) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics Act"),[7] authorizes us to administer and enforce the Code of Conduct. The Ethics Act defines the Code of Conduct as being composed of eight elements, one of which is, for members and employees of the Council, "the Code of Official Conduct of the Council of the District of Columbia, as adopted by the Council."[8] For the current Council Period, the Code of Official Conduct was adopted pursuant to section 3 of the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 21, Resolution of 2015.[9]

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[5] Violation of any of these laws is punishable pursuant to 18 U.S.C. § 216.

[6] *See also* federal Office of Government Ethics ("OGE") Informal Advisory Letter 97 x 9 at 2 (May 21, 1997) (written for former Councilmember) (confirming that, for post-employment purposes, "sections 207(a)(1) and 207(a)(2) [of Title 18 of the United States Code] are the only substantive provisions of the current version of the statute which apply to former employees of the District of Columbia government"); OGE Informal Advisory Letter 86 x 18 at 1 (Dec. 9, 1986) (concluding that "section 207 [of Title 18 of the United States Code] does apply to Council employees, based on the plain language of the statute, its legislative history, and consistent administrative practice").

[7] Effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1162.02(a)(1)).

[8] Section 101(7)(A) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(A)). For employees and public officials who are not members or employees of the Council, the Code of Conduct is defined as "Chapter 18 of Title 6B of the District of Columbia Municipal Regulations." Section 101(7)(E) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(E)).

[9] Effective January 2, 2015 (Res. 21-1; 62 DCR 493).

For purposes of this opinion, specific provisions of federal law and the Council's Code of Official Conduct are discussed in the following text.

II. Conflicts of Interest While Seeking Employment

An individual is prohibited by 18 U.S.C. § 208(a) from, among other things, "participat[ing] personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, … any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest."[10] For conflict of interest purposes, the rationale underlying section 208(a) is that the financial interests of the entity with which an employee is seeking employment are generally imputed to the employee with respect to any given particular matter.[11] The remedy for an employee finding himself or herself in such a job search situation is recusal, which is accomplished by not participating in the particular matter.[12]

However, even if the Chamber's financial interests could have been imputed to you during the job search process,[13] recusal would still not have been required because, by the time active negotiations[14] began after your second interview on July 22, the Council had been in recess for at least a week. In other words, due to the recess, you were not participating in any pending particular matters at all. Consequently, the need for any recusal did not arise.

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[10] Written in very similar language, section 223(a) of the Ethics Act (D.C. Official Code § 1-1162.23(a)) is the District's analog to 18 U.S.C. § 208(a). Rule I(a) of the Council's Code of Official Conduct, which is also substantively similar to 18 U.S.C. § 208(a), is discussed in the text below.

[11] *See* 5 C.F.R. § 2635.402(b)(2)(v); *see also* OGE Memorandum DO-06-029 at 3-4 (Oct. 4, 2006) ("OGE has emphasized that the term ["particular matter"] typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties … It is important to remember that the term does not [generally] cover particular matters of general applicability, such as rulemaking, legislation, or policy-making of general applicability.").

[12] *See* 5 C.F.R. § 2635.604(a).

[13] *See* Financial Interests of Nonprofit Organizations for Purposes of 18 U.S.C. § 208, 30 Op. O.L.C. 64 (2006) (concluding that "a nonprofit organization [does not have] a financial interest in a particular matter solely by virtue of the fact that the organization spends money to advocate a position on the policy at issue in the matter").

[14] The regulations implementing 18 U.S.C. § 208(a) define the term "negotiations" as meaning "discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position." 5 C.F.R. § 2635.603(b)(1)(i). Here, while you may not have discussed "specific terms and conditions of employment" during your first interview on July 12, that meeting, nevertheless, was "mutually conducted with a view toward reaching an agreement regarding possible employment," therefore falling within the meaning of the regulatory definition. Accordingly, we use the word "active" several places in the text to describe the negotiations following your second interview on July 22.

The result is no different here under Rule I of the Council's Code of Official Conduct. Subsection (a) of the Rule prohibits a Council employee from using his or her official position or title, or personally and substantially participating, in particular matters "in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee." The term "person closely affiliated with the employee" is defined by Rule I(e)(5) to include an "affiliated organization," which, in turn, is defined by Rule I(e)(1)(B) to mean "[a] person with whom the employee is negotiating for or has an arrangement concerning prospective employment." Again, you were not participating in any particular matters pending during the time of your active negotiations with the Chamber. The last time that you participated personally and substantially in any pending matters was on July 14, the day before recess, when you chaired your committee's public hearing on six bills.[15] However, none of those measures appears to be "focused upon the interests of specific persons, or a discrete and identifiable class of persons," thereby meeting the definition of a "particular matter" under Rule I(e)(4).[16] Accordingly, recusal was not required.

III. Avoiding Appearances of Impropriety

Although 18 U.S.C. § 208 and Rule I of the Council's Code of Official Conduct may not have applied while you sought employment with the Chamber, you were, during that time, bound by a separate duty under Rule 202(a) of the Council's Rules of Organization and Procedure to avoid "both actual *and perceived* conflicts of interest and preferential treatment."[17]

Rule 202(a) is not part of the Code of Conduct under the Ethics Act,[18] and, therefore, this Board has no authority to enforce it. Further, there is no provision in the Council's Code of Official Conduct that requires recusal for Councilmembers faced with situations creating only the appearance of violating the law or ethical standards. Nevertheless, from our perspective, the facts here indicate that you took steps to receive guidance on the way forward. On July 28, the day after executing the contract, you informed the Council's General Counsel that you had accepted the position with the Chamber. Several days later, you met with the General Counsel to discuss the relevant provisions of the Code of Official Conduct[19] and requested a formal opinion

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[15] Bill 21-291, the "DCRA Infractions Fine Increase Regulation Amendment Act of 2015"; Bill 21-466, the "Local Business Support Amendment Act of 2015"; Bill 21-527, the "Vacant and Blighted Buildings Enforcement Amendment Act of 2015"; Bill 21-598, the "Vacant Property Enforcement Amendment Act of 2016"; and Bill 21-689, the "Homeowners Protection from Construction Damage Amendment Act of 2016".

[16] *Cf.* 5 C.F.R. § 2635.604(a)(2) (authorizing employee's participation in particular matter when, among other things, "[t]he matter is not a particular matter involving specific parties").

[17] Emphasis added. The Rules were adopted pursuant to section 2 of the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 21, Resolution of 2015.

[18] *See* section 101(7) of the Ethics Act (D.C. Official Code § 1-1161.01(7)).

[19] Pursuant to Rule XI(d)(1) of the Council's Code of Official Conduct, the General Counsel is authorized to provide an employee "confidential advice about compliance with the Code of Conduct and any other applicable laws and regulations." *Cf.* 5 C.F.R. § 2635.502(a)(1) ("In considering whether a relationship would cause a reasonable person

from the Director of Government Ethics. Then, on August 12, after several days of discussions with the Council Chairman and the General Counsel, you announced your resignation from the Council.

We understand that some on the Council, as well as others in the public, raised government ethics issues that may have arisen had you undertaken your job with the Chamber during the remainder of your term. However, we cannot be concerned here with what might have been. The fact is that you resigned, and all the information available to us indicates that you received advice and counsel before doing so. Consequently, we cannot find that you, at any relevant time, took any action creating the appearance of impropriety.

IV. Post-Employment

Your obligation to abide by government ethics laws did not end with your resignation. As discussed in this section, there are a number of limitations that apply to your post-Council activities.

A. Permanent Prohibition

Under Rule VIII(a) of the Code of Official Conduct, former Council employees, including Councilmembers, are prohibited from knowingly making, with the intent to influence, any communication to or appearance before any officer or employee of a District government agency or court, on behalf of any other person (except the District), with respect to particular matters involving specific parties and in which the District is a party or has a direct and substantial interest, if the employee had participated personally and substantially in such matters as an officer or employee.

Rule VIII(a) does not expressly provide for the duration of the prohibition. However, its heading ("PERMANENT RESTRICTIONS ON REPRESENTATION ON PARTICULAR MATTERS") clearly signals the Council's intent that the duration be permanent. Further, the similar post-employment prohibition in 18 U.S.C. § 207(a)(1), which applies to District government employees, is also permanent.[20]

The Rule does provide for exceptions.[21] For example, the prohibition does not apply to a former Council employee who acts on behalf of the United States or the District, or acts as an elected official of a state or local government. Also, the Rule does not prevent a former employee giving testimony under oath, or from making statements required to be made under penalty of

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to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.").

[20] *See* 5 C.F.R. § 2641.201(c) ("18 U.S.C. 207(a)(1) is a permanent restriction that commences upon an employee's termination from Government service. The restriction lasts for the life of the particular matter involving specific parties in which the employee participated personally and substantially.").

[21] *See* subsection (d)(1) of the Rule.

perjury.[22]

A number of the terms found in Rule VIII(a) are significant enough that we should discuss their meaning. However, because the Rule itself does not contain any definitions of these terms, we look elsewhere in the Code of Official Conduct or to the regulations implementing 18 U.S.C. § 207(a)(1).

The first term is "with the intent to influence." A communication or appearance is made with the intent to influence when it is "made for the purpose of seeking a Government ruling, benefit, approval, or other discretionary Government action; or affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy."[23]

A "communication" occurs when an individual "imparts or transmits information of any kind, including facts, opinions, ideas, questions or direction, to an employee of the [District government], whether orally, in written correspondence, by electronic media, or by any other means."[24] Under this definition, communications are limited only to those with respect to which the former employee intends that the information conveyed will be attributed to himself or herself.[25] The significance of this element of intent is discussed below, in the section on behind the scenes activities.

The term "particular matter," as defined by Rule I(e)(4) of the Code of Official Conduct, is "limited to deliberation, decision, or action that is focused upon the interest of specific persons, or a discrete and identifiable class of persons." We note that most matters considered by the Council (for example, bills, resolutions, and budget requests of general applicability) would not be considered particular matters involving specific parties for purposes of Rule VIII(a).[26] In contrast, contracts, tax exemptions, tax relief bills, grants, and lawsuits would, in most cases, likely meet the definition.[27]

The last term, "participate personally and substantially," can be broken down into its principal elements. To participate personally means to participate "[d]irectly, either individually or in

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[22] *See* subsection (d)(2) of the Rule.

[23] 5 C.F.R. § 2641.201(e)(1).

[24] 5 C.F.R. § 2641.201(d)(1).

[25] *Id.*

[26] See related discussion of OGE's view in footnote 11.

[27] *Cf.* 5 C.F.R. § 2641.201(h) ("[O]nly those particular matters that involve a specific party or parties fall within the prohibition of [18 U.S.C. §] 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case.").

combination with other persons; or through direct and active supervision of the participation of any person he supervises, including a subordinate."[28] To participate substantially requires that the employee's involvement be "of significance to the matter."[29] Further, participation may be substantial, even though it is not determinative of the outcome of a particular matter, and it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.[30]

The foregoing discussion of some of the terms used in Rule VIII(a) is necessary because most of the terms themselves figure into the other post-employment prohibitions covered below. However, in any given case, the underlying facts will determine which of the terms we apply – or not – to a former employee's actions. For example, your communication to a committee staffer would be permissible, where your intent is only to find out the status of a particular matter. The communication, in other words, would not be made with the intent to influence. On the other hand, you could communicate with a former colleague on the Council about a particular matter on which you had no personal and substantial involvement.

B. Two-Year Prohibition

Under Rule VIII(b) of the Code of Official Conduct, former Council employees are prohibited, within two years of terminating employment with the Council, from knowingly making, with the intent to influence, any communication to or appearance before any officer or employee of a District government agency or court, on behalf of any other person (except the District), with respect to particular matters involving specific parties and in which the District is a party or has a direct and substantial interest, if the employee knows, or reasonably should know, was actually pending under his or her official responsibility as an officer or employee within one year before he or she terminated service or employment with the Council.[31]

Rule VIII does not define "official responsibility." However, inasmuch as the Rule is substantively similar to 18 U.S.C. § 207(a)(2), which applies to District government employees, we again look for meaning to the regulations implementing the federal statute. There, the term is defined, in pertinent part, as "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."[32] In more practical terms, if a former Councilmember or non-elected Council employee supervised other employees on a particular matter involving specific parties – even if he or she had no personal

[28] 5 C.F.R. § 2641.201(i)(2).

[29] 5 C.F.R. § 2641.201(i)(3).

[30] *Id.*

[31] Rule VIII(b) is subject to the same exceptions as described above in the text with respect to Rule VIII(a).

[32] 5 C.F.R. § 2641.202(j)(1). For Executive Branch employees, 6B DCMR § 1899.1 provides a substantively identical definition.

involvement in the matter – he or she is barred for two years from communicating with, or appearing before, those in the District's agencies and courts regarding the matter.

C. One-Year Cooling Off Period

Rule VIII(c) of the Code of Official Conduct prohibits a former Councilmember, within one year after leaving employment with the Council, from "knowingly mak[ing], with the intent to influence, any communication to or appearance before … any former subordinate employee, on behalf of any other person, other than the District of Columbia, in connection with any matter on which the former [Councilmember] seeks action by a Councilmember or Council employee in his or her official capacity."[33] We assume that the prohibition is intended to address the same concern that underlies the one-year cooling off period applicable to Executive Branch employees, that is, "the possible use of personal influence based on past government affiliations to facilitate the transaction of business."[34]

A number of observations about the prohibition are worth noting. First, as applied to a former Councilmember, the prohibition is extremely narrow, reaching only contacts with former subordinates.[35] It does not extend, for example, to central Council staff or to Legal Service employees, for whom the personnel authority is the Chairman. However, while we have recommended expanding the scope of the prohibition in pending legislation,[36] we can only interpret Rule VIII(c) as it now exists.

Second, Rule VIII(c) applies, on its face, to communications or appearances made in connection with "any matter," as opposed to any "particular matter," as that term is used in both subsection (a) and (b) of the Rule. We view the use of the broader term "any matter" in subsection (c) to be purposeful. Had the Council intended to limit the one-year cooling off period to the narrower class of particular matters, it clearly could have done so.

Third, the use of the term "any matter" in Rule VIII(c) may reasonably be taken to reflect the Council's intention to extend the one-year prohibition to *all* matters, even those, for example, in which the former employee had no involvement.[37] However, we are not called upon to make that determination for purposes of this opinion.

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[33] Rule VIII(c) is subject to the same exceptions as described above in the text with respect to Rule VIII(a).

[34] *See* 6B DCMR § 1811.11. The one-year cooling off period itself is set out in 6B DCMR § 1811.10.

[35] For former non-elected Council employees, Rule VIII(c) extends the prohibition to making communications or appearances "before the Councilmember for whom the employee worked," in addition to any former subordinate employee.

[36] See discussion of Bill 21-250, the "Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015", in the Conclusion below.

[37] *Cf.* 6B DCMR § 1811.11 (providing that one-year cooling off prohibition in 6B DCMR § 1811.10 "shall apply without regard to whether the former employee had participated in, or had responsibility for, the particular matter, and shall include matters which first arise after the employee leaves government service").

D. Behind the Scenes Activities

There is no provision in the Code of Official Conduct that prohibits former Councilmembers – or, for that matter, former non-elected Council employees – from engaging in post-employment behind the scenes activities (for example, advising and consulting), even if the individual had participated personally and substantially in a given particular matter.[38]

This lack of a prohibition against behind the scenes activities parallels the practice in the federal system, but with one exception. The regulation that implements the permanent prohibition in 18 U.S.C. § 207(a)(1) contains a proviso: "Nothing in this [regulation] prohibits a former employee from providing [behind the scenes] assistance to another person, provided that the assistance *does not involve a communication* to or an appearance before an employee of the United States."[39]

The proviso takes on added significance because the term "communication" is defined, in pertinent part, to include "only those communications with respect to which the former employee intends that the information conveyed will be attributed to himself, although it is not necessary that any employee of the United States actually recognize the former employee as the source of the information."[40] Indeed, in promulgating the regulation, OGE included the following in a number of examples to illustrate the meaning of "communication":

> *Example 5 to paragraph (d):* A former employee established a small government relations firm with a highly specialized practice in certain environmental compliance issues. She prepared a report for one of her clients, which she knew would be presented to her former agency by the client. The report is not signed by the former employee, but the document does bear the name of her firm. The former employee expects that it is commonly known throughout the industry and the agency that she is the author of the report. If the report were submitted to the agency, the former employee would be making a communication and not merely confining herself to behind-the-scenes assistance, because the circumstances indicate that she intended the information to be attributed to herself.

To the extent that 18 U.S.C. § 207(a)(1) applies to elected and non-elected Council employees alike, we cite the above example as a cautionary note that some conduct can, even indirectly,

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[38] In contrast, former Executive Branch employees are subject to a two-year behind the scenes prohibition. *See* 6B DCMR § 1811.8.

[39] *See* 5 C.F.R. § 2641.201(d)(3) (emphasis added).

[40] 5 C.F.R. § 2641.201(d)(1).

extend beyond permissible behind the scenes assistance to impermissible communication made with the intent to influence an individual's former colleagues.[41]

E. Confidential Information

Rule VII of the Code of Official Conduct prohibits both elected and non-elected Council employees from disclosing or using confidential or privileged information acquired by reason of their position, unless authorized or required by law to do so. They also are prohibited from divulging information in advance of the time prescribed for its authorized issuance or from otherwise making use of, or permitting others to make use of, information not available to the general public. Both these prohibitions apply to all former Council employees as well.

V. Conclusion

The foregoing guidance is based on your actions in seeking and securing your position with the Chamber. However, as a former District government employee, you are encouraged to avail yourself of continuing post-employment advice, if you obtain different employment in the future. Other restrictions may apply. For example, if you were to join an accounting or law firm, 18 U.S.C. § 203(b) may prevent you from sharing in any fees earned by the firm for representing clients before agencies and courts of the District, if those representations were made at a time when you were served on the Council.[42]

Speaking of the future, we expect the Council to act soon on Bill 21-250, the "Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015".[43] The bill was submitted by this Board at the Council's direction, and it would amend the Ethics Act to establish a unified ethics scheme for the Executive and Legislative Branches of the District government. To that extent, we mention the bill because its reach would extend to all areas of government ethics, not just those discussed in this opinion. For example, the bill would expand the scope of the Council's one-year post-employment cooling off period to prohibit, among other things, Councilmembers from having any transactions intended to influence their former colleagues or employees in connection with matters on which they seek official action. You may well find, then, if you return for advice, that some aspects of the law have changed.[44]

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[41] *See* "Communications" Under 18 U.S.C. § 207, 25 Op. O.L.C. 59, 62 (2001) ("In order to use influence gained while a high-ranking government official, a former official must intend that information or views conveyed to her former agency be attributed to her.").

[42] As an attorney, you also must be mindful of the D.C. Rules of Professional Responsibility, insofar as they govern your post-employment activities. *See, e.g.,* Rule I.11 (Successive Government and Private Employment), Rule I.6 (Confidentiality of Information) and Rule I.9 (Conflict of Interest: Former Client). You should consult with the D.C. Bar's Legal Ethics Committee if you have additional questions about your legal (as opposed to government) ethics obligations.

[43] Introduced on June 12, 2015; referred to the Committee on the Judiciary.

[44] We do not decide, for purposes of this opinion, whether any future change in the law would apply to you as a former employee. Any future advice would depend on the facts presented and the applicable law, whatever it is then determined to be.

In closing, note that this advisory opinion is provided to you pursuant to section 219 of the Ethics Act.[45] Therefore, no enforcement action for violation of the Code of Conduct may be taken against you, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking the opinion. Also, section 219(b) of the Ethics Act[46] provides that this opinion must be published in the *D.C. Register* within 30 days of its issuance, but that your identity cannot not be disclosed unless you consent to such disclosure in writing. We encourage individuals to consent in the interest of greater government transparency. Please, then, let the Director of Government Ethics know your wishes about disclosure.

The foregoing is the opinion of the Board, as demonstrated by the signature of the Chairman below.

Robert J. Spagnoletti — 9/26/16

Robert J. Spagnoletti
Chairman, Board of Ethics and Government Accountability

Attachment (as stated)

#1009-013

[45] D.C. Official Code § 1-1162.19.

[46] D.C. Official Code § 1-1162.19(b).

EXHIBIT 1

-----Original Message-----
From: Orange, Vincent B. (Council) [mailto:VOrange@DCCOUNCIL.US]
Sent: Tuesday, August 02, 2016 3:13 PM
To: Sobin, Darrin (BEGA)
Cc: Efros, Ellen (Council); Mendelson, Phil (COUNCIL); Orange, Vincent B. (Council)
Subject: Request for Formal Opinion

Dear Mr. Sobin:

I would like to request a formal opinion on my new position of President and CEO District of Columbia Chamber of Commerce effective August 15, 2016, and finishing my term (which ends on January 2, 2017) as an at-large member of the Council of the District of Columbia, and Chairman of the Committee on Business, Consumer and Regulatory Affairs.

I'm requesting to be included in the opinion what limitations and/or restrictions, if any, will occur while serving in these positions, when I would need to seek recusal on matters and any post Council employment restrictions.

Thank you in advance for your prompt consideration of this request.

Vincent Orange

Sent from my iPhone