

# **Ethics and Open Government in a Virtual World**

**Ethics Week 2020**  
**Board of Ethics and  
Government  
Accountability**

# Board of Ethics and Government Accountability



Ethics Week 2020

## **Social Media and the Code of Conduct**



# Everyone's on it!



# ***What is Social Media?***



Social media is an umbrella term that refers to internet-based tools, programs, and applications that allow their respective users to share information.

Individuals can create accounts, and interact with other users in virtual communities.



# ***Popular Social Media Platforms***

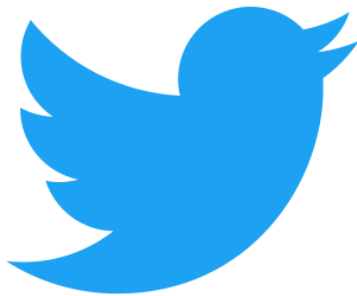


**facebook**

**World's Largest Social  
Network**



*Instagram*



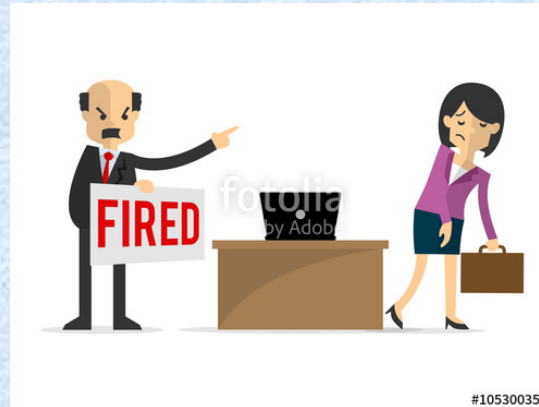
**You Tube**

# ***Why is OGE doing this presentation?***



***We all have rights of free speech, but ...***

***We do not have a right to employment with the District of Columbia government!***



# ***Why is OGE doing this presentation?***



## **Director :**

- ✦ Ministerial fines

## **Board :**

- ✦ Fines of up to **\$5,000** per violation or fines of up to 3 times the amount of unlawful contribution, gift, honorarium, or outside income

## **Agency Corrective/Disciplinary Action**

# ***What is the Code of Conduct?***



- D.C. Official Code § 1–1161.01(7) defines the Code of Conduct as being comprised of the following:
  - (A) 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;
  - (B) Sections 1-618.01 through 1-618.02;
  - (C) Chapter 7 of Title 2 [§ 2-701 et seq.);
  - (D) Section 2-354.16;
  - (E) For employees and public officials who are not members or employees of the Council, Chapter 18 of Title 6B of the District of Columbia Municipal Regulations;
  - (E-i) Chapter 11B of this title [§ 1-1171.01 et seq.];
  - (F) Parts C, D, and E of subchapter II, and part F of subchapter III of this chapter for the purpose of enforcement by the Elections Board of violations of § 1-1163.38 that are subject to the penalty provisions of § 1-1162.21.
  - (G) Section 1-329.01, concerning gifts to the District of Columbia.



# ***What does the Code of Conduct say about the use of social media?***



- **NOTHING AT ALL!**
- Use of personal social media accounts is **not** prohibited by the District's Code of Conduct. However, there are certain instances in which an employee's use of a personal social media account would violate the District Code of Conduct.
- BEGA Advisory Opinions supplement - 1559-001 Social Media and the Code of Conduct (January 2017)  
<https://bega.dc.gov/publication/1559-001-social-media-and-code-conduct>

# ***Common Ethics “blunders” on Social Media***



- **Gifts**
- **Using public office for personal or private gain**
- **Political activity**
- **Recommendations/Endorsements**
- **Misuse of government resources**

# ***Gifts and Social Media***



- **Gift means any:**
  - Gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.
  - Services and gifts of training, transportation, local travel, lodgings, meals.
  - This includes gifts provided:
    - In-kind;
    - By purchase of a ticket;
    - Payment in advance; or
    - Reimbursement after the expense has been incurred.

# ***Gifts and Social Media***



- Employees shall not, directly or indirectly, solicit or accept a gift from a **prohibited source**, a **subordinate employee**, or a gift **given because of the employee's official position or duties**.
- A **Prohibited Source** is any person or entity who:
  - Is seeking official action by the employee's agency
  - Does business or seeks to do business with the employee's agency
  - Conducts activities regulated by the employee's agency
  - Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
  - Is an organization in which the majority of its members are described in the items above.
- **Gifts include solicitations on your social media page!**

6B DCMR §§ 1803.2 AND 1803.4(B)



# ***Gifts and Social Media***



# ***Gifts and Social Media***



## **Example 1:**

Rashee is a supervisor at her agency. She maintains a personal Facebook page and is “friends” with many of her co-workers. Rashee is also very passionate about deforestation. She creates a GoFundMe page to raise money to support a tree planting group in the District and posts the link to her Facebook page. Rashee’s administrative aide sees the link on Facebook and contributes \$50 to Rashee’s GoFundMe account.

# ***Gifts and Social Media***



## **Answer:**

Yes. Rashee should immediately return the contribution to her administrative aide.

See DPM § 1804.2- An employee may not directly or indirectly, give a gift to or make a donation toward a gift for an official superior.

# ***Gifts and Social Media***



## **Example 2:**

Johnnie maintains a Facebook account. Johnnie is Facebook friends with the owner of a prohibited source, whom he first met after the owner began working with Johnnie's agency. The owner of the prohibited source sends Johnnie access to a game hosted on Facebook that costs \$60.00. Johnnie accesses and plays the game.



# ***Gifts and Social Media***



## **Answer:**

In this instance, Johnnie has violated the Code of Conduct by accepting a gift from a prohibited source. Access to the game has a monetary value of \$60.00, and that access was provided by a prohibited source.

See DPM § 1803.1 et seq. Employee may not solicit or accept gift from prohibited source

# ***Common Ethics “blunders” on Social Media***



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# ***Biographical Information on an Employee's Personal Social Media Account***



- Employees may include their District employment information in the biographical section of their respective personal social media accounts.
- Employees are prohibited from **using public office for private gain** or taking actions that give the appearance that the District sanctions or endorses the activities of an employee or another person or entity affiliated with the employee .

*See DPM § 1800.3(g). See also Council of the District of Columbia Code of Official Conduct ("Council Code") § VI(c)(1). See generally DPM § 1807.1(e). See also Council Code Rules II(a)(1), VI(c)(3).*

- Additionally, the DPM prohibits employees from engaging in any outside employment, private business activity, or interest in any manner that the employee **capitalizes on his or her official title or position**.

*See DPM § 1807.1(e). See also Council Code Rule II(a)(1).*

## ***Biographical Information on an Employee's Personal Social Media Account - Continued***



- Whether inclusion of District employment in the biographical section of a personal social media account violates the Code of Conduct - totality of the circumstances, including whether the employee:
  1. States that he or she is acting on behalf of the government;
  2. Refers to his or her connection to the government as support for the employee's statements;
  3. Prominently features agency's name, seal, uniform or similar items on the employee's social media account or in connection with specific activities;
  4. Refers to government employment, title, or position in areas other than those designated for biographical information;
  5. Holds a highly visible position in the government, such as a senior or political position, or is authorized to speak for the government as part of the employee's official duties; or
  6. Other circumstances would lead a reasonable person to conclude that the government sanctions or endorses the employee's social media activities.

*See D.C. Board of Ethics and Government Accountability Advisory Opinion 1559-001 (January 26, 2017).*



## ***Biographical Information on an Employee's Personal Social Media Account – Disclaimers***



- A disclaimer that affirmatively disavows government sanction or endorsement of the employee's posts or that distances the employee's views from the District's views are beneficial.
- Example: “*The views expressed herein are not the views of the District of Columbia government*” or simply “*Tweets are my own*”.
- Inclusion of a disclaimer does not automatically provide safe harbor.
- Remember, the use of @ followed by text (i.e. @SomeName) creates a link to another account, while the use of hashtag # followed by text (i.e. #SomeTopic) links a social media post to other similarly themed posts containing hashtag.)

# ***Biographical Information on an Employee's Personal Social Media Account***



## **Example 3:**

Stan maintains a Facebook account which lists his District employment, along with other information, in the biographical section. There is no disclaimer on his Facebook account. Stan posts an advertisement for his private business on his Facebook account.

# ***Biographical Information on Social Media cont.***



## **Answer:**

In this instance, Stan's Facebook post would not violate the Code of Conduct. The inclusion of District employment in the biographical information portion of an employee's social media account, without more, does not rise to the level of an ethics violation.

# ***Biographical Information on Social Media cont.***



## **Example 4:**

Ronald maintains a Facebook account which does not list his District employment in the biographical section. Ronald is a deputy administrator in his agency. Due to the higher profile position, Ronald's Facebook account contains a disclaimer. Ronald posts an advertisement for a business he owns on the Facebook account. The advertisement reads "Please support my business. All of my @ (Ronald's Agency) coworkers say it's the best."



# ***Biographical Information on Social Media Cont.***



## **Answer:**

In this instance, due to Ronald's high profile position in the District government as well as the inclusion of a link to his agency, there is a violation of the Code of Conduct as (1) the post gives the impression that the District government supports his business and (2) uses public office for private gain. The disclaimer would be insufficient to protect this employee under these facts. The result would be no different in this example had Ronald not held a high profile position given the direct reference to his coworkers.

# ***Common Ethics “blunders” on Social Media***



- **Gifts**
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# ***Politics and Social Media***



- The local **Hatch Act** regulates **political activity** of District employees.

“Political Activity” refers to any activity that is directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.

- When engaging in **District campaigns or elections**, D.C. government employees cannot:

Knowingly solicit, accept, or receive a political contribution from any person, and cannot file as a candidate for election to a D.C. **partisan** political office.

*You **cannot** fundraise through your Twitter, Facebook, or other personal social media pages, for a candidate in a District regulated campaign or election. This includes providing links to the contribution pages of any of those entities' websites.*

# ***Politics and Social Media***



- ***ALL*** D.C. government employees are prohibited from engaging in ***ALL*** Political Activity, regardless of whether it is District Regulated Political Activity or not, while:
  - On duty;
  - In any room or building occupied in the discharge of official duties in the D.C. government, including any agency or instrumentality thereof;
  - Wearing a uniform or official insignia identifying the office or position of the employee;
  - Using any vehicle owned or leased by the District, including an agency or instrumentality thereof.

See D.C. Official Code § 1-1171.03(a)



# ***Politics and Social Media***



- In addition, a D.C. government employee may not coerce, explicitly or implicitly, any subordinate employee to engage in political activity.

D.C. Official Code § 1-1171.03(b)

- D.C. government employees also cannot use their official authority or influence for the purpose of interfering with or affecting the result of an election.

D.C. Official Code § 1-1171.02(a)(1)



# ***Politics and Social Media***



With respect to social media, an Employee can violate the Local Hatch in two ways:

- (1) **the time of the day** that the Employee uses a private social media account
- (2) **the manner** in which the Employee uses a private social media account.

Example: If you are referencing your agency or government title *in a post or tweet*, you **MAY NOT**

- **Direct** people to vote for or against a candidate.
- **Link** to a partisan political group's social media account because it demonstrates support for the group
- **Post** the picture of a partisan political candidate or a political cartoon.
- **Share** a link to a partisan political group's website or an article advocating for or against a partisan political candidate.

# ***Politics and Social Media***



## **Example 5**

Sandra, a District employee, wants to get involved in the management of the political campaign of a candidate for a partisan political office for an election regulated by the District. Sandra creates a website for the candidate. One of the pages on the website she created is a page to contribute to the campaign.

# ***Politics and Social Media***



## **Answer:**

In this instance, Sandra has violated the Code of Conduct by engaging in fundraising activities. Note that the creation of the campaign website without the fundraising page does not violate the Code of Conduct.

# ***Politics and Social Media***



## **Example 6:**

Ashley, a D.C. employee, just added the following post to her Instagram account(@1CoolEthicsAttorney). Has she violated the Hatch Act?



# ***Politics and Social Media***



## **Answer:**

No. The post is not directed towards the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative or referendum.



# ***Politics and Social Media***



## **Example 7:**

Rochelle maintains a Facebook account. One day, during a fifteen-minute break between meetings, Rochelle contributes \$2,000.00 to a partisan political candidate's campaign through a Facebook link while located in a District building.

# ***Politics and Social Media***



## **Answer:**

In this scenario, Rochelle violated the Code of Conduct because donating to a campaign is political activity. Furthermore, the political activity occurred during the tour of duty and in a District occupied building space.

# ***Common Ethics “blunders” on Social Media***



- **Gifts**
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# ***Recommendations or Endorsements***



- **This is another common area where an Employee's use of a personal social media account can violate the Code of Conduct.**
- Social media platforms allow their users to recommend or endorse other users generally or the skills of other users specifically.
- An employee who writes a letter of recommendation for a contractor or grantee must be certain they have the authority to speak on behalf of the District government or their agency.
- ***Most employees or their agency do not have this authority to speak on behalf of the District.*** Employees who have that authority are the Mayor, Councilmembers, agency heads, and in some instances, high-level executives, managers, and Council staffers.
- If employees make any such recommendation or endorsement on a personal social media account, they must clearly indicate that it was made in their personal capacity only, and not on behalf of the District.
- Again, the use of @ followed by text (i.e. @SomeName) creates a link to another account, while the use of hashtag # followed by text (i.e. #SomeTopic) links a social media post to other similarly themed posts containing hashtag.)

# ***Recommendations or Endorsements***



## **Example 8**

Asia maintains a LinkedIn account that contains her biographical information. Asia worked in the same District agency as Ralph. They did not work on any projects together. Accordingly, their relationship was personal and not professional. Ralph left the District agency and requested Asia endorse him on LinkedIn. Asia endorsed Ralph's writing and communication skills on LinkedIn. She stated further in a narrative *"I would strongly recommend Ralph for any job that requires intensive writing and communication skill. Based upon reviews from supervisors who managed him, Ralph's work was always top-notch. You will not be disappointed in your decision to hire Ralph."*



# ***Recommendations or Endorsements***



## **Answer:**

Asia's recommendation narrative violates the Code of Conduct. Although it does not mention the District, professional recommendations must be based on a professional relationship and personal knowledge. Here, there was neither a professional relationship nor personal knowledge concerning the skills of Ralph.

This Office's past guidance regarding employee conduct generally applies in the social media context as well.

See Office of Government Ethics Legal Advisory Opinion 1559-001 (January 26, 2017)

# ***Recommendations or Endorsements***



## **Example 9:**

Tyrell maintains a Facebook account that contains his District employment information in the biographical section. While browsing Facebook, Tyrell noticed the page of ACME Computers, a prohibited source. Tyrell liked the prohibited source's Facebook page. Tyrell also left the following recommendation on the prohibited source's Facebook page: *"I strongly recommend ACME for any IT issues you may have. I had an issue at work where I was unable to access the internet. My IT department was unable to resolve the issue. My IT department contacted ACME, which resolved the issue immediately."*

# ***Recommendations or Endorsements***



## **Answer:**

The recommendation is not a violation of the Code of Conduct. Although ACME Computers is a prohibited source, Tyrell's recommendation does not mention the District, is provided in a personal capacity, and based on a professional relationship.

# ***Common Ethics “blunders” on Social Media***



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# ***Use of Government Time and Resources***



- DPM states that “an employee has a duty to protect and conserve government property and shall not use such property, or allow its use, for other than authorized purposes.” See DPM § 1808.1.
- Thus, an employee’s use of a personal social media account during working hours and using government issued technology, is not encouraged, particularly when such use causes an employee to be unproductive or causes the District to incur costs.
- The amount of time spent using a personal social media account while at work can also violate the Code of Conduct, i.e., 15 minutes vs. 2 hours.



# ***Official Social Media Accounts***



- Many District agencies have official agency social media accounts to which some employees have access.
- Official agency social media accounts are considered government resources.
- Employees must not use official agency social media accounts for other than their authorized purposes.
- “Authorized purposes” is statutorily defined as “those purposes for which government property is made available to members of the public or those purposes authorized by an agency head in accordance with law or regulation.” Accordingly, an official social media account must be used for official agency business only.
- Political activity, partisan or nonpartisan, is not an authorized purpose.
- Must be careful “retweeting,” “liking” or endorsing posts - prohibition against losing impartiality and showing favoritism applies.
- Agencies are encouraged to adopt official social media policies.

DPM § 1808.1. See also Council Code Rule VI(a)

# ***Agency Limitations on Use of Personal Social Media Accounts***



- An agency may impose additional restrictions on an employee's use of a personal social media account.
- As a general rule, these additional restrictions are not part of the Code of Conduct, therefore, BEGA has no jurisdiction.
- For example, while our Opinion advised that under certain circumstances, an employee can provide an endorsement on LinkedIn for another employee, an agency may limit that conduct and provide that its employees are not allowed to endorse other employees or contractors. *Agency will ensure compliance.*

# ***Where to go for ethics advice***



- **BEGA**
  - Director of Government Ethics
  - (202) 481-3411
  - BEGA Hotline - - (202) 535-1002
  - Email - - [bega@dc.gov](mailto:bega@dc.gov)
  - [www.bega-dc.gov](http://www.bega-dc.gov)
- Your Agency Ethics Counselor