

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



Office of Government Ethics



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

NEGOTIATED DISPOSITION:

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

FINDINGS OF FACT:

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

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

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

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

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

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

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

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

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

NATURE OF VIOLATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

TERMS OF THE NEGOTIATED SETTLEMENT

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

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

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

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



Jack Evans
Respondent

8/8/19.
Date

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

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

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

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



Jack Evans
Respondent

8/3/19
Date



Brent Wolfingbarger
Director of Government Ethics

8-8-2019
Date

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

APPROVED:



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

Aug 8, 2019
Date

EXHIBIT 1

ENROLLED ORIGINAL

A RESOLUTION

23-49

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 19, 2019

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

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

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

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

“GENERALLY, Employees shall not:

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

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

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

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

EXHIBIT 1

ENROLLED ORIGINAL

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

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

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

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

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

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

Sec. 9. This resolution shall take effect immediately.

Description		Final Reading	
Date of Vote		Mar 19, 2019	
Vote Type		Voice Vote	
Vote Result		Approved	
Phil Mendelson	Yes	Brianne Nadeau	Yes
Jack Evans	Yes	Mary Cheh	Yes
Brandon Todd	Yes	Kenyan McDuffie	Yes
Charles Allen	Yes	Vincent Gray	Yes
Trayon White	Yes	Elissa Silverman	Yes
Anita Bonds	Yes	David Grosso	Yes
Robert White	Yes		
Voting Summary			
Yes	13	No	0
Present	0	Absent	0
Recused	0	Abstained	0
Vacant	0	Other	0

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



IN RE: Jack Evans

Respondent

CASE No.: 19-0011-P

ORDER

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

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

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

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

Norma B. Hutcheson

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

Aug 8, 2019

Date