



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

November 26, 2019

Dear Councilmember Cheh and Members of the Ad Hoc Committee,

First, I am writing to let you know I truly appreciate the challenge dealing with the allegations involving my conduct has caused the Council. I surely am grateful for the consideration that you have given the issues.

I also am writing to say I appreciate the opportunity to appear before the Council's Ad Hoc Committee on Tuesday, December 3, 2019. To date, I and/or my counsel have appeared at WMATA, BEGA, the Council and have submitted hundreds of pages of material. I understand OMM has gathered thousands more. For the Council's special inquiry, I sat for four days of interviews over fifteen hours asked by experienced attorneys with prosecutorial backgrounds. I answered every question, and there was a written transcript of every question and answer so the record would be complete. After reviewing all of this material and viewing the presentation by the attorneys from O'Melveny and Myers, I have decided there really should be no reason to duplicate these questions and answers and appear before the Committee. All of the facts and information already have been submitted, and my counsel have submitted a new brief letter to address the issues raised at the November 19 hearing.

After working at law firms during my entire 29 years on the Council, in July 2016, I set up my own company. I clearly did not anticipate the difficulties of operating my own business as opposed to working for a law firm. Many of the practices I used at the law firm, I continued to follow in my own business. I did not realize at the time that some of these practices did not lend themselves to a personal business. In particular, I want to stress my understanding of the ethics rules at the time was that my provision of private consultation services to my clients was separate and apart from my office providing ongoing constituent services. This misunderstanding has resulted in a number of issues concerning my business. At no time during my employment at the law firms or during the operation of my business, did I knowingly or intentionally violate any ethics rules. And O'Melveny & Myers has concluded the exact same thing. In retrospect, it was not a good idea to set up my own business. As such, I have closed the business and do not intend to have any outside employment as long as I am a member of the Council.

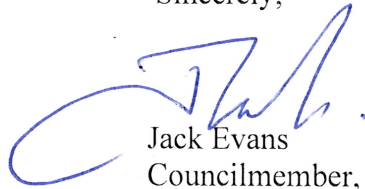


Since the O'Melveny Report has been issued, I have made all the necessary amendments to my Financial Disclosure Statements that were identified in the report. In addition, I, along with my staff, have completed ethics training at BEGA.

I sincerely regret the difficulties I have put the Members of the Council through during this period and look forward to working with all of you going forward. I intend to focus on representing the residents of Ward 2 on the Council.

Thank you for your kind consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Evans', with a large, sweeping flourish underneath.

Jack Evans  
Councilmember, Ward 2

**WINSTON  
& STRAWN**

1700 K Street, N.W.  
Washington, D.C. 20006  
T + 1 202 282 5000  
F + 1 202 282 5100

Abbe David Lowell  
**PARTNER, WINSTON & STRAWN LLP**  
202-282-5875  
ADLowell@winston.com

**BakerHostetler**

1050 Connecticut Ave., N.W., Ste 1100  
Washington, D.C. 20036  
T + 1 202 861 1500  
F + 1 202 861 1783

Mark Tuohey  
**OF COUNSEL, BAKERHOSTETLER**  
202-861-1654  
MTuohey@bakerlaw.com

November 26, 2019

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

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

**Re: Councilmember Jack Evans**

Dear Councilmember Cheh and Members of the Ad Hoc Committee:

We write this letter as attorneys for Councilmember Jack Evans to respond to the presentation and statements made at the November 19, 2019 hearing of the Council. As we have previously sent to the Council letters dated October 25, 2019 and November 5, 2019 that set out issues concerning the inherent problems with outside employment, ambiguities and actual contradictory language in the Code of Conduct, the lack of real guidance and oversight by the BEGA, and a 41 page very detailed response to the report submitted by your outside counsel, O'Melveny & Myers ("OMM"), this will be a brief submission. We believe this submission, along with those we reference above, should obviate our making a more formal presentation on December 3, 2019.

**1. NO VIOLATIONS OF ANY LAW**

One issue raised at the November 19 meeting was if there were violations of law in Mr. Evans' conduct. Under precedents and practice, certain sanctions, like censure and especially the severe sanction of expulsion, would require such a serious law violation finding. As you know, OMM made no such finding and specifically found there was no conduct they found that would constitute a crime, bribery or even gratuity. Whether that was their assignment or not, the OMM attorneys have extensive experience in criminal law and surely would have made such a finding or referral had they found any. Moreover, while OMM dismissed "intent" as irrelevant to their opinion on violations of the ethics Code of Conduct, the conclusion that Mr. Evans misunderstood



Councilmember Mary Cheh and Members of the Ad Hoc Committee  
November 26, 2019

Page | 2

rules and had no demonstrable intent to violate them is a critical finding in concluding there were no violations of law. Whatever else might be said about the difference between a finding of an ethics rule violation and a violation of a law, intentionality is required for the latter. There is no such finding. One question that hypothesized if *any* violation of a Code provision is also a violation of the law establishing BEGA and its ability to write ethics rules is a stretch to reach that conclusion. There is simply no basis in law to equate a violation of the Code as a violation of the statute that established the agency to write the Code.

## **2. INTENT MATTERS IN ETHICS ISSUES**

With respect to statements made that “intent” does not matter in applying the Code of Conduct, again legal precedent makes clear that ethics rules are not “strict liability” restrictions. If, for example, Mr. Evans believed – as he did and OMM reports – that a consulting firm he had was no different than his role in a law firm which OMM agrees does not, under the current rules, have to disclose its clients, then he may be wrong, he may need to amend, the rule may need to be clarified, but his lack of intent to violate is not only relevant, it is dispositive – at least as far as any sanctions is considered. As OMM said at the hearing: “But to be fair to Mr. Evans, it is difficult to comply, if you don’t understand the rules” and changes in consulting agreement language on the issue of conflicts “seemed inadvertent.” This proposition that intent does not matter is simply not correct.

## **3. ETHICS EXPERT OPINION WAS VERY RELEVANT**

A question was raised concerning the significance of the letters we submitted from ethics expert Professor Michael Frisch. The alternative to our seeking out an expert and submitting any findings is to simply rely on opinions formulated by OMM for this specific assignment, even as OMM has cited to no case or precedent to support some of its most important views (e.g., intent does not matter, having private clients disqualifies an official from helping that client with a constituent issue, a lawyer working for himself as a consultant to a client has no attorney-client relationship with that client as he would if he worked in a law firm). OMM counsel conceded they had no particular experience with ethics investigations but far more importantly is the fact that, rather than put forward our own view or opinion of the rules, we sought some guidance and precedent. It may be that the only real precedent exists in legal ethics opinions, but that is a better starting point than simply making up rules and definitions for this investigation. Moreover, Mr. Evans is an attorney and his training or knowledge of the rules for attorneys are very important and relevant to assessing his conduct and views, for example that law firms and lawyers do not disclose the identity of clients.

## **4. OUTSIDE EMPLOYMENT CANNOT PREVENT CONSTITUENT SERVICES**

OMM stated that once a councilmember has outside employment, that councilmember can no longer provide long-standing constituent services to a client because what was ordinary and



appropriate, became extraordinary and inappropriate. First, we are not contending that an official maintaining a consistent position or practice is automatically a defense to an allegation of a conflict of interest. There is no such automatic exoneration, but there is also no automatic condemnation either. What seems correct under any precedent that can be applied is that, if Mr. Evans always would take a call to refer a person to an agency, always help someone with a pothole or blocked alley, always vote against a tax (whether for parking or anything else), he did not have to stop doing that simply because someone asking was someone he knew as a friend or became a client. That simply cannot be the rule if the Council is going to remain functional *and* allow outside employment. In addition, there is a difference between Mr. Evans or anyone else taking an action that applied to an entire community or segment (e.g., all parking companies) and one that was a special purpose action for a specific individual or entity. While clearly established in the law for legal and non-legal conflict of interest decisions, this distinction was not addressed at the November 19 hearing at all.

#### **5. SUBJECTIVE ASSESSMENTS OF NSE WORK AND PAYMENT IS DANGEROUS**

Another issue was what work Mr. Evans did for his clients. The *only* client who spoke with OMM made it clear that he received value for what he paid. The Council should not put itself in a position to second-guess that or to assume what others who were not interviewed would conclude. Moreover, if the Council allows outside employment and starts to determine whether attorneys and consultants who are specifically allowed to have positions have done enough work for what they are paid, there is no end to that analysis. Like literally hundreds of attorneys and consultants in Washington, Mr. Evans had retainer agreements with all of his clients. These are common practice in both law firms and consulting firms. In these arrangements, one is not paid by the hour but rather on a monthly or semi-annual basis for whatever service is or is not provided. It is not possible to quantify what that service is worth on an hourly basis and rather unfair to apply that criterion now.

#### **6. THE DIGI MEDIA RECORD IS A GOOD ONE FOR MR. EVANS**

So much of the OMM submission and questions involved Digi Media. With regard to Digi, the uncontradicted record is this: without any reason to do so other than doing the right thing, with no one raising a question, with no investigation or inquiry pending, with no media criticism, Mr. Evans decided not to go forward with Digi. He returned the retainer checks and he returned the stock. Any actions taken with regard to Digi were not part of a client relations and, as such, not an ethics violation. It is also important to note that OMM concluded that William Jarvis was not in any business with Mr. Evans and acted solely as a friend.

**7. MR. EVANS' STAFF DID NOT ACT IMPROPERLY**

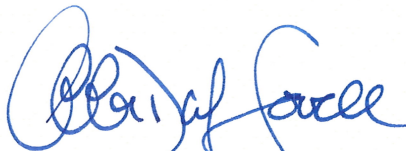
One result of any inquiry is that there is collateral damage to people not under review. OMM made clear that any staff work for Mr. Evans' consulting business was purely *de minimis*. Mr. Evans' consulting business was operated out of an office in his home, and not out of his Council office. His staff acted properly.

\* \* \* \* \*

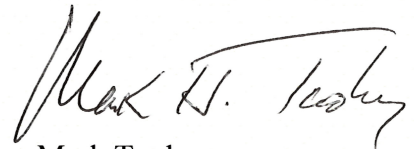
Mr. Evans has stated that he too, through the twenty-twenty perfect vision of hindsight, would do more to ensure that there was not even a question about his conduct. Who can say differently about his or her own actions? However, the record, fairly seen, is clear: his conduct violated no applicable law, his intent was not to violate any rule, his alleged violations – if any – were based on misunderstandings; the issue of outside employment is one that has to be addressed fairly for the future and not retroactively. Whatever result the Council would now impose ought to be consistent with precedents that apply the sanction of censure or expulsion for far intentional actions of wrongdoing that are not what the record establishes here.

Allegations of Code of Conduct violations are precisely the type of issues by which Mr. Evans should and will be judged by the voters. That is how the system was designed and should operate. There is a recall effort underway, and an election to occur in six months. Those processes should determine Mr. Evans' future. The Council should not easily or readily disenfranchise the residents of a ward. That would create a precedent that could easily be expanded and misused against anyone who lets that occur.

Sincerely,



Abbe David Lowell



Mark Tuohey