

Exhibit 16

From: [Efros, Ellen \(Council\)](#)
To: [Flowers, Brian \(BEGA\)](#); [Sobin, Darrin \(BEGA\)](#)
Cc: [Walter, Zachary \(Council\)](#)
Subject: RE: Do you have time for a chat today?
Date: Monday, May 9, 2016 5:38:50 PM

Well a blanket recusal is out of the question --- in fact, he needs to recuse himself on all particular matters relating to Pepco/Exelon IF they come before the Council. I will aske Zach to join us at noon.

From: Flowers, Brian (BEGA) [mailto:Brian.Flowers@dc.gov]

Sent: Monday, May 09, 2016 5:22 PM

To: Sobin, Darrin (BEGA) ; Efros, Ellen (Council)

Subject: RE: Do you have time for a chat today?

Below is the link. It was provided to Zach Walter about a month ago. I don't know what issue he was examining at the time.

http://www.bega-dc.gov/sites/default/files/documents/AA-009-13_0.pdf

Brian K. Flowers

General Counsel, BEGA

Desk: 202.481.3407

Cell: 202.309.4254

From: Sobin, Darrin (BEGA)

Sent: Monday, May 09, 2016 5:19 PM

To: Efros, Ellen (Council)

Cc: Flowers, Brian (BEGA)

Subject: RE: Do you have time for a chat today?

Yes, possible forum shopping, though I did ask him whether he minded if you were consulted and he had no objection. He wants a blanket assurance that if any Pepco Exelon matter comes before the Council he will not have to recuse. No sure we can do that but we are willing to look at the matter. We did an opinion on something similar for ANC folks who also had law firm day jobs.

Brian, can you forward that one please to Ellen?

Darrin P. Sobin

Director of Government Ethics

Board of Ethics and Government Accountability

441 4th Street, N.W., Suite 830 South

Washington, D.C. 20001

Tel. 202-481-3411

From: Efros, Ellen (Council) [mailto:eefros@DCCOUNCIL.US]

Sent: Monday, May 09, 2016 5:14 PM

To: Sobin, Darrin (BEGA)

Cc: Flowers, Brian (BEGA)

Subject: RE: Do you have time for a chat today?

We gave him an OGC opinion on this and the answer was "yes." I have pasted below from our opinion to him with the caveat that he must recused himself if it relates to a particular matter before the Council. Me thinks he is forum-shopping, but I do not know that the Council is even involved in the Pepco/Exelon mess – don't think it is unless someone is about to make a move to do so. 😊

Rule I of the Council's Code of Official Conduct, modeled on D.C. Official Code § 1-1162.23 and 18 U.S.C. § 208, provides that:

No employee shall use his or her official position or title, or

personally and substantially participate, 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, or attempt to influence the outcome of a particular matter, 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.

Rule I's definition of "person closely affiliated with the employee" includes an organization in which a person serves as an employee. Rule I(e)(1) and (5). Thus, if a Council employee has outside employment with an organization, the financial interests of the organization are imputed to the employee as if the interests were his own. Accordingly, an employee may not personally and substantially participate^[1] in a particular matter before the Council that is likely to have a direct and predictable effect^[2] on the financial interests of the employee's outside employer.

If the Council employee knows that the employee's outside employer is providing services for a client or otherwise representing a client in a particular matter – even if the Council employee is not working in a capacity relating to the client – the Council employee cannot participate in the particular matter.

In addition, even if the firm is providing services to a client in a matter before the Council, it is important to note that the standard requires there to be a "particular matter." Rule I(e)(4) provides that the term "[p]articular matter" is limited to meaning a deliberation, a decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons." Whether a matter before the Council is a particular matter must be determined on a case-by-case basis.

From: Sobin, Darrin (BEGA) [<mailto:darrin.sobin@dc.gov>]

Sent: Monday, May 09, 2016 4:59 PM

To: Efros, Ellen (Council) <eeefros@DCCOUNCIL.US>

Cc: Flowers, Brian (BEGA) <brian.flowers@dc.gov>

Subject: RE: Do you have time for a chat today?

Will do. The question involves when and whether CM Evans must recuse if a matter involving his law firm's client comes before the Council. Pepco/Excelon.

Darrin P. Sobin

Director of Government Ethics

Board of Ethics and Government Accountability

441 4th Street, N.W., Suite 830 South

Washington, D.C. 20001

Tel. 202-481-3411

From: Efos, Ellen (Council) [<mailto:eefros@DCCOUNCIL.US>]
Sent: Monday, May 09, 2016 4:58 PM
To: Sobin, Darrin (BEGA)
Cc: Flowers, Brian (BEGA)
Subject: RE: Do you have time for a chat today?
[Yup, call me when you get free 724-8720](#)

From: Sobin, Darrin (BEGA) [<mailto:darrin.sobin@dc.gov>]
Sent: Monday, May 09, 2016 4:57 PM
To: Efos, Ellen (Council) <eefros@DCCOUNCIL.US>
Cc: Flowers, Brian (BEGA) <brian.flowers@dc.gov>
Subject: RE: Do you have time for a chat today?
I'm doing a training from 10 to noon here at OJS. Can we speak at around noon when I get back?

Darrin P. Sobin
Director of Government Ethics
Board of Ethics and Government Accountability
441 4th Street, N.W., Suite 830 South
Washington, D.C. 20001
Tel. 202-481-3411

From: Efos, Ellen (Council) [<mailto:eefros@DCCOUNCIL.US>]
Sent: Monday, May 09, 2016 4:56 PM
To: Sobin, Darrin (BEGA)
Cc: Flowers, Brian (BEGA)
Subject: RE: Do you have time for a chat today?
[No, but I will be tomorrow. Can I call you @ 11?](#)

From: Sobin, Darrin (BEGA) [<mailto:darrin.sobin@dc.gov>]
Sent: Monday, May 09, 2016 3:17 PM
To: Efos, Ellen (Council) <eefros@DCCOUNCIL.US>
Cc: Flowers, Brian (BEGA) <brian.flowers@dc.gov>
Subject: RE: Do you have time for a chat today?
Are you back in the office?

Darrin P. Sobin
Director of Government Ethics
Board of Ethics and Government Accountability
441 4th Street, N.W., Suite 830 South
Washington, D.C. 20001
Tel. 202-481-3411

From: Efos, Ellen (Council) [<mailto:eefros@DCCOUNCIL.US>]
Sent: Friday, May 06, 2016 1:57 PM
To: Sobin, Darrin (BEGA)
Cc: Flowers, Brian (BEGA)
Subject: Re: Do you have time for a chat today?

I will try and call u later. Not in the office. If not, Monday?
E

Sent from my iPhone

On May 6, 2016, at 1:07 PM, Sobin, Darrin (BEGA) <darrin.sobin@dc.gov> wrote:

CM Evans has reached out to us on an issue and I wanted to get your read.

*Darrin P. Sobin
Director of Government Ethics
Board of Ethics and Government Accountability
441 4th Street, N.W., Suite 830 South
Washington, D.C. 20001
Tel. 202-481-3411*

[1] To participate “personally” means to participate directly. 5 C.F.R. § 2640.103(a)(2). To participate “substantially” means that the employee’s involvement is of significance to the matter. *Id.*

[2] “Direct and predictable effect” means there is:

- (A) A close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest; and
- (B) A real, as opposed to a speculative possibility, that the matter will affect the financial interest.

Rule I(e)(2).