

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

**Monthly Meeting of the Board**

July 11, 2013, 1:00 p.m.  
Room 540 South (BEGA Board Hearing Room)  
One Judiciary Square

**AGENDA**

- I. Call to Order
- II. Ascertainment of Quorum
- III. Adoption of the Agenda
- IV. Acknowledgment of Adoption of the Minutes of the June 6, 2013, and June 20, 2013, meetings.
- V. Executive Session (non-public) to discuss one ongoing, confidential Formal Investigation pursuant to D.C. Official Code § 2-575(b)(14). Then resumption of public meeting.
- VI. Report by the Director of Open Government
  - a. Trainings/Presentations
  - b. Web site
  - c. BEGA hearing room audio/video set up
- VII. Report by the Director of Government Ethics
  - a. Update on Status of Office of Government Ethics (OGE) Operations – Recap of previous month's activities (statistics)
  - b. Publication and Reporting Obligations
  - c. Update on Lobbyist Filings
    - i. Statute does not provide for extensions
    - ii. Short filing date

- d. Budget Matters
  - e. July 8, 2013, Council Hearing on Permanent BEGA Legislation regarding Additional Civil Penalties, Negotiated Dispositions, and the local Hatch Act
  - f. July 10, 2013, Legislative “fixes” to Ethics Act introduced before D.C. Council
  - g. Lawsuit filed by the D.C. Police Union. OAG representing BEGA
  - h. Graham lawsuit dismissed
  - i. Attorney General’s Opinion regarding BEGA’s jurisdiction over the Office of the Chief Financial Officer and its subordinate agencies
  - j. Non-Confidential Investigations
    - i. Allen - - Hearing Notice
    - ii. Hicks - - Hearing Notice
    - iii. Michael A. Brown – Notice of Violation
    - iv. Wade – Notice of Violation
  - k. Advisory Opinion - - discussion of six boards and commissions the Ethics Board previously had asked us to further research and discussion of next steps regarding this Advisory Opinion.
- VIII. Executive Session (non-public) to discuss remaining ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14), to deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13), and Personnel matters pursuant to D.C. Official Code § 2-575(b)(10).
- IX. Resumption of Public Meeting
- a. Discussion of any remaining public items
- X. Adjournment

## **MEETING MINUTES**

District of Columbia

Board of Ethics and Government Accountability

Monthly Meeting of the Board

**July 11, 2013, at 1:00 pm**

Hearing Room 540 South

One Judiciary Square

I. Call to Order

The Monthly Meeting of the Board was called to order at 1:10 pm by Chairman Robert Spagnoletti in Hearing Room 540 South at One Judiciary Square, 441 4th Street NW, Washington, DC 20001

II. Ascertainment of Quorum

All Board Members were present (Robert Spagnoletti, Deborah Lathen and Laura Richards), constituting a quorum.

III. Adoption of the Agenda

The Agenda was adopted unanimously.

IV. Acknowledgment of Adoption of the Minutes of the June 6, 2013, and June 20, 2013, meetings.

The above-referenced Minutes were adopted unanimously via e-mail.

V. Executive Session (non-public) to discuss one ongoing, confidential Formal Investigation pursuant to D.C. Official Code § 2-575(b)(14). Then resumption of public meeting.

The Board of Directors moved to the Executive Session of the Meeting at 1:12 p.m. to discuss the above-referenced matter.

The Public Session resumed at 1:21 p.m.

Chairman Robert Spagnoletti reported that the Board decided unanimously to make public the investigation of Councilmember Marion Barry regarding disclosure of his 2012 Public Financial Disclosure Statement (FDS) that he accepted gifts from two prohibited sources.

Director Sobin advised that Councilmember Barry disclosed on his 2012 FDS that he accepted a \$2,800 gift from Forney Enterprises, Inc. (FEI) and a \$4,000 gift from F&L Construction (FLC). Specifically, FEI served as a subcontractor on Leckie Elementary School and two change orders totaling \$1.8 million, which came before the Council in 2013. Therefore, FEI is a prohibited source. Similarly, FEI is also a prohibited source since they held a 2012 contract with the Department of Public Works for approximately \$3.4 million.

Councilmember Barry stated that the gifts were in no way in exchange for his vote, opinion, judgment, action, decision, or exercise of discretion in connection with his official duties. The OGE did not find evidence to the contrary. However, since Councilmember Barry failed to report the gifts in the form of a written statement (describing the matter and the nature of the potential conflict of interest to the Council Chairman) to be read into the record, he was not excused as required. In addition, he did not recuse himself from matters surrounding the contractors before the Council.

Councilmember Barry acknowledged that he knew that the contractors were or had been either contractors or subcontractors with the District and that his conduct violated the District Code of Conduct. Due to his conduct, Councilmember Barry was Censured and fined \$13,600, which doubles the amount of unlawful gifts received. The Settlement expressly states that the funds to satisfy the fine must not come from prohibited sources. Additionally, Councilmember Barry agreed to attend ethics training provided by OGE within six months (see attached, Negotiated Disposition).

Director Sobin recommended that the Board approve the Negotiated Disposition Agreement, stating that it is a fair and appropriate resolution to the investigation.

Chairman Spagnoletti inquired as to why the fine was doubled as opposed to being imposed at the maximum for three (3) times the amount. Director Sobin replied that the maximum amount was not warranted and that there

was no evidence of *quid pro quo*. He also commented on Barry's inability to pay and acknowledged his decision to disclose the gifts on his FDS.

Board Member Deborah Lathen asked if the contractors expected any favors from Councilmember Barry for giving him gifts. Director Sobin explained that when OGE asked Mr. Forney that very same question, he said that he admired Councilmember Barry and that he wanted to help him.

Board Member Lathen said that the contractors should also be held accountable for any unethical behavior. She asked, and the other Board Members agreed, to have the matter of the contractors referred to other appropriate outside authorities, including, perhaps, the Office of the Inspector General or the United States Attorney's Office for investigation.

The Board voted unanimously to sign the Negotiated Disposition.

## VI. Report by the Director of Open Government

### a. Trainings/Presentations

i. Traci Hughes, the Director of the Office of Open Government (OOG) reported that she has conducted the following Open Meetings Act trainings since the June 6, 2013, Board Meeting:

1. Board of Message Therapy (June 11, 2013)
2. Board of Marriage and Family (June 12, 2013)
3. Board of Audiology (June 17, 2013)
4. Veterinary Board (June 22, 2013)

Collectively, Directors Hughes and Sobin or OGE staff conducted presentations as follows:

5. Foggy Bottom Civic Association (June 22, 2013)
6. DC Auditor (June 26, 2013)
7. DCPS Interns (July 9, 2013)
8. Peruvian Members of Congress (June 26, 2013)
9. Mayor's Advisory Committee on Child Abuse and Neglect (July 2, 2013)
10. Podiatry Board (July 10, 2013)

The Agency has scheduled trainings with the Department on Aging and the Department of Human Services.

Additionally, Director Hughes reported that on June 19, 2013, she held the first meeting with District Freedom of Information Act (FOIA) Officers (about 50, many of whom also serve as agency general counsels). The meeting informed Officers of the role of the OOG; charged by BEGA Board to streamline FOIA processing in efforts of eliminating back logs and ensure consistency among agencies in the application of the statute. Also, a survey was issued about the types of document management software and redaction software used by agencies; the number of FOIA requests received this year; the number of pending requests beyond the 15 business day response deadline; the estimated percentage of requests from the media, the general public; whether the majority of agency searches were of electronic documents, hard copy or both; and what agencies charge for staff review of documents and copies. Although not mandatory, FOIA officers were given two weeks to complete the survey. There was a 50% response rate.

Furthermore, Director Hughes advised that she requested agency document retention plans and/or policies from all agencies and has received 5 thus far. She reports that many of the policies have not been updated in several years; one agency has not updated its policy since 1979. Others do not have any written policies or best practices, but rely entirely on the DCMR records disposition schedule as set out in DCMR 1-1501 to 1-532.1. The provision may not account for the needs of every agency, particularly as it relates to the electronic storage search of documents and searching capabilities of agencies. It is her understanding that the Office of the Secretary (OS), which has oversight of the DC Archives, may have a working group to establish best practices for document retention of which is a critical component of open government. Director Hughes plans to meet with the OS next month to discuss this issue, and the current FOIA reporting system.

The Director spoke about the importance of acquiring a technological infrastructure for BEGA to meet its mission of ensuring District operations at every level are transparent, open to the public and promote civic engagement. The Agency plans to have audio and video wiring of the Hearing Room, which will allow members of the public to view and participate via video conferencing and the Internet. It also will allow

BEGA staff to conduct online trainings on Ethics, FOIA, and the Open Meetings Act; the room also may be used by other agencies, boards and commissions.

Furthermore, she reported that the FOIA Officers unanimously consented to the need for a citywide FOIA tracking system, which will track from the time of request to the point of publication of documents. Also, the system will allow requestors to file online and track in real-time the progress of their requests. She believes the system will reduce the amount of time it takes to process requests and cut litigation costs as agencies will be better able to meet the 15 day business deadline imposed by statute.

Also underway, are plans to develop a web site for BEGA that will serve as an open government portal to District government operations. The site will be visually engaging, encourage viewers to explore in an intuitive and user friendly manner. It also will serve as a substantive resource for District agency services and data. It will be accessible on desktop and mobile devices and will include FOIA tracking, lobbyist filings and hopefully, a spending dashboard for users to view the state of operations in the District. It also will include a centralized calendar of all meeting dates of boards and commissions.

Chairman Spagnoletti informed Director Hughes about the need to further discuss funding. Board Member Richards asked whether District agencies would be required to participate on the platform. Director Hughes responded that agency participation has to be a requirement, and that using the FOIA system would make their jobs a lot easier.

## VII. Report by the Director of Government Ethics

- a. Update on Status of Office of Government Ethics (OGE) Operations – Recap of previous month's activities (statistics)
- b. Investigations
- c. Advisory Opinions

The status of matters (investigations and advisory opinions) since the June 6, 2013, Board Meeting is as follows:

- 1. Investigations Opened – 4
- 2. Investigation Closed – 4
- 3. Investigations Pending – 16

4. Advisory Opinions Issued – 4
5. OGE averages about 7 informal advice requests per week, which are recorded for tracking purposes.

d. Publication and Reporting Obligations

- ✓ Director Sobin reported that OGE met the following requirements:
- ✓ June 15, 2013, requirement of publishing matters relating to FDS filers, non-filers, and extensions in the DC Register.
- ✓ The quarterly report for the period April 1, 2013, through June 30, 2013, was posted on our website at the beginning of July.
- ✓ Formal written Advisory Opinions are timely posted on website and published in the DC Register
- ✓ Standard training power point screens are posted on our website.
- ✓ Director Hughes is working to post the Code of Conduct on the website.

e. Update on Lobbyist Filings

Director Sobin reported that OGE implemented a new module for the lobbyist E-filing system. The Lobbyist Activity Report filings for the period January 1, 2013, through June 30, 2013, were due July 10, 2013. In preparation for the filing period, OGE re-designed the Report and all of the schedules in order to make them more accurate and user-friendly.

Director Sobin informed the Board that OGE has received several complaints regarding the filing deadline of July 10, 2013, particularly, because it includes a major ‘vacation’ holiday (July 4<sup>th</sup>). The Agency understands that the statute requires filing to occur between July 1<sup>st</sup> and July 10<sup>th</sup> of each year; however, due to weekends and the holiday, the filing deadline is shortened. While the statute does not provide for extensions, it does, however, provide for the Board to issue waivers to late filing fines upon good cause shown.

f. Budget Matters

It was reported that OGE predicts an \$80,000 - \$100,000 budget surplus (stemming from salary lapse) for the end of this fiscal year with existing expenses. However, due to projected projects discussed earlier by Director Hughes, (hearing room modernization, FOIA tracking system, and web site development) the Agency will actually be facing a deficit. BEGA would like to get funding for the projected projects (Hearing Room modernization - \$156,000 and FOIA Tracking System - \$163,000) underway as soon as possible.

g. Legislative Matters

On July 8, 2013, Director Sobin testified at the Committee on Government Operations at the Council Hearing on Permanent BEGA Legislation regarding Additional Civil Penalties, Negotiated Dispositions, and the Local Hatch Act. The two pieces of legislation discussed were as follows:

- B20-0116 - Issuing Advisory Opinions on our own initiative and Negotiated Dispositions/Additional Civil Penalties; and
- B20-0117 - Local Hatch Act.

The Director provided specifics to Councilmember Kenyan McDuffie in terms of the *sua sponte* Advisory Opinions currently underway; negotiated dispositions, including the Non-public Informal Admonitions and the Public Negotiated Dispositions; as well as OGE's research and training efforts regarding the Local Hatch Act.

July 10, 2013, Legislative "fixes" to Ethics Act introduced before the D.C. Council. The Committee on Government Operations has drafted legislative fixes to the Ethics Act recommended in the BEGA Best Practices Report including the following:

- Donations as part of the Code of Conduct;
- To include language that BEGA has jurisdiction over all instrumentalities of the District government, including subordinate and independent agencies, Boards/Commissions, and ANCs;

- That BEGA create a Universal Code of Conduct applicable to all instrumentalities of the District government;
- Have access to all records except as prohibited by law;
- Issue penalties for obstruction;
- Requirement to comply with requests;
- Penalties for knowingly and willfully falsifying, concealing, and covering up, and making false/fraudulent statements to BEGA;
- Affirmative obligation to report to BEGA and to issue penalties for failure to comply;
- Extending the requirement to present evidence regarding Formal Investigations to the Board from 14 days to 30 days; and
- Changing the “or” to “and” so that in the penalty provision the Board can both issue a penalty and refer a matter for prosecution.

This legislation was introduced on July 11 and has been referred to the Committee on Government Operations. It is anticipated that this legislation will be taken up when the Council reconvenes in September.

h. Lawsuit filed by the D.C. Police Union.

Director Sobin informed the Board that the Office of the Attorney General will be representing the Agency in the lawsuit. He advised that BEGA would not comply with their request to be subject to the MPD collective bargaining agreement(s). The OAG Opinion states that BEGA is not subject to the collective bargaining agreement(s) and that, in any event, BEGA does not have the authority to enter into an MOU with the Union that would provide preferential treatment to its members. He also informed the Board that OAG is preparing the Answer and a motion to dismiss.

i. Councilmember Graham lawsuit dismissed

The Court determined that the Administrative Procedures Act applies to BEGA and that the Councilmember has standing to bring the suit. But BEGA has authority to issue the Order it issued and to say what it was based upon. The Court noted that granting the relief sought would not redress the claimed injury because the Council’s reprimand was based upon more than BEGA’s action. Importantly, the Court also

concluded that BEGA can issue advisory opinions and make findings even if it does not intend to take action, as it did in the Graham matter.

Board Member Lathen expressed her appreciation to OAG for doing a good job. She requested that OGE draft a formal letter for the Board's signature.

- j. Attorney General's Opinion regarding BEGA's jurisdiction over the Office of the Chief Financial Officer (OCFO) and its subordinate agencies

Director Sobin advised that Council has the authority to extend BEGA jurisdiction to the OCFO through legislation and that it did so in the Ethics Act; therefore, BEGA has jurisdiction.

- k. Schedule of Fines

During a recent meeting with the Office of Campaign Finance (OCF), Director Sobin was informed that OCF fines for FDS violations maxed out at \$2,000. In the OGE Schedule of Fines, the maximum amount is \$1,000. The Director proposes increasing the fine to \$2,000.

Samantha Riley, Attorney Advisor commented that the Office has worked to notify filers who are non-compliant with FDS filings. Board Member Richards asked if fines would be assessed on a per diem basis. Director Sobin said that non-filers are subject to fines for the code of conduct violation of failing to file, not daily fines.

At 2:30 p.m., Chairman Spagnoletti recommended a five minute break. The Meeting resumed at 2:41 p.m.

- l. Non-Confidential Investigations

- 1. Steven Allen – Misuse of Disability Parking Placard - Hearing Notice. The Notice of Violation was served; however, the response was procedurally deficient and was not signed. He was then given until July 16, 2013, to submit a proper response or proceed as a general denial. OGE will not file an opposition to the response, but instead suggests scheduling a hearing date. The Hearing date was set by the Board for August 13, 2013, at 1:00 p.m.

2. Larry Hicks – Post Employment - Hearing Notice. The Notice of Violation was served and the response received. OGE will set a hearing date during the next Board Meeting. The Board authorized the issuance of a subpoena.
3. Michael A. Brown – Bribery. The Notice of Violation is factually based upon the plea agreement from the criminal case in which Mr. Brown admitted to 1 count of bribery by a public official; admitted to receiving \$55,000 in cash from representatives of a private company in return for help in obtaining approval as a Certified Business Enterprise from the D.C. Department of Small and Local Business Development; and to assist the company with the District of Columbia Regulatory Affairs (DCRA) permits. The NOV has 4 counts (conflict of interest, gifts outside sources, acceptance of a gift to be induced to do an act in violation of official duties, prestige of office for private gain).

The Chairman asked if any discussions of a Negotiated Disposition had taken place, and Director Sobin informed him they had discussions with counsel regarding FDS, but not on the above issue. The Board agreed unanimously to issue the Notice of Violation, the NOV was signed.

4. Brenda Wade – Theft from Supermarket by DCRA Employee. The Notice of Violation is for 1 count of engaging in outside interest, which violates District law (D.C. Official Code § 22-3211). The theft occurred while on tour of duty, Ms. Wade was caught, but not arrested (approximately \$45 worth of items was recovered). The Board agreed unanimously to issue a Notice of Violation, the NOV was signed.
- m. Advisory Opinion - - discussion of six boards and commissions the Ethics Board previously had asked OGE staff to further research and discussion of next steps regarding this Advisory Opinion.

The Board (BEGA) previously asked the staff to conduct further research on the below listed entities before BEGA decided whether they should be included among the boards on which, in BEGA's view, lobbyists should not be permitted to serve.

1. Commission on Fashion Arts & Events
2. Construction Codes Coordinating Board
3. Board of Medicine
4. Boxing and Wrestling Commission
5. DC Retirement Board
6. Board of Pharmacy

After discussion, the Board agreed unanimously to include five of the six foregoing boards and commissions on the no-lobbyist list. The Construction Codes Coordinating Board was omitted based on staff's advice that its role was purely advisory. The others were included because they either exercised licensing and/or disciplinary authority, acted as financial fiduciaries, or were authorized to apply for grants or receive gifts,

Chairman Spagnoletti informed the Board that he attended an event at UDC Law School concerning the elected attorney general where he had an opportunity to speak with Attorney General Nathan. Attorney General Nathan informed Chairman Spagnoletti that he still believed that his original list of 5 Boards were the only ones that should be prohibited from having lobbyists serve.

Chairman Spagnoletti emphasized that in compiling a no-lobbyist list, BEGA is not interpreting the law, but rather is expressing its view as to how an ambiguous law may be amended. Board Member Lathen stated that input from District residents should be obtained on the issue of what boards should be subject to any ban of lobbyist membership. Staff agreed to engage in a public outreach effort, using conventional methods (e.g., a roundtable) and electronic methods (i.e., online chats).

- VIII. Executive Session (non-public) to discuss remaining ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14), to deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13), and Personnel matters pursuant to D.C. Official Code § 2-575(b)(10).

The Executive Session of the Board Meeting commenced at 3:24 p.m.

IX. Resumption of Public Meeting

The Public Meeting resumed at 4:34 pm.

a. Discussion of any remaining public items

Having no further business before the Board, Chairman Spagnoletti announced the closing of the Public Meeting.

X. Adjournment

The Board Meeting adjourned at 4:35 p.m.

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



Office of Government Ethics

In Re: Marion Barry  
Case No.: 1055-001

NEGOTIATED DISPOSITION

Pursuant to D.C. Official Code § 1-1162.21(a)(4)(E)<sup>1</sup> of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012, D.C. Law 19-124, D.C. Official Code § 1-1161.01 et seq., the Office of Government Ethics (“OGE”) hereby enters into this Negotiated Disposition Agreement with the Respondent, Marion Barry. Mr. Barry agrees that the resulting Negotiated Disposition Agreement is a settlement of the above-titled action, detailed as follows:

I. FINDINGS OF FACT

Mr. Barry currently is a District of Columbia Councilmember and was a Councilmember for the period January 1, 2012, through December 31, 2012. As a Councilmember, Mr. Barry was required to file a Public Financial Disclosure Statement (“FDS”) for calendar year 2012, on or before May 15, 2013. Mr. Barry filed his Public FDS on May 15, 2013. In response to Question 8, which states, “Please list all gifts you received from a prohibited source in an aggregate value of \$100 in a calendar year,” Mr. Barry listed a \$2,800 gift from Forney Enterprises, Inc.,<sup>2</sup> and a \$4,000 gift from F & L Construction.

With respect to Forney Enterprises, Inc., Mr. Barry acknowledges that he was aware that Forney Enterprises, Inc. was or had been either a contractor or subcontractor with various District agencies. In fact, Forney Enterprises, Inc. performed work on a Department of General Services contract for Design-Build Services for Leckie Elementary School and two change orders totaling approximately \$1.8 million came before the D.C. Council for a vote in 2013. Forney Enterprises, Inc., therefore, is a prohibited source, which Mr. Barry acknowledged when he listed the \$2,800 gift from Forney Enterprises, Inc. in response to the question concerning gifts from prohibited sources.<sup>3</sup>

With respect to F & L Construction, Mr. Barry acknowledged that he knew that F & L Construction was or had been either a contractor or subcontractor with various District agencies. In fact, F & L Construction had an approximately \$3.4 million contract with the Department of Public Works beginning in July 2012. F & L Construction, therefore, is a prohibited source, which Mr. Barry acknowledged when

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<sup>1</sup> D.C. Official Code § 1-1162.21(a)(4)(E) of the Ethics Act provides, in pertinent part, that “[i]n addition to any civil penalty imposed under this title, a violation of the Code of Conduct may result in the following: . . . Any negotiated disposition of a matter offered by the Director of Government Ethics, and accepted by the respondent, subject to approval by the Ethics Board.”

<sup>2</sup> Mr. Barry subsequently clarified in a letter to the Director of Government Ethics dated June 13, 2013, that he received the gift from Keith Forney, owner of Forney Enterprises.

<sup>3</sup> Prohibited Source is defined in the Ethics Act as “any person that: (A) Has or is seeking to obtain contractual or other business or financial relations with the District government; (b) Conducts operations or activities that are subject to regulation by the District government; or (c) Has an interest that may be favorably affected by the performance or non-performance of the employee’s official responsibilities.” D.C. Official Code § 1-1161.01(46).

he listed the \$4,000 gift from F & L Construction in response to the question concerning gifts from prohibited sources.<sup>4</sup>

Mr. Barry stated in his June 13, 2013, letter to the Director of Government Ethics that there was no agreement or understanding that in exchange for his gifts from Forney Enterprises, Inc. and/or F & L Construction, that his vote, opinion, judgment, action, decision, or exercise of discretion in connection with his official duties as a Councilmember would be influenced in any way to benefit Forney Enterprises, Inc. or F & L Construction, respectively. Each company, however, had a matter before the D.C. Council in 2012. Mr. Barry, as a sitting Councilmember, normally would have participated in any discussion of those matters and voted on them. Because he accepted the gifts from these contractors, however, he was required to prepare a written statement describing the matter and the nature of the potential conflict of interest and submit that written statement to the Council Chairman.<sup>5</sup> This would satisfy the requirement to disclose the matter and allow the Chairman to read the written statement into the record and excuse the Councilmember from votes, deliberations, and other actions on the matter, as required.<sup>6</sup> Mr. Barry neither disclosed to the Council Chairman that he accepted these gifts, provided written statements about the nature of his conflicts of interest, nor recused himself from votes, deliberations, and other actions on the matters before the Council relating to these two companies.

## II. NATURE OF MISCONDUCT

For each of the two gifts Mr. Barry received, Mr. Barry's conduct is in violation of:

- The Council Code of Conduct, Section III (Gifts From Outside Sources) (a), which states, in pertinent part, that "employees shall not solicit or accept, either directly or indirectly, any gift from a prohibited source."
- The Conflicts of Interest section of the Ethics Act, D.C. Official Code § 1-1162.23(c)(3), which states that "[d]uring a proceeding in which an elected official would be required to take action in any matter that is prohibited under subsection (a) of this section,<sup>7</sup> the Chairman shall: (A) Read the statement provided in paragraph (1) of this subsection into the record of the proceedings; and (B) Excuse the elected official from votes, deliberations, and other actions on the matter."

Because Mr. Barry accepted gifts from Forney Enterprises, Inc. and F & L Construction, he accepted two gifts from prohibited sources, in violation of the Council Code of Conduct, Section III(a). Because Mr. Barry failed to disclose to the Council Chairman that he accepted these gifts, provide written statements about the nature of his conflicts of interest, and recuse himself from votes, deliberations, and other actions on the matters before the Council relating to these two companies, he violated D.C. Official Code § 1-1162.23(c)(3).

## III. TERMS OF THE NEGOTIATED DISPOSITION

Mr. Barry acknowledges that his conduct was in violation of the District Code of Conduct and that he should be, and hereby is, "**Censured**" for his conduct and fined in the amount of \$13,600. The Ethics Board may assess a civil penalty for a violation of the Code of Conduct of not more than \$5,000 per

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<sup>4</sup> Mr. Barry subsequently clarified in a letter to the Director of Government Ethics dated June 13, 2013, that he received the gift from Freddie Winston, owner of F & L Construction.

<sup>5</sup> D.C. Official Code § 1-1162.23(c)(1).

<sup>6</sup> D.C. Official Code § 1-1162.23(c)(3).

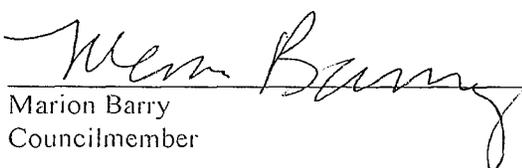
<sup>7</sup> D.C. Official Code § 1-1162.23(a) states, in pertinent part, that "[n]o employee shall use his or her official position or title . . . in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests . . ."

violation, or 3 times the amount of an unlawful gift. (D.C. Official Code § 1-1162.21(a)(1)). The fine of \$13,600 represents 2 times the total amount of the two unlawful gifts. Mr. Barry agrees to pay \$6,800 of the fine in a lump sum within 14 days of full execution of this Negotiated Disposition Agreement by bank check or money order made out to the D.C. Treasurer and provided to OGE. Mr. Barry agrees to pay the remaining \$6,800 in four equal quarterly installments of \$1,700.00 on the following dates: October 11, 2013; January 10, 2014; April 11, 2014; and July 11, 2014. Payments shall be made by bank check or money order made out to the D.C. Treasurer and provided to OGE. Mr. Barry agrees that in no event shall any of the money for the fine be obtained from a prohibited source.

Moreover, Mr. Barry, as part of this Negotiated Disposition Agreement, agrees to attend ethics training provided by OGE within six months of the full execution of this Negotiated Disposition Agreement. Mr. Barry also promises not to engage in such conduct in the future. In return for Mr. Barry's acknowledgement of this Censure, penalty of a \$13,600 fine, agreement to attend ethics training, and promise not to engage in such conduct in the future, OGE will not seek any further remedy or take any further action relating to the above misconduct.

Mr. Barry understands that if he fails to adhere to this agreement, OGE will recommend that the Ethics Board hold an open and adversarial hearing on this matter.<sup>8</sup> Because OGE is, at this time, foregoing requesting that the Ethics Board hold an open and adversarial hearing on this matter, Mr. Barry agrees to waive any statute of limitation defenses should the Board decide to proceed in that manner as a result of Mr. Barry's breach of this agreement.

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 herein.

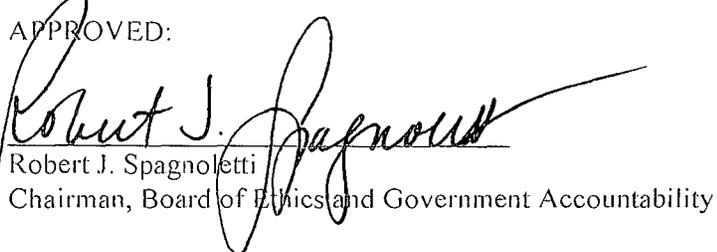
  
Marion Barry  
Councilmember

7-10-13  
Date

  
Darin Sobin  
Director of Government Ethics

7/11/13  
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 Chairman below.

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

7/11/13  
Date

<sup>8</sup> D.C. Official Code § 1-1162.14(a)(1)