

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



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July 23, 2019

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Re: Questions Concerning Great Weight and Commissioner Testimony

Commissioners:

Your Commission asked us two questions about the application of great weight in proceedings where the Commission has authorized an individual representative to testify:

- (1) May the BZA or another agency deny great weight to an individual Commissioner's written or oral testimony when the Commission properly voted to let that person represent the full Commission's views in the proceeding?**

Yes, if that testimony is not supplemented by corroborating documentation from the Commission within 7 days. Generally speaking, the issues and concerns to which an agency must give great weight are the issues and concerns raised in written recommendations adopted by the Commission.¹ An agency is not required to give great weight to issues and concerns separately raised in written or oral testimony by a Commission representative unless the agency receives, within 7 days, written documentation the Commission properly approved that supports that testimony.²

¹ See Advisory Neighborhood Commissions Act of 1975 ("ANC Act"), § 13(d)(3)(A), effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.10(d)(3)(A)).

² *Id.* § 13(d)(4) (D.C. Official Code § 1-309.10(d)(4)); see *Neighbors United for a Safer Community v. Bd. of Zoning Adjustment*, 647 A.2d 793, 798 (D.C. 1994); *Friendship Neighborhood Coalition v. Bd. of Zoning Adjustment*, 403 A.2d 291, 294-95 (D.C. 1979).

(2) May the BZA or another agency seek follow-up testimony without providing the ANC sufficient time to meet again and consider the matter?

Yes, to the extent its statute and rules so permit. Your question involves situations where your Commission's representative is testifying in proceedings that affect neighborhood planning and development, and is asked to supply follow-up testimony on new developments in those proceedings. Your concern is that, if the agency does not give the representative enough time to prepare follow-up testimony, legal and logistical hurdles may make it difficult for your Commission to meet and vote on written comments supporting that testimony within 7 days of your representative's testimony. Although we appreciate this concern, the ANC Act, which does not guarantee Commissions the right to present oral testimony before an agency on matters affecting neighborhood planning and development,³ similarly does not limit an agency's discretion to request and schedule follow-up testimony from a Commission representative.

If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Brian K. Flowers, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

By: 

JOSHUA TURNER
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³ Letter to Roger Moffatt, Aug. 19, 2008, at 2, available at <http://app.occ.dc.gov/documents/2008/20080819.pdf> (last visited July 23, 2019).