

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

September 16, 2019

Sherice A. Muhammad
Chairperson, ANC 7D
4409 Jay Street N.E.
Washington, D.C. 20019

Re: Requirements for Censuring or Removing an ANC Officer

Commissioner Muhammad:

You asked this office to explain the requirements for censuring or removing Advisory Neighborhood Commission (“ANC”) officers.¹ This letter responds to your request.

I. Censuring an Officer

Censure, as we have previously explained, “represents the ANC’s official, public reprimand of a Commissioner’s conduct.”² The Advisory Neighborhood Commissions Act of 1975,³ or “ANC Act,” does not discuss censure, so we rely on Robert’s Rules of Order,⁴ and under Robert’s Rules, an ANC has broad discretion on whether to censure an ANC officer but must grant an accused officer fair process.

Robert’s Rules counsels that “[f]ormal disciplinary procedures” such as censure “should generally be regarded as reserved for serious situations or those potentially so.”⁵ It does not,

¹ Each ANC elects officers – the Chairperson, Vice-Chairperson, Secretary, and Treasurer, and “any other officers that the Commission deems necessary” – from among its members “at a public meeting of the Commission held in January of each year.” D.C. Official Code § 1-309.11(e)(1).

² Letter to Nicholas Delle Donne, Nov. 29, 2017, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-2-B-November-30-2017-September-13-Censure-Resolution.pdf> (last visited Sept. 13, 2019).

³ Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

⁴ See D.C. Official Code § 1-309.11(e)(3) (“Where not otherwise provided, the procedures of the Commission shall be governed by Robert’s Rules of Order”).

⁵ HENRY MARTYN ROBERT III, ET AL., ROBERT’S RULES OF ORDER NEWLY REVISED (“Robert’s Rules”), p. 644, ll. 8-10 (11th ed. 2011).

however, attempt to prescribe which situations are appropriate for censure. That is for the ANC to resolve, to the extent its bylaws allow.⁶

Robert's Rules does, however, require an ANC to grant an accused officer fair process. The officer must be "informed of the charge and given time to prepare his defense," as well as the right to "appear and defend himself."⁷ In addition, if the ANC wishes to censure an officer "other than promptly after [a] breach occurs," or to censure the officer for conduct that took place outside of any ANC meeting, the ANC must take steps to assure itself that the allegations in question are true.⁸ "[T]here is a need for a trial, or at least fact-finding by the whole assembly or a committee, which should occur in a confidential setting because the reputation of the accused is at stake."⁹

Two caveats, however, are important, since Robert's Rules apply only where not "otherwise provided."¹⁰ First, each of the procedural requirements described in Robert's Rules applies only to the extent it is consistent with the relevant ANC's bylaws.¹¹ Second, proceedings surrounding censure, including any trial or fact-finding, must comply with applicable open-meetings laws. If the ANC or a committee conducts a trial or fact-finding in a meeting, that meeting must be open to the public. Similarly, if and when an ANC votes on whether to censure a Commissioner, that meeting must be open. This is because the Home Rule Act requires that any ANC meeting "at which official action of any kind is taken must be open to the public,"¹² and the ANC Act states that "[n]o meeting may be closed to the public unless personnel or legal matters are discussed."¹³

II. Removing an Officer

Although the ANC Act does not speak to censure, it does prescribe how ANC officers may be removed. Under the Act, "[r]emoval of any officer shall be undertaken at a special Commission meeting."¹⁴ Such a meeting must be called "if at least one-half of the elected Commissioners request in writing" that the Chairperson call one.¹⁵ In that event, the Chairperson must "schedule

⁶ See D.C. Official Code § 1-309.11(d) ("Each Commission shall establish bylaws governing its operation and internal structure").

⁷ *Id.* p. 656, ll. 4-5.

⁸ *Id.* p. 649, ll. 19-29.

⁹ Letter to Albrette "Gigi" Ransom, July 20, 2009, at 3, available at <http://app.occ.dc.gov/documents/2009/20090720.pdf> (last visited Sept. 13, 2019).

¹⁰ D.C. Official Code § 1-309.11(e)(3)

¹¹ See Letter to Tom Coumaris, Feb. 18, 1998, at 2 n.2, available at <http://app.occ.dc.gov/documents/1998/feb/19980218.pdf> (last visited Sept. 13, 2019) ("where there is a conflict between an ANC's bylaws and Robert's Rules of Order, the bylaws govern"); Letter to Delle Donne, *supra*, at 2 (applying Robert's Rules because "nothing in ANC 2B's Bylaws allows a censure motion to be conducted in a manner inconsistent with Robert's Rules").

¹² D.C. Official Code § 1-207.42(a); see Letter to Gottlieb Simon, July 21, 2017, at 2, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-July-21-2017-Open-Meetings-Question.pdf> (last visited Sept. 13, 2019) (noting that "ANCs falls under" the Home Rule Act's open meetings requirement).

¹³ D.C. Official Code § 1-309.11(g).

¹⁴ *Id.* § 1-309.11(e)(2)(A).

¹⁵ *Id.* § 1-309.11(e)(2)(B).


the meeting to take place within 30 days” of receiving Commissioners’ written request.¹⁶ The Chairperson presides over the meeting (unless his or her removal is at issue).¹⁷ If a quorum of the ANC – a majority of the ANC’s sitting Commissioners¹⁸ – is present, and a majority of Commissioners present vote to remove the officer, the officer is removed.¹⁹

You asked whether a special meeting called to remove an officer may involve matters other than that officer’s removal. The answer is yes, as long as your bylaws so permit. Nothing in the ANC Act precludes an ANC from conducting a special meeting on more than one subject,²⁰ and Robert’s Rules provides that special meetings are called to “consider one *or more* items of business specified in the call of the meeting.”²¹

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
Assistant Attorney General
Legal Counsel Division

¹⁶ *Id.* All otherwise applicable notice requirements must be followed. *See id.* § 1-309.11(c) and (c-1); Letter to Marvin Fields, Aug. 21, 2001, at 2, available at <http://app.occ.dc.gov/documents/2001/aug/20010821.pdf> (last visited Sept. 13, 2019).

¹⁷ D.C. Official Code § 1-309.11(e)(2)(C).

¹⁸ A majority of an ANC’s Commissioners constitutes a quorum. *See id.* § 1-309.11(b)(1).

¹⁹ *Id.* § 1-309.11(e)(2)(D). We note, of course, that a Commissioner who has been removed under this procedure does not cease to be a Commissioner; he or she merely ceases to be an officer.

²⁰ The only exception is for a very different circumstance: when “a vacancy occurs in an Advisory Neighborhood and no letter of resignation is submitted.” *Id.* § 1-309.06(f)(2). In that case, the ANC must call a meeting “for *the purpose* of considering the vacancy.” *Id.* (emphasis added).

²¹ Robert’s Rules, *supra*, p. 91 ll. 30-31.