

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL**



**ATTORNEY GENERAL  
KARL A. RACINE**

**Legal Counsel Division**

August 31, 2021

Trupti J. Patel  
Commissioner, ANC 2A03  
940 25th Street, N.W. #425N  
Washington, D.C. 20037

**Re: Process for Censuring or Removing an ANC Officer**

Commissioner Patel:

You asked us what process would be required to censure or remove an officer in your Advisory Neighborhood Commission (“ANC”), taking your ANC bylaws into account. This letter responds to your question.

An ANC’s power to censure or remove a Commissioner flows from three sources. The first is the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),<sup>1</sup> the governing statute to which any ANC action must conform. The second is the ANC’s bylaws, which govern the ANC’s “operation and internal structure”<sup>2</sup> and must be consistent with the ANC Act.<sup>3</sup> The third is Robert’s Rules of Order, which apply “[w]here not otherwise provided.”<sup>4</sup> With these sources in mind, we describe each process in turn.

**I. Censure**

Censure, which is an “official, public reprimand of a Commissioner’s conduct,”<sup>5</sup> is a form of official discipline. Censure in your ANC operates according to Robert’s Rules because neither the ANC Act nor your bylaws specifically regulates it. The ANC Act outlines rules that apply to all ANC meetings,<sup>6</sup> but offers no specific requirements for censure. And your bylaws specify

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<sup>1</sup> Effective Oct. 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

<sup>2</sup> D.C. Official Code § 1-309.11(d).

<sup>3</sup> *Id.* § 1-309.11(d)(2).

<sup>4</sup> *Id.* § 1-309.11(e)(3).

<sup>5</sup> Letter to Comm’r Delle Donne, Nov. 29, 2017, at 1, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-2-B-November-30-2017-September-13-Censure-Resolution.pdf> (all websites last visited Aug. 26, 2021).

<sup>6</sup> See D.C. Official Code § 1-309.11.

one cause for censuring a Commissioner (missing 3 consecutive regular ANC meetings),<sup>7</sup> but say nothing else on the subject. For that reason, we turn to Robert’s Rules to fill the gap.

Under Robert’s Rules, as updated in 2020,<sup>8</sup> the course to follow depends on whether the Commission is responding to conduct that just happened in a meeting.

Conduct that just took place in a meeting (including any words spoken in debate)<sup>9</sup> should be resolved in that meeting, and the appropriate response to that conduct depends on how serious the conduct is. A “slight breach of order,” such as “addressing another member instead of the chair in debate, or, in a single instance, failing to confine” the member’s “remarks to the merits of the pending question,” should earn only a warning and a light rap of the gavel.<sup>10</sup> For more serious misconduct, however, censure is a last step after other efforts have failed. At first, the Chairperson may direct the Secretary to “take down objectionable or disorderly words” the Commissioner has used.<sup>11</sup> The Chairperson may then refer to the Commissioner by name and direct the Commissioner to cease his or her misconduct.<sup>12</sup> If the Commissioner does not withdraw his or her remarks and refuses to apologize for them, the Commission may vote to censure the Commissioner at the Chairperson’s invitation or on motion of any Commissioner.<sup>13</sup>

The process is more involved when the censure is for conduct that did not just take place in a meeting, because when that happens, Commissioners “generally have no first-hand knowledge of the case.”<sup>14</sup> As described in the 2020 update to Robert’s Rules, “charges must be preferred and a formal trial held before the assembly of the society, or before a committee – standing or special – which is then required to report its findings and recommendations to the assembly for action.”<sup>15</sup> Robert’s Rules offers a detailed roadmap for this process,<sup>16</sup> and we are happy to offer specific guidance as needed, including on how much of this process must take place in the public eye (since ANC meetings generally must be open to the public).<sup>17</sup> The bedrock principle, however, is that the accused Commissioner “has the right to due process – that is, to be informed of the

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<sup>7</sup> Bylaws, ANC 2A, Art. IV, Sec. 10, available at <https://www.anc2a.org/bylaws>.

<sup>8</sup> See Robert’s Rules of Order Newly Revised (12th ed. 2020).

<sup>9</sup> See *id.* § 61:22.

<sup>10</sup> See *id.* § 61:10.

<sup>11</sup> *Id.* § 61:12.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* § 61:15. Since this process requires the Chairperson’s involvement, it may not fully account for situations in which the misconduct is alleged to have been engaged in by the Chairperson. Robert’s Rules also provides, however, that if a Chairperson “culpably fails to perform the duties of the chair properly in a meeting,” the Commission may “employ measures temporarily to replace the chair with another presiding officer expected to act in accordance with the will of the assembly.” *Id.* § 62:10. (This is distinct from wholesale removal of an officer, discussed later in this letter.)

<sup>14</sup> *Id.* § 61:22.

<sup>15</sup> *Id.*

<sup>16</sup> See *id.* §§ 63.7 – 63.37.

<sup>17</sup> See D.C. Official Code §§ 1-309.11(g) and 1-207.42(a).

charge and given time” to prepare a defense; to appear and present that defense; “and to be fairly treated” throughout.<sup>18</sup>

## II. Removal of an officer

The process for removing an ANC officer, unlike the process for censuring one, is outlined in the ANC Act. Accordingly, if your ANC wishes to remove an officer, it must follow the process described in section 14(e)(2) of the ANC Act (D.C. Official Code § 1-309.11(e)(2)), notwithstanding any conflicting provisions in your ANC’s bylaws.

As we explained in a recent letter, the removal of Commission officers was originally “governed by Robert’s Rules of Order . . . and by each ANC’s bylaws.”<sup>19</sup> But that changed in 2000, when the Council adopted the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000 (“2000 Act”).<sup>20</sup> The 2000 Act added a new section 14(e)(2), which was intended to “establish[] the procedure for the removal of a Commission officer.”<sup>21</sup> Accordingly, as we wrote in an August 21, 2001 letter to Commissioner Fields, “[r]emoval of an officer is governed by” section 14(e)(2),<sup>22</sup> since, “when a statute limits a thing to be done in a particular mode, it includes a negative of any other mode.” *Christensen v. Harris County*, 529 U.S. 576, 583 (2000); *Ethyl Corp. v. EPA*, 51 F.3d 1053, 1061 (D.C. Cir. 1995) (internal citations omitted from both).

Under section 14(e)(2), an officer may only be removed “at a special Commission meeting.”<sup>23</sup> (We will call this an officer-removal meeting.) Contrary to your bylaws, an officer-removal meeting is not called by a request from a single Commissioner.<sup>24</sup> Instead, “at least one-half of the elected Commissioners” must “request in writing that the Chairperson” call an officer-removal meeting, at which point the Chairperson is required to call it.<sup>25</sup> The Chairperson must “schedule the meeting to take place within 30 days of receipt of the request,” and must preside over that meeting unless the Chairperson’s own position is at issue.<sup>26</sup> If a quorum is present at that meeting, “the vote of a majority of the Commissioners shall remove the officer from his or her office.”<sup>27</sup>

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<sup>18</sup> Robert’s Rules, *supra*, § 63:5. The due process described here, applicable in all disciplinary matters, should not be confused with the due process guaranteed by the federal Constitution, which applies only when the government seeks to deprive a person of life, liberty, or property. See U.S. Const. amend. V.

<sup>19</sup> Letter to Comm’r Johnson, June 29, 2021, at 2, available at <https://oag.dc.gov/sites/default/files/2021-08/ANC-4C07-Letter-to-Commissioner-Johnson-RE-At-Will-Removal-of-Chairperson-.pdf>.

<sup>20</sup> Effective June 27, 2000 (D.C. Law 13-135; 47 DCR 2741).

<sup>21</sup> Comm. on Local and Regional Affairs, “Report on Bill 13-468, the ‘Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000,’” at 8, Jan. 11, 2000 (on file).

<sup>22</sup> Letter to Comm’r Fields at 2, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-6-A-August-21-2001-Notice-of-Special-Meeting-to-Remove-Treasurer.pdf>.

<sup>23</sup> D.C. Official Code § 1-309.11(e)(2)(A).

<sup>24</sup> See Bylaws, ANC 2A, *supra*, Art. IV, Sec. 10.

<sup>25</sup> D.C. Official Code § 1-309.11(e)(2)(B).

<sup>26</sup> *Id.* § 1-309.11(e)(2)(B) and (C).

<sup>27</sup> *Id.* § 1-309.11(e)(2)(D).

Unlike a censure process, removal of an ANC officer does not require allegations of misconduct, which means it also does not require any kind of trial process. Rather, as we recently explained, “if a majority of Commissioners disapprove of the job an officer is doing, they may remove that officer without any demonstration or even allegation of misconduct.”<sup>28</sup>

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

Sincerely,

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(AL-21-568)

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<sup>28</sup> Letter to Comm’r Johnson, *supra*, at 2.