

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL  
KARL A. RACINE

Legal Counsel Division

August 30, 2022

Schannette Grant  
Interim Executive Director  
Office of Advisory Neighborhood Commissions  
1350 Pennsylvania Ave., N.W., Ste. 11  
Washington, D.C. 20004

**Re: Commissioner Recusal from Federal Actions**

Director Grant:

Under the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),<sup>1</sup> each Advisory Neighborhood Commission (“ANC”) may “present its views to any federal or District agency.”<sup>2</sup> But a commissioner who is a federal employee might not wish to participate (or might be barred by their job from participating) in presenting the ANC’s views to a federal agency, especially the commissioner’s own agency.<sup>3</sup> You asked whether a commissioner who is in that position may choose to be recused from ANC matters that involve federal agencies. The answer is yes.

Since your question involves both the ANC Act and District ethics laws, we begin with some background on each. Under the ANC Act, each ANC is composed of elected commissioners<sup>4</sup> who convene regularly to discuss and vote on matters that come before the ANC.<sup>5</sup> Commissioners must abide by the ANC Act, their ANC’s bylaws,<sup>6</sup> and, “[w]here not otherwise provided,” with Robert’s Rules of Order.<sup>7</sup> Moreover, since commissioners are public officials of the District government, they must abide by the requirements in the District’s Code of Conduct,<sup>8</sup>

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

<sup>2</sup> D.C. Official Code § 1-309.10(f).

<sup>3</sup> In keeping with our Office’s role in this area, we do not advise on the scope or application of any federal ethics or personnel requirement, including the sufficiency of any recusal procedure.

<sup>4</sup> *See* D.C. Official Code § 1-309.06.

<sup>5</sup> *See id.* § 1-309.11(b).

<sup>6</sup> *See id.* § 1-309.11(d).

<sup>7</sup> *Id.* § 1-309.11(e)(3).

<sup>8</sup> *See* Letter to Comm’rs Costello and Piekara, Feb. 2, 2022. This letter is available from <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs> (all websites last visited Aug. 29, 2022). The different components of the Code of Conduct are outlined in section 101(7) of the Board of Ethics and Government Accountability

which are enforced by the Board of Ethics and Government Accountability (“BEGA”).<sup>9</sup> Under the Code of Conduct, a Commissioner may not, for example, “engage in outside employment or private business activity or have any direct or indirect financial interest that conflicts or would appear to conflict with the fair, impartial, and objective performance of officially assigned duties and responsibilities.”<sup>10</sup>

A commissioner who is a federal employee must be recused from matters involving federal agencies to the extent that the Code of Conduct or the bylaws for that Commissioner’s ANC so require. Moreover, even where there is no requirement, nothing prohibits a commissioner’s recusal. Nothing in the ANC Act or any other law prohibits this, and we are not aware of any ANC bylaw that purports to prohibit it either. What is more, Robert’s Rules of Order explicitly allows it: “Although it is the duty of every member who has an opinion on a question to express it by his vote, he can abstain, since he cannot be compelled to vote.”<sup>11</sup>

ANCs may also take reasonable steps to ensure that a commissioner’s recusal is clear and meaningful. For example, an ANC may assess whether a written communication to a federal agency on a matter from which a commissioner is recused should be on letterhead that includes the name of that Commissioner. An ANC may also assess whether or how to let federal-employee commissioners be walled off from discussion on matters involving federal agencies, just as Council employees with oversight-related responsibilities over ANCs who also serve as commissioners are screened from matters that may bear on their respective ANCs.<sup>12</sup>

If you have any questions, please feel free to contact Assistant Attorney General Joshua A. Turner at 202-442-9834, or Deputy Attorney General Brian K. Flowers at 202-724-5524.

Sincerely,

KARL A. RACINE  
Attorney General for the District of Columbia

By: *Joshua A. Turner*  
JOSHUA A. TURNER  
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(AL-22-467)

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Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01(7)).

<sup>9</sup> See D.C. Official Code § 1-1162.02.

<sup>10</sup> *Id.* § 1-618.02.

<sup>11</sup> Robert’s Rules of Order Newly Revised, § 45:3 (12th ed. 2020).

<sup>12</sup> See Letter from Darrin P. Sobin, Director of Gov’t Ethics, BEGA, to Adrian T. Jordan, Analyst, Feb. 28, 2013, available at [https://bega.dc.gov/sites/bega/files/publication/attachments/Advisory\\_Opinion\\_013-13.pdf](https://bega.dc.gov/sites/bega/files/publication/attachments/Advisory_Opinion_013-13.pdf).