

**District of Columbia
Board of Ethics and Government Accountability**

Public Symposium on Government Ethics “Best Practices”

January 10, 2013

Testimony of
Kathleen Clark¹

I want to thank the Board for having this public meeting and inviting me to participate.

I am a lawyer who represents individuals, government agencies and companies on issues of government ethics.

During 2011 and 2012, I served as Special Counsel to the District’s Attorney General. I provided advice on the ethics reform legislation that the Council ultimately adopted. I also trained District employees on these issues and wrote the District’s first Ethics Manual, which has since been updated to account for the legislative changes adopted last year.

I am currently drafting a treatise on government ethics as an Associate Reporter for the American Law Institute, and I am a law professor at Washington University in St. Louis.

My comments today reflect my own views and not those of any institution with which I am affiliated.

You have asked participants to describe “best practices” in the field of government ethics. Rather than describing those best practices in a vacuum, I think it would be more useful for me to identify those areas in which the District of Columbia faces the most pressing ethics issues.

But before I go into those suggested reforms, I want to share with you my perspective, based on my experience as part of the District government. When I worked as Special Counsel, I trained hundreds of rank and file employees on government ethics standards. I want to share with you my sense that the overwhelming majority of these employees want to know what the ethics standards are and to abide by them.

But as I will describe in a bit more detail, some of the current ethics rules invite contempt for ethics. One of the challenges you face as a board is revising those ethics standards so that they no longer invite such contempt.

1) Conduct an Assessment of Ethical Risk

My first suggestion is that you perform an assessment of ethical risk. Where is the greatest ethical risk within the District Government? It might be specific agencies. But more likely, it may be specific functions. I would predict that you will find the greatest ethical risk where you find the largest flows of money: money coming into the government in taxes, for example, or money leaving the government in contracts and grants.

You have responsibility for providing ethics training, advice, review of financial disclosures and enforcement.

I recommend that you target your resources in training, advice, review of financial disclosures and enforcement toward those areas that pose the greatest risk.

¹ John S. Lehmann Research Professor of Law, Washington University in St. Louis; kathleen_clark@mac.com.

2) Prioritize

The District has 32,000 employees, and you could fritter away your attention and resources on relatively minor violations by low level officials. I encourage you not to do that. Instead, once you have identified the key areas of ethical risk, I encourage you to exercise your enforcement discretion and choose a few enforcement cases that will enable you to send a message that there's a new sheriff in town.

3) Use the Financial Disclosure Review Process to Promote Ethics Awareness

Third, I want to encourage you to use the Financial Disclosure review process as a tool for giving ethics advice, promoting ethics awareness and enforcing ethics standards.

The most important aspect of a financial disclosure process is what occurs after the employees file their financial disclosures. At that point, someone in the government needs to review those disclosures and ascertain whether there are conflicts of interests.

The agency previously charged with enforcing ethics standards against the District's highest level officials, the Office of Campaign Finance, reviewed these forms for technical completeness, but apparently did not review them for compliance with the substantive ethics standards.

4) Address Other Deficiencies

Finally, I want to address a few smaller issues that nonetheless merit your attention sooner rather than later.

I recommend that you revise the gift rule, which prohibits employees from accepting a gift from anyone who is regulated by the District government unless one of the few exceptions applies. To be frank, this rule is so strict that it is absurd, and it is not being enforced. Having a rule on the books that is strict in theory but is not being enforced invites contempt for ethics as an endeavor.

I recommend that you provide clear guidance that District employees are bound by the federal conflict of interest statutes and correct the inaccurate or incomplete ethics advice that the Office of Campaign Finance has given to District officials in the past.

You may also want to ensure that District employees come to this Board for ethics advice rather than seeking advice from other sources within the government. The current District Ethics Manual suggests that employees can go to a variety of sources for ethics advice, but this can lead to confusion and forum shopping.

I would also recommend that you seek a legislative change to increase the size of this board from three to five members. Right now, if one of you has to recuse yourself on a matter or is otherwise unavailable, the Board cannot take action unless there is unanimity between the two remaining Board members. This could hobble the Board, and frankly you have a lot of work on your plate.

Once again, I want to thank you for creating this open forum to discuss ethics reforms in the District, and would be happy to answer any questions you have.