

D.C. OFFICE OF PERSONNEL
NOTICE OF FINAL RULEMAKING

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with section 502 of Title V of the Omnibus Public Safety Agency Reform Amendment Act of 2004 (Act), effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code § 5-1031) (2005 Supp.), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Chapter 16, General Discipline and Grievances, of Title 6 of the District of Columbia Municipal Regulations, to add language implementing the provisions of the Act. The Act provides that, with some noted exceptions, no corrective or adverse action against an employee of the Fire and Emergency Medical Services Department (FEMSD) or Metropolitan Police Department (MPD), including firefighters and police officers, respectively, shall be commenced more than ninety (90) days, not including Saturdays, Sundays, or legal holidays, after the date that the FEMSD or MPD knew or should have known of the act or occurrence allegedly constituting cause for the corrective or adverse action. Accordingly, this rulemaking amends section 1601 of the chapter to add a new section 1601.9 implementing the provisions of the Act. Additionally, and at the request of the Chief, FEMSD, section 1601.5 of the chapter is being amended to add language stating that the provisions of the chapter shall apply to uniformed members of the FEMSD at the rank of Battalion Fire Chief and above who are in the Career Service. No comments were received and no changes made to the notice of proposed rulemaking published at 53 DCR 1767 (March 10, 2006). Final rulemaking action was taken on March 12, 2006.

CHAPTER 16

GENERAL DISCIPLINE AND GRIEVANCES

Section 1601.5 is amended to read as follows:

- 1601.5 (a) Any procedures for handling corrective or adverse actions involving uniformed members of the Metropolitan Police Department, or of the Fire and Emergency Medical Services Department (FEMSD) at the rank of Captain or below provided for by law, or by regulations of the respective departments in effect on the effective date of these regulations, including but not limited to procedures involving trial boards, shall take precedence over the provisions of this chapter to the extent that there is a difference.
- (b) The provisions of this chapter shall apply to uniformed members of the FEMSD at the rank of Battalion Fire Chief and above who are in the Career Service.

A new section 1601.9 is added to read as follows:

1601.9 Notwithstanding any other provision of this chapter, and in accordance with the provisions of section 502 of Title V of the Omnibus Public Safety Agency Reform Amendment Act of 2004 (D.C. Law 15-194; D.C. Official Code § 5-1031) (2005 Supp.), the following will apply to all corrective and adverse actions against any employee, uniformed and non-uniformed, of the Fire and Emergency Medical Services Department (FEMSD) or Metropolitan Police Department (MPD):

- (a) No corrective or adverse action against any employee, uniformed and non-uniformed, of the FEMSD or MPD will be commenced more than ninety (90) days, not including Saturdays, Sundays, or legal holidays, after the date that the FEMSD or MPD knew or should have known of the act or occurrence allegedly constituting cause for the corrective or adverse action.
- (b) If the act or occurrence allegedly constituting cause for the corrective or adverse action is the subject of a criminal investigation by the MPD, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General for the District of Columbia, or an investigation by the Office of Police Complaints, the ninety-day (90-day) period for commencing a corrective or adverse action under section 1601.9 (a) of this section shall be tolled until the conclusion of the investigation.

D.C. OFFICE OF PERSONNEL

NOTICE OF FINAL RULEMAKING

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title XVIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-618.01 *et seq.*) (2001), hereby gives notice that final rulemaking action was taken to adopt these rules. These rules amend section 1803 of Chapter 18, Employee Conduct, of Title 6 of the District of Columbia Municipal Regulations, to amend sections 1803.2 and 1803.3 of the chapter to clarify what a District government employee should do if he or she receives a gift, and what an employee may do if he or she is invited to a holiday party or similar event. Additionally, a few minor changes have been made to sections 1803.1, 1803.5, 1803.9, 1803.11, and 1803.12 of the section. No comments were received and no changes were made under the notice of proposed rulemaking published at 53 DCR 2259 (March 24, 2006). Final rulemaking action was taken on May 2, 2006.

CHAPTER 18

EMPLOYEE CONDUCT

Section 1803 is amended as follows:

1803 RESPONSIBILITIES OF EMPLOYEES

Sections 1803.1 through 1803.3 are amended to read as follows:

- 1803.1 (a) An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in or create the appearance of the following:
- (1) Using public office for private gain;
 - (2) Giving preferential treatment to any person;
 - (3) Impeding government efficiency or economy;
 - (4) Losing complete independence or impartiality;
 - (5) Making a government decision outside official channels; or
 - (6) Affecting adversely the confidence of the public in the integrity of government.

- (b) In all cases arising under section 1803 of this chapter, employees are encouraged to consult with their supervisors or the agency's ethics counselor.

1803.2 (a) Except as noted in section 1803.3 of this section, a District government employee shall not solicit or accept, either directly or through the intercession of others, any gift from a prohibited source.

- (b) For the purposes of this section, the following terms shall have the meaning ascribed:

Gift – any gratuity, favor, loan, entertainment, or other like thing of value.

Prohibited source – any person or entity that:

- (1) Has or is seeking to obtain contractual or other business or financial relations with the District government;
 - (2) Conducts operations or activities that are subject to regulation by the District government; or
 - (3) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.
- (c) An employee who receives a gift that cannot be accepted under the provisions of this section shall:
- (1) Return the gift to the donor or reimburse the donor the market value of the gift; or
 - (2) If the gift is perishable and it would not be practical to return it to the donor, donate the gift to charity, share it with the office staff, or destroy it.

1803.3 The restrictions outlined in section 1803.2 of this section do not apply to the following:

- (a) Bona fide personal relationships such as those between an employee and his or her family or personal friends;
- (b) The acceptance of food and refreshments of nominal value on infrequent occasions:
 - (1) In the ordinary course of a luncheon or dinner meeting, or while on an inspection tour where an employee may properly be in attendance; or

(2) In connection with an annual holiday party or event sponsored by an entity other than the District government, provided that the employee shall notify his or her supervisor in time sufficient for the supervisor to make a meaningful judgment to approve or disapprove the employee's attendance. When making the determination the supervisor may consider such factors as the agency's interests and any appearance of a conflict of interest. The supervisor shall disapprove the employee's attendance if there is an actual conflict of interest.

- (c) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees such as the acquisition of a car, home, or appliance;
- (d) The acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and like items of nominal value; or
- (e) The acceptance of a voluntary gift of nominal value or of a cash donation in a nominal amount which is presented on a special non-recurring occasion such as marriage, illness, or retirement, but excluding birthdays, or other annually-recurring events.

1803.4 An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay. This subsection does not preclude the presentation or acceptance of a voluntary gift of nominal value or of a cash donation in a nominal amount when given on a special, infrequent occasion such as marriage, illness, or retirement.

Section 1803.5 is amended to read as follows:

- 1803.5 For the purposes of section 1803.4 of this section, the term nominal means an individual cash donation of no more than \$10 or an individual voluntary gift of no more than \$10 in market value.
- 1803.6 An employee shall not accept a gift, present, or decoration from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. § 7342.
- 1803.7 An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the government (18 U.S.C. § 209).
- 1803.8 An employee shall report directly and without undue delay to his or her agency head and to the Office of the Inspector General of the District of Columbia any information concerning conduct which he or she knows, or

should reasonably know, involves corrupt or other criminal activity, or conflict of interest:

- (a) On the part of another District employee, which concerns that person's employment or office; or
- (b) On the part of a person dealing with the District government, which concerns that person's dealings with the District government.

Section 1803.9 is amended to read as follows:

- 1803.9 An agency head who has information concerning conduct as described in section 1803.8 of this section shall immediately report such information to the Office of the Inspector General of the District of Columbia.
- 1803.10 An employee shall not interfere with or obstruct an investigation by a District or federal agency of misconduct by another District employee or by a person dealing with the District.

Sections 1803.11 and 1803.12 are amended to read as follows:

- 1803.11 Coercion, harassment, or retaliatory action shall not be taken against an employee acting in good faith under section 1803.8 of this section.
- 1803.12 All employees of the District government shall comply with the requirements of the Freedom of Information Act of 1976, effective March 29, 1977, as amended (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*) (2005 Supp.).
- 1803.13 Nothing contained in these regulations shall preclude the Mayor from serving as an honorary chair or honorary member of a nonprofit entity's fundraising event, so long as the entity for which funds are raised supports a nongovernmental bona fide charitable activity benefiting the District of Columbia. Use of the Mayor's name or title in fundraising solicitations or announcements of general circulation shall be in accordance with such terms and limitations as the Mayor may prescribe by Mayor's order or by direction in particular cases. The authority granted by this subsection shall not extend to the use of the Mayor's name or title in solicitations made by or on behalf of the Mayor directly to individual contributors.
- 1803.14 (a) It is the policy of the District government to avoid conflicts of interest concerning the award, implementation, monitoring, and performance of contracts for services. As a means of assisting District government agencies to evaluate real or potential conflicts of interest in this area, a new hire will be required to disclose to the personnel authority upon initial appointment such previous employment relationships (whether in the private or public sectors) as the personnel authority may direct,

including full disclosure of any ongoing economic benefits to the employee from previous employment relationships.

- (b) The new hire will make such disclosure to the personnel authority as part of the new hire processing conducted by the personnel authority, and to the employee's supervisor upon arrival at the employing agency.
- (c) The personnel authority will communicate the information required to be disclosed under this section to the head of the employing agency, and will advise the employee in writing of the restrictions imposed by sections 1803.14 (d) and (e) of this section.
- (d) For one (1) year after the date of initial employment with the District government, an employee required to make a disclosure under this section will be screened from, and shall not participate in any manner, in the District government's decision to enter into, extend, modify, or renew a contract or consultancy engagement with the employee's former employer (hereafter, "procurement action").
- (e) The one-year (1-year) restriction from participation in any procurement action prescribed in section 1803.14 (d) of this section will be extended for as long as the employee receives an ongoing economic benefit from a former employer. It will be the employee's responsibility to advise his or her immediate supervisor of the continued receipt of the ongoing economic benefit from a former employer.
- (f) Notwithstanding the prohibitions set forth in sections 1803.14 (d) and (e) of this section, the head of the employing agency may authorize an employee required to make a disclosure under this section, as part of the employee's official duties, to do any of the following: (1) participate in the oversight or review of the work-product or performance of a former employer that is currently a contractor or consultant with the District government; (2) serve as the District government's liaison with the former employer; or (3) otherwise communicate with the former employer on matters pending before the employee's employing agency.
- (g) The determination to require that the employee perform any of the duties listed in section 1803.14 (f) of this section will be based upon the written determination of the agency head, made in light of all relevant circumstances, that the interest of the District government in the employee's participation outweighs the concern that a reasonable person might question the integrity of the District government's programs or operations. Applying this standard, the agency head may determine that the employee's participation reasonably may be permitted in certain activities involving the employee's former employer, but not in others. In all instances under this section in which the employee is prohibited

from participation, the employee will be screened from the receipt of any information regarding the former employer's matter that is pending before the District government.

- (h) An agency head may delegate the responsibility for making any of the determinations prescribed in this section to other personnel in the agency. The person in the agency making any such determinations may consult with the D.C. Ethics Counselor or with the agency's ethics counselor.
- (i) For the purposes of this section, an "ongoing economic benefit from a former employer" will include any pension, annuity, stock option, bonus, cash or in-kind distribution in satisfaction of equitable interest, payment of all or a portion of the premiums on a life or health insurance policy, or any other comparable benefit; and a "former employer" is any person or organization: (1) for which the employee has, within the one (1) year preceding his or her employment by the District government, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee, or (2) from which the employee receives an ongoing economic benefit.