



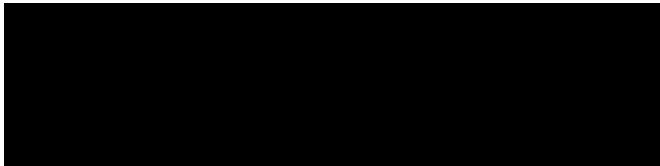
Rushern L. Baker  
County Executive

## THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

Robin Barnes-Shell  
Acting Executive Director

December 6, 2013

### Sent Via E-Mail Only



RE: [REDACTED]

You inquired about whether the ethics law prohibits you from participating in presentation to the Board of Directors for your agency for "support and concurrence" of recommendations regarding proposals from the Proposal Analysis Group (PAG).

You advised that your spouse has a contract with several developers in the area that would submit proposals that the PAG would review. The PAG reviews Requests for Proposals (RFP) and makes recommendations to you, who in turn makes a presentation to the Board of Directors of your agency for "support and concurrence". The issue presented is whether you must recuse yourself because of your spouse's contractual relationship with developers who have responded to a RFP.

The Board of Ethics considered the facts and concluded that you are prohibited from participating in presentation to the Board of Directors for your agency for "support and concurrence" of recommendations regarding proposals from the Proposal Analysis Group (PAG), and therefore, you must recuse yourself from those proceedings.

Section 2-293 of the Code of Ethics provides:

#### **Sec. 2-293. Prohibited conduct and interests.**

(a) Participation Prohibitions. Except as permitted by Board regulations or opinion, an official or employee may not participate in:

(1) Any matter, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to that matter, if, to his knowledge, he, his spouse, parent, child, brother, or sister has an interest therein.

(2) Any matter, except in the exercise of an administrative or ministerial duty, when any of the following is a party thereto:

(A) Any business entity in which he has a direct financial interest of which he may

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reasonably be expected to know:

(B) Any business entity of which he is an officer, director, trustee, partner, or employee, or in which he knows any of the above-listed relatives has this interest:

(C) Any business entity with which he or, to his knowledge, any of the relatives listed in paragraph (1) of this Subsection is negotiating or has any arrangement concerning prospective employment;

(D) Any business entity which is a party to an existing contract with the official or employee, or which the official or employee knows is a party to a contract with any of the above-named relatives, if the contract could reasonably be expected to result in a conflict between the private interests of the official or employee and his official duties;

(E) Any entity doing business with the County in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if he may be reasonably expected to know of both direct financial interests; or

(F) Any business entity which the official or employee knows is his creditor or obligee, or that of any of the relatives listed in paragraph (1) of this Subsection, with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of the official or employee or any of the above-named relatives.

(3) If a disqualification pursuant to paragraphs (1) or (2) of this Subsection leaves any body with less than a quorum capable of acting, or if the disqualified official or employee is required by law to act or is the only person authorized to act, the disqualified person shall disclose the nature and circumstances of the conflict and may participate or act.

(b) Employment Restrictions.

(1) (A) Except as permitted by regulation of the Board when such interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by, or have a financial interest in, any entity subject to his authority or that of the County agency, board, or commission with which he is affiliated or any entity which is negotiating or has entered a contract with that agency, board, or commission; or

(ii) Hold any other employment relationship which would impair the impartiality or independence of judgment of the official or employee.

(B) This prohibition does not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a requirement that persons subject to the jurisdiction of the authority be represented in appointments to it;

(ii) Subject to other provisions of law, including this Section 2-293, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided it is publicly disclosed to the appointing authority and Board; or

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Board.

## Section 2-290 of the Code of Ethics states:

### Sec. 2-290. Statement of purpose and policy.

(a) The Prince George's County Council, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

(b) It is evident that this confidence and trust is eroded when the conduct of the County's business is subject to improper influence and even the appearance of improper influence.

(c) For the purpose of guarding against improper influence, the County Council enacts this Code of Ethics to require County officials and employees to disclose their financial affairs and to set minimum standards for their conduct of local business.

(d) It is the intention of the Council that this Division, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.

It is apparent by your own recounting of the facts that your wife has an interest in companies that would come before the PAG for consideration. Additionally, the purpose of the Code of Ethics is to guard against improper influence and the appearance of improper influence. The articulated policy is that people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained. The stated intention of the Ethics Division is that this policy is to be liberally construed to accomplish this purpose.

Additionally, the Prince George's County Code of Ethics is clear on participation prohibitions. The Code of Ethics states, that an employee or official may not participate in "[A]ny matter, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to that matter, if, to his knowledge, he, his spouse, parent, child, brother, or sister has an interest therein." This clearly falls within those parameters. You must recuse yourself from those matters or seek a waiver from the Board of Ethics.

The Board of Ethics is charged with administering the law and providing opinions and advice to accomplish this purpose. In, this case, even if the facts led one to believe that there was no conflict of interest or violation of the Code of Ethics; there is clearly an appearance of improper influence and conflict of interest. While, conduct that is prohibited by the Code of Ethics leaves discretion to the Board for the applicant to seek and the Board to grant a waiver; this situation seems clear that this is not permitted by the Code of Ethics. However, under the law, you are permitted to seek such a waiver under the current circumstances; however, it is within the discretion of the Board as to whether it will grant a requested waiver.

Board of Ethics

By:   
COVETTE ROONEY  
Board Chair