

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

October 4, 2018

Karen Wirt
Chairperson, ANC 6C
234 E Street, N.E.
Washington, D.C. 20002

Re: Questions re Reasonable Accommodations for ANC Commissioners

Chairperson Wirt:

This letter responds to your question of whether the Americans with Disabilities Act (“ADA”)¹ requires an ANC to reasonably accommodate a Commissioner in several identified circumstances. These circumstances, and our brief answers, follow:

- When the Commissioner attends an ANC committee meeting, which is open to the public, but makes no final decisions. **Yes.**
- When the Commissioner holds his own public meeting for his constituents. **Yes.**
- When the Commissioner meets with developers of new projects in his SMD during the course of his work for constituents, but not necessarily on behalf of the Commission. **It depends.**
- When the Commissioner meets informally with constituents, who are not hearing-impaired, in settings that are not public meetings. **It depends.**
- When the Commissioner meets with DC officials during the course of his work for constituents. **Yes.**

These conclusions flow from the ADA and its implementing regulations, case law interpreting that language, and guidance from the Department of Justice (“DOJ”). Title II of the ADA requires “public entities” like ANCs² to reasonably accommodate any “qualified individual with

¹ Approved July 26, 1990 (104 Stat. 328; 42 U.S.C. § 12101 *et seq.*).

² See 42 U.S.C. § 12131(1)(A) and (B) (a “public entity” includes “any State and local government,” and “any department, agency, special purpose district, or other instrumentality of a State or States or local government”).

a disability” so that the individual is not “excluded from participation in or . . . denied the benefits of” the ANC’s “services, programs, or activities.”³ For example, a public entity must:

furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.⁴

That includes furnishing appropriate aids and services to elected officials, like Commissioners, so that those officials may carry out their duties. DOJ’s Primer for State and Local Governments on the ADA illustrates this point by noting that “if an elected city council member has a disability that prevents her from attending council meetings in person,” the city would be required to accommodate her by, for example, “delivering papers to her home and allowing her to participate by telephone or videoconferencing.”⁵ In keeping with this principle, an October 22, 1992 letter from this office⁶ advised that an ANC was required to “provide an interpreter for a deaf candidate at [an upcoming] ANC candidates’ forum meeting scheduled for October 26, 1992.”⁷

Our understanding, based on our review of DOJ guidance and our phone conversations with ADA specialists in DOJ,⁸ is that an ANC must reasonably accommodate any qualified Commissioner with a disability to the extent necessary to carry out the Commissioner’s functions and duties. That includes providing reasonable accommodations necessary for the Commissioner to participate in ANC public meetings, ANC committee meetings, and any separate meetings the Commissioner holds for the benefit of his or her single-member district. It also includes accommodations necessary for the Commissioner to conduct meetings with constituents, businesses, or District officials in the Commissioner’s official capacity, since these are part of a Commissioner’s work as an elected official responsible for hearing community concerns and conveying them to District government bodies.

Although we offer this general guidance, we also note that accommodations questions will need to be resolved on a case-by-case basis. The line between official meetings with constituents (in which accommodations may be required) and informal discussions of public business (in which accommodations likely are not required) can often be fuzzy, and questions of whether the ADA requires accommodation in a particular context may prove fact-intensive. Moreover, determining what, if any, accommodations will be needed in any particular context requires

³ *Id.* § 12132.

⁴ 28 C.F.R. § 35.160(b)(1).

⁵ Dep’t of Justice, *ADA Update: A Primer for State and Local Governments* (“Primer”), https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html (last visited Sept. 10, 2018).

⁶ Letter to Ms. Joan Fowler Brown, Oct. 22, 1992 (“October Letter”), available at <http://app.occ.dc.gov/documents/1992/oct/19921022.pdf> (last visited Oct. 2, 2018).

⁷ *Id.* at 1.

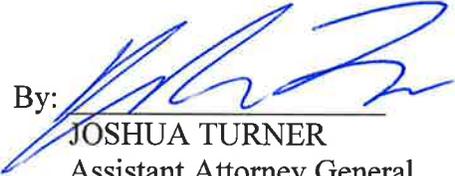
⁸ The DOJ ADA specialist we spoke to indicated that the services, programs, and activities of an elected multi-member body have been interpreted to include the functions an elected member of that body performs within the scope of his or her membership in that body.

conversations with the Commissioner in question to determine what the Commissioner needs,⁹ and internal ANC deliberations to determine what the ANC can do without incurring “undue financial and administrative burdens.”¹⁰ When the ANC is considering what accommodations are available or appropriate in a particular context, it may wish to contact attorneys from the District’s Department on Disability Services,¹¹ or ADA specialists from the Department of Justice.¹² We are also prepared to assist in answering specific questions.

If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

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⁹ See, e.g., 28 C.F.R. § 35.160(b)(2) (“In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities”).

¹⁰ *Id.* § 35.164.

¹¹ See, e.g., <https://dds.dc.gov/service/services-people-blindness-and-visual-impairments> (last visited Oct. 2, 2018).

¹² See Primer, *supra* (contact information for DOJ ADA specialists).