

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON PUBLIC SAFETY AND THE JUDICIARY  
COMMITTEE REPORT**

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**TO:** All Councilmembers  
**FROM:** Councilmember Phil Mendelson, *Phil Mendelson*  
Chairman, Committee on Public Safety and the Judiciary  
**DATE:** November 17, 2008  
**SUBJECT:** Report on PR 17-928, "Attorney General Peter J. Nickles Confirmation Disapproval Resolution of 2008"

The Committee on Public Safety and the Judiciary, to which PR 17-928, the "Attorney General Peter J. Nickles Confirmation Disapproval Resolution of 2008" was referred, reports favorably thereon, and recommends approval by the Council.

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**I. BACKGROUND AND NEED**

The purpose of Proposed Resolution 17-928 is to disapprove the nomination of Peter J. Nickles as the Attorney General for the District of Columbia. Mr. Nickles is currently a resident of Great Falls, Virginia.

In making this recommendation, the Committee emphasizes a number of concerns with appointing this nominee to position of the Attorney General. Mr. Nickles' tenure as Acting Attorney General is replete with actions and statements that show he regards his primary responsibility to be to the Mayor. If the past eleven months in which Mr. Nickles has served in this role -- six spent in an interim capacity and nearly five as the nominee -- are prologue to how he will operate in this role if confirmed, then the Attorney General for the District of Columbia will continue to operate in a capacity that is, essentially, the Mayor's attorney rather than the city's.

The Attorney General is the chief law enforcement officer in the District of Columbia with responsibility for representing the public interest and upholding the law. As such, the

Attorney General must have judgment, sensitivity, absolute commitment to the rule of law, and the understanding he or she has one client: the government. These interests should be paramount in every aspect of the Attorney General's service. These interests survive any one individual Attorney General, and survive any administration during which he or she is appointed. The energies of this office should not be spent pursuing a partisan agenda.

With regard to the nominee's independence, this vote is the Council's only check. Mr. Nickles' predecessors have universally recognized the independence innate in this role. The Committee believes that the rights, the safety, and the security of the citizens of the District of Columbia should not, on principle, be sacrificed to individual politics. However, in judgment, temperament, and practice, Mr. Nickles has adhered to his belief that the Attorney General's primary client is the Mayor, leaving the role of the peoples' chief law enforcement officer vacant. In the Council's role reviewing a candidate's fitness for office, it is crucial to consider the impact that confirmation has on the citizens of the District of Columbia.

A nomination submitted to the Council should not be considered a *fait accompli*. Rather, a nomination instigates the Council's oversight role in assuring that the candidate put forth is competent, has nothing disqualifying about him or her, understands his or her role and the mission of the agency, has vision for the agency, and will serve in the best interests of the District and its citizens. The Committee believes that the nominee does not meet this standard and recommends to the Council the disapproval of his confirmation.

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QUALIFICATIONS FOR THE OFFICE OF THE ATTORNEY GENERAL

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Without question, Mr. Nickles possesses a resume of exceptional experience and knowledge. A graduate of Princeton University and Harvard Law School, Mr. Nickles has over four decades of experience practicing as an attorney. The majority of this time was spent at Covington & Burling, a law firm where he became a partner in 1971. During his tenure in private practice, Mr. Nickles litigated cases that advanced the rights of the disadvantaged and brought cases that improved conditions for those without a voice.

His efforts while in private practice have helped to secure relief for the District's homeless and mentally ill residents in the form of the creation of community-based services for persons with mental illnesses. He was an advocate for prisoners' rights and represented prisoners in claims of unconstitutional conditions in District facilities. These efforts helped resolve deficiencies in the security, health care, sanitation, and fire safety provided to prisoners. Mr. Nickles also represented a class of women prisoners in a class action that resulted in an injunction requiring the District to provide adequate reproductive health care and prevent harassment and sexual abuse. With particular focus on prisoners' rights, Mr. Nickles' work has led to improved conditions, reduced violence, and better service.<sup>1</sup> For this and other work, Mr.

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<sup>1</sup> District of Columbia Office of the Attorney General website: Acting AG Bio - Peter Nickles, <http://oag.dc.gov/occewp/view.a.3.q.638711.occNav.31705.asp> (last visited Nov. 6, 2008).

Nickles was awarded the District of Columbia Bar's Pro Bono Lawyer of The Year Award for 1998.

Mr. Nickles has been a member of the D.C. Bar since 1964, and has served the District legal community as an advisor and teacher. From 1970 until 1975, he was Chairman to Covington & Burling's Neighborhood Legal Services Program for the District. Between 1980 and 1992, he served as an Adjunct Professor of Law at Howard Law School. Early in his career, between 1968 and 1970, Mr. Nickles served as general counsel of the Jackson State Task Force and the Kent State Task Force, reporting to the Scranton Commission on Campus Unrest.

Mr. Nickles remained in private practice until he was asked to serve as general counsel by Mayor Fenty when he took office in January 2006. He remained in that role until January 2008, when he was appointed to the position of Acting Attorney General following the departure of Linda Singer. Under his regime, the Office of the Attorney General has experienced certain improvements. The agency has, during his tenure, made strides in affirmative litigation efforts, filing actions against slumlords, against a managed care organization, and against other entities to enforce consumer protection laws. He has also made rulemaking a priority, focusing the efforts of OAG's Rulemaking Section to update city regulations and increase efficiency.<sup>2</sup> Mr. Nickles has also developed a professional development program for support staff, a comprehensive trial skills training program for lawyers, and an awards program for outstanding employees.

It is also worth noting that Mr. Nickles was involved in a collaborative effort to respond, with regulations and legislation, to the recent Supreme Court *Heller* decision affecting the District's handgun ban.

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RESIDENCY IN THE DISTRICT OF COLUMBIA

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While currently a resident of Virginia, the nominee has stated that, if confirmed, he will move into the District. The Council has sought similar assurances from Mr. Nickles in the past. When he first came to the District government in January 2006, Mr. Nickles stated his intention to take up residency in the District since it was presumed at the time that the residency requirement applicable to subordinate agency heads applied to the Mayor's general counsel as well. However, nearing the expiration of the 180 day deadline with which to comply, Mr. Nickles indicated that he was "too busy" to do so.<sup>3</sup> Only after Mr. Nickles decided that he would

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<sup>2</sup> Letter from Peter J. Nickles, Acting Attorney General, District of Columbia Office of the Attorney General, to Phil Mendelson, Chairperson, Committee on Public Safety and the Judiciary, Council of the District of Columbia, 4-5 (Oct. 15, 2008) [hereinafter Letter from Nickles to Mendelson, Oct. 15, 2008] (on file with the Committee).

<sup>3</sup> See James Jones, *Fenty's Top Legal Adviser Faces Residency Test*, WASH. CITY PAPER, June 15, 2007, at 10 ("Way back in November, when Nickles was introduced to the press, he indicated he would, as required by law, take up residency in the District."); "With only 20 days left to make the move, Nickles says he's been too busy keeping District agencies out of receivership to do much house shopping."); see also Yolanda Woodlee, *Failure to Move*

rather remain a resident of Virginia was it determined that the Mayor's general counsel is not required to live in the District.

The residency requirement for many District government positions has been given considerable focus by the Council in reviewing nominees, and rightly so. Living within the District allows those who work for local government to create personal ties to the jurisdiction that enable them to better serve District residents. Mr. Nickles has not made an effort to become a District resident since he began working for the city in January 2006. This symbolic reluctance to become a resident has angered many in the community. Indeed, his current commute to work from outside the District sends a powerful statement to the residents on whose behalf the Attorney General functions.

Residency is about more than just renting an apartment in the District. For the chief law enforcement officer, it is imperative that there be a strong connection to this jurisdiction. The law requires the Attorney General to be a resident of the District throughout his or her tenure.<sup>4</sup> The unique nature of the Attorney General makes it important that the individual in that role be closely connected to the needs and wants of this jurisdiction. Making the District one's home means that an individual has an ultimate stake in the outcome of government action.

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CONELATION OF ROLE OF GENERAL COUNSEL TO THE MAYOR AND  
ATTORNEY GENERAL TO THE DISTRICT OF COLUMBIA

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A review of Mr. Nickles' record while serving as the Mayor's general counsel, and his record to date as the Acting Attorney General for the District of Columbia, illustrates that the nominee sees little distinction in the client and duties of these two positions. In both capacities Mr. Nickles unapologetically views the Mayor as the primary client,<sup>5</sup> and has shown in many of his actions that he sees no limitation on his role regardless of his title. The Council has been dogmatic in asserting that the Attorney General serves the District and not any single politician, party, or ideology. However, the nominee has shown that he either does not recognize or does not value any distinction in these roles.<sup>6</sup>

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*Spurs Legal Debate; Council Members Seek to Close Apparent Loophole in Residency Law*, WASH. POST, Sept. 9, 2007, at C6.

<sup>4</sup> D.C. OFFICIAL CODE § 1-515.01(e) (2008). That paragraph reads: "Each subordinate agency, independent agency, and instrumentality head shall be a resident of the District of Columbia throughout his or her tenure and shall forfeit his or her position if he or she fails to remain a resident of the District of Columbia."

<sup>5</sup> See *Bill 17-548, the Attorney General for the District of Columbia Clarification Act of 2007*, Hearing Before the Council of the District of Columbia Committee on Public Safety and the Judiciary, 2 (Jan. 28, 2008) (written testimony of Acting Attorney General Peter J. Nickles) [hereinafter Nickles testimony, Bill 17-548] ("Enacting the bill would sever the accountability of the Attorney General to the Mayor and the Executive Branch, which is the Attorney General's primary client, undermining the Executive's ability to execute the laws.")

<sup>6</sup> Confronted by a sharp ideological change from previous holders of the office, the Council took steps to clarify the role of the Attorney General (see Bill 17-548). The testimony submitted by then Acting Attorney General Nickles on this legislation dismissed any benefit of such clarification and questioned what problem the legislation actually

