

**DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

**MINUTES OF REGULAR MEETING
JANUARY 5, 2017**

The District of Columbia Board of Ethics and Government Accountability held its Regular Monthly Meeting on Thursday, January 5, 2017, at 11:00 a.m. at One Judiciary Square, 441 Fourth Street, N.W., Room 540 South, Washington, D.C. 20001. The Board’s Chairperson Bob Spagnoletti was present, as well as Board Members Norma Hutcheson, Carol Schwartz, Shomari Wade and Tameka Collier. Also present on the dais was John (Jack) Grimaldi, the Board’s Senior Counsel.

The full discussion and the meeting is on audio file, and may be found at <https://bega.dc.gov/publication/january-5-2017-board-meeting-minutes>

AGENDA

- I. Call to Order
--Chairman Spagnoletti called the meeting to order.
- II. Ascertainment of Quorum
--The Chairman established that a quorum was present.
- III. Adoption of the Agenda
--**The Board voted unanimously** to adopt the agenda.
- IV. Report by the Director of Open Government
- V. Report by the Director of Government Ethics
 - a. Update on Status of Office of Government Ethics (OGE) Operations – Recap of previous month’s activities (statistics)

	Current	Last month	Nov 2016
Investigations Opened:	1	1	3
Investigations Closed:	5	10	6
Investigations Currently Open:	5	9	18
Investigations Stayed (Inactive):	21	22	20

- b. Publication and Reporting Obligations

The Best Practices Report has been issued and distributed. Our Quarterly Complaint Report has been published. Both documents are in the Dropbox and available to the public on our website.

c. Trainings/Outreach –

i. Attended by staff –

Ms. Olawunmi finished a series of classes necessary to retain her auditing credentials, with her attendance at a three-day Critical Thinking Skills class offered by the Council of Inspectors General on Integrity and Efficiency (CIGIE). General Counsel Flowers completed the EEO Counselor/Officers Certification program offered by the Office of Human Rights.

ii. Conducted by staff –

Eight, not including one scheduled with the Real Estate Commission that was cancelled. The 8 included two new employee orientations, two MSS trainings, one general Board and Commission training, an abbreviated training session for the Commission on Arts and Humanities, and an internal training on our lobbyist system for staff who would be inheriting duties of our employee who is out on FMLA.

Director Sobin, Senior Attorney Grimaldi, and GC Flowers attended the Council of Government Ethics Laws Annual Conference that was held last month. That conference generally covered new developments in the fields of campaign finance, governmental ethics, elections, lobbying and freedom of information.

d. Advisory Opinions/Advice –

Informal Advice: 32, since the last meeting, down from 58 last month. Additionally, we responded to more than a dozen queries related to the impending Lobbyist Registration and Lobbyist Activity Report filing deadlines.

On December 23, we published a *sua sponte* advisory opinion on social media, which is in draft form and by law, must be published in the D.C. Register for a 30 day period before it is finalized. Comments are due by January 23.

e. Ethics Legislation/Comprehensive Code of Conduct

The BPR was timely delivered on December 30 and copies will be provided to new Councilmembers Gray and Trayon White.

Speaking of new Councilmembers, the new Council was sworn in on Monday, January 2, 2017. We have a new Committee Chair on our oversight Committee, Councilmember Charles Allen, from Ward 6 who has assumed the Chairmanship of the Committee on Public Safety and the Judiciary. The Committee liaison, Kate Mitchell, fortunately, will be staying on with the Committee, which is good for our plan to reintroduce the Comprehensive Code of Conduct. Mr. Grimaldi has circulated a draft version of the revised bill to establish the CCC, so I'll let him bring you up to date.

f. Rulemaking

We were asked by the Department of Human Resources to comment on a proposed rulemaking that adds the Attorney General, Chancellor of the D.C. Public Schools, the Executive Director the D.C. Public Library, and members of the State Board of Education (SBOE) to the list of persons who are authorized to serve as an honorary chair or honorary member of a nonprofit entity's fundraising event, in their respective capacities, as specified in the provisions of the rulemaking. It also adds new provisions governing "intimate (consensual) personal relationships" to the nepotism section of the DPM.

The DPM does not currently have such a broad provision with respect to who may serve as an honorary chair of a charitable fundraising committee, but restricts its coverage to the Mayor. The Council Code of Conduct has a corresponding provision for Councilmembers. We have also taken a different position on personal relationships. The DCHR rulemaking defines an "intimate relationship" as a romantic or sexual association consented to between two persons. In section 223k of the CCC, we define "personal interest" to mean:

an interest that, while not directly financially advantageous, would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the covered individual in a particular matter. Personal interests include, without limitation, benefits to the covered individual, benefits to immediate family members and affiliated organizations, including reputation or business good will, job or career advancement, close personal friendships, and memberships in groups and organizations.

We don't necessarily see the two provisions as being in conflict with one another and I recommend we not oppose the DPM revisions. However, I also recommend, that a sentence be added to the new fundraising provision that makes it clear that the provision does not authorize the solicitation or receipt of donations or contributions from prohibited sources. This is to prevent a recurrence of the situation we had with the

Chancellor of DCPS recently who sought contributions to a non-profit entity from city contractors.

I also don't have a problem with the way the new intimate relationship prohibition appears. I think it is important to point out that the wording would not allow us to bring an enforcement action against two employees engaged in a romantic or sexual relationship (the wording discourages conduct of this nature by requiring a manager or supervisor to "make an effort" not to engage in such relationships). Rather, the violation would come with a failure to report the relationship to a supervisor. The reporting obligation is similar to the existing familial reporting requirement in the nepotism rule.

- g. Budget: Tomorrow, we have our Budget Request team meeting with the Mayor's Budget folks. We will make our best pitch for our budget enhancement which is needed to cover both non personal service expenditures, such as overhead and Board member stipends, as well as Personal Service costs which we hope this year will include an additional administrative employee to assist with Lobbyist and FDS matters. Importantly, we have also asked for close to \$1,000,000 over 5 years as part of our Capital Budget plan to overhaul and maintain our FDS/Lobbyist e-filing system which will not only fix a myriad of ongoing technical and usability problems, but will keep us in compliance with cybersecurity measures imposed by the Office of the Chief Financial officer. A representative from OCTO has agreed to join us tomorrow in order to help us accurately describe precisely how dire the current situation has become.

- h. Staffing

I'm very pleased to introduce you to our temporary attorney, Ms. Asia Stewart-Mitchell. Ms. Mitchell comes to us from the Seventh Judicial Circuit of Maryland where she served as a Law Clerk for the Honorable Toni Clarke. She is a graduate of our own UDC David A. Clarke School of law and did her undergraduate work at Rutgers. Ms. Mitchell is filling in for Ms. Cooks who is out on FMLA leave until March. She is also assisting with Lobbyist/FDS matters during Ms. Dillion's FMLA, which began just after the holiday.

- i. Lobbyist/Financial Disclosure Matters

- 1) Lobbyists

- i. We will be sending reminder letters out to lobbyists regarding the January 2017 Lobbyist Activity Report filing due date (January 16, 2017) and 2017 registration deadlines (January 10, 2017)

2) Financial Disclosure

i. Confidential Filers

Agency Compliance – Certificate of Excellence will be provided to all agencies who timely provide to us lists of their Confidential Filers.

- ii. New Question about spouses. We are working with our IT vendor to remove the question that asks how much the spouse of a District employee earns. This will be consistent with what we discussed previously and follows the federal practice.

j. Conflict of Interest Waivers (D.C. Official Code § 1-1162.23 (b)).

k. Non-Confidential Investigations

- i. #1537-001 - *In Re: L. Barksdale* – This is a formal investigation involving allegations that the Respondent, now a former employee of DCRA, pleaded guilty to a federal bribery charge related to her acceptance of cash in return for facilitating the issuance of construction permits. Ms. Barksdale worked at DCRA from June 2001 until June 2012. The offenses occurred in April and May of 2012 as the result of a undercover FBI investigation in which Ms. Barksdale accepted \$900. On July 13, 2016, Judge Amit P. Mehta of the United States District Court for the District of Columbia sentenced Ms. Barksdale to 3 years of probation, to include 180 days of home confinement and location monitoring based on several factors established by the government (1) Ms. Barksdale’s early acceptance of responsibility, (2) her willingness to debrief with the government concerning her conduct, and (3) her dependency on drugs and alcohol. Judge Mehta did not assess any fines or restitution. On December 30, we interviewed Ms. Barksdale. She confirmed those facts and indicated further that she did not initiate the transactions. She stated that those two instances were the only such instances in which she accepted bribes. Additionally, Ms. Barksdale appeared to be remorseful. She currently works part time as a permit expediter, in which she describes her duties as pulling permits on behalf of contractors. We recommend that the Board dismiss this matter as it appears to have been properly resolved in the criminal proceeding. **The Board unanimously dismissed this matter.**

- ii. #1426-001 *In re: Gerren Price* – The Board issued its Final Decision and Final Order in this matter on November 29, 2016. On December 15, 2016, Mr. Price filed a Petition for Review of the Board’s Order with the D.C. Court of Appeals. We have yet to receive a copy of the Respondent’s Petition and no court dates have been set.

VI. Opportunity for Public Comment

VII. **The Board voted unanimously to deliberate in** Executive Session (non-public) to Discuss Ongoing, Confidential Investigations pursuant to D.C. Official Code § 2-575(b), to deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13), and Personnel matters pursuant to D.C. Official Code § 2-575(b)(10).

VIII. Resumption of Public Meeting

- a. Discussion of any remaining public items
 - i. No matters to announce

IX. Adjournment