

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

**MINUTES OF REGULAR MEETING
March 19, 2018**

The District of Columbia Board of Ethics and Government Accountability held its Regular Monthly Meeting on Monday, March 19, 2018, at 10:00 a.m. at One Judiciary Square, 441 Fourth Street, N.W., Room 540 South, Washington, D.C. 20001. The Board's Chairperson Tameka Collier was present, as well as Board Members Norma Hutcheson, Shomari Wade, and Darrin Sobin. 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/event/march-19-2018-bega-monthly-board-meeting>

- I. Call to Order
Chairperson Collier called the meeting to order.
- II. Ascertainment of Quorum
Chairperson Collier established that a quorum was present.
- III. Adoption of the Agenda
Board Member Hutcheson moved approve the agenda, Member Sobin seconded the motion. The motion was approved unanimously.
- IV. Approval of Minutes
Board Member Hutcheson moved that the Board approve the minutes below, Member Wade seconded the motion. The motion was approved unanimously.
 1. January 5, 2017 Meeting Minutes
 2. February 19, 2017 Meeting Minutes
 3. March 9, 2017 Meeting Minutes
 4. April 6, 2017 Meeting Minutes
 5. May 4, 2017 Meeting Minutes
 6. June 1, 2017 Meeting Minutes
 7. July 6, 2017 Meeting Minutes
 8. August 3, 2017 Meeting Minutes
 9. September 7, 2017 Meeting Minutes
 10. October 19, 2017 Meeting Minutes
 11. November 9, 2017 Meeting Minutes
 12. December 21, 2017 Meeting Minutes

Report by the Director of Open Government

A. Litigation – Mayor’s Advisory Commission on Caribbean Community Affairs

On March 2, 2018, Attorney Barton and I appeared before Judge Campbell to conclude the OOG litigation against Michael Yates in his capacity as Chairman of the Mayor’s Advisory Commission on Caribbean Community Affairs. Judge Campbell agreed with OOG’s position that the office, as part of its enforcement authority, may seek additional notice of MACCCA to ensure compliance with the OMA. Although OOG asked for two-weeks advance notice of all MACCCA meetings and for mandatory publication on the OOG central calendar for one year, the Judge ordered that MACCCA provide one week advance notice to OOG and publish all meetings, agendas and related materials on the central calendar for one year.

B. United Medical Center Board

As this board is aware, the Office of Open Government issued a binding opinion to the United Medical Center, Not-for-Profit Hospital Board on January 26th, requiring the Board to publish the closed portion of a December 13th meeting in which the board deliberated upon, and voted to close the hospital Obstetrics Unit. Wisely, the Chair of the Board relented on her position to sue the OOG to block publication of the recording at the request of Councilmember Allen. The UMC Board published the full recording of the closed session on the UMC website on March 6, 2018. Counsel to the board redacted those portions of the recording in which he was providing advice to the board.

C. Commission on the Selection and Tenure of Administrative Law Judges

The Commission on the Selection and Tenure of Administrative Law Judges remains out of compliance with the findings of the October 30, 2017 opinion in which the OOG found numerous violations of the Open Meetings Act. Namely, the members of the COST have not been trained on the requirements of the OMA and have not back posed on the Office of Administrative Hearings website, or on the central calendar, all meeting minutes and audio files of meetings dating back to November 2014.

Attorney Barton has contacted the COST to arrange a training date. I contacted Chief Judge Adams on March 6 to inquire as to when the COST would comply with the publication requirement. There has been no reply to my request, and OOG is still awaiting word on a training date.

Meanwhile, the OAH general counsel on February 16th submitted to the OOG general inbox a FOIA request for all records reviewed in connection with the OOG’s investigation of the OMA complaint giving rise to the October 30th opinion. The request was sent in manner contrary to specific instruction on the OOG website directing requests to be submitted through the online portal and/or submitted to my inbox at traci.hughes@dc.gov. I therefore, did not begin processing the request until

counsel for OAH inquired about the status of the request via my direct inbox on 3.14.18. The request is now being timely processed as of March 14.

D. Legislation

The Office of Open Government, at the request of Councilmember Gray, provided input on emergency and temporary legislation making it mandatory for all public bodies to store electronic records for a minimum of five years. Councilmember Gray, during the Council hearing on March 6, 2018 than OOG on the record for its input into the measures.

E. Outreach

On February 21st, I moderated a panel on the impact of community activism on policing in DC. The panel was sponsored by the DC Affairs Community of the DC Bar and was held at Arent Fox. Panelists included Monica Hopkins-Maxwell, Executive Director of the ACLU DC office; Community Activist Eugene Puryear; Michael Tobin, Executive Director of the Office of Police Complaints; and Jennifer Ubiera, Fellow for Law for Black Lives-DC.

On March 6th, I was invited to participate in a BEGA community meeting held at Turkey Thicket, informing attendees about the role of the Office of Open Government.

The week of March 12th was Sunshine Week. I was invited to speak to attendees of the Open Government Coalition Summit held at the American Bar Association on March 13th to answer questions about the Office of Open Government. The event was sponsored by the OGC, the American University of School Communications and the Society of Professional Journalists. Other presenters at the event included Barney Krucoff, Interim CIO at OCTO who discussed the city's launch of the data portal which not contains agency data – including that of BEGA.

As part of the Office of Open Government's long-standing relationship with the Open Gov Hub, I have been asked to host a delegation of Mayor's from the country of Albania on March 22nd. I will discuss with the delegation the Office of Open Government and its initiatives. I will also conduct a short presentation on the OMA.

F. Trainings and Advisory Opinions

Since the last meeting of the Board, the OOG has responded to 9 requests for FOIA advice; and 7 requests for OMA advice. The Office conducted 5 OMA trainings and two FOIA trainings.

The office has resolved two OMA complaints.

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	Jan 2017
Investigations Opened:	13	6	0
Investigations Closed:	0	1	1
Investigations Currently Open:	26	8	8
Investigations Stayed (Inactive):	8	9	9

Stayed (Inactive) Cases		
Nature of Stay	Number	Date Rec
Court (fugitive)	1	Jan. 2016
OEA (pending appeal)	1	Dec. 2016
OIG	4	Jan. 2016
OAG (pending civil False Claims Act complaint)	2	Sept. 2016
Total Stayed Cases	8	

b. Publication and Reporting Obligations

We have no outstanding publication or reporting obligations. Our most recent Quarterly Complaint Report was posted to the website and our Agency Performance Measures were completed and uploaded into the City Administrator’s Quickbase Database.

c. Trainings/Outreach –

i. Attended by staff – As reported at the last meeting, all BEGA staff have completed the online training course “Sexual Harassment Prevention for Employees” as outlined in Mayor’s Order 2017-313, dated December 19, 2017. Senior Attorney Advisor Grimaldi attended an ADA training session.

On Wednesday, March 21, Attorney Advisor Ashley Cooks and I will participate in an online presentation regarding GoToWebinar and GoToTraining. GoToWebinar is a platform businesses and sole proprietors can use to create and deliver online video conferences with their clients. GoToTraining is a web-hosted online training service, which contains an online classroom and desktop sharing software that enables the user to present their screen to other trainees and students via the Internet in real time. We will be able to record our training programs and make them available for future viewing online, as well. After researching several

similar options like WebEx and Adobe Connect, we believe these two products offer the most “bang for the buck,” and we plan to begin using this software in April to expand our training reach and make it even easier for District employees to complete their ethics training. Director Hughes notes that the agency currently has a subscription to Web-X.

ii. Conducted by staff –

Since the date of the last meeting, we conducted 14 training sessions, slightly more than 11 before our prior meeting. The trainings consisted of 4 new employee orientations, 4 MSS, 2 FDS presentations, 2 Board and Commission trainings, 1 Donations Management Training, 1 ethics training at HBX.

Road Show- We conducted two road show presentations since the last Board meeting. The first presentation took place at the February 28th meeting of Advisory Neighborhood Commission 5A, which was held at Trinity College. The second presentation, in which OGE was joined by OOG, was for the North Michigan Park Citizens Association and took place on March 6th at Turkey Thicket Recreational Center. Attendees at both presentations were eager to hear about BEGA and we received good feedback. We plan to continue our community outreach efforts.

d. Advisory Opinions/Advice –

Informal Advice: approximately 90, slightly down from the 100 reported at the last meeting. The last meeting totals included advice related to the lobbyist filing deadline, and this month’s totals include 2 additional weeks.

Formal Advice requests:

We have issued one formal advisory opinion: #1687-001 Meet and Greet Advisory Opinion. The subject matter of that opinion is permissible activities involving hosting “meet and greets” [not fundraisers] for partisan political candidates under the District of Columbia Hatch Act, ethics laws or election expenditures laws. The request was also sent to the Office of Campaign Finance. We are also working with Mr. Kittab to develop a database for formal and informal advice.

e. Ethics Legislation/Comprehensive Code of Conduct

We are not aware of any recent developments with respect to ethics legislation or the CCC.

f. Rulemaking

In the Dropbox, you will find a draft rulemaking to adopt procedures for informal show cause hearings to be used in conjunction with our ministerial schedule of fines, which was largely based on the procedures enacted by OCF for similar purposes. We have also included with that draft a revised schedule of fines that includes references to the statutory or regulatory provisions for which each such fine is being imposed.

g. Budget:

BEGA's Performance Oversight Hearing was held on Thursday, February 8. We have no reporting obligations resulting from that hearing. We have continued to hold monthly budget meetings, and we are formulating a response to the notice we recently received from the Mayor's Office, proposing to channel some of OGE's FY2019 funding to other purposes.

We recently ordered 7 new laptops and docking stations to replace a portion of the aging computers our staff has been using, in most instances, since 2012. New laptops for the remaining staff members will be purchased either later in FY2018 or at the beginning of FY2019, based on whether we will have sufficient funds available to accomplish that initiative during this fiscal year.

We are also working with a potential vendor to conduct a trial demo of a new case management software system (SCOUT). However, the vendor has asked us to provide documentation better outlining our operational processes, so that the trial version of the software can be configured as closely as possible to how we operate in the real world. The OIG was kind enough to share some of the policies and procedures it currently has in place to govern its investigative and auditing functions, as was OCF, and we are currently reviewing those documents with an eye toward hammering out similar policies and procedures of our own. Once those policies and procedures are finalized, we will work with the vendor on next steps to begin the case management system demo. We hope to acquire a new case management system by the end of FY18, if at all possible.

h. Staffing –

We have 2 positions to fill, and we have been working with DCHR to get the new Program Specialist position description approved and posted. DCHR has suggested that we consider using the "Compliance Specialist" title for our position, based on the duties set forth in the draft description I shared with the Board during its last meeting. I am also finalizing the position description for our new Investigative Auditor position, based on PDs used by the City of Philadelphia and the State of California for positions with similar responsibilities, and I hope to have it approved by DCHR and posted within the next 30 days.

i. Litigation

In addition to the case previously discussed by the Director of the Office of Open Government, we are aware of at least 5 other pending cases.

•Gerren Price, D.C. Court of Appeals – Mr. Price appealed the Board’s findings that he violated the DPM’s nepotism provisions to the DC Court of Appeals. Following a series of extensions, Mr. Price has filed his brief. The government’s brief is due on Tuesday, March 20, 2018. We are reviewing that pleading and will provide our comments to OAG by the close of business today.

•Charlene Dickens, D.C. Court of Appeals – Ms. Dickens is one of 2 DDOT employees who appealed their designations as public filers. Her petition was dismissed by Court of Appeals on 3/2/18.

•Edwin Edokwe, D.C. Superior Court – In a similar case, Mr. Edokwe filed his brief in Superior Court on August 21 and OAG filed its reply brief in early October. The dismissal of Mr. Edokwe’s petition was announced by Judge Holeman on 2/9/18 – OAG is awaiting the final order from chambers to affirm the Board’s ruling. We will be considering our next steps in these cases.

•Larry Hicks, D.C. Superior Court (C.A. 17-0008091)
This is an enforcement (collection) action filed to reduce the Board’s \$20,000 fine imposed on Mr. Hicks to judgment. The Board imposed the fine in February of 2014, and Mr. Hicks appealed that finding to the Superior Court and Court of Appeals. With his judicial remedies exhausted, a hearing is now set on this matter for April 2, 2018. The Office of the Attorney General has asked BEGA to provide a representative to authenticate the Board’s order, if necessary. Mr. Grimaldi will be available to appear for that purpose.

•Claudia Barber vs BEGA/OOG, D.C. Superior Court (C.A. 2018 CA 001060 P(MPA)). This is a case filed on February 9, 2018, challenging an opinion issued by the Office of Open Government concluding that OOG had no authority to independently nullify actions taken during meetings of public bodies. The OAG has filed a motion to dismiss this case on the basis that the OOG decision was issued under the authority of the Open Meetings Act (part of the APA), and not under the Comprehensive Merit Personnel Act, the statute under which this lawsuit was classified by the court.

j. Lobbyist/Financial Disclosure Matters

a. Public Financial Disclosure Statements for Calendar Year 2017.

We are still working to ensure that all non-compliant public financial disclosure statement filers file their forms via our e-filing system.

b. 2018 Financial Disclosure Season

We have begun the early stages of preparation for the 2018 Financial Disclosure season. On Monday February, 12, 2018 and Tuesday, February 13, 2018 we held our annual Financial Disclosure training for Ethics Counselors. All filer lists were

due to OGE on March 1st. To date we have received 85 of the 102 public lists due to us and 71 of the 102 confidential lists due to us. We are currently in the process of contacting the Ethics Counselors responsible for the outstanding lists and asking them to submit those lists immediately. If they fail to do so by the end of this week, we will begin looping their respective agency heads into our conversations, in the hopes of expediting compliance.

c. Lobbyists

Our auditor is in the process of reviewing the January 2018 Lobbyist Activity Report (LAR) filings. Total LAR filings being reviewed are 405 records.

The auditor recommended to the Director of Government Ethics that all lobbyist claiming 503(c)(3) status and receiving \$200 credit on their registration fees should be verified to ensure that we are giving the credit to those who truly meet the 503(c)(3) designation.

Upon research, the auditor identified a database on the IRS website where 503(c)(3) organizations can be verified by entering their Employer Identification Number (EIN). At the moment, we have identified 78 organizations claiming 503(c)(3) status to be audited. There may be additional organizations as we go through the January 2018 desk review process. The board will be updated on the auditor's findings during the next Board Meeting.

k. Non-Confidential Investigations

1. #1641-001, *In re*: R. French
[The Board took this matter up out of order because the Respondent was present.]
At the last meeting, it was decided that we would proceed to sanction Mr. French using the Director's authority to impose ministerial fines. Mr. French will be provided an opportunity to appeal the proposed \$600 fine to the Board at its March meeting. OGE, through Attorney Stewart-Mitchell presented the reasons while the ministerial fine should be upheld. The Responded appeared and argued against the imposition of a fine. The Board unanimously upheld the \$600 ministerial fine. An Order was signed to reflect the Board's action.
2. #1634-001, *In re*: R. Wilson -This is a formal investigation that we discussed at the last meeting, involving a former OSSE employee who, before her separation from the District government, failed to submit full, accurate, and complete financial disclosure forms for three consecutive years. Our negotiations with Ms. Wilson were not successful. We believe this is an appropriate case for the Director to impose a ministerial fine on the Respondent. We have given some thought as to the process that should be used, which led us to draft the new proposed regulations that will govern our informal hearing process. Looking to the Office of Campaign Finance as a model, we will issue a Notice to Ms. Wilson to appear at an informal

hearing and show cause why she should not be fined for her willful failure to file accurate FDS reports for 3 consecutive years. Following that informal hearing, we will make written findings and issue a decision that may be appealed to the Board, consistent with the Ethics Act and the proposed new regulations. We plan to move forward with the informal hearing process in Ms. Wilson's case once the Board authorizes publication of the new regulations.

3. #1398-001 *In re: C. Snowden* -- This is an investigation referred by the Office of the Inspector General involving the Deputy Mayor for Greater Economic Opportunity. According to the OIG's Report of Investigation, on three occasions in late-summer 2015, Ms. Snowden used government resources for other than official business and ordered, directed, or requested subordinate employees to perform personal services, in violation of DPM §§1807.1 (b) and (c). We have been in communications with Ms. Snowden's attorney.

VI. Opportunity for Public Comment

The Board unanimously approved a motion to deliberate in Executive Session (non-public) to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b), to consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body pursuant to D.C. Official Code § 2-575(b)(4)(A), to discuss personnel matters including the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials pursuant to D.C. Official Code § 2-575(b)(10), and 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).

VII. Resumption of Public Meeting

- a. Discussion of any remaining public items
 - i. #1031-015, *In re* P. Taylor
 - ii. #1031-016, *In re* A. Wilson
 - iii. #1031-017, *In re* J. Niles

VIII. Adjournment

- a. The Next meeting will be held on Thursday, April 5, 2018.