

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

**MINUTES OF REGULAR MEETING
April 5, 2018**

The District of Columbia Board of Ethics and Government Accountability held its Regular Monthly Meeting on April 5, 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://www.open-dc.gov/meeting/4518-bega-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/Approval of Minutes
Chairperson Collier amended the agenda by removing the Report by the Director of Open Government. The motion was approved unanimously. Agenda adopted.

Chairperson Collier moved approve the following meeting minutes; Member Hutcheson and Wade voted to approve the January 4th and February 1st meeting minutes; the March 19th meeting minutes were unanimously approved.

- 1. January 4, 2018 Meeting Minutes
- 2. February 1, 2018 Meeting Minutes
- 3. March 19, 2018 Meeting Minutes

- IV. 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	Feb. 2018
Investigations Opened:	1	13	6
Investigations Closed:	5	0	1
Investigations Currently Open:	23	26	8
Investigations Stayed (Inactive):	8	8	9

Stayed (Inactive) Cases		
Nature of Stay	Number	Date Rec
Maryland Court (fugitive)	1	Jan. 2016
DC Superior Court (from OEA)	1	Feb. 2017
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. We will be publishing our Quarterly Complaint Report for the second quarter of FY18 within a week. A draft of the report is in the dropbox. We also anticipate completing and uploading into the City Administrator’s Quickbase Database.

c. Trainings/Outreach –

i. Attended by staff – Attorney Advisor Asia Stewart Mitchell attended a DC Bar CLE on “Who is the Client of the Government Attorney.” Additionally, Director Wolfingbarger is enrolled in the Public Corruption Investigation Training Program (PCITP) being conducted locally by CIGIE from Tuesday April 10 through Thursday April 12.

ii. Conducted by staff –

Since the date of the last meeting, we conducted only 5 training sessions, considerably less than the 14 before our prior meeting. The trainings consisted of 2 new employee orientations, 2 MSS trainings and a Board and Commission training at ABRA. Additionally, Director Wolfingbarger gave a presentation to the Office of the Inspector General (MFCU), to educate their staff on the auditing methods used by the Payment Error Rate Measurement (PERM) program to identify overpayments in the Medicaid and CHIP programs.

d. Advisory Opinions/Advice –

Informal Advice: approximately 51, down from the 90 reported at the last meeting. Note that this covers only a 2 week period.

Formal Advice requests:

We have received no formal advice requests since the last meeting.

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. We have also included with that draft a revised schedule of fines that includes a reference to the statutory or regulatory provision for which the fine is being imposed. We have incorporated comments received at the last meeting that, as an alternative, would permit a respondent to state his or her position in writing, rather than having to appear in person. We are asking the Board to adopt this rulemaking today.

g. Budget:

BEGA's Budget Oversight Hearing will be held before the Council's Committee on the Judiciary and Public Safety on Friday, April 13 at 10:30 am in Room 123 of the Wilson Building. We are the third agency on the list. We have also continued to hold monthly budget meetings.

h. Staffing –

We have 2 positions that are currently vacant, the new Program Specialist position and the Investigative Auditor position. DCHR is currently reviewing a revised PD for the Program Specialist and my draft PD for the Investigative Auditor role. A third position will also become vacant on Monday April 9, when Janet Foster leaves us to join the staff of the House of Representatives Ethics Office. DCHR has already approved a revised PD for that attorney advisor position, as well as a new set of ranking factor questions, and they have informed that it will be posted no later than today. We will use temp staff if needed over the next few months to get us through the FDS filing season and the next Lobbyist filing season in July, but that is a safeguard action we will only take if we are unable to get our vacancies posted and filled the traditional way through DCHR.

i. Litigation

Status of pending cases.

•Gerren Price – (CA No. 16-AA-1230), Mr. Price has filed his brief. The government has requested an extension to file its brief which was due on Tuesday, March 20, 2018.

•Charlene Dickens – (CA No. 17-CV-1027), Petition dismissed by Court of Appeals on 3/2/18.

•Edwin Edokwe – (2016 CA 007889 P(MPA), Dismissal of Petition announced by Judge Holeman of DC Super Ct. on 2/9/18 – OAG is awaiting the final order from chambers to affirm the Board’s ruling.

02/09/2018 Event Resulted:
The following event: Status Hearing scheduled for 02/09/2018 at 10:00 am has been resulted as follows:
Result: Status Hearing Held
Judge: HOLEMAN, BRIAN F Location: Courtroom 516, CourtSmart. The Court's order that will be issued from chambers will affirm the ruling of the board. No further date set. KWD/J. HOLEMAN
EDWIN EDOKWE (Plaintiff); ; NADA A PAISANT (Attorney) on behalf of DISTRICT OF COLUMBIA BOARD OF ETHICS AND GOVERNMENT (Defendant); Judge BRIAN F HOLEMAN

•Larry Hicks – (2017 CA 008091), 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 February 8, 2018. On Monday, April 2, the Court dismissed this matter without prejudice at the government’s request. It is anticipated that the case will be refiled once the record has been assembled.

•Claudia Barber vs BEGA/OOG, D.C. Superior Court (C.A. 2018 CA 001060 P(MPA). There have been no new developments in this case that was 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. All filer lists were due to OGE on March 1st. To date we have received 97 of the 102 public lists due to us and 89 of the 102 confidential lists due to us. We are currently contacting the Ethics Counselors responsible for the outstanding lists and asking them to submit those lists immediately.

c. Lobbyists

During the March 19, 2018 meeting, our auditor reported that he was in the process of verifying the Non-profit status of all organization paying \$50 for their registrations. A total of 83 organizations were identified for verification.

- Thirty-six (36) were identified to be in violation.

- 3 of the 36 had their 501(c)(3) status revoked by the IRS within the last year.
- 29 were 501(c)(5), 501(c)(6) or 501(c)(9) organizations not eligible for the \$200 credit.
- 4 organizations were not found on the IRS website, Guidestar, or Non-profit Explorer. The auditor will follow up with the organizations he could not find and request their IRS Determination Letters to verify their eligibility for the \$200 credit.

The auditor recommends that we send those in violation letters to notify them and to request reimbursement of the \$200 credit from the date of violation. The auditor also recommends we research BEGA's authority to assess interest on the unpaid balance of the firms' registration fees, and to impose a penalty against them for their incorrect filing decisions.

k. Non-Confidential Investigations

1. #1634-001, *In re: R. Wilson* - No new developments in this case. 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. Once the Board approves the new Rule that establishes a procedural framework for the issuance of ministerial fines, we will send Ms. Wilson to Notice to Show Cause why the Director should not impose a \$3,000 fine against her due to her willful failure to file for 3 consecutive years. Following her response, we will make written findings and issue a decision that can be appealed to the Board, consistent with the Ethics Act.
2. #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 believe we have reached an agreement in principle for a Negotiated Disposition in this matter, but Ms. Snowden and her counsel are still reviewing our draft language.
3. #1031-016, *In re A. Wilson* and #1031-017, *In re J. Niles*

Pursuant to D.C. Official Code § 1-1162.12 (a), we opened a preliminary investigations into whether former-Chancellor Antwan Wilson and former-Deputy Mayor Jenifer Niles violated the Code of Conduct by transferring the Chancellor's daughter to an out-of-boundary school after the start of school year 2017-2018. The Board authorized this as a formal investigation at the last meeting. We have since interviewed the former Chancellor. We are working to schedule an interview with the former Deputy Mayor for Education and other witnesses.

V. 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).

VI. Resumption of Public Meeting

- a. Chairperson Collier reported that effective April 23, 2018, Brian K. Flowers would be Interim Director of the Office of Open Government.

VII. Adjournment

- a. The next meeting will be held on May 3, 2018.