

**DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
MINUTES OF MEETING
September 6, 2018**

The District of Columbia Board of Ethics and Government Accountability held a meeting on Thursday, September 6, 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.

The full discussion and the meeting is on audio file, and may be found at: <https://bit.ly/2QnPpxg>

- 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
The Board voted unanimously to approve the following meeting minutes.
 1. July 9, 2018.
 2. August 10, 2018 Meeting.
- IV. Report by the Director of Open Government -

A. OMA/FOIA Advice:

Issuance of OMA Advisory Opinion:

1. Statewide Independent Living Council Complaint: On September 5, 2018, the OOG issued an Open Meetings Act (OMA) Advisory Opinion [OOG-002.8.1.18 SILC AO](#) finding that the Statewide Independent Living Council was in violation of the OMA for: (1) failing to timely publish to its website or the website of the District government draft and final meeting agendas for public meetings that occurred from March 2014 through May 2018; (2) failing to timely notice the public through the D.C. Register of its upcoming meetings; (3) failing to timely publish in the D.C. Register its 2015 yearly calendar of meetings; (4) failing to publish in the D.C. Register its 2018 yearly calendar of meetings; and (5) failing to timely publish final meeting minutes to its website or the website of the District government. The issuance of the opinion was as a result of a member of the public contacting the OOG for assistance in locating the July 19, 2018, SILC public meeting notice.

2. Office of Unified Communications Complaint: As the Board recalls, the OOG recently released an advisory opinion on: “[W]hether it is consistent with FOIA for the MPD to require

requesters of certain records about themselves (first-party request) to attach to the request proof of their identity at the time of the submission; and that attorneys making FOIA requests on behalf of clients supply proof of identification for the client or the attorney, such as a copy of the client's or attorney's government-issued identification, and proof of representation such as a signed authorization or a retainer agreement.

A similar issue has surfaced with the Office of Unified Communications (OUC). The OUC recently required valid identification of a requester to process a FOIA request for a 911 transcript in which the requester was the caller. The OOG is addressing the matter in response to a request for an advisory opinion.

Informal OMA/FOIA Advice

Since July's Board meeting, the OOG responded to five (5) FOIA and two (2) Open Meetings Act (OMA) requests for substantive informal legal advice and assistance, including a FOIA drafting request. In addition, the OOG completed requests for technical assistance. The OOG completed seventeen (17) requests for technical assistance regarding the OMA Boards and Commissions Central Calendar. The OOG completed two (2) requests for technical assistance with OMA Boards and Commission Record processing.

OOG assistance with public body meeting: On August 29, 2018, the OOG provided assistance to the Major Crash Review Task Force by reviewing and actually physically posting their notice of public meeting and ensured all necessary public notice steps were taken for the entity to lawfully meet. As the Board may recall, the OOG attended for the purpose of monitoring and providing assistance with complying with the OMA, a public hearing of the Major Crash Review Task Force meeting last month. This task force is one of the newer public bodies.

B. Trainings: The OOG Director participated in the National Association of Telecommunications Officers and Advisors (NATOA) conference in Philadelphia, PA, August 26, 2018 to August 29, 2018. The conference concerned the effective creation of governmental programming for television and social media. The conference also featured presentations on closed-captioning and the retention of social media content as a government record. The OOG will use the information gained at the NATOA conference to produce video content for training and outreach purposes. The OOG is also exploring options to assist public bodies in recording and publishing meetings using social media, such as Facebook Live and YouTube.

C. Litigation Update: There is no new activity since the last Board meeting in the Open Meetings Act (OMA) case concerning the D.C. Mayor's Advisory Commission on Caribbean Community Affairs (MACCA). The OOG has not received from the MACCCA the one week advance notice of its meetings pursuant to the Court's March 5, 2018 Order. However, there is no indication that MACCCA is in violation of the order at this time as no meetings of the Commission have been publically noticed since April 17, 2018.

D. Outreach Activity:

1. On August 23, 2018, the OOG distributed electronically, an invitation to Washington Legal Clinic for the Homeless (WLCH) to attend the Ethics day presentations. The OOG previously conducted a FOIA training with the WLCH. The WLCH is sending the invite to the Consortium of Legal Service Providers and Fair Budget Coalition.

2. As reported last month, the OOG is voluntarily participating in the District’s performance planning process. The OOG distributed the draft OOG FY2019 performance plan to the Board via e-mail. One new area the OOG seeks to track is the office’s audits. Currently, the OOG conducts audits upon receipt of a complaint. The OOG plans, in FY2019, to conduct planned audits of agency websites for compliance with FOIA and the OMA. The proposed performance tracking mechanism contemplates a performance measure connected with the OOG’s conducting of these audits.

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). These are reported statistics that have been adjusted to reflect some cases that were not included on previous reports.

	Current	Last month	June 2018
Investigations Opened:	4	3	7
Investigations Closed:	4	3	3
Investigations Currently Open:	39	41	35
Investigations Stayed (Inactive):	10	8	8

Stayed (Inactive) Cases		
Nature of Stay	Number	Date Rec
Maryland Court (fugitive)	1	Jan. 2016
DC Superior Court (from OEA)	1	Feb. 2017
OIG	6	Jan. 2016
OAG (pending civil False Claims Act complaint)	2	Sept. 2016
Total Stayed Cases	10	

b. Publication and Reporting Obligations

We submitted the Financial Disclosure Statement lists to the DC Register on August 14, 2018, and we submitted the list of registered Lobbyists to the DC Register on August 28, 2018.

c. Trainings/Outreach –

i. Attended by staff – Our Auditor Ishmael took a course on Project Management Essentials. Attorney Stewart-Mitchell attended two DC Bar CLE courses: Private Eyes and the Professional Rules: Legal Ethics of Using Investigators – August 13, 2018, and Ethics and the Government Lawyer- August 30, 2018. Attorney Cooks attended an ADA course entitled “ADA Title I: Roundtable.” Lastly, I attended the Maximizing Your Leadership Potential course offered by the Center for Creative Leadership in Hyattsville from August 15 through August 17, which was an excellent program.

ii. Conducted by staff –

Since the date of the last meeting, we conducted or participated in 6 trainings, one more than the 5 reported at the last meeting. The trainings consisted of 2 new employee orientations, our Monthly Ethics Training, two Hatch Act trainings held at OAG, and a training for new Excepted Service employees held in conjunction with the Mayor’s Office of Talent and Appointments.

2018 Ethics Day- 2018 Ethics Day will be held on October 4th, following the monthly Board meeting. The following entities have confirmed participation: Office of General Counsel for the D.C. Council, Office of Campaign Finance, Office of the Inspector General, D.C. Bar, and, of course OOG. We have already received positive inquiries from those employees who attended last year and plan to attend this year.

iii. Newsletter –

As mentioned last month, we are engaging OCTO in discussions to possibly allow us to disseminate both OGE’s monthly newsletter and OOG’s quarterly newsletter via mass email to all dc.gov email account holders along the lines of Mayor Bowser’s weekly newsletters. OOG and OGE will also cross-promote one another’s newsletters when our own newsletters are published.

We are still planning to relaunch OGE’s monthly newsletter at some point in September, and our new attorney, Sonya King, is leading that effort. One of our major goals is to transform the newsletter from a Word or PDF publication into something more like Mayor Bowser’s weekly newsletters, where the content is directly embedded in an email, as well as being available for download from the agency’s website, and Sonya has reached out to some former colleagues with experience preparing similar materials for their guidance and assistance.

d. Advisory Opinions/Advice –

Informal Advice: approximately 46, which is somewhat lower than the 64 reported at the last meeting. However, last month's meeting was held a little later than usual on August 10, so the shortened timeframe since the last meeting may partially account for this reduced figure.

Formal Advice requests: We have received no formal advice requests since the Board's last meeting.

e. Ethics Legislation/Comprehensive Code of Conduct

The Council's Committee on the Judiciary and Public Safety is considering the "Campaign Finance Reform Amendment Act of 2018," and asked for our comments. One of the main purposes of the legislation is to prohibit contractors from contributing to campaigns. The bill also establishes a new Campaign Finance Board as a new, standalone five-member Board. The sections that particularly relate to this Board's jurisdiction concern the provisions for enhancing financial disclosure requirements and training, and a proposed amendment to the Hatch Act provision that permits one employee of the Mayor, Attorney General or a Councilmember to fundraise while the employee is "on leave." Although a similar bill died in committee during the last Council period, there appears to be some movement on this bill.

With respect to the Hatch Act provision, we recommended that the term "on leave" be clarified to specify that the term includes only annual or unpaid leave. The concern was that an elected official could grant an employee administrative or some other form of unearned leave to engage in fundraising. We do not believe that was what was originally intended.

With respect to financial disclosures, the bill requires all board and commission members to take BEGA's ethics training within 90 days after the beginning of their service (the training can be electronic), and requires BEGA to detail all contributions by lobbyists in the agency's publicly-available, online, quarterly reports

This legislation may also present an opportunity for us to change the definition of "public official" to clarify who is required to file a financial disclosure statement. We made the change in a rulemaking, but it is the statute that most employees consult when determining whether they are required to file. The current statute is worded in such a way that it implies that only "Excepted Service" employees are required to file.

f. Rulemaking

As we informed the Board at our last meeting, we are still contemplating rules to further flesh out the procedures and standards to be applied to both FDS and Lobbyist waivers and appeals. We will also need to amend our lobbying rules to

ensure they are consistent with the changes the Council made in the recent Budget Support Act.

g. Budget:

Waddah, Sonya and I are working with a team from CMTS on the implementation process for our new case management system. We are meeting on a weekly basis, and our next implementation meeting is Friday at 1:30 pm. Per the terms of the solicitation, the new system must be operational by September 30.

Other than that, we are continuing to work on completing the remainder of our planned FY18 acquisitions within our allocated budgetary funding, including possibly replacing some of the Board's videoconferencing equipment which has reached the end of its useful life due to vendor-related technical support issues.

h. Staffing –

We have one permanent position that is currently vacant, the Paralegal position that DCHR has reclassified into a third Investigator position. DCHR informed me on Tuesday that this vacancy should be posted by Wednesday at the latest, but I am still awaiting confirmation that occurred.

I would also like to introduce you to our new Attorney Advisor, Sonya King, who just joined us on Monday. Sonya most recently served as Deputy Section Chief with the OAG, where she supervised 18 lawyers and 5 support staff in the Juvenile Section of the Public Safety Division. Prior to that, she spent more than 7 years as an assistant prosecutor in Prince George's County, Maryland, after starting her career as a law clerk for a Circuit Court Judge in PG County and a brief stint with the PG County Public Defender's Office.

Unfortunately, I must regretfully pass along the news that our Compliance Specialist, Nikaela Redd, has been offered an opportunity that is too good to pass up, and her last day with us will be Friday September 14. She will be greatly missed. Upon receiving Ms. Redd's resignation last Friday, I immediately asked DCHR to post the Compliance Specialist position for competitive recruitment.

i. Litigation

Status of pending cases.

- Gerren Price – (CA No. 16-AA-1230), Both Mr. Price and the District have filed their briefs. The most recent docket entry reflects that a calendar notice was sent. The docket does not indicate the date of oral arguments.

- Edwin Edokwe – (2016 CA 007889 P(MPA), FDS Designation appeal. Dismissal of Petition announced by Judge Holeman of DC Super Ct. on 2/9/18 – On August 14, Judge Holeman released a written decision affirming the Board's decision in this matter. In upholding the decision, the record the judge relied on consisted of

Edokwe's pleadings, the Director's Opposition (Director Sobin at the time), and the recording of Board's proceedings. The decision is very deferential to our authority. It is simply based on the ordinary APA substantial evidence standard. Interestingly, one of his quotes is that the policy considerations underlying the deferential standard of review stems from the fact that many disputes involve "specialized considerations for which there are no judicially manageable standards." That decision is in the drop box.

- 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 after a contested hearing. OAG recently informed us they refiled this case on July 5. Mr. Hicks was scheduled to file his answer on September 4.

- Rahsaan French vs. BEGA, D.C. Superior Court (C.A. 2018 CA 002306 P(MPA)). Employee is appealing the imposition of a \$600 ministerial fine. The pro se case was filed on April 6. There has been no change in the status of this case since the last meeting. The next status hearing is set for November 30, 2018 at 2 pm.

- J. Dillion vs. BEGA, OEA Matter No. J-0030-18. This is an employment matter involving a separated employee. An appeal of the OEA Judge's decision was timely filed last week. The matter is now on appeal before the OEA Board. Ms. Dillion's deadline for filing an opposition to the government's Petition for Review before the Board has not yet expired.

j. Lobbyist/Financial Disclosure Matters

There are currently 275 FDS non-filers remaining, 69 of which are ANCs. We sent a non-compliance notice to the non-filers on August 1st giving them until August 10th to come into compliance; that notice was sent out via email and hard copy. However, the ANCs were not included in the list we submitted to the DC Register. We are gearing up to begin sending fine and enforcement notifications; we plan to send the first wave of notifications on or around September 10, 2018, since our last notification advised non-filers that they should file before August 10th to avoid fines. We reached out to all Ethics Counselors we have on record and asked them for any updates with regard to their role as Ethics Counselors (contact information, change in Ethics Counselor etc). We also asked the Ethics Counselors to assist us with updated contact information for PFDS non-filers.

FDS Partial Waiver Factors:

As discussed in the portion of the meeting on Rulemaking, we have begun drafting the rulemaking to implement standards for FDS partial waivers, FDS designation appeals, and lobbyist fine waivers.

FDS Special Project: I met with our Auditor and Intern and tasked them with determining how many DC government employees have not been designated as either Public or Confidential filers, despite earning salaries that would appear to require them to file. Out of 36,558 employees, 5,589 have been designated as either Public or Confidential filers, leaving 30,696 employees who have not been designated. Brian and I are working with Ishmael and Barry to determine the number of non-District employees who are required to file (such as ANC Commissioners who are not employed by the District), as well as the number of District employees who have not been required to file despite their current salaries, to ascertain the true number of individuals who are required to file under the statute and our rules. Part of that process involves looking at a spreadsheet of DC government employee salaries and identifying those whose salaries surpass the minimum threshold and presumably should have been designated as public FDS filers. We will update the board on our findings at next month's board meeting.

a. Lobbyists

Lobbyist Program:

1. Testing out the new electronic framework for the Lobbyist program. We are in the process of selecting beta testers from a pool of lobbyists to test out the new system. The BEGA staff have tried it out and have offered suggestions to Mark McDermott at OCTO.
2. Nikaela and Ishmael are working on sending out enforcement letters to lobbyists who failed to register and/or file LARs.
3. Nikaela is working an implementation timeline to ensure that the changes in the lobbying statute are reflected.
4. Lobbyist Filing Waiver Requests for Review
 - a. #1711-001, MD/DC Credit Union Association – Pursuant to D.C. Official Code § 1-1162.32(c), the Ethics Board may waive the penalty imposed for untimely filing of a Lobbyist Activity Report for “good cause shown.” Mr. Murray’s stated reason for his firm’s failure to timely file its activity report is that he was hired on July 2, 2018, and that he submitted his own information on July 9, 2018. He states that he was not notified about the fact that the deadline had been missed, but upon discovering that fact he immediately filed the activity report when he got back to his desk. Respondent’s LAR was filed on July 23. The amount of the fine levied was \$90. We ask the Board to deny this request for a waiver. The Credit Union didn't even register until Mr. Murray registered them on July 23, 2018, so it seems illogical for him to have assumed his predecessor filed the LAR on its behalf.
--The Board tabled this matter until the next meeting.
 - b. #1710-001, UNITE HERE Local 25 –

Respondent states that he had multiple reports on the online system and was confused with the lobbying registration which would not let me into the lobbying report. I could not respond to BEGA email notice due to being on vacation until August 1st. The Respondent's report was filed on August 1, 2018. The amount of the fine is \$160. We recommend that the Board reject this request. The explanation offered does not appear to warrant a waiver.

--The Board unanimously denied this waiver request.

5. Compliance Specialist Redd is working on responding to COGEL to reflect changes made in the Budget Support Act.
6. Inquiry Letters have been sent to two entities concerning allegations of unregistered lobbying activity.

Non-profits

We have received \$5,200 out of \$11,200, owed to us by nonprofit organizations who did not qualify for the \$200 credit. We are in the process of drafting second notices to the remaining organizations to request our reimbursement.

Lobbyist Activity Reports

We submitted the required list of Lobbyist registrants to the DC Register on August 28, 2018. We are gearing up to beta test the new Lobbyist e-filing system. We have also begun discussing how to notify the lobbyists of and implement the changes in the lobbyist rules, which take effect October 1, 2018.

Lobbyist reminders went out to all registered lobbyists on Monday, June 4, 2018. The deadline for filing Lobbyist Activity Reports ("LARs") was July 10, 2018, and as today, we have received 429 LARs. There are six lobbyist non-filers.

k. Non-Confidential Investigations

1. #1634-001, *In re: Rochelle Wilson* - We served Ms. Wilson with a ministerial fine order by email and certified mail on August 27, 2018. As stated in the order, at the close of our investigation, OGE concluded that Ms. Wilson violated D.C. Official Code §§ 1-1162.24(a)(1)(A)(i), 1-1162.24(a)(1)(A)(ii), and 1-1162.24(a)(1)(A)(iii) by failing to file fully completed PFDS forms that truly and accurately reflected her (and her spouse's) business interests, activities, and positions with outside organizations for calendar years 2014, 2015 and 2016 before the annual May 15th deadlines in 2015, 2016 and 2017. We fined Ms. Wilson \$2,750 for these violations; she has responded to the order by inquiring about her appeal rights.
2. #1398-001 *In re: Courtney 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).

3. #1031-016, *In re* Antwan Wilson and #1031-017, *In re* Jenifer Niles

Pursuant to D.C. Official Code § 1-1162.12 (a), we opened 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. Our team has completed their investigations in these cases and I am awaiting their findings and recommendations.

4. #1101-003, *In re*: Jack Evans – This is a formal investigation into allegations that Councilmember Evans violated the Council Code of Conduct. We are still reviewing and analyzing documents we have received pursuant to discovery requests to formulate next steps in our investigation.
5. #1706-001 *In re*: Rustin Lewis – This is a formal investigation into whether Rustin Lewis violated the Local Hatch Act, D.C. Official § 1-1171.01 et seq. by filing as a candidate for At-Large Councilmember, while also being employed as a professor at the University of the District of Columbia (“UDC”). The Local Hatch Act prohibits employees from filing as candidates for partisan office within the District. OGE is currently reviewing Mr. Lewis's personnel records, and Mr. Lewis is currently cooperating with our investigation.

VI. Opportunity for Public Comment
No public comments were received.

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 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).

VIII. Resumption of Public Meeting

- a. Discussion of any remaining public items
- b. The Chairperson announced that the Board had approved a negotiated disposition in #1401-001 *In re*: Antaeus Hayes, in which Respondent admitted to referring employees to a private business person for tax preparation services while on duty and also using his government cell phone to do so. Respondent has agreed to pay a fine of \$2,000.00 and attend ethics training.

IX. Adjournment