

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

**MINUTES OF REGULAR MEETING
SEPTEMBER 7, 2017**

The District of Columbia Board of Ethics and Government Accountability held its Regular Monthly Meeting on Thursday, September 7, 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 Tameka Collier was present, as well as Board Members Norma Hutcheson, Carol Schwartz, and Shomari Wade. 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 <http://bega.dc.gov/event/september-7-2017-bega-monthly-meeting>

AGENDA

- I. Call to Order
--Chairman Collier 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	July 2017
Investigations Opened:	4	4	1
Investigations Closed:	11	3	
Investigations Currently Open:	16	17	16
Investigations Stayed (Inactive):	17	24	23

Stayed (Inactive) Cases		
Nature of Stay	Number	Date Rec
Court (pending motions and one fugitive)	2 1	Jan. 2016
OEA (pending motions)	1	
OIG	46 -13	Jan. 2016
OAG (pending civil False Claims Act complaint)	1	Sept. 2016
Council (pending post-employment action on CCC)	3	June 2016
IRS/OTR (potential criminal complaint)	1	Jan. 2016
Total Stayed Cases	17	

b. Publication and Reporting Obligations

We have no outstanding publication or reporting obligations. As required by the Ethics Act, we published a Summary of Registered Lobbyists (Lobbyist Registrations for 2017 Filing Year as of August 1, 2017), in the DC Register and our website, on August 11. We are reviewing our CBE commitments for the upcoming fiscal year.

c. Trainings/Outreach –

i. Attended by staff –

One – Attorney Stewart-Mitchell attended a course offered by the DC Bar entitled “More Effective Writing Makes More Effective Lawyers.” The class explored the fundamentals (and the critical details) of creating clear, well-organized, persuasive legal documents.

I have been invited to serve on a working group that is tasked with modernizing the District’s rulemaking procedures. I previously worked with the Office of Documents and Administrative Issuance for 10 years, served on the Drafting Committee for the 2010 Model State Administrative Procedure Act that was adopted by the Uniform Law Commission, and have presented to the DC Bar on the District APA. I do not anticipate that the work will detract from what BEGA, as an administrative agency subject to the District’s Administrative Procedure Act, does every day. The first meeting of the working group is September 15.

ii. Conducted by staff –

12, which is one more than the 11 conducted last month. The 12 trainings include: three new employee orientations and MSS (FDS) trainings, one general Boards and Commission training, one regular Monthly Ethics Training, a training session at the Criminal Justice Coordinating Council, D.C. Code Reform Commission, and two local Hatch Act trainings for EOM staff, including several agency heads.

- iii. Ethics Day- Ethics Day- BEGA's Ethics Day 2017 is scheduled to take place on October 19th following the monthly Board meeting. We have secured participation from the Office of Partnerships and Grant Services, the Office of the Inspector General, Office of Campaign Finance, the D.C. Council's Office of the General Counsel; and the D.C. Bar has agreed to co-sponsor and conduct a Legal Ethics course for government attorneys. We will offer a total of nine ethics courses.
- iv. Ms. Ethics Videos – We have been working with Pendragwn Productions, the company that produced the Ms. Ethics video, to create six, short ethics videos. The covered topics include: misuse of title/position, widely attended gatherings, nepotism, Hatch Act, financial conflicts of interest, and outside employment. Each video will be 30-seconds long and each scene will feature an actor calling Ms. Ethics over the telephone for advice. The actual shoot for the videos is scheduled to take place on September 15th. The videos will be completed at the beginning of October and will be shown at Ethics Day.

d. Advisory Opinions/Advice –

Informal Advice: approximately 65, since the last meeting, up from 59 last month.

Formal Advice requests:

Since the last meeting, we received five requests for formal opinions and published one formal Advisory Opinion on whether certain activities undertaken by the District government to encourage District residents to contact United States Senators regarding District statehood would violate the Code of Conduct. We concluded that the Executive Office of the Mayor and the New Columbia Statehood Commission could, through the Office of the Chief Technology Officer, develop or create a portal that would facilitate District residents' communications with United States Senators. That opinion was issued on August 17 and published on September 1.

During that time period, we also received four requests for opinions on the application of post-employment rules -- one of which has since been withdrawn. One of those requests came from former Councilmember Vincent Orange, who

followed up with more questions based on the advice he was given earlier last month. His latest request and the draft response are in the drop box, and I'll let Mr. Grimaldi take it from here.

e. Ethics Legislation/Comprehensive Code of Conduct

Along with Chairperson Collier and Mr. Grimaldi, Interim Director Flowers met with Councilmember Charles Allen and his Committee Director on August 29 to discuss the CCC. The meeting went well. The Councilmember had reviewed a copy of the PowerPoint that we used during meetings last Council Period on the lapsed Bill 21-250, and he was quick to ask questions as we went through the presentation. We also got confirmation, after the meeting, that the second hearing on the CCC will be held during the morning of November 2. Between now and then, we will also be meeting with the Mayor's General Counsel and the Director of the Office of Policy and Legislative Affairs, as well as with the members of the Judiciary Committee. So, things are heating up!

I'll let Mr. Grimaldi discuss the legislative package about increasing the Board's quorum requirement to three members.

f. Rulemaking

1. We have included in your dropbox a proposed rulemaking that makes changes to ensure that the Board's rules are consistent with the Council Financial Disclosure Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-240). That legislation requires the Chairman and each member of the Council to file a public financial disclosure statement semiannually on May 15 and November 15 of each year
2. We have completed the process of compiling a list of Boards and Commissions that are currently exempt from the PFDS filing requirement that we believe should be required to file given their duties and responsibilities. A copy of that list is available for your review in the drop box, along with a description of those Board and Commissions' activities. We will discuss these recommendations at the next Board Meeting, after you have had an opportunity to review the list.

g. Budget:

We have continued to hold monthly budget meetings. The next budget meeting will include a discussion on closing out FY17.

h. Staffing –

We have 2 new administrative positions to fill in October, as well as the Director vacancy.

i. Lobbyist/Financial Disclosure Matters

1. Public Financial Disclosure Statements

We are still working to get all non-compliant public financial disclosure statement filers to file their forms via our e-filing system. Approximately 235 non-filers remain. We sent out two notifications, through the e-filing system, about a week and a half ago, asking non-filers to file. Last week, we sent out a fine notification to the remaining non-filers. Below is a status update.

33 current employees on list

11 have filed

15 have been fined and still have not filed since being fined.

2 pending Waivers from last year (Charlene Dickens and Edwin Edokwe)

6 pending statuses- 3/6 have no email- 4/6 waiting on update from Ethics Officer

1 was deleted per confirmation from Ethics Officer

2. Confidential Financial Disclosure Statement Enforcement for the current year. (5/15/2017)

We are currently reviewing CFDS reports and following up with ethics officers regarding CFDS submissions and inquiring whether employees are still employed with the District.

3. Confidential Financial Disclosure Statement Enforcement (for last year)

Last month, we informed you that we were prepared to bring enforcement actions against the remaining non-compliant confidential financial disclosure filers for the 2016-2015 filing year but that we decided to wait until we received an employment status from each employee's HR representative. Yesterday, we have received those employment status updates.

One of the non-filers has been on worker's comp. We have had some contact with the employee and would like to continue to work with him to file the form, instead of moving forward with an enforcement action at this time. There is also an employee who filed this year's FDS but failed to file last year's FDS. Because this employee has shown at least some willingness to file the FDS form, we want to give him an additional 30 days to submit the 2016-2015 form.

That said, today we are prepared to move forward with four (4) enforcement actions against employees who have had no communication with our office and failed to file their CFDS forms for both this year and last year.

e. Lobbyists

a. We recently met with an OCTO representative regarding OCTO's updates to our lobbying e-filing system. Some of the upgrades we expect to see are changes to the lobbying registration system so that late-registrants are automatically fined and fines are automatically generated. According to OCTO, the updates to the e-filing system will be ready in November, approximately two months prior to the January filing season.

j. Non-Confidential Investigations

- 1) *#1426-001: In re G. Price* - We transmitted the complete agency record to the Court of Appeals shortly after our July Board meeting. The Court of Appeals set a briefing schedule in this matter: Mr. Price's brief was due August 26, 2017 and our response September 25, 2017. The Office of the Attorney General is representing BEGA on the appeal. Mr. Price has requested an extension of time to file his brief.
- 2) *#1031-007: In re K. Henderson*- This matter is a formal complaint, pursuant to D.C. Official Code § 1-1162.13 (a)(1), based on a Report of Investigation (ROI), received from the Inspector General containing a finding that former Chancellor Henderson violated DPM § 1800.3 (h), that requires employees to "act impartially and not give preferential treatment to any private organization or individual." There are ongoing discussions with Ms. Henderson's attorney. However, at the same time, we are in the process of conducting interviews with persons who might be witnesses in the enforcement hearing.

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. #1019-013: *In re*: C. Curry- The Chairperson reported that the Board voted unanimously to approve the negotiated disposition in which Respondent will pay a \$250 fine.
 - ii. The Board unanimously approved notice of violations for: #1630-001 In re A. Moon; # 1641-001 In re R. French; # 1640-001 In re A. Ball

- k. Adjournment