

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

**Monthly Meeting of the Board**

May 8, 2014, 1:00 p.m.  
Room 540 South (BEGA Board Hearing Room)  
One Judiciary Square

**AGENDA**

**I. Call to Order**

The Monthly Meeting of the Board was called to order at 1:02 pm by Chairman Robert Spagnoletti in Hearing Room 540 South at One Judiciary Square, 441 4th Street NW, Washington, DC 20001.

**II. Ascertainment of Quorum**

All Board members were present constituting a quorum.

**III. Adoption of the Agenda**

The Agenda was adopted unanimously.

**IV. Acknowledgment of Adoption of the Minutes of the April 3, 2014, meeting.**

The Chairman noted that the minutes of the April 3, 2014, meeting were unanimously approved by email vote and have been posted on the website.

**V. Report by the Director of Open Government**

**a. Budget Hearing**

On April 14, 2014, Director Sobin and Director Hughes testified before Councilmember McDuffie regarding the budget needs of both offices. The Mayor's Proposed Fiscal Year 2015 Budget decreases the Office of Open Government's budget and does not allow for an increase in FTE's or continued full funding for the Information Technology Specialist position.

Much of the Councilmember's questions centered on the decision to hire an Information Technology Specialist, rather than an Attorney Advisor as originally budgeted and approved by the Council. Director Hughes explained that there was a greater need to focus first on establishing a technological infrastructure for BEGA, but the need remains for an attorney advisor to assist with enforcement of the Open Meetings Act, and with FOIA training. Director Hughes also requested that the Council restore full funding for the IT position, provide funding for an Attorney Advisory FTE, and for the completion of the Open Government web portal.

The full text of their testimony before the Government Operations Committee, and answers to the Councilmember's follow-up questions may be found on the BEGA website at: <http://www.bega-dc.gov/testimonypublic-comment/fy-2015-budget-hearing-follow-responses-cm-mcduffie>

Chairman Spagnoletti noted that Councilmember McDuffie was very engaged in BEGA's budget needs. He asked if Director Hughes had followed up Councilmember McDuffie after the Budget Hearing. Director Hughes stated that she and Director Sobin submitted a letter to the Councilmember on April 24, 2014, answering all of the outstanding questions posed during the hearing..

Board Member Richards asked Director Hughes what the chances were of full funding being restored. Director Hughes stated that BEGA had put forth its best case. She explained that Jada Irwin was currently taking over the duties currently performed by an outside vendor for lobbyist filings, and that if needed, lobbyist funds could be used to fund her position.

#### **b. Open Meetings Act Training**

On April 8, 2014, Director Hughes conducted the annual Open Meetings Act training of the points of contacts for Boards and Commissions. Of the 176 Boards and Commissions, 50 were represented at the training. Darryl Gorman from the Office of Boards and Commissions and Director Sobin and Attorney Burns from the Office of Government Ethics presented trainings on the general requirements of boards and commissions members, the new Code of Conduct and Hatch Act requirements. The two-hour training was held in the Old Council Chambers.

Director Hughes also conducted Open Meetings Act training online for Alliance for the Chesapeake Bay, and for the Mayor's Advisory Commission on Caribbean Community Affairs. Director Sobin also addressed that group and informed them of ethics requirements.

In addition to the compliance trainings, Director Sobin and Director Hughes also spoke about their offices and their respective roles during an overview session on April 11, 2014, at UDC with the members of the DC Leadership Development Council.

#### **c. BEGA Freedom of Information Act Requests**

Currently, Director Hughes is working with the Office of Government Ethics to process a FOIA request from Conti Fenn & Lawrence. The firm is requesting a large volume of documents, including notes, letters, emails, orders and memoranda concerning seven BEGA matters; and the audio file from the March 6, 2014, board meeting.

So far this year, BEGA has received seven FOIA requests, and Director Hughes has provided documentation to the Mayor's Office in response to an appeal of two FOIA requests made of the Office of Open Government.

#### **d. FOIA Advice**

Now that the Office of Open Government is fully operational, the Office is now receiving numerous requests for informal advice on FOIA. In April 2014, Director Hughes received six requests from FOIA Officers and or General Counsels for advice; and assisted one member of the public with gaining access to information that should be proactively disclosed on the Department of Public Works and Department of Consumer and Regulatory Affairs sites. That information includes a listing of all District Government employees and their corresponding agencies. Additionally, viewers can now search the list by name. Director Hughes thanked Brian Flowers in the Mayor's Office and Michael Black in OCTO who made sure the information was posted on the web.

#### **e. Office of Open Government Advisory Group**

Director Hughes held the first meeting today with the members of the Open Government Advisory Group. The members include: Aaron Schumacher, of Clearly Innovative; Chris Birk of the OpenGov Foundation; Justin Harrison of Vinolovers; Tommy Shen of General Assembly; Rodney Cobb of GitMachines; Kanika Tolver, a government IT consultant; Aaron Saunders of Clearly Innovative; and Matt Bailey of Code for DC. The group has graciously agreed to work with Director Hughes to develop open data policy and clearly defined benchmarks for the city to meet to publish and maintain data. Each of them has extensive knowledge about open data, open source, coding and Information Technology. Director Hughes thanked Rodney Cobb for reaching out and helping the Office of Open Government to establish such an impressive think tank.

Board Member Richards asked if Director Hughes had included anyone from the Mayor's Office in the Advisory Group. Director Hughes responded that she had not and that the Group was entirely from the private sector, and that including the Mayor's Office at this stage may not be the most efficient course. In April, the Mayor's Office asked Director Hughes for her comments on a draft open data policy, and Director Hughes provided comments and suggested edits to that policy. One of the edits included the involvement of the Office of Open Government on an advisory group which is to advise the EOM on open data policy. To date, Ms. Hughes has not received a response regarding her edits and the inclusion of such a group. She is currently working with the Group to establish goals and objectives to propose to the next administration.

Board Member Richards suggested that including the Mayor's office might help the project progress. Director Hughes responded that the Mayor's draft policy suffers from many deficits, including no benchmarks and no timeframes for implementation. Director Hughes is still in communication with Brian Flowers, the Mayor's General Counsel.

Board Member Richards asked about the progress of "FOIA Express." Director Hughes responded that she had been informed by Brian Flowers that the city has backed off on its plan to house FOIA documents on an OCTO server. There is no date for full implementation; it may be tied to the release to the public of the open data policy.

**f. BEGA Hearing Room - Wiring**

OCTO will begin wiring the room tomorrow, May 9, 2014, and the project will be completed by the next board meeting.

**g. BEGA Website**

There is increased traffic on the BEGA website. For the period of April 3 to May 7, there were 1,829 visits to the site and 2,852 sessions – meaning visitors clicking through more than one page on the website. 50% of the sessions were by new visitors. (The numbers are nearly double from the previous month, March 6 – April 3 = 941 visitors with 1,544 sessions)

Spikes to page views occurred on days when we linked the site to Twitter messages about FDS deadlines. The FDS forms page saw the most activity with 953 page views.

**VI. Report by the Director of Government Ethics**

**a. #1060-001 – OAH Investigation**

Anthony Conti, Counsel for Respondent Walker and Kerry Verdi, Counsel for Respondent Oden, were present to discuss scheduling for the hearing.

Director Sobin stated that the Court of Appeals had vacated the Preliminary Injunction in the matter and that the Superior Court had vacated their judgment accordingly. Therefore, enforcement proceedings can move forward.

Chairman Spagnoletti stated that a new Preliminary Injunction had been filed today.

Board Member Lathen asked Conti and Verdi if they represented both parties for purposes of scheduling. Conti responded that he represented both Respondents in the Superior Court matter, but that for purposes of the hearing, he represented Walker and Verdi represented Oden.

Chairman Spagnoletti asked Director Sobin what the Office of Government Ethics (OGE) proposed for scheduling. Director Sobin responded that, because they had been close to proceeding before the Preliminary Injunction, there was a good argument for restarting quickly.

He hoped to start the proceeding in June. Specifically, starting on June 4<sup>th</sup> and ending on June 20<sup>th</sup>. (On – 4<sup>th</sup>, 6<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 20<sup>th</sup> - Off – 5<sup>th</sup>, 9<sup>th</sup>, 13<sup>th</sup>, 16<sup>th</sup>, 19<sup>th</sup>)

Board Member Lathen asked if those would be full days. OGE General Counsel Stacie Pittell responded that the hearing would conclude each day at approximately 3:30 pm. Lathen asked how long it would take OGE to put on their case in chief. Pittell responded that it would take 3 to 4 days.

Chairman Spagnoletti asked Conti and Verdi what they proposed for scheduling. Conti explained that he and Verdi had gone through their clients' schedules and June would not work. Conti and Verdi's co-counsel, Billy Martin, both have trials in June. In addition, their clients will both be out of the country for a portion of June. Walker will be out of the country from June 6<sup>th</sup> – June 16<sup>th</sup>. Oden will be out of the country June 19<sup>th</sup> – June 26<sup>th</sup>.

Conti proposed three options for hearing dates.

- July 14<sup>th</sup> – July 25<sup>th</sup>
- August 6<sup>th</sup> – August 16<sup>th</sup>
- October 19<sup>th</sup> – October 31<sup>st</sup>

Chairman Spagnoletti proposed taking the October dates off the table because they were too far out. He asked if OGE had any problem with the July dates. Director Sobin and General Counsel Pittell said that there was no problem with those dates. Conti further proposed using the August dates as a buffer, which OGE concurred with.

Chairman Spagnoletti set the hearing for July, holding the August dates as a buffer. He asked OGE and the respondents' attorneys to work together on scheduling within the July dates.

General Counsel Pittell asked what OGE should do if there is a major problem with a witness being able to attend during those dates. Chairman Spagnoletti suggested that if there was a major problem with the July dates, perhaps the August dates could be used to accommodate.

Chairman Spagnoletti announced that the Board would hold off on issuing a Hearing Notice until the two parties had worked out the schedule. Chairman Spagnoletti reminded the parties that this was not Superior Court and that the Board expected them to play nice and only bring to the Board issues that they can't resolve together. Specifically, Chairman Spagnoletti made it clear that he did not want either side to present excessive motions to the Board, especially on matters that could easily be resolved without the Board's involvement.

**b. Update on Status of Office of Government Ethics (OGE) Operations –  
Recap of previous month's activities (statistics)**

Investigations Opened: 3

Investigations Closed: 1

Currently Open: 12

c. Publication and Reporting Obligations: Up-to-date. (Complaint report for the period 1.1.14, through 3.31.14, is up on our website).

d. Trainings

- i. Attended by staff: the entire staff took the GLBT (Gay, Lesbian, Bi-Sexual Transgender) training
- ii. Conducted by staff: 9 trainings, including 2 for the Agency Ethics Counselors on the new DPM, and 3 New Employee Orientations.
- iii. We now have citywide Ethics Training classes scheduled once per month through December. This is in addition to our “on request” trainings.

e. Advisory Opinions

- iv. Formal Written Advisory Opinions: 2 issued. (One requestor asked a new question, so we are working on that one). Both involved the new post-employment restrictions for former employees.
- v. Informal Advice: 52 since the last Ethics Board meeting

Chairman Spagnoletti commented that the Advisory Opinions issued were well done and thoughtful and they helped to make the prohibitions work for people rather than just creating an outright ban.

f. Financial Disclosure Matters

- vi. May 15<sup>th</sup> filing deadline

Attorney Patzelt reported that she and OGE staff were hard at work for financial disclosure season. Chairman Spagnoletti thanked Attorney Patzelt and said he was happy that all filers looked to be falling in line.

g. Budget

- vii. BEGA’s Budget hearing took place on April 14<sup>th</sup>. Director Sobin appeared along with Director Hughes and Chairman Spagnoletti. Although BEGA mostly supported the Mayor’s proposed budget, Director Sobin made clear that the proposed NPS funds would likely not be sufficient to cover anticipated expenses including litigation costs. Afterwards, the Office of Open Government and the Office of Government Ethics sent a letter to Councilmember McDuffie to answer some questions and clarify a few answers. BEGA has not received any further questions.

h. Rulemakings

i. **Negotiated Dispositions** - - OGE sent the Ethics Board members a draft of the Rulemaking for Negotiated Dispositions. It adds a chapter to Title 3 of the DCMR to set forth the procedures, sanctions, and penalties for negotiated dispositions. The Negotiated Disposition rulemaking describes the procedure for both non-public admonitions and public negotiated dispositions.

For non-public admonitions, the rulemaking details that the Director of Government Ethics may impose a non-public informal admonition for low-level violations of the Code of Conduct and provides a process by which Respondents who receive a non-public informal admonition may request that the Director reconsider its imposition. The request for reconsideration must be in writing and Respondent may appeal the denial of a request for reconsideration to the Ethics Board.

For public negotiated dispositions, the rulemaking details the negotiation process. It prohibits *ex parte* discussions with the Ethics Board on substantive matters, sets forth the possible sanctions, and explains that Respondents can apply for an expungement. The rulemaking also details that in the event of a breach, the Director of Government Ethics may allow Respondent to cure the breach, recommend that the Ethics Board nullify the negotiated disposition and hold a hearing, or seek authorization from the Ethics Board to file a petition in D.C. Superior Court for enforcement of the Ethics Board's civil penalty.

Chairman Spagnoletti said that the rules looked terrific but that he had a few concerns. His first concern is the use of the word "expungement." Although he recognized that the term is used in the statute, he feels that "sealing" would be more appropriate. When records are expunged, they are destroyed and treated as though they never happened. When records are sealed, the records are kept, but are sealed from the public. He recommended that OGE look to the "Criminal Records Sealing Act" for guidance.

Chairman Spagnoletti is concerned with what Respondents can say when BEGA expunges or seals their records. In criminal matters, if a person's records have been expunged then the person can say that they were never arrested and they were never charged. If the records have been sealed, then the person can say the same, but with certain exceptions. Chairman Spagnoletti recognized that BEGA can only control its own universe.

Chairman Spagnoletti is also concerned with what BEGA can say about expunged or sealed records. He spoke about a situation where an employee steals a ream of paper. The employee's supervisor suspends the employee for the theft. Because it is a low level violation, BEGA issues

an informal admonition with an opportunity to expunge. If, in the future, the OIG or the FBI comes to BEGA and asks, in the context of another larger theft, if BEGA has had any dealings with the employee, what can BEGA say? In criminal matters, the court would only be able to say that there are no records available.

Board Member Lathen asked if the records would be subject to FOIA. Director Hughes answered that they could be exempted by rulemaking. Chairman Spagnoletti added that any records from the employee's agency would be subject to FOIA.

Board Member Lathen asked why OGE wanted to have expungement as an option. Director Sobin responded that it was an option because it was a part of the Ethics Act. Utilizing expungement gives meaning to the words in the statute. General Counsel Pittell added that, even if records are expunged, they have already been available to the public on BEGA's website for six months to a year.

Board Member Lathen asked if records could effectively be expunged after they had been on the internet. Director Sobin responded that OGE had already done so with an elected official. Chairman Spagnoletti added that expungement allows an opportunity to answer application questions truthfully, such as employment or bar applications.

Board Member Lathen asked if records are expunged strictly for innocence. Chairman Spagnoletti responded that records are expunged for actual innocence and in the interest of justice after a passage of time.

Board Member Richardson is concerned with the discretion involved in expungement. She would prefer date specific standards, with no discretion. Director Sobin added that expungement helps with negotiating. Chairman Spagnoletti is concerned that the standards are too squishy. General Counsel Pittell added that remorse is a common standard. Board Member Richards has found remorse to be an unworkable standard.

Chairman Spagnoletti asked OGE to email the Board their revisions.

## ii. **New DPM**

On April 11, 2014, DCHR published a revised DPM Chapter 18. The new DPM Chapter 18 has some significant changes, which include the following:

- District government employees are now required to report *credible* violations of the District Code of Conduct to OGE *or* the OIG. Previously, they were required to make reports to the agency head *and* the OIG. In



addition, District government employees are required to cooperate with any official function of OGE.

- In the gifts from outside sources section, the new DPM Chapter 18 now includes a list of things that are no longer considered gifts. These include small things like a soft drink or coffee, items with little intrinsic value such as a plaque or certificate, promotion items such as pens, and admission to civic, charitable, governmental, or community organization events where the admission is of nominal (\$10 or less) value.

- In the gifts between employees section, the new DPM Chapter 18 now allows gifts from subordinates to official superiors, as long as they are not coerced, on an occasional basis, if they are of nominal value, are food & refreshments to be shared in the office among several employees, are gifts for personal hospitality of a customary value, or are given for an infrequently occurring occasion of personal significance. For situations where the recipient of the gift makes a higher salary than the giver but is not an official superior, if there is a personal relationship and the gift is not intended to induce a professional advantage, a gift is now permissible.

- There is now a section on nepotism. Anyone who as part of their job participates in hiring and other personnel actions, is prohibited from selecting, appointing, advocating for, and recommending a relative. Relative is broadly defined to include immediate family, in-laws, first cousins, and others. The nepotism section also requires that if an agency is contemplating hiring a relative of a current employee who normally would be part of the process, the employee must file a written recusal with the agency which will be included in the relative's personnel file if that person is hired. The penalties for violation of the nepotism section are severe. They include rescinding the hiring decision for the relative, disciplinary action including termination for the employee, and a requirement that the employee pay restitution to the District for any gains (such as salary) received by the relative.

- There also have been significant changes in the post-employment section. The biggest change is that *all* former government employees are prohibited for one year from having any transactions with, appearances before, or communications with, their former agency that is intended to influence the agency in connection with any particular matter pending before it or in which it has a direct and substantial interest. This includes matters the

former employee did not work on when they were a government employee and matters that arose after the employee left District government service. In addition, this applies regardless of whether the former employee is representing him or herself or another person or company. This prohibition is intended to prohibit the possible use of personal influence based on past governmental affiliations to facilitate the transaction of business. We issued a post-employment memorandum and a dos & don'ts sheet specifically addressing post-employment requirements. We also have trainings scheduled to cover post-employment.

iii. **BEGA Legislation**

On April 28, 2014, the DC Council amended the Ethics Act, on an emergency basis, to:

- ❖ Clarify that BEGA has jurisdiction over the entire District government and its instrumentalities, excluding the courts;
- ❖ Require BEGA to develop a comprehensive Code of Conduct for review and approval by the Council;
- ❖ Allow the Director 30 business days to present evidence to the Board on a formal investigation;
- ❖ Allow the Ethics Board to sanction a Respondent and refer the matter to a prosecutor;
- ❖ Clarify that any failure to obey an order of the court enforcing a BEGA penalty may be treated by the court as contempt; and
- ❖ Add to the Code of Conduct the acceptance and use of gifts by District entities, concerning gifts to the District. This means that we are able to take enforcement actions against those who fail to follow the donation process when warranted, provide misleading information during the donation approval process, or make material omissions during the donation approval process.

Board Member Lathen asked if the gifts/donations provisions would reach contractors. Chairman Spagnoletti noted that BEGA has suggested adding language to the city's boilerplate contracts that would subject contractors to BEGA jurisdiction. Board Member Richards added that this specific provision deals with agencies, not employees.

Board Member Richards asked what the common circumstances were for this provision. Director Sobin responded that foundations, charities, dignitaries, etc. sometimes give gifts to the city. To do so, they have to fill out a form that details who they are, why they're giving the gift, and what their connection is to the city. OAG reviews the proposed gift, OPGS signs off on it, and the gift is put in a special fund and tracked.

Board Member Richards asked if this provision covered the awards given to employees, such as government service or teacher appreciation awards. Director Sobin responded that yes, it gives BEGA jurisdiction over agencies in this respect. General Counsel Pittell added that if it was an employee's failure to follow the donation process, then the employee would be subject as well.

Board Member Richards asked if this was a different authority from the authority that covers public/private partnerships. Director Sobin answered that the distinction needs to be specifically addressed in the Comprehensive Code of Conduct. Such partnerships need to be statutorily authorized, and need to include a provision that a quid pro quo can be allowed in certain situations. For example, a situation where a university donates a pool to the city in exchange for their students being allowed to use the pool.

iv. "Comprehensive Code of Conduct of the District of Columbia"

The Office of Government Ethics has begun work on a Comprehensive Code of Conduct for review and approval by the Council, as mandated by recently enacted legislation (D.C. Act 20-323). Towards this effort, OGE has set a timeline for this work, with the goal of providing the Board with a completed draft version of the Comprehensive Code of Conduct by Thursday, May 29<sup>th</sup>, for discussion at the June 5<sup>th</sup> Board meeting. After the June 5<sup>th</sup> Board meeting, further changes can be made for final approval at the July 19<sup>th</sup> Board meeting, if the Board so chooses. This timing coincided with the end of our Capital City Fellow's rotation with our office, which ends on July 24<sup>th</sup>.

The format of the Comprehensive Code of Conduct will be similar to a compact, e.g. the WMATA Compact, with the various provisions organized by article. The Comprehensive Code of Conduct will then be an attachment to a draft bill that the Council can introduce as legislation. Our methodology in drafting the Comprehensive Code of Conduct is to merge the several "Codes of Conduct," as they currently exist, into a single document. We have been meeting on a weekly basis to discuss the draft. The draft will incorporate the suggestions made in our "Annual Best Practices Report" as well as best practices from other jurisdictions. Lastly, an explanation document, akin to a legislative Committee Report, will accompany the final draft of the Comprehensive Code of Conduct to be sent to the Council. Like a Committee Report it will contain section by section analysis with reasoning and justifications for the incorporated best practices.

Chairman Spagnoletti asked if OGE planned to reach out to the Mayor or the Council before presenting a draft to the Board. Director Sobin responded that he would like it to go to the Board first so that OGE could have the Board's input before circulating it outside BEGA. Chairman Spagnoletti thought that was a great idea.

i. 2014 Symposium

UDC School of Law offered to host our next symposium. Director Sobin recommends that we take them up on their offer. They publicize it, get a large crowd, and televise it.

Chairman Spagnoletti said that he thought this was a great idea.

j. Non-Confidential Investigations

i. AI-007-12 – Allen – OAG filed the attachment of wages. Once it comes back from the Clerk's Office (expected any day now), OAG will serve the Office of Pay and Retirement Services. OPRS will then garnish Allen's wages and the checks will be forwarded to us by OAG.

ii. #1087-001 – Moten - - OAG is having more trouble with Moten. No one has a good address for him. He also owes a large amount of money to D.C. in another case, which OAG has not yet been able to collect. Our \$1,000 may not be immediately collectable, per OAG.

iii. #1057-001 – Michael Brown - - Brown's response to the NOV was due on May 5, 2014. (An extension to that date had been granted because his sentence in his criminal case had been moved to April 28, 2014. Recently, we read in the newspaper that his sentence had been postponed again, to today, May 8, 2014. He has neither requested an extension to respond to the NOV, nor has he provided a response.

Our rules state that "[i]f a respondent chooses not to file a response, the Board shall treat such action as a general denial." 3 DCMR 5509.6. Therefore, we recommend that the Ethics Board set a hearing date.

Board Member Lathen asked if Mr. Hicks would have to pay his fine while his matter was on appeal. General Counsel Pittell responded that he would not, because that requirement was not included in the Board Order.

VII. Opportunity for Public Comment

Rodney Powell, a member of the Office of Open Government Advisory Group, made comments to the Board about the Group. He stated that all members of the Group were present or on the phone for the Group's first meeting and that they look forward to hitting the ground running. They hope to address doable matters and matters that are low cost but high impact. He looks forward to providing the Board with updates after the Group's next meeting.

- VIII. Executive Session (non-public) to Discuss Ongoing, Confidential Investigations pursuant to D.C. Official Code § 2-575(b)(14), 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).

The Public Meeting was closed at 2:22 pm.

- IX. Resumption of Public Meeting

The Public Meeting resumed at 2:56 pm.

Director Sobin announced that the Board had approved a Negotiated Disposition for Carl Turpin, an OAG attorney assigned to DCPS. In a matter before the Office of Employee Appeals, Turpin submitted a cut & pasted affidavit. The OEA ALJ did not use the affidavit as part of the decision on the case. The Negotiated Disposition includes a \$500 fine.

- X. Adjournment

The resumed Public Meeting was closed at 2:57 pm.