

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

DRAFT MEETING MINUTES – OCTOBER 1, 2020

The District of Columbia Board of Ethics and Government Accountability held a meeting on October 1, 2020 at 12:00 a.m. The meeting was held remotely via WebEx. The Board’s Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Felice Smith, Melissa Tucker, and Darrin Sobin. These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting.

Members of the public were welcome to attend, and a recording of the meeting is available at: <https://www.youtube.com/watch?v=OO3pA34u0Z8&feature=youtu.be>

Questions about the meeting may be directed to bega@dc.gov

I. Call to Order – 12:00 PM

II. Ascertainment of Quorum

Quorum established.

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously approved the agenda and the September 2020 Meeting Minutes.

IV. Report by the Director of Open Government

Good morning Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, the Director of Open Government. I am pleased to present this report on the activities of the Office of Open Government (“OOG”). Since the last Board meeting, the OOG has continued to fulfill its mission of ensuring that all persons receive full and complete information regarding the affairs of the District government and the actions of those who represent them.

A. Open Meetings Act (“OMA”) and Freedom of Information Act (“FOIA”) Advice

1. Advisory Opinion: I have not issued an advisory opinion since the September Board meeting.

2. Informal OMA/FOIA Advice: OOG continues to experience a high volume of requests for advice and assistance on open government matters since the commencement of the public health emergency on March 16, 2020. Since the last Board meeting, the OOG’s responses for informal and technical FOIA and OMA advice and assistance are as follows:

- The Office responded to 12 requests for FOIA advice;
- The Office responded to 16 requests for OMA advice; and

- The Office responded to 5 requests for technical assistance with open-dc.gov.

B. Training/ Outreach:

1. COVID Best Practices Training. On September 3, 2020, Attorneys Barton and DeBerry, attended the “Transforming the Government Amidst COVID-19 Webinar.” Government leaders discussed the challenges brought forth within their agency since the start of COVID-19. Leaders discussed best practices and hurdles that have developed and how the current circumstances are affecting workplace culture. Agencies are moving toward a more digital future.
2. Advocacy Training: On September 10, 2020, Attorney DeBerry, attended the “Lessons from a Zoom Jury Trial Webinar.” The webinar focused on preparation techniques used to advocate effectively in a virtual forum. Practitioners discussed strategies to employ and pitfalls to avoid.
3. Public Charter School Board Training: On September 16, 2020, I met with representatives from the DC Charter School Alliance; Education Board Partners; and, the DC Public Charter School Board. We met to coordinate plans for educating public charter school boards of trustees and education officials on the new OMA requirements. Starting on October 1, 2020, public charter school board of trustees meetings are subject to the OMA. Our plan is to host a kickoff training and question and answer session and to then offer a series of Office of Open Government sponsored OMA training sessions. The Education Attorney, once hired, will attend the board meetings on an as-needed basis to help get the schools up to speed. Attorney DeBerry will be currently serving in that capacity until the new attorney is hired.
4. OMA Introductory Training for Public Charter School Board of Trustees: On September 22, 2020, the D.C. Public Charter School Board hosted a Zoom Webinar for public charter school boards of trustees and public charter school executive staff. I presented an “Introduction to DC’s Open Meetings Act for Public Charter School Boards of Trustees” and responded to questions. Attorneys Barton and DeBerry were also panelists and answered OMA questions from webinar participants. The training was the first of a series of Open Meetings Act trainings for representatives of the individual DC Public Charter School Board of Trustees. The training was well attended by approximately 60 public charter school board representatives.
5. Ethics Training. On September 22, 2020, Attorney Barton and DeBerry attended, “Ethics and the Government Attorney” webinar. The D.C. Bar CLE sponsored program discussed the rules of professional responsibility and ethical dilemmas government lawyers face in areas that included maintaining confidentiality and determining who is their client.
6. Open Government Coalition Webinar. On September 29, 2020, I was a featured panelist on a webinar presented by the D.C. Open Government Coalition on Public Access to Police Body Worn Camera (“BWC”) Video. In addition to myself, the Panelist included: Honorable Councilmember Charles Allen; Mitch Ryals from

the Washington City Paper (Loose Lips); Douglas Sloan from the NAACP Washington Office; and, Jeff Roberts, the head of the Freedom of Information Coalition in Colorado where the legislature recently broadened access to police information. The moderator was Kevin Goldberg of the D.C. Open Government Coalition.

Panelist answered questions and discussed the issues of releasing BWC footage, while maintaining transparency and protecting privacy concerns. Specific topics included; whether MPD's redactions are cost prohibitive; the timeliness of the release of footage; and whether MPD over-redacts the footage, which allegedly increases costs. The video recording of the webinar will be made available to the public by the D.C. Open Government Coalition soon and we plan to make it available on open-dc.gov.

I would like to publicly thank the Open Government Coalition for hosting this event and for inviting me to speak as a panelist. This is an important and timely topic and I look forward to further discussion regarding body worn cameras and transparency in D.C. policing.

Member Sobin requested that Director Allen provide more details concerning what was discussed during the program. Director Allen provided additional details and mentioned the legislation that she later reported in her report. She provided additional details on the proposed bill and her thoughts on transparency and policing. She also mentioned her testimony on 10/15/2020 and invited the Board to let her know if there are any matters they would like her to discuss specifically with the D.C. Council.

7. Monitoring Public body meetings: OOG continues to play an important role in ensuring that Boards, Commissions, and other public bodies successfully conduct government business remotely. OOG continues to ensure the public's right of access to public meetings by monitoring public body compliance with the OMA as amended by the "Coronavirus Support Congressional Review Emergency Amendment of 2020." We are monitoring public meeting notices to ensure they provide remote meeting access information for the public to observe these meetings. We are also attending meetings remotely to observe meetings as participants.
 8. COVID-19 Emergency Response Meetings: On September 14, 2020 and September 28, 2020, I participated in the COVID-19 Coordination and Support Plan Briefing with the District of Columbia Homeland Security and Emergency Management Agency (HSEMA). The District of Columbia remains in Phase 2 of the reopening plan. The District government is not offering flu shots to its employees, HSEMA has recommended that all District employees and officers get a flu shot this year, due to concerns about the burdens on the District's health care system and other public health concerns.
- C. Litigation and Legislative Update: Police Reform Bill: B23-0882, the "Comprehensive Policing and Justice Reform Amendment Act of 2020" that was introduced on July 31, 2020, has been referred to the Committee on the Judiciary and Public Safety. A hearing on the Bill will occur on October 15, 2020. I will be providing testimony on the Bill, as it concerns government transparency issues. Specifically, it requires the Mayor to publicly release the names and body-worn camera recordings of any officer who committed an

officer-involved death or serious use of force, unless the subject or their next of kin objects to its release. A significant issue is the Mayor's practice of redacting the faces and badge numbers of officers featured in the video footage. Since officers are acting on behalf of the state, it is our position that they do not have a privacy interest that needs protection, so the redactions are unnecessary. The full text of the bill and a bill summary is included in Dropbox.

D. Administrative Matters:

1. **Attorney Positions:** The Office of Open Government will be filling two attorney vacancies in FY21. The positions are an Open Meetings Trial Attorney who will be responsible for OMA enforcement in Superior Court; and, an Education Attorney who will be responsible for advising public charter school boards of trustees and DCPS local school advisory teams. Director Ford and I are working with the Office of the City Administrator to assist with the DC Department of Human Resources (DCHR) provision of Human Resource services, including the hiring of personnel. DCHR is requiring BEGA to pay for its services in FY21, but our budget does not support payment for these services, which DCHR has provided until now. I have requested to the City Administrator that DCHR post our vacancies while we work out the payment issue. We hope to have the matter resolved soon, as we need to commence the hiring process as soon as possible.
2. **FY22 Budget Planning:** BEGA is commencing planning for the FY22 Budget. I will be meeting with Director Ford to plan for our budget submission. Chief among our budget concerns is office space, so we will continue to work with DGS on requesting sufficient funds to effectuate a move to an office space that meets our needs.
3. **Current Office Space:** On September 11, 2020, I met with a representative from the Department of General Services at the Office of Open Government's office space, along with BEGA's Administrative Officer and COVID-19 response coordinator Sandra Peterson. DGS evaluated OOG's space and concluded that the space is sufficient for social distancing requirements. In preparation for Phase 3 of the reopening he recommended that we provide hand sanitizing stations by the printer and in the hearing room.

This concludes the Office of Open Government's October 1, 2020 report.

V. Report by the Director of Government Ethics

Good morning, Chairperson Hutcheson and Members of the Board. My name is Rochelle Ford and I am the Acting Director of Government Ethics. I am pleased to present this report on the activities of the Office of Government Ethics (OGE).

- A. Update on Status of Office of Government Ethics (OGE) Operations: First I will provide a recap of the previous month's activities. Given the COVID-19

emergency, OGE’s staff has continued to investigate pending matters as is feasible given the stay at home orders. These reported statistics do not reflect status changes that we anticipate will occur as a result of actions taken by the Board during today’s meeting.

| OPEN INVESTIGATIONS BY STATUS | |
|--------------------------------------|----|
| Open | 46 |
| Open - Negotiations | 0 |
| Open - Show Cause Hearing | 2 |
| Grand Total | 48 |

| OPEN "UNDOCKETED MATTERS" | |
|----------------------------------|----|
| Grand Total | 0- |

| PENDING/STAYED INVESTIGATIONS BY STATUS | |
|--|----|
| Closed - Pending Collection | 29 |
| Closed - Pending DC Superior Court Case | 0 |
| Stayed - OAG False Claims Act Case | 4 |
| Stayed - OIG Investigation | 7 |
| Stayed - US District Court Case | 0 |
| Grand Total | 40 |

| REGULATORY MATTERS BY STATUS | |
|-------------------------------------|----|
| Closed - Pending Collection | 24 |
| Open | 0 |
| Grand Total | 24 |

| | Current | Last month | August |
|--------------------------------|---------|------------|--------|
| Investigations Currently Open: | 48 | 53 | 50 |
| Investigations Stayed: | 11 | 13 | 13 |

Investigations initiated and closed: The numbers of open investigations reflect 4 investigations opened since the Board last met. OGE’s investigative teams resolved 6 matters since the Board last met.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

During the month of September, OGE attorneys and investigators attended the 2020 Virtual Compliance and Ethics Institute held by the Society of Corporate Compliance and Ethics (SCCE). The conference was comprehensive, spanning 3 days and covering all aspects of ethics, compliance, investigations, and enforcement. This covered domestic and global ethics as well and public and private sector. In addition to the Institute, Attorney Cooks attended OCTO's WebEx Events Training and Attorney Stewart-Mitchell attended Financial Investigations Triage. This conference was attended by private and public sector ethics professionals to discuss and learn about investigative techniques, advice and training, ethics program management, and other best practices or ethics professionals.

Program Specialist Kosick attended 4 trainings: Unpacking Bias, Excel 2019: Creating Macros, Creating and Populating a Database in Access, and Make the time you Need: Getting Organized.

Auditor Tujuba completed the following trainings: Establishing Team Goals and Responsibilities, and Using Feedback Effectively; Gaining a Positive Perspective on Feedback; Strategies for Building a Cohesive Team; and Clarity and Conciseness in Business Writing.

2. Conducted by staff:

Since the last Board meeting, OGE conducted a Monthly Ethics Training in September attended by 209 employees and online ethics training. The numbers from the online ethics training were not available yet and will be reported next month. OGE attorneys gave two ethics trainings to DCPS (439 participants), one to OAH (50 participants) and another to the staff of incoming Councilmember Brooke Pinto.

OGE did not host a brown bag this month in order to gear up for BEGA's 2020 Ethics Week. The title this year is "Ethics and Open Government in a Virtual World." Programs will run the week of October 19-23, 2020. Councilmember Charles Allen has agreed to give the opening remarks. A copy of the final course schedule for the week is included in the DropBox.

C. Advisory Opinions/Advice:

Informal Advice: approximately 46 which is 7 less than the 53 reported at the September meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

OGE did not issue any advisory opinions since the last meeting.

D. Budget

FY21 Budget: OGE is now working to prepare for FY22 budget planning with Director Allen. Also, as we anticipate budget restriction as a result of the global pandemic, OGE has worked with the CFO and will work with OAG to perfect and secure outstanding debts to BEGA.

E. OGE Administrative Matters

Office Status:

OGE's staff continues to work remotely, although some staff members go into the office on an ad hoc basis to handle mail and other matters onsite as needed.

I am pleased to announce that Ashley Cooks has been promoted to Supervisory Attorney Advisor for Advice and Training to reflect her role in substantially expanding and formalizing OGE's education and outreach efforts in accordance with OGE's strategic plan to provide more specialized ethics training in partnership with District agencies, to better train and advise ethics counselors, and to manage the District's learning management system and track ethics trainings.

Like all of three of the staff attorneys at OGE, Attorney Cooks has done an exceptional job at performing her regular duties as well as her assigned specialties and her expertise and knowledge of BEGA's rules is an important asset to the agency. Considering the feedback we have received on the ethics counselor training programs and her expansion of ethics day to a week long program, Supervisory Attorney Cooks is off to a great start.

Her new position description has been added to the DropBox.

F. Financial Disclosure and Lobbyist Registration Programs:

Financial Disclosure – As reported last month, the staff has identified non-filers – designated public filers who received all notices, did not contact OGE for support or assistance, and did not complete the requirement have incurred a \$300 late penalty and still must file their financial disclosure forms. OGE anticipates levying fines on over 100 non-filers. Auditor Tujuba completed the Public Financial Disclosure Statements, conflict of interest audits and an audit of 2nd quarter lobbyist filings and the staff will pursue identified enforcement matters accordingly.

Lobbying Registration and Reporting (LRR) System – 3rd Quarter Lobbyist Reports are due by October 15.

Thank you. This concludes the Office of Government Ethics' October 1, 2020 report.

VI. **Acknowledge of Public Comment** – none submitted as of the meeting.

VII. Executive Session (non public)

VIII. Resumption of Public Meeting

The Board was unable to consider the September 21, 2020 Meeting Minutes, so they will be considered at the November meeting.

IX. Adjournment

The Board will meet again on November 5, 2020.

UNAPPROVED