

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

**MINUTES OF MEETING  
OCTOBER 4, 2018**

The District of Columbia Board of Ethics and Government Accountability held a meeting on Thursday, October 4, 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 Shomari Wade and Darrin Sobin.

The full discussion and the meeting is on audio file, and may be found at: <https://www.open-dc.gov/meeting/board-ethics-and-government-accountability-monthly-meeting-5>

**MEETING MINUTES**

- 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 adopt the meeting agenda. The Board approve the following meeting minutes.
  - 1. September 6, 2018 Meeting

**IV. REPORT BY THE DIRECTOR OF OPEN GOVERNMENT**

- A. Open Meetings Act (OMA) and Freedom of Information Act (FOIA) Advice:
  - 1. Resolution of OMA Complaint  
On October 3, 2018, the OOG issued Dismissal number OOG-0003\_9.24.18, which dismisses an Open Meetings Act (OMA) complaint against the Commission on the Selection and Tenure of Administrative Law Judges (COST). The complainant requested that the OOG provide the following relief: (1) nullify the COST's hearing, which the complainant contends was improperly conducted; and (2) order the COST to comply with the complainant's FOIA request. The OOG denied the complainant's first request because the request to nullify the COST's hearing is tantamount to granting the complainant with a private right of action under the OMA, which is improper. The complainant's second request was denied because it exceeds the OOG's statutory authority.
  - 2. Informal OMA/FOIA Advice  
Since the September Board meeting, the OOG responses for informal and technical advice regarding the OMA and FOIA are as follows:  
The OOG provided twelve (12) substantive responses to requests for FOIA advice and five (5) substantive responses for OMA advice.  
The OOG provided five (5) responses to OMA requests for technical assistance.

## B. Trainings:

1. On September 7, 2018 to September 9, 2018, Director Niquelle Allen attended the National Association of Parliamentarians conference in Buffalo, NY. The training focused on Parliamentary Procedure and included a training session on Open Meeting laws.
2. On September 10, 2018 to September 11, 2018, Application Engineer Waddah Kittab attended the Development Security Conference in Boston, MA. The conference focused on the role of cybersecurity in the development of information technology (IT) operations. On
3. On September 21, 2018, Director Niquelle Allen and OOG Attorney Advisor Johnnie Barton attended the D.C. Bar's training on "More Effective Writing Makes More Effective Lawyers." The training focused on legal drafting techniques.
4. On September 26, 2018, the OOG conducted a FOIA training for approximately 45 employees of the Department of Insurance, Security and Banking. This training was titled "The 'ABC's' of FOIA." This new FOIA presentation was also published on open-dc.gov.

## C. Special Projects

1. On September 18, 2018, the OOG Director met with the Office of Cable Television, Film, Music, and Entertainment (OCTFME) to discuss the production of a training video for the OOG similar to the training video currently utilized by the Office of Government Ethics. The budget discussed for the video is in line with the OGE video. We are seeking to produce seven vignettes on OMA to be incorporated into future training sessions. We also discussed filming a narrative that would become a full-length training video. The next step is negotiating a Memorandum of Understanding with OCTFME for the training.
2. On September 21, 2018, the OOG Director met with the DC Bar to discuss participation in BETA testing for the DC Bar's production unit. The DC Bar would produce videos in its production studios and OOG would test the DC Bar's production offering and provide feedback so that the DC Bar can refine its production offering. The OOG Director is a member of the DC Bar.

## D. Outreach Activity

1. Mayor's Office of Legal Counsel (MOLC): On September 20, 2018, the OOG Director met with Ron Ross and Melissa Tucker of the MOLC. The primary topic of discussion was FOIA. We discussed FOIA training and the OOG's role in advising agencies in the appeal process. The MOLC expressed a need to remain impartial during the appeals process and will forward requests for legal advice, regarding FOIA appeals, to the OOG.
2. DC Open Government Coalition: On September 20, 2018, the OOG Director presented at the DC Open Government Coalition meeting. The Director discussed the vision for the OOG in the future and the OOG's plan to increase training and public outreach regarding FOIA and the OMA. The Director also received questions from the DCOGC members. Of note, former OOG Director, Traci Hughes, was present at the meeting and is serving as the DCOGC Vice-President.

## E. Legislation

1. The D.C. Council Committee on Health is considering the "Preservation of Electronic Recordings of Meetings Amendment Act of 2018". This bill would amend the Open Meetings Act to require the preservation of recorded meetings for five years.

2. The OOG received an inquiry concerning a legislative adjustment to the law concerning closed meetings. The inquiry concerned amending the Open Meetings Act to permit public bodies to enter into a closed session without first voting to close the meeting in open session. The OOG advised that in Maryland, a public body may close part an open meeting to hold a closed session and may meet entirely in closed session.

F. Rulemakings

The Office of Open Government is working on new and revised regulations given the recent changes in the law. As you know, the new law that permits the Board to review certain Advisory Opinions issued by the OOG. We have drafted a new set of regulations that sets forth the procedure for reviewing Advisory Opinions for your input. This is a working draft. The OOG will continue the drafting process and update the Board as we complete the project. This concludes the OOG Director’s report for October 4, 2018.

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 reported statistics may not reflect matters that we are waiting to enter into the new case management system.

	Current	Last month	June 2018
Investigations Opened:	0	4	3
Investigations Closed:	4	4	3
Investigations Currently Open:	35	39	41
Investigations Stayed (Inactive):	10	8	8

<b>Stayed (Inactive) Cases</b>		
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
<b>Total Stayed Cases</b>	<b>10</b>	

- b. Publication and Reporting Obligations

We are in the process of preparing the Quarterly Complaint Report for the last quarter of FY 18.

- c. Trainings/Outreach –

- i. Attended by staff – This has been a productive month for staff development. Attorney Advisor Ashley Cooks attended a program offered by the National Criminal Justice Training Center of Fox Valley Technical College entitled “Strategies for Instructional Excellence.” Our Auditor

Ishmael Okai took a course on Common Investigative Techniques. Attorneys Stewart-Mitchell, Cooks and King attended an intensive two-day training program on Investigative Questioning Techniques that was offered by the National Institute for Trial Advocacy (NITA). Attorney Cooks attended FOIAXpress training. Most of the staff attended Mandatory Case Management System Training for the new system. Finally, I completed three courses offered by OCP, including a course on preparing Statements of Work, and the two-day program required to become a certified OCP Contract Administrator, which will allow me to serve as the CA for our case management system contract with WingSwept.

ii. Conducted by staff –

Since the date of the last meeting, we conducted or participated in 12 trainings, double the 6 reported at the last meeting. The trainings consisted of 3 new employee orientations, our Monthly Ethics Training, a Hatch Act training held at DGS two trainings at the Office of Risk Management, one for the Public Charter School Board, one at the Office of Administrative Hearings, one at the Office of Cable Television, Film, Music & Entertainment, and two DC One Fund trainings.

2018 Ethics Day- 2018 Ethics Day will be held on October 4th, following this 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 accountholders 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 originally had planned to relaunch OGE's monthly newsletter at some point in September, and our new attorney, Sonya King, is still leading that effort. However, we temporarily had to put the newsletter project on the backburner because I drafted Sonya to work with me on the implementation of our new case management system, which had a hard-stop deadline of September 30. Having completed that project, Sonya should have sufficient bandwidth available in October to get the newsletter back in circulation.

d. Advisory Opinions/Advice –

Informal Advice: approximately 60, which is higher than the 46 reported at the last meeting.

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

e. Ethics Legislation/Comprehensive Code of Conduct

We have no new legislative developments to report at this time.

f. Rulemaking

As we informed the Board at our last meeting, we have been contemplating rules to further flesh out the procedures and standards to be applied to both FDS and Lobbyist waivers and appeals, and to ensure that our lobbying rules are consistent with the changes the Council made in the recent Budget Support Act. We have a draft prepared, but are not proposing that the Board adopt the proposed rules at this time.

g. Budget:

Waddah, Sonya and I worked with a team from CMTS and successfully completed the implementation process for our new case management system, which went live and was operational last Friday, September 28. Waddah, Brian and I are collaborating to put the finishing touches on the data migration project to ensure that the data stored in ProLaw is successfully uploaded into the new system. Waddah has been painstakingly mapping fields from the old ProLaw database to newly-created ones in CMTS, and we anticipate completing the migration

Other than that, we were able to complete the bulk of our remaining planned FY18 acquisitions within our allocated budgetary funding, including the acquisition of four more new laptops and docking stations as well as a new network color printer, copier and scanner. However, we were unable to replace any of the Board's videoconferencing equipment primarily due to time constraints.

h. Staffing –

We have two permanent positions that are currently vacant: The third Investigator position and our Compliance Specialist position. The Investigator position has closed, and once DCHR finishes evaluating the qualifications of the 94 people who applied for the position, we will convene an interview panel to schedule and conduct interviews of the most qualified candidates. The Compliance Specialist vacancy was posted on September 25 for a period of ten days, and when I last looked in the system on Monday, we had already received over 40 applications for that position, many of whom appeared to be highly qualified.

i. Litigation

Status of pending cases.

- Gerren Price – (CA No. 16-AA-1230), No change since the last meeting. The most recent docket entry reflects that a calendar notice was sent but does not indicate the date of oral arguments.

- Edwin Edokwe – (2016 CA 007889 P(MPA), FDS Designation appeal. This appeal was dismissed by Judge Holeman whose written decision was issued on August 14. We have to determine our next steps on this matter and that of another employee who appealed her designation as a public filer and lost. Neither employee has filed an FDS or paid the required fine.

- 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 filed a summary judgment motion in the case. Mr. Hicks has until October 9, 2018 to file an opposition to the OAG motion.

- 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. Both the District and Mr. French have been provided with briefing dates.

- J. Dillion vs. BEGA, OEA Matter No. J-0030-18. This matter has been settled.

j. Lobbyist/Financial Disclosure Matters

There are currently 204 (this number may change before Thursday) FDS non-filers remaining, 57 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. The ANCs were not included in the list we submitted to the DC Register. We sent the first round of PFDS fine letters on September 21, 2018. A number of non-filers have contacted our office to request that their fine be waived.

k. Financial Disclosure Waiver Requests –

Pursuant to D.C. Official Code § 1-1162.21(a)(3) anyone adversely affected by a civil penalty imposed under Section 221 of the Ethics Act may appeal said penalty to the Ethics Board.

- i. Tekia Stokes – Ms. Stokes appeals her fine because she felt that the filing instructions were unclear and because she felt she no longer had to file after she separated from District employment. After a review of our records, it appears that Ms. Stokes filed her FDS statements in a timely manner in previous years when she was employed by the District, which lends credence to her claims. Accordingly, OGE does not oppose this request. Board member Wade recused himself from voting on this matter by leaving the room. Chairperson Collier and Board member Sobin granted the waiver request.
- ii. Alicia Lewis – Ms. Lewis appeals her fine due to financial hardship; she admits to ignoring our filing notifications and claims that she assumed that she did not need to file as she had separated from District employment. Although we are sympathetic to Ms. Lewis’ situation and were inclined to abstain from opposing it, unlike the others on this list who filed their FDS statements contemporaneously with their penalty waiver requests, she still has not brought herself into FDS filing compliance. Accordingly, OGE opposes this request. The Board unanimously voted to table this matter until the next meeting to give Ms. Lewis time to file.
- iii. Dr. Cheryl Pearson-Fields aka Dr. Amari Sokoya Pearson-Fields – Dr. Pearson-Fields appeals her fine due to financial hardship and because she claims her email address did not work when she attempted to file the form. After taking her arguments into consideration, OGE does not believe a penalty waiver is warranted and opposes this request. The Board unanimously voted to deny the waiver request.
- iv. Vonda Orders – Ms. Orders appeals her fine because she separated from District employment in February and claims that she did not receive any of OGE’s written notices except the fine notice. After a review of our records, it appears that Ms. Orders regularly filed her FDS statements in a timely manner in previous years when she was employed by the District, which lends credence to her claims. Accordingly, OGE does not oppose this request. The Board unanimously voted to grant the waiver request.
- v. Klara Baryshev – Ms. Baryshev appeals her fine because she claims she did not receive any of OGE’s written notices except the fine notice and she didn’t complete the form because she did not know how to do so. After a review of our records, it appears that Ms. Baryshev regularly filed her FDS statements in a timely manner in previous years when she was employed by the District, which lends credence to her claims.

Accordingly, OGE does not oppose this request. The Board unanimously voted to grant the waiver request.

a. Lobbyists

Lobbyist Program:

1. Testing out the new electronic framework for the Lobbyist program. OCTO has conducted four beta testing sessions on the new system that has been tentatively named the Lobbyist Registration and Reporting (LLR) System, utilizing the services of a group of Lobbyists who volunteered to participate in the development process. I also attended one of those sessions on September 27. Mark McDermott from OCTO indicated he would send me a summary of the feedback they received from the beta testers so that we could incorporate it into our development efforts.
2. Ishmael is working on sending out enforcement letters to lobbyists who failed to register and/or file LARs.
3. We have to identify staff to prepare 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.” At the Board’s last meeting, you stayed this matter until the next meeting and asked us to solicit additional information from the Lobbyist before ruling on its waiver request. One of the last things she did before departing our office, our Compliance Specialist Nikaela Redd prepared a letter to be sent to the Lobbyist under my signature requesting that information. I will review the letter and send it out next week upon my return from vacation, and we will share whatever information the Lobbyist provides us at the Board’s next meeting. We are therefore asking the Board to continue this matter until the next meeting.
5. Inquiry Letters have been sent to two entities concerning allegations of unregistered lobbying activity.

Non-profits

We have received \$6,400 owed to us by nonprofit organizations who did not qualify for the \$200 credit. We sent second notices to the remaining organizations on October 3, again requesting that they remit payment of the balance owed for their true registration fees.

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 took 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*: R. 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 and a payment plan. We advised Ms. Wilson that we would grant her a payment plan by way of a negotiated disposition. You may recall, OGE offered Ms. Wilson a Negotiated Disposition during her initial interview on November 30, 2017; she declined the offer in December of that same year.
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 are proposing a Negotiated Disposition to resolve this matter.
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 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 still reviewing their findings and recommendations that they submitted to me yesterday.
4. #1101-003, *In re*: J. 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.

#1706-001 *In re*: R. 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. We are proposing a Negotiated Disposition in this matter.

- VI. Opportunity for Public Comment- Michael Sindrum provided 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 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
  - k. The Board approved the following negotiated dispositions:
    - 1. #1398-001 In re C. Snowden
    - 2. #1706-001 In re R. Lewis
- IX. Adjournment – Next Board meeting November 1, 2018.