

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

DRAFT MEETING MINUTES – NOVEMBER 3, 2022

The District of Columbia Board of Ethics and Government Accountability held a meeting on November 3, 2022, at 12:00 p.m. The meeting was held remotely via WebEx. The Board’s Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Felice Smith, and Darren Sobin. These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting. Questions about the meeting may be directed to bega@dc.gov.

Members of the public were welcome to attend, and a recording of the meeting will be made available on open-dc.gov and BEGA’s YouTube channel.

I. Call to Order

The meeting was called to order at 12:01 pm.

II. Ascertainment of Quorum

Chairperson Hutcheson and Board Members Nottingham, Smith, and Sobin were present and constitute a quorum for the meeting.

III. Adoption of the Agenda/Approval of Minutes

The Board voted unanimously to adopt the agenda and approve the minutes from the October 6, 2022, meeting.

IV. Report by the Director of Open Government

Good afternoon, Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, 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, OOG has continued to fulfill its mission of ensuring that all persons receive full and complete information regarding the affairs of the District of Columbia government and the actions of those who represent them.

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

1. Advisory Opinions

On October 12, 2022, I issued #OOG-2022-0008-M Resolution of Complaint ANC, dismissing an OMA complaint filed against an Advisory Neighborhood Commission. As the Board knows, D.C. Official Code § 2-574(3)(F) excludes ANCs from the definition of public bodies and the OMA’s statutory meeting requirements. The complainant was informed that the Advisory Neighborhood Councils Act of 1975 (D.C. Official Code § 1-309.01 *et seq.*) governs ANC

meetings and to advise the Office of Advisory Neighborhood Commissions of the issue.

2. Informal OMA/FOIA Advice

Since the last Board meeting, OOG has responded informally, via e-mail or telephone, to requests for assistance as follows:

OOG responded to twenty-four (24) requests for OMA advice.

OOG responded to seventeen (17) requests for FOIA advice; and

OOG responded to thirty-seven (37) requests for technical assistance with open-dc.gov.

B. Remote Meeting Monitoring

OOG attorneys attend remote public meetings to ensure compliance with the OMA. During this process, they also inspect public body websites and the OOG's central meeting calendar for public meeting notices and records. We provide legal advice on OMA compliance and take corrective action if necessary.

During October 2022, OOG attended sixteen (16) remote public body meetings. As a result of the monitoring, a Notice of Infraction was issued to the chair of a public body for habitual non-compliance. Eleven (11) separate instances of written corrective measures were taken, regarding:

1. Public meeting notices that lacked planned agendas, instructions for the public to attend remote meetings; and the absence of meeting records that should have been on the public body's website or the central meeting calendar. The OMA requires the timely posting of these items. D.C. Official Code §§ 2-576; 2-577; 2-578.
2. Agendas that omitted the notice required by 3 DCMR § 10409.2, “[T]his meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.”

C. Training/Outreach

1. Practicing Law Institute Pretrial Practice Course

On October 4, 2022, Trial Attorney Weil, completed “Pretrial Practice 2022”, the training included a review of procedures and strategies on pleadings, motions to dismiss, discovery, *Daubert* motions, summary judgment, and settlements.

2. BEGA 2022 Ethics Week: “Ethics in Practice”

During Ethics Week, which was held virtually on October 11-14, 2022, the OOG staff attended all sessions or multiple sessions of BEGA's “Ethics in Practice” Program. Each session covered best practices for compliance with

ethics laws and other insightful information. OOG also presented seminars on open government and FOIA. IT Specialist, Kevon Bridges, provided technical support and assistance throughout the training program. I, along with OOG's legal staff, attended the government ethics webinars to meet our annual ethics training obligations.

3. BEGA 2022 Ethics Week: OOG's FOIA Training

On October 13, 2022, I provided Ethics Week attendees with an overview of the Office of Open Government, the services OOG provides, and the importance of government transparency. I presented "FOIA Litigation: FOIA Appeals, Affidavits and Cases," a webinar for District FOIA Officers. The purpose of this webinar was to prepare D.C. FOIA Officers for the FOIA Appeals process when the appeal is a civil action in D.C. Superior Court. Topics included: the District's FOIA Appeals process; how to prepare for potential FOIA litigation; how to prepare a Vaughn Index; and current FOIA cases. Attorney DeBerry assisted with the presentation. The presentation was well attended, and attendees were able to ask questions during the presentation via the chat feature. OOG's legal staff were in attendance.

4. Ethics Week 2022: "Best Practices for OMA Compliance" Training

On October 13, 2022, Chief Counsel Barton presented, "Best Practices for OMA Compliance" webinar. This course was tailored to address the issues that Administrative Contacts for Boards and Commission face when ensuring public body meetings are held in adherence to the OMA. The training included practical advice for ensuring OMA compliance based upon OOG's experience with public bodies that face compliance issues. The training was well received by the attendees. I, along with the OOG legal staff, were in attendance.

5. Ethics Week 2022: Parliamentary Procedure Training

On October 13, 2022, Susan Leahy, creator of Robert's Rules Made Simple, presented a webinar on the rules of parliamentary procedure. The course provided information on the basics of using Robert's Rules of Order to hold orderly, efficient meetings. The course provided instruction on using motions and general group dynamics. Trial Attorney Nicholas Weil, OOG's parliamentary law expert, assisted with the presentation. I, along with OOG's legal staff attended the webinar.

6. 21st Annual Compliance and Ethics Institute

I attended the Society of Corporate Compliance and Ethics' 21st Annual Compliance and Ethics Institute from Monday, October 17, 2022, to Wednesday, October 19, 2022. The Compliance Institute provided seven (7) hour-long courses per day. Courses on my itinerary included webinars that covered privacy issues, leadership, investigations, education programs, and budget. Key courses I attended that are directly related to open government included: "We're Still Talking About Social Media Risk: What's Old Is New Again;" "Can the US

Operate With 50+ Sets of Privacy Rules”; and “Best Practices for Developing an Enterprise-Wide Approach to Data Security & Privacy Compliance.”

7. National Institute of Trial Advocacy (“NITA”) Deposition Training

On October 19-21, 2022, Chief Counsel Barton attended NITA’s 3-day online Deposition Training. The attendees actively participated in each stage of the deposition process and received individual critiques from the skilled faculty presenters.

8. Office of Administrative Hearings (“OAH”) FOIA training.

On October 19, 2022, Trial Attorney Weil presented FOIA training to the OAH Office of General Counsel and staff members. The training covered the basics of D.C. FOIA and the obligations of government employees when an agency receives a FOIA request. He also provided instruction on the use of FOIA exemptions.

9. FOIA Officer Training: “Nuts and Bolts of FOIA”

On October 28, 2022, Chief Counsel Barton presented a FOIA training for District Agency FOIA Officers. The training, “Nuts and Bolts of FOIA” consisted of interactive questions and instruction. Participants engaged with the facilitator through questions and answers, and exercises that illustrated common FOIA issues. I, along with Attorney Weil and Paralegal Specialist Brown were in attendance. 28 FOIA Officers attended the training. This was the last course in OOG’s FOIA Training Program. We are planning to formalize this training program and offer it to new and veteran FOIA Officers several times a year.

10. Mayor Bowser’s Cabinet Meeting and Ethics Training

On November 2, 2022, I attended the Mayor’s Cabinet meeting where she provided Ethics Training for over 300 D.C. government leaders. OGE Director Ashley Cooks facilitated the training and responded to participants ethics questions. Mayor Bowser stressed her commitment to an ethical government that adheres to the ethics rules, which she sponsored as a member of the Council of the District of Columbia (“D.C. Council”).

C. Litigation and Legislative Update

1. Litigation

a. *Shilling v. Speaker of the U.S. House of Representatives, Nancy Pelosi, et al.*, (Case No. 1:22-cv-162 (TNM))

The U.S. District Court for the District of Columbia’s, October 3, 2022, opinion disposed a suit by radio host Robert Schilling against the U.S. House

of Representatives, Speaker Pelosi, the Oversight & Reform Committee, the Clerk, and the Chief Administrative Officer.

Acknowledging that the federal Freedom of Information law does not apply to Congress (e.g., 5 U.S.C. § 551(1)(A)), Mr. Schilling still sued for the House officials' non-disclosure of records (if any existed), asserting a "common law right of public access." Judge McFadden dismissed the complaint, holding that any common law right of access to government records (which, in any case, is recognized only in dicta) would be superseded by the Speech or Debate language of the U.S. Constitution, Art. I, § 6, cl. 1.

Judge McFadden's opinion is in the Dropbox.

- b. Terris, Pravlik & Millian, LLP ("TPM") lawsuit re: preliminary budget requests (21-CV-0543 (D.C. Ct. App.); 2020 CA 003087 B (Super. Ct.))

As I have reported, TPM sued the District under D.C. FOIA, alleging that the District of Columbia failed to produce and post various online Office of the State Superintendent of Education and District of Columbia Public Schools budget-related documents.

The D.C. Court of Appeals heard an oral argument on September 28, 2022, and disposition is pending. Both parties filed supplemental letters (citing Rule 28(k)) about an Office of Legal Counsel (U.S. D.O.J.) opinion that was mentioned in the oral argument about the separation of powers.

Those supplemental letters are in the Dropbox (but the cited opinion does not directly address FOIA law).

- c. Washington Post lawsuit re: records arising out of Capitol insurrection (2021 CA 002114 B (Super. Ct.))

As I have reported, The Washington Post ("Post") has sued the District of Columbia, seeking certain records relating to the Capitol insurrection. The Superior Court dismissed, in part, The Post's claim concerning Mayor Bowser's e-mail messages, but other claims remain contested, including over the Mayor Bowser's WhatsApp messages.

By consent of the parties, the dispositive motions deadline was extended to November 7, 2022, and the parties are set for mediation on December 29, 2022. Judge Scott's scheduling order is in the Dropbox.

- d. Campaign Legal Ctr. v. DOJ re: records surrounding citizenship question on 2020 Census (1:18-cv-01771-TSC (D.D.C.))

I have reported on the appellate decision in this case, which arose out of a 2017 correspondence between the U.S. Department of Justice ("DOJ") and the Census Bureau (the "Gary Letter") to enable Commerce Secretary Wilbur Ross to add an item to the 2020 Census questionnaire to ask respondents about

their citizenship status.

The U.S. Court of Appeals concluded that, despite the Gary Letter being sent *after* the Attorney General's first mention of the citizenship question, the language of the Gary Letter itself was crafted to "protect [DOJ]'s litigation and policy interests," so the Gary Letter was *itself* a final document, representing a substantive policy judgment so that its drafts qualified for withholding under federal Exemption 5. However, the Court remanded for further consideration of the withholding of five e-mails that may have been sent *after* the Gary Letter was transmitted.

Since the appellate opinion, the requester-plaintiff, Campaign Legal Center ("CLC"), filed its renewed motion for summary judgment on remand. CLC argues: "The remaining documents . . . are not subject to the deliberative process privilege at all because they postdate the agency decision at issue, and therefore are neither pre-decisional nor deliberative. The documents at issue were drafted after a final agency decision had been reached and simply reflect a predetermined rationale and borrowed work product. . . [E]ven if th[e District] Court were to find the material to be pre-decisional and deliberative, the documents should still be released because DOJ has not specifically articulated how the withheld information could result in any foreseeable harm"

DOJ's response was due on October 30, 2022. CLC's reply is due on November 30, 2022. The available documents, including an update to the docket sheet and the scheduling order, are in the Dropbox.

e. Chicago Justice Project lawsuit re: Metropolitan Police Department ("MPD") gang database records (Super. Ct. Case No. 2022 CA 001175 B)

On March 15, 2022, the Chicago Justice Project ("CJP") sued the District of Columbia to compel the release of records from a MPD database associating individuals with specific gangs or crews, including information about individuals (e.g., race, age, gender, criteria for inclusion in the database, and associated criminal activity), and the identities and titles of those authorized "to input, alter, update, or make changes to data." (Compl. Ex. B.)

On November 23, 2022, MPD denied the request because (1) fulfilling the request would take "more than 8 hours of personnel time to reprogram or reformat records" cf. D.C. Official Code § 2-532(f)(1) (D.C. FOIA section 202(f)(1) (defining "[r]easonable efforts")), and (2) D.C. FOIA "does not require agencies to do research, analyze data, answer written questions, or create records." (Compl. Ex. E.) However, MPD followed up on November 30, 2022, with limited responses.

After considering the parties' cross-motions for summary judgment, Judge Dayson, on September 21, 2022, granted, in part and denied, in part, each side's motion. Specifically, the court found that "the District has failed to comply with FOIA for Request C2 [(Records sufficient to show each . . .

entity . . . that . . . has access to the data . . . detailed in Request A 1')] but" the District was not required "to create new documents in response to Request C6 [('Please provide Records sufficient to show the number of searches that each . . . entity detailed in Request C 2 has conducted in each Database. Please provide the information broken down by year for each year the Database has been maintained.').]" The court is "reserv[ing] judgment as to whether the District of Columbia must produce a [Vaughn] Index as to redactions in [Request H1(d) () related to individuals' appearance and activity ()]."

There remain unresolved issues concerning redactions on request #H1(d), though the court's disposition is expected to be filed this week. I will include an update on the redaction issue in my December report to the Board.

The complaint and its attached exhibits, the court's summary-judgment order, and the parties' joint status report are in the Dropbox.

OOG staff will continue to monitor court activity.

2. Legislation

a. Post-Public Health Emergency Protections Extension Emergency and Temporary Amendment Acts of 2022

On October 17, 2022, the Mayor approved D.C. Act 24-0564, the "Post-Public Health Emergency Protections Extension Emergency Amendment Act of 2022." As I have reported, section 5 extends the pandemic-enacted remote option for meetings of public bodies to be deemed open if the public body takes "steps . . . reasonably calculated to allow the public to view or hear the meeting while the meeting is taking place, or, if doing so is not technologically feasible, as soon thereafter as reasonably practicable." Also, public bodies' requirement to post *physical* meeting notices continues to be suspended.

On October 31, 2022, the Mayor signed companion temporary measure (Bill 24-0976), and it was enacted as A24-0615. The measure must now undergo a 30-day Congressional review.

b. Board of Ethics and Government Accountability Delinquent Debt Recovery Amendment Act of 2022 (Bill 24-0706)

On October 31, 2022, the Mayor signed the bill, and it was enacted as A 24-0620. The measure must now undergo a 30-day Congressional review.

c. Advisory Neighborhood Commissions Pandemic Provisions Extension Second Emergency, and Temporary Amendment Acts of 2022 (B24-1079) / Temporary Act (B24-1082)

On November 1, 2022, the D.C. Council passed as emergency legislation (B24-1079) to extend the provisions of D.C. Law 24-108, the "Advisory Neighborhood Commissions Pandemic Provisions Extension Temporary

Amendment Act of 2022,” which expires on November 19, 2022. The Emergency Act amends the Advisory Neighborhood Commissions Act of 1975 to remain in effect pandemic related provisions. These include election procedures to fill vacancies on Advisory Neighborhood Commissions and for Advisory Neighborhood Commissions to conduct remote meetings. The companion temporary measure, B24-1082, passed on first reading.

d. Executive Director of the Office of Advisory Neighborhood Commissions Kent Boese Appointment Resolution of 2022 (R 24-0663)

On November 1, 2022, the Council adopted Resolution Number R-24-0663, which names Kent Boese as the permanent Executive Director of the Office of Advisory Neighborhood Commissions (OANC). Mr. Boese will replace the Interim Executive Director, Schannette Grant. Executive Director Boese is currently an ANC Commissioner in Ward 1 (ANC 1A).

e. Other Legislative Activity

Uniform Law Commission update: Redaction of Personal Information from Public Records.

The Uniform Law Commission has designated a study committee to evaluate "the need for and feasibility of a uniform or model law concerning the redaction of personal information, particularly with respect to judges and other public officials, from . . . public records in order to address safety concerns." This project is in its earliest stage of a multi-year path to adoption, but OOG will monitor any meetings or work product of the study committee.

D. Administrative Matters

1. FY22 Performance Evaluations and Agency Reorganization

OOG has completed the FY22 Performance Evaluation of its staff members. As a result of his outstanding performance in FY22, BEGA provided a performance award to Trial Attorney Nick Weil. Also, with the completion of the FY22 Performance Evaluation, IT Specialist, Kevon Bridges, has aligned with BEGA's new Administrative Division, which is led by BEGA's Chief of Staff, Christina Mitchell.

2. OOG Attorney Advisor Vacancy

OOG will be listing its vacant Attorney Advisor position with the Department of Human Resources ("DCHR") next week. DCHR will be accepting applications for the position for 30 days. We look to have the position filled by the end of the calendar year.

3. BEGA Website Redesign

I attended meetings with OCTO, along with other agency leaders and the IT Specialist on October 6, October 7, and October 25. We have viewed the mock-up of the website and are refining the final product, which will reimagine bega.dc.gov as a modernized, user-friendly, electronic space and information tool.

4. Parliamentary Procedure Portal

On November 11, 2022, I met with vendor Susan Leahy regarding the Parliamentary Procedure Portal. The vendor is updating it to provide greater functionality and more accurate analytics. We are also working with the vendor to offer a Certificate of Completion for the users that go through all of the content on the platform. The portal, which has been functional since September 2021, has about 300 registered users.

5. FY24 Budget Formulation

BEGA is currently working on its FY24 budget. I along with other BEGA leaders and the Administrative Officer met with the Office of the Chief Financial Officer to plan for the future budget and request enhancements based on financial projections and program needs. I, along with Director Cooks and Chief of Staff Mitchell meet with the Executive (Office of the City Administrator) regarding our budget proposal on November 17, 2022.

This concludes the Office of Open Government's November 3, 2022, report.

Board Member Nottingham requested additional information on the notice of infraction issued to the public body mentioned at the beginning of the presentation. Director Allen noted that notice was issued after repeated infractions to alert the public body that it could face additional remedies continued to fail to comply with the OMA and that the next step would be for OOG to seek a remedy for violations of the OMA in Superior Court. Board Member Sobin stated that he thought the work by OOG in monitoring meetings was a good use of resources to assist the public bodies with compliance with the OMA prior to taking punitive action.

V. Report by the Director of Government Ethics

Good afternoon, Chairperson Hutcheson and Members of the Board. I am Ashley Cooks, the 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 OGE Operations

The information reported today regarding OGE's cases will not reflect any status changes that may occur as a result of actions taken by the Board during today's meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	56
Open - Negotiations	1
Open - Show Cause Hearing	0
Grand Total	57

OPEN "UNDOCKETED MATTERS"	
Grand Total	2

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	27
Stayed - Pending DC Superior Court Case	4
Stayed - OAG False Claims Act Case	6
Stayed - OIG Investigation	5
Stayed - US District Court Case	1
Grand Total	43

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	30
Open	3
Grand Total	33

	Current	Last month	September
Investigations Currently	57	44	48
Investigations Stayed	16	16	16

The number of open preliminary and formal investigations includes 15 new matters. The investigative team resolved 2 investigations since the Board last met. This total does not reflect the number of complaints that were dismissed for a lack of jurisdiction. The Quarterly Complaint Report for the fourth quarter of Fiscal Year 2022 has been posted online and a copy was placed in the drop box for your review.

B. Trainings/Outreach

1. Professional Development Trainings Attended by staff

During the month of October, OGE’s Legal Staff, Investigator Cook, and I attended the 2022 Society of Corporate Compliance and Ethics (SCCE) 21st Annual Compliance & Ethics Institute. Some attended in person in Arizona and others virtually from here. The Institute ran Sunday through Wednesday, October 16th through the 19th. Some of the most relevant and interesting sessions were:

A Risk-Based Approach to Compliance Hotline Cases; Implementing Ethical and Effective Culture Change: Case Studies on Sustainable Culture Change; Government Expectations of Investigations; A comparative analysis of Internal

Investigations and Ethics Consultations; Conducting Joint Investigations with External Partners; Managing the Ethics & Compliance Function in a Hybrid Environment; Conducting Ethical Compliance Investigations; and Designing Compliance Programs Which Are Based on Outcomes, Rather Than Process.

BEGA employees who will travel to attend trainings and conferences will complete the Travel Approval and Reimbursement training through District Integrated Financial System (DIFS). This is the District's new integrated financial system that I reported on last month. OGE attorneys and investigators are taking this training in anticipation of 44th Annual Conference of the Council on Governmental Ethics Laws (COGEL) in Montreal, Canada next month, December 4th through the 7th.

OGE employees Program Specialist Kosick and Auditor Tujuba completed the mandatory DC Government Cybersecurity Training course. All employees must complete this course by the end of the calendar year. Program Specialist Kosick is also working on completing Project Management and Data Analytics courses. Auditor Tujuba took the following trainings: Leading in a Hybrid Workplace, Planning an Effective Performance Appraisal, Developing a Successful Team, and Being a Fair and Caring Manager.

Investigator Ileana Corrales attended a two-day course titled Management & Leadership Skills for First-Time Supervisors & Managers. In addition to the SCCE conference, Senior Attorney Advisor Lynn Tran attended Advanced Compliance and Ethics Workshop 2022.

2. Conducted by staff

Since the October Board meeting, OGE conducted 6 trainings: the October Boards & Commissions training, November Hatch Act Training, our final Hatch Act Training of the 2022 election season, two ethics trainings for D.C. Fire and Emergency Medical Services, a training on Seeking or Negotiating for Employment for EOM, and the October Brown Bag session.

Earlier this week, General Counsel Rashee Raj led our Monthly Ethics Counselor Brown Bag session titled “Ethics Scary Stories – true tales that make Ethics Counselors’ blood run cold”. Using the Halloween theme, GC Raj and OGE attorneys told “scary” ethics stories paraphrased from some of the recent negotiated dispositions. 33 Ethics Counselors attended and enjoyed hearing the updates. Our next Brown Bag session will take place on Monday, November 28, on the favorite annual holiday topic: Gifts.

During October, 37 employees completed online ethics training via PeopleSoft. In April 2022, OGE went live with the Learning Management System (LMS). The system enhances the training outreach of OGE and equips employees with the tools and information necessary to be ethical. Since going live, 350 employees have completed 710 learning modules, which is a 7% increase from previous reporting. Supervisory Attorney Stewart-Mitchell, Program Specialist Kosick, and I met with

our LRN program manager to discuss ways to increase employee registration.

3. Outreach

OGE issued its November 2022 Newsletter, “Ethically Speaking” on November 1st. This issue features a reminder about the Local Hatch Act restrictions, most recent negotiated dispositions, upcoming events, U.S. OGE’s 2021 Conflict of Interest Prosecution Survey, ethics prosecutions in other jurisdictions, and advice on dealing with stress. The newsletter is posted on our website and a copy was placed in the drop box for your review.

OGE and OOG continue to meet with the Office of the Chief Technology Officer’s website development staff to coordinate the BEGA website refresh. We are currently working on changes to the website’s design, so that information is readily available with minimal search efforts. We submitted an updated site map of the website in early October and approved the mock-up of the website design. OCTO has imaged our current website and we are working on language and images for each new webpage.

4. Ethics Week 2022

During the week of Tuesday, October 11 through Friday, October 14, 2022, OGE hosted BEGA’s annual Ethics Week. This year’s theme was “Ethics in Practice,” demonstrating how ethics weaves its way through all areas of our work. As Director Allen mentioned, Thursday, October 13th was dedicated solely to OOG trainings. All the event’s sessions were well attended, and we’ve received positive feedback. Some of the sessions with highest attendance were:

- Unlocking the Positive Value of Ethics – 198 attendees
- Being Ethical is Harder Than You Think! – 120 attendees
- BEGA Investigations – 112 attendees
- Financial Disclosure – 102 attendees
- Ask BEGA – 97 attendees
- Legal Ethics for Government Attorneys – 94 attendees
- Open Meetings Act – 91 attendees
- Introduction from OOG Director and FOIA Course – 89 attendees
- Board Member Darrin Sobin joined us for a panel discussion on the Future of Government Ethics – 67 attendees

I’d like to thank the Attorney Stewart-Mitchell for coordinating the event and all the staff members who participated and attended. The Ethics Weeks presentations and sessions are available to view on BEGA’s [YouTube](#).

C. Advisory Opinions/Advice

1. Informal Advice

OGE’s legal staff provided advice for approximately 35 ethics inquiries, which is 2 less than the 37 reported at the last Board meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

2. Formal Advice

OGE’s *sua sponte* Advisory Opinion entitled “Guidance on the Local Hatch Act and Fundraising Activities” is in its 30-day public-comment period. This opinion provides guidance on maintaining ethical standards while engaging in political activity and clarifies prohibited and permissible fundraising activities. It covers permissible fundraising activities, such as fundraising for one’s own campaign, fundraising for a partisan, non-district regulated campaign, and the Designation Rule. Pursuant to D.C. Official Code § 1–1162.19(2), the opinion was sent to the D.C. Registrar for a 30-day notice of publication.

D. Legislation Updates

1. B24-0706 Board of Ethics and Government Accountability Delinquent Debt Recovery Amendment Act of 2022

This bill will allow BEGA to discretionarily transfer delinquent debts associated with settlements and judgements for ethics and Open Meeting Act violations to the District’s Central Collection Unit for collection, and for the funds collected on BEGA’s behalf to be deposited into the Ethics Fund or OMA Fund instead of the General Fund. The additional funding will allow BEGA to supplement its operations budget. I am pleased to announce that on Tuesday, October 4th, the bill was passed by the Council. On November 1st, it was approved by the Mayor. The next step is to submit the bill to Congress. A copy of the committee report was placed in the drop box for your review.

E. OGE Administrative Matters

1. OGE Staffing

The Attorney Advisor and Program Support Assistant vacancy announcements both closed since the last Board meeting in October. Both sets of applications are under review. As an approved fiscal year 2023 budget enhancement request, OGE received funding to hire a Supervisory Investigator. That position will be posted in the next few weeks.

The closing out Fiscal Year 2022 performance evaluations and formulation of Fiscal Year 2023 performance plans is underway now. The process for both will be completed by November 18, 2022.

2. Budget

The agency is in the process of finalizing its Fiscal Year 2024 budget packet. We will submit our Fiscal Year 2024 budget formulation packet by the November 4th deadline. Our budget enhancement requests, and budget presentation for the Office of Budget and Performance Management will be submitted on next week and budget meeting is scheduled for November 17th.

3. Office Relocation

Our office relocation is underway! We have begun weekly meetings with the Department of General Services' construction team and architect to discuss the build-out of the space. Again, the address for the new office space is 1050 15th Street N.W.

F. Financial Disclosure Statement (FDS)

On October 14th, the FDS Team sent notices to all DC Councilmember informing them that their bi-annual Financial Disclosure Report is due November 15. A reminder was sent to Councilmembers and their Chief-of-Staffs on October 26. Our latest e-filing system upgrade, which provides clarity for Councilmembers when filing their bi-annual Financial Disclosure was deployed on October 25th.

G. Lobbying Registration and Reporting (LRR)

Third Quarter 2022 Activity Reports were due Monday, October 17, 2022. On September 30, the LRR team sent a reminder notice to 450 lobbyists. The notice advised the recipients of the deadline. In response, reporting entities filed 462 Activity Reports, 11 New Registrations, and 11 Terminations. Additionally, reporting entities filed 13 Support Tickets.

Attorney Advisor Echols and Program Specialist Kosick provided Director Cooks with a proposed Lobbyist Site Map for future BEGA website enhancements. The goal is to make the website more accessible and responsive to Lobbyists with a 'one-stop shop' approach. In anticipation of making repairs and upgrades to the e-filing system, the LRR teams met with Abstract Evolutions to discuss potential fixes and prepare a cost estimate. That cost estimate will be included in our budget enhancement request.

Finally, Auditor Tujuba completed the third quarter calendar year 2022 Lobbyist Activity Report audit. His findings were communicated to the Lobbyists Team.

Thank you. This concludes the Office of Government Ethics' November 3, 2022, report.

Chairperson Hutcheson and Board Member Sobin commended OGE on the Ethics Week presentations. Board Member Sobin also noted that he presented on civil alternatives to criminal prosecution at a recent panel at New York Law School and advised that there was increasing interest in the alternative to criminal prosecution, which was the impetus for BEGA's establishment.

VI. Public Comment – if received

The Board did not receive any public comments.

VII. Executive Session (nonpublic)

The Board voted unanimously to enter into Executive Session to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14), 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

The Board resumed the public meeting at 1:05 pm.

There were no matters to report out.

IX. Adjournment

The Board will meet next on December 1, 2022, at 12:00 pm.