

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

**MINUTES OF MEETING
DECEMBER 19, 2018**

The District of Columbia Board of Ethics and Government Accountability held a meeting on Thursday, December 19, 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 Norma Hutcheson, Shomari Wade and Darrin Sobin. Also present was Senior Attorney Advisor Rochelle Ford.

Members of the public are welcome to attend. Questions about the meeting may be directed to bega@dc.gov.

Meeting Minutes

I. Call to Order

Chairperson Collier called the meeting to order at 10:05 a.m.

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:

1. November 1, 2018 Meeting Minutes
2. 2019 Amended Board Meeting Schedule.

IV. Report by the Director of Open Government

Good morning Chairperson Collier and Members of the Board. I am Niquelle Allen, Director of the Office of Open Government (OOG), and I am pleased to present this monthly report on the activities of the OOG. 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 Opinions: The Office has not issued any Advisory Opinions since the last Board meeting but has received three (3) requests for Advisory Opinions. Two of these requests are for FOIA Advisory Opinions and one is for an OMA Advisory Opinion.

2. Informal OMA/FOIA Advice: Since October's Board meeting, the OOG responses for informal and technical FOIA and Open Meetings Act (OMA) responses are as follows: (1) 12 FOIA and 4 OMA substantive responses; and 4 responses to OMA requests for technical assistance.

B. OMA/FOIA Audits:

The OOG is currently auditing of public bodies' DC.GOV websites for compliance with the OMA. A preliminary FOIA audit of DC.GOV was recently completed and the OOG will report the preliminary results to the Mayor's General Counsel and the Office of the Chief Technology Officer next month. The Office will work with both to correct any deficiencies. The FOIA audit consisted of a review of the DC.GOV FOIA tab for the information that the District government is supposed to proactively release under the FOIA statute.

C. Fiscal Year 2020 Budget:

The OOG along with the Office of Government Ethics will continues working on the fiscal year 2020 Budget (FY20). There are no updates on the OOG's budget enhancement request at this time.

D. Training/ Outreach:

(1) On November 5, 2018, the OOG's Attorney, Johnnie Barton, conducted an OMA training for the Board of Funeral Home Directors.

(2) On November 29, 2018, the OOG Director completed a brief training for the newly-reconstituted Child Support Guideline Commission. I trained the new commissioners, which included Councilmember Charles Allen, on the Office's role and their obligations under the Open Meetings Act.

(3) On December 9-12, Attorney Barton and I, along with the Office of Government Ethics attorneys and the Board's Senior Attorney Advisor, attended the 40th Conference on Government Ethics in Philadelphia, PA. Attorney Barton and I attended a series of seminars on FOIA and open meetings laws.

(4) I served as an instructor and participated in the National Association of Attorneys General, National Attorneys General Training and Research Institute's National Ethics Summit on December 11-13, 2018 in Phoenix, AZ. I presented an hour-long course titled "Managing the Freedom of Information Process." The presentation focused on the challenges of meeting FOIA requirements and processing FOIA requests in the digital age. The District of Columbia Attorney General and the Office of the Attorney General's Ethics Attorney also presented at the Ethics Summit.

(5) The OOG in connection with the DC Bar has completed the first short film segment which serves as an introduction of what the OOG does. It is currently published on the OOG website. The DC Bar has completed editing the full film, which I will review and receive this week. The OOG looks forward to sharing the video with the Board and releasing it to the public in the near future.

(6) The OOG Director participated in the Mayor's Cabinet meeting where the Director of the Department of Small and Local Business Development presented Small Business Enterprise Goals for FY19. Renowned District of Columbia Chef and restaurateur Jose Andres spoke to the cabinet about his efforts to rebuild Puerto Rico, local business development, and immigration.

E. Rulemaking:

The Office of Open Government has submitted for consideration by the Board new and revised regulations to implement the recent changes in the law and which makes clarifying amendments to the OOG's regulations at 3 DCMR § 104000.

F. Staffing:

On Friday December 14, 2018, the OOG bade farewell to its IT and Applications Engineer, Waddah M. Kittab. We wish Waddah the very best in his new career endeavor. The announcement to fill the position left vacant by Waddah was posted on December 18, 2018 and is to run through January 18, 2019.

This concludes the OOG Director's report for December 19, 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 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	
Count of Number	
Current Status	Total
Open	30
Open - Show Cause Hearing	1
Grand Total	31

PENDING/STAYED INVESTIGATIONS BY STATUS	
Count of Number	
Current Status	Total
Closed - Pending Collection	10
Closed Pending Appeal to DC Court of Appeals	1
Closed Pending DC Superior Court Appeal	2
Stayed - OAG False Claims Act Case	2
Stayed - OIG Criminal Investigation	5
Stayed - Other Court Case	1
Stayed - US District Court Case	2
Grand Total	23

REGULATORY MATTERS BY STATUS	
Count of Number	
Current Status	Total
Closed - Pending Collection	25

Closed Pending DC Superior Court Appeal	1
Open - Appeal to Director	3
Open - Board Appeal	3
Grand Total	32

	Current	Last month	October 2018
Investigations Currently Open:	31	35	35
Investigations Stayed (Inactive):	10	10	10

B. Publication and Reporting Obligations

We are in the process of preparing the Quarterly Complaint Report for the first quarter of FY 19. Although we did not adopt any new performance measures for FY19, we have identified new statistics related to our regulatory enforcement matters and audits that we will report in FY20, and we have begun to keep track of those statistics during FY19 to use as a benchmark for comparison purposes next year. A draft of those updates was uploaded to the Dropbox for your review.

C. Trainings/Outreach –

i. Attended by staff – We sent three employees from the Office of Government Ethics to the Council on Government Ethics Laws (COGEL) Conference last week.

ii. Conducted by staff –

Since the date of the last meeting, we conducted or participated in 9 trainings, 3 more than last month. The nine trainings consisted of 4 new employee orientations, two Monthly Ethics Trainings, and three full ethics trainings at the Department of Parks and Recreation.

iii. Newsletter –

OGE’s December newsletter has been published on BEGA’s website. Once the holiday season is behind us, we will schedule a meeting with the Mayor’s Communications Director, Anu Rangappa, to coordinate sending an upcoming newsletter to the All DC government employees distribution list per our prior discussions with the Mayor’s office.

D. Advisory Opinions/Advice –

Informal Advice: approximately 113, which is higher than the 60 reported at the last meeting.

Formal Advice requests: We received one formal request for post-employment advice that is still pending. The question raised is whether a building permit, certificate of occupancy and zoning proceeding constitute the same or a different particular matter in connection with whether a former employee is permitted to serve as an expert witness.

E. Ethics Legislation/Comprehensive Code of Conduct

On December 4, the Council approved on final reading Bill 22-0107, the "Campaign Finance Reform Amendment Act of 2018". As it pertains to BEGA, the legislation clarifies that all members of boards and commissions who are confirmed by the Council must undergo ethics training within 90 days of commencing service, and that employees who are designated under the Local Hatch Act to engage in partisan political fundraising may do so only while on annual or unpaid leave.

F. Rulemaking

We have no new developments to report.

G. Budget:

Mr. Kittab and I triaged and uploaded the data related to all matters (open, pending and closed) from ProLaw into our CMTS live system the past few weeks. I am still conducting my quality assurance testing of the import, but so far everything looks good. I plan to QC the contents of 160 randomly selected cases that were imported into CMTS last weekend to obtain a statistically valid assessment before reaching a final conclusion that the project was completed successfully.

Part of the data migration project actually involved capturing information that was available in PDF documents stored in ProLaw and the Shared drive and inputting that relevant information into the structured data fields we imported into CMTS. For instance, in several instances, the ProLaw database did not contain any information related to the DC employee or public official who was the subject of our investigation, or the complainant. However, that information did exist within the intake documents and other PDF files stored in the Shared drive, so I did my best to capture that information and input it into the Excel spreadsheet we used to import the ProLaw data into CMTS.

The last phase of the data migration project will involve importing the digital files from ProLaw – and in some instances from the Shared drive – into CMTS. Those additional services were not covered by our contract to purchase the software, and we have requested a purchase order be issued so that the vendor can submit an invoice and begin working on that phase of the project. We hope to have that last phase of the project completed within the next few weeks.

Last month, Director Allen and I coordinated to submit eight separate budget enhancements for FY20, which were uploaded to the Dropbox for your review.

We will continue working with the Mayor's Administration and the Council to forge an FY20 budget for the agency that is adequate for our needs.

H. Staffing –

We have selected candidates for our two permanent positions that are currently vacant, and we anticipate both positions will be occupied on January 7: These positions are our third Investigator position and our Compliance Specialist position. An offer was accepted by our selection for the Investigator position, and Sandra is working with DCHR to extend an offer to our selection for the Compliance Specialist by the end of the week. That candidate informed us that a two-week notice to her current employer will be satisfactory, so she should be able to start on January 7 if DCHR can wrap up the details on our end this week.

I. Litigation

Status of pending cases.

- Gerren Price – (CA No. 16-AA-1230), This case was submitted on October 24, 2018, and we are awaiting the Court's decision.

- 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. Both Mr. Hicks and the District have filed briefs. The primary issues seem to be whether the Superior Court should have heard Mr. Hick's appeal, and whether that issue can be brought before the court at this late date.

- Rahsaan French vs. BEGA, D.C. Superior Court (2018 CA 002306 P(MPA)). Employee appealed the imposition of a \$600 ministerial fine. The pro se case was filed on April 6. Mr. French failed to file an opening brief. On November 16, 2018, the case was dismissed for lack of prosecution.

J. Lobbyist/Financial Disclosure Matters

We still have approximately 200 PFDS non-filers. We plan to re-focus on FDS enforcement when our new Compliance Specialist is on boarded in the coming weeks. All councilmembers timely filed their November 2018 PFDS filings, except Council Chair Mendelson. Chair Mendelson was granted a fifteen (15) day extension to file his form.

a. 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. #19-0004-R - Jill Forbes – This matter was tabled at last month’s meeting. On October 11, 2018 Respondent requested a waiver of the \$300 fine levied against her by the Office of Government Ethics due to her failure to timely file her 2017 Public Financial Disclosure Statement (“PFDS”). Respondent asked that her fine be waived because she recently separated from District government employment, moved to Massachusetts and did not receive notice of this year’s filing requirement. Respondent also noted a history of timely completion of her financial disclosure filing requirements. Respondent filed her 2017 PFDS on October 15, 2018. At this time, we do not oppose this request. **The Board unanimously voted to grant the waiver request.**

- ii. # 19-0009-R – Elvi Moore - On November 29, 2018 Respondent requested a waiver of the \$300 fine levied against her by the Office of Government Ethics due to her failure to timely file her 2017 Public Financial Disclosure Statement (“PFDS”). Respondent asked that her fine be waived because she resigned her post as a Commissioner of the Commission on the Arts and Humanities (“the Commission”) due to extended international travel. Respondent also noted that she was advised, possibly by the Commission, that she was no longer required to file the form. Respondent filed her 2017 PFDS on December 5, 2018. The Office of Government Ethics does not oppose Respondent’s Request. **The Board unanimously voted to grant the waiver request.**

- i. #19-0010-R – Ivan Ortiz - On November 26, 2018 Respondent requested a waiver of the \$300 fine levied against him by the Office of Government Ethics due to his failure to timely file his 2017 Public Financial Disclosure Statement (“PFDS”). Respondent asked that his fine be waived because he was under the impression that he had not been designated to file this year and he did not receive the Office of Government Ethics’ notices. We recommend that the board table this matter until next month to find out if Mr. Torres complies with his filing requirement in the interim. **The Board unanimously voted to table this matter until the next meeting.**

a. Lobbyists

Lobbyist Program:

1. We are currently coordinating with the lobbyists and OCTO to conduct four training webinars for the new lobbyist e-filing system this week. We are also

gearing up to send the lobbyists their filing period notification. As you know, January 1st marks the opening of the ten (10) day filing period. This will be the lobbyists' first time filing under the new statutory amendments and their first time using our new system, so we want to make sure they are well prepared in advance of the filing period. We are also planning to enter an MOU with OCTO to obtain the full-time services of two IT resources during January to help resolve any customer service issues related to the new system that may arise. It is our understanding that OCTO has a "pool" of qualified available IT resources it can draw upon to help agencies address emergent IT needs, and I believe this will be a prudent investment from our standpoint.

K. Non-Confidential Investigations

1. #1634-001 – *In re*: R. Wilson – At the conclusion of our preliminary investigation, OGE determined 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 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. We have finalized a Negotiated Disposition to resolve Mrs. Wilson's failure to file and she signed the document on Monday. OGE requests that the Board approve the Negotiated Disposition at this time. **The Board unanimously approved the negotiated disposition.**
2. #1031-016, *In re* A. Wilson and #1031-017, *In re* J. Niles. Pursuant to D.C. Official Code § 1-1162.12 (a), we conducted formal investigations into whether the actions of former-Chancellor Antwan Wilson and former-Deputy Mayor Jenifer Niles in connection with the Chancellor's daughter's mid-year transfer to an out-of-boundary school during the 2017-2018 school year violated the Code of Conduct. Our team is engaged in negotiations with the Respondents regarding the terms of potential Negotiated Dispositions to resolve these charges, and we anticipate presenting such agreements or Notices of Violation for the Board's consideration during its January monthly meeting.
3. #1101-003, *In re*: Jack Evans – This formal investigation into allegations that Councilmember Evans violated the Council Code of Conduct is currently stayed.

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. 19-0007 A. Beasley
 2. 1034-005 J. Waters
 3. 1449-001 L. Watson

IX. Adjournment