

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

**MINUTES OF REGULAR MEETING
FEBRUARY 19, 2017**

The District of Columbia Board of Ethics and Government Accountability held its Regular Monthly Meeting on Thursday, February 9, 2017, at 11:00 a.m. at One Judiciary Square, 441 Fourth Street, N.W., Room 540 South, Washington, D.C. 20001. The Board’s Chairperson Robert Spagnoletti was present, along with Board Members, Carol Schwartz, Shomari Wade, Norma Hutchesson, and Tameka Collier. Also present on the dais was John (Jack) Grimaldi, the Board’s Senior Counsel.

The full discussion of the meeting is on audio file, and may be found at <https://bega.dc.gov/publication/february-9-2017-board-meeting-minutes>

AGENDA

I. Call to Order

--Chairman Spagnoletti called the meeting to order.

II. Ascertainment of Quorum

--The Chairman established that a quorum was present.

III. Adoption of the Agenda

--**The Board voted unanimously** to adopt the agenda.

IV. Report from the Director of Open Government

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)

| | Current | Last month | Nov 2016 |
|-----------------------------------|---------|------------|----------|
| Investigations Opened: | 3 | 1 | 1 |
| Investigations Closed: | 4 | 5 | 10 |
| Investigations Currently Open: | 6 | 5 | 9 |
| Investigations Stayed (Inactive): | 22 | 22 | 20 |

b. Publication and Reporting Obligations

Our publication and reporting obligations are in compliance. We recently completed updating information for our FY17 and FY18 Performance Plans.

c. Trainings/Outreach –

i. Attended by staff –

Several staff attended a 2.5 hour website training on how to add content to the BEGA website once the website is transferred back to OCTO.

ii. Conducted by staff –

Nine, slightly up from eight last month. The 9 trainings include two new employee orientations, two MSS trainings, one general Board and Commission training, an abbreviated training session for the Department of Energy and the Environment, and trainings at the Office of the Attorney General for its incoming class of Charles Ruff Fellows and one for Board members of the Commission on Arts and Humanities.

d. Advisory Opinions/Advice –

Informal Advice: 61, since the last meeting, up from 32 last month. Additionally, we responded to more than a 2 dozen queries related to lobbyist registration and lobbyist activity reporting.

On January 23, we finalized for publication a sua sponte advisory opinion on social media. We received one comment from the Council that was incorporated into the final version.

e. Ethics Legislation/Comprehensive Code of Conduct

Since the last Board meeting, at least one ethics-related bill has been introduced in the Council. Mr. Grimaldi circulated to you a copy of CM Nadeau's Bill 22-0036, the Ethics Reform Amendment Act of 2017, which is substantively the same as her earlier bill that lapsed at the end of Council Period 21. The bill contains several recommendations the Board made in the 2014 BPR, and it's also encouraging to note that CM Allen, our new oversight committee chair, is among the co-introducers.

A number of other bills are in the works, including, of course, our own bill to establish the Comprehensive Code of Conduct. I'll let Mr. Grimaldi update you on that front.

f. Rulemaking

- 1) Fines for Confidential Financial Disclosure Statement non-filers. During a recent enforcement action, an attorney for a respondent questioned our authority to impose fines on confidential filers who had filed, but had not responded to all answers on the form. We have adopted a ministerial schedule of fines that includes among the various offenses “Failure to comply with all applicable Financial Disclosure Statement filing requirements.” This rulemaking clarifies and definitizes the fine that will be imposed on employees who fail to file a “true, complete and correct confidential report.”
- 2) Appeal Rules for Informal Admonition Issued by Director. The existing rules provide that an employee who receives a non-public informal admonition may file a request for reconsideration within 15 days of receipt of the admonition. The employee can appeal the denial of the request for reconsideration to the Ethics Board. The rules do not provide for a direct appeal to the Ethics Board or any time frame for doing so outside of the reconsideration process. The questions we bring to the Board’s attention for discussion and guidance are whether there should be a right of direct appeal, if so, what would be the appropriate time limit, and finally, whether the Board’s review would be such that the appellant could be subject to additional sanctions.

g. Budget: Our Budget request is under consideration by the Mayor’s Budget Office. As I told you last month, a meeting had been scheduled on our request for a budget enhancement for FY18. We did in fact meet with the Mayor’s Budget folks and made our best pitch for our budget enhancement which is needed to cover both non personal service expenditures, such as overhead and Board member stipends, as well as Personal Service costs which we hope this year will include an additional administrative employee to assist with Lobbyist and FDS matters. Importantly, we have also asked for close to \$1,000,000 over 5 years as part of our Capital Budget plan to overhaul and maintain our FDS/Lobbyist e-filing system which will not only fix a myriad of ongoing technical and usability problems, but will keep us in compliance with cybersecurity measures imposed by the Office of the Chief Financial officer. As it happens, last week the Council passed legislation entitled the Council Financial Disclosure Amendment Act of 2016. The statute will require Councilmembers to file Public Financial Disclosure Statements with BEGA twice per year – May 15th and November 15th – instead of once a year as they do currently. This Act will apply upon the date of inclusion of its fiscal impact in an approved budget and financial plan. The fiscal impact is estimated by the OCFO to be \$94,000 for FY 2017 and then \$45,000 for FY 2018. The bulk of this cost is to modify the e-filing system to accommodate the new filings. I notified the Mayor’s Budget team of and it is being factored into our enhancement request.

Our Oversight hearing is scheduled for February 22nd. We are preparing our answers to the Committee Chair's written questions, which will be submitted next week. We are also preparing testimony, which will be delivered by the Chairman. From everything I have seen so far, we should be in excellent shape for the hearing.

h. Staffing

Last month I was very pleased to introduce to you our new temporary attorney, Ms. Asia Stewart. This month I am saddened to report that we will be losing one of our permanent Attorney Advisors Mr. Rudy Chounoune who will be taking a position with Fire and Emergency Medical Services as an assistant General Counsel. We will miss Rudy very much but wish him well in his new role for the District government. In the meantime, we expect both of our FMLA employees, Ms. Dillion and Ms. Cooks, to return to work in the next month. Ms. Dillion graciously has been working part time during her FMLA leave period already, but it will be great to have her back full time as we ramp up for FDS filing season.

i. Lobbyist/Financial Disclosure Matters

1) Financial Disclosure Statements

- i. Speaking of FDS, we are preparing this year in a number of ways. First, we created an updated the financial disclosure form by removing the question regarding spousal income and made modifications to the form to make the questions more in line with the statute. A demo of this updated form was uploaded to an e-filing test site earlier this week. We will run several tests on this new form and will make additional modifications if needed. Second we have scheduled a Financial Disclosure Season "kick-off meeting" with all agency heads next Wednesday, February 15th, in this hearing room. During the meeting we will review the financial disclosure filing process, including what criteria agencies should use in determining whether it should designate an employee as a "filer," the differences between public and confidential filers, and we will cover the reporting deadlines for agencies to submit their lists of filers to this Office. A make-up meeting has also been scheduled for the following day, Thursday February 16th. Third, we are preparing a step-by-step reference guide for agency heads to use when determining what employees are required to file financial disclosure statements. We hope that this streamlined review of the filing process and requirements will reduce the number of inquiries we receive and ensure greater agency accuracy and compliance. Finally, in an additional effort to encourage agency compliance, we have informed all agencies that if they comply with the Financial Disclosure, deadlines, they will receive a "Certificate of Excellence" from our Office and will be recognized on our website.

ii. Confidential Disclosure Statement Enforcement

1. An audit of the 2016 Confidential Disclosure Statement Review Reports revealed that approximately 180 employees who were designated as confidential filers failed to submit their CFDS forms to their agency head by the May 16, 2016 deadline. On February 3, we sent out a mass email to all of these non-compliant filers instructing them to immediately file their CFDS with their agency. We have received a number of responses and will be following up in the coming weeks with personalized correspondence to any remaining non-compliant employees.

iii. Status of Appeals

1. District employees Edwin Edokwe and Charlene Dickens, two DDOT employees who filed appeals in D.C. Superior Court regarding the Board's denial of their request for a waiver from filing their financial disclosure statements, had their first court date on January 27th. Mr. Edokwe's next court date (a status hearing) is April 28, 2017. Ms. Dickens' next court date (also a status hearing) is August 18, 2017.

2) Lobbying

i. We just finished a very busy January lobbyist filing season which included this Office's attorney staff responding to numerous inquiries and conducting an aggressive outreach effort to ensure greater compliance. As you are aware, Lobbyist registrations for the 2017 calendar year were due January 15th and Lobbyist Activity Reports covering the second half of 2016 were due January 10th.

To date, **275** registration forms have been filed for 2017.

In addition, approximately **371** January 2017 Lobbyist Activity Reports were filed and **71** termination reports were filed.

A breakdown of these filings is summarized as follows:

- Late-filed Lobbyist Activity Report and/or Termination Reports: **25**
- Total amount of late-filers who paid fines/fine amount collected: **23 / \$1,000**
- Total amount of remaining late-filers who did not have not paid fine / outstanding fine amounts to be paid: **2 / \$30**
- There are currently **three** registered lobbyists who have not filed their January 2017 Lobbyist Activity Reports at all. We have reached out to all three via phone calls, mailings, and emails regarding the lobbying reporting requirements. We anticipate that at least one of these lobbyists will file their activity reports in the near future.

- This year, this Office will publish on its website a list of all non-compliant lobbyists, including lobbyists who filed their reports but did not pay fines that were assessed and those lobbyists who did not file their reports at all. We have informed the 9 filers owing money and 4 non-filers of this new procedure and anticipate publishing the list on February 15th.

ii. Waiver requests

1. 1587-001 – *Children’s National Health System*

OGE did not oppose the request. The Board unanimously approved the waiver request.

2. 1595-001 – *Greater Washington Board of Trade*

OGE did not oppose the request. The Board unanimously approved the waiver request.

j. Non-Confidential Investigations

- 1) #1426-001 *In re: Gerren Price* – The Court of Appeals issued an Order for Mr. Price to show cause as to why his Petition for Review should not be dismissed for lack of jurisdiction. The Court of Appeals has not yet ruled on this issue and no court dates have been set. By way of background, the Ethics Act provides that appeals of any order or fine made by the Ethics Board shall be made to the Superior Court. D.C. Official Code §1-1162.17. However, the District of Columbia Administrative Procedure Act provides that the Court of Appeals has exclusive jurisdiction to hear appeals of contested cases, which, potentially, would cover Mr. Price’s hearing before the Board. We are in communication with the Office of the Solicitor General regarding the status of this matter and will continue to update the Board as it moves through the appeals process.

I. Opportunity for Public Comment

II. **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 deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13), and Personnel matters pursuant to D.C. Official Code § 2-575(b)(10).

III. Resumption of Public Meeting

- a. Discussion of any remaining public items

The Board announced its approval of 2 audits:

a. #1461-001-In Re: Graves Horton Askew Jenkins Audit (“Graves Horton”) and #1457-001 – In Re: Kerry Pearson Audit

Ms. Olawunmi completed the audits of Kerry Pearson and Graves Horton. In the case of Graves Horton we determined that they were not required to submit documentation in support of their January 2016 Lobbyist Activity Report because they did not engage in lobbying activity during that reporting period. Similarly, the audit of Kerry Pearson revealed that his activities, which included advocating for the DC Public Service Commission’s approval of the Pepco Exelon merger, did not qualify as “lobbying” activity as that term is defined. As such, OGE recommends that the Ethics Board issue its Audit Reports for Graves Horton and Kerry Pearson as “Final Periodic Audit Reports” because it has been determined that the Graves Horton January 2016 Lobbyist Activity Report complies with the Ethics Act and Mr. Pearson was not required to register under the lobbyist registration rules. Those reports are published on the BEGA website.

IV. Adjournment