

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

**MINUTES OF REGULAR MEETING
March 9, 2017**

The District of Columbia Board of Ethics and Government Accountability held its Regular Monthly Meeting on Thursday, March 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 Hutcheson, 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/march-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 by 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	Dec 2016
Investigations Opened:	1	3	1
Investigations Closed:	3	4	5
Investigations Currently Open:	4	6	5
Investigations Stayed (Inactive):	22	22	22

Stayed Cases	
Nature of Stay	Number

Court (pending motions and one fugitive)	2
OEA (pending motions)	1
OIG	14
OAG (pending civil False Claims Act complaint)	1
Council (pending post-employment action on CCC)	3
IRS/OTR (potential criminal complaint)	1

b. Publication and Reporting Obligations

Our publication and reporting obligations are in compliance.

c. Trainings/Outreach –

i. Attended by staff –

Senior Attorney Advisor Grimaldi attended an ADA agency self-assessment training presented by ODR. Several staff members, including Ms. Dillion and Mr. Dow attended a training offered by OCTO in conjunction with the migration of OGE’s website back to the District’s servers. Internally, we have weekly meetings on FDS and Lobbyists in preparation for the upcoming filing system.

ii. Conducted by staff –

15, up from 9 last month. The 15 trainings include three new employee orientations and MSS training, one general Board and Commission training, training sessions at the Office of Unified Communications, the United Medical Center, Mayor’s Office of Legal Counsel and Health Benefit Exchange. We also went to DCPS to provide the new Chancellor with a briefing on the District’s Code of Conduct rules that would satisfy the mandatory training requirement applicable to all employees who are required to file either public or confidential financial disclosure statements.

d. Advisory Opinions/Advice –

Informal Advice: 80, since the last meeting, up from 61 last month.

We have several advisory opinions in the pipeline, including one for an employee with a cupcake business who asked whether she could sell cupcakes to her coworkers and another on post-employment restrictions. We anticipate having a proposed sua sponte opinion on the applicability of the Code of Conduct to ANC

Commissioners ready in time for the Attorney General's ANC Seminar that is scheduled to be held next Saturday.

e. Ethics Legislation/Comprehensive Code of Conduct

Since the last Board meeting, we re-filed the bill to establish the Comprehensive Code of Conduct. I'll let Mr. Grimaldi update you.

f. Rulemaking

- 1) The proposed rulemaking approved by the Board at our last meeting will be published in the DC Register tomorrow. That rulemaking clarifies the fine that will be imposed on employees who fail to file a "true, complete and correct confidential report."
- 2) List of Boards and Commissions required to file PFDS statements. During the course of our training and in response to inquiries from Boards and Commissions, we have determined that there are a number of Boards that we believe should be required to file public financial disclosure statements that at the present time, do not. These include Boards with significant financial and fiduciary responsibilities, such as the DC Retirement Board, the Public Charter School Credit Enhancement Fund Committee, United Medical Center, Public Charter School Board, and the Health Benefit Exchange. The Public Charter School Credit Enhancement Fund Committee, for example, provides millions of dollars in funds to DC public charter schools. But because it is not listed under 1-523.01(e), its members are not required to file financial disclosure statements.

In the CCC, we proposed adding a number of these boards to the agencies whose members were required to file public financial disclosure statements. However, the Ethics Board currently has the authority to make this change by exercising its rulemaking authority to designate the members of these boards as "public officials." See, D.C. Official Code § 1-1161.01 (47)(I) "Public official" means "... [an]y additional employees designated by rule by the Ethics Board who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest." This requirement to file public statements currently only applies to the 25 or so boards and commissions listed in section 2(e) of the Confirmation Act.

We are compiling a list of those Boards and Commissions that are currently exempt from the filing requirement that we believe should be required to

file given their duties and responsibilities and will present that list to you upon completion.

g. Budget:

We have been informed that there is a projected \$119,000 shortfall in our Personal Service Funds through the end of the current Fiscal Year. This is the result of several factors:

- 1) Two attorneys left the agency in the previous fiscal year and the two replacements were more experienced thus requiring a hiring starting salary.
- 2) Two employees took FMLA and the agency was required to pay 8 weeks of salary for each while at the same time replacing one of them with temporary assistance to cover essential duties.
- 3) An existing employee, whose job description did not adequately capture the tasks expected of her when she was hired, was elevated to a higher salaried position; and
- 4) This agency employs 5 attorneys, all of whom received a 10.75% pay raise under the Legal Services pay scale at the beginning of the Fiscal Year. The pay raise had not been factored into the budget process when the Fiscal Year 17 Budget was approved by the Council.

We are addressing this shortfall by submitting a reprogramming request to the Mayor that would allow us to use our O-Type funds from fines and lobbyists to make up the difference. This is permissible because the salaries in question can be attributed to Lobbyist/FDS staff duties. However, this is far from ideal solution, especially since those funds will now not be available to overhaul the e-filing system as we had hoped, making it essential that we receive approval of the Capital Budget request we made to the Mayor for that purpose.

h. Staffing – We are in the process of filling the attorney position vacated by Mr. Chounoune. Also, Attorney Cooks is scheduled to return to the office on March 20.

i. Lobbyist/Financial Disclosure Matters

a. Public Financial Disclosure Statements

1. March 1st was the deadline for all agencies, boards and commissions to submit their list of Public Financial Disclosure Filers to our Office. This year, we had a record number of agencies comply with that deadline and we continue to receive public filer

lists from agencies on a daily basis. The next deadline is May 1st, which is when agencies must submit their lists of Confidential Files. Employees must file their Confidential and/or Public Financial Disclosure Statements by May 15th. On June 1st, all agencies must submit to our Office their Confidential Financial Disclosure Statement Review Reports, which lists the names of non-compliant filers and any violations of the Code of Conduct.

b. Confidential Disclosure Statement Enforcement

1. Last month we reported that an audit of the 2016 Confidential Disclosure Statement Review Reports revealed that approximately 180 employees failed to submit their CFDS forms to their agency head by the May 16, 2016 deadline. We reached out to these non-compliant filers throughout February and instructed them to immediately file their CFDS with their agency. In response, approximately 73 employees filed their CFDSs with their agency, leaving 107 remaining non-filers. We're working agency ethics counselors to bring these remaining employees into compliance.

c. Lobbyists

July 2016 Lobbyist Activity Reports Desk Review Audits

At the November and December 2016 Board meetings we noted that we sent inquiry letters to five entities to ascertain their business relationships with the lobbyists that disclosed them as their clients. OGE received and reviewed the responses submitted by the five entities and imposed civil penalties on three entities for their failure to register as lobbyists, and for their failure to timely file their lobbying activity reports. We are happy to report that all three entities have now registered as lobbyists, filed the requisite reports, and paid their fines and fees -- which totaled nearly \$2,500. Because we determined that the other two entities did not engage in lobbying, we did not require them to register or file lobbying activity reports and we did not impose any civil penalties.

j. Non-Confidential Investigations

VI. Opportunity for 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 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).

VIII. Resumption of Public Meeting

a. Discussion of any remaining public items

--The Board had nothing to report from the Executive session.

IX. Adjournment