

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

**MINUTES OF REGULAR MEETING
May 3, 2018**

The District of Columbia Board of Ethics and Government Accountability held a meeting on May 3, 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 on the dais was John (Jack) Grimaldi, the Board's Senior Counsel.

The full discussion and the meeting is on audio file, and may be found at <https://bega.dc.gov/publication/may-3-2018-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
Board Member Hutcheson moved approve the agenda. The motion was approved unanimously. Board Member Hutcheson moved to adopt the April 5 Minutes. The motion was approved unanimously.
 1. April 5, 2018 Meeting Minutes
- IV. Report by the Interim Director of Open Government

FOIAXpress Training – The vendor, for our city-wide FOIA system, AINS, has conducted a significant number of the 16 scheduled trainings at the Office of the Chief Technology Officer (OCTO), which were to be done between March and December of this year. Attorney Johnnie Barton has already taken the training, and both Attorney Cooks and I have signed up for the training.

I have also followed up with respect to the report that the EOM was considering proposed legislation and regulations updating FOIA. There are still no specifics, but my understanding is that the thrust of the proposal would be to realign the District's statute with the federal statute, and to perhaps update the FOIA fee structure under DCMR 1-408. I believe the new OOG Director will have an opportunity to review and weigh in on any proposal.

Informal advice:

7 FOIA, includes assisting a member of the public with drafting and submitting 2 requests

Trainings:

3 OMA trainings: DCRA, COST and ABRA. Attorney Barton conducted the required OMA training with the Commission on Selection and Tenure of Administrative Law Judges.

Advisory Opinions:

1. April 11, 2018: #OOG-0001.1.30.18 Whether the UMC Board's failure to make available to the public an electronic recording of its February 21, 2017, Strategic Planning Committee meeting violated the OMA. (Yes).
2. April 24, 2018: # OOG-004_4.20.18 Resolution of Complaint _Grubbs- OOG has no jurisdiction to resolve dispute between pharmacy and customer regarding prescription.

Also note that Waddah is working to design the advice database for OGE.

Website improvements:

In conjunction with Mr. Kittab and Attorney Cooks, incremental, steps that have been taken to improve the website include:

- o Placing an up to date html version of the Board's rules on the website. We will also place different versions of the rules on the website.
- o Having OCTO place an Open Government/FOIA tab on the site to ensure the required information was easier to find
- o Creating summaries for our advisory opinions (the summaries are searchable)
- o Creating summaries for our negotiated dispositions
- o E-filing upgrades for lobbyist and FDS filings
- o Ensuring that agendas and hard copies of minutes were on the OGE website and not only on the OOG website
- o In conjunction with OCTO, reorganized the heading menu and the information contained within each tab in order to make the website easily searchable

Potential budget enhancement

We were recently asked by the Council's Judiciary Committee whether there were any OOG initiatives to be funded in the upcoming budget. I informed the staff that there was a need to upgrade the computers and replace the printer. Previously, there was a discussion on making the OOG more visible and known to the public by developing materials for outreach. For example posters could be placed in government buildings, specifically in locations where public bodies meet. Additionally funds are needed to produce materials for community outreach. BEGA, including both OGE and OOG have as part of a roadshow attended community meetings to inform the public what it is that

we do. At the most recent one, the public seemed more interested in hearing about the OOG (since it affects them more directly), so funding to increase community outreach efforts would be helpful.

Litigation:

OOG v. Yates: 2016 CA 007337 B. On March 20, 2018, Judge Campbell granted Defendant’s Consent Motion to Alter or Amend the Court’s March 5, 2018 Order or, in the Alternative, for Clarification. The Order makes clear the Mayor's Advisory Commission on Caribbean Community Affairs (“MACCCA”), is to provide to the OOG at least an additional one week’s notice of the date, time, location, and draft agenda of any meeting occurring within twelve months of the date of the Court’s order and shall publish on the District’s central meeting calendar notice of any meeting occurring within twelve months of the date of the order, rather than indefinitely. Pursuant to the Court’s order MACCCA, on April 17, 2018, submitted its draft meeting agenda to the OOG for review. The OOG to ensure compliance with the OMA provided the MACCCA with several recommended changes to the draft meeting agenda.

Claudia Barber v. BEGA/OOG: 2018 CA 001060 (P)(MPA). There has been one new developments in this case that was filed on February 9, 2018. You may recall that the plaintiff in this case is challenging an opinion by the Office of Open Government concluding that the OOG had no authority to independently nullify actions taken during improper closed meetings of public bodies. On March 16, 2018, Petitioner Claudia Barber filed an Opposition to Respondent OOG/BEGA’s Motion to Dismiss. The Opposition to the Motion to Dismiss alleges: (1) D.C. Superior Court has general jurisdiction over all civil actions unless otherwise vested to another court; (2) the matter is a contested case under the APA and subject to notice and hearing requirements, which the OOG did not follow in the advisory opinion; and (3) Because the Court has general jurisdiction over all civil actions unless vested to another court, it is proper for petitioner to request judicial review of the agency decision. May 11, 2018 is the date of initial scheduling conference for this matter.

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	Feb. 2018
Investigations Opened:	1	1	13
Investigations Closed:	0	5	0
Investigations Currently Open:	24	23	26
Investigations Stayed (Inactive):	8	8	8

Stayed (Inactive) Cases		
Nature of Stay	Number	Date Rec
Maryland Court (fugitive)	1	Jan. 2016
DC Superior Court (from OEA)	1	Feb. 2017
OIG	4	Jan. 2016
OAG (pending civil False Claims Act complaint)	2	Sept. 2016
Total Stayed Cases	8	

b. Publication and Reporting Obligations

We have no outstanding publication or reporting obligations. We published our Quarterly Complaint Report for the second quarter of FY18, and we know it was read because it was quoted by the press. We also completed and uploaded our second quarter performance measures into the City Administrator’s Quickbase Database. It is in the dropbox and you will note that we met or exceeded all or our performance goals.

c. Trainings/Outreach –

i. Attended by staff – Mr. Dow attended DCHR’s Agency-Level Administrative Training and Setting Boundaries.

ii. Conducted by staff –

Since the date of the last meeting, we conducted or participated in 12 training sessions, considerably more than the 5 before our prior meeting. The trainings consisted of 3 new employee orientations, 2 MSS trainings and a Board and Commission training at EOM with a Hatch Act emphasis, 2 Hatch Act trainings at OAG, 2 Ethics presentations at DPR, and we participated in Donations Management Training at OPGS and an ANC Legal Seminar hosted by OAG.

d. Advisory Opinions/Advice –

Informal Advice: approximately 105, significantly up from the 51 reported at the last meeting. Note that this includes approximately 50 calls concerning FDS filings. More than 400 FDS IT inquiries were received into our automated mailbox and forwarded to OCTO for resolution.

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

e. Ethics Legislation/Comprehensive Code of Conduct

The Council has proposed adding a subtitle to the Budget Support Act that will include procurement lobbying in the types of matters requiring registration with this office. Mr. Grimaldi can fill you in on the specifics of the latest iteration of that proposal.

f. Rulemaking

The 30 day comment period for the proposed and emergency rulemaking that was adopted at the last meeting will expire on May 5. As you recall, that rulemaking adopts procedures for informal show cause hearings to be used in conjunction with our ministerial schedule of fines and revises the schedule of fines to include a specific reference to the statutory or regulatory provision for which the fine is being imposed. To date, we have received no comments. There will be minor tweaks prior to finalizing the rulemaking.

g. Budget:

BEGA's Budget Oversight Hearing was held before the Council's Committee on the Judiciary and Public Safety on Friday, April 13. We are optimistic that the Committee favorably received our testimony and anticipate modest budget enhancements. We have also continued to hold monthly budget meetings.

h. Staffing –

We have 2 positions that are currently vacant – an Attorney Advisor position and our proposed new Investigative Auditor position. I was heavily engaged in discussions with DCHR last week re: both the Investigative Auditor PD and our new Compliance Specialist PD, which DCHR finally certified last week and has been uploaded to the Dropbox for your review. I'm also pleased to introduce you to Denise Kiser, who accepted our Compliance Specialist position and joined us on Monday April 30. I also uploaded Ms. Kiser's resume to the Dropbox for your review. Ms. Kiser has been working closely this week with Attorney Stewart-Mitchell on FDS issues, but we will not hesitate to bring on additional temp staff if needed over the next few months to get us through the FDS filing season and the next Lobbyist filing season in July. Lastly, the Attorney Advisor position closed one week ago on Thursday April 26, and we will be scheduling interviews with the strongest candidates next week. Mr. Grimaldi also announced his retirement, effective June 23.

i. Litigation

Status of pending cases.

•Gerren Price – (CA No. 16-AA-1230), Mr. Price has filed his brief. The government has requested an extension to file its brief which was due on Tuesday, March 20, 2018.

- Charlene Dickens – (CA No. 17-CV-1027), FDS Designation appeal. Petition dismissed by Court of Appeals on 3/2/18.
- Edwin Edokwe – (2016 CA 007889 P(MPA), FDS Designation appeal. Dismissal of Petition announced by Judge Holeman of DC Super Ct. on 2/9/18 – OAG is awaiting the final order from chambers affirming the Board’s ruling.

- Larry Hicks – (2017 CA 008091), 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. Mr. Hicks’ appeal to Superior Court was dismissed. The Superior Court dismissed the enforcement action without prejudice at the government’s request. Mr. Grimaldi has assembled the record so that the action can now be refiled.

- Claudia Barber vs BEGA/OOG, D.C. Superior Court (C.A. 2018 CA 001060 P(MPA). This matter was discussed in an earlier portion of the meeting. As indicated at that time, May 11, 2018 is the date of initial scheduling conference for this matter.

- 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.

- J. Dillion vs. BEGA, OEA Matter No. J-0030-18. This is an employment matter involving a separated employee. A Status/Prehearing Conference is set for Tuesday, May 8, 2018.

j. Lobbyist/Financial Disclosure Matters

- a. We launched the new Public Financial Disclosure Statement e-filing system with the help of OCTO. All Public Financial Disclosure Statement notifications have gone out via email. We received 163 bounce backs on the email notification and are sending out hard copies to filers with undeliverable email addresses. The last data update we received from OCTO is listed below:

2018 Financial Disclosure Season

	Total
total users	3,516
bad address	140
emails sent	3,376
undelivered	24
emails received	3,352
Logins	592

Submits	478
% Logins	18%
% Submits	14%

b. Lobbyists

Lobbyist Desk Review Report

Our auditor has completed the desk review for the filing period of January 2018. A total of 405 records of lobbyist activity reports were reviewed under the following criteria:

- Whether both the lobbyist and the entity registered and files Lobbyist Activity Report (LAR),
- Whether the compensation report for both lobbyist and the entity match?
- Whether gift were given to any officials. If so, did it meet the gift threshold and reporting requirement?
- Were elected official given any campaign contributions by lobbyists? If so, did it meet the threshold and reporting requirement?
- Whether all lobbyist claiming nonprofit 501(c)(3) status actually qualify to receive the \$200 credit?
- What relationships exist (if any) between lobbyist and elected officials?

Registrations and Lobbyist Activity (LAR) Report Filings

Out of 405 records reviewed, 5 organization either failed to register, file the LAR or both. We are in the process of drafting letters to be sent to the 5 lobbyist to inform them of the violation and resulting fines of \$10 per day not to exceed \$300 pursuant to DC Official Code § 1-1162.32(c).

Compensation Reports

We identified 24 lobbyists whose compensation reports were inconsistent with what the entities reported. We will contact them and request more information to reconcile the variance. If it is found that any lobbyist willfully and knowingly violated the reporting requirements, they will be subject to a \$5,000 fine under DC Official Code § 1-1162.32(a) if the violation is determined to be willful.

Political Contributions

We identified 82 lobbyists who reported campaign contributions to several officials. We will turn over the findings to the Office of Campaign Finance to verify that campaign finance rules are being followed.

Non-profits

Last month we reported that 29 non-profit organizations were not eligible to receive the \$200 credit. We are still in the process of determining the appropriate course of action within BEGA's jurisdiction and drafting letters to all the violators.

k. Non-Confidential Investigations

1. #1634-001, *In re: R. Wilson* - No new developments in this case. This is a formal investigation that we discussed at the last meeting, involving a former OSSE employee who, before her separation from the District government, failed to submit full, accurate, and complete financial disclosure forms for three consecutive years. Our negotiations with Ms. Wilson were not successful. We believe this is an appropriate case for the Director to impose a ministerial fine on the Respondent, but our enforcement actions have been delayed due to the attorney assigned to the case needing to focus her efforts on ensuring the new FDS filing system was operational in time for filing season, and in responding to FDS-related inquiries. After the FDS filing season starts winding down on May 15, we will send Ms. Wilson to Notice to Show Cause why the Director should not impose a fine against her due to her willful failure to file for 3 consecutive years. Following her response, we will make written findings and issue a decision that can be appealed to the Board, consistent with the Ethics Act and the new rulemaking.

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 believe we have reached an agreement in principle for a Negotiated Disposition in this matter, but Ms. Snowden and her counsel are still reviewing our draft language.

Board Member Sobin noted that he was recused from the Snowden matter. Director Wolfingbarger noted that there would be no substantive discussion in the public session. The Chair noted that Mr. Sobin did not have to leave the room for the 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 a 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. The Board authorized this as a formal investigation at the last meeting. We have since interviewed both the former Chancellor and Deputy Mayor for Education and several DCPS employees.

VI. Opportunity for Public Comment

Mr. Michael Sindram called by telephone to provide public comments to the Board.

- Mr. Sindram asked for more information concerning the OOG pharmacy opinion referenced earlier in the meeting. Mr. Barton responded to him by summarizing the opinion.
- He also asked if the public input portion would be included in the hard copy minutes. He was told by the Interim OOG Director that there would be a summary going forward.
- What was the discussion concerning the nonprofit lobbyist credit? Director Wolfingbarger responded to this question.
- Is BEGA taking action to include PSC under BEGA's jurisdiction?
- He wanted to know the status of the Chancellor's investigation
- Does the Board have contact information for former OOG Director Hughes?

VII. **The Board unanimously approved a motion 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

- a. Discussion of any remaining public items
 - i. #1101-003, In re: J. Evans

IX. Adjournment