

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

**MINUTES OF REGULAR MEETING  
May 5, 2017**

The District of Columbia Board of Ethics and Government Accountability held its Regular Monthly Meeting on Thursday, May 5, 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 Interim Chairperson Tameka Collier was present, as well as Board Members Norma Hutcheson, Carol Schwartz, and Shomari Wade. 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/may-4-2017-board-meeting-minutes>

**AGENDA**

- I. Call to Order  
--Chairman Collier 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 (Johnnie Barton)  
--update on Yates litigation.  
--summary of opinions and advice.
  
- 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	March 2017
Investigations Opened:	11	3	1
Investigations Closed:	2	0	3
Investigations Currently Open:	16	7	4
Investigations Stayed (Inactive):	22	22	22

<b>Stayed Cases</b>	
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

We recently updated our performance statistics for the second quarter of fiscal year 2017. I am pleased to report that we met or exceeded all of our performance marks. That information is in the dropbox.

c. Trainings/Outreach –

i. Attended by staff –

Senior Attorney Grimaldi and our ADA coordinator attended ADA Training. Attorney Foster attended a legal ethics training seminar entitled The Legal Technology Jungle: Surviving the Law’s Greatest Ethical Challenges. The three-hour training was sponsored by the Office of the Attorney General and covered the ethical challenges of practicing law with and around technology.

ii. Conducted by staff –

11, which is one more than the 10 conducted last month. The 11 trainings include two new employee orientations and MSS (FDS) trainings, one general Board and Commission training, training sessions at the DC Retirement Board, Alcohol Beverage Regulation Administration, the Committee on Persons with Disabilities, Public Service Commission, and we participated in Donations Management Training offered by the Office of Partnerships and Grant Services. I also met with the new COO at DCPS to provide him with a personalized ethics training. We continue to remind those in attendance of 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: 61, since the last meeting, up from 54 last month.

We published one formal advisory opinion since the last meeting. That opinion addresses whether, and under what circumstances a District employee is permitted to sell products from the employee's outside business activity to her District government colleagues. The proposed sua sponte advisory opinion on the ethical standards that apply to ANC Commissioners was published in the DC Register for the required 30 day comment period beginning on April 21. We have not yet received any comments on the proposed opinion. We do believe that it would have changed the outcome of a number of ANC investigations conducted in the past, because the DPM imposes the same standard upon ANC Commissioners that are imposed upon other elected officials – including the duty to avoid even the appearance of a violation of the law or regulations.

e. Ethics Legislation/Comprehensive Code of Conduct

I have nothing to report since the last Board meeting, on our Ethics legislation. At the moment, the Council is busy with Budget hearings having just finished up all of its oversight hearings.

f. Rulemaking

We have nothing new to report on the proposed rulemaking that was approved by the Board at the February meeting. We have received no comments and will prepare a Notice of Final Rulemaking for publication by the next meeting. As you may recall, the rule clarifies that a fine will be imposed on employees who fail to file a “true, complete and correct confidential report.”

g. Budget:

As you know we had our budget hearing last Thursday, April 27<sup>th</sup>. Former Chairman Spagnoletti again emphasized our need for funds to replace our aging FDS and Lobbyist E-Filing System. Following the Mayor's budget submission to the Council that did not include Capital funds to replace the e-filing system, I reached out to the Mayor's budget officials who informed me that they would attempt to locate the funds immediately instead of doing it through a Capital Budget request, which would have caused us to wait until the start of the new FY in September before we could get started. We were encouraged to hear that the Councilmember too had been informed that the Executive is committed to finding funds immediately and to transfer them to us through reprogramming. We also emphasized the need for an additional administrative FTE for Lobbyist/FDS matters.

I think our former Chairman made our points well, especially when he mentioned that the new law containing the twice per year FDS filing requirement for Council Members will not, by its own applicability clause, go into effect until these funds become available to us. Councilmember Allen also noted that his own legislative goals to increase lobbyist reporting to quarterly from semiannually would require a new e-filing system and more administrative support.

Finally, I was very pleased that a member of the lobbyist community testified in support of our requests and also said some nice things about the great customer service he had experienced at the hands of our small but dedicated staff.

- h. Staffing – I am very pleased to announce that Ms. Asia Stewart-Mitchell has been offered and has accepted the vacant attorney position. Out of the many qualified applicants we interviewed, Ms. Stewart-Mitchell stood apart and we are very pleased to have her now on a permanent basis.

Last week we interviewed multiple applicants for the vacant auditor position. The General Counsel and I have settled on a leading applicant and we expect to make an offer shortly. We are in the process of checking references.

- i. Lobbyist/Financial Disclosure Matters

- a. Public Financial Disclosure Statements

- 1. As of today we have sent out both email and hard copy Public Financial Disclosure Statement notifications to over 3,000 Designated Public Filers. A little over 1/3 of designated filers have already filed but we expect a large influx of filings closer to the May 15<sup>th</sup> deadline. We have answered over 150 financial disclosure questions and average a 24-hour response time. We have now begun to address all “bounced-back” emails and returned USPS mailers by researching updated contact information and resending the PFDS notifications.
    - 2. We are nearing completion of our review of all Boards and Commissions to determine whether they should be required to file public financial disclosure statements given their duties and responsibilities. For your reference, this project involves a review of over 200 boards and commissions and to date we have reviewed approximately 130 Boards and Commissions. We will present a list of Boards and Commissions that we recommend should be required to file public financial disclosure statements, along with a description of those Board and Commissions’ activities, upon completion.

b. Confidential Financial Disclosure Statement Enforcement

1. Last month we reported that an audit of the 2016 Confidential Financial Disclosure Statement Review Reports revealed that approximately 96 employees failed to submit their CFDS forms to their agency head by the May 16, 2016 deadline. As of today that number has been reduced to 65. After notifying the filers of their non-compliance throughout February, March, and April, we will now impose a ministerial fine of \$300 on each of the remaining non-filers. The fine will be deducted directly from their District paychecks. We'll use our resources to focus on current, active District employees, since it will be difficult to collect the fine from those who are no longer employed with the District. Of the 65 non-filers, approximately 11, that we know of, are no longer employed by the District.

c. Lobbyists

1. I spoke at a D.C. Bar event on April 12<sup>th</sup> entitled The Ethics of Lobbying in D.C. The session covered the requirements for being a lobbyist in the District and also included a discussion of recent legislation regarding lobbying, including the Comprehensive Code of Conduct. Attendance at the event was not as well attended as I had hoped, however, the audience was engaged and we had several registered lobbyists who attended the event after receiving a notification of the event from us via our e-filing system.
2. The Final Audit report on Manatt Phelps and Phillips LLPs January 2016 lobbying activity reports was submitted to the dropbox earlier this week. As you can see in the Audit Report, Manatt accepted our Statement of Findings and took corrective actions, including amending two of their lobbying activity reports to add greater specificity regarding their lobbying activity and paying a civil fine for a late-registration for one of its clients. At this time, we request that the Board issue this Audit report as the Final Periodic Audit Report for Manatt, Phelps, and Phillips LLP.

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 §

VIII. Resumption of Public Meeting

a. Discussion of any remaining public items

The Board had nothing to report out of the Executive session.

IX. Adjournment