

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

Monthly Meeting of the Board

June 6, 2013, 1:00 p.m.
Room 540 South
One Judiciary Square

AGENDA

- I. Call to Order
- II. Ascertainment of Quorum
- III. Adoption of the Agenda
- IV. Formal Adoption of the Minutes of the May 2nd monthly meeting
- V. Report by the Director of Open Government
 - a. Trainings/Presentations
- VI. 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)
 - b. Publication and Reporting Obligations
 - c. Staffing and Job Announcements
 - d. Update on Financial Disclosure Statement Filings
 - e. Update on Lobbyist Filings – Inspection Plan
 - f. Trainings (conducted by staff & attended by staff)
 - g. Budget Matters

- h. Upcoming Council Hearing on Permanent BEGA Alternative Disposition Legislations
 - i. Best Practices Report – Implementation Plan
 - j. DPM Chapter 18 revisions by DCHR
 - k. Posting of Dispositions Resulting in Sanctions – Results of OGE/OOG discussions and plan going forward
 - l. Proposed Memorandum of Understanding (“MOU”) with the D.C. Police Union
 - m. Outside Pro Bono work by BEGA Attorneys in conjunction with Council Program - - Develop Policy for BEGA staff
 - n. Non-Confidential Investigations
 - o. Advisory Opinion - - discussion of legislation proposed by the Office of the Attorney General in connection with a previous Advisory Opinion concerning whether Board/Commission members can be lobbyists.
- VII. Executive Session (non-public) to Discuss Ongoing, Confidential Preliminary Investigations pursuant to D.C. Official Code § 2-575(b)(14), 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
- IX. Adjournment

MEETING MINUTES

District of Columbia

Board of Ethics and Government Accountability

Monthly Meeting of the Board

June 6, 2013, at 1:00 pm

Hearing Room 540 South

One Judiciary Square

I. Call to Order

The Monthly Meeting of the Board was called to order at 1:04 pm by Chairman Robert Spagnoletti in Hearing Room 540 South at One Judiciary Square, 441 4th Street NW, Washington, DC 20001.

II. Ascertainment of Quorum

All Board Members were present (Robert Spagnoletti, Deborah Lathen and Laura Richards), constituting a quorum.

III. Adoption of the Agenda

The Agenda was adopted unanimously.

IV. Formal Adoption of the Minutes of the May 2, 2013 monthly meeting.

The Minutes of May 2, 2013, were adopted unanimously.

V. Report by the Director of Open Government

a. Trainings/Presentations

Director of Open Government, Traci Hughes reported that over the last month she has conducted several presentations regarding the Open Meetings Act (OMA), including a presentation along with Darrin Sobin, the Director of Government Ethics at the Mayor's Board Chairs Meeting and a presentation to the nominees to the Housing Productions Trust Fund Advisory Board. She also met with the

Board Executive Directors at the Department of Health regarding OMA and compliance. There are five divisions of Boards including the Medical Nursing Allied and Behavioral Pharmacy and Health Care Facilities Boards with oversight of more than 60 specialization boards, she is coordinating with each of the Department of Health board executive directors to train members about the OMA and its procedural requirements. Upon request of the Mayor's Office, Director Hughes met with the Superintendent of Bong County, Liberia, Selena Polson-Mappy to discuss the District's Freedom of Information Act (FOIA), its applications and the challenges the District faces regarding meeting response to deadlines. Victor Bonett of the Office of the Attorney General participated to provide Ms. Mappy with insight into individual agency efforts to meet FOIA requirements.

Mr. Sobin also gave a brief presentation about the history of BEGA and the role of the Office of Government Ethics.

Director Hughes expressed her satisfaction with regular calls received from District Agencies seeking advice on FOIA and OMA compliance. She added that inquiries were seeking informal advice, and although she has not yet been requested to provide formal advice, she anticipates it will be forthcoming.

Chairman Spagnoletti asked Ms. Hughes how she has been received thus far by District agencies, she replied, "very well received because many people know me from previous Government agencies."

However, although agencies are aware of OMA, they are not aware of the procedural requirements of the Act, so the responses have been robust and many employees want to know how to comply. There are several aspects of the OMA where it has become readily apparent that the law does not address many practical applications of the law, like the Language Access Act. There are no provisions in OMA for posting of minutes agendas in different languages, so her informal advice is that where it is the expectation of your constituency, like many people who utilize this Agency's Boards and Commissions services or needed that information for who are Spanish speaking persons to post that information in Spanish. Additionally, it is very challenging for the numerous boards and commissions and many of the agencies to post meetings minutes in the three business day time frame. The Director recommends that if at all possible, post draft meeting minutes to maintain compliance. She adds that these are just some practical implications of the provisions that may not have necessarily been accounted for in its original adoption by the Council.

Ms. Hughes assured Chairman Spagnoletti that she maintains notations of all meetings, informal and formal advice, as well as gathering suggestions for proof as to the law.

Laura Richards commented that the Open Government Coalition performed a survey on compliance; however, they did not address the issue of unannounced meetings, but acknowledged that a problem exists. Director Hughes advised that in accordance with the law any full meeting of a board or commission is to be publically announced. She reports to have had several discussions regarding 'form of notice,' particularly concerning the inability to post in the DC Register. However, agencies can post on Websites, as well as the physical location where the meeting is taking place. Also, another issue of OMA is that it does not cover subcommittees and in many instances these meetings of subcommittees are taking up agenda items that are before the full board, so quite often it seems to be a semantic difference between what constitutes a subcommittee and quorum. She has made it very clear that they cannot call a subcommittee meeting with the intention of going around quorum requirements of OMA.

In light of the volume of work that the OOG faces, Chairman Spagnoletti suggested that Director Hughes begin preliminary work of filling the attorney position slated in the beginning of the fiscal year.

Unexpected Break in Agenda: A member of the public (who also attended last month's Meeting) was escorted out of the public meeting by two security officers. Director Hughes reported that security was notified to be on standby, but not instructed to escort him/her from meeting. Ms. Hughes met with officers briefly, and the person immediately returned to the meeting.

VI. 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)

Director Sobin reported that the OGE has also been very busy during the last month.

Status on matters since last Board Meeting are as follows:

- Investigations Opened – 7
- Investigations Closed - 3

- Investigations Pending – 14
- Advisory Opinions New – 1
- Advisory Opinions Issued – 2
- Many informal, verbal advice requests and responses

b. Publication and Reporting Obligations

The Board was advised that OGE is current on all publication and reporting obligations. Additionally, the Office is in the process of adopting a more ‘user friendly’ approach to redacting advisory opinions which will have fewer redactions since it throws off the rhythm of the opinion. The Director has also personally increased his efforts to reach out to members of the Government who requested opinions to ask their consent to publication without redactions to no avail. However, he reports his satisfaction with the way opinions are now being redacted with only names being omitted.

Per instructions from the Board during the last Meeting, Director Sobin reported that PowerPoint slides of ethics trainings are now posted on BEGA’s website. Sobin’s biography has been drafted and will soon be posted as well. Further, the Board was advised that the next Investigations Quarterly Report is due June 30, 2013, and is slated to be timely published.

c. Staffing and Job Announcements

The Office is in the process of interviewing for the Senior Attorney position; we are confident that it will be filled shortly.

d. Update on Financial Disclosure Statement Filings

The Office has been working diligently to get up to speed using the new FDS e-Filing System similar to the database used by the Office of Campaign Finance (OCF). May 15, 2013, marked OGE’s deadline for receipt of all FDS. The next step was to issue non-compliance letters to persons who failed to comply. Board Member Deborah Lathen inquired as to how many people failed to comply, and Samantha Riley responded with an estimation of a few hundred between public officials the ANCs. However, she added that since letters were distributed that number dropped drastically. There were also instances where many filers continued to file with OCF. Mr. Sobin added that there will be no penalties for late filers this year; OGE’s goal is just to get everyone that is supposed to file in compliance. The agencies are reviewing

filings of non-public designated filers, and should refer those persons to our Office. So far, one concern has been brought to our attention and the matter is under confidential investigation.

The Office of Administrative Hearings has an extension of time to file its FDS. Unfortunately, the Agency was not part of the initial notification, but filings are close to being complete. The District of Columbia Housing Authority (DCHA) has not yet filed. We have been working with their General Counsel regarding some challenges with their own FDS requirements in that they do not completely comply with OGE's. The General Counsel requested an Agency extension until June 28, 2013, of which was granted.

We are required to publish, by June 15th, the names of all public filers who filed, failed to file, or are on extension and the reasons for the extensions. The names of all non-filers will be published in the DC Register, in addition to other compliance enforcement actions.

Former Council Member Michael A. Brown has "respectfully declined" to file; although he has resigned, he is still required to file for the previous year. Initially, Mr. Brown requested an extension of several months, but this Office informed him that we would require an explanation before granting such a lengthy extension. We later received a letter from his attorney on June 4, 2013, declining to file with no explanation. Mr. Brown was encouraged to file and was made aware of his requirements to comply with FDS filing, and the process enforced for non-filers. Therefore, we anticipate presenting the Board with a notice of violation at the next Meeting.

Director Sobin also reported that Traci Hughes created a 'Survey Monkey' for OGE, which enabled us to receive feedback from filers about their experience during our FDS filing process. It was sent to 100 random FDS filers, and we received nine responses. I have supplied you with copies of the actual survey and answers to the questions. Overall, I believe feedback was positive, and we intend to use the information to improve our filing process for next year (i.e., ease of use, user friendliness).

Board Member Lathen inquired as to how many FDS forms BEGA received and what standards are used to review them. The Director responded by saying that he anticipates mirroring the inspection protocol similar to what was used in the lobbyist inspection. The first step is to manually look at each Question #8 (i.e., Please list all gifts you received from a prohibited source in

an aggregate value of \$100 in a calendar year). We are currently in the process of reviewing those answers, which will flag whether or not additional investigation is required.

e. Update on Lobbyist Filings – Inspection Plan

During the last Meeting, the Board requested OGE to develop an Inspection Plan for lobbyist filings, and it has been accomplished. Clara Olawunmi Investigator/Auditor assisted in putting it together and did an excellent job. We intend to utilize the Plan for the activity reports due next month in July.

f. Trainings (conducted by staff & attended by staff)

The OGE conducted the following trainings in May:

1. Advisory Neighborhood Commissions;
2. Board/Commission Chairs; and
3. Bar Counsel (the employees of each Agency met and had a very nice meeting discussing various roles and coordination. We explained the functions of each Office and we expect a collaborative working relationship going further).

Additionally, the Office has scheduled three DC agency trainings this month with the Department of Housing and Community Development, Department of Human Services, and the Office of the DC Auditor. Lastly, Attorney Advisor, Yancey Burns attended a two day Appellate Practice Training; Samantha Riley planned to attend, but was detained due to fulfilling FDS obligations.

g. Budget Matters

The Office requested re-programming of \$100,000 from personal services to non-personal services for the following items:

- Ongoing IT support and maintenance of the Online Financial Disclosure and Lobbyist Filing System;
- Ongoing IT support and maintenance of the ProLaw Case Management System;
- Development and deployment of a new Freedom of Information Act database management system for the OOG;

- Build-out work and equipment for the new separate BEGA Board Office and Hearing Room facility located at 441 4th Street, N.W., Suite 540S; and
 - Purchase of computers, copier, set of the DC Code, and other supplies required to maintain the upkeep and productivity of the Agency
- h. Upcoming Council Hearing on Permanent BEGA Alternative Disposition Legislations

The June 13, 2013, Committee Hearing before Councilmember Kenyan McDuffie has been cancelled. The Hearing was scheduled to discuss proposed amendments to the Ethics Act on Negotiated Dispositions/Issuing Advisory Opinion on our own initiative, and the Hatch Act. The legislation gave us our permanent version of existing emergency and temporary legislation, which gave us our own sanction authority, as well as the local Hatch Act which became part of our code of conduct. We are considering asking for some small revisions to alternative sanctions to make clear what kinds of things we can do like trainings, remediation, restitution, probation, and community service that can actually be accomplished by rulemaking instead of legislation. The Director believes BEGA already has the authority, so the Agency may dispense with going through the Council and simply add through rulemaking.

Board Member Richards commented that one of those provisions clarify that negotiated dispositions approved by the Board would be public, and asked about the informal ones that we wish to be nonpublic; can we make that distinguished by rule making? Director Sobin said that if the negotiated disposition was an informal admonition then it would not be public. But if the negotiated disposition was something else, it could be public, depending upon how it was negotiated.

General Counsel Stacie Pittell added that the informal admonitions are called nonpublic informal admonitions, so it is clear that they are meant to be nonpublic – and the negotiated dispositions say negotiated dispositions. Director Sobin agreed to make it clear that they are public through rulemaking, as long as it complies with the statutory obligations since negotiating dispositions that result in a public disposition are public. Further, during the drafting of the legislation, Ms. Pittell renamed the ‘negotiated disposition’ to ‘public negotiated disposition.’ It was divided into two sections under the heading of negotiated dispositions. One section was the nonpublic informal admonitions, and the second section was the public negotiated dispositions. She suggested that if done by rulemaking, we make it along the same lines. In the revised version, it is very clear.

The Chairman spoke on expungement, and the importance to clarify what that means in a world of sealing records because of the differences in terms of who can have access to the information whether you actually literally had no longer maintained any shred of paper or computer data that relates to it; or whether anyone else like the IG or US Attorneys Office could get that information subsequent to whatever we call expungement. Director Sobin remarked that it could be done by rulemaking and agreed to have a recommendation and perhaps drafts by the next Meeting.

i. Best Practices Report – Implementation Plan

Our Best Practice Report is still out there. We have had communications with the Council who is interested in putting our recommendations into practice. The Council has asked us to clarify some of the points on the Report and we have responded accordingly. The best information we are receiving right now is that they are working on it, but they may not really focus on it completely until the end of the budget season. So far, it has been a great collaborative effort and I think we are going to get all the support we need. Additionally, OGE is putting together research on a variety of topics and drafting sections for the Universal Code of Conduct. We have an intern for the summer who is assisting us with the Code, along with our attorneys.

j. DPM Chapter 18 revisions by DCHR

Director Sobin reports that DPM (6BDCMR Chapter 18) is part of our Code of Conduct by law. It was a set of regulations that governed the disciplinary process and expectations of Government employees, but the Council made it a part of our Code of Conduct when they enacted the Ethics Act. Not only can violations of the DPM result in disciplinary action, but they can also result in civil penalties from BEGA. The DPM required updating because of many changes in the Ethics Act. Therefore, it has been a work in progress since the start of BEGA back in October. DCHR is responsible for issuing us the DPM, and they have been working on it in collaboration with the Office of the Attorney General where I was able to do some of the work. We have revised and submitted the last version to you, and DCHR is eager to publish, which could result in a 30 day notice and comment period for the public.

Board Member Lathen inquired about how the terms, ‘waste, fraud and abuse’ are defined as it relates to Section 1800.3k, [Employee disclosed waste, fraud, abuse and corruption to appropriate authorities]. She stated that if employees are to be bound to these provisions, there should an understanding of what constitutes those terms. General Counsel Pittell advised that although waste,

fraud, and abuse are not clearly defined, they are part of the IG statute, and since they are charged with investigating fraud and abuse, it is their obligation to report those items. Director Sobin added that the term ‘appropriate authorities’ was used so it is not limited to the IG and brings BEGA into the fold as well.

Board Member Lathen also commented on Section "L" regarding ‘employee shall satisfy in good faith their obligations including all just financial obligations and the tax part of it’. She discussed whether BEGA was trying to reach private financial obligations, such as credit cards. She acknowledged the hardship many people may be facing with paying mortgages and other financial obligations due to the state of the economy. Director Sobin explained that ‘it’s a soft version of what currently exist,’ and agreed that it is a policy decision that needs to be thought through. He believes it was ‘softened’ by using, “Good Faith” obligations. He assured the Board that it would have to be an extreme situation for OGE to recommend any kind of preliminary investigation for an employee that simply could not pay their bills. Chairman Spagnoletti added that the theory behind this issue is not to have government employees in such financial constraints which may make them more susceptible to ethical misconduct; however, we want to ensure financial obligations like child support are being fulfilled.

Board Member Lathen reiterated her concern about whether BEGA is the appropriate place to bring about enforcement actions against employees not satisfying their financial obligations, and stated that there are already procedural remedies in place to handle situations where employees fail to satisfy financial obligations. It was discussed that the Section needs revision by taking out ‘financial obligations,’ perhaps making it limited federal, state, or local taxes and government obligations as opposed to just financial obligations.

Board Member Richards inquired about Section 7, “charitable gifts,” specifically, what would not be included as a gift, and things that could be accepted without violating the gift rule, such as attendance at a charitable event. She asked that OGE look at ways of narrowing the topic because it is overly broad. Board Member Lathen recommended that OGE look into the way the Federal Government handles gifts to charitable events; whereby, approval comes from the Office of the Inspector General. Director Sobin informed the Board that he instructed DCHR to take out the part about not being able to accept a charitable gift at any amount.

On the issue of ‘widely attended events,’ the Board spoke to the policy currently employed by the federal government’s Office of Government Ethics, which puts the decision in the hands of the Agency Head. Director Sobin spoke to his reservations about having BEGA making those decisions, because of the workload that it would entail. The Board suggested looking further into federal government policies and the policies of other jurisdictions for guidance on the subject.

- k. Posting of Dispositions Resulting in Sanctions – Results of OGE/OOG discussions and plan going forward

Director Sobin reports that at the last Meeting, the Board requested that he and Director Hughes developed a plan regarding posting information on sanctions. He states that it is an acceptable compromise that weighs the public’s interests; full disclosure and transparency vs. privacy concerns.

Non-public informal admonitions will be posted, but in redacted form since they are private. OGE will remove identifying information from advisory opinions prior to posting. As for public negotiated dispositions, the documents will be posted with the person’s first initial and last name. Director Hughes added that information is posted in the disclaimer on the BEGA website that if individuals are seeking a full document with the unredacted information they can request a copy

- l. Proposed Memorandum of Understanding (“MOU”) with the D.C. Police Union

Director Sobin recommended not discussing the substantive matter because OGE is awaiting an opinion from the Office of the Attorney General as to whether or not the proposal is something from a legal prospective. Director Hughes stated that she has been informed that the AG’s Office is working on the MOU and will provide a formal opinion.

- m. Outside Pro Bono work by BEGA Attorneys in conjunction with Council Program – Develop Policy for BEGA staff

Director Sobin discussed Outside Pro Bono work by BEGA Attorneys in Conjunction with the Council Program, and recommended to the Board that OGE attorneys refrain from participating in the Program. He added that our attorneys, as a policy matter issue, should not engage in outside practice of law. While the Board acknowledged the Director’s concerns, they opined to allow the attorneys to participate in pro bono work, stating that much could be

gained from such an opportunity. The Board suggested that assignment be determined on a case-by-case basis, but left the final decision-making up to the Director.

n. Non-Confidential Investigations

Director Sobin reported two non-confidential investigations for the Board's consideration, and requested the issuance of Notices of Violations for approval and signature, so the Office may move forward with adversarial hearings in due course.

GC Pittell reported the first case involving Larry Hicks, a former employee of the Department of Employment Services (DOES). Mr. Hicks was the Project Manager of a program in which private employer L.S. Caldwell & Associates, Inc. (Caldwell) participated. The matter involved job training for people and he had direct oversight to the program that L.S. Caldwell was participating in. Mr. Hicks initiated negotiations for employment with Caldwell and was hired. Upon leaving DOES, Mr. Hicks contacted DOES staff on behalf of Caldwell and ultimately attended a meeting where they were discussing the same matters that he had worked on at the time he was at DOES.

Board Member Lathen asked if Mr. Hicks initiated potential employment discussions with Caldwell while working at DOES. GC Pittell informed her that he reported that he was first approached by Caldwell, but did not revisit the matter until several months later. Board Member Lathen also asked if Mr. Hicks notified the IG's Office about his employment with Caldwell, or recused himself from working on Caldwell matters, or if employees are given instructions on post-employment conflicts of interests. GC Pittell advised that Mr. Hicks did not notify anyone of his intent to work for Caldwell, nor was he forthcoming about his position. Also, GC Pittell added that rules are contained in the DPM and all employees are responsible for knowing them, and it is part of ethics training. Furthermore, Mr. Hicks was given the opportunity to have a negotiated disposition opposed to this proceeding, but we did not hear back from him.

Board Member Lathen acknowledged that technically a crime was committed, and asked if any thought was given to referring the matter to the US Attorney's Office. GC Pittell said that OGE had considered it, but according to the statute, the Board could either sanction the person or refer the matter. The Board voted unanimously to issue the NOV.

GC Pittell reported that the second matter involved the misuse of a Disability Parking Placard by DCRA employee, Steven Allen. The Office of the Inspector General investigated the case and observed him misusing the placard to park in the vicinity of his District work location all day at a meter without paying for it on at least 22 documented instances. The IG's Office

met with him about the misuse only for him to start back misusing the placard a couple of months later. This Office interviewed him and he admitted to misusing the placard; we explained the option of negotiated disposition, as well as how the matter would proceed if the disposition was not entered into. The Office was under the impression that we had a verbal agreement with him to sign the paperwork. The Board voted unanimously to issue the NOV.

- o. Advisory Opinion - - discussion of legislation proposed by the Office of the Attorney General in connection with a previous Advisory Opinion concerning whether Board/Commission members can be lobbyists

The Board discussed criteria for selecting which Board or Commission members should be prohibited from being employed as lobbyists. General Counsel Pittell provided the Board a chart/spreadsheet and projected the chart/spreadsheet on the wall. The chart/spreadsheet included information about the 23 Boards/Commissions that require City Council approval under the Confirmation Act and are included under the Ethics Act's definition of "public official", as well as additional Boards/Commissions for the Board to consider. Chairman Spagnoletti began the discussion by asking if the Office of the Attorney General (OAG) provided the Office of Government Ethics (OGE) any criteria or justification for the Boards and Commissions that they selected in their draft legislation concerning the prohibition. Director Sobin replied that they had not and General Counsel Pittell explained the criteria that OGE had developed.

Board Member Richards discussed the three types of Boards/Commissions: those nominated by the Mayor and actively approved by the Council, those nominated by the Mayor and passively approved by the Council, and those nominated by the Mayor or Others without the involvement of the Council. Board Member Richards suggested that OGE look to discern the intent of the Council in regard to these different types of Boards/Commissions and their differing nomination/approval requirements by looking to the legislative history of the Confirmation Act. A member of the audience, Esther Bushman, volunteered to supply OGE with the legislative history of the Confirmation Act. Board Member Richards asked about the Commission on Fashion Arts and Events and why they require Mayoral nomination and active Council approval. Their function illustrated the questions that surround why certain Boards/Commissions require Mayoral nomination and active Council approval.

The Board decided that more questions needed to be answered before they could make an informed decision about the criteria for prohibition. The Board

directed OGE to sit down with OAG to come to a common understanding about the criteria, including OAG's thoughts regarding the distinction between fulltime, part time, and special government employee Board/Commission members. The Board directed OGE to meet with OAG and explore a methodology for creating criteria, looking toward consistency between the two agencies. Director Sobin informed the Board that he would set up a meeting with OAG to explore the methodology.

- VII. Executive Session (non-public) to Discuss Ongoing, Confidential Preliminary Investigations pursuant to D.C. Official Code § 2-575(b)(14), 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

Chairman Spagnoletti announced the re-opening of the Public Meeting and invited the public to speak. No members of the public were present.

OOG Director Hughes informed the Board that she received information from FEMS Chief Kenneth Ellerbe regarding a possible violation of the FOIA provision of the DPM at FEMS. Director Hughes shared the information with OGE Director Sobin who has opened a preliminary investigation into the matter.

IX. Adjournment

Chairman Spagnoletti announced that the Board Meeting was over and adjourned at 4:45 p.m.