

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

**MEETING MINUTES – June 6, 2024**

The District of Columbia Board of Ethics and Government Accountability held a hybrid meeting at the Board of Ethics and Government Accountability, 1030 15<sup>th</sup> Street, NW, Suite 700 West, and virtually on June 6, 2024, at 12:00 p.m. Chairperson Norma Hutcheson did not attend the meeting. Board Member Melissa Tucker presided over the meeting and Board Members Charles Nottingham, Felice Smith, and Darrin Sobin participated in the meeting.

Members of the public were welcome to attend, and a recording of the meeting will be made available on open-dc.gov and BEGA’s YouTube channel.

**I. Call to Order**

The meeting was called to order at 12:00 p.m.

**II. Ascertainment of Quorum**

Four Board members, Melissa Tucker, Charles Nottingham, Felice Smith, and Darrin Sobin were present for the meeting.

**III. Adoption of the Agenda/Approval of Minutes**

The Board members voted unanimously to adopt the agenda and approve the minutes for the May 2024 meeting.

**IV. Report by the Director of Open Government**

Good afternoon, Presiding Member Tucker, and Members of the Board. I am Niquelle Allen, Director of Open Government. I am pleased to present this report on the activities of the Office of Open Government (“OOG”). Since the last Board meeting, OOG has continued to fulfill its mission of ensuring that all persons receive full and complete information regarding the affairs of the District of Columbia government and the actions of those who represent them.

**A. Open Meetings Act (“OMA”) and Freedom of Information Act (“FOIA”) Advice**

**1. Advisory Opinions**

I have not issued an advisory opinion since the Board’s last meeting.

**2. Informal Advice**

Since the last Board meeting, OOG has responded informally, via e-mail or telephone, to requests for assistance as follows:

5 requests for OMA advice;  
3 requests for FOIA advice; and  
8 requests for technical assistance with open-dc.gov.

**B. Meeting Monitoring**

OOG's staff attends public bodies' meetings, in person and remotely, to ensure compliance with the OMA. They also inspect public bodies' websites and OOG's Central Meeting Calendar for public meeting notices and records. OOG attorneys provide legal advice on OMA compliance and take corrective action if necessary.

During May 2024, OOG's legal staff attended 17 public body meetings. As a result of the monitoring, OOG communicated 2 corrective measures. The public bodies failed to do the following: (1) post sufficient notice of its meeting and (2) post the meeting agenda.

**C. Training/Outreach**

1. DC Bar's 2024 John Payton Leadership Academy

On May 3, 2024, Attorney Advisor Anthony J Scerbo attended the Developmental Sprint, as part of the DC Bar's John Payton Leadership Academy, which tasked participants with identifying a leadership improvement goal and working with their support groups to assess progress in making progress in accomplishing those goals. On May 18, 2024, Attorney Scerbo participated in the DC Bar's Pro Bono Center Advice & Referral Clinic, at which volunteer attorneys assist individuals by providing legal information, brief advice, and referrals to individuals with civil legal problems. On May 20, 2024, Attorney Scerbo attended the second full-day Leadership development program, as part of the DC Bar's John Payton Leadership Academy. The training focused on personal assessments and evaluation of attributes in leading others. On Saturday, June 1, 2024, Attorney Scerbo volunteered at the DC Bar's Pro Bono Center quarterly Immigration Clinic, at which volunteer attorneys assist individuals by providing legal information, brief advice, and referrals to individuals with immigration challenges.

2. Active Listening for Lawyers and Paralegals-A Critical Skill for High Performance

On May 7, 2024, Paralegal Specialist Kimberly Brown attended an on-demand training module entitled, "Active Listening for Lawyers and Paralegals". The session provided an overview of the benefits of active listening and addressed emerging issues of when it is not practiced properly. The training also provided effective active listening techniques to assist in client engagement and relationship building.

3. Conducting Effective Internal Investigation: An Overview of Investigation Phases and Key Considerations

On May 10, 2024, Paralegal Brown attended an on-demand training module entitled, “Conducting Effective Internal Investigation: An Overview of Investigation Phases and Key Considerations”. The training highlighted fundamental steps in conducting investigations including document collection, witness interviews, and reporting.

4. Open Meetings Act Training for the Mayor’s Office of Talent and Appointments

On May 23, 2024, Chief Counsel Louis Neal facilitated a virtual Open Meetings Act training with members of the Mayor’s Office of Talent and Appointments (MOTA). The virtual training course covered the basic principles of the OMA and procedures for ensuring that public bodies are in compliance with the OMA. Director Allen was present at the virtual training session and assisted Chief Counsel Neal with answering questions from the participants.

5. Open Meetings Act and Parliamentary Procedure

On May 30, 2024, BEGA facilitated training on its areas of expertise for the board of directors of DC Water (“DC Water”) during the public body’s annual retreat at their headquarters in Navy Yard. Attorney Weil facilitated in-person training on the Open Meetings Act and Parliamentary Procedure for DC Water and Attorney Advisor Brandon Lewis assisted with the presentation. The Office of Government Ethics also presented in-person Ethics training for DC Water.

6. Sexual Harassment Training

In response to Mayor’s Order 2023-13 District Sexual Harassment, the following have completed the mandatory employee training:

On April 29, 2024, Attorney Scerbo completed the training.

On May 6, 2024, Attorney Lewis completed the training.

On June 3, 2020, Paralegal Brown completed the training.

On June 4, 2024, Chief Counsel Neal completed the training.

On June 5, 2024, Director Allen completed the training.

7. American Society of Access Professionals 2024 National Training Conference

On June 3-5, 2024, the American Society of Access Professionals hosted their 17<sup>th</sup> annual National Training Conference in Garden Grove, California. Chief Counsel Neal and Attorney Lewis completed the training conference and are currently returning from the training. Summaries of the sessions that they attended will be included in next month’s Board report.

## **D. Litigation and Legislative Update**

### **1. Litigation**

- a. Leslie Richards v. “D.C. Finance & Treasury” (Case No. 24-CV-0034 (D.C. Ct. of App.); Case No. 2021-CA-003762-B (Super. Ct.)).

I have previously reported on this *pro se* case in which the plaintiff-appellant seeks information about a disbursement to her from a private bank. Among her many points is the contention that the University of the District of Columbia “refus[ed] to disclose through FOIA who cashed” a particular numbered paycheck.

The opening brief is in Dropbox. The District of Columbia (District) parties’ brief will be due on June 17, 2024.

- b. DC Open Government Coalition v. District of Columbia (Case No. 2023-CAB-007251 (D.C. Super. Ct.)).

I have previously reported on this case, in which the DC Open Government Coalition (OGC) seeks an accounting of the backlog of public-records requests submitted through the FOIAXpress Public Access Link.

The parties have filed cross-motions for summary judgment, and a hearing is set for June 21, 2024, at 1:30pm (civil calendar 5, courtroom 318).

The District argues that OGC’s claims are moot because the Office of the Chief Technology Officer (OCTO) generated OGC’s requested report and delivered the information that OGC requested. The District also contends that OCTO does not produce or maintain a report of the nature that OGC requested, so the record did not exist according to D.C. FOIA. OGC responded that even though OCTO provided a report, the record provided was not prepared in a manner that satisfied OGC’s request.

The substantive filings are in Dropbox.

### **2. Legislation**

- a. Budget Support Act re: OMA Enforcement—Fine Increase and Fee-Shifting (Subtitle D of Title I of Bill 25-0784)

On May 29, 2024, the D.C. Council passed on first reading, the Fiscal Year 2025 Budget Support Act of 2024. As a subtitle of this bill, the “Open Meetings Enforcement Amendment Act of 2024” would (1) raise the maximum fine, for “a pattern or practice of willfully participating in one or more closed meetings in violation of the” OMA, to \$500; and (2) permit OOG to recover “the costs of litigation.”

The Committee of the Whole's draft report is in Dropbox. The relevant language appears on page 14 of the report and pages 9 and 10 of the committee print (the 5th attachment).

- b. Rulemaking Public Comment Modernization Amendment Act of 2024 (Bill 25-0790)

This legislation, introduced by Councilmember Anita Bonds, would amend the District of Columbia Administrative Procedure Act to require agencies issuing proposed rulemakings to receive oral comments (“data and views”) and electronic written comments. Current law allows agencies to require that comments be presented in writing. *See* D.C. Official Code § 2-505(a).

Also, the Office of Documents and Administrative Issuances would also be required to “publish and maintain an electronic directory of . . . rules open for public comment.”

The introduced version of the bill is in Dropbox. The Committee on Executive Administration and Labor will hold a hearing on July 10, 2024.

- c. D.C. FOIA Exemption: Physical and Mental Evaluations and Reports (Bill 25-0545)

I have previously reported on the Health Occupations Revision General Amendment Act of 2023. This measure would add a new enumerated D.C. FOIA exemption, Exemption 21, which would cover certain medical records; reports from “physical and mental evaluations”; and “Consent Orders, Final Orders, and Notices of Summary Suspensions issued pursuant to [the District of Columbia Health Occupations Revision Act of 1985],” *see* D.C. Official Code § 3-1201.01 *et seq.*

The bill passed after its final reading on May 7, 2024. The legislation was signed by the Mayor on May 29, 2024 and returned on May 30, 2024. The Signed Act is in Dropbox. The pertinent language is on pages 33 (section 101(uu)) and 48 (section 206).

**E. Administrative Matters**

1. Attorney Advisor Vacancy: OOG is currently recruiting to fill an Attorney Advisor position. The DC Department of Human Resources will post the vacancy announcement on Friday, June 7, 2024. We hope to have the position filled by the end of FY24.

**This concludes the Office of Open Government's June 6, 2024, report. I am happy to answer any questions the Board may have.**

**V. Report by the Director of Government Ethics**

Good afternoon, Board member Tucker, and Members of the Board. I am Ashley Cooks, the Director of Government Ethics. I am pleased to present this report on the activities of the Office of Government Ethics (“OGE”).

**A. Update on Status of OGE Operations**

The information reported today regarding OGE’s cases will not reflect any status changes that may occur because of actions taken by the Board during today’s meeting.

<b>OPEN INVESTIGATIONS BY STATUS</b>	
Open	51
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	51

<b>OPEN "UNDOCKETED MATTERS"</b>	
Grand Total	7

<b>PENDING/STAYED INVESTIGATIONS BY STATUS</b>	
Closed - Pending Collection	41
Stayed - Pending DC Superior Court Case	5
Stayed - OAG False Claims Act Case	1
Stayed - OIG Investigation	5
Stayed - US District Court Case	0
Grand Total	52

<b>REGULATORY MATTERS BY STATUS</b>	
Closed - Pending Collection	26
Open	2
Grand Total	28

	<b>Current</b>	<b>Last month</b>	<b>April</b>
Investigations Open	51	47	35
Investigations Stayed	11	12	11

The number of open preliminary and formal investigations includes 16 new matters. The investigative team resolved 12 investigations since the Board last met. This total does not reflect the number of complaints that were dismissed for a lack of jurisdiction.

OGE has continued its communications and referrals to the Chief Financial Officer’s Central Collection Unit (“CCU”) for collection of delinquent debts. We continue holding monthly meetings with the CCU team. We are transferring new debts and will

continue to update the list monthly. According to CCU, ten larger and older debts will be sent to the Office of the Attorney General for judgment through Superior Court.

**B. Trainings/Outreach**

1. Professional Development Trainings Attended by Staff

Several OGE employees completed the mandatory training under the recent Mayor's Order 2023-131 for Sexual Harassment. Program Support Assistant Naquita Titus and IT Specialist Kevin Brown attended a QuickBase training by the Office of the Chief Technology Officer. Auditor Courtney Walker attended Microsoft Office 365 Excel Part 1 and Communicating Non-Defensively. Program Coordinator Stan Kosick took Emotional Intelligence. Chief of Staff Christina Mitchell completed 4 courses: the ADA Compliance Plan training facilitated by the Office of Disability Rights, D.C. Human Resources' Performance Management Symposium, the Continuity Planning Course hosted by the Federal Emergency Management Agency, and Building High Performance Teams. Investigator Tahja Reid completed 2 courses: Hatch Act Training and Mental Health First Aid Certification. General Counsel Rashee Raj attended Ethics in Social Media 2024 and Women Lawyers in Leadership.

2. Conducted by staff

Since the May Board meeting, OGE conducted seven training courses, which included the May and June Monthly Hatch Act Trainings, the May Monthly Ethics Training, and specific trainings for the following agencies: the District of Columbia Public Schools, the DC Water's Board of Directors, and the Office of the People's Counsel.

On Monday, May 20<sup>th</sup>, Attorney Advisor Maurice Echols presented the May Ethics Counselor Brown Bag Session on Recent BEGA Dispositions. Thirteen ethics counselors attended and heard summaries of the last 6 to 8 months' worth of ethics investigation dispositions and engaged in a discussion about trends. A copy of the presentation was placed in the DropBox.

During May, 447 employees completed courses using the Learning Management System. The courses with the highest completion rates were Board of Ethics and Government Accountability Ethics Training, Conflicts of Interest: An Overview, and Financial Interests and Disclosure. Three-hundred seventy-two employees completed ethics training using PeopleSoft during the month of May.

3. Outreach

OGE is still in the process of updating and implementing new training courses for the Learning Management System. We have been meeting with LRN, the vendor that hosts our LMS, to discuss the best course of action for adding 6 new courses,

to include an updated Financial Disclosure Statement training for ethics counselors.

OGE began its outreach initiative, “Ask BEGA” in which Attorney Advisors will visit agencies and government buildings to provide on-site ethics advice to employees, as well as information about the office. This initiative is a spin-off of BEGA’s Roadshow that existed prior to the pandemic. In April, Attorney Advisors Maurice Echols and Marissa Jones visited the Department of Energy and provided advice to a group of employees. Our next two Ask BEGA events for the Commission on the Arts and Humanities and the Department of Buildings will take place in the summer.

**C. Advisory Opinions/Advice**

1. Informal Advice

OGE’s legal staff provided advice for approximately 57 ethics inquiries, which is 19 more than the 38 reported at the last Board meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

2. Formal Advisory Opinions

On March 29th, OGE published an advisory opinion titled “Guidance on Social Media use for Official Purposes by District Government Elected Officials and District Government Employees.” The 30-day comment period passed, but the opinion was complicated by a recent Supreme Court opinion from March, *Lindke v. Freed*. OGE made edits to follow the Supreme Court’s opinion and the second draft will be published to the website and in the D.C. Register for a 30-day comment period. A copy of the revised will be advisory opinion was placed in the drop box for next month’s meeting.

OGE issued a draft advisory opinion in response to a request from a former employee of the Office of the Attorney General (“OAG”) who sought guidance on whether the post-employment restrictions would prohibit him from serving as part of the legal team in a lawsuit against the District. The draft opinion advises the requestor that entering an appearance in a matter where OAG represents the District as a party to the litigation would be prohibited during the one-year cooling off period. The opinion also concludes that providing behind-the-scenes assistance in the litigation would be permissible during the one-year cooling off period if the requestor is not identified as the source of any behind-the-scenes guidance. The draft opinion was published on Monday to the website and will be published in the D.C. Register for a 30-day comment period. A copy of the advisory opinion was placed in the drop box.

OGE also published advisory opinion, Advisory Neighborhood Commissioner Sign-on Letter, which responds to the Office of Advisory Neighborhood Commissions’ (“OANC”) request for advice on the parameters around the drafting,

circulating, and sending of sign-on letters by Advisory Neighborhood Commissioners (“Commissioners”). Specifically, OANC would like this Office to identify the circumstances under which it is appropriate for Commissioners to participate in sign-on letters in their official capacity. OGE concluded that Commissioners may draft or endorse sign-on letters in their official capacity if: (1) they are conducting official ANC/District government business as authorized by their Commissions and doing so within the bounds of the ethics rules and the law, or (2) they are conducting official government business by representing the interests of their Single Member District (“SMD”) and endorses the letter as the SMD representative. The opinion advises that Commissioner are prohibited from using their official titles to draft or endorse sign-on letters that are personal in nature and do not relate to official District government business. The draft opinion was published on Monday to the website and will be published in the D.C. Register for a 30-day comment period. A copy of the advisory opinion was placed in the drop box.

**D. Legislation and Rulemaking Updates**

1. Financial Disclosure Rulemaking

OGE has identified board and commission members that do not meet the definition of public official under D.C. Official Code § 1-1161.01(47) and don’t file financial disclosure forms even though they engage in conduct that creates a financial conflict of interest or the appearance of a conflict of interest. OGE drafted a proposed rulemaking that would designate those board and commission members as public financial disclosure statements filers and it was posted in the D.C. Register on March 29, 2024, for a 30-day comment period and was emailed to all ethics counselors. Also, a press release was posted on the BEGA website. We received four comments, which have been uploaded to the DropBox for the Board’s review. OGE plans to amend the proposed rulemaking to include four boards that were suggested in comments from the Department of Licensing and Consumer Protection.

**E. OGE Administrative Matters**

1. 2025 Budget Oversight Hearing

On May 10th, the Council conducted a first vote on the FY2025 Budget Support Act of 2024. OGE learned that the proposed Lobbying Fees and Penalties Reform Amendment Act was included in the Budget Support Act. This legislation will increase the lobbyist registration fees and the penalty for late filings. The final Council vote will take place on June 12.

**F. Financial Disclosure Statement (FDS)**

Pursuant to D.C. Official Code §§ 1-1162.24 and 1-1162.25, public officials and certain government employees must file a financial disclosure statement as a means of transparency and to prevent engaging in conduct that violates the financial conflicts

of interest statute. BEGA is responsible for ensuring that employees and public officials, who meet the statutory requirement, file their annual financial disclosure statement.

The 2024 FDS season is still underway! The 2024 Financial Disclosure Statements (CY2023) were due on May 15, 2024. In April, the FDS team sent emails and mail notices to 4,282 Public Filers announcing the 2024 Financial Disclosure season's arrival, and each agency sent notice to 4,539 confidential filers. By the May 15<sup>th</sup> filing deadline, 85% of the public filers and 89% of confidential filers had filed. As of May 31st, almost 90% of public filers and 93% of confidential filers had filed.

The FDS Team continues to send reminders to late filers. The team fielded 827 Support Tickets of which 272 tickets pertained to password and access issues, the remaining tickets were name and agency changes. IT Specialist Kevin Brown and Program Support Assistant Naquita Titus have revamped the QuickBase FDS Tracker to make it more user friendly for staff and external users.

#### **G. Lobbying Registration and Reporting (LRR)**

Pursuant to D.C. Official Code § 1-1162.27(a), a person who receives compensation or expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying shall register with the Director of Government Ethics and pay the required registration fee. According to D.C. Official Code § 1-1162.30, each registrant shall file a quarterly report concerning the registrant's lobbying activities during the previous quarter.

Lobbyist reporting has remained steady since the start of the 2024 calendar year. The 2024 first quarter activity reports were due April 15, 2024. A filing reminder was sent to 373 recipients on March 27, 2024. The Lobbying Registration and Reporting System reported 1 new registrant in May. The system registered 51 late activity Reports in April, and the LRR Team prepared fine letters to be sent.

**Thank you. This concludes the Office of Government Ethics' June 6, 2024, report.**

#### **VI. Public Comment – if received**

No public comments were received.

#### **VII. Executive Session (nonpublic)**

The Board voted unanimously to enter into Executive Session to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14), 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**

The meeting resumed at 1:18 p.m.

The Board approved negotiated disposition in **24-0051-P in re Y. Fields.**

The Board opened a formal investigation in **24-0012-F In re R. Nivar.**

The Board approved a Scheduling Order and Notice of Hearing in **24-0009-F In re Aretha Chapman.**

The Board will next meet on July 11, 2024, at 12:00 p.m.

The meeting adjourned at 1:19 p.m.

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