

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

**MINUTES OF MEETING
JUNE 7, 2018**

The District of Columbia Board of Ethics and Government Accountability held a meeting on Thursday, June 7, 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://www.open-dc.gov/meeting/board-ethics-and-government-accountability-monthly-meeting-2>

- 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 Sobin moved to approve the agenda. The motion was approved unanimously. Chairperson Collier motioned to approve the minutes of the last two meetings held within the month of May. The motion was approved unanimously.
 - 1. May 3, 2018 Meeting Minutes – approved
 - 2. May 11, 2018 Meeting Minutes – approved

Report by the Director of Open Government

Informal advice:

9 FOIA and 2 OMA.

Trainings:

One (1) combined OMA and Ethics training with the UMC Board.

Advisory Opinions:

- 1. #OOG-0001_1.04.18_FOIA AO. Whether it is consistent with FOIA for a District government agency, specifically the Metropolitan Police Department (MPD) to require that: (1) individual FOIA requesters of certain records about themselves (first-party request) attach to the request proof of their identity at the time of the submission; and (2) whether attorneys making FOIA requests on behalf of clients must supply proof of identification for the client or the attorney, such as a copy of the client or attorney's

government-issued identification, and proof of representation such as a signed authorization and/or a retainer agreement.

(a) The opinion found that it is inconsistent with FOIA to require that individual FOIA requesters of MPD incident reports, accident reports and 911 calls (about themselves or others) or their attorneys attach to the request proof of the attorney or client's identity or proof of representation or a release executed by the client.

(b) The Duncan Ordinance, which regulates the release of adult arrest records provides: (1) defense attorneys representing their client do not need to provide a consent form, proof of identification of the client or themselves, so long as the record's use is for law enforcement purposes; (2) the statute provides for the release of arrest records to the subject of the records, but does not expressly state how to ensure the release to the requester is proper; and (3) requires that a designee of the subject of the arrest records present releases in appropriate form executed by the subject of the arrest records. While analyzing the plain letter of the law, it was also pointed out to the requester that in the absence of providing positive proof of identity for a first party request, the agency would have the discretion to redact or withhold records that might otherwise be disclosed.

2. #OOG-006_5.24.18 Resolution of Complaint regarding the Commission on the Selection and Tenure of Administrative Law Judges (COST). The complainant alleged misconduct by the members of COST and several OAH employees. The relief sought nullification of the July 13, 2016, COST public meeting and to report the alleged misconduct of the COST members and OAH employees to the Office of Disciplinary Counsel. The OOG's dismissal of complaint provides: (1) reporting the COST members and OAH employees to the office of Disciplinary Counsel is beyond the OOG's statutory mandate; (2) D.C. Official Code § 2-579(d) grants the power exclusively to the D.C. Superior Court to void the actions of a public body "where the court finds that the balance of equities compels the action or the court finds that the violation was not harmless" Complainant's February 2, 2018 correspondence seeking the same relief was also dismissed.

3. #OOG-0005_5.11.18 Resolution of Complaint regarding the Center for Creative Nonviolence (CCNV). This complaint was dismissed on the basis that the OOG's authority does not extend to allegations involving: (1) unlawful refusal to enter a shelter; (2) the forcible ejection from shelter; and (3) removal from a shelter for arbitrary and capricious reasons. The complainant was provided with the address and telephone number of an appropriate legal assistance agency.

Litigation:

Claudia Barber v. BEGA/OOG: 2018 CA 001060 (P)(MPA). The Court on May 1, 2018, dismissed the case without prejudice for plaintiff's failure to establish the court's jurisdiction of the matter.

IV. 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	Mar. 2018
Investigations Opened:	5	1	1
Investigations Closed:	0	0	5
Investigations Currently Open:	33	24	23
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.

- 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 11 training sessions, approximately the same as the 12 reported at the last meeting. The trainings consisted of 2 new employee orientations, Board and Commission training at the DC Retirement Board and United Medical Center, 2 Ethics presentations at DPR, 2 at the Office of the People's Counsel and one at the Department of Youth Rehabilitative Services.

- 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.

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

e. Ethics Legislation/Comprehensive Code of Conduct

We have nothing to report under this topic.

f. Rulemaking

The 30 day comment period for the proposed and emergency rulemaking that was adopted at the last meeting expired 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. We did not receive any comments on the proposed rules. We are asking the Board to adopt as final, the rules that are in the dropbox. Board Member Sobin moved to adopt the rulemaking. The Board unanimously approved.

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, the new Program Specialist position and the Investigative Auditor position. DCHR is currently reviewing a revised PD for the Program Specialist and my draft PD for the Investigative Auditor role. A third position will also become vacant on Monday April 9, when Janet Foster leaves us to join the staff of the House of Representatives Ethics Office. DCHR has already approved a revised PD for that attorney advisor position, as well as a new set of ranking factor questions, and they have informed that it will be posted no later than today. We will use 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, but that is a safeguard action we will only take if we are unable to get our vacancies posted and filled the traditional way through DCHR.

i. Litigation

Status of pending cases.

•Gerren Price – (CA No. 16-AA-1230), Both Mr. Price and the District have filed their briefs. Mr. Price requested an extension to file his reply that is due today.

•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 still awaiting the final written order from chambers affirming the Board’s ruling.

•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. With Mr. Grimaldi’s assistance, OAG has assembled the record and has drafted a new enforcement petition. We expect that the action will be refiled soon.

•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, the case has been dismissed.

•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. The Initial Scheduling Conference is set for July 7, 2018.

•J. Dillion vs. BEGA, OEA Matter No. J-0030-18. This is an employment matter involving a separated employee. The agency’s response to the employee’s brief on jurisdiction is due on June 15.

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. We have given some thought as to the process that should be used. Once the Board approves the new Rule that establishes a procedural framework for the issuance of ministerial fines, we will send Ms. Wilson to Notice to Show Cause why the Director should not impose a \$3,000 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.
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 recused himself by leaving the room.)
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.
4. #1101-003, *In re*: J. Evans – This is a formal investigation into whether Councilmember Evans violated the Council Code of Conduct by lobbying the Council on behalf of a client for a law firm at which he was employed. In

addition, we have received additional complaints that Councilmember Evans made false statements on his most recent Financial Disclosure statement in connection with his outside activities and that he violated rules regarding outside employment. We have submitted a request to the Council for documents and will work with their general counsel's office to resolve any issues related to that request.

V. Opportunity for Public Comment

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).

VI. Resumption of Public Meeting

- a. Next Board meeting scheduled for July 12, 2018 at 10:00 am.

VII. Adjournment