

**DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
MINUTES OF MEETING
JULY 9, 2018**

The District of Columbia Board of Ethics and Government Accountability held a meeting on Monday, July 9, 2018, at 2:00 p.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.

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-3>

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 amend the agenda to allow the Board to deliberate in Executive Session (non-public) 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). Chairperson Collier seconded the motion. The motion was approved unanimously.

1. June 7, 2018 Meeting Minutes approved

IV. Report by the Director of Open Government -

The office has continued to fulfill its mission of ensuring that all persons are entitled to full and complete information regarding the affairs of the District government and the actions of those who represent them. I want to thank both Attorney Johnnie Barton and our Applications Engineer Waddah Kittab for continuing to perform their duties at a high level during this period of time prior to my taking office. I believe that the office is in to be in good standing.

Informal advice:

Since the June meeting, the OOG responded to 14 FOIA and 6 Open Meetings Act (OMA) informal requests for legal advice and assistance.

Trainings:

The OOG conducted one OMA training for the Major Crash Task Force.

Advisory Opinions:

1. #OOG-0001_1.04.18_FOIA AO.

The opinion provides:

- 1) ----

2. #OOG-0007_6.06.18 Resolution of Complaint_ANC.

FOIA Request Response: On June 26, 2018, the OOG timely transmitted 258 responsive documents to the requester to comply with the request for any records that mentions the name of a former employee. The response also directed the requester to the audio recording of the COST’s July 19, 2017, public meeting published on the Open.dc.gov website.

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	Apr. 2018
Investigations Opened:	7	5	1
Investigations Closed:	3	1	0
Investigations Currently Open:	35	32	24
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 prepared the 3rd Quarter Report for publication. That report is in the drop box. We are still working to address problems we encountered with the FDS filing system, and are mindful that we have to publish the required lists soon. We additionally have to determine when to publish the link that permits the public to retrieve filed reports.

c. Trainings/Outreach –

i. Attended by staff – Our staff have attended a number of trainings since the last meeting. We participated in a webinar on Data Analysis Toolkit for Attorneys, had a Records Retention Policy meeting. GC Flowers attended a FOIAXpress training. Administrative Officer Peterson attended several trainings, including DSLBD Compliance, E-Invoicing training, and Designated Employer Representative (DER) training. Both of our two DLP interns have completed 7 different project management courses that were available for free through SkillPort, to help them plan and execute their assigned projects this summer. I also attended Agency Performance Planning training that the City Administrator’s Office conducted on June 26 to help get ready for our FY19 Performance Management preparation.

ii. Conducted by staff –

Since the date of the last meeting, we conducted or participated in 4 trainings, down from 11 reported at the last meeting. The trainings consisted of 2 new employee orientations, our Monthly Ethics Training, and a training held at DOES. Senior Attorney Advisor Grimaldi conducted a CLE on Religion in the workplace.

2018 Ethics Day- Last year BEGA held its annual Ethics Day on October 19th, here at One Judiciary Square. Based on the large number of attendees and the positive reviews, the event was a huge success. This year, OGE is proposing that the Board host an Ethics Day similar to last year’s event. A draft proposal of courses was placed into the Board’s Dropbox.

d. Advisory Opinions/Advice –

Informal Advice: approximately 64. This compares with approximately 120 reported at the last meeting. Note that last meeting’s statistics included more than 50 calls concerning FDS filings.

We received a complaint that an educational organization known as PAVE (Parents Amplifying Voices in Education) was recruiting parents to lobby the Mayor and Council. It was not clear whether the employees of PAVE were engaging in lobbying themselves – and that was not the allegation. Indirect lobbying such as grassroots or astroturf lobbying, is likely not covered by our statute. The complainant was advised of that, but wanted to file a complaint

nonetheless. We would have to find that employees of PAVE were themselves communicating with legislative or executive branch officials on the covered subjects for the matter to fall within the prohibitions of our statute.

§ 1-1161.01. Definitions.

(32)(A) “Lobbying” means communicating directly with any official in the legislative or executive branch of the District government with the purpose of influencing any legislative action or an administrative decision.

We wanted to engage the Board on this issue, to ensure you were of the same opinion. It is easy to understand why the complainant feels that an organization making a concerted effort to enlist parents to apply pressure on legislative or executive branch officials to advance the organization’s policy goals should be considered “lobbying” activity by BEGA, therefore we felt it was prudent to solicit the Board’s views on this issue before communicating a position to the complainant.

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

e. Ethics Legislation/Comprehensive Code of Conduct

As a part of the Budget Support Act, the Council included a subtitle to be cited as the “BEGA Amendment Act of 2018.” That subtitle makes a number of conforming and technical changes, but also requires lobbyist to file quarterly, rather than the 2 times per year they now file. It also includes in the definition of lobbying, procurement matters, specifically, contracts, grants, reprogrammings, or the procurement of goods and services, so that persons who communicate with legislative or executive branch officials on these types of matters would also be required to register as lobbyists. The subtitle also addresses some of the agency’s structural issues by clarifying that the Director of OOG, like the Director of OGE reports directly to the Board. It also permits OMA opinions to be appealed to the Board. Finally, consistent with the Constitutional mandate in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U. S. 477 (2010), in which the United States Supreme Court held that the dual for-cause limitations on the removal of Board members contravened the Constitution’s separation of powers, the subtitle eliminates terms for either Director.

f. Rulemaking

We have no new developments with respect to rulemaking.

g. Budget:

There have been no new developments since the last meeting.

h. Staffing –

We have 2 permanent positions that are currently vacant, an Attorney Advisor position and the slot I have been trying to turn into an Investigative Auditor position. However, I have decided to turn the latter position into a third Investigator position in light of Ileana's upcoming leave, while Barry is willing to continue working for us in the Fall through an extension of his DLP internship to provide additional bandwidth for our auditing efforts. He is wrapping up his MBA degree from UDC in December, but will continue working at OGE on a part-time basis through the Fall semester.

DCHR has extended an offer letter for our Attorney Advisor vacancy, and the selected candidate will be joining us at the end of July or the beginning of August.

Lastly, I'd like to introduce you to Nikaela Jacko Redd who has just joined OGE this morning as our new Compliance Specialist. She is licensed to practice law in NY, NJ, VA and DC, and I believe she will prove to be an excellent addition to our staff thanks to her extensive experience working on complex white collar and financial investigations, as well as her strong interpersonal skills.

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 on July 3 again requested an extension to file his reply.

- 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 – We continue to wait for 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. The OAG has informed us that this case will be refiled this week.

- 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. We submitted the record in this matter to OAG on May 31, 2018. OAG Attorney, Chris Sousa submitted the record we provided him to Superior Court on June 5, 2018. The Initial Scheduling Conference is set for July 13, 2018.

•J. Dillion vs. BEGA, OEA Matter No. J-0030-18. This is an employment matter involving a separated employee. We are waiting for the Administrative Law Judge’s ruling on whether OEA has jurisdiction in this matter.

j. Lobbyist/Financial Disclosure Matters

a. The Financial Disclosure season is settling down. OCTO initiated FDS Support which is a help portal available on our website and there were approximately 26 technical help requests queued in that application as of the end of last week. As of 3:30 pm on Friday, July 6, 2018, 465 of 3,542 required Public Financial Disclosure Statement filers still had not submitted their information, which constitutes an 86.87% compliance rate. Of the 465 remaining non-filers, 117 are ANC Commissioners, while 77 are employed by DCPS, whose spam settings apparently blocked our notification emails, leaving only 271 non-filers across the rest of DC government. A statistical breakdown of the remaining non-filers’ agency affiliations is set forth below.

Row Labels	Count of Filer Name
ABRA	2
ANC	117
CAH	3
CFSA	13
COUNCIL	2
DBH	16
DCHA	8
DCHFA	3
DCHR	3
DCOA	1
DCPL	4
DCPS	77
DCRA	5
DCRB	2
DCWATER	4
DDOT	16
DDS	8
DFHV	1
DGS	15
DHCD	11
DHCF	5
DHS	1
DISB	6
DMEDU	1
DMV	1

DOC	1
DOEE	3
DOES	8
DOH	6
DPR	2
DPW	8
DSLBD	2
DYRS	4
EOM	2
EOM-OS	1
FEMS	8
HBX	2
HPRB	1
HSEMA	3
MPD	8
NFPHC	17
OAG	2
OAHA	2
OCA	1
OCFO	9
OCP	12
OCTO	7
OHR	1
OIG	2
OP	2
OPC	1
OSSE	9
OUC	1
PCSB	2
PSC	1
RPTAC	2
SBOE	3
UDC	6
WCSA	1
Grand Total	465

Based on the foregoing, the number of non-filers for this FDS season appears to be relatively consistent with what has been observed and reported in previous years. Thus, we have no objections to proceeding to publish the lists of filers and non-filers in the DC Register pursuant to the statute, or to publicizing the link to the Search function for the new system.

FDS Partial Waiver Factors:

At one of our recent meetings the Board suggested that OGE develop a set of factors to be applied when we are considering partial waiver requests. We discussed this matter at our FDS/Lobbyist meetings and came up with five factors that seemed would warrant consideration of such a partial waiver request. We are submitting these factors to you today for review and discussion.

1. Personal/physical safety concerns
2. Reasonable, specifically articulable identity theft/security breach concerns
3. Secret/sensitive government or financial business concerns
4. Undue burden (Fleps argument)
5. Other (Unique circumstance or matter of first impression)

FDS Designation Appeals

In order to complete my evaluation of one pending designation appeal, I am seeking the Board's feedback on the review standard that should be applied in such appeals. Unfortunately, the language in DPM §1810.8 ("The decision of the Director of Government Ethics respecting the designation shall be in writing and shall be issued within five (5) days of receipt and shall be final.") gives no guidance whatsoever regarding the following issues:

1. Burden of proof (on agency or employee?)
2. Standard of proof (preponderance of the evidence? Clear & convincing evidence?)
3. Burden shifting at some point? (e.g. EEOC cases under McDonnell-Douglas decision)

b. Lobbyists

Non-profits

We have begun to receive payments from some of the 28 nonprofit organizations that Ishmael identified as not qualifying for the reduced registration fee (\$50 vs. \$250) available to 501(c)(3) organizations. I have asked the organizations to reimburse us for the underpayments related to January 2017 and January 2018 registration periods. To date, we have collect an additional \$4,800 in Lobbyist registration fees based on the results of Ishmael's audit, and if all 28 organizations bring themselves into compliance, we would recover an additional \$11,200 in registration fees.

Lobbyist Activity Reports

Lobbyist reminders went out to all registered lobbyists on Monday, June 4, 2018. The deadline for filing Lobbyist Activity Reports ("LARs") is July 10, 2018, and as of the end of last week, we had received 119 LARs.

k. Non-Confidential Investigations

1. #1634-001, *In re: R. Wilson* - 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 served on Ms. Wilson, by certified letter and email, a *Notice of Hearing, Statement of Violations and Order to Show Cause* why the Director should not impose a fine against her due to her willful failure to file accurate forms for 3 consecutive years. That hearing is scheduled for June 21, 2018 at 10:00 a.m. Following her response or appearance at our offices, 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).
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.

VI. Opportunity for Public Comment

The Board unanimously approved a motion to deliberate in Executive Session 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).

I. Resumption of Public Meeting

- a. Next Board meeting scheduled for August 2, 2018 at 10:00 am

II. Adjournment