

MEETING MINUTES

District of Columbia
Board of Ethics and Government Accountability
Monthly Meeting of the Board
August 1, 2013, 1:00 p.m.
Hearing Room 540 South
One Judiciary Square

I. Call to Order

The Monthly Meeting of the Board was called to order at 1:01 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

Two Board members were present (Robert Spagnoletti and Laura Richards), constituting a quorum. Deborah Lathen was not present due to illness.

III. Adoption of the Agenda

The agenda was adopted by consensus.

Chairman Spagnoletti stated that the Board meeting would need to conclude at 2:00 pm because of a conflict. The Board and Director Darrin Sobin acknowledged the upcoming departure of staff attorney Samantha Riley, who has accepted a position in the federal government, and thanked her for service. Mr. Sobin noted the key role Ms. Riley played in administering the employee financial disclosure program.

IV. Report by the Director of Open Government

a. Technology

Traci Hughes, the Director of the Office of Open Government (OOG), reported that the Executive Office of the Mayor (EOM) has reprogrammed funding in the amount of \$76,000 to allow BEGA to wire the BEGA hearing room with audio and video capability. The \$76,000 will be added to funds in BEGA's Fiscal Year 2013 budget for equipment. The funding will cover equipment video teleconferencing and audio visual installation costs for the hearing room. BEGA will enter into a Memorandum of Understanding (MOU) with DC-Net in the amount of \$156,684.55 to complete the project. It is anticipated that the room will be fully wired and operational by end of the fiscal year.

Once completed, the room will be offered to other boards and commissions for use when BEGA hearings are not in session. The room will be fully integrated to allow the public to view and participate in meetings remotely by accessing a phone or an Internet connection. With the new technology, BEGA will have the capability to make video and audio recordings of meetings.

Director Hughes also reported that the EOM has agreed to expedite plans to implement a Freedom of Information Act (FOIA) tracking system by the end of the fiscal year at the request of OOG. The EOM indicates that it wants to develop the system, rather than BEGA, as current annual reporting requirements call for agencies to submit data to the Office of the Secretary for submission to the Council.

The EOM is working to secure the requisite number of licenses for agency participation in the FOIA tracking system. Director Hughes recommended that once the tracking system is procured, the following agencies, which reported the highest volume of FOIA Requests in Fiscal Year 2012, should be trained first to begin using the system:

- Metropolitan Police Department
- Department of Consumer and Regulatory Affairs
- Fire and Emergency Management Services
- Department of Environment
- Department of Health
- Office of Police Complaints

Ms. Hughes noted that the recommended system will allow FOIA requesters to submit requests online and track the status of requests. Chairman Spagnoletti commended Director Hughes on her remarkable progress in getting a FOIA tracking system underway, noting that the issue has been discussed since 2007.

Finally, Ms. Hughes stated that the Office of Contracting and Procurement has issued a request for proposal to vendors to develop the new BEGA website, including an open government portal and dashboard. Ms. Hughes believes that a vendor will be secured by September 1, 2013.

b. FOIA Complaints

Ms. Hughes stated that OOG received and resolved its first formal FOIA complaint on July 23, 2013. The requestor alleged that a FOIA request to the Department of Housing and Community Development (DHCD) on June 6, 2012 went unanswered. Director Hughes contacted DHCD, which mailed the responsive documents to the requestor on July 30, 2013. Through a miscommunication, DCHD expected the requestor to come to its office to collect the documents.

c. Trainings

Director Hughes stated that OOG is continuing to inform agencies, boards and commissions about their compliance obligations under the Open Meetings Act and FOIA. Within the past month, Ms. Hughes and Ronald Cook conducted Open Meetings Act training sessions with the Board of Dentistry and the Board of Medicine. In addition, Director Hughes and Director Sobin conducted a FOIA overview and ethics rules training with Fire and EMS executive staff members. Finally, Director Hughes stated that she included mention of the role of the Office of

Open Government as part of Director Sobin's full ethics training conducted at the Department of Human Services.

VI. Report by the Director of Government Ethics

a. Director Sobin provided an update on the status of the Office of Government Ethics (OGE) Operations.

The status of investigations since the July 11, 2013, Board Meeting is as follows:

Investigations Closed – 1

Investigations Opened – 3

Two of the investigations are formal investigations referred by the Office of the Inspector General (OIG).

The status of Advisory Opinions since the July 11, 2013, Board Meeting is as follows:

OGE received one request for a formal advisory opinion.

John Grimaldi, BEGA Senior Attorney, is drafting the *Constituent Services* Advisory Opinion. The opinion provides guidance as to what conduct constitutes appropriate constituent services by an elected official without crossing the line into the misuse of a public position. Chairman Spagnoletti noted that the opinion does not discuss the separate issue of constituent services funds.

The *Discounts* Advisory Opinion, addressing the circumstances under which government employees may accept discounted goods and services, is completed and will be issued shortly. Director Sobin states that the staff needs guidance from the board on next steps regarding the *Lobbyist* Advisory Opinion, stating BEGA's views as to which boards and commissions should be prohibited from having lobbyists as members.

OGE has provided ethics training to the following employee groups since the July 11, 2013, Board Meeting:

- DHCD Summer Youth Program participants
- Department of Human Services Senior Staff
- Department of Health Board (conducted with Director Hughes)
- DC government new employees

OGE will be participating in new employee orientation sessions every other Monday going forward.

Upcoming training sessions have been scheduled for the following:

- Labor Management Partnership Council Subcommittee

- Office of the Attorney General
- Mayor's Cabinet

b. Publication and Reporting Obligations

Director Sobin reported that OGE is up-to-date with all publication obligations.

c. Update on Lobbyist Filings

Director Sobin reported that OGE staff members are compiling a list of lobbyists who filed Activity Reports for January 1, 2013 – June 30, 2013, but who have not registered for 2013, so that reminders can be sent out. In addition, OGE staff members are compiling data for late Activity Report filers so that bills can be sent out. There is a \$10 per day late fee by statute, absent waiver by the Board. Director Sobin stated that he will mail a letter to each filer who submitted its Lobbyist Activity Report late, which provides the total amount of the civil penalty. Director Sobin stated that one person already has indicated that he will ask for a waiver from the Board. In addition, Director Sobin suggested that the Board discuss the issue of waivers for Lobbyists and his inability to grant extensions at the next Board meeting.

Clara Olawunmi, BEGA Investigator, stated that she is conducting a substantive review of Lobbyist Activity Reports, using specific indicators to flag certain reports for further review. Ms. Olawunmi stated that she flags Lobbyist Activity Reports based on the level of information provided.

Board Member Richards asked how many of the Lobbyists filings had been flagged and whether written auditory standards exist. Stacie Pittell, BEGA General Counsel, stated that it is premature to give the number of flagged reports because the review remains underway. Ms. Olawunmi stated that a written auditing plan exists.

d. Budget Matters

Director Hughes stated that the Mayor authorized a reprogramming of funds for the wiring of the Board room, which means that BEGA will use all of its budgeted funds.

e. Strategic Plan for Office

Director Sobin stated that Mr. Grimaldi will begin drafting a strategic plan for the Office, using its performance plan as a foundation. OGE staff recently consulted with the office of the City Administrator regarding its first performance plan.

f. Lobbyists on Boards and Commissions

Director Sobin stated he has gone back and forth with the Office of the Attorney General in an attempt to reach a consensus on the issue of which boards and commissions should be prohibited from having lobbyists as members. At the last Board meeting, BEGA decided to include this

issue as a matter for discussion during its Best Practices symposium to be held in the autumn. The Board asked staff about action taken pursuant to the Board's decision last month to seek public comment on the issue. Mr. Sobin said a draft notice will be circulated to the Board for review.

Mr. Sobin stated that he is still hoping for consensus with the Attorney General regarding this issue. Board Member Richards inquired as to how to reach a consensus when the Board is firm on a position. Chairman Spagnoletti stated that BEGA and the Attorney General have agreed to disagree. Chairman Spagnoletti stated that the Board anticipates an email outlining the process for public comment from OGE.

g. Non-Confidential Investigations

i. In Re: Larry Hicks

The Board set a Hearing in this matter for Tuesday, September 10, 2013, at 10:00 a.m.

ii. In Re: Brenda Wade

Ms. Pittell reported that Ms. Wade entered into a Negotiated Disposition with OGE, in which she acknowledged violating one section of the District Personnel Manual (DPM) and agreed to pay a \$350 fine, pursuant to a payment plan. The Board approved the Negotiated Disposition and Chairman Spagnoletti signed it.

iii. In Re: Marion Barry

Director Sobin stated that, pursuant to a Negotiated Disposition, Councilmember Barry timely made an initial payment of \$6,800, by the close of business on July 25, 2013.

iv. In Re: Monica Davis

The Board voted to issue, and Chairman Spagnoletti signed, a Notice of Violation against a former District employee who failed to file a Confidential Financial Disclosure Statement (CFDS) with her employing agency.

v. In Re: Ron Moten

The Board voted to issue, and Chairman Spagnoletti signed, a Notice of Violation against a 2012 candidate for political office who failed to file a Public Financial Disclosure Statement (PFDS).

vi. In Re: Steven Allen

A Notice of Violation previously was issued to Mr. Allen and the Board at its July meeting set a Hearing Date for August 13, 2013. Director Sobin reported that the Hearing Notice was not

issued because BEGA was unable to obtain documents needed to move forward with the case from the office of the Inspector General.

In reviewing the matter, Chairman Spagnoletti noted that this matter, which involves the alleged abuse of a handicapped parking sticker, initially was investigated by OIG, which has concluded its probe. BEGA staff initiated a separate enforcement action and reached out to OIG for case documents. The staff received some documents, but not the entire case file. Without access to the entire file, BEGA will have to replicate OIG's investigation, Mr. Spagnoletti noted.

Mr. Sobin stated that he has spoken to the Inspector General several times in an attempt to resolve the matter, without success. Mr. Sobin stated that he believes the concern of the Investigator General is that OIG is an independent agency and that sharing files freely with other agencies may compromise OIG's independence. Director Sobin stated that the Inspector General told him that BEGA must conduct its own investigations.

Director Sobin stated that BEGA has two investigators, whereas OIG has a staff of about 120, making it unreasonable for BEGA to duplicate information already in OIG's possession. Director Sobin stated that the Inspector General consistently stated that OIG is independent and he is not required to provide files to BEGA.

Chairman Spagnoletti stated that he had a long, direct conversation with the Inspector General, in which he stated that the statute establishing BEGA anticipated that BEGA will take enforcement actions pursuant to OIG investigations. Chairman Spagnoletti stated that the Inspector General told him that BEGA should conduct its own investigations. He then stated that he told the Inspector General that BEGA should not have to duplicate work. Chairman Spagnoletti further stated that the Inspector General was unsympathetic and stated that he will decide what OIG shares with BEGA. Chairman Spagnoletti stated that the Inspector General has the same position regarding the case where OIG found no misconduct. Finally, Chairman Spagnoletti stated that he informed the Inspector General that this matter would be discussed during the Board meeting.

Chairman Spagnoletti inquired about possible legislation to foster a more productive working relationship between BEGA and OIG, especially in light of the Inspector General's refusal to produce documents needed to satisfy BEGA's discovery responsibilities in the Allen case.

Mr. Grimaldi stated that a provision in OIG's enabling law (codified at D.C. Official Code § 1-301.115a(b)(2)) requires the Inspector General to "give due regard to the activities of the District of Columbia Auditor with a view toward avoiding duplication and insuring effective coordination and cooperation." While the OIG provision pre-dates BEGA's establishment, it could be used as a model for amending OIG's enabling law to add a similar requirement with respect to BEGA, Mr. Grimaldi suggested.

Ms. Pittell also stated that the Inspector General is subject to Council of Inspectors General on Integrity and Efficiency (CIGIE) which requires Inspector Generals to maintain and provide documents pursuant to all applicable laws.

Chairman Spagnoletti stated that one avenue to explore is to have the Inspector General enabling statute amended to make it subject to document requests from BEGA. Board Member Richards inquired about the relationship between OIG and the Office of the U.S. Attorney for the District of Columbia. Chairman Spagnoletti said that in his experience the relationship is informal and the sharing of information is very informal. Ms. Pittell agreed that the relationship is informal. Chairman Spagnoletti further stated that the relationship between OIG and OAG is informal and there is no formal MOU for information sharing.

Ms. Richards stated that she does not mind a formal information sharing process, as long as OIG shares information. She stated that negotiating a MOU seems impossible at this point, owing to the acrimony evident in the emails.

Chairman Spagnoletti raised the possibility of issuing a subpoena for the documents and asked if there are any foreseeable legal impediments to doing so. Mr. Sobin said he saw no impediments and recommended that the Board authorize a subpoena in the pending case, Allen, to avoid further delays.

Ms. Richards then made a single motion (1) to have BEGA authorize the issuance of a subpoena in the Allen case if further discussions with the Inspector General do not resolve the issue informally and (2) to direct the staff to pursue information sharing MOUs with the OIG, the U.S. Attorney and other entities whose responsibilities complement or overlap those of BEGA. This motion was seconded by Chairman Spagnoletti and approved by the Board.

Chairman Spagnoletti stated if BEGA cannot work cooperatively with OIG, then BEGA will have to conduct most or all of its own investigations. BEGA, he said, is extremely understaffed to meet such an eventuality. Given OIG's concern for maintaining its independence, the Chairman proposed that BEGA approach the Mayor and Council now to secure additional staff resources. He instructed Director Sobin to draft a plan with an estimate of how many additional BEGA staff members will be needed for BEGA to conduct all of its own investigations. Ms. Richards suggested that step is premature. Chairman Spagnoletti responded that because increasing the staff involves a substantial increase in BEGA's budget, it is better to raise it now, as opposed to later.

Ms. Richards asked how the staff determined the number of cases that BEGA anticipated receiving from OIG. Ms. Pittell stated that the number she provided in a previous Board meeting was a rough estimate.

Chairman Spagnoletti noted that in light of the need to adjourn at 2:00 p.m., there would be no time for public comment.

VIII. Adjournment

The Board Meeting adjourned at 2:01 p.m.