

DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Monthly Meeting of the Board
September 4, 2013, 1:00 p.m.
Room 540 South (BEGA Board Hearing Room)
One Judiciary Square

AGENDA

- I. Call to Order
- II. Ascertainment of Quorum
- III. Adoption of the Agenda
- IV. Acknowledgment of Adoption of the Minutes of the August 1, 2013, meeting.
- V. Report by the Director of Open Government
 - a. Technology
 - b. Trainings
- 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. Trainings
 - i. Attended by staff
 - ii. Conducted by staff
 - d. Advisory Opinions on our own initiative
 - e. Update on electronic lobbyist registrations and electronic fee payments
 - f. Budget Matters

- g. Best Practices Symposium in October
- h. FY 2014 Performance Plan Update
- i. Updated Ethics Manual
- j. Hearing on BEGA legislation - - scheduled for October 7, 2013
- k. Non-Confidential Investigations
 - i. Larry Hicks - - Hearing scheduled for September 10, 2013, 10 am
 - ii. Steven Allen - - Hearing scheduled for September 19, 2013, 10 am
 - iii. Lanae Godfrey - - Negotiated Disposition
 - iv. Michael A. Brown - - Extension for response to Notice of Violation
 - v. Davis - - Received response to Notice of Violation (failure to file Financial Disclosure Statement)
 - vi. Moten - - Notice of Violation (failure to file Financial Disclosure Statement)

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

September 4, 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 1:08 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. Acknowledgment of Adoption of the Minutes of the August 1, 2013, meetings.

The Minutes were adopted unanimously online, and posted accordingly.

V. Report by the Director of Open Government

a. Technology

Traci Hughes, the Director of the Office of Open Government (OOG) reported that she secured a vendor to develop the BEGA website. Phase one will focus on ensuring all ethics opinions, training, financial disclosure and lobbyist forms will be live on the new site. It will also include the development of the OOG dashboard to display government data such as spending, public safety data, etc., and is slated to go live mid-November. The vendor is InQbation. The cost for the first phase of website development is \$21,103. Director

Hughes informed the Board that BEGA is awaiting funds (\$76,000) from the Mayor's Budget Office to begin the work of wiring BEGA's Hearing Room for audio, video and Internet capability. The total cost for the room is \$156,684.

Additionally, Director Hughes advised that she has been working with the Office of the Chief Technology Officer to create landing pages to include more detailed information about the OOG, the FOIA process and the Open Meetings Act; the information may be linked to from the BEGA homepage. A BEGA in the News Section has also been added to allow viewers to track press coverage.

In securing both these projects, BEGA is on track to spend down funds allotted for fiscal year 2013. BEGA will have a reserve of lobbyist registration fee payments to use for Non-personal Services spending.

b. Trainings

Director Hughes reported that since the August 1, 2013, Board Meeting, she has conducted FOIA trainings with the Department of Insurance Securities and Banking; and Open Meetings Act trainings of The Housing Production Trust Fund Advisory Board and the Board of Nursing. She also met with the general counsels of the Non-for-Profit Hospital Corporation and for the Alcoholic Beverage Regulation Administration. Additionally, she has offered advice to FOIA officers at Fire EMS, the Homeland Security and Emergency Management Agency, the Department of Health, and the Deputy Mayor for Planning and Economic Development. Also, she is beginning to receive calls from the public either offering suggestions on greater transparency or asking for information on the Open Meetings Act.

Chairman Spagnoletti inquired about the status of the FOIA Tracking System, and who was taking the lead on the project as it pertains to policy, procedure and implementation. Director Hughes informed the Board that she spoke with Brian Flowers of the Mayor's Office and was informed that the Mayor's office is leading this initiative and that it is on track to purchase the System by the end of the fiscal year.

Further, she informed the Board that one of the difficulties of establishing the OOG stems from it originally being established as an appointed position established by the Mayoral Office. There are some areas of lag that did not

anticipate for the independence of OOG under BEGA versus operating under the Mayor. For example, in late 2011 the Mayor issued an Order that asked district executive agencies to submit transparency plans to the Office of the City Administrator. This fell through the cracks and was not done. Ms. Hughes alerted the City Administrator that agency transparency plans had not been submitted. She has received no information on the status of the plans. The Director plans to draft a proposed transparency plan for consideration by the Mayor's office by the end of the year.

Director Hughes was asked by Board Member Lathen what a transparency plan should look like. Director Hughes explained that a transparency plan should incorporate an agency's document retention policies; its staff capacity for document retention; and a description of how it works with the D.C. archives to determine whether documents should be maintained electronically and/or scanned. There are confidentiality concerns that can only be determined by respective agency directors. The transparency plan extends well beyond FOIA, in that it addresses document maintenance and retention as well as their accessibility to the public.

From the perspective of a member of the public, it is good public policy to make certain documents available to the public proactively, without waiting for a FOIA request, Director Hughes said. She said that the District should use technology advances in making information available to the public.

Chairman Spagnoletti asked if the legislation required one transparency plan per agency or one plan for the District that includes all agencies. Director Hughes stated that it is her understanding that the Order requires District agencies to submit their own respective plans to be folded into a larger plan.

Board Member Richards asked whether the transparency plan will reflect existing document retention statutes and rules Director Hughes says it will under the plan she anticipates on developing. She has encouraged both the Mayor's Office and City Administrator's Office to tap into the OOG as a resource.

Board Member Lathen asked if a component of the transparency plan is to communicate it so that the general public knows how to use it to find things of interest to make it easily accessible to the varying communities within the District. Director Hughes says that her goal is to offer a guide to District residents and people visiting regarding the use of the transparency plan, but

her concern for now is to prepare something that is sustainable and workable for review.

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)

The status of matters (investigations and advisory opinions) since the August 1, 2013, Board Meeting is as follows:

1. Investigations Opened – 3
2. Investigation Closed – 6
3. Investigations Pending – 19
4. Advisory Opinions Issued – 4
5. OGE has issued a total of 24 Published Opinions and 160 Informal Opinions (email advice).

- b. Publication and Reporting Obligations

Director Sobin reported that OGE is up to date with its publication and reporting obligations. The next quarterly report is due in October. All public opinions are posted within 30 days.

- c. Trainings

- i. Attended by Staff

Two Attorneys attended trial advocacy training offered by the Office of the Attorney General (OAG). The Director thanked OAG for allowing OGE attorneys to participate in the training. Also, an investigator attended a one week auditor certification training conducted by the Association of Inspectors General.

- ii. Conducted by Staff (Ethics training)

1. Labor Management Partnership Counsel
2. OAG
3. New Employees Orientation (bi-weekly)

d. Advisory Opinions on BEGA's own initiative

The Constituent Services Opinion has been well received and we expect to conduct training on Constituent Services with the Mayor's Cabinet on September 9, 2013. OGE also expects that the Council will request training on the matter.

e. Update on electronic lobbyist registration and electronic fee payments

Director Sobin reported that he expects both the online lobbyist registration database, and the lobbyist electronic payments systems to be completed by the end of the fiscal year. He advised that the vendor is slated to implement a payment gateway, so that BEGA will be able to receive credit card payments for lobbyist registration fees, fines, penalties, etc.

f. Budget Matters

It was reported that OGE will exhaust most of its FY'13 budget provided that the Hearing Room modernization takes place prior to the end of the fiscal year. Monies collected for lobbyist registration (\$51,000) and fines (\$7,400) will carry over into the next fiscal year. Additionally, the Agency is at 100 percent in collecting fines. However, OGE will have a bit of a surplus due to losing one of its attorneys; the funds that would have been used for salary will lapse.

g. Best Practices Symposium in October

Director Sobin said that the Best Practices Symposium will be held following the next Board Meeting on October 3, 2013. The Board Meeting will start at 1:00 p.m., followed by the Symposium at 6:00 p.m. He suggested as the themes: "*So You Want a Universal Code of Conduct*" and "*Policies on Transparency in Government.*"

The symposium will address the issues that accompany drafting a Universal Code of Conduct (UCC) in anticipation of new legislation require BEGA to develop such a Code. The symposium will be broadly publicized.

Board Member Richards suggested that OGE include as part of the symposium a report to stakeholders on BEGA's first year of operations, with an opportunity for feedback.

Board member Deborah Lathen suggested that OGE include information about the nature of a UCC and why there is a need for a universal code. She said the topic becomes more interesting to people when they have an understanding of its purpose and why it is needed OGE agreed to provide general background information about UCC in its Notice.

The Board agreed that the symposium also will include an opportunity for comments on the issue of whether lobbyists should serve on District boards and commissions.

h. FY'14 Performance Plan Update

OGE completed its agency Performance Plan and submitted it to the Office of the City Administrator (OCA) on August 29, 2013. The Performance Plan will be forwarded to the citywide Performance Management team for final review prior to being posted on its website.

i. Updated Ethics Manual

The OGE is in the process of having the Ethics Manual printed. It will be bound with a blue cover with silver lettering on the front, and published in font size 10. The Manual will be available electronically on the website.

Board Member Lathen inquired as to whether OGE received any feedback on the Constituent Services Opinion. Director Sobin informed the Board that the Office received positive feedback from both the Executive branch and the Council and no direct negative feedback.

Board Member Richards asked if the Council anticipates producing its own opinion. Director Sobin BEGA staff consulted extensively with the General Counsel to the Council, as well as the Executive side in drafting the opinion, and does not anticipate a separate opinion.

Chairman Spagnoletti commented that the District's Attorney General complimented OGE for an outstanding Opinion. He said that he thought that the Office did a nice job explaining it and making it very clear and obvious what the expectations are when it comes to public officials handling their constituent services.

j. Hearing on BEGA legislation scheduled for October 7, 2013

Our legislation, which was introduced by Council Member Kenyan McDuffie and co-sponsored by several others, will do multiple things that are designed to flow from our Best Practices Report, and help fill in some of the gaps to the original ethics legislation.

The legislation will amend the BEGA Establishment and Comprehensive Ethics Reform Amendment Act of 2011 to subject certain conduct to the Code of Conduct enforceable by the BEGA; to clarify that the code of conduct applies to the entire District government and its instrumentalities, while excluding the courts; to require the Board to develop a universal Code of Conduct for review and approval by the Council; to allow the Director access to government records without subpoena; to require District employees and public officials to cooperate with official functions of the Board, subject to penalties for knowing or willful false statements; to allow the Director 30 days from the initiation of a formal investigation to present evidence to the Board, instead of 14 days; to allow the Director to pursue both a civil fine and refer matters for criminal prosecution; to clarify any failure to obey the order of the court enforcing a penalty imposed by the Board may be treated by the court as contempt; and to create an affirmative obligation for employees and public officials to report conduct that violates the Code of Conduct.

k. Non-Confidential Investigations

- i. Larry Hicks – Hearing scheduled on September 10, 2013, at 10:00 a.m. involving a post-employment violation of the code of conduct.
- ii. Steven Allen – Hearing scheduled on September 19, 2013, at 10:00 a.m. involving alleged misuse of a parking placard. An earlier hearing was postponed because staff was unable to get the documents needed to meet its discovery obligation from the Office of the Inspector General. The Board authorized OGE to issue a subpoena; however, staff was able to resolve the matter with OIG without serving the subpoena.

Chairman Spagnoletti asked whether discussions with the IG led to a common understanding about access to documents. The Director said there is now a process in place for requesting documents, and that he has a commitment from the IG that to honor BEGA requests in the same manner as requests received from the Office of the United States Attorney.

Board Member Lathen referenced a previous memo from Director Sobin that said if BEGA was not able to receive the type of support needed from OIG, the Agency would need additional resources of at least two additional investigators and one additional attorney; she asked if those employees were still required.

Director Sobin explained that OGE's dealings with OIG present two issues: the referral of cases and accessing documents. He said that the OIG, in addition to agreeing to provide requested documents, also has committed to refer cases to OGE. Nevertheless, OGE cannot predict accurately whether the OIG will refer all of the cases in which OGE might be interested; when cases will arrive; and whether cases will be ready to prosecute or will require OGE to conduct additional investigation. The memorandum in question sought to estimate how many more investigators and attorneys we would need if OGE received cases that were not ready for prosecution.

Board Member Richards noted that based on the negotiated agreement with the IG, in addition to the provision in the pending BEGA legislation requiring cooperation in terms of document production, the need for additional staff would appear to be alleviated. She asked if Director Sobin still planned to go forward with the request for additional staff. The Director answered that OGE will not have to make that determination until the budget is reviewed February.

Board Member Lathen suggested that Mr. Sobin meet with the IG and come up with a formalized plan for referring cases and provided documents. She said it would not be a good use of District resources to add additional staff simply because another agency is not turning over needed materials.

- iii. Lanae Godfrey – Parking Placard matter. Ms. Godfrey works for the Office of the Chief Financial Officer (OCFO) as a Customer Service Team Lead in the Office of Tax and Revenue. She has worked for the Office for approximately five years. Once OGE received a ruling from the Office of the Attorney General that it has jurisdiction over OCFO, staff interviewed Ms. Godfrey. OGE is

recommending a negotiated disposition. In January 2012, Ms. Godfrey began using her mother's Maryland- issued disability placard to park in the vicinity of her D.C. work location. She used the placard sporadically from January 2012 to September 2012, to remain in a parking spot longer than the two- hour maximum.

In September 2012, Ms. Godfrey seriously fractured her ankle and was out of the office until December 2012. From December 2012 to February 2013, she resumed using the disability placard regularly because of her ankle injury. She requested that her doctor provide her with the documentation necessary to obtain a personal placard, but never followed up on the request.

It was during this period, that OIG investigators observed her misusing the placard. She was interviewed by OIG on February 27, 2013 and voluntarily admitted that she used the placard January 2012 to September 2012 even though the OIG had not observed those infractions. Also, Ms. Godfrey admitted that during December 2012 to February 2013, she used the disability placard. OIG told Ms. Godfrey that her use of the placard constitutes misuse. Ms. Godfrey stated that she discontinued use of the disability placard after her initial meeting with OIG.

OGE offered, subject to the Board's approval, a \$100 fine, which Ms. Godfrey has paid. Ms. Godfrey's choice to voluntarily admit much more misuse than OIG was privy to is a mitigating factor. The Director stated that Ms. Godfrey is remorseful and that he doubts that she will participate in future misconduct during her employment with the District. With that, he recommended that the Board approve the Negotiated Disposition.

Board Member Lathen expressed concern at the low amount of the fine. General Counsel Stacie Pittell said that it was calculated based on meter costs in that area, and in other similar cases where it was calculated for 22 days the cost was about two hundred dollars. She added that in Ms. Godfrey's case, she was observed by OIG for only five days, and it was only by Ms. Godfrey's own admission that OGE was able to establish the level of misuse.

Director Sobin says that OGE considered all factors before making its final decision and believes that it is consistent with some of the other fines in this type of violation.

Board Member Richards asked OGE to include employee salary grades in future investigation reports. She said that she would be more inclined to recommend a higher penalty if Ms. Godfrey was a higher ranking employee.

The Board unanimously voted to approve the Negotiated Disposition.

- iv. Michael A. Brown – Director Sobin reported that Michael Brown requested an extension to respond to OGE’s Notice of Violation until after his sentencing in another on October 3, 2013. The Board voted unanimously to approve the staff’s recommendation for an extension to October 10, 2013.
- v. Monica Davis – Director Sobin reported that Monica Davis, who received a Notice of Violation for failing to file her Financial Disclosure Statement (FDS), has since filed the form with her agency. After brief discussion, the Board voted unanimously to dismiss the case. Mr. Sobin noted that there is now a 100% compliance rate among current and former D.C. employees who are required to file financial disclosure statements.

In response to a question by Chairman Spagnoletti, Mr. Sobin said that no administrative fines were imposed on any tardy FDS filers, given that this is OGE’s first year managing the FDS system. OGE adopted the policy to just get everyone filed.

- vi. Ronald Moten – Notice of Violation. This matter involves a political candidate’s failure to file the required financial disclosure form. The Board set a hearing date for October 17, 2013, at 1:00 p.m. Director Sobin said that while all District employee filers are in compliance, this is not true of other classes of filers: approximately 64 ANC Commissioners and about ten political candidates are noncompliant.

VII. Public Comment

Having no further business on the Public portion of the Agenda before the Board, Chairman Spagnoletti invited the public to speak or offer comments limited to three minutes per person.

Dorothy Brizill asked about the Board's customary practice regarding:

1) Adjourning a meeting to go into closed session, and whether the public is typically allowed the opportunity to comment before adjournment. Based on her reading of previous agendas, Ms. Brizill stated that the public must wait to address the Board after the closed session ends. She recommends the public be allowed to comment prior to adjournment of the public portion of the meeting and before the Board goes into closed session. She also recommended to the Board that a section of the agenda specifically indicate at what point in the meeting the board will hear from the public and/or take questions from the public. Ms. Brizill noted that public comment to the board is especially important as the board is in its infancy.

2) Wiring of the BEGA hearing room at a cost of \$156,000 for recording and broadcasting meetings. Ms. Brizill thinks it would be wiser to wire a room in the 11th floor conference center, because the cost would be incurred for not only BEGA's used, but for other boards and entities such as the Board of Elections (BOE) since the BOE operates out of Judiciary Square and does not have a hearing room that is wired for broadcast or reporting.

3) Best practices symposium in October. Ms. Brizill recommends the symposium be held in the evening and not during the day at 1 P.M. if BEGA would like to hear from the public. Ms. Brizill says the only members of the public BEGA will hear from at 1 P.M. are people who are in academia, politicians, or people who are essentially unemployed and able to attend. Ms. Brizill says that as Ms. Hughes can verify, the Open Government Coalition (OGC) held its symposium in the evening and it was extremely well attended, and that Ms. Brizill organized the first symposium for the OGC.

4) Whether the Board is tape-recording its minutes, and if the Board intends to tape record formal hearings.

5) An August 2, 2013, email Ms. Brizill sent to Mr. Sobin (referenced immediately below). Ms. Brizill has not received a response.

Read into the Record:

“Other than posting the BEGA board's monthly agenda on your web site, do you also send out press advisories regarding the meeting and particular matters that will be discussed or considered? At the July

11 meeting, how were certain members of the media alerted to the fact that you planned to discuss Marion Barry, and that you would do so in an open session of the Board, and not in executive session? With regard to the August 1 meeting, did you, s member of the Board, or a BEGA staffer give prior notice to the media (or anyone else) that there would be a lengthy discussion of BEGA's deteriorating relationship with Inspector General Willoughby?"

Ms. Brizill says she would like to know if BEGA has a press secretary, and if not, who is the press contact supplying information to certain members of the media to alert them to matters that are not posted on the public agenda.

Chairman Spagnoletti says that as to adjourning to a closed meeting, it is the practice of the Board to take public comments before adjourning to a closed meeting as the Open Meetings Act (OMA) Requires. He added that as required by the OMA, the Board does resume public session after the conclusion of the closed portion of the meeting, noting that it is impossible to know how long the closed portion of the meeting will last. Chairman Spagnoletti says that on only one occasion does he recall any member of the public being present at the end of a closed session.

Board Member Lathen says that the Board has allowed the public to comment before going into closed session.

Ms. Brizill recommends the public agenda be changed to reflect "public comment" than closed session. Chairman Spagnoletti acknowledges that the agenda does not say "public comment," but "resumption of public meeting, discussion of any remaining public items and adjournment."

Board Member Richards said Ms. Brizill's recommendation has merit and the agenda should indicate "public comment." She says that could be a regular feature of the agenda since that is the normal order of the BEGA meetings anyway.

All members of the Board agree to note public comment on the agenda.

Chairman Spagnoletti said that as to rewiring the room, BEGA does not control the space on the 11th floor, and the rooms on the 11th floor are not physically situated for a contested hearing, which is what is required since BEGA will conduct contested hearings in which parties will present evidence. He said that BEGA will make the rewired room available to other boards and commissions that need hearing space when BEGA is not using the room – adding that making the room available to other boards and commissions was part of the proposal to the Mayor's Office when BEGA asked to reprogram funds for this purpose. The BOE may use the room as well.

Chairman Spagnoletti says that he understands Ms. Brizill's concerns regarding a later start time for the symposium, and that the Board will consider revising the time. Board Member Richards agrees.

Chairman Spagnoletti says that as for the recording of the meetings, all of the meetings are recorded by handheld recorders, noting it's not ideal but it serves the purpose and provides a back up live version of what the minutes record. He says that when the BEGA hearing room is wired, BEGA will have higher quality recordings.

Chairman Spagnoletti says he could not address the e-mail Ms. Brizill sent to Mr. Sobin. Speaking for himself he said that he provided no advance notice of the July meeting to any member of the media.

Ms. Brizill said that the posted agenda for the July meeting indicated that the closed session of the meeting would occur at the end of the meeting, but on the day of the meeting the Board went into closed session at the beginning of the meeting for several minutes and then resumed its open session to discuss a matter involving Councilman Marion Barry. The Barry matter had not been noticed on the public agenda, Ms. Brizill noted. She asked when and how the July meeting agenda was changed. Chairman Spagnoletti said he approved the agenda, although he did not create it, and that he determined that the brief closed session should occur at the beginning of the meeting. Prior to the July meeting, the Barry matter was confidential and nonpublic.

Chairman Spagnoletti says BEGA follows its posted rules as registered in the DCMR and the OMA which provide that a board or commission may close a meeting for various purposes, including considering confidential investigations.

Board Member Lathen says that the decision to adjourn the short closed session at the top of the meeting was to ensure the public would be informed early on in the meeting about the Board's decision regarding the Barry matter. If the Board had waited until the end of the public meeting to go into closed session to discuss the Barry matter, the public may not have been present at the resumption of the open meeting.

Having no further business before the Board, Chairman Spagnoletti announced the closing of the Public Meeting at 2:35 p.m.

- VIII.** Executive Session (non-public) to discuss remaining ongoing, confidential 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).

The Executive Session of the Board Meeting commenced at 4:09 p.m.

IX. Resumption of Public Meeting

The Public Meeting resumed at 4:10 p.m.

a. Discussion of any remaining public items

Having no further business before the Board, Chairman Spagnoletti announced the closing of the Public Meeting.

X. Adjournment

Having no further business, the Board adjourned until the hearing on September 10, 2013, at 10:00 a.m.