

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

**MINUTES OF MEETING
June 6 2019**

The District of Columbia Board of Ethics and Government Accountability held a meeting on June 6, 2019 at 10:00 a.m., in Room 540 South of the One Judiciary Square Building, 441 4th Street, N.W., Washington, D.C. The Board's Chairperson Norma Hutcheson was present as well as Board Members Charles Nottingham, Darrin Sobin, and Melissa Tucker. Senior Attorney Advisor, Rochelle Ford, was also present.

Members of the public are welcome to attend. Questions about the meeting may be directed to bega@dc.gov.

AGENDA

I. Call to Order

Chairperson Hutcheson called the meeting to order at 10:01 a.m.

II. Ascertainment of Quorum

Chairperson Hutcheson established that a quorum was present.

III. Adoption of the Agenda/Approval of Minutes

The Board voted unanimously to adopt the agenda. The Board approved the May 9, 2019 meeting minutes.

IV. Report by the Director of Open Government

Good afternoon Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, Director of the Office of Open Government (OOG). I am pleased to present this report on the activities of the OOG. I would first like to congratulate the new members of the Board on their appointments. I look forward to working with you and appreciate your service to the community by serving as a member of the Board of Ethics and Government Accountability.

Since the last Board meeting, the OOG has continued to fulfill its mission of ensuring that all persons receive full and complete information regarding the affairs of the District government and the actions of those who represent them.

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

1. Advisory Opinions:

The OOG has not issued any Advisory Opinions since the last Board meeting.

2. Informal OMA/FOIA Advice:

Since the May Board meeting, the OOG has provided responses to requests for informal FOIA and OMA advice. The OOG has also responded to requests for technical advice concerning the use of the OOG's website for OMA compliance. The OOG provided 6 FOIA and 4 OMA substantive responses to requests for informal advice. The OOG also provided 4 responses to OMA requests for technical assistance.

B. OMA/FOIA Audits:

The OOG is continuing its comprehensive FOIA/OMA audit FOIA/OMA, which it anticipates completing on or before August 1, 2019, and will report the results prior to September 30, 2019. Attorney Barton is handling the OMA audit and I am handling the FOIA audit.

On May 22, 2019, I met with Barney Krucoff, the Chief Data Officer for the District, regarding DC.GOV's compliance with the FOIA law's requirement to make certain information available on the Internet. As background, in January 2019, the OOG sent the Mayor, through her General Counsel, the results of a preliminary FOIA audit of the DC.GOV website that the OOG conducted in December 2018. Mr. Krucoff explained the Office of the Chief Technology Officer's (OCTO) efforts to ensure DC.GOV's full compliance with FOIA prior to the end of the fiscal year. I was pleased with OCTO's briefing and actions taken thus far to make DC.GOV compliant with FOIA.

C. Training/ Outreach:

1. On May 21, 2019, the OOG Attorney Advisor, Johnnie Barton and Director of Ethics, Brent Wolfingbarger facilitated a joint Open Meetings Act and Ethics training for the Mayor's Advisory Committee on Child Abuse and Neglect.

2. On May 21, 2019, I attended a leadership training course sponsored by the Office of the Attorney General. The two-hour long course focused on the coaching model for guiding members of your staff to successful outcomes.

3. On May 21, 2019, the OOG met with OCTO concerning the BEGA Hearing room. OCTO reiterated that the video teleconferencing equipment it supports is at the end of life cycle and must be replaced. The OOG is willing to use its FY2019 budgeted funds to upgrade the equipment prior to September 30, 2019. As you know, BEGA received a budget enhancement to completely upgrade the hearing room. The FY19 upgrade will complement the FY20 total upgrade of the hearing room. With that said, if you have specific concerns, suggestions, or needs regarding this project please let us know. OCTO also expressed that it will arrange a demonstration of its equipment offerings for BEGA's Hearing Room at its DC-Net office, located at 655 15th Street, NW, 5th Floor.
4. On May 21, 2019, I met with Councilmember Gray's Legislative Director, Terrance Norfleet. The meeting was informal and the purpose was to introduce myself to him.
5. On May 22, 2019, I met with the OCTO Chief Data Officer regarding the FOIAXpress (this was the same meeting I mentioned regarding the FOIA audit). I advised on proposed upgrades to the current system to make it easier to use. We also discussed having a meeting in the near future with open government advocates to hear their concerns and suggestions regarding FOIA Xpress. I agreed to host the meeting. We are working on dates for that meeting.
6. On May 23, 2019, Attorney Advisor Barton facilitated an Open Meetings Act training for the Comprehensive Homicide Elimination Strategy Task Force and FOIA training for the Alcohol Beverage Regulation Administration.

D. Legislative Update:

1. Budget Support Act: The FY20 Budget Support Act (or BSA) included proposed changes to the FOIA law. The OOG received several inquiries concerning our position on the proposed changes to FOIA law. Before the on the BSA hearing, the OOG sent a letter to the Chairman of the District of Columbia Council, Phil Mendelson, encouraging him to reintroduce the matter in a separate Bill to facilitate the public's ability to comment on the proposed changes. The OOG also advised that it supported the inclusion of personal devices in the scope of FOIA (i.e. mobile phones, tablets, etc.), but without restriction on the content. The OOG also advised that the language put forth to streamline FOIA requests was too subjective and would lead to delays and litigation.
2. Rulemaking: On May 16, 2019, I adopted the proposed amendments to Chapter 104, Title 3 of the District of Columbia Municipal Regulations

(DCMR), as final rules amendments to the OOG's regulations at 3 DCMR § 104000. These rules, which became effective on May 31, 2019, make conforming changes to ensure that the Office of Open Government's rules are consistent with newly added section 205c of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011. This Act took effect on October 30, 2018. The newly adopted rules authorize appeals for reconsideration of Open Meetings Act advisory opinions in prescribed circumstances. Additionally, the rules make clarifying and conforming amendments consistent with the Open Meetings Act.

E. Staffing:

1. Summer Intern

OOG's legal fellow, Anthony Scerbo, from the David A. Clark School of Law, has started working with the OOG and he will be with us for 10 weeks.

2. IT Specialist

OOG is also pleased to introduce the Board to our new IT Specialist, Tiffany Montgomery. Ms. Montgomery comes to us from the private sector, where she served as a Chief Information Officer, and the federal government.

This concludes the Office of Open Government's June 6, 2019 report. Thank you.

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). These reported statistics do not reflect status changes that we anticipate will occur as a result of actions taken by the Board during today's meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	16
Open - Show Cause Hearing	3
Open - Negotiations	2
Grand Total	21

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	13
Closed Pending Appeal to DC Court of Appeals	1
Closed - Pending External Action	3
Stayed - Pending DC Superior Court Case	1

Stayed - OAG False Claims Act Case	2
Stayed - OIG Investigation	7
Stayed - US District Court Case	5
Grand Total	32

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24
Open - Appeal to Director	2
Open - Board Appeal	8
Grand Total	34

	Current	Last month	April 2019
Investigations Currently Open:	21	23	24
Investigations Stayed:	15	15	15

B. Publication and Reporting Obligations:

We have completed the Quarterly Complaint Report (QCR) for the second quarter of FY19 and published it to our website. We are also preparing to submit our FDS filer report to the DC Register as required before June 17, 2019.

C. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

Investigator Corrales attended one training webinar on Best Practices for Responding to Ethics Hotline Reports (I-Sight). Attorney King and Senior Attorney Ford attended Drupal Training, which is conducted by OCTO and provides technical information on editing the BEGA website. On May 22, our Administrative Officer, Sandra Peterson, attended ERisk Training conducted by the District's Office of Risk Management (ORM). And from June 4 to June 6, Attorney King attended the Financial Investigations Practical Skills (FIPS) Training offered by the National White Collar Crime Center. The FIPS training provides information on how to develop the practical skills, insight, and knowledge necessary to manage a successful financial investigation from start to finish, including the acquisition and examination of financial records, interview skills, and case management and organization.

2. Conducted by staff:

Since the date of the last meeting, we conducted or participated in 4 trainings, 10 less than the 14 we conducted last month. The 4 trainings consisted of one Board & Commission training conducted jointly with the OOG at the Mayor's Advisory Committee on Abuse and Neglect; 1

Boards and Commissions Training for the DC Developmental Disabilities Council; and two new employee orientations.

D. Advisory Opinions/Advice:

Informal Advice: approximately 82, which is 29 more than the 53 reported at the last meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems. Attorney Stewart-Mitchell and I both have fielded large volumes of FDS inquiries since the Board's last meeting, probably hundreds of them.

Formal Advice requests: We have no pending formal advice requests.

E. Ethics Legislation/Comprehensive Code of Conduct:

Nothing new to report. Chairman Allen has introduced this year's version of the CCC for the Council's consideration, and CM Brianne Nadeau introduced another bill on March 19, 2019 entitled the "Ethics Reform Amendment Act of 2019." We look forward to working with Chairman Allen, CM Nadeau, and their respective staffs to advance these legislative efforts in furtherance of our agency's mission.

F. Rulemaking:

Notice of our proposed Rulemaking was published in the DC Register on April 26, 2019. It contained a number of conforming and technical changes to our rules, including the change from a 3 to 5 member board and the accompanying quorum change. It is focused on the criteria the Board considers when it has before it waiver requests, whether for e-filing, or FDS or lobbyist fines. It also includes criteria for employee designation appeals. It is contemplated that when the final rule is published, it will contain our entire body of rules, so they are more readily accessible to the public. Another thing to keep in mind is that the agency has the discretion to finalize all or only parts of the rule, depending on the comments it receives as well as its further consideration of the rules. As we announced last month, we respectfully ask the Board to formally approve the Rulemaking now that more than 30 days have elapsed since its publication in the DC Register.

The Board voted to adopt the Proposed Rulemaking since Director Wolfingbarger did not receive any comments.

G. Budget:

Our FY19 budget currently looks to be in good shape. With less than 4 months remaining in the fiscal year, our local funds currently have an available balance of 42% of our appropriation while our O-Type funds currently have an available balance of 64% of our appropriation. Our staff members are actively enrolling in training programs they believe are well-suited for their individual needs and

career goals, and I am working with DGS, OCP and the Office of the Secretary on several projects to take advantage of our available funding between now and September 30.

Because the Mayor's Office and the Committee on the Judiciary & Public Safety did not provide funding for our #1 FY20 Budget Enhancement Request – an allocation to cover the rent for new office space that is adequate for our needs – we have shifted our focus to use our existing space as effectively as possible in the interim. On May 28, Ms. Peterson and I met with officials from DGS to discuss possible modifications to the so-called “Bullpen” area where 5 of our FTE positions are currently stationed which may allow the space to be utilized by more employees, including temporary staff members and summer interns. We have also requested estimates regarding the anticipated costs to better sound-proof our existing conference room/interview room on the 8th floor, as well as the two offices that adjoin the space occupied by DSLBD. Lastly, we are awaiting a contract to be awarded to a staffing agency to provide us with an experienced Application Developer to help implement needed enhancements in our FDS and Lobbyist e-filing systems.

Audio/Visual Equipment replacement – Our FY20 Budget Enhancement Request for \$50K to replace our existing a/v infrastructure has been funded, and Director Allen and I have been exploring the available software and equipment options to find a system that will best suit the agency's needs at a reasonable price. One issue I wanted to raise with the Board is whether you may have any interest in occasionally holding the Board's monthly meetings in other locations around the District. This idea occurred to me when Attorney Barton and I conducted our Board & Commission training last month at the Mayor's Advisory Committee on Abuse and Neglect. As I was reading through the minutes from the Committee's last meeting, I noted that they had decided to convene their meetings from time-to-time in different community settings throughout the District's various wards as a way to extend the Committee's visibility and outreach to the public. I thought I should share that concept with the Board to gauge your interest in taking a similar approach from time-to-time, because if the Board thinks the concept is worthy of consideration, Director Allen and I will need to ensure that whatever A/V software and equipment package the agency purchases would be capable of broadcasting the Board's meetings from both the Boardroom as well as remote locations.

H. Staffing:

The candidate we selected for our vacant Auditor position finally signed his offer letter from DCHR last week and is expected to join us on June 11, 2019. DCHR has also posted a new Program Specialist position to help manage our Lobbyist and FDS programs, which is the role Caleb Smith is currently filling through a temporary staffing agency.

Back in April, we secured the services of Joseph Thomas as a temporary Tech Support Specialist to help handle customer service requests related to our Lobbyist

and FDS e-filing systems. Joe will continue working in that capacity through the month of June to help wrap up outstanding Support Tickets, as well as July when the next quarterly Lobbyist reporting season begins.

We have been working to restructure one of staffing pattern to create a new Grade 9 Customer Service Representative position, and actually sent a new position description for that role to DCHR for its review. Once that position was filled, we then planned to post the updated Position Description for our General Counsel position, which has been vacant since Brian Flowers' resignation became effective on April 12. However, based on developments that occurred yesterday which we will discuss in Executive Session, we have decided to go ahead and move forward with posting the General Counsel position as soon as possible.

I. Litigation:

Status of pending cases.

- Gerren Price – (CA No. 16-AA-1230), This case was submitted on October 24, 2018, and we are awaiting the Court's decision.
- Blaine vs. BEGA, OEA Matter No. J-0030-19. This is an employment matter involving a separated employee. We submitted our draft response to OAG, which they filed on our behalf before our April 12 deadline. The Administrative Law Judge issued an Order requiring to the employee to submit a legal brief establishing OEA's jurisdiction by April 26, 2019. As of May 3, 2019, the employee had not responded, and on May 3 the ALJ issued an Order requiring the employee to submit both her brief and a statement of good cause for failing to file the brief timely by May 16, 2019. We have asked OAG for an update on any developments which may have occurred since May 16 and will update the notes accordingly once we hear back from them.
- Larry Hicks – (2017 CA 008091). This was an enforcement (collection) action filed to collect a \$20,000 fine imposed on Mr. Hicks. On May 28th, OAG informed us that Mr. Hicks contacted them and agreed to a payment plan. Under the plan, he should complete payment of his fines by September of 2021.

J. Lobbyist/Financial Disclosure Matters:

This year there are approximately 3,815 designated filers and so far about 3,227 designated filers have filed the form via our e-filing system, which constitutes an 84.59% compliance rate.

We still have approximately 200 PFDS non-filers from last season, along with the 588 current non-filers from this year. We are continuing to formulate a strategy for conducting enforcement and will bring that strategy back for discussion with the Board in the coming months. 202 of this year's non-filers are ANC

Commissioners and another 70 are DCPS employees, which combined represents more than a third (34.35%) of all non-filers.

Between April 1 and June 5, we have received 992 Support Tickets from customers seeking assistance with our e-filing systems, and we have successfully resolved 869 of those Support Tickets (87.6%) to date. The current status of those 992 Support Tickets is broken down below:

Row Labels	Count of Date Submitted
Open	1
Pending - Brent	5
Pending - Caleb	23
Pending - Developer	50
Pending - Joe	41
Pending - Tyrell	3
Resolved	869
(blank)	
Grand Total	992

K. Lobbyist Filing Waiver Requests:

Pursuant to D.C. Official Code § 1-1162.32(c), the Ethics Board may waive the penalty imposed for untimely filing of a Lobbyist Activity Report for “good cause shown.”

1. 19-0019-R. Alliance for Construction Excellence (ACE). The Board unanimously approved this request on May 9, 2019, but no Order was signed so we are providing the Chair with an Order to be made effective *nunc pro tunc* as of May 9, 2019.

The Board Chairperson signed the Order approving the request and the Board voted to make the order effective *nunc pro tunc* as of May 9, 2019.

2. 19-0014-R. Sibley Memorial Hospital. The Board unanimously approved this request on May 9, 2019, but no Order was signed so we are providing the Chair with an Order to be made effective *nunc pro tunc* as of May 9, 2019.

The Board Chairperson signed the Order approving the request and the Board voted to make the order effective *nunc pro tunc* as of May 9, 2019.

3. 19-0017-R. Holland and Knight. The firm requests waiver of late fees imposed for 2019 Registration Reports and Activity Reports due to

difficulties navigating the new e-filing system. OGE does not oppose this request, as long as the firm pays a \$300 civil penalty previously imposed against it in Case No. 15-0022-R within 30 days for which we have no record of ever receiving payment. The Board tabled this request to allow the staff to further investigate whether a payment has been made for a previous penalty. We have requested additional information from Holland & Knight on the issue, but we have not yet received a response.

4. 19-0020-R. Compass Government Relations Partners, LLC. The Board unanimously denied this request on May 9, 2019, but no Order was signed so we are providing the Chair with an Order to be made effective *nunc pro tunc* as of May 9, 2019.

The Board Chairperson signed the Order denying the request and the Board voted to make the order effective *nunc pro tunc* as of May 9, 2019.

L. Non-Confidential Investigations:

1. 18-0006-P, *In re: Jack Evans* – This formal investigation into allegations that Councilmember Evans violated the Council Code of Conduct is currently stayed.

VI. Opportunity for Public Comment

Michael Sindram provided public comment via telephone. Mr. Sindram provided a definition of the term *nunc pro tunc*. He then requested that the meeting agenda be sent to him directly before meetings. He next stated that he supported the idea of the Board holding its meetings in different locations, but wants the Board to ensure that those locations allow for public telephone participation. Mr. Sindram expressed dissatisfaction with the amount of time that the investigation regarding Jack Evans has been stayed. He stated that the delay appears to suggest that “lawmakers are above citizens,” and he requested that the Board take action with respect to this matter. Lastly, Mr. Sindram expressed dissatisfaction with the Chair’s advisement about his remaining time to continue his comments.

VII. Executive Session (non public)

The Board voted unanimously 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).

VIII. Resumption of Public Meeting

The Board authorized a formal investigation in the following matter:

1. 18-0013-P, *In re*: Dr. Marla Wyche-Hall

The Board issued a Notice of Violation in the following matter:

1. 19-0003-F, *In re*: Kenneth Crosswhite

The Board approved a negotiated disposition in the following matter:

1. 16-0043-P, *In re*: Ali Shakeri

IX. Adjournment

BEGA's next meeting is July 11, 2019 at 12:00 p.m.