

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

Monthly Meeting of the Board

October 3, 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 September 4, 2013, meeting.
- V. Report by the Director of Open Government
 - a. Technology
 - b. Personnel
 - c. 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
 - e. Lobbyist waiver requests
 - f. Update on electronic lobbyist registrations and electronic fee payments

- g. FDS filers
- h. Budget Matters
- i. Best Practices Symposium at 6 pm
- j. Increasing Hotline Use
- k. Hearing on BEGA legislation scheduled for October 7, 2013
- l. Non-Confidential Investigations
 - i. Larry Hicks - - Hearing held
 - ii. Steven Allen - - Hearing held
 - iii. Michael A. Brown - - Second request for extension for response to Notice of Violation
 - iv. Moten - - FDS hearing scheduled for October 17, 2013
 - v. Vincent Orange – Ethics Training held on September 27, 2013. Can apply for expungement on November 1, 2013.
 - vi. Marion Barry - - scheduled to make next payment on October 11, 2013.
 - vii. Payments on all other fines are up-to-date

VII. Opportunity for Public Comment

VIII. 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).

IX. Resumption of Public Meeting

- a. Discussion of any remaining public items
- b. Opportunity for Public Comment

X. Adjournment

MEETING MINUTES

District of Columbia

Board of Ethics and Government Accountability

Monthly Meeting of the Board

October 3, 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 1:04 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 September 4, 2013, Meeting.

The Minutes of September 4, 2013, Board Meeting was adopted unanimously via e-mail and is posted online.

V. Report by the Director of Open Government

a. Technology

The Director of Open Government, Traci Hughes, informed the Board that development of the new BEGA website is making progress. She presented a

preliminary demonstration of the new website and explained that it will incorporate icons, filtering structures, and staff profile information, including that of the Board. The site will also include a calendar view of all board and commission meetings. The points of contacts to boards and commissions will be responsible for filling out the profile information for their respective boards and commissions. Director Hughes will moderate and approve the text sent by the board point of contacts and it will automatically populate/update on the BEGA site. The site will be ADA compliant like the current site which is accessible to those who are hearing and visually impaired. She expects the site to be up and running in mid-November provided that procurement is timely approved in the new fiscal year.

Director Hughes provided an update on the wiring of the Hearing Room by stating that she revised the MOU with OCTO on September 19, 2013, to extend the period of performance from September 30, 2013 to September 30, 2014. The revised MOU amount is \$80,000 with the remaining amount of \$76,684 funded in FY '14 through the Executive Office of the Mayor. Installation will not begin until OCTO has received the entire compensation package.

b. Personnel

The Office of Open Government will begin advertisement for an IT specialist, as soon as the District is no longer operating on reserved funds. It will be an entry level position with a salary range of \$43,000 - \$54,000.

c. Trainings

It has been a busy month for Open Meetings Act (OMA) and Freedom of Information Act (FOIA) trainings.

Director Hughes and Director Sobin conducted a joint training of Board and Commissions Points of Contact on September 13, 2013. Director Hughes says that the audience was very engaged, and the majority of the questions were about OMA compliance.

Additionally, Director Hughes conducted OMA trainings of the Board of Nursing, Board of Pharmacy, Board of Industrial Trades, Board of Professional Engineering, the Occupational and Professional Licensing Board, as well as a joint training with General Counsel, Stacie Pittell at the retreat of the Citizen Review Panel.

She also conducted two FOIA trainings in September at the Office of Administrative Hearings and the Homeland Security and Emergency Management Agency. The Office of Open Government continues to experience and increase in calls from agencies seeking advice on processing FOIA requests, and compliance with the Open Meetings Act.

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). Status of cases since last Board Meeting is as follows:

- Investigations Opened – 3
- Investigations Closed – 7
- Advisory Opinions Issued – 1
- Informal Advice – 37
- Hearings – 2

FY 2013 Statistics

- Investigations Opened – 57
- Investigations Closed – 40
(The closed cases included 8 negotiated dispositions with fines totaling \$14,550. Of the 49 investigations opened at least 90 days by the end of FY’13, 29 were completed within 90 days.)
- Advisory Opinions (Formal) Issued – 25
- Informal Advice – 186

b. Publication and Reporting Obligations

The following publications and reporting obligations were published timely:

- Quarterly Complaint Report (July 1, 2013 – Sept. 30, 2013)
- Advisory Opinions

Director Sobin asked the Board for its view on establishing some type of policy concerning hearing transcripts as it relates to posting transcripts of contested hearings on the website, and costs associated with purchasing transcripts.

He informed the Board that transcripts from the two recent hearings held in September cost \$4,200. It is estimated that two hearing per month would cost about \$48,000 per year. BEGA does not have funds allocated for transcripts, and if we order a transcript in every case, the Agency would go into a deficit of about \$30,000. The appearance fee for the court reporter to come out and record the hearing is \$175; we would have each hearing recorded, and later determine if it was necessary to have it transcribed.

Director Hughes said that the Open Meetings Act requires that after a decision has been rendered, the disposition and transcript should be made available no later than 7 business days.

The Board decided that transcripts will be ordered on a case-by-case basis. Also, personal identifiers that are not relevant to the case will be redacted.

OGE will check with the Court Reporter to find out whether or not there is an issue with posting copies of transcripts on the website once purchased by the Agency.

c. Trainings

i. Attended by Staff

- Entire staff attended DCHR training on Performance Evaluations
- One staffer attended a webinar on cyber investigation techniques
- Two staffers attended a Human Resources conference
- Clara Olawunmi received a Certificate of Completion on Certified Inspector General Auditor training from the Association of Inspectors General

ii. Conducted by Staff

- Mayor's Cabinet Meeting on Constituent Services
- DCRA Union
- Department on Aging
- New Employee Orientations (2)
- Chairman Spagnoletti – Ward 4 Democratic Committee

- Ethics training for Councilmember Vincent Orange
- Constituent Services and Ethics Overview training for the Office of Labor Relations & Collective Bargaining
- Ethics training for Councilmember Marion Barry has not yet been scheduled; however, fine payments are on schedule.

d. Advisory Opinions

OGE is working on two sua sponte opinions – one addressing Letters of Recommendation and one involving Boards and Commissions.

The opinion on Letters of Recommendations will supplement the Constituent Services Opinion. OGE is receiving many calls from Councilmembers and their staff about when they appropriately can support causes in their communities and lend the support of the government to something they feel is worthwhile. The OGE letter will provide more detailed guidance than that contained in the Council’s Code of Conduct. The Boards and Commissions letter will address which parts of the Code of Conduct apply to members of various boards. The rules’ applicability may differ depending upon various factors, including whether a board member serves full- or part-time, is compensated, is classified as a special government employee, and other factors.

Additionally, OGE received a request on Blind Trusts from members of the Ad Hoc Committee of the Council that investigated Councilmember Barry’s disclosure of gifts from prohibited sources. The Ad Hoc Committee members requested that OGE issue an opinion on whether Blind Trusts are appropriate for Councilmembers or government employees in general.

e. Requests for Waiver of Late Fees Imposed for Tardy Submission of Lobbyists Reports

1. Laborers Mid-Atlantic Regional Organization – The request initially was forwarded to the Board; however, the matter has since been resolved and no waiver is necessary. It was found that the company had in fact timely filed and inadvertently was entered into the electronic filing system under both its full name and its abbreviated name, LIUNA MAROC.

2. Holland & Knight – The Board denied the waiver request stating that the reason provided (reporting period was within the 4th of July holiday) did not substantiate good cause for failure to timely file.
3. National Nurses United – This entity’s representative asserted that he was not required to file a report because he conducted no lobbying activities during the 6-month reporting period.

Mr. Grimaldi stated that BEGA takes the position that if someone who has registered as a lobbyist conducts no lobbying activities during the reporting period, the registrants nevertheless need to file a report showing zero activity. The registrant argued that the relevant statute establishes a presumption that a non-filing registrant has not received or expended funds for the purpose of lobbying and that the statutory presumption obviates the need to file. Mr. Grimaldi, acknowledging that the statute may be ambiguous, nevertheless advised BEGA to take the position that the presumption is not overcome by not filing an activity report.

The statutory provision in question, D.C. Official Code 1-1162.30(c), states that “*each registrant who does not file a report required by this Section for a given period is presumed not to be receiving or expending funds that are required to be reported under this subtitle.*”

Board Members Richards and Lathen stated that they found the statute to be ambiguous. Chairman Spagnoletti did not, stating that the statute is clear enough to alert registrants that an activity report should have been filed.

The Board agreed to assess half the penalty because the company made a good faith effort to interpret the statute correctly.

OGE will include an FAQ on the website explaining how BEGA interprets the statute, i.e. that a registered lobbyist must file an activity report even if the registrant did not engage in lobbying activity during the reporting period.

f. Update on Electronic Lobbyist Registrations and Electronic Fee Payments

Director Sobin informed the Board that OGE has received the Merchant ID from OCFO and the PayPal ID from OCTO for electronic fee payments. As soon as the payment gateway is complete, OGE will be able

to receive electronic payments for lobbyist registrations, fines, etc. With regard to electronic lobbyist registrations, the vendor is currently developing a system to handle multiple registrations and multiple filings using one login ID and one pin number, which will allow registrants to file multiple reports electronically. These improvements will greatly enhance user desirability to both file and pay electronically.

Director Sobin also informed the Board that lobbyist fees, classified for budget purposes as “Other Type Funds,” or “O-Funds:” can be used only for lobbyist matters, such as developing the e-Filing system. Money collected for fine payments is unrestricted and may be used for any BEGA purposes as appropriated by the Council.

g. Financial Disclosure System (FDS) Filers

A review of OGE files revealed that 9 candidates for political office that our system listed as non-filers may never have been advised of their responsibility to file. OGE reached out to them via phone and email addresses provided by the Board of Elections and Office of Campaign Finance, and by conducting personal visits. Through these efforts, BEGA contacted 7 of the 9 candidates, who then filed disclosure reports. The final 2 could not be reached. The Board decided not to pursue those matters. In an effort to try to prevent recurrences of this situation, OGE intends to ask the Board of Elections to have candidates include additional contact information that will be good after the conclusion of campaigns.

Also, OGE found two glitches in the system concerning the District of Columbia Public Schools (DCPS) in that all filers filed as confidential filers. However, Chancellor Kaya Henderson and perhaps other high-ranking DCPS personnel should have filed publicly. OGE has contacted DCPS to resolve the matter. OGE also has contacted the District of Columbia Department of Human Resources to find out if there are additional employees who are required to file publicly. In addition to DCPS, it was discovered that the Department of Mental Health (DMH) failed to have responsible staff members file confidential FDS. DMH is now remedying the situation, and OGE expects the Agency to be compliant soon.

h. Budget Matters

Director Sobin said that because budgetary matters already have been discussed, he would proceed to the next agenda items.

Board Member Lathen asked to discuss the federal Government shutdown and inquired as to what impact it might have on BEGA if the federal budget is not approved in 7 days given that the District is operating on reserve funds. The Director stated that it is his understanding that Mayor Gray wrote a letter to the Office of Management and Budget stating that he considers every District employee to be essential. There has been some communications, but nothing has been decided. The decision to keep the District government open will ultimately be decided by President Obama. Director Hughes added that no BEGA employee is considered 'essential' because no one serves in a position necessary to public health and/or public safety.

i. Best Practices Symposium at 6:00 p.m.

OGE put forth good efforts promoting the Best Practices Symposium. Notice was given to various law schools and media contacts. Also, there was a write-up about the event in the *Washington Post* on October 2, 2013.

j. Increasing Hotline Use

The Director informed the Board that OGE continues to post fliers at training, including distributing Ethics pamphlets at the New Employee Orientations conducted every two weeks.

He added that he is not overly concerned about the minimal number of calls received via the Hotline because (1) OGE numbers are up and are consistently increasing; (2) OGE is operating at capacity, as far as handling complaints and/or requests for advice; and (3) the majority of calls are received on the regular phone line, which implies that people trust OGE enough not to want to remain anonymous.

BEGA's experience is consistent with that of the Office of the Inspector General and with other jurisdictions, such as New York.

Board Member Richards said that it is good to know that people are calling on the regular phone line, but inquired about the volume of calls OGE receives from individuals wishing to report suspected misconduct. General Counsel Pittell responded by saying that while many of complaint cases are received on the regular phone line, it is her experience that most significant cases are reported by people with whom the agency staff has built relationships.

General Counsel Pittell stated that she and Director Sobin receive calls from people they know or from agencies wanting to report matters that may involve some type of ethical misconduct.

Board Member Richards suggested that OGE build a more ‘public-face,’ perhaps through public service announcements or running advertisements in local community newspapers.

Director Hughes agreed to inquire with DCTV to find out if they would be willing to run a tickler periodically. She added that if the Board is willing to obligate funds towards marketing and advertisement, she would pursue different avenues of obtaining more media attention for BEGA.

k. Hearing on BEGA Legislation Scheduled for October 7, 2013

The Hearing on BEGA Legislation scheduled for Councilmember McDuffie Committee on Government Operations is set October 7, 2013. Director Sobin reported that both he and Chairman Spagnoletti plan to attend the Hearing and the Chairman expects to testify. The legislation is very important because it clarifies those agencies, employees, and elected officials to which the Ethics Act applies; it recognizes the District’s need for a Universal Code of Conduct applicable to all employees and elected officials serving the District; and it provides BEGA with the necessary tools to perform its statutory functions, including access to government records, mandatory reporting by employees of misconduct of others, penalties for untruthfulness to BEGA, as well as civil contempt by the Superior Court for failure to comply with BEGA orders.

He stated that the Office of the Inspector General (OIG) objects to the provision in the draft legislation that allows BEGA access to its records. The OIG contends that this provision compromises its independence. Mr. Sobin stated that the legislation merely puts BEGA on a par with the “access to records” authority of both the OIG and the Office of the Auditor. OIG’s concern that it might have to turn over such items as confidential law enforcement records is overstated, he said, because the proposed legislation includes a provision that exempts from disclosure records that are protected by law. The IG has sent a letter to both the Mayor and the Chairman of the Council voicing his objection.

Board Member Lathen asked if the Director intends to respond directly to the allegations raised in the IG’s letter at the October 7 hearing. Director Sobin said that he will address the IG’s concerns only if they are raised. He advised

the Board that BEGA was not afforded a courtesy copy of the IG's correspondence, and obtained a copy via the Internet.

The Board then discussed emergency legislation, passed by the Council on September 17, 2013, regarding changes to the requirement that ANC Commissioners file FDS forms. The proposed legislation no longer requires ANCs to file the same forms as other confidential filers. Instead, ANC members are required only to submit the certification that appears at the end of the FDS, certifying that they paid their taxes; diligently safeguarded the assets of taxpayers of the District; reported illegal activity, such as bribes, of which they were aware; have not been offered or accepted bribes; have not directly or indirectly received government funds through illegal means; have not raised or received funds in violation of District law; and have not received or have been given anything of value from a prohibited source.

The proposed legislation makes this relief retroactive to 2012, which means that BEGA cannot take enforcement actions against ANC Commissioners who failed to file for that year. The Council action moots 64 potential enforcement actions. The date for the Mayor to review the emergency legislation ends October 7, 2013.

Board Member Richards asked whether the legislation mooted a potential enforcement action based on disclosures contained in 2012 ANC filings. Director Sobin advised that if a violation is disclosed – such as an affirmative answer to Question 8 (accepting money from a prohibited source) – that information can be used to institute an enforcement action. The certification requirement becomes effective in January, with the filing date for 2013 in May.

BEGA will now have to create a new module in the e-Filing system to support the ANC certifications.

I. Non-Confidential Investigations

- i. Larry Hicks – Hearing held on September 10, 2013
- ii. Steven Allen – Hearing held on September 19, 2013
- iii. Michael A. Brown – Second request for extension to respond to Notice of Violation
- iv. Ronald Moten – FDS Hearing scheduled on October 17, 2013, at 1:00 p.m.

- v. Councilmember Vincent Orange – Ethics Training held on September 27, 2013, he can apply for expungement on November 1, 2013.
- vi. Councilmember Marion Barry – scheduled to make next fine payment on October 11, 2013.
- vii. Payments on all other fines are up-to-date

VII. Opportunity for Public Comment

No member of the Public made a comment.

Having no further business before the Board, Chairman Spagnoletti announced the closing of the Public Meeting at 2:28 p.m.

VIII. 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).

The Executive Session commenced at 2:36 p.m.

IX. Resumption of Public Meeting

- a. Discussion of any remaining public items

Having no further business before the Board, Chairman Spagnoletti announced the closing of the Public Meeting at 3:25 p.m.

- b. Opportunity for Public Comment

No member of the public was present at the resumption of the Public Meeting.

X. Adjournment

The Board Meeting adjourned at 3:25 p.m.