**COUNCIL OF THE DISTRICT OF COLUMBIA**

**COMMITTEE ON THE JUDICIARY**



**COUNCIL OF THE DISTRICT OF COLUMBIA**

**PUBLIC HEARING**

**AGENCY BUDGET OVERSIGHT HEARING**

**FISCAL YEAR 2016**

**Testimony of Darrin P. Sobin**

**Director of Government Ethics**

**Board of Ethics and Government Accountability**

**Thursday, April 30, 2015**

**10:00 A.M.**

**1350 Pennsylvania Avenue, N.W.**

**Room 120**

**Washington, D.C. 20004**

Good morning, Chairperson McDuffie and members of the Committee. I am Darrin P. Sobin, Director of Government Ethics of the Board of Ethics and Government Accountability (“BEGA” or “Board”). I am pleased to be here to discuss BEGA’s budget needs for Fiscal Year 2016, and to update the Committee and the public on the status of the Board and its operations. My budget request includes one position for an ethics trainer for the Office of Government Ethics to meet the steadily growing demand for trainings.

The mission of the Board of Ethics is to foster high ethical standards for District government employees and strengthen the public’s confidence that the government’s business is conducted with impartiality and integrity. The Board is responsible for administering the Code of Conduct applicable to all District government employees; receiving, investigating and adjudicating violations of the Code of Conduct; training District employees on ethics standards; issuing rules and regulations governing District employees and public officials; administering the financial disclosure and lobbyist registration systems; and providing formal and informal ethics advice.

This has been a year of transition for BEGA. Now in only its third year of operation, BEGA has become widely known inside and outside of the government as the agency responsible for ethics advice, training and enforcement of the District’s ethics laws. As our visibility has increased, so too has the workload and the complexity of the matters handled by our staff. That being said, we very much appreciate the two positions granted to BEGA last year – a third investigator and an administrative support staffer to assist with Lobbyist Registration and Financial Disclosure filing by District employees. We have made excellent use of them. The two new employees – both District residents – bring to BEGA many years of previous District government experience. The same may be said of our new General Counsel who stepped in when the Board’s original General Counsel took a position as Chief of Staff at the Office of the D.C. Auditor. General Counsel Brian Flowers has nearly 30 years of District Government experience including at one time serving as General Counsel to this Council and later to the Mayor in the previous administration. This skill set has been invaluable not only with respect to traditional General Counsel duties but, as I will discuss shortly, with respect to the Comprehensive Code of Conduct which we are proud to submit to you today. In summarizing BEGA’s accomplishments over the past year, I’ll start with the aforementioned Comprehensive Code of Conduct, which has been almost a year in the drafting and which we promised to you at our oversight hearing in February.

* The Comprehensive Code of Conduct is comprised of 19 Articles and will apply across the government to all employees, elected officials and in some cases those who provide services to the government. It was prepared, based in substantial part on provisions in the Ethics Act, the Comprehensive Merit Personnel Act, Chapter 18 of the District Personnel Manual, the Council’s Code of Official Conduct and national best practices. The draft was circulated for comment to individuals both in and outside of the District government, including those in the Council and in the Executive Office of the Mayor. In the last year I personally met with each Councilmember or their staff to discuss concerns or suggestions for this new Code. Moreover, this draft is posted on the BEGA website and members of the public are invited to submit comments over the next 30 days. The Board will be working toward approval of a final draft following this meeting and over the next several weeks. A final legislative package, including background materials and a section-by-section analysis of the Comprehensive Code, will be submitted to the Council before the summer recess.
* BEGA has continued to conduct ethics training for the 34,000 plus District government workforce, including all new employees, and has expanded its training efforts to include Councilmembers and their staffs, board and commission members, ANCs, and lobbyists. We also conduct specialized trainings on topics such as post-employment and the local Hatch Act. In calendar year 2014, we conducted a total of 84 trainings and, in the 4 months of calendar year 2015 thus far, we have already conducted 40, including four with new and current Councilmembers and their staffs, and 7 with the Executive Office of the Mayor. The transition, coupled with the emphasis of the new Mayor and Councilmembers on ethics compliance, has strained the resources of our office. According to our Performance Accountability Report issued by the City Administrator, training increased by 138.46% from the year before.
* The plain-language District Ethics Manual was revised to reflect significant changes made to Chapter 18 of the District Personnel Manual in April 2014. It also includes information from the Council Code of Official Conduct. The most updated version of the Ethics Manual, current as of November 1, 2014, is posted on our website and also has been reprinted and distributed widely in booklet form.
* In FY 2015, to date, BEGA issued 6 formal written Advisory Opinions, 4 based on requests, and 2 *sua sponte*. The *sua sponte* Advisory Opinion is on letters of recommendation/letters of support and discusses issuing letters of recommendation for former employees and letters of support for contractors and grantees.

All of the Opinions are posted on our website and were published in a timely manner in the *D.C. Register*. The safe harbor Advisory Opinions are posted in redacted form, unless the person seeking the Opinion consents to publication with identifying information. Informal ethics advice to employees who called or emailed ramped up substantially in the last year. In 2014, this totaled 511, and thus far in the first six months of FY 2015, 376. This advice is recorded in a BEGA internal database to ensure consistency of the informal advice-giving function. According to our Performance Accountability Report maintained by the City Administrator, this is a 123% increase over the previous quarter.

* At the beginning of FY 2015, BEGA had 48 open investigations and has closed 28. Twenty investigations are pending. Of those 28 closed investigations, 9 resulted in negotiated dispositions, with fines ranging from $300 to $15,000, and totaling $22,050. We have a 100% success rate in the 9 enforcement actions we have initiated this fiscal year, including a 100% compliance rate for collecting the fines in those cases far. The negotiated dispositions concerned matters such as misuse of government resources, including emails with signature blocks, financial conflicts of interest, post-employment violations, and a local Hatch Act violation. The individuals investigated include high level officials, such as division heads, as well as mid- and low-level employees, and ANC Commissioners. As required by the Ethics Act, our quarterly reports list all of our investigations and include, for each, a description of the allegations, status, and any resulting dispositions. All final contested decisions, as well as negotiated dispositions, are posted on the BEGA website.
* Lobbyist registration and activity reporting continued to be handled successfully. Registration fees for FY 2015, to date, were recorded and deposited in the appropriate account ($55,800).

We also had our vendor update the lobbyist electronic filing system, so that registrants can pay late filing fines online and receive electronic receipts for payment of fees and fines. The system also now includes training screens and FAQ links to the e-filing system, as well as a “contact BEGA” button. It also allows lobbyists to attach supplemental documents to the lobbyist activity reports.

In terms of financial disclosure statements (FDS), we are currently in the middle of what we term “Financial Disclosure Filing Season.” Our new automated system allows employees to be contacted via email with instructions and log-in information for using the on-line filing system. This not only saves the cost of postage, but many hours of administrative time by BEGA staff who would otherwise be required to manually enter data from those who in the past would file a paper FDS form. We anticipate over 1200 public filers this year, and close to 3000 confidential filers. This represents a significant increase over previous years.

On October 22, 2014, the Board held its third annual public symposium. The theme was “Keeping Government Accountable: Ethics and Open Government Considerations for Leaders and Citizens.” We held it at the University of the District of Columbia David A. Clarke School of Law, and it was moderated by Dean Shelley Broderick. Our guest panelist was Mark Davies, the Executive Director of the New York City Conflicts of Interest Board. As in previous years, the purpose of the symposium was to elicit input from members of the public, government employees, and academia in advance of drafting our annual Best Practices Report. We received useful input from those in attendance which was utilized both in the Report as well as in the aforementioned Comprehensive Code of Conduct.

* With the symposium information in hand, on December 31, 2014, BEGA issued its third Best Practices Report. The Report, required by the Ethics Act, is posted on the BEGA website and contains an assessment of ethical standards for public employees and officials, including a review of national best practices, and recommendations for legislative action.
* The Board held its 12 statutorily required monthly meetings in calendar year 2014 and has held 4 thus far in calendar year 2015. These did not include the special meetings that were sometimes required to adjudicate matters or one recently held to consider the draft Comprehensive Code of Conduct. All of our meetings are video recorded and are available to the public on our website.

As you can see, BEGA has accomplished much in the past year, despite an ever increasing demand on staff time. This is particularly true with respect to training requests. Accordingly, we submitted a request for a budget enhancement for FY 2016 to fund an additional FTE for an ethics trainer for OGE. The enhancement is to meet the steadily growing demand for trainings. Ethics trainings, typically 2 hours in length, are a huge burden on the office staff, and it is not unusual for the Director of Government Ethics – me -- to conduct these trainings personally because of the lack of available staff (there are only 3 staff members qualified to conduct ethics trainings). Moreover, OGE’s performance indicators under its Performance Plan include time limits on other core functions such as Advisory Opinion issuance (30 days) and completion of investigations (90 days). The training commitments make it difficult to meet these deadlines on a consistent basis. An additional FTE would permit existing staff to concentrate their efforts on other regular activities of the office. Finally, it has been our experience that the training function is critically important to avoid costly investigations and enforcement proceedings because they prevent employees from unwittingly running afoul of the ethics rules and deter deliberate conduct. In my view, an FTE focused on training would, in the long run, be a cost savings to the District. I hope funds can be located to support this request.

Thank you. I am pleased to answer any questions the Committee may have.