**COUNCIL OF THE DISTRICT OF COLUMBIA**

**COMMITTEE ON GOVERNMENT OPERATIONS**



**COUNCIL OF THE DISTRICT OF COLUMBIA**

**PUBLIC HEARINGS**

**AGENCY PERFORMANCE OVERSIGHT HEARINGS**

**FISCAL YEAR 2014-2015**

**Testimony of Darrin P. Sobin**

**Director of Government Ethics**

**Thursday, February 12, 2015**

**10:00 A.M.**

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

**Room 500**

**Washington, D.C. 20004**

Good morning, Chairperson McDuffie and members of the Committee. I am Darrin Sobin, Director of Government Ethics, and I am pleased to be here today to update the Committee and the public on the status of the Board of Ethics and Government Accountability (“BEGA” or “Board”) and its operations.

This has been a busy year, and I am happy to highlight the many achievements of the Board and staff in carrying out the core functions of our agency over the course of the performance review period. Let me summarize BEGA’s accomplishments over the past year, focusing on those that most closely relate to our principal functions of administering and enforcing the District’s Code of Conduct, providing ethics advice and training, overseeing lobbyists and government employee financial disclosure filings, and meeting our publication and reporting requirements.

* 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 calendar year 2015 thus far, we have conducted 12, including two with new Councilmembers and their staffs. According to our Performance Accountability Report issued by the City Administrator, training 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 distributed widely in booklet form.
* In FY 2014 and FY 2015, to date, BEGA issued thirteen formal written Advisory Opinions, 12 based on requests, and one *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.

Of the twelve formal written advisory opinions issued based on request, four concern post-employment questions and three concern outside employment (*i.e.*, second job) issues. BEGA also issued two formal written advisory opinions on local Hatch Act questions, one concerning blind trusts, one discussing unpaid service on a non-profit board, and one concerning residual financial benefits from previous employment.

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 five months of FY 2015, 278. This advice is recorded in a BEGA internal database to ensure consistency of the informal advice-giving function. According to our Performance Accountability Report the City Administrator tracks this at a 118.81% increase from the previous year.

* In FY 2014 and FY 2015, to date, BEGA initiated 59 investigations and closed 58. Of those 58 closed investigations, 13 resulted in negotiated dispositions, with fines ranging from $300 to $20,000, and totaling $65,750. We have a 100% collection rate on those fines so far. The negotiated dispositions concerned matters such as misuse of government resources, including emails with signature blocks, financial conflicts of interest, gifts from prohibited sources, and a local Hatch Act violation. The individuals involved included high level officials, such as an agency head, a general counsel, and two division heads, as well as mid- and low-level employees. As required by the Ethics Act, 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 2014 and FY 2015, to date, were recorded and deposited in the appropriate account ($86,250). We also issued fines to lobbyists who filed late or failed to file required reports. To date, we have collected $3,150 in lobbyist fines.

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 FY 2014, we gave out informal advice on 56 lobbyist matters.

In terms of financial disclosure statements (FDS), in FY 2014, BEGA handled filings for 865 filers. Our staff gave out informal advice on 123 FDS matters.

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, and information about the symposium, including copies of the written statements submitted, is posted on the website.

* 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.
* On the personnel front, we are happy to say that we filled the additional positions we were given for FY 2015. We have on staff now an additional administrative person to work on lobbyist and financial disclosure matters. We also have a senior investigator coming on board in a couple of weeks.
* We also are working on a Comprehensive Code of Conduct. An initial draft of the Comprehensive Code of Conduct has been prepared, based in substantial part on provisions in the Ethics Act, the Comprehensive Merit Personnel Act, Chapter 18 of the District Personnel Manual, and the Council’s Code of Official Conduct. The draft has been circulated for comment to individuals both in and outside of the District government, including those in the Council and, most recently, in the Executive Office of the Mayor. The Ethics Board looks to begin discussing the draft at its March meeting, regardless of whether feedback from all sources has been received, and to work toward approval of a final draft by its budget hearing before the Committee on April 30, 2015. A legislative package, including background materials and a section-by-section analysis of the Comprehensive Code, will be submitted to the Council within a reasonable time thereafter, but certainly before the summer recess.
* The Board held its 12 statutorily required monthly meetings in calendar year 2014 and 2 thus far in calendar year 2015. These did not include the special meetings that were sometimes required to adjudicate matters. In total, the Board met on 21 occasions.

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 me to conduct these trainings myself 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 OGE’s 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.

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