

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

DRAFT MEETING MINUTES – OCTOBER 6, 2022

The District of Columbia Board of Ethics and Government Accountability held a meeting on October 6, 2022 at 12:00 p.m. The meeting was held remotely via WebEx. The Board’s Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Felice Smith, Darren Sobin and Melissa Tucker. These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting. Questions about the meeting may be directed to bega@dc.gov.

Members of the public were welcome to attend, and a recording of the meeting will be made available on open-dc.gov and BEGA’s YouTube channel.

I. Call to Order

The meeting was called to order at 12:00 p.m.

II. Ascertainment of Quorum

A quorum was established with Chairperson Hutcheson and Board Members Charles Nottingham, Darren Sobin, and Melissa Tucker present at the start of the meeting. Chairperson Hutcheson noted that Board Member Felice Smith would join the meeting later.

III. Adoption of the Agenda/Approval of Minutes

The Board voted unanimously to adopt the agenda for the meeting. Chairperson Hutcheson and Board Members Nottingham and Tucker voted to approve the minutes from the September 8, 2022 meeting. Board Member Sobin recused himself from voting on the minutes since he did not attend the September Board meeting.

IV. Report by the Director of Open Government

Good afternoon, Chairperson Hutcheson, and Members of the Board. I am Niquelle Allen, Director of Open Government. I am pleased to present this report on the activities of the Office of Open Government (“OOG”). Since the last Board meeting, 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

I have not issued an advisory opinion since the last Board meeting.

2. Informal OMA/FOIA Advice

Since the last Board meeting, OOG responded informally, via e-mail or telephone, to requests for assistance as follows:

OOG responded to seventeen (17) requests for OMA advice;
OOG responded to sixteen (16) requests for FOIA advice; and
OOG responded to twenty-four (24) requests for technical assistance with open-dc.gov.

B. Remote Meeting Monitoring

To ensure compliance with the OMA OOG attorneys attend remote public meetings and inspect public body websites and the OOG's central meeting calendar for public meeting notices and public meeting records. We provide legal advice on OMA compliance and take corrective action if necessary.

During September 2022, OOG attended four (4) remote public body meetings. As a result of the monitoring, three (3) instances of written corrective measures were taken, including notification:

1. That two (2) public meeting notices did not include draft agendas and meeting records were missing from the public body's website or the central meeting calendar. The OMA also requires timely posting of these items. D.C. Official Code § 2-576, Notice of meetings.
2. Missing electronic link from the meeting notice to attend a remote meeting. D.C. Official Code § 2-577, Meeting procedures.

C. Training/Outreach

1. FOIA Training

On September 13, 2022, Attorney DeBerry presented "FOIA Requesters; FOIA Fees; Acknowledgment Letters; and Final Response Letters" training for approximately 45 FOIA officers. Several participants followed up with questions via email. I, along with Paralegal Specialist Brown, attended the training. This webinar was conducted as part of a series of FOIA training courses hosted and facilitated by OOG.

2. FOIA "Exemptions" Training

On September 20, 2022, I presented FOIA training, "Commonly Used FOIA Exemptions" for District FOIA Officers. Attorney DeBerry also assisted during the presentation. The 51 attendees actively participated by asking questions during the presentation. Chief Counsel Barton, Attorney Weil, and Paralegal Specialist Brown were also in attendance. This webinar was conducted as part of a series hosted by OOG. D.C. FOIA Officers are required to take 8 hours of FOIA training per year.

3. OMA Basic Training

On September 22, 2022, Chief Counsel Barton presented an OMA training for 43 administrative points of contact and public body members. The training included practical advice for ensuring OMA compliance. I, along with the OOG legal team, attended the training.

4. OMA and Parliamentary Procedure Training

On September 27, 2022, Attorney DeBerry and Attorney Weil, conducted “Basic Parliamentary Procedure & the OMA” training for 30 administrative points of contact or public body members. The attendees actively participated by asking questions.

5. National Institute of Trial Advocacy (“NITA”) “Investigative Questioning Techniques”

On September 15-16, 2022, I, along with Attorney Weil and Paralegal Kimberly Brown, attended NITA’s “Investigative Questioning Techniques” training. The two-day training required active participation by attendees and was held at American University School of Law. Members of the Office of Government Ethics’ (OGE) staff also attended. Constructive feedback was given by NITA’s experienced faculty in an active learning format.

6. NITA Deposition Training

On September 27-29, 2022, I, along with Attorney DeBerry, Attorney Weil, and Paralegal Specialist Brown, and members of the OGE staff attended NITA’s 3-day online Deposition Training. The attendees actively participated in each stage of the deposition process and received individual critiques from the skilled faculty presenters.

7. Mayor Bowser’s Cabinet Meeting

On September 28, 2022, I attended Mayor Bowser’s Cabinet meeting. In the meeting, Cabinet Members and Independent Agency Directors received information from the new Chief Financial Officer on the launch of the new financial system, DISF, that went live on October 3, 2022. We also received reports on the accomplishments of several agencies.

8. District Integrated Financial System (DISF) Training

On September 29, 2022, I completed DISF Training, which included the following courses: Introduction to DIFS; Chart of Accounts (COA) Microlearning; Introduction to DIFS EPM; Introduction to Reporting; P-Card; and Travel Approval and Reimbursement. IT Specialist, Kevon Bridges, completed P-card and Travel Approval and Reimbursement training on September 30, 2022.

C. Litigation and Legislative Update

1. Litigation

- a. Washington Post FOIA lawsuit re: records arising out of Capitol insurrection (Super. Ct. Case No. 2021 CA 002114 B).

As I have reported, the Washington Post (“Post”) sued the District under D.C. FOIA, seeking certain records relating to the Capitol insurrection. The Superior Court dismissed the Post’s claim concerning the Mayor’s e-mail messages, but other claims remain contested.

The mediation session has been reset for November 29, 2022, and dispositive motions are due on October 6, 2022.

- b. Terris, Pravlik & Millian, LLP (“TPM”) lawsuit re: preliminary budget requests (21- CV-0543).

As I have reported, TPM sued the District under D.C. FOIA, alleging that the District failed to produce and post online various budget-related documents related to the Office of the State Superintendent of Education and District of Columbia Public Schools.

The D.C. Court of Appeals heard oral argument on September 28, 2022.

OOG staff will continue to monitor court activity.

2. Legislation

- a. Post–Public Health Emergency Protections Extension Emergency/ Temporary Amendment Acts of 2022

On September 20, 2022, the Council of the District of Columbia (“Council”) enacted legislation, one section of which addressed the impending expiration of certain pandemic amendments to the OMA. If approved into law, this legislation will continue the ability of District public bodies to (1) forgo public posting of a *physical* notice of meetings; and (2) to provide that a meeting shall be deemed open to the public if the public body allows the public to view or hear the meeting while the meeting is taking place or, if doing so is not technologically feasible, as soon thereafter as reasonably practicable.

The emergency version passed by voice vote (Bill 24-0975), and the companion temporary measure (Bill 24-0976) passed on its first reading by unanimous roll call. Both bills are in the Dropbox.

b. Board of Ethics and Government Accountability Delinquent Debt Recovery Amendment Act of 2022

On October 4, 2022, the Council also passed on final reading, Bill 24-0706, which Director Cooks and I have reported on, concerning referral of delinquent debts to the Central Collection Unit and depositing them into the Ethics and Open Government Funds. (For your convenience, the current version of the bill is attachment H to the committee report, which is in the Dropbox.)

D. Administrative Matters

1. OOG Attorney Advisor Vacancy

OOG will be listing its Attorney Advisor position this month. We look to have the position filled by the end of the calendar year.

2. OOG Attorney Promotions

OOG Attorney Nicholas Weil has accepted the opportunity to serve as OOG's Trial Attorney and OOG Attorney Sheree DeBerry will occupy the newly formed Attorney-Advisor position that covers training coordination, education, FOIA, and records management. Congratulations to both Attorneys.

This concludes the Office of Open Government's October 6, 2022, report.

V. Report by the Director of Government Ethics

Good afternoon, Chairperson Hutcheson and Members of the Board. I am Ashley Cooks, the Director of Government Ethics. I am pleased to present this report on the activities of the Office of Government Ethics (OGE).

A. Update on Status of OGE Operations

The information reported today regarding OGE's cases will not reflect any status changes that may occur as a result of actions taken by the Board during today's meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	43
Open - Negotiations	1
Open - Show Cause Hearing	0
Grand Total	44

OPEN "UNDOCKETED MATTERS"	
Grand Total	1

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	28
Stayed - Pending DC Superior Court Case	4
Stayed - OAG False Claims Act Case	6
Stayed - OIG Investigation	5
Stayed - US District Court Case	1
Grand Total	44

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	30
Open	17
Grand Total	47

	Current	Last month	August
Investigations Currently	44	48	49
Investigations Stayed	16	16	16

The number of open preliminary and formal investigations includes 4 new matters. The investigative team resolved 8 investigations since the Board last met. The Quarterly Complaint Report for the fourth quarter of Fiscal Year 2022 will be formulated over the next month and will be posted by the next Board meeting.

B. Trainings/Outreach

1. Professional Development Trainings Attended by staff

The District started the transition to a more dynamic, fluid and integrated financial system over three years ago. The new system, District Integrated Financial System (DIFS), has three components: Enterprise Resource Planning, Enterprise Performance Management, and Reporting. Due to this change, the Office of Chief Finance Office released mandatory trainings for employees who will use the new system. BEGA uses the new system for its purchase card, budget, and travel expenses needs. As BEGA’s Agency Program Coordinator, Auditor Amanueil Tujuba completed all the six DIFS trainings: Introduction to DIFS, Introduction to DIFS Enterprise Performance Management Planning, Introduction to Reporting, Chart of Accounts Microlearning, PCard Reconciliation, and Travel Approval and Reimbursement. Administrative Officer Tyrell Dow, Director Allen, IT Specialist Kevon Bridges, Chief of Staff Christina Mitchell, and myself completed those same trainings. BEGA employees who will travel to attend trainings and conferences will complete the Travel Approval and Reimbursement training.

Administrative Officer Tyrell Dow completed ADA Coordinator Annual Training Titles I and II, Mastering the Art of Technical Writing, and Business Grammar & Proofreading.

Investigators and attorneys participated in two trainings offered by the National Institute for Trial Advocacy (NITA). The trainings were NITA's Investigative Questioning Techniques Training (a 2-day in person course) and Deposition Skills Training (a 3-day virtual course). Both trainings were intense, and instruction was entirely interactive learning. I also attended the Deposition Skills Training

Attorney Advisor Maurice Echols completed the following courses in addition to the NITA Investigative Questioning Techniques course: National White Collar Crime Center (NW3C) Cognitive Interview Training and Deposition Training offered by the National Academy of CLE.

Senior Attorney Advisor Lynn Tran completed the Practicing Law Institute's Corporate Political Activities 2022: Complying with Campaign Finance, Lobbying, and Ethics Laws training.

General Counsel Rashee Raj took a 24-hour course Dare to Lead Training based on the book by Brené Brown. The small group worked on the skills, practices, and tools that underpin the four skill sets of courage: Rumbling with Vulnerability, Living into Our Values, Braving Trust, and Learning to Rise. The purpose of the course is to reimagine leaders as those who take responsibility for finding the potential in people and processes and have the courage to develop that potential. Being a Daring Leader in practice means being vigilant about creating and fostering a culture in which people feel safe, seen, heard, and respected.

2. Conducted by staff

Since the September Board meeting, OGE conducted 6 trainings: the September Monthly Ethics Training, two ethics trainings for the DC One Fund rollout, the September Brown Bag session, DC Lobbying and How to File training, and the October Monthly Hatch Act Training.

Last week, Attorney Advisor Millicent Jones led our Monthly Ethics Counselor Brown Bag session which examined the intersection of the DC One Fund and ethics. Twenty-eight Ethics Counselors attended. Our next Brown Bag session will take place on Monday, October 31, and will focus on ethics "Scary Stories" – true tales of the issues that make Ethics Counselors' blood run cold.

During September, 27 employees completed online ethics training via PeopleSoft. In April 2022, OGE went live with the Learning Management System (LMS). The system enhances the training outreach of OGE and equips employees with the tools and information necessary to be ethical. Since going live, 267 employees have completed 661 learning modules; up 5% from previous reporting.

3. Outreach

OGE and OOG continue to meet with the Office of the Chief Technology Officer's website development staff to coordinate the BEGA website refresh. The website refresh will improve organization, searchability, and user friendliness, as well as

the overall appearance of the website. We are currently working on changing the website's design, so that information is readily available with minimal search efforts. We recently submitted an updated site map of the website and approved the mock-up of the website design.

4. Ethics Week 2022

Ethics Week is next week! This year's theme is "Ethics in Practice", and it will take place next week, October 11-14th as a virtual event. The event will feature courses presented by OGE and OOG staff, as well as guest presentations and panel discussions by leading ethics and compliance professionals. The course schedule and registration information can be found on the BEGA website. A copy of the final schedule was placed in the drop box for your review.

C. Advisory Opinions/Advice

1. Informal Advice

OGE's legal staff provided advice for approximately 37 ethics inquiries, which is 13 more than the 24 reported at the September meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

2. Formal Advice

OGE has completed a *sua sponte* Advisory Opinion entitled Guidance on the Local Hatch Act and Fundraising Activities. The opinion provides guidance on maintaining ethical standards while engaging in political activity and clarifies prohibited and permissible fundraising activities. It covers permissible fundraising activities, such as fundraising for one's own campaign, fundraising for a partisan, non-district regulated campaign, and the Designation Rule. It also includes fundraising prohibitions for social media and offers four illustrative examples. Pursuant to D.C. Official Code § 1-1162.19(2), the opinion was sent to the D.C. Registrar for a 30-day notice of publication. A copy of the opinion was placed in the drop box for your review.

D. Legislation Updates

1. B24-0706 Board of Ethics and Government Accountability Delinquent Debt Recovery Amendment Act of 2022

This bill will allow BEGA to discretionarily transfer delinquent debts associated with settlements and judgements for ethics and Open Meeting Act violations to the District's Central Collection Unit for collection, and for the funds collected on BEGA's behalf to be deposited into the Ethics Fund or OMA Fund instead of the General Fund. The additional funding will allow BEGA to supplement its operations budget. On Tuesday, October 4th, the bill was passed by the Council. As next steps, the bill will be presented to the Mayor for approval and then

Congress. I would like to thank Council member Nadeau for introducing the legislation and advocating for its passage. I also thank the BEGA staff members who assisted in drafting the legislation and provided research for its justification. A copy of the committee report was placed in the drop box for your review.

E. OGE Administrative Matters

1. OGE Staffing

I am pleased to announce that Ms. Christina Mitchell, our new Chief of Staff, started on September 12th. Christina joined the District Government in 2004 and joined the BEGA team with extensive experience with the OCFO and the Executive Office of the Mayor, where she was the Chief of Staff for the Office of Disability Rights. Christina's role within DC has been a cross-cutting one with a city-wide profile including Age Friendly DC, Emergency Mass Care Planning and implementing the City-wide Effective Communication Program, to include sign language and video remote interpretation. Christina is a Certified Public Manager, and native Washingtonian, with 2 kids.

Our Attorney Advisor vacancy announcement closed last Monday, and we will begin reviewing resumes soon. The Program Support Assistant vacancy was posted to careers.dc.gov on last Friday and closes on October 14 but may be extended if necessary. As an approved fiscal year 2023 budget enhancement request, OGE received funding to hire a Supervisory Investigator. That position will be posted in the next few months.

2. Budget

On October 1st fiscal year 2023 began. On September 29th, the Office of Budget and Performance Management held its Fiscal Year 2024 Budget Formulation Kick-off Meeting. BEGA's Chief of Staff and Administrative Officer attended the meeting. BEGA will submit its fiscal year 2024 budget enhancement requests by the November 4th deadline.

We received notice from the Department of General Services that our office relocation is underway. Again, that space is located at 1050 15th Street N.W. The next step is to schedule a kick-off construction meeting with the project team. Additionally, OGE and OOG worked with the Office of Chief Financial Officer to close-out funding for the remainder of fiscal year 2022, as well as preparing for expenditures in the fiscal year 2023.

F. Financial Disclosure Statement (FDS)

Enforcement activities continue for the 2022 Filing Season with OGE providing a list of late and "Not Filed" filers to the Office of Pay and Retirement Services for wage garnishment. The calendar year 2021 Financial Disclosure fine wage garnishment include 164 non and late Public filers, 112 non and late Confidential filers, and fine waivers denied by Board.

Auditor Tujuba completed the calendar year 2021 Public and Confidential Financial Disclosure Statement Completeness and Accuracy Audit and the findings were discussed with the FDS team.

Abstract Evolutions, the IT vendor that has made several upgrades the FDS e-filing system, provided a beta-test version of the latest upgrade to the Financial Disclosure E-File system. This recent upgrade consists of enhancing log-in privileges for Council members and adding certification language that is consistent with the member's bi-annual filing requirements. Last week, OGE conducted testing and provided feedback to Abstract Evolutions identifying a few reporting issues. Abstract Evolutions responded with a proposed fix on September 30.

G. Lobbying Registration and Reporting (LRR)

The third Quarter Activity Reports for 2022 are due on Monday, October 17, 2022. On September 30, the LRR team sent a reminder notice to 450 lobbyists. The notice advised the recipients of the upcoming due date for Activity Reports. The LRR team sent an invitation to 450 lobbyists and admin personnel for the Lobbyist Training - Introduction to DC Lobbying and How to File. The training took place on October 5th and was conducted by Attorney Advisor Echols and Program Specialist Kosick.

Thank you. This concludes the Office of Government Ethics' October 6, 2022 report.

Board Member Sobin asked Director Cooks whether the Hatch Act fundraising opinion was an update of a prior opinion issued by OGE. Director Cooks noted that although OGE had previously issued guidance on the Local Hatch Action, this opinion directly addressed fundraising under the Local Hatch Act.

The Board also welcomed BEGA's new Chief of Staff, Christina Mitchell. Chairperson Hutcheson noted that Board Member Smith joined the meeting during the presentation by Director Cooks.

VI. Public Comment – if received

No comments were received.

VII. Executive Session (nonpublic)

The Board voted unanimously to enter into Executive Session to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14), 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 resumed the public meeting at 1:12 pm. The board approved a negotiated disposition in **22-0013-P In re K Dobson**.

IX. Adjournment

The Board will meet next on November 3, 2022 at 12:00 p.m.

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