

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

Monthly Meeting of the Board

May 2, 2013, 1:30 p.m.
Room 1114 South
One Judiciary Square

AGENDA

- I. Call to Order
- II. Ascertainment of Quorum
- III. Adoption of the Agenda
- IV. Formal Adoption of the Minutes of the April 4th monthly meeting.
- V. Report by the Director of Open Government
- 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. Staffing and Job Announcements
 - d. Update on Financial Disclosure Statement Filings
 - e. Trainings (conducted by staff & attended by staff)
 - f. Budget Oversight Hearing – April 22, 2013, and updates
 - g. Release of Best Practices Report on April 17, 2013
 - h. UD-028-13 – Request from complainant to reconsider investigating complaint

- i. Proposed Memorandum of Understanding (“MOU”) with the D.C. Police Union
 - j. Non-Confidential Investigations and Public Dispositions – Vincent Orange Formal Investigation – Update.
 - k. Advisory Opinion - - discussion of the Board’s previous decision to issue an Advisory Opinion after considering the Memorandum submitted by the Office of the Attorney General
- VII. Executive Session (non-public) to Discuss Ongoing, Confidential Preliminary Investigations pursuant to D.C. Official Code § 2-575(b)(14) and Personnel matters pursuant to D.C. Official Code § 2-575(b)(10).
- VIII. Resumption of Public Meeting
 - a. Discussion of any remaining public items
- IX. Adjournment

MEETING MINUTES

District of Columbia

Board of Ethics and Government Accountability

Monthly Meeting of the Board

May 2, 2013, at 1:30 pm

Conference Room 1114 South

One Judiciary Square

I. Call to Order

The Monthly Meeting of the Board was called to order at 1:38 pm by Chairman Robert Spagnoletti in the Conference Room 1114 South at One Judiciary Square, 441 4th Street NW, Washington, DC 20001.

II. Ascertainment of Quorum

All Board Members were present, constituting a quorum.

III. Adoption of the Agenda

The Agenda was adopted unanimously.

IV. Formal Adoption of the Minutes of the April 4th monthly meeting

The Minutes of April 4, 2013, were adopted unanimously after BEGA staff confirmed that revisions requested by Laura Roberts had been made and included in final copy.

The new Director of the Office of Open Government (OOG), Traci Hughes, discussed the importance of complying with D.C. Code § 2-578 'Record of Meetings' (i.e., copies of records shall be made available for public inspection no later than 3 business days after the meeting; copy of full record, including any recording or transcript shall be made available for public inspection no later than 7 business days after meeting). Director Hughes also proposed making audio recordings available to the public on the website or embedding an audio file and link with the minutes posted on the BEGA Web site. She will reach out to OCTO to determine the best means of getting this accomplished. Director Sobin added

that audio recordings are currently available for the public to review at the Office if requested.

V. Report by the Director of Open Government

Director Hughes reported that she is glad to be part of the BEGA. She spoke about testifying before Councilmember Kenyan McDuffie at the Common Council Budget Oversight Hearing on April 22, 2013. During the Hearing, Ms. Hughes requested two FTEs, a staff attorney, as well as an IT specialist who will assist with the development and maintenance of the FOIA database system.

VI. Report by the Director of Government Ethics

a. Update on Status of Office of Government Ethics (OGE) Operations – Recap

Director Sobin stated that Traci Hughes, Director of Open Government, is a great addition to the Office and he is happy to have her work with the BEGA.

Status of cases since last Board Meeting is as follows:

- Investigations Pending – 10
- Investigations Closed – 5
- Advisory Opinions New – 1
- Advisory Opinions Issued – 3
- Many informal, verbal advice requests received

Additionally, the Director discussed the redesigning of the BEGA website to include information concerning the OOG. Traci Hughes added that her Office has opened a Twitter account, the handle is @DCOPENGOV. She will Tweet about the public portion of the Board meeting.

Investigators are reviewing Lobbyist Registration Forms and Lobbyist Activity Reports to determine whether any lobbyist failed to file. They are also preparing an audit plan for substantive reviews of lobbyist filings.

b. Publication and Reporting Obligations

The Office is in compliance with its publication requirements on both the BEGA website, as well as publication in the D.C. Register. Responses to advisory opinions are being prepared within 30 days of issuance, and in most cases, redactions are posted within a week following the initial response. The

Office also is current on its Quarterly Report for January 1 thru March 31, 2013. The last quarterly report was posted on April 2, 2013.

c. Staffing and Job Announcements

Director Sobin reported that the Senior Attorney-Advisor position will be filled as soon as possible. He noted that the responsible party will assist the Board with preparing issuances in which the OGE cannot be involved, as well as drafting advisory opinions.

d. Update on Financial Disclosure Statement Filings

The Director advised that the FDS e-Filing System is up and running and letters were mailed to ANC Commissioners and other required filers (statements due May 15th). He reported that Ms. Riley has become the new FDS expert and she did a good job with the FAQs. Chairman Spagnoletti reported that he encountered a glitch in the system (limited the amount of text in the box and if you type more text than allowed, the text continued into the next field) while filing his Statement. General Counsel, Stacie Pittell also commented about a problem while filing. Both Darrin Sobin and Samantha Riley advised that OCTO is aware of problems with the system and they have been in constant contact with IT to remedy the situation. Ms. Riley said that while she was not aware of the type of issue experienced by Chairman Spagnoletti, she would follow up with OCTO.

e. Trainings (conducted by staff & attended by staff)

The Director informed attendees that the BEGA training program is in place, and training materials, such as PowerPoint slides are made available via email. Also, Director Sobin agreed to post training material on the website.

BEGA staff conducted and/or attended the following training sessions:

- Ethics Training on April 10, 2013 (Department of Small and Local Business Development);
- Ethics Training on April 17 and 18, 2013 (District of Columbia Regulatory Affairs); and
- FDS - ANC Commissioners' Training on April 22 and 25, 2013
- Investigators attended Interviewing Training on April 22 and 23, 2013

f. Budget Oversight Hearing – April 22, 2013, and updates

Director Sobin reported that during his testimony at the April 22nd Oversight Hearing, he requested two FTEs for fiscal year 2014 -- a staff assistant to help with FDS and lobbyist filings, and an attorney to assist with the increasing case load. Furthermore, Director Sobin added that filings previously were handled by three full-time employees at the Office of Campaign Finance, and while Samantha Riley and Eric Younger have done a good job thus far, an additional employee is needed to accomplish these tasks.

g. Release of Best Practices Report on April 17, 2013

The Director reported that the Best Practices Report was published on April 17, 2013, and posted on the BEGA website. Board Member Lathen asked that the Office provide recommendations for next steps. Director Sobin agreed to create a strategic plan for the next Board Meeting.

h. UD-028-13 – Request from complainant to reconsider investigating complaint

This Office received a sworn Complaint requesting a formal investigation. However, it was reclassified as an undocketed matter because the issues raised were not within the jurisdiction of the Ethics Board.¹ Complainant was advised accordingly, but requested reconsideration without providing any additional information or basis for reconsideration.

The Board voted to deny the Motion for Reconsideration without prejudice.

i. Proposed Memorandum of Understanding (“MOU”) with the D.C. Police Union.

Kristopher Baumann, Chairman of the Fraternal Order of Police for the Metropolitan Police Department Labor Committee, has requested that BEGA enter into an MOU detailing the rights of Union members who are involved in a BEGA investigation. Board Member Lathen asked the Office for further details on the MOU request. Chairman Spagnoletti questioned whether

¹ The discussion of this matter occurred during a Closed Board Meeting on April 11, 2013, not during the Open Board Meeting on April 4, 2013.

BEGA had the authority to enter into an MOU with any entity. All Board Members agreed that they needed more information to fully consider the request and they directed the Office to prepare an analysis of the MOU request and the factors surrounding the request.

- j. Non-Confidential Investigations and Public Dispositions – Vincent Orange Formal Investigation – Update.

Director Sobin read into the record a summary of the Vincent Orange Public Admonition (see attached).

Chairman Spagnoletti urged Director Sobin to draft an Advisory Opinion concerning constituent services that would lay out bright lines and define what constitutes appropriate delivery of constituent services. The Advisory Opinion will illustrate the difference between providing zealous constituent services and using undue influence. Director Sobin stated that the Office would draft the Opinion.

The Board discussed the posting of Negotiated Dispositions to the BEGA website and decided that posting would be dictated by the nature of the Disposition (Public, on website, vs. Non-Public, not on website.) The Board directed the two Directors to create a proposed plan for the publication of disciplinary matters. The Chairman commended the Office for the way they handled the issue, adding that the Agreement between both parties was impressive.

The Board unanimously adopted the Agreement noting that a separate opinion is needed.

GC Pittell presented a Negotiated Disposition (unsigned by the Respondent) to the Board for preliminary approval. The Negotiated Disposition was for a case that involved the misuse of a Disability Parking Placard. Unlike the previous Negotiated Disposition for the misuse of a Disability Parking Placard, which included a \$500 fine, this Negotiated Disposition included a \$750 fine due to aggravating circumstances (the Respondent continued to misuse the Disability Parking Placard after being alerted of the misuse by the Office of the Inspector General and the Respondent attempted to disguise the misuse by switching the Disability Parking Placard to another vehicle). Board Member Lathen questioned whether the amount of the fine would be a deterrent for future offenders (i.e., is the fine less than what respondent would pay in a month of parking tickets?). The Office informed the Board that the Respondent had been disciplined by his/her agency, which included a 30-day

suspension without pay. The Board also discussed whether publicizing the Respondent's identity on the BEGA website should be another form of disciplinary action, as well as a method to deter others from engaging in unethical behavior. Director Hughes cautioned the Board that whatever they decide in this particular case, they have to be sure it is done across the board.

The Board decided that the subject needed more discussion. The Office presented the Negotiated Disposition to the Board prior to being signed by the Respondent because of the time lag between Board Meetings. The Board preliminarily approved the Negotiated Disposition. If the Respondent signs it, it can be sent to Chairman Spagnoletti for signature.

- k. Advisory Opinion - - discussion of the Board's previous decision to issue an Advisory Opinion after considering the Memorandum submitted by the Office of the Attorney General. Discussion of the matter began with Chairman Spagnoletti recapping the history of the Advisory Opinion, which was discussed at the open April 4, 2011 meeting and at the closed board meeting on April 11, 2013. The Board recognizes that eventually corrective legislation will be needed to address the issue. Board Member Lathen would like more time to review the latest Opinion drafted by the Office. Chairman Spagnoletti wants to stand down on the Board issuing another Advisory Opinion. Board Member Lathen agrees and suggested drafting a Memorandum to the Office of the Attorney General that would detail the Board's understanding and interpretation of the law. Chairman Spagnoletti agrees because the Memorandum will speak to who interprets the law with respect to the District Code of Conduct. Board Member Lathen and Chairman Spagnoletti have spoken to the Attorney General but Board Member Richards has not.

After discussions, the Board agreed that further dialogue is needed before making a final decision about whether to issue an advisory opinion or memorandum. They agreed in tandem to complete the advisory opinion first, so as to set the legal arguments/analysis. However, if they decide that they want a memorandum instead of an advisory opinion, the staff will draft a memorandum at that point.

Chairman Spagnoletti announced the end of the Public Meeting and invited the public to speak.

Michael Lee introduced himself as a 56 year-old veteran and native Washingtonian and spoke about being drug-free for 22 years. He advised that he served in the US military and spoke about being very dissatisfied the amount of injustice, corruption and wrongdoing in the government. He stated that he testified before the Adrian Fenty Administration six times. He complained that veterans and residents do not receive the help they need. Board Member Roberts informed Mr. Lee that the BEGA deals with ethics issues. Mr. Lee did not report an ethics violation.

The Board Members unanimously closed the Public Session at 3:27 p.m.

VII. Executive Session (non-public) to Discuss Ongoing, Confidential Preliminary Investigations pursuant to D.C. Official Code § 2-575(b)(14); Personnel matters pursuant to D.C. Official Code § 2-575(b)(10), and to deliberate upon a decision in an adjudication action or proceeding pursuant to D.C. Official Code § 2-575(b)(13).

VIII. Resumption of Public Meeting

1. Discussion of any remaining public items.

IX. Adjournment

Chairman Spagnoletti announced that the Executive Session was over and adjourned at 5:31 p.m.

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



Office of Government Ethics

IN RE: VINCENT ORANGE,

Respondent

CASE No.: AI-016-13

SUMMARY

The Office of Government Ethics entered into a Negotiated Disposition Agreement with Councilmember Vincent Orange as a full settlement of this Office's investigation into Councilmember Orange's conduct on December 21, 2012, in connection with a Department of Health inspection at a private business. Councilmember Orange has acknowledged that his conduct in appearing at a business undergoing a Department of Health inspection, asking questions, urging that the business be allowed to remain open while curing the violations, and repeatedly asking to speak to a superior when he was told the business would have to close, had the effect of influencing the Department of Health representatives to leave the site without issuing the closure notice. Councilmember Orange further acknowledges that his conduct in influencing the Department of Health personnel to leave the site of the business without issuing the notice of closure allowed the business to continue to operate for several more hours.

Accordingly, Councilmember Orange acknowledges that his conduct was in violation of the District Code of Conduct, specifically, the Council Code of Conduct, Section VI(c)(1) (Prestige of Office), which states, "[a]n employee may not knowingly use the prestige of office or public position for that employee's private gain or that of another." Councilmember Orange acknowledges that because of this violation of the District Code of Conduct, he should be and is Admonished for his conduct. Moreover, Councilmember Orange agreed to attend

ethics training provided by the Office of Government Ethics within six months. The negotiated disposition also includes a provision that in six months Councilmember Orange can request to have this Negotiated Disposition Agreement expunged if all terms of this agreement have been satisfied.

I recommend that the Ethics Board approve this Negotiated Disposition Agreement because it is a fair and appropriate resolution to this investigation. I had the occasion to meet personally with Councilmember Orange during this investigation, both to interview him regarding his conduct on December 21, 2012, and to negotiate this Agreement. During my contact with Councilmember Orange, I found him to be both contrite and remorseful regarding the impact his conduct had on the Department of Health representatives who were on-site attempting to do their jobs. Councilmember Orange explained to me that his intention was to provide good constituent services, rather than to gain any personal benefit for himself. Specifically, he wanted to prevent employees of the business from being out of work over the Christmas holiday. He acknowledges, however, that there is a line between good constituent services and improper interference with government services and that the line was crossed in this instance. In addition, I note that Councilmember Orange stated his views on the importance of good ethics and integrity in government and, in that vein, accepted responsibility for his conduct. I view these as mitigating factors, which I have taken into account in recommending this Negotiated Disposition to you.

I want to emphasize that the resolution of this matter by sanction does not mean that Councilmembers cannot engage in active, and perhaps even zealous constituent services. That is part of their job – to make sure that Government is operating at peak efficiency and that residents in need of government services are receiving those services. But interference with the duties of government employees is not allowed.

The Ethics training we will provide to Councilmember Orange, which will be open to all Councilmembers, will give special emphasis to the parameters of appropriate constituent services. I may also issue an advisory opinion on the subject to provide additional guidance.

For all of these reasons, I believe that this Negotiated Disposition is an appropriate resolution to this investigation and urge adoption by the Board.