

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



November 9, 2017

The Honorable Eugene Adams
Chief Judge
Office of Administrative Hearings
One Judiciary Square
441 4th Street, NW, Suite 450N
Washington, DC 20001

Dear Judge Adams:

I am in receipt of your November 7, 2017, letter addressed to the members of the Board of Ethics and Government Accountability (BEGA). Although I was not specifically addressed on the letter, other than as a carbon copy recipient, I am compelled to reply to the many allegations made regarding the scope of the authority of the Office of Open Government (OOG), and whether the OOG conducted itself illegally¹ in issuing an opinion concerning the compliance of the Commission on the Selection and Tenure of Administrative Law Judges (COST) with the requirements of the Open Meetings Act (OMA).

Regrettably, the Chief Administrative Law Judge (Chief ALJ) has lodged a host of allegations, innuendo and personal attacks in an effort to convince BEGA to intervene and prohibit the OOG from publicly releasing its findings as outlined in #OOG-0003_7.03.17 OMA Complaint_AO. The OOG must ensure that the allegations are addressed and are not used to deflect or muddy the findings that the COST failed on numerous occasions to abide by the requirements of the OMA, and that COST terms are being served outside the statutory timeframes, potentially impacting quorum. Therefore, the OOG addresses below the issues raised by the Chief ALJ in the order in which they were memorialized in his letter to BEGA.

The Authority of BEGA in Relation to the OOG

The enforcement authority of the OOG resides in § 503(a)(2) of the District of Columbia Administrative Procedures Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-593(a)(2)). (2017), and 3 DCMR § 10400 *et seq.* (2017). These provisions grant the OOG the authority to investigate OMA complaints, and to issue opinions on implementation of the OMA and the Freedom of Information Act. (D.C. Official Code § 2-593(a)(2) and (c)). The director of the OOG retains this authority solely, and it is one that is not delegated to BEGA nor the director of the Office of Government Ethics. Therefore, the request of BEGA to intervene and prohibit the public issuance of #OOG-0003_7.03.17 OMA Complaint_AO is misplaced as BEGA does not have the authority to do so. To be clear, the decision to embargo public release of the opinion was made for the benefit of briefing the Chief ALJ and his counsel

¹ 11.7.17 Letter to BEGA members from Chief Judge Adams: “As a result of that complaint, the OOG undertook a surprisingly exhaustive review of COST practices that dated back more than three years and then opined on a number of issues well beyond the scope of a permissible complaint – in a manner that calls the OOG’s fairness and impartiality into question and the leaves the OAH to conclude...that the OOG Director’s motives are impure and arguably illegal.”

on the opinion,² and to notify the chair of the COST, the Executive Office of the Mayor, and the Chairman of the Council.³

During our October 30, 2017, meeting in which I gathered with you and OAH general counsel to brief OAH on the findings in the opinion, you requested an additional thirty days to gather the missing information regarding the term appointments of COST members Josey-Herring and Williams. You stated that you had a “relationship” with both and would try to gather the documentation. Once again, this professional courtesy was extended in light of the impact of the opinion. This was a courtesy breaking with protocol, but necessary, I thought to avoid blindsiding all impacted parties (i.e., the COST, the Council, and the Executive Office of the Mayor). Typically, the OOG, in exercising its authority, issues opinions without the option of preview.⁴

Conciliation and Handling of the Complaints Giving Rise to the OOG’s Opinion

The Chief ALJ states that in the “course of its inquiry and the preparation of an Advisory Opinion..., the OOG violated its own regulations, policies and practices, made material misrepresentations about its reason for undertaking the inquiry and then withheld important information about those motivations. The consequence of these actions is a draft Advisory Opinion prepared by the OOG that is inaccurate, misleading, biased and intended to disparage as to render it useless.”⁵

If more than what was admittedly a “cursory” review of OOG opinions was performed, or simply an inquiry made, the Chief ALJ would understand that, to date the OOG has not used conciliation provisions as a mechanism to resolve OMA complaints. This is due to concerns that requiring conciliation of OMA complaints may exceed the OOG’s grant of statutory authority under existing law. All complaints are therefore resolved with the issuance of opinions. Such opinions may be issued in connection with a complaint or may be issued *sua sponte* in accordance with the OOG’s statutory enforcement authority under the OMA.

Further, the contention that because the Chief ALJ was not made aware of the second complaint regarding the same June 29, 2017 meeting, the OOG failed to meet its regulations and operated outside the scope of its authority is incorrect. This argument is contrary to the regulation itself. Pursuant to 3 DCMR § 10405.2: “The Director may transmit a complaint to the public body complained of.” As stated on October 30, 2017, and again in your requested meeting with me on November 1, 2017,⁶ I exercised discretion to treat both the M. Borbely complaint and the anonymous complaint under one cover, as both complained of the same meeting of the COST that occurred on June 29, 2017.⁷ There was no attempt to

² On October 6, 2017, OOG Director Hughes met with Chief ALJ Adams and OAH General Counsel, Vanessa Natale, in the Chief ALJ’s office to inform the OAH that I was drafting the opinion, and that when it was completed, I would extend to the Chief ALJ, and his counsel, the courtesy to preview before issuing the opinion publically. I also informed the Chief ALJ and his counsel at that meeting that the OOG’s review of the term history of the COST revealed some gaps, and that to date, we found no evidence in the COST’s enabling statute allowing hold over. The Chief ALJ committed to seeking the records from the Mayor’s Office of Talent and Appointments, and to track down the records at OAH. This led to additional written requests from OOG to OAH seeking the term records. (Supra.)

³ OOG Director Hughes, verbally notified the Mayor’s General Counsel, Ms. Betsy Cavendish, immediately after an OMA training on October 28, 2017. Director Hughes hand delivered a copy of the final opinion to Ms. Cavendish, and Council Chair Phil Mendelson on November 3, 2017, and caused a copy to be hand delivered to the Superior Court for Judge Yvonne Williams the same day.

⁴ The 30-day period was modified by the Chief ALJ during the 11.2.17 meeting. (11.2.17 email between Director Hughes and Judge Adams. (Attachment #1)

⁵ 11.7.17 letter to BEGA members from Chief Judge Adams. (Pages 1-2).

⁶ OOG Director Hughes did not seek the meeting to “clarify some information she reported earlier.” Judge Adams asked for the meeting to “chat” more about the opinion. (See, October 31, 2017 email from Judge Adams to Director Hughes. (Attachment #2)

⁷ Given the well-publicized contentiousness of recent COST actions regarding the reappoint of Administrative Law Judges, it was only prudent that confidential nature of the second complainant be shielded.

misrepresent, fulfill “murkier motivations”, or to conceal the nature of the complaint. In fact, I was forthcoming concerning the reason I needed the requested records in a September 13, 2017 email submitted to OAH: “I am turning back to this, and would like to close the above-referenced matter out. Will you please provide copies of all notices, agendas and recording of both open and closed session meetings of the COST from January 1, 2014 – July 30, 2017. I am asking for this specific range of records because the OOG conducted a training of all COST members on the requirements of the OMA on November 21, 2013...I must review these records to ascertain the COST’s compliance with the {sic} OMA from the date of this initial training. This will inform the formal finding related to {sic} complaint.”⁸ 3 DCMR § 10405.7 states that the director of the OOG “may request further information from either the Public Body or the complainant...” Hence, the broader inquiry of the September 13, 2017 email. Therefore, despite the assertion, *with no factual basis to support it*, the OOG is not constrained to only the relief sought by the complainant, and may seek additional information if a review of the records suggests additional violations of the OMA. This was *precisely* the scenario under which the COST fell. The OOG investigation simply went where the record led.

The COST was treated in the same manner as all other public bodies the OOG reviews for compliance with the OMA. In fact, the OOG in issuing advisory opinions under the OMA, regularly includes in its analysis the legislative history of the public body at issue.⁹ This would include the public body’s composition, terms of members and its statutory functions. The OOG’s practice of providing the composition, membership, terms and statutory function of a public body was not employed by the OOG solely to address the COST complaint. *Any* statements to the contrary constitute misstatements of fact and defy logic, as it is the common pattern and practice of OOG to undertake such reviews. Acknowledgement of this practice should once and for all dispel allegations that the OOG has ulterior motives and has unfairly targeted the COST or the OAH, and thus allow focus to return to the COST’s non-compliance with the OMA.

⁸ Judge Adam’s claim that “[A]part from a few email exchanges between Ms. Hughes and Ms. Natale in late July about the audio recording for the June 29, 2017 COST meet, there were no substantive communications about any other aspect of this inquiry until early October,” is patently false. See, 9.13.17 email from Director Hughes to Ms. Natale and Mr. Neal. Subject line: COST Meeting Notices – RE: #OOG-0003_7.03.17 Notice of Complaint_COST. 10.4.17 and 10.5.17 emails between Director Hughes, Ms. Natale and Mr. Neal, Subject line: Missing Term Information; 10.11.2017 email from Director Hughes to Ms. Natale and Chief Judge Adams, Subject line: Missing COST Orders; 10.11.2017 email from Ms. Natale to Director Hughes, Chief Judge Adams and Louis Neal, Subject line: Historical Information re: the COST; 11.11.17 email from Mr. Neal to Director Hughes attaching the original appointment letter and reappointment letter for Judge Williams, Subject line: Williams Original Appt. Ltr. (Attachment # 3)

⁹ <https://www.open-dc.gov/documents/oog-0012617-advisory-opinion-regarding-whether-dbh-ombudsman-advisory-council-subject-open>, provides the enabling legislation and statutory background of the Department of Behavioral Health)
https://www.open-dc.gov/sites/default/files/COAA%20OOG-006_%2012.12.16_AO%20%28FINAL%29_0.pdf, cites the enabling legislation, composition and statutory purpose of the Commission of African Affairs
<https://www.open-dc.gov/documents/oog-0033216-seuab-advisory-opinion>, lists the membership and purpose of the Sustainable Energy Utility Advisory Board.
https://www.open-dc.gov/sites/default/files/FINAL%20DCPCSB_OMA%20OOG-0004_7.3.17%20%28Issued%208.9.17%29.pdf, cites the enabling legislation, composition and purpose of the District of Columbia Public Chart School Board.
https://www.open-dc.gov/sites/default/files/Makenta2_OMA%20OOG-0001_6%201%2017_AO%20corrected%20strikethroughs%20revised-final.pdf, provides the legislative history and composition of the Board of Zoning Adjustment and the statutory purpose of the Office of Zoning.
https://www.open-dc.gov/sites/default/files/7%2015%2016_OOG-0006_OSSE_OPINION%20DEMAND%20LETTER%20%28Executed%20Kang%29.pdf, provides an analysis of the statutory charge of the Uniform Per Pupil Funding Working group.
<https://www.open-dc.gov/documents/3816-dc-housing-authority-board-commissions-opinion-and-demand>, provides the composition and membership of the D.C. Housing Authority Board of Commissioners.
https://www.open-dc.gov/sites/default/files/OOG%20005_1%2007%2015%20AO-OMA%20signed%20pdf%20%28BD%20of%20Medicine%29_Redacted.pdf, cites the enabling legislation, number of members and statutory functions of the Board of Medicine.

Further, the assertion that the COST is somehow being unjustly singled out flies in the face of the law. “So in a situation such as the instant one, a failure to properly notice a particular meeting due to a technical error cannot – fairly or accurately – be blamed on the COST unless there is an ulterior motive...But instead of taking OAH staff to task for the original lapse complained of, the OOG focused on the COST for an alleged offense that was not even theirs and then ‘bootstrapped’ its broader inquiry from that situation, wander further into areas that are not only unnecessary, but also inappropriate given how this matter has been handled.”¹²

Here again, it is important to emphasize these errors are more than just “procedural hiccups.” There is an ongoing pattern of non-compliance spanning a three-year period. The COST committed more than just a mere technical error of notice for the June 29, 2017 meeting. As the opinion notes in great detail, the COST not only failed to provide notice to the public, but it failed to take a roll call vote to enter into closed session; it failed to properly notice the agenda as the agenda was changed without a roll call vote; and it failed to read into the record the citation to the OMA for entering into closed/executive session. These are all violations clearly articulated and prohibited under the OMA.

Second, only public bodies are required to comply with the OMA. (D.C. Official Code § 2-574(3)). Agencies are specifically omitted from the requirement of the OMA (D.C. Official Code § 2-574(3)(A)). Therefore, the members of the COST are liable for compliance, not the OAH. Failure to properly provide notice and comply with all aspects of the OMA is the full responsibility of the COST, and is fairly and accurately placed at the feet of all of the members of the COST, including ex officio members.

While the OOG recognizes that the findings of the opinion may cast a shadow over the COST, the review by the OOG was fair, ethical and in clearly within the boundaries of the scope of the director’s authority. If there was a lapse, it was in affording the OAH a preview of the opinion.

The Confidential Treatment of the Second Request

As explained to the Chief ALJ in the November 1, 2017 one-on-one meeting at the OOG’s office, the second complaint relative to the June 29, 2017 meeting was an in-person complaint, submitted anonymously. As a result, the Chief ALJ requested that I re-send by email the July 5, 2017 notice of complaint, and asked if I was willing to submit my redacted notes taken in connection with the second anonymous complaint. I granted the first request, and denied the second as the notes are investigatory in nature and are deliberative in scope. These are sound basis for withholding records from release regardless of the title held, and the qualifications for the OOG Director position. The request for notes, in-and-of-itself, was highly inappropriate. The Chief ALJ’s request in that same meeting asking that “once I’ve had the opportunity to review the opinion in detail, and if I have recommendations for changing the language, would you consider changing the wording?” was beyond the pale, and a clear attempt to influence and interfere with the findings of the OOG.

As indicated in writing on November 2, 2017 all issues raised in the opinion, are the only issues the OOG intends to address. The COST may certainly respond in kind to the findings of fact and the issues raised in the opinion. The OOG will continue to protect the anonymity of the second complainant as the person clearly has cover under the District’s Whistleblower law (D.C. Official Code § 1-615 *et seq.*)

The November 1, 2017 Meeting Requested by Judge Adams

The Chief ALJ asked during the November 1st meeting if I was aware of a news article being written about the COST’s actions concerning Judge Goode. I acknowledged the anonymous complainant informed me of a reporter following the story, but I made it clear to the complainant that I had no

¹² 11.7.17 letter to BEGA Members from Chief Judge Adams (at page 6).

intention to comment on the findings of the OOG opinion, and that if I was asked questions in connection with the opinion, I would let the opinion speak for itself.

The Chief ALJ then inquired if I had communicated with Judge Goode. I stated that I had not. It was then that the Chief ALJ warned me that the modus operandi of Judge Goode and his attorneys was to depose anyone they believed was in opposition to their position. The Chief ALJ then repeated the same warning as he was leaving the OOG suite. The first time it was taken as general information. Restating it a second time appeared to me to be an attempt to dissuade the OOG from publicly issuing the opinion.

The September 29, 2017 COST Meeting

It is accurate that I attended the meeting. However, I was only present for the first public portion of the meeting. It is also true that when Mr. Neal and Ms. Natale pulled me aside to ask “how did they do going into closed session?” I answered “horribly.” This is because just days earlier, the OOG advised Mr. Neal on the procedural protocol the members of the COST must follow to go into closed session. “After taking a roll call vote in the public session at which the majority of the members present vote in favor for closure, the following must occur: (1) pursuant to DC Official Code Sec. 2-575(c)(2) the presiding officer shall make a statement providing the reason for closure, the subject matter to be discussed during the closure, in this case personnel matters, and reference the citation for closure to D.C. Official Code Sec. 2-575(b)(10). Be mindful that no matters may be discussed in closure other than the personnel matters in this instance. After completing the business in closure, return to the open session and report any official action taken during the closure that is appropriate.” (9.22.17 email from Johnnie Barton, OOG Attorney Advisor to Louis Neal - Attachment #4).

The Chief ALJ should be aware that my presence at the September 29, 2017 COST meeting was to ensure compliance with the OMA’s protocol to enter a closed/executive session. The attached electronic communication exchanges on Friday September 22, 2017,¹³ between the OOG, Mr. Neal and Ms. Natale illustrate their concern that the COST would not comply with the OMA to properly enter closure during the September 29, 2017, public meeting. The recording of the public portion of this meeting shows this concern came to fruition with the failure of COST to follow the script for entering closed/executive session which the OOG had provided to Mr. Neal.

As for the alleged conspiratorial connection to an impending Washington Post article, you go to great pains to somehow couch my interaction with Post reporter Keith Alexander at the September 29th meeting of the COST as improper and imply a connection to Administrative Law Judge union representatives. “During the time the COST was in closed/executive session to consider the reappointments on the agenda, Ms. Hughes was seen in conversation with a Washington Post reporter and ALJ union representatives. While the ‘optics’ of these interactions could be harmless, our recent experiences with Ms. Hughes suggest otherwise, particularly because the union representatives later approached City Council staff to gather information on a planned story about the COST and the sensitive reappointment decision that was pending at the time, stating they were working with that very reporter.” This, sadly, is a grasp at straws. I stated clearly to Mr. Alexander, and the people he was speaking to, that I was sorry for interrupting, but I just wanted to give Mr. Alexander my updated contact information as we attended college together. Any contemporaneous discussions had with council staff have nothing to do with me, or the OOG opinion. Your implication otherwise is disparaging.

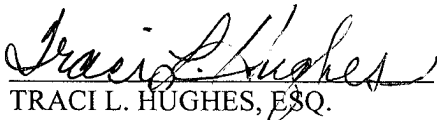
¹³ See 9.22.17 email from L. Neal to Director Hughes and Mr. Barton outlining the language to read onto the record in accordance with the advice provided by OOG. It is worth noting that I specifically interceded during the COST’s July 19, 2017 to warn that the members the COST failed to properly enter into closed session. As the meeting took place in the OOG suite, I immediately informed Ms. Natale, who in turn, immediately informed the COST. My advice was ignored yet again by the members of COST. This is evidenced by the recording of the meeting as referenced in #OOG-0003_7.03.17 OMA Complaint_COST_AO (at page 13).

The Terms of the COST Members

The Chief ALJ states that “It is not the OOG’s purview to opine on COST member appointments, the terms of those appointments or the validity of any COST decisions.” Again, this is a falsity, as the OMA clearly speaks to the appropriateness of a quorum for a public body to take official action. As stated in the opinion, the OOG review is not only proper, but *necessary* for a full review of COST compliance: “D.C. Official Code § 2-574 defines a “Meeting” as “[A]ny gathering of a quorum of the members of a public body...to consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending and voting...” Therefore, the OOG was compelled to undertake a review of which COST members were appointed to their terms by the Mayor, the Chief Judge of the D.C. Superior Court, and the Council to determine the validity of formal actions taken by the members of the public body.” To state that the OOG undertook this review “irresponsibly” is completely refuted by the thorough and detailed assessment of COST terms and potential impacts on official actions the COST has taken over the past several years.¹⁴ The 19-page opinion sets this out logically, fairly and responsibly.

This attempt to thwart transparency and compliance with the OMA by attacking, slurring and, arguably, threatening the author of an opinion which clearly and thoroughly documents a pattern of non-compliance is unfortunate. The pattern and facts speak for themselves regardless of who undertakes the task of documenting the violations. The OOG is confident that any public servant functioning in the role of director would reach the same result. If allowed to succeed, the Chief ALJ’s attempt to quash will only result in an extreme disservice to the citizens of the District of Columbia.

Sincerely,



TRACI L. HUGHES, ESQ.

Director, Office of Open Government

Board of Ethics and Government Accountability

cc: Members, Board of Ethics and Government Accountability
Vanessa Natale, OAH General Counsel

¹⁴ In response to the visible upset caused by the opinion during my briefing of the OAH on October 30, 2017, I assumed I could speak freely, once again relying upon our long professional association. In an attempt to offer a suggestion on how the OAH could react, I asked, “Wearing my PR hat for a moment, what would be the harm in just starting over and appointing all new members to the COST.” I did not, say “we should just get rid of the COST and start over (with new members).” The OOG does not have the authority to compel any public body member’s appointment or reappointment.

Attachment 1

Re: OOG-0003_7.03.17 Notice of Complaint_COST

Adams, Eugene (OAH)

Thu 11/2/2017 2:08 PM

To: Hughes, Traci (BEGA) <traci.hughes@dc.gov>;

I did say that—however, I may need more in light of what I now know. Is that going to be a problem?

Eugene A. Adams
Chief ALJ
Office of Administrative Hearings
202/442-5823

On Nov 2, 2017, at 1:17 PM, Hughes, Traci (BEGA) <traci.hughes@dc.gov> wrote:

You mentioned yesterday that you would not need the 30 days. 7-10 at most. Did I mishear you?

From: Adams, Eugene (OAH)
Sent: Thursday, November 2, 2017 12:50 PM
To: Hughes, Traci (BEGA)
Subject: Re: OOG-0003_7.03.17 Notice of Complaint_COST

So, the 30-day embargo we talked about is off the table? I told you yesterday that we probably wouldn't need 30 days to do what we wanted to do, but are you unilaterally withdrawing that offer?

Eugene A. Adams
Chief ALJ
Office of Administrative Hearings
202/442-5823

On Nov 2, 2017, at 11:12 AM, Hughes, Traci (BEGA) <traci.hughes@dc.gov> wrote:

Good morning, Gene:

I assure you that the complaints/issues raised are fully outlined in the opinion. There are no other matters the OOG intends to address. And, as I have confirmed, the OAH may submit its reply to the opinion if it so chooses. The reply will be posted along with the opinion.

When we met on Monday, you asked that I give you time to find out whether there is documentation clearing the gaps in the COST member terms. Have you found that information? That missing documentation is the only information that would change the analysis in the opinion.

Otherwise, there is no reason to further delay issuance. Please let me know.

Thanks,

Traci

From: Adams, Eugene (OAH)
Sent: Wednesday, November 1, 2017 5:43 PM
To: Hughes, Traci (BEGA)
Subject: Re: OOG-0003_7.03.17 Notice of Complaint_COST

So that leaves OAH in a situation where we can have no information about the second complaint that was the genesis of your broader inquiry? I understand why you might describe your notes as work product (although it's questionable whether that privilege even applies in your capacity as the Director, which is not an attorney position), but how are we then to know 1) whether the complainant even provided all the information required by your regulations when making a complaint or 2) what the specifics of the complaint were?

This seems inconsistent with the role and responsibilities of your agency as they apply to Open Government.

Eugene A. Adams
Chief ALJ
Office of Administrative Hearings

202/442-5823

On Nov 1, 2017, at 5:03 PM, Hughes, Traci (BEGA) <traci.hughes@dc.gov> wrote:

As much as I would like to help, the notes I took in relation to the second complaint are attorney work product. I cannot turn them over, even in redacted form.

From: Adams, Eugene (OAH)
Sent: Wednesday, November 1, 2017 4:14 PM
To: Hughes, Traci (BEGA)
Subject: Re: OOG-0003_7.03.17 Notice of Complaint_COST

Do you or any one else have written notes that would memorialize the allegations made? I'm assuming there is some written record of the allegations made by the anonymous complainant? If so, can we have a redacted version of those that we can treat as the second complaint?

Eugene A. Adams
Chief ALJ
Office of Administrative Hearings
202/442-5823

On Nov 1, 2017, at 3:48 PM, Hughes, Traci (BEGA) <traci.hughes@dc.gov> wrote:

It was in person. There was no complaint form filled out for the second complaint.

From: Adams, Eugene (OAH)
Sent: Wednesday, November 1, 2017 3:35 PM
To: Hughes, Traci (BEGA)
Subject: Re: OOG-0003_7.03.17 Notice of

Complaint_COST

T—

Since your inquiry was also triggered by the anonymous complainant that visited you, can you also please send me that individual's actual complaint (redacted, of course)? Thanks!

Eugene A. Adams
Chief ALJ
Office of Administrative Hearings
202/442-5823

On Nov 1, 2017, at 1:34 PM, Hughes, Traci (BEGA)
<traci.hughes@dc.gov> wrote:

Hi Gene.

As requested, attached is the notice of the complaint, and a copy of the complaint OOG received in writing.

Traci

From: Hughes, Traci (BEGA)
Sent: Wednesday, July 5, 2017 2:48 PM
To: Adams, Eugene (OAH); Natale, Vanessa (OAH)
Cc: Barton, Johnnie (BEGA)
Subject: OOG-0003_7.03.17 Notice of Complaint_COST

Dear Chief Judge Adams, and Ms. Natale --

Please see the attached Notice of Complaint. As always, I remain available to answer any questions you may have.

Kind Regards,

Traci

<OOG-0003_7.03.17 Notice of Complaint_COST.pdf>

<News Room oah.pdf>

<Borbely_Redacted.pdf>

Attachment 2

Barton, Johnnie (BEGA)

From: Hughes, Traci (BEGA)
Sent: Thursday, November 09, 2017 1:44 PM
To: Barton, Johnnie (BEGA)
Subject: Fw:

From: Adams, Eugene (OAH)
Sent: Wednesday, November 1, 2017 12:18 PM
To: Hughes, Traci (BEGA)
Subject: Re:

On my way.

Eugene A. Adams
Chief ALJ
Office of Administrative Hearings
202/442-5823

On Nov 1, 2017, at 12:14 PM, Hughes, Traci (BEGA) <traci.hughes@dc.gov> wrote:

Yes. I will be back in my office in 5 minutes.

On Nov 1, 2017, at 11:57 AM, Adams, Eugene (OAH) <eugene.adams@dc.gov> wrote:

Can I visit now?

Eugene A. Adams
Chief ALJ
Office of Administrative Hearings
202/442-5823

On Nov 1, 2017, at 11:46 AM, Hughes, Traci (BEGA) <traci.hughes@dc.gov> wrote:

Hi Gene --

I just rang you. I can be available before 2 today. Otherwise, please let me know a time that works tomorrow.

Traci

From: Adams, Eugene (OAH)
Sent: Wednesday, November 1, 2017 11:04 AM

To: Hughes, Traci (BEGA)

Subject:

T—

Still would like to chat about your report at your convenience?

Gene

Chief ALJ

Office of Administrative Hearings

202/442-5823

Attachment 3

Kittab, Waddah (BEGA)

From: Hughes, Traci (BEGA)
Sent: Thursday, November 09, 2017 1:28 PM
To: Kittab, Waddah (BEGA)
Subject: Fw: Missing Term Information

From: Natale, Vanessa (OAH)
Sent: Thursday, October 5, 2017 11:44 AM
To: Hughes, Traci (BEGA); Neal, Louis (OAH)
Cc: Barton, Johnnie (BEGA)
Subject: RE: Missing Term Information

Good morning Traci,

Based on what me and Louis know, The COST does not provide any information to the Mayor for any appointees to the COST. We, at OAH will be told by MOTA, The Council and Superior Court who their appointees are/will be. We do not generally receive documents related to appointments to the COST and the ones that we have received we forwarded to you.

I recommend that you reach out to the COST members, current and former, to get that information. I also remember that there was an office at EOM that handled Boards and Commissions. I'm not sure if that still exists or if MOTA handles that work now.

As you know, we will help in any way we can but we simply do not have the answers to some of your questions.

Thanks,

Vanessa

Vanessa Natale
202-724-7024

Confidentiality Notice

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From: Hughes, Traci (BEGA)
Sent: Wednesday, October 04, 2017 5:20 PM
To: Neal, Louis (OAH); Natale, Vanessa (OAH)
Cc: Barton, Johnnie (BEGA)
Subject: Missing Term Information

Good afternoon --

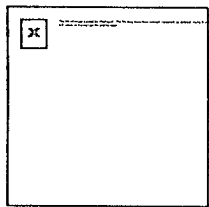
I cannot locate any documentation regarding the terms of:

- Anita Josey-Herring membership appointment to the COST between 2010-2013. I do have a Committee Report on PR 19-115, dated May 2, 2011 (attached) which indicates that Judge Josey-Herring's term expired on April 30, 2013. However, Rohulaman Quander appears to have replaced Judge Josey-Herring, serving the remainder a second term from July 2013-April 2016.
- James William Cooper's second term appointment to the COST for service between 2016-2019. (I am aware he was replaced by Rob Hawkins in March of 2017)
- Judge Greg Jackson's second term appointment served between 4/2012-10/2013
- Was Judge Yvonne Williams a holdover between 12/16/2016 and 8/1/2017?

It is my understanding that it is the COST which provides all of the information for inclusion in the Mayor's Order for all appointees to the COST. Is that correct? We have checked with ODAI, the DC Register online and MOTA, and cannot locate any of the orders.

Thank you,

Traci



Traci L. Hughes, Esq., Director
 District of Columbia Office of Open Government
 Board of Ethics and Government Accountability
 p: 202.481.3406 | e: traci.hughes@dc.gov | w: open-dc.gov | a:
 441 4th Street NW, Suite 830 South, Washington, DC 20001



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The new school year is here and every day is a new opportunity for our students to learn and grow. We all have a role to play in ensuring students get to school, ready to learn, and understand that #EveryDayCounts. Go to attendance.dc.gov to learn more.

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Kittab, Waddah (BEGA)

From: Hughes, Traci (BEGA)
Sent: Thursday, November 09, 2017 1:29 PM
To: Kittab, Waddah (BEGA)
Subject: Fw: Missing COST Orders

From: Natale, Vanessa (OAH)
Sent: Wednesday, October 11, 2017 11:36 AM
To: Hughes, Traci (BEGA)
Cc: Adams, Eugene (OAH)
Subject: Re: Missing COST Orders

Good morning!

We are still working on it. Will have an update for you tomorrow morning.

Thank you!

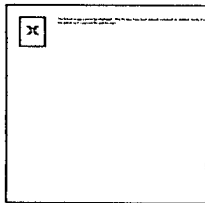
Sent from my iPhone

On Oct 11, 2017, at 11:02 AM, Hughes, Traci (BEGA) <traci.hughes@dc.gov> wrote:

Good morning.

Have you had any success locating the missing orders? Thanks.

Traci



Traci L. Hughes, Esq., Director
District of Columbia Office of Open Government
Board of Ethics and Government Accountability
p: 202.481.3406 | e: traci.hughes@dc.gov | w: open-dc.gov | a:
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Fw: Historical Information re: the COST

Hughes, Traci (BEGA)

Thu 11/9/2017 2:03 PM

To: Kittab, Waddah (BEGA) <waddah.kittab@dc.gov>;

From: Natale, Vanessa (OAH)
Sent: Wednesday, October 11, 2017 3:08 PM
To: Hughes, Traci (BEGA)
Cc: Adams, Eugene (OAH); Neal, Louis (OAH)
Subject: RE: Historical Information re: the COST

You're welcome!

Vanessa Natale
202-724-7024

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From: Hughes, Traci (BEGA)
Sent: Wednesday, October 11, 2017 3:08 PM
To: Natale, Vanessa (OAH)
Cc: Adams, Eugene (OAH); Neal, Louis (OAH)
Subject: Re: Historical Information re: the COST

Thank you very much.

From: Natale, Vanessa (OAH)
Sent: Wednesday, October 11, 2017 2:44 PM
To: Hughes, Traci (BEGA)
Cc: Adams, Eugene (OAH); Neal, Louis (OAH)
Subject: FW: Historical Information re: the COST

Hello Traci,

We have some answers for you. Please see below email from James McKay.

Thank you,

Vanessa

Vanessa Natale
202-724-7024

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From: Adams, Eugene (OAH)
Sent: Thursday, October 05, 2017 2:29 PM
To: Natale, Vanessa (OAH)
Subject: Fwd: Historical Information re: the COST

FYI

Eugene A. Adams
Chief ALJ
Office of Administrative Hearings
202/442-5823

Begin forwarded message:

From: "McKay, James (OAG)" <james.mckay@dc.gov>
Date: October 5, 2017 at 2:23:47 PM EDT
To: "Adams, Eugene (OAH)" <eugene.adams@dc.gov>
Cc: "Wilburn, Nadine (OAG)" <nadine.wilburn@dc.gov>
Subject: FW: Historical Information re: the COST

Gene-

I forgot to mention that Judge Josey-Herring was a mayoral appointee to COST. She was appointed in 2007 by Mayor's Order 2007-150 and reappointed in 2013 by Mayor's Order 2013-135.

Jim

From: McKay, James (OAG)
Sent: Thursday, October 05, 2017 2:16 PM
To: Adams, Eugene (OAH); Wilburn, Nadine (OAG)
Subject: RE: Historical Information re: the COST

Gene-

Here are my answers to your questions:

1. Who the three COST members were who resigned in protest during Mary Oates Walker's tenure?

Charlotte Brookins-Hudson, Judge Gregory Jackson, Rohulamin Quander.

2. Which of them was the Chair?

Charlotte Brookins-Hudson

3. What were the approximate dates of their appointments (if you recall)?

Rohulamin Quander (August 2, 2013 by the Mayor. Mayor's Order 2013-208)

Charlotte Brookins-Hudson (May 6, 2008 by Council Resolution 17-611.
Reappointed by Resolution 19-103)

Judge Gregory Jackson (approximately December 2010)

4. Did Yvonne Williams replace Judge Jackson and if so, to finish his term before she was appointment anew to a full term?

I don't know since it happened after I left. Maybe Nadine knows.

5. Was Anita Josey-Herring ever a COST member and, if so, do you recall when?

Yes. She was appointed by Chief Judge Satterfield in September 2009 and was elected chair of COST on September 16, 2009.

6. Finally, do either of you have any emails or other documents that might reflect any of this information?

I have provided some references above. Let me know what else you need.

Jim

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Kittab, Waddah (BEGA)

From: Hughes, Traci (BEGA)
Sent: Thursday, November 09, 2017 1:27 PM
To: Kittab, Waddah (BEGA)
Subject: Fw: Williams Original Appt Ltr.pdf
Attachments: Williams Original Appt Ltr.pdf

From: Neal, Louis (OAH)
Sent: Wednesday, October 11, 2017 3:13 PM
To: Hughes, Traci (BEGA)
Cc: Natale, Vanessa (OAH)
Subject: Williams Original Appt Ltr.pdf

Good afternoon, Traci –

Please see attached COST Chair Yvonne Williams's original appointment letter and her reappointment letter. And we will continue to supplement as much and as often as possible. Thank you, Traci!

Louis.

Louis L. Neal, Jr.
Deputy General Counsel
D.C. Office of Administrative Hearings
441 4th Street, NW, Suite 450 N
Washington, DC 20001-2714
Louis.Neal@dc.gov
Telephone: 202-724-3672
Fax: 202-442-4789



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Superior Court of the District of Columbia
Washington, D.C. 20001

Lee F. Satterfield
Chief Judge

(202) 879-1600

December 16, 2013

The Honorable Yvonne M. Williams
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 1440
Washington, D.C., 20001

Dear Judge Williams:

I am pleased to appoint you to serve as a voting member of the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearing. This appointment is made pursuant to Section 10 of the Office of Administrative Hearings Establishment Act of 2001. This appointment is effective today, December 16, 2013. Your term will expire on December 16, 2016.

Thank you for agreeing to serve the District of Columbia community in this capacity.

Sincerely,

A handwritten signature in black ink that reads "Lee F. Satterfield". The signature is fluid and cursive.

Lee F. Satterfield
Chief Judge

Cc: Mayor Vincent Gray
DC City Council Chairman Phil Mendelson
Chief Administrative Law Judge Mary Oates Walker
Office of Boards and Commissions Director Darryl G. Gorman



Superior Court of the District of Columbia
Washington, D.C. 20001

Robert E. Morin
Chief Judge

(202) 879-1600

August 1, 2017

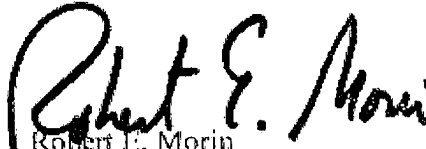
The Honorable Yvonne M. Williams
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 1440
Washington, D.C., 20001

Dear Judge Williams:

I am pleased to appoint you to serve another term as a voting member of the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearing. This appointment is made pursuant to Section 10 of the Office of Administrative Hearings Establishment Act of 2001. This appointment is effective *nunc pro tunc* to December 16, 2016. Your term will expire on December 16, 2019.

Thank you for agreeing to serve the District of Columbia community in this capacity.

Sincerely,


Robert E. Morin
Chief Judge

Cc: Mayor Muriel Bowser
DC City Council Chairman Phil Mendelson
Mr. Eugene A. Adams, Chief Administrative Law Judge
Mr. Steve Walker, Director of the Mayor's Office of Talent and Appointments

Attachment 4

Neal, Louis (OAH)

From: Barton, Johnnie (BEGA)
Sent: Friday, September 22, 2017 12:23 PM
To: Neal, Louis (OAH)
Cc: Hughes, Traci (BEGA)
Subject: RE: Notice of Meeting on Reappointments September 29 2017.doc

Louis,

After taking a roll call vote in the public session at which the majority of the members present vote in favor for closure, the following must occur: (1) pursuant to DC Official Code Sec. 2-575(c)(2) the presiding officer shall make a statement providing the reason for the closure, the subject to be discussed during the closure, in this case personnel matters, and reference the citation for closure, to D.C. Official Code Sec. 2-575(b)(10). Be mindful that no matters may be discussed in closure other than the personnel matters in this instance. After completing the business in closure, return to the open session and report an official action taken during the closure that is appropriate.

Johnnie



Johnnie L. Barton, Esquire
Attorney Advisor, District of Columbia Office of Open
Government
Board of Ethics and Government Accountability
p: (202) 741-5373 | e: johnnie.barton2@dc.gov | w: open-dc.gov
a: 441 4th Street NW | Suite 830 South | Washington, DC
20001



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From: Neal, Louis (OAH)
Sent: Friday, September 22, 2017 11:54 AM
To: Hughes, Traci (BEGA); Barton, Johnnie (BEGA)
Subject: RE: Notice of Meeting on Reappointments September 29 2017.doc

bsolutely. Thank you, Traci! One more thing, Traci – is there a “script” that the COST Chair should follow when opening/closing/adjourning the meeting. I know I sound paranoid; but I want them to do this right. Thanks!

Neal, Louis (OAH)

From: Hughes, Traci (BEGA)
Sent: Friday, September 22, 2017 12:27 PM
To: Neal, Louis (OAH)
Cc: Barton, Johnnie (BEGA)
Subject: Re: Notice of Meeting on Reappointments September 29 2017.doc

Hi Luis,

There is no specific script. However there are protocols to follow: (1) prior to going into executive session, the COST must first read onto the record the reason for closure, i.e., "At this time the COST will vote to enter into closed session to discuss personnel matters pursuant to D.C. Official Code § 2-575(b)(10)"; (2) take the roll call vote; (3) at the conclusion of the closed session, reopen onto the public record and announce any final decisions made during the closed portion of the meeting.

Please be certain to only discuss topics during the closed session/properly cited to and voted on to enter the closed session.

Traci

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**DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES OF
THE OFFICE OF ADMINISTRATIVE HEARINGS
NOTICE OF PUBLIC MEETING**

In accordance with D.C. Code § 2-576(1), the District of Columbia Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (Commission) hereby gives notice that it will meet on September 29, 2017, at 11:00 a.m. at the D.C. Rental Housing Commission, 441 4th Street, NW Suite 1140B North, Washington, DC in order to consider the reappointments of seven Administrative Law Judges. The members will vote to close a portion of the meeting pursuant to D.C. Code § 2-575(b)(10), which permits closed meetings in order to “discuss the appointment, employment, assignment, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.” The agenda below will be posted on the OAH website at www.oah.dc.gov and the Office of Open Government/BEGA website at www.open-dc.gov.

For further information, please contact Louis Neal at Louis.Neal@dc.gov or 202-724-3672.

AGENDA

- I. Call to Order (Board Chair)**
- II. Ascertainment of Quorum**
- III. Adoption of Agenda**
- IV. Appearance/Comments by Chairman Phil Mendelson at his request**
- V. Executive Session (non-public). Vote to enter closed session to discuss personnel matters pursuant to D.C. Official Code § 2-575(b)(10).**
 - a) Re-Vote on Administrative Law Judges Due to Technical Issue on 6/29/2017 Meeting**
 - a. Nicholas Cobbs**
 - b. Sharon Goodie**
 - c. Scott Harvey**
 - b) Vote on Reappointments of Remaining Eligible Administrative Law Judges**
 - a. Arabella Teal**
 - b. Audrey Jenkins**
 - c. Wanda Tucker**
 - d. Jesse Goode**
- VI. Resumption of Public Meeting**
- VII. Discussion of Next Meeting**
- VIII. Adjournment (Board Chair)**

COST Meeting – September 29, 2017

Call to Order

“This meeting of the Commission on the Selection and Tenure of Administrative Law Judges is called to Order. This meeting is called for the purpose of considering and/or voting on the reappointment of seven (7) administrative law judges.”

Roll Call

Determine the presence of all members, including the CALJ, if necessary
Have each COST member say they are “present.”

“I ascertain that all of the voting members are present. Therefore, a quorum is established”

Adoption of Agenda

“I have reviewed the Agenda, and move that it be adopted as the official Agenda for this meeting.”

[After moved and seconded, “this Agenda is therefore adopted as the official Agenda for this meeting.]

Appearance/Comments by Chairman Phil Mendelson at his request.

[“Thank you, Mr. Chairman” – whatever else needs to be said]

Executive Session (non-public).

“The Commission will now move into the Closed session of this meeting. We will resume the public meeting at the conclusion of the closed session, which will consist of the Commission discussing and voting on the reappointees and discussing other related matters as appropriate. Therefore, pursuant to D.C. Official Code § 2-575(b)(10), this public session is adjourned.”

Resumption of Public Meeting

“The public session of this meeting is reconvened and called to order. All members are again present and a quorum retained.”

[“During the Closed Session, the Commission has voted/not voted on the reappointees, and letters will be delivered to all reappointees [hopefully by the end of the day.”]]

Discussion of Next Meeting Adjournment (Board Chair