

IN THIS ISSUE >>>

- Filing a Complaint w/the Commission
- Training Resources
- Legislative Updates
- Commission Complaint Process
- Commission News & Updates
- Becoming a Commissioner

Oregon Government Ethics Commission

3218 Pringle Road SE, Suite #220
Salem, Oregon 97302
Phone: 503-378-5105
Fax: 503-373-1456
Email: ogec.mail@oregon.gov
Website: www.oregon.gov/OGEC



Volume 2, Issue 2

SUMMER 2021

A Quarterly Newsletter

Ethics Matters



Commission Members >>>

Dan Mason, Chair
Dave Fiskum, Vice-Chair
Nathan Sosa
Anna Sortun
Amber Hollister
Karly Edwards
Shawn Lindsay
Vacancies (2)

Staff Members >>>

Ron A. Bersin, Executive Director
Diane Gould, Compliance & Education Coord.
Becky Maison, Operations & Policy Analyst

Investigators:

Susan Myers
Lisa Christon

Trainers:

Monica J. Walker
Stephanie Heffner

Administrative Staff:

Kathy Baier
David Hunter

Filing a Complaint with the Commission

**Areas in which the Commission has jurisdiction: The provisions of Oregon Government Ethics law – ORS Chapter 244; Lobby Regulation law – ORS Chapter 171.725 through 171.785; and the Executive Session Provisions of Public Meetings law – ORS Chapter 192.660 & ORS 192.685.*

If an individual has reason to believe a violation of a provision which falls within the Commission's jurisdiction* has occurred, they may want to contact the Oregon Government Ethics Commission (OGEC) first to discuss their concerns with an OGEC staff member prior to filing a formal written complaint.

Email: ogec.mail@oregon.gov or Phone: 503-378-5105

Please be aware that complaints filed with the Commission will **NOT** be anonymous. The subject of the complaint will be provided a copy of the complaint in its entirety, including the name of the person who filed the complaint per the law. If an individual wishes to file a written complaint, they need to explain exactly what actions were taken by the public official that they believe violated the law, and include the basis for their belief that a violation occurred. The best practice is to provide the "who, what, where, why, how, and when of the circumstances, as in the below example:

"City Councilor X voted in a council meeting held on January 3, 2021, to approve a contract between the City and her brother's company. Her brother's company is XYZ Renovations and they are now doing renovations on City Hall. I believe she had a conflict of interest when she voted to approve the contract and I have attached the minutes for the meeting in which that happened."

(Continued on pg.2)



Training Resources

Customized Webinars (Live):

Trainers are available to present training sessions or workshops on government ethics law, lobbying regulations and executive session provisions. These sessions are 1.5 to 2 hours in length. You can request this training by calling our office at: 503-378-5105 or by completing a 'request for training' form on-line at:

[OGEC: In-Person / On-Site Training](#)



Monthly Webinars (Live):

OGEC offers monthly Webinars. These 60 minute trainings are presented live by an OGEC trainer using the internet. We offer several different classes each month:

- Monthly Webinar Calendar (mid page): [OGEC: Webinars](#)
- To register or arrange for webinar training please e-mail us at: ogec.training@oregon.gov

Workday* Learning (WDL) Courses ~ *Formerly iLearn courses

These training modules are short, focused and convenient. This training focuses on government ethics law, lobbying regulations and executive session provisions. Anyone with an e-mail address can register to take classes through WDL, whether you are a public official or a private citizen. WDL can be accessed via the following links:

- State employee – [Workday Oregon - Sign In to Workday \(myworkday.com\)](#)
- Non-State employee – [Register - Workday Learning External Portal \(oregon.gov\)](#)

Filing a Complaint with the Commission

Continued from pg. 1

An example of an incomplete or vague complaint:

“John Doe uses the county truck to pick his kids up from school when he is supposed to be working. This is unethical. You should investigate this.”

An example of a non-jurisdictional complaint:

“The Governor is shutting down the state and costing people their jobs. Mandating masks and vaccinations is unconstitutional and unethical.”

For additional information on the OGECs complaint process, filing a complaint and the Commission’s jurisdiction, please refer to the following link:

[OGEC: How to File a Complaint](#) ■

Important Date:

January 1, 2022



Legislative Updates

- **SB60** ~ Effective 1/1/2022: [SB0060 \(oregonlegislature.gov\)](#)
Relating to the timeline for evaluating potential government ethics violations. Specifically, extends the period for the OGEC to complete the Preliminary Review Phase of alleged violation(s) of ethics laws to 60 calendar days from 30 calendar days.
- **SB61** ~ Effective 1/1/2022: [SB0061 \(oregonlegislature.gov\)](#)
Relating to advice provided by the OGEC. Authorizes OGEC to provide written commission advisory opinions, staff advisory opinions an oral or written staff advice on the application of executive session provisions of Oregon public meetings law.
- **SB62** ~ Effective 1/1/2022: [SB0062 \(oregonlegislature.gov\)](#)
Relating to payment of civil penalties imposed by the OGEC. Prohibits current or former public official from soliciting, receiving or using public moneys from a public body to pay or make payments on any civil penalties imposed by the OGEC.
- **SB63** ~ Effective 1/1/2022: [SB0063 \(oregonlegislature.gov\)](#)
Relating to the composition of the members serving on the OGEC. Extends the maximum amount of time an individual may serve as a member of the OGEC from one full four-year term to two full four-year terms.

Commission Complaint Process



Complaint Timelines

Preliminary Review Phase = *30 days (135 days for Lobbying)

Investigative Review Phase = 180 days

****Will increase to 60 days on January 1, 2022 – Senate Bill 60 ([SB60](#))***

When the Oregon Government Ethics Commission (OGEC) receives a complaint, the Executive Director reviews the complaint to determine if the alleged violation falls within the agency's jurisdiction (Oregon Government Ethics, Lobbying Regulation, or Executive Session laws).

If the complaint alleges a violation within the commission's jurisdiction, includes the basis for the person's belief that a violation occurred, and is accompanied by related evidence – staff will notify the person the complaint was filed against within two days and also provide them with copies of the complaint materials. This includes the identity of the complainant.

If the complaint is not within the Commission's jurisdiction, the Executive Director sends the person who submitted the complaint a letter advising that the Commission cannot take action on the matter at this time based upon the information submitted.

About 90 percent of the cases reviewed by the Commissioners are initiated as a result of complaints submitted by the public. The balance of cases are initiated by the Commissioners themselves as a result of information obtained from other sources, such as government agencies or media coverage.

Preliminary Review Phase

If an alleged violation appears to be within the OGEC's jurisdiction, the Commission will open a case and initiate a preliminary review.

The preliminary review phase must be completed within 30* days (135 for Lobbying) of the complaint being filed or the action being initiated by the Commission. The objective of preliminary review is to determine if sufficient cause exists to conduct an investigation. "Cause" is defined by statute as "... a substantial objective basis for believing that an offense or violation may have been committed and the person who is the subject of an inquiry may have committed the offense or violation." *60 days beginning January 1, 2022.

The OGEC is required by law to conduct preliminary review confidentially. If an inquiry is made, the OGEC will make no public disclosure or comment other than to acknowledge that a complaint was received. This confidentiality requirement applies only to OGEC personnel. The ability of any other persons to publicly comment about a matter is not affected.

A staff report is prepared at the end of preliminary review and will be considered by the Commission in its next executive session (meaning it will be considered in a closed meeting and will not appear on the public agenda). About one week before the meeting, OGEC staff sends a copy of the report to the person the complaint was filed against, i.e. the Respondent. The Respondent (and their attorney) may attend the executive session.

Continued on next page...

Commission Complaint Process Continued...

If the Commission does not find cause to investigate, the matter is dismissed. If cause is found, an investigation is conducted. In either instance, all information concerning the matter will then become available to the public, and the person who filed the complaint, i.e. the Complainant, will receive a copy of the report.

Investigative Phase

If the Commission finds "cause" to pursue the case at the end of preliminary review, the investigative phase begins. The Commission has 180 days to investigate, during which time subpoenas for documents and oral testimony may be issued.

A staff report is prepared at the end of the investigatory phase and will be considered by the Commissioners in a regular public meeting. Both the Complainant and the Respondent will be sent copies of the report about one week prior to the meeting. The Commissioners may choose to do one of the following:

- 1.) Dismiss the case
- 2.) Continue the investigation for no more than 30 days
- 3.) Find that Oregon Government Ethics, Lobbying Regulation, or Executive Session law was violated
- 4.) Seek a negotiated settlement
- 5.) Take other appropriate action if justified

If the Commission finds a violation, the case will be moved to the contested case stage. If not, the case is dismissed.

Contested Case Hearing

The Commission may move a case to contested case hearing if it finds (by a preponderance of the evidence) that a violation occurred. OGEC staff provides the Respondent with information on how to request a contested case hearing, and in most cases, OGEC staff also draft a proposed stipulated final order to settle the case. The person may choose to settle the case by signing the stipulated final order and complying with its terms, rather than proceed to a hearing. The Respondent may also elect to move the case to Marion County Circuit Court.

A contested case hearing is less formal than a court proceeding. The assistant attorney general assigned to the OGEC presents evidence to the administrative law judge on behalf of the Commission. The opposing party (or their attorney) makes a presentation responding to the OGEC's case. Both sides then make closing statements. The administrative law judge reviews the evidence submitted at the hearing and prepares a proposed final order.

The OGEC may accept, change or reject the proposed order in issuing the Commission's final order.

Appeal

A person wishing to appeal a final order may petition the Oregon Court of Appeals for judicial review.

STEP ONE:

[Link to Complaint Form Page](#)

STEP TWO:

Submit Complaint

Submit a complaint that is within the jurisdiction of the Oregon Government Ethics Commission.

[Complaint Form](#)

“What’s New With the Commission”

Getting to Know the Oregon Government Ethics Commission



Our Quarterly Newsletter “Ethics Matters” gives the Commission staff the opportunity to share information on what the Commission is focusing on, tips and instructions on how to navigate ethics in Oregon, and even how to correctly file reports such as quarterly lobbyist expenditure reports or Statements of Economic Interest. But previously, it didn’t give our readers the chance to know who makes up the Commission. We want to change that and are looking to add new sections, such as staff achievements, introductions to new staff members and Commissioners, or farewells to Commissioners.

Recently, two well-loved Commissioners, pictured here are Commissioners that we said “Goodbye” to in June. Both Commissioner Charles Starr and Commissioner Sean O’Day were valued members of the Commission. We want to thank both of them for their service with the Commission and with the State of Oregon. We would not be able to do our job without them and their fellow Commissioners.

A new feature of our newsletter is a get to know our Commissioners section. This is where we will introduce our newest Commissioners, get to know existing ones, or, in this case, say farewell to our outgoing Commissioners.

On June 11th, we had our last Commission meeting with Commissioner Sean O’Day. He will be greatly missed as he brought a wealth of knowledge to our Commission and we were sad to see him go. Sean O’Day served on the Commission from June 2018 until June 2021. A reservist in the United States Army, Sean had to cut his term of office short when he was called to active duty. He is currently serving a one-year tour of duty in the Middle East. In his civilian job, Sean is currently the Deputy Director for the Oregon Department of Veterans’ Affairs.

We took the time to ask him a few questions about his time on the Commission and here is what he had to say:



Q1: What inspired you to apply to be a member of the Oregon Government Ethics Commission?

A1: I firmly believe that as a government by the people for the people, our Western democracy can only survive if those governed by democratic institutions are willing to accept the government’s decisions as legitimate, and such legitimacy rests on a foundation of ethics.

As a public official myself, I have been subject to Oregon’s Ethics Laws for over 20 years. I was inspired to join the Commission with the goals of advancing ethical principles of good and responsive governance, improving the consistency of the Commission’s opinions, clarifying some gray areas of the law, and reinforcing the Commission’s role in educating public officials.

My first introduction to this area of the law was over 20 years ago as a law clerk to the then Chief Justice of the Oregon Supreme Court, Hon. Wallace P. Carson, Jr. and then subsequently as the Deputy Legal Counsel to Governor John A. Kitzhaber. Since then, my career focused mostly on serving local governments, both as a lawyer and manager. Throughout my career, I had the pleasure of teaching and advising hundreds of public officials on government ethics.

It was with that personal philosophy and combination of professional experience that I had hoped to bring a practical voice and perspective as the Commission redrafted its guide to ethics, revised administrative rules, and adjudicated complaints against individuals.

Q2: What aspect of the Commission did you enjoy or appreciate the most?

A2: I truly appreciated the professionalism and non-partisan ethic of my fellow Commissioners. Although eight of the nine members of the Commission are nominated by the leadership of the Democratic and Republican parties in each house of the Legislative Assembly, the tenor of the Commission is markedly non-partisan. I think the Commission’s non-partisan tenor is a direct result of both parties’ commitment to government ethics and the quality and professionalism of the individual Commission members. Indeed, although I am an unaffiliated vote, my appointment was at the recommendation of Rep. Mike McLane, who was the House minority leader at the time.

The other aspect of the Commission that I appreciated is the persistent focus on education. Although there are times where some form of restitution and/or punishment is warranted, such circumstances are rare. Most ethical violations occur out of ignorance, not willful neglect nor wanton disregard for the law. As such, I appreciated my fellow Commissioners’ and the staffs’ focus on proactively educating public officials on their ethical responsibilities, and even where a violation occurred, to first consider whether a letter of education was a sufficient and appropriate consequence.

Q3: What are some key takeaways that you would care to share with current and/or future Commissioners?

A3: There is a theme, here, to my answers. The key take ways I have for future Commissioners is to preserve the non-partisanship nature of the Commission, continue to focus on education over retribution, understand your role and limitations, and finally, respect local governments' home rule authority.

As an ethics Commissioner, it's imperative that you remain non-partisan, lest you risk undermining both the legitimacy of the Commission and the integrity of our democratic institutions. At the federal level, there is a saying that "politics should end at the water's edge," which means that when it comes to international matters – particularly where the existence of the country is at stake -- government officials should place the Nation's interests above partisan priorities; the phrase "water's edge" serving as a metonymy for "national border." The same is true of Ethics. Because legitimacy is the currency of our democracy, there cannot be any room for partisanship when deciding ethical matters, otherwise we risk losing our government institutions to political corruption and moral bankruptcy. There should be no place for partisanship politics at the Commission.

Just as an ounce of prevention is worth a pound of cure, so too does the value of education outweigh the cost of prosecution. When deciding complaints, adopting opinions, and writing rules, I hope future Commissioners will keep an open mind and try to put themselves in the shoes of other public officials, so as to see the issue from that perspective. Context is everything, particularly when deciding complaints. Legislation is always drafted as a one-size-fits-all solution to a well-defined problem, when in reality life is messy and problems are rarely black and white. The life of a public official is filled with complex, ambiguous, uncertain, and variable conditions. Good people can (and do) make mistakes; governing in a complex, ambiguous, uncertain and variable environment can be fraught with ethical dilemmas. Keep those factors in mind when deciding cases, be appropriately empathetic, and look for a just result that finds the right balance between the public interest and the humanity in the situation. More often than not, the just result is issuing a letter of education or mandating training for the public official.

Finally, as a future Commissioner, if you are not familiar with how government is structured in Oregon, educate yourself. In particular, understand that in Oregon, cities and counties enjoy constitutional home rule authority, which means they are not subordinate units of state government. (Both the Association of Oregon Counties and League of Oregon Cities have some good materials on this topic.) As a result, cities and counties are not bound by AG opinions (which are binding on state agencies such as the Commission), and unless expressly preempted by state law, cities and counties have authority to adopt their own rules and policies. Likewise, become familiar with how state agencies work, and the limitations on your own authority when it comes to how far can go in interpreting and applying state law (the answer to which is very little). In my view, the Commission is not the place for activism. If you want to advocate for ethics reform, go lobby the legislature. The job of a Commissioner is to fairly and impartially apply the law as written without trampling on individual rights and without intruding upon the constitutional home rule prerogative of local governments. To do that well, future Commissioners need to have a basic understanding of home rule and administrative law that governs state agencies.

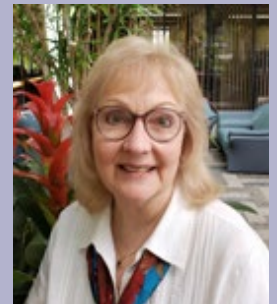
Q4: Any other relevant details that should be shared or you would want to be included?

A4: In closing, I want to say it was a pleasure to be able to serve on the Commission. But for the Army calling me to active duty, I would have loved to continue to serve the state of Oregon as a member of the Commission. The staff and members of the Commission are of the highest caliber, and it was an honor to serve alongside each and every one of them.

AWARDS ~ 2021 Ambassador of Public Service ~ Kathy Baier

In honor of the 2021 State Employee Recognition Day, Oregon state government agencies nominated individuals who exemplify what it means to be an Ambassador of Public Service.

On April 29, 2021, Kathy Baier was designated by Executive Director Ron Bersin as someone who is a true Ambassador of Public Service and who has persevered in the face of adversity and exemplified resilience in serve to Oregon this past year. On behalf of the OGEC, we would like to recognize and congratulate Kathy on this well-deserved achievement.



STAFF UPDATE ~ New Trainer/Program Analyst ~ Stephanie Heffner

Please join us in welcoming Stephanie to our team! Stephanie joined us in July. We are excited to have her on-board and to once again be at full staff. As an experienced trainer, Stephanie has a lot to share and will be a great asset to the OGEC.

In the weeks she has been a member of the team, Stephanie has been an engaging trainer for the OGEC. She has a reputation for developing and delivering compelling trainings in the nonprofits, hospitality, and government sectors. She is passionate about engaging the community and looking forward to assisting fellow Oregonians with understanding government ethics laws. Stephanie has a MPA in Community Engagement & Policy Advocacy from SIT Graduate Institute. Excited to be back in Oregon, she's on a mission to explore the state by kayak.



WELCOME Stephanie! We are glad to have you on our team!

Interested in Becoming an OGEC Commissioner?

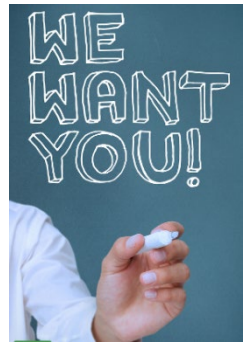
Serving on a Commission for the State of Oregon is very rewarding and a great way to learn more about Oregon and Oregon's laws as well as provide a public service for your community.

The OGEC currently has vacant Commissioner positions that need to be filled. The term of office for a Commissioner is four (4) years.

One of the features of the Commission is that it is bipartisan by design. The Commission is comprised of nine Commission members. No more than three of the members may be from the same political party. The Governor nominates one member directly; the other eight members are nominated by the Democratic and Republican leaders of the Oregon House and Senate. All nine members are then appointed by the Governor and confirmed by the Senate. If you are interested in becoming a Commission member, you can apply here at the Oregon Governor's website: https://www.oregon.gov/gov/admin/Pages/How_To_Apply.aspx

Commissioners act as fact-finders and decision makers on cases of alleged violations of the laws within the Commission's three areas of jurisdiction: Ethics law, Lobby law, and the Executive Session provision of Oregon Public Meetings law. Each six weeks the Commissioners receive a meeting book containing investigative reports, settlements, final orders, and other matters that require a vote of the Commissioners. Commission meetings occur approximately every six weeks, are typically held on Fridays, usually begin at 9 a.m. and last approximately three to five hours. Meetings are currently held in a hybrid in-person/online format. The stipend for service is \$151 per day of Commission work plus travel reimbursement. The Commission meeting schedule is usually available a year in advance to help ensure there are no scheduling conflicts. For additional information on Commission meetings refer to the following link: [OGEC: Commission Meetings](#) If you have any questions about this opportunity, please call 503-378-5105 or email OGEC.mail@oregon.gov.

***Come! Make a difference! Volunteer! Be an active member of the community!
Apply to be a member of the Oregon Government Ethics Commission!***



Forms & Publications

Be Sure to Check-Out the Newly Updated Guide for Public Officials:

[Guide for Public Officials](#)

Commission Calendar: [OGEC Commission Calendar](#)

Commission Newsletter: [OGEC Commission Newsletters](#)



Oregon Government Ethics Commission

3218 Pringle Road SE, Suite 220

Salem, Oregon 97302

Phone: 503-378-5105

Fax: 503-373-1456

Email: OGEC.mail@Oregon.gov

Website: www.oregon.gov/ogec

Coming Soon >>>

- *Lobbyist Quarterly Reporting*
- *Lobbyist Training & Guides*
- *Public Records & Information*
- *OGEC Guidance & Advice*