

GO #2  
March 14, 2011

**MEMORANDUM**

March 10, 2011

TO: Government Operations and Fiscal Policy Committee

FROM: <sup>JCA</sup> Jean C Arthur, Legislative Analyst

SUBJECT: Organizational Reform Commission Recommendations on: Committee Evaluation and Review Board and Legal Services (ORC Recommendations #1, 8, 9)

In its report issued on January 31, 2011, the Organizational Reform Commission made one recommendation on the review of County boards, committees and commissions and two on legal services for County government agencies and departments. The three recommendations are addressed below. Where appropriate and available, staff has included comments from the affected agencies.

- I. **Organizational Reform Commission Recommendation (#1): Acceleration of the Citizens Review Committee.** As part of the existing process for County review and evaluation of boards, committees and commissions, an ad hoc committee appointed by the Executive is next scheduled to commence in 2012. We believe that is the appropriate forum to rationalize the existence of 86 boards, committees and commissions. But we recommend that the Executive accelerate this process by convening this review committee as early as possible in 2011. We also recommend that rather than its previous two-year duration, and the nearly two-year evaluation process by the Council, the Executive instruct a new review committee to complete its work in six months, and that the Council commit itself to completing its evaluation and action within the following six months. Finally, we propose that rather than allowing for an open-ended evaluation, the Executive charge the new review committee with the task of reducing or reorganizing the number of boards, committees and commissions. From our initial analysis, we believe that much of this can be achieved through consolidation of similarly purposed boards, committees and commissions.

County Executive's Position: Support

The next Committee Evaluation and Review Board (CERB) is currently scheduled to begin in 2012, ten months from now. In response to the ORC recommendation, I will begin the selection process for CERB members and initiate the review process for existing Boards, Committees, and Commissions (BCCs) during FY11.

The new CERB will develop a methodology to amass and analyze data. This will include collecting data from numerous sources including the BCCs and the County Executive's Office. The BCCs and my office will be an integral part of this process.

At this time many departments have been impacted by budgetary reductions. As a result, many of the BCC Liaisons have changed and are new to the BCCs. The staff is learning the demands of their new roles. Their understanding of the BCCs will improve with time, and the value of their assistance to the board and the CERB will increase. The staff that manages the BCCs has also been reduced and is developing new procedures to accomplish the workload. They are currently striving to maintain the quality of service they have been providing the BCCs for the past four years. Both of these entities will be better prepared to assist with the report in the future.

I am committed to improving the efficiency of the BCCs. However, a great deal of information must be objectively reviewed before the work of the CERB is completed. As mentioned previously, although the new CERB is scheduled to begin in 2012, I will implement the ORC recommendation by beginning the process for selecting new CERB members and initiating the review process of existing BCCs during FY11.

**Council Staff Recommendation:** Support

Council staff supports this recommendation as well as the County Executive's plans. In addition, staff recommends that when the CERB is appointed, the resolution should include a deadline not only for the report to be issued but also for action on the recommendations.

The last CERB was appointed in March 2002 and issued its report in July 2004. The Council held worksessions on the report in 2004 and 2005 and adopted Resolution No. 15-1165. That resolution implemented some of the minor CERB recommendations, mostly dealing with the Council's representation on different boards and committees. See resolution attached at circles 1-3. Also in 2005, the Council introduced and enacted Bills 2-05 and 3-05, which implemented other CERB recommendations.

The Council introduced, in April 2009, two bills to implement more of the recommendations of the last CERB. Both bills were sponsored by Councilmember Leventhal. Bill 20-09, which unified the three agriculture-related advisory groups by creating the Agricultural Advisory Committee, was enacted in October 2009. Bill 21-09, which would have implemented CERB recommendations affecting the Cable and Communications Advisory Committee and the Solid Waste Advisory Committee, among others, expired without Council action in October 2010.

The Council adopted a resolution, entitled Resolution to Implement Recommendations of the Committee Evaluation Review Board, on October 21, 2009. That resolution created the Agricultural Advisory Committee in law and repealed resolutions from 1973 and 1976 establishing and restructuring the Agricultural Advisory Committee.

- II. **Organizational Reform Commission Recommendation (#8): Development of In-House Expertise.** The agencies' chief legal officers should start to develop in-house legal expertise to replace the contract attorneys who have been used extensively to date. For example, when taking into account all compensation, including benefits, the average cost of a staff attorney in County government is approximately \$60 per hour including benefits. Contracted legal services are substantially more costly, except for child welfare cases. We appreciate the importance of such services in certain cases, but to save money, County agencies should explore greater use of an in-house legal team when it makes good business sense.

**County Executive's Position:** Support

The ORC report includes a recommendation that the chief legal officers of County-funded agencies develop in-house legal expertise to replace contract attorneys who have been used extensively to date.

I fully support the Commission's recommendation in this regard. County agencies should explore greater use of in-house attorneys when, as the Commission noted, "it makes good business sense."

I recognize that government agencies need outside counsel to handle cases imposing unusual workload requirements; matters that involve specialized knowledge not normally contained in an in-house law department; cases that present an appearance of a conflict; and matters where the Government finds it prudent to be able to rely on outside counsel's malpractice insurance.

**Council Staff Recommendation:** Support

Historically, the County has hired outside counsel on issues such as pensions, child protection cases, real estate and collective bargaining. Through December 31 of the current fiscal year, the County has spent \$247, 628.30 on outside counsel, most of that for child protective services and cable communications.

Although staff supports this recommendation, staff notes that developing in-house expertise could require the Office of County Attorney to hire additional employees to handle the workload that has been contracted out. New hires will, at least initially, negate some of the savings that may result from implementing this recommendation. Also, for some practice areas and for some cases, hiring outside counsel always will be more cost efficient, for example, when expertise in an area is needed only infrequently.

- III. **Organizational Reform Commission Recommendation (#9): Montgomery Law Office Task Force.** The Executive and Council should request that the heads of all County agencies designate their chief legal officers to participate on a six-month task force to develop a blueprint for creation of a consolidated *Montgomery County Law Office*. Under the creation of such an office, the legal expertise serving the County would be centrally located, with attorneys and other professionals primarily assigned to service the institutions from which they originally came, but also available to assist other branches on an as-needed basis. Naturally, “bright lines” or boundaries would need to be established to acknowledge and accommodate periodically conflicting interests, but we believe the potential benefits (e.g., combine administrative staffs, real estate consolidation) make it worth a full exploration to determine both feasibility and potential cost-savings.

**County Executive’s Position: Support**

I support the creation of a task force to explore the advantages and obstacles to creating a centralized law office for County-funded agencies. I agree with the Commission that there may be potential savings realized by combining administrative staffs and certain legal practice areas such as contracting and real property transactions.

It should be noted, however, that significant consolidation already exists. The Montgomery County Public Schools, Montgomery College, and the Housing Opportunities Commission are members of the County’s Self-Insurance Fund. As a result, the lawyers from the County Attorney’s Office provide legal representation to these agencies (and their employees) in legal actions seeking monetary damages for actions in tort and for alleged violations of constitutional rights. This arrangement has been very successful. The average hourly rate for the lawyers in the County Attorney’s Office assigned to the Self-Insurance Litigation Division is \$75.22 per hour – an exceptional value.

As the ORC report acknowledged, I recognize that there would be significant obstacles to creating a combined law office. These include dealing with potential conflicts of interest that may arise among the various County-funded agencies, as well as the potential need to change State laws.

Montgomery County Planning Board position:

Consolidating the Montgomery County law Office We do not support the goal of developing a "blueprint for creation of a consolidated Montgomery County law Office" for several reasons.

As you are aware, the M-NCPPC Office of the General Counsel was recently studied as part of the broader CAS review launched jointly by the Montgomery and Prince George's County Councils. Among other observations made in this context, Council staff reported as follows:

- . [M-NCPPC] User departments in both counties were extremely satisfied with the embedded staff model utilized by the [M-NCPPC] legal Department. Under this model, legal staff is designated to work within the user departments on issues specific to each County.
- . legal staff is very strong and generally provides superior quality services and products.
- . The legal division is timely in providing legal advice and is always available.

We have grave reservations that consolidating or centralizing a legal department would disrupt our corporate culture of preventing legal problems by providing managers with seamless access to legal support.

On a more technical level, we echo the concern voiced by ORC that a consolidated legal organization will face "periodic conflicting interests." The ethical standards that sometimes preclude lawyers from representing multiple clients with conflicting interests are not optional and, notwithstanding laudable intentions, they carry serious consequences for attorneys who fail to comply. Our General Counsel worries that consolidation may actually escalate expenses for hiring outside counsel to resolve foreseeable conflicts in a consolidated legal organization. As you have experienced, it is very difficult for one legal office to represent two clients whose interests may be divergent from time to time.

It is also important to recognize that, notwithstanding the "embedded" model described above, the Commission's legal Department already is largely consolidated across both counties served by M-NCPPC. For this reason, we cannot consider the prospect of joining a consolidated Montgomery County legal department without taking into account the potential service impact for our work in Prince George's County.

Finally, from a fiscal perspective, we should mention that M-NCPPC actually saved approximately \$80,000 during FY 2011 by withdrawing its risk management litigation from the County Attorney's office and bringing that work program into the M-NCPPC legal Department. Based on this observation, we cannot agree that bigger always means more cost effective.

On the other hand, our General Counsel would welcome the opportunity to participate in a task force of chief legal officers charged with exploring opportunities for joint procurement; for example, to procure subscriptions for legal publications and online research databases. We also think it would be advantageous to include the County Attorney for Prince George's County in this sort of effort, and to consider utilizing the Council of Governments as a partner in this initiative.

MCPS Position:

4. Substitute contracted legal services with in-house expertise. Create a consolidated Montgomery County law office (Page 17). The report proposes to establish a task force to recommend whether to create a single law office for all county agencies, including MCPS. The ORC suggests that this would enable the creation of additional in-house expertise and avoid the need to hire contract attorneys. According to the report, this change would save from \$500,000 to \$1,000,000 across all agencies. This savings is an estimate, not based on specific analysis. The report notes that it is often necessary for contract attorneys to develop specific expertise in certain cases. This specialized expertise applies to education law. The report recognizes that a consolidated legal office may face conflicts of interest between agencies in certain situations and says that "bright lines" would need to be maintained to avoid conflicts. The report fails to note that MCPS already works through the county attorney's office in cases involving suits for damages involving the interagency Risk Management Fund. The report also fails to identify how a common law office would result in any significant savings. In fact, if the common law office needed to develop outside expertise in new areas, it may very well cost even more than current costs across all agencies.

Montgomery College Position: (submitted by Clyde "Rocky" Sorrell, MC General Counsel)

There is already a great deal of consolidation of the Montgomery College's legal work under the County's Self Insurance Program---the County Attorney's office, in coordination with the College's Office of General Counsel, handles claims of all agencies covered by this program (the College is one of several), including all workmen's compensation claims, tort and negligence claims and federal claims such as civil rights.

Beyond this, there are too many special interests, expertise requirements and conflicts of interest for each of the agencies that would keep us from consolidating the legal function further. Other complications could attach to further merger as well, including attorney code of ethics violations and confidentiality problems.

Finally, the College's Office of General Counsel is composed of only two attorneys and one assistant/secretary. The Office of General Counsel is extremely lean for the responsibilities that the Office of General Counsel carries and the size of the organization that we represent."

**Council Staff Recommendation:** Recommend creation of a task force to study further collaboration on cross-agency legal services rather than a county-wide legal office.

Council staff supports **exploration** of creation of a legal office to ascertain if County agencies can pool additional legal services. Staff believes that exploration is a worthy exercise as it may identify areas of further collaboration and cost avoidance. However, staff cautions against expecting huge savings, since a legal office would have to have the same expertise that is now present in the legal units of the various agencies.

None of the other agencies have large legal staff, and that staff tends to be highly specialized in practice areas specifically associated with the mission of the agency. This expertise would be vital in a county-wide legal office so those positions simply would be transferred. Additionally, attorneys in the agencies tend to be just one part of a larger unit, so the management would remain in place whether or not the attorneys are there, resulting in no savings.

For example, attorneys for Montgomery County Public Schools are either part of Special Education Legal Services or General Counsel legal services. The two special education attorneys report directly to the Associate Superintendent for Student Services (special education) and the General Counsel attorneys, which are contractors, report to the Chief Operating Officer. The management structure at MCPS would remain intact. Only the attorneys would have moved so the County would get little, if any, savings.

Staff recommends that if a task force is created, its charge be broad enough to allow it to look at expanding areas of collaboration, not just consolidation.

As noted above, the four County agencies that would be affected have all submitted comments on this recommendation. All comments, except for those from Housing Opportunities Commission, are inserted above. The Housing Opportunities Commission's response is attached at circle 4.

All the agencies, as well as the County Executive, cite ethical conflicts as a barrier to creating a common legal office. Staff agrees that this office would have to overcome a major hurdle resulting from representing clients with opposing interests. It could be that

the hurdle would be too large to allow for effective representation and that the legal office would frequently have to hire outside counsel to overcome the conflict.

In addition to ethical concerns, all four agencies also cite specialty of the legal practice related to their various missions as a consideration in determining the feasibility of a legal office. They point out that the county-wide legal office would have to cover that expertise thereby negating some savings.

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Resolution No.: 15-1165  
Introduced: September 27, 2005  
Adopted: October 11, 2005

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Management and Fiscal Policy Committee

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**SUBJECT:** Resolution to implement recommendations of the Committee Evaluation Review Board (CERB) – Name and Membership

**Background**

1. Section 2-146 of the Montgomery County Code provides for the appointment every ten years of a citizen's Committee Evaluation and Review Board (CERB) to review the Montgomery County Boards, Committees and Commissions. The most recent CERB was appointed in March 2002 and submitted its final report to the County Executive and County Council in July 2004.
2. The Council's Management and Fiscal Policy (MFP) Committee held four worksessions to review the report and recommendations of the CERB. Legislation was introduced to address the recommendations of the CERB. A public hearing was held on March 8, 2005.
3. In addition to legislation, the MFP Committee, in its review of the CERB report, developed several recommendations that require Council action by resolution. Those recommendations are:
  - a. Amend Resolution No. 13-1498 establishing the Facilities Implementation Group (FIG) to change the name of the group to better reflect its purpose. The name of the group is changed to the Dickerson Area Facilities Implementation Group.
  - b. Amend Resolution No. 9-1460 establishing the Strathmore Hall Foundation, which provides that an individual designated by the Council will serve in a liaison capacity to the Board of Directors. This amendment will provide that a Council representative serves at the discretion of the Council.
  - c. Amend Resolution No. 14-1281 establishing the Pedestrian Safety Committee, which requires a representative from the Council. This amendment will provide that a Council representative serves at the discretion of the Council.
  - d. Amend Resolution No. 11-1826 establishing the Airpark Liaison Committee, which provides that one member of the Committee be a representative of the Council. This amendment will provide that a Council representative serves at the discretion of the Council.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

- (1) Resolution No. 9-1460 is amended by adding at the end of the action clause: However, the County Council may decline to designate an individual to serve in a liaison capacity.
- (2) Resolution No. 11-1826 is amended by revising paragraph B.4. as follows:  
4. Montgomery County Council – One (1) representative, at the Council's option.
- (3) Resolution No. 13-1498 is amended by inserting "Dickerson Area" before "Facilities Implementation Group" in the title and Action clause.
- (4) Resolution No. 14-1281 is amended by revising paragraph 2.h. as follows:  
a representative from the County Council, if the Council recommends one;

This is a correct copy of Council action:



Linda M. Lauer, Clerk of the Council

Resolution No.: 16-1171  
Introduced: April 21, 2009  
Adopted: October 20, 2009

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY MARYLAND**

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By: Councilmember Leventhal

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**SUBJECT:** Resolution to Implement Recommendations of the Committee Evaluation Review Board (CERB)

**Background**

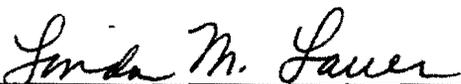
1. Section 2-146 of the Montgomery County Code provides for the appointment every ten years of a citizen's Committee Evaluation and Review Board (CERB) to review the Montgomery County Boards, Committees and Commissions. The most recent CERB was appointed in March 2002 and submitted its final report to the County Executive and County Council in July 2004.
2. The Council adopted Resolution No. 7-1138 establishing the Agricultural Advisory Committee on April 3, 1973.
3. The Council adopted Resolution No. 8-705 restructuring the Agricultural Advisory Committee on March 16, 1976.
4. Bill 20-09 would create the Agricultural Advisory Committee in County law.

**Action**

The County Council for Montgomery County Maryland approves the following resolution:

Resolution Nos. 7-1138 and 8-705 establishing and restructuring the Agricultural Advisory Committee are repealed.

This is a correct copy of Council action.

  
Linda M. Lauer, Clerk of the Council

MEMORANDUM

March 8, 2011

TO: Jean Arthur, Senior Legislative Aide  
Montgomery County Council

FROM: Jerry Robinson, Acting Executive Director  
Housing Opportunities Commission

SUBJECT: Cross-Agency Consolidation of Attorney Functions



The Housing Opportunities is not one of Montgomery County's tax supported agencies. It has had its own legal counsel to deal with the myriad of issues that are unique to it as a housing authority, housing finance agency and property owner/manager. This is a niche that is not easily matched by the current staffing and portfolios in the County Attorney's Office.

For example, HOC's attorney's duties now run the gamut of landlord-tenant (from the perspective of a property owner) cases to real estate finance, employment law, administrative law and other highly specialized areas like HUD public housing and housing choice voucher regulations. More importantly, HOC requires counsel who can provide bond and audit opinions.

Staff in the Office of the County Attorney would need to be exclusively dedicated to this assignment and to develop the required expertise. Duties would need to include attending Commission and other meetings, gaining familiarity with the Commission's procedures, giving opinions and advising commissioners on meeting conduct and procedures. A representative would have to be available regularly to attend meetings of staff, committees and the Commission itself and provide timely review of documents, resolutions and contracts.

There is some potential for conflicts as well since the County often makes loans to HOC for its developments. These are often secured by notes and other loan documents which are currently negotiated between the County Attorney's Office and the Commission's counsel. Since the Commission is an independent agency, there is reason to keep the separation between the two parties to these loan transactions.

There are several activities that would still require separate counsel, such as federal tax credits or special HUD finance deals, collective bargaining and municipal finance. Attorneys in those fields are unlikely to work for the salary level in the County Attorney's Office. Also, they would need to contract out the real estate services for complex real estate transactions because the County Attorney would need more extensive support to do those functions than the office currently has. Hiring additional paralegal staff might be another alternative.