



MONTGOMERY COUNTY ETHICS COMMISSION

Annual Report for Calendar Year 2012

Introduction

Section 19A-6(f) of the Montgomery County Public Ethics Law requires the Ethics Commission (the Commission) to publish an annual report. The report is to summarize the actions the Commission has taken during the preceding calendar year and describe each waiver it approved and advisory opinion it issued during the year.

The mission of the Commission is to promote the public's trust of County government through the independent administration, including enforcement, of laws designed to ensure the impartiality of County employees, including elected officials, in the execution of their responsibilities. It does this through the administration of three programs: financial disclosure, lobbying disclosure, and outside employment approval -- and through myriad other activities.

The Commission currently has five members which is a full complement under the Public Ethics Law. They, along with the respective dates of their terms' expiration, are:

Stuart D. Rick, Chair	10/2013
Kenita V. Barrow, Vice-Chair	10/2015
Rachel B. Brown	10/2015
Mark L. Greenblatt	10/2016
Nina Weisbroth	10/2013

In April 2012, Mr. Antar Johnson's term expired. Kenita Barrow was reappointed in May 2012; Rachel Brown was appointed in July 2012 filling Antar Johnson's vacated position; and Mark Greenblatt was appointed in November 2012, filling the position vacated by Gilles Burger in June 2011.

Calendar year 2012 was a year of great transition for the Commission. In April 2012, the Montgomery County Inspector General issued his report "Review of Certain Montgomery County Ethics Activities." The Inspector General's report is found at:

http://www.montgomerycountymd.gov/OIG/Resources/Files/PDF/IGActivity/FY2012/mceec_fin_al_report_apr_2012.pdf

Montgomery County Ethics Commission

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This report detailed weaknesses in the design and administration of the Financial Disclosure System and observed that placing all of the staff responsibilities of the Commission in the hands of two persons causes a number of concerns in how the Commission addresses its mandates.

Reflecting the commitment of the County Executive and the County Council to the importance of the mission of the Commission, a new Program Manager I position was created, advertised, and filled in November 2012. This increased the staff for the Commission from two to three. Also, the Commission was allowed to abolish its Program Specialist I position and to create a Program Specialist II position. These personnel actions, along with a commitment to a new online lobby registration and reporting system, reflect the commitment Montgomery County Government made to its ethics program in calendar year 2012.

In addition to funding personnel changes, funding for an online lobbying registration and reporting system was provided for in the FY 2013 budget. In the fall of 2012, a new lobbying registration system was implemented and is now operational. It is expected that with the continued development of electronic systems to manage the Commission's programs, the Commission will be in a greatly enhanced position to execute its mission.

The Commission met in regular Public Meetings ten times during 2012. The Commission also conducted ten Administrative Meetings following its Public Meetings. (The Commission holds administrative meetings following its regular monthly meetings to consider matters that are non-public.) During the year, Commissioners attended two County Council work sessions relating to the Commission. One Commissioner served on the interview panel for the selection of the Program Manager I position.

Major Objectives for 2013

The Commission will continue to focus on the management of its core programs, the financial disclosure system, the lobbying program and the outside employment approval process. As identified in the Inspector General's report, the financial disclosure system suffers from many weaknesses. To address these, the Commission will continue to work with the Chief Administrative Officer, the Office of Human Resources, the Department of Technology Services, and the County Attorney in particular, to make incremental improvements in the existing system. Separately, the Commission will be reviewing the financial disclosure provisions in the Public Ethics Law with a view towards suggesting improvements that conform Montgomery County law to State Ethics Law requirements, consistent with making the provisions relevant to the prevention of conflicts of interest in Montgomery County.

As systems are put in place to manage information requirements, Commission staff will be able to focus more on having the Commission fulfill the function in County government that it should: promoting compliance (through training and education, for example) with Public Ethics Law requirements and proactively taking steps to improve the ethics laws and regulations to best serve the taxpayers of Montgomery County.

Status of Programs and Operations

This annual report summarizes the work of the Commission in each of the following areas:

- 1. Financial Disclosure**
- 2. Outside Employment**
- 3. Lobbying**
- 4. Complaints, Investigations and Hearings**
- 5. Advisory Opinions, Waivers, Advice**
- 6. Education**
- 7. Legislative and Regulatory**
- 8. Coordination and Outreach**
- 9. Administration**

1. Financial Disclosure: The Public Ethics Law requires filing of financial disclosure reports by certain County employees. The Commission prepares and distributes financial disclosure forms and maintains reports filed by employees; it currently administers the electronic filing system for reporting and coordinates with the Office of Human Resources and all County agencies regarding the status of filers, and resolves all anomalous circumstances and questions associated with the filing of financial disclosure reports and the administration of the system designed for that purpose.

The Public Ethics Law promotes the public's confidence in the integrity of County employees by requiring certain employees, including elected officials, to file financial disclosure reports that are required to be made publicly available. The ethics law also requires certain other employees to file confidential disclosure reports. The reports detail financial holdings and relationships so that conflicts of interest between an employee's County duties and the employee's personal activities and interests can be identified and addressed. The Public Ethics Law requires filings of financial disclosure reports when individuals are first appointed to a filing position, annually thereafter, and when terminating from a filing position.

There are about 1800 filers of financial disclosure forms by County employees annually. The program is administered by the Commission's staff through an electronic filing system. Successful program administration is dependent on the accuracy of the database of employees and their status as filers. It is also dependent on the employees who file the forms and on County senior management who are the designated reviewers of forms. Lastly, it is dependent on County managers to follow-up with employees who have not filed and to obtain final reports from employees who are terminating from filing positions. Members of certain County boards, commissions, and committees, who are considered "public employees" for purposes of the public ethics law, are also required to file reports. As these persons are not normally tracked in the County's personnel system, a separate tracking system has been established for these persons.

2. Outside Employment: The Public Ethics Law requires that County employees obtain approval from the Commission prior to engaging in any employment other than County employment. The Commission prepares and makes available Outside Employment request forms and administers a process pursuant to which approvals are obtained. The Commission's staff prepares all requests for consideration by the Commission, to include obtaining additional information from requestors and County agencies and conducting preliminary legal analysis of requests. The Commission approves requests, as appropriate, setting conditions on approval as necessary to ensure compliance with ethics requirements, and staff notifies requestors by letter of the disposition of requests by the Commission. The Commission publishes approved Outside Employment information required to be made publicly available by the Public Ethics Law.

The Commission processed over 900 requests for outside employment approval in calendar year 2012. Pursuant to the Commission's practice, Commission staff inputs data from the submitted requests onto a master template that provides a vehicle for Commission review of submissions. The manual input of data is extremely detailed and time consuming.

During 2011, plans were made to pursue electronic filing of outside employment requests in 2012. This has been an objective of Commission staff for several years. Unfortunately, this project was not funded. Commission staff will continue to work with the Department of Technology Services to develop an online request system for the outside employment approval process. One challenge to this project is the differing forms that have been generated as regards outside employment requests for employees generally and the form that has been generated specifically for police requests. The form that the police use requires substantially greater and different information, thereby more than doubling the scope of the project to create an online application system.

3. Lobbying: The Public Ethics Law requires certain persons who spend or receive over \$500 to communicate with County officials and employees to register as lobbyists and to file semi-annual activity reports with the Commission. Annual registration fees are required and are paid to the Commission and processed and deposited into the General Fund. The Commission publishes and updates information required to be made public by the Public Ethics Law. A list of the registered lobbyists in the County during 2012 can be found at:

<http://www.montgomerycountymd.gov/Ethics/Resources/Files/xls/lobbying2012web.xls>

In 2012, the Commission and the Department of Technology Services worked on an online registration system for lobbyists. This system was implemented in December 2012, and all new registrations for 2013 are being filed using the new system. The new system is intended to make registration easier for registrants, to allow data to be captured electronically rather than by manual process by Commission staff, and to promote transparency for the public in accessing the online data. The Commission is continuing to work on a second stage of the lobbying registration and reporting online project. Lobbyists are required to report semi-annually on their lobbying activities. The Commission will be replacing the outdated manual form used for this purpose with an online system. The online filing of these forms will greatly facilitate the filing

of the forms and facilitate the management by the Commission of the information reported. Again, transparency to the public of the filed information will be an important advantage of the new system.

Another change was made by the Commission to the lobbying program as regards the charging of lobbying fees. This change is discussed below in the summary of Advisory Opinion 12-11-012.

4. Complaints, Investigations and Hearings: Pursuant to the Public Ethics Laws, the Commission receives complaints and, as appropriate: conducts investigations, conducts hearings, makes findings, and imposes sanctions and penalties.

During 2012, no new complaints of ethics violations that fell within the jurisdiction of the Commission were received; one matter that had resulted in a Commission hearing in December 2011, resulted in a finding of an ethics violation by the County's former Inspector General. The Memorandum and Order from the Commission pertaining to that finding is found at:

<http://www.montgomerycountymd.gov/Ethics/Resources/Files/memoandorder3-16-12.pdf>

There were no pending complaints or investigations at the close of 2012.

5. Advisory Opinions, Waivers, and Advice: In accordance with the Public Ethics Law, the Commission answers inquiries on the application of the ethics law, publishes opinions, and grants waivers of ethics law requirements, as appropriate. The Commission issued eight advisory opinions during calendar year 2012 which are published at:

<http://www.montgomerycountymd.gov/ethics/decisions/opinions/2012.html>

and granted four waivers which are published at:

<http://www.montgomerycountymd.gov/ethics/decisions/waivers/2012.html>,

and issued one general guidance memorandum published at:

<http://www.montgomerycountymd.gov/Ethics/Resources/Files/holidaypartyguidance.pdf>.

Summaries of the opinions, waivers and guidance appear below. The decisions made were limited to the facts presented and no assumption should be made to the application of the opinion to any other circumstances.

AO 12-01-001 concerned an inquiry as to whether an employee could accept travel reimbursement for attending an information technology conference from one of the sponsors of the event. Because the presenter of the check did not fall into any of the categories of prohibited sources of gifts, the travel reimbursement could be accepted. The employee would not be able to

seek travel reimbursement from the County with respect to expenses already paid for by the outside source.

AO 12-02-002 concerned whether a former public employee was restricted from taking a job with a County vendor. The Commission determined that the employee was not restricted from working for the vendor nor limited in what the employee could do for the vendor while working for it. This was due to the Commission's conclusion that the former employee did not "significantly participate" in matters relating to the system the contractor was involved with where his position was to "troubleshoot" system issues, and not to evaluate or manage the Company's contractual arrangements with the County.

AO 12-03-005 concerned whether an employee could accept a valuable prize received at a computer security conference. The Commission determined that under the facts of the particular case, the employee would not have been entitled to keep the valuable prize, because the entity giving the prize was doing business with the employee's County agency.

AO 12-04-007 addressed whether an employee could keep a \$200 gift certificate received as a result of participation in a drawing. The Commission determined that under the specific facts presented, the employee would not be able to keep the gift certificate. While the gift was not explicitly prohibited under the gift rules, the Commission determined that the employee's entry into the drawing by using his County business card amounted to prohibited solicitation of a gift.

AO 12-04-006 was a third in a series of opinions (1995-3 and 11-10-005) addressing fundraising activities of Montgomery County Police on behalf of the Special Olympics. The core question was whether an exception to the prohibition on certain solicitations could be utilized, and particularly, whether the County Executive can authorize the Police Department to fundraise for a charity where a third party for-profit enterprise is integral to the fundraising program. The Commission determined that the County Executive can authorize the Department to be involved in the proposed charitable activities. The Commission suggests a number of considerations that should be taken into account by the County Executive before granting such fundraising authority.

AO 12-06-008 concerned the Arts and Humanities Council (AHC MC) and whether implementation of a proposal regarding AHC MC structure would create a conflict of interest under County ethics law. The Commission provided generic advice as to how the proposed structure might cause conflicts of interest under County law.

AO 12-07-010 answered an inquiry from a Board Commission or Committee (BCC) member who was interested in applying for the executive director position of the very BCC the individual was a member of. The Commission advised that the BCC member should resign the individual's BCC position before applying for the vacant executive director position for the BCC.

AO 12-11-012 concerned the manner in which lobbying fees are charged to lobbyists registering in Montgomery County. The Commission concluded that all lobbyists meeting the requirements for registration be registered for each client represented and that all lobbyists pay the annual

registration fee. This constituted a change in practice as some lobbyists (who were not the registering lobbyists) had previously been identified on registrations without paying the annual registration fee.

The Commission issued four waivers in 2012.

Waiver 12-02-03 addressed the statutory conflict created by a request of a doctor at the Department of Health and Human Services to have outside employment with an entity (a hospital) doing business with the County. The Commission determined that the proposed employment was not likely to create an actual conflict of interest.

Waiver 12-02-004 addressed a request for a waiver from the prohibition on outside employment with a vendor of the employee's department. The Commission determined that subject to the condition that the employee, in his county job, not work on matters affecting the outside vendor, that the outside employment activity would not create an actual conflict of interest.

Waiver 12-06-009 addressed a request from an employee who wanted to seek employment (to begin after service with the County) with a manufacturer who did business with the County. The employee participated personally and substantially as a County employee in matters affecting the manufacturer. The Commission determined that no actual conflict of interest would exist if the employee recused himself from all matters affecting the potential employer. Furthermore, the waiver was issued contingent on the employee not representing the manufacturer before the County during his employment with the manufacturer.

Waiver 12-08-011 involved a request from a part time librarian to work for the Friends of the Wheaton Library Book Store. Based on the facts presented to the Commission, the Commission granted the waiver as long as the requestor declined assignments to work at the Wheaton library and contingent on the requestor's not exercising any County authority over arrangements between the County and the Friends of the Library and its chapters.

In addition to the advisory opinions and waivers listed above, the Commission issued "Guidance on Attendance at Holiday Parties and Other Celebrations." This guidance was issued after an inquiry was received from a member of the public as to the propriety under the gift provisions of the County ethics law of County officials, including elected officials, attending holiday celebrations sponsored by lobbyists and persons doing business with the County. The guidance was intended to provide insight to the gift prohibitions in the ethics law and the extent to which exceptions to the gift prohibition would apply to attendance at holiday parties and similar events.

6. Education: The Commission conducts public education and other information programs regarding the Ethics Law. With the exception of Commission staff providing instruction on filling out and review of financial disclosure forms, ethics education has been handled primarily by the County Attorney's Office. Commission staff focused on other priorities in 2012 and intends to increase its role in 2013 in educating County employees of their obligations under the Public Ethics Law.

7. Legislative and Regulatory: The Commission recommends and prepares new ethics legislation and regulations. Pursuant to new State requirements (Senate Bill 315 (Chapter 277 of the Acts of 2010),) the Commission is required to certify on October 1 of each year that Montgomery County's Ethics Law is equivalent to or more restrictive than State Ethics Law as regards elected officials. This requirement was substantially met in 2012 through a letter to the State Ethics Commission in which the Commission explained the steps it was taking to address the requirements of the State law.

In 2011, the Commission began a collaborative process with the County Attorney's Office and the County Council's Legislative Attorney to review the County's ethics laws. In the April 2012, the Commission forwarded a draft of some proposed amendments to the Public Ethics Law to the State Ethics Commission. Counsel to the Commission attended a meeting of the State Ethics Commission in May 2012 to discuss the proposal. No formal comment has been received by the Commission to its April 2012 proposal. Subsequently, in October 2012, the Commission considered and approved a proposed approach to a redrafting of amendments to financial disclosure portions of the Public Ethics Law. Thematically, the approach is to align financial disclosure reporting with possible conflicts of interests, the primary objective being learning what assets or relationships an employee has that may be at odds with the execution of the employee's County job. The Commission anticipates further development of legislative proposals in 2013.

8. Coordination and Outreach: The Staff of the Commission coordinates with the County Attorney's Office and the Office of the Inspector General as necessary on legal and investigative matters; the Staff also serves as the principal public resource on the County's ethics laws, to include managing a website that reflects Commission programs, activities, and publications such as annual reports, approvals of outside employment requests, semi-annual lobbying data, and waivers and opinions. In recent years, reductions to the Commission staff resulted in reduced staff attention to its management of its website. The hiring of a new Program Manager in November 2012 has substantially improved the Commission's ability to fulfill its transparency mission.

9. Administration: The Staff of the Commission is responsible for assuring that Commission meetings are run in accordance with the Open Meetings Act and other applicable law. The Staff informs and advises the Commission as to all material matters under its jurisdiction; Commission staff are also responsible for budget, procurement, human resources, and resource management for the operation of the office in accordance with Montgomery County policies, and attends required training in these and other office management areas.

For the Commission:

Respectfully Submitted,



Stuart D. Rick, Chair

February 19, 2013

Date

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