



# Legal Views

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*A Resource from Montgomery County's Office of the County Attorney*

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## The Hybrid Notice System

**Nowelle Ghahhari**

Many Montgomery County Housing Code Inspectors and other enforcement personnel have taken to sending notices, required to be sent via certified mail, by both certified mail and first-class mail. But what happens when the certified mail copy comes back “unclaimed” and the first-class copy does not come back as undeliverable? Has the Defendant been given proper notice?

The Court of Appeals recently addressed this issue within the context of a foreclosure proceeding. The Trustee conducting the sale followed State requirements and sent the required notices by both certified and first-class mail three times. Each certified copy referenced that an identical letter had been sent via first-class mail, and each first-class copy referenced that an identical letter had been sent via certified mail. All three of the certified copies were returned “unclaimed,” but none of the first-class copies were returned. The Defendant did not receive notice of the sale until after it occurred.

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## Internal Affairs Process – Montgomery County Police

**Chris Hinrichs**

Montgomery County employs approximately 1,200 sworn police officers. These police officers protect the lives and property of nearly one million residents. They are called on to do a wide array of duties, from assisting in community events, to engaging dangerous criminals. The responsibilities involved in being a police officer can be stressful and life threatening at times.

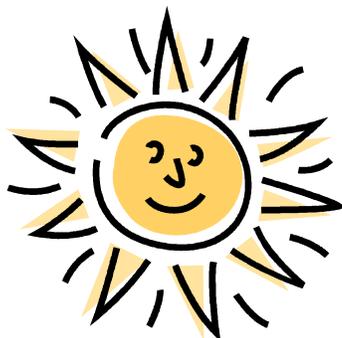
Montgomery County takes great pride in its police department and strives for excellence from its officers on a daily basis. However, for various reasons and on rare occasions, people within Montgomery County may take umbrage with an officer’s actions. Sometimes, these incidents can be resolved amicably through dialogue with the officer. On less frequent occasions, individuals may feel so aggrieved they file a “formal complaint.” As a result, the police department maintains an Internal Affairs Division (IAD). The IAD investigates and administratively prosecutes police officers. The alleged offenses range from the use of offensive language, neglect of duty, abusive authority, to excessive force. Fortunately, the result of an investigation leading to a sustained charge against an officer is not a regular occurrence and many officers are exonerated or otherwise cleared by the evidence.

An investigation is usually initiated when a person contacts the IAD. The IAD sends a complaint form, upon request, to any individual. That individual submits the complaint form directly to the IAD. Alternate forms of filing a complaint may also be acceptable. (Complaints involving excessive force generally require a sworn statement be filed with the department within 90 days of the incident.) If it is

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The Defendant’s claim before the Court of Appeals was that the State’s foreclosure notice scheme failed to provide her due process under the Fourteenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights. The Court affirmed the scheme, explaining that, in determining whether it affords sufficient due process, actual receipt of notice is not the proper test. The proper test is whether the means selected were reasonably calculated to inform persons affected. The Court further emphasized that notice by mailing is ordinarily presumed to be sufficient.

The Court concluded that, because the Maryland foreclosure scheme involved a hybrid system of both certified and first-class mail, it passed Constitutional muster because it afforded notice in even the worst-case scenario of all certified mail notices being returned “unclaimed.” The Court explicated that, although all three certified mail notices were returned “unclaimed,” none of the first-class mail notices had been returned. Hence, the Trustee had no knowledge that the Defendant had not received any notice of the foreclosure sale. The Court noted, however, that its holding would have been different if the first-class mail copies had been returned undelivered, or the certified mail copies had been returned as something other than “unclaimed.” “Reasonable follow-up measures” would have been required of the Trustees in such case. ❖

*Griffin v. Bierman*, 403 Md. 186 (2008).

**Internal Affairs Process**

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determined that the complaint has merit, it is placed onto one of two tracks. Generally, if the alleged offense is considered minor, the IAD may send the complaint directly to the officer’s supervisor and the incident may be resolved through appropriate counseling. Otherwise, a complaint is categorized as “formal” and a traditional IAD investigation is launched.

An IAD investigation takes approximately 90 days. Witnesses are interviewed and evidence is collected. Maryland’s Law Enforcement Officers’ Bill of Rights (LEOBR) grants an involved officer numerous rights that must be recognized throughout the investigation and subsequent administrative hearing. When the investigation is completed, the involved officer’s commander reviews the

investigation and produces “findings” that may result in “sustained” charges. Next, the Internal Investigatory Review Panel (IIRP) reviews the commander’s findings and makes its own recommendations to the Chief. Finally, the Chief reviews both the Commander’s findings and the IIRP’s findings and issues the final decision as to both factual findings and discipline.

If the Chief sustains a finding, the involved officer is then administratively charged with a violation. (The administrative process under the LEOBR has no bearing on ancillary civil proceedings against an officer or the County or criminal proceedings against a complainant.) An officer will often elect to have an alternate hearing board convene rather than accept the charges so the case can be heard by a hearing board. An alternate hearing board consists of one officer selected by the union, another officer selected by the Chief, and a Chairperson (non-officer) selected from a panel. The hearing is conducted much like a traditional trial and during the trial evidence is presented and witnesses testify. Complete cooperation from a complainant during the hearing (and investigation) is usually necessary in order to have a successful outcome. The hearing board considers the evidence, renders a verdict, and imposes discipline in accordance with the verdict and the past performance of the officer.

A complainant should keep in mind that the Chief cannot reject a verdict and cannot influence the imposition of discipline once imposed by a hearing board. As a result, the hearing board maintains all authority and responsibility as to the outcome of a case brought against an officer. Generally, an alternate hearing board will issue discipline ranging from oral admonishment to suspension. IAD can be contacted at 240-773-6000. ❖



# The Check Is in the Mail

**Scott Foncannon**

Just when you think you've seen it all, another clever criminal comes up with an easy money, get rich scheme. In the one that surfaced recently, Montgomery County was targeted as a possible victim, together with the consumer. The County was notified that fraudulent Montgomery County checks were being mailed to people throughout the country, along with a cover letter that asked the payee to cash the check and use the funds to pay an administrative fee for some award or activity.

One letter notifies the consumer that he or she is the lucky recipient of a \$50,000.00 grant from North American Grant, Inc. Enclosed with the announcement is a check from Montgomery County in the amount of \$2,995.29. The recipient is directed to cash the County's check and send the money to the company as payment for a federal and international administrative fee. The letter states that the grant will be delivered within two business days. A second letter notifies the recipient that he or she has been selected to be a mystery shopper in a consumer research program. The recipient is asked to cash the enclosed check from Montgomery County for \$2,995.29 and send a money gram for that amount to a

training agent. This activity is the first step in training as a mystery shopper. The checks enclosed with the letters are virtually identical to Montgomery County checks, down to the electronic signature of the Director of Finance. So far, these checks have turned up in California, North Carolina, and Maryland.

Although identity theft has gotten the majority of headlines as the fraud of choice, in this day and age, consumers must be ever vigilant with telephone calls, emails, and responses to any correspondence received. Financial fraud is a sophisticated criminal enterprise that victimizes many people each year. Carefully read and review all solicitations and correspondence before responding and, if it sounds too good to be true, it usually is. **Never** give personal financial information to anyone over the phone or the internet.

Recently, the IRS issued a warning about a check scam that uses the IRS's name as the bait. The fraud convinces people to provide personal financial information in order to get tax refunds and rebates. Montgomery County's Office of Consumer Protection notified the public of this scam through its website, <http://www.montgomerycountymd.gov/ocptmpl.asp?url=/content/ocp/index.asp>. This website also posts helpful and interesting information regarding consumer issues and the Office sponsors programs to educate consumers that promote protection from financial fraud.

While the County has many safeguards in place to prevent these checks from clearing its accounts, private accounts and assets may not have the same safeguards. Do not hesitate to contact your local law enforcement agency or consumer protection agency if you believe you are being victimized. If you have questions or concerns about a possible check fraud scam, <http://www.fakecheck.org> is a good source of information. ❖



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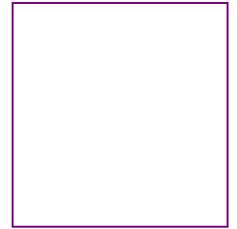
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**Legal Views** is a quarterly newsletter prepared as part of the County Attorney's preventive law and education efforts. This information is not legal advice, but an informative tool. While we attempt to ensure the accuracy of information, the informal nature of Legal Views does not allow for thorough legal analysis. If you have an interest in a reported article, please contact us. If you wish to be placed on our mailing list, please send your request with your full name, address, and phone number.



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ADDRESS CORRECTION REQUESTED

## Fellow Travelers

*A lot of stress results from being too proud or stubborn to ask for directions. Not just how to get to a specific place, but directions for living life. Be willing to seek out the advice and help of others further along the road you wish to travel.*



*Stress Busters*, by Katherine Butler