



Legal Views

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Volume 14, Issue 3

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

August 2009

Isiah Leggett, County Executive

Leon Rodriguez, County Attorney

Accept the Challenge – Focus on the Details!

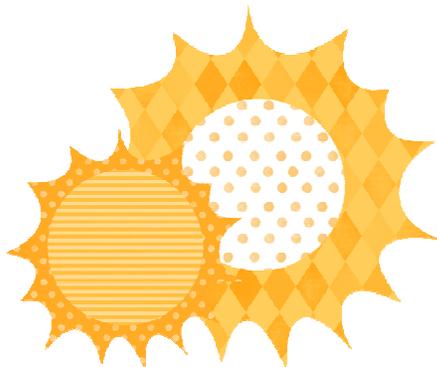
Karen Federman Henry

As we recover from the year-end crush of contract reviews, it seemed like a good time to provide some helpful hints for those of you who are lucky enough to serve as contract administrators (and those of you who supervise or select them). During FY09, this Office reviewed almost 700 contracts for the County. Those reviews do not begin to scratch the surface of the issues faced by contract administrators during the year as payments become due, or vendors fail to perform, or the needs of the County change. For all of these issues, the contract administrator is essential to working through the necessary details. This article seeks to capture a few highlights for all of us to keep in mind when your department needs goods or services.

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We Would Like to Hear From YOU, Our Readers!

Christine Collins

In the words of H. L. Mencken, “The capacity of human beings to bore one another seems to be vastly greater than that of any other animal.”

We, the Legal Views writers (lawyers every one of us), struggle in our quest to make certain that our readership is not bored by the articles we write—lest we fall squarely into Mencken’s quote. We want to be informative, and we want to fulfill the goal of our humble publication – to provide insight into issues affecting our clients. Our editors, a lofty, yet often unappreciated group, have suggested we try to fulfill that goal by injecting humor and by minimizing the use of obscure legal terms. But let us face reality, it is not easy to inject humor into an article about the American Recovery and Reinvestment Act of 2009 (I have issued this challenge to my colleague whose article appears inside this issue.).

We ask you, our reader, to provide feedback about our publication. What have you liked; what have you hated; what would you like to read about in the future; how can we make our publication better? We are open to any type of feedback that you are willing to provide, and do not spare our feelings. Heck, lawyers have oft been accused of not having any feelings, so you need not fear upsetting us!!

Please respond by sending an email to any one of the following:

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Make sure that your contract administrator has adequate resources. The selection of a contract administrator can make a significant difference in the successful acquisition of goods and services. Make sure that the person assigned has the time and ability to handle the task. All contracts require payment for goods and services received. For goods, this is usually uncomplicated, but for services, this may involve review of a report or other performance measure. The contract administrator must become familiar with the scope of services in the contract and then evaluate whether the contractor has performed in accordance with the contract. The contract administrator also is responsible for ensuring that the compensation requested meets the compensation term in the contract.

Work with the Office of Procurement. Despite a department's best efforts, there are often times where a question arises or a contract needs to be amended. The Office of Procurement can work with the contract administrator to identify alternatives and appropriate methods. In fact, another department may have a contract in place that could be utilized to serve your needs without too much effort—the Office of Procurement may be able to provide that information.

Provide explanation and back-up documents when submitting items for review by the Office of the County Attorney. The attorneys who review contracts may often have questions regarding a particular document. The goal is to ensure that your contracts and amendments meet legal requirements as well as your needs. Including a copy of the request for proposals with a new contract or the main contract and any amendments with a new amendment will expedite the review by giving the attorney reviewing the document more background. Even with the materials, questions may come up, which leads to the next tip.

Build in review time. There will always be last-minute items that cannot be avoided. For most contracts, however, there should be time for comment, edits, and even major changes without running into a problem. The Office works toward reviewing documents within 1 to 3 days, but that does not account for any questions, revisions, or additional negotiation that may become necessary. With almost 700 documents to review, it does not take much imagination to see that a complex contract could take

almost a month to complete.

The procurement process is a group effort that succeeds when we work together, and the contract administrator can make your procurement experience a good one! ❖

The Quick and Dirty on Service of Process

Nowelle Ghahhari

There may be a time when you, as a County employee, are sued for something you did in the course of your employment or you may be served with a subpoena to appear as a witness for a specific court-related proceeding, such as a deposition or a trial. There are times when County employees are required to serve certain documents on other persons, like the police serving criminal charges on someone or a code inspector serving a citation. Legal documents must be properly served on the intended party. In order to determine whether proper service of process was made, there are three questions that must be answered: 1) What is being served? 2) How should it be served? and 3) Upon whom can it be served?

There are various court-related documents that must be served *in personam*, which means a particular person must be provided with a copy of the particular document. *In personam* service is obtained by hand delivering a copy of the complaint and summons, or other papers, to an individual, or to their agent by appointment or by law, at the individual's home, or by leaving the papers with an individual of "a suitable age and discretion" at their home. Service of complaints and summons, including such documents as civil citations, generally, must be *in personam* also. Likewise, subpoenas must be served *in personam*, although, if the person being subpoenaed is represented by an attorney, the subpoena may be mailed to the attorney via regular mail.

In personam service may be made on corporate entities, partnerships, and associations by serving certain designated people within that organization. For

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American Recovery and Reinvestment Act of 2009

Scott Foncannon

The American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law by President Obama on February 17, 2009. The stated purpose and intent of the law is to retain and create jobs, as well as to promote economic recovery. The Act hopes to achieve the purpose and intent through a combination of tax cuts, tax incentives, direct aide to individuals, state fiscal relief, and direct federal government spending. The total fiscal impact is estimated at \$787 billion.

The most often asked question is, “How much money will Montgomery County receive?” Funds will be distributed to states, counties, cities, and other public entities through two primary means – allocation grants from the state, based on a formula, and competitive grants that come directly from the Federal Government to the public entity. The exact amounts will remain unknown until the County actually receives the money. However, between allocation and competitive grants, the County hopes to receive in excess of \$150 million.

One of the central aspects of the Act is the transparency and reporting requirements. Recipients of ARRA funds are required, among other things, to report the jobs created and retained and are subject to audit. Sanctions for fraud, waste, and abuse include requiring repayment of the ARRA funds. Another limiting aspect of payment is that the funds, generally, may not be used to replace or substitute for existing appropriated funds in the County’s budget. Other strings are also attached to the funds, including Buy America provisions, Davis-Bacon wage requirements, and whistleblower protections. Montgomery County has launched a website to track the progress of the funds. The State of Maryland and the Federal Government also maintain websites with ARRA information.

The challenge was thrown down by my colleague to make an effort to insert some humor into the discussion about the Recovery Act. After several drafts with that in mind, I resolved that, indeed, there is little humor in this 1500 page piece of Federal legislation, designed to save the largest economy in the world. There was also the potential for making some comment that could be interpreted as political or bias. If, however, you are so inclined, I would be happy to participate in some academic discussions about the legislation and its various regulations, OMB circulars, or the Council of Economic Advisors’ model for job estimation, all of which are well written, informative, and very interesting. So for those of you who are interested, let’s set up a series of “lunch and learn” sessions in the Library. I await your calls... ❖

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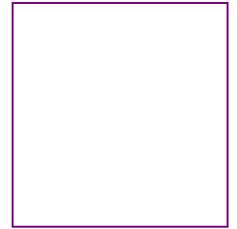
Patricia P. Via

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

Service of Process

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example, if you are serving a civil citation on an owner of a business which is a corporate entity, service may be made on the resident agent or an officer of the corporation. Different entities have different designated persons who are authorized by law to accept service. You should contact the Office of the County Attorney if you have questions about service for these types of entities.

Proper service of court documents is important in allowing a matter to proceed properly. Certain time periods may be tied to the date of service of a document, such as the time to respond to the document. So, know what you are serving, how to serve it, and who to serve. Usually, these types of service will be handled by the Office of the County Attorney, but if you are served with an item, please contact the Office to determine what further action may be needed. ❖