

MFP COMMITTEE #2&3  
April 21, 2010  
**Worksession**

## MEMORANDUM

April 19, 2010

TO: Management and Fiscal Policy Committee

FROM: Essie McGuire, Legislative Analyst *Essie McGuire*  
Justina Ferber, Legislative Analyst *JF*

SUBJECT: **FY11 Operating Budget, Office of the County Attorney and the Ethics Commission**

Today the Management and Fiscal Policy (MFP) Committee will review the County Executive's recommended FY11 operating budget for the Office of the County Attorney and the Ethics Commission.

The following persons will be present for the worksession:

- Marc Hansen, Acting County Attorney
- Barbara McNally, Executive Secretary, Ethics Commission
- Phil Weeda, Budget Analyst, OMB
- Helen Vallone, Budget Analyst, OMB

In addition, Council Staff has invited Ethics Commissioners to attend the worksession.

The County Executive recommends shifting the functions of the Ethics Commission into the Office of the County Attorney. This packet will review both the FY11 budget for the County Attorney's office, and the recommended shift and restructuring of the Ethics Commission. The County Executive's recommendation for the Office of the County Attorney is attached on circles 1-6; this recommendation contains the recommended FY11 budget for the Ethics Commission.

### **OVERVIEW: OFFICE OF THE COUNTY ATTORNEY**

For FY11, the County Executive recommends total expenditures of \$4,692,810 for the Office of the County Attorney, a decrease of \$532,170 or 10.2 percent from the FY10 approved level of \$5,224,980. The County Executive's recommendation does not change the total number of positions, which will remain at 75 (72 FT, 3 PT), but reduces workyears from the FY10 approved level of 39.3 to 36.8 in FY11.

The major change recommended for the Office of the County Attorney is the shifting of the Ethics Commission. The Office will also abolish one position, shift three others, and continue to lapse four positions to achieve department savings. Table 1 below summarizes the changes.

**Table 1: FY11 Recommended Changes from FY10 Approved**

Lapse ACAIII, Public Interest Litigation	-\$49,930	-0.5
Lapse ACAII, Finance and Procurement	-\$96,740	-1.0
Lapse ACAIII, Human Resources and Appeals	-\$147,930	-1.0
Lapse ACAIII, Zoning, Land Use, & Econ. Dev.	-\$154,470	-1.0
Shift Ethics Commission functions	\$163,650	1.0
Shift ACAIII from DTS to OCA	\$122,540	1.0
Increase cost: Retirement Adjustment	\$25,350	
Decrease lapse assumption	\$16,120	1.5
Group Insurance Adjustment	\$15,070	
Annualize FY10 operating and personnel expenses	-\$34,090	
Decrease operating expenses	-\$111,510	
Furlough Days	-\$124,990	-1.5
Shift ACAIII from General Fund to Self Insurance Fund	-\$155,240	-1.0
<b>Total</b>	<b>-\$532,170</b>	<b>-2.5</b>

## **FY11 EXPENDITURE ISSUES**

### **I. POSITIONS**

The County Executive's recommendation does not change the total number of positions in the OCA budget. However, it includes one position abolishment and three position shifts. It also continues to lapse four attorney positions to achieve savings.

#### **Vacancies**

The County Attorney's office has 6 current vacancies as follows:

- ACAIII Human Resources and Appeals since 6/21/09
- ACAIII Public Interest Litigation since 7/1/08
- ACAIII Zoning, Land Use, and Econ. Dev. since 10/12/09
- ACAII Finance and Procurement since 7/18/09
- ACAIII HHS (Child Welfare) since 4/24/09
- County Attorney since 1/17/10

As this list shows, the County Attorney's office has been operating at a reduced complement for all of FY10 and most of FY09 due to the recent hiring freezes and savings plans. Mr. Hansen states that there are no vacancies in non-attorney, support staff positions. While those positions have been subject to the hiring freeze as well, there has been no turnover in support areas.

#### **Position Shifts**

The Executive recommends certain position shifts that will help redistribute staff efforts to address workload issues resulting from the length of the position vacancies.

1. The recommendation shifts a position that is currently charged back to the Department of Technical Services (DTS) to the OCA. OCA states that this position was fully dedicated to

DTS work and now will serve as general counsel to DTS but also have other responsibilities. This will result in DTS sharing counsel with other departments, as many other departments already do.

2. The recommendation shifts an attorney from OCA to the Self-Insurance Fund. This position shift also involves attorneys from the Insurance Defense Litigation and Public Interest Litigation divisions. **The net result of the shifts is one less attorney in the Public Interest Litigation division and the ability to fill the lapsed position in Child Welfare.** Filling the child welfare position is a priority is to help address caseload increases, as that position has been lapsed for just over one year. Council staff notes that this will affect the workload of the Public Interest Litigation division, as that division will lose one position in FY11 and also has a part time position that has been held vacant since July 2008.

**Council staff supports the position shifts and lapse as recommended by the County Executive.**

### **New Functions**

The Executive recommended shifting two new functions to the Office of the County Attorney. The function of the Ethics Commission is discussed in Part II below.

Council staff also understands that the proposed shift of Equal Employment Opportunity functions from the Office of Human Resources to the Office of Human Rights will have an impact on the work of the OCA. Executive branch staff report that if this shift is approved, the response to complaints filed with external compliance agencies (EEOC, Maryland Commission on Human Relations and Office of Human Rights) by an employee against the County will be investigated and prepared by the County Attorney's Office.

**Mr. Hansen states that to accomplish this additional work he would need to increase the hours of a current part-time attorney, which would require an additional \$44,200. Council staff understands that this additional funding is not reflected in the Executive's March 15 budget submission. The Committee may want to discuss this resource issue with OCA and OMB staff, understanding that it is contingent on the shifts in the Office of Human Resources and the Office of Human Rights.**

### **Caseload**

The County Attorney's monthly report gives work and caseload information in several key areas. Portions of the most recent monthly report are attached to this packet for review. Council staff highlights the following two areas:

1. **Child Welfare:** The table on circle 7 shows that the number of Child in Need of Assistance (CINA) and Termination of Parental Rights (TPR) cases is up significantly in FY10 to date. The figures show that in the first three months of 2010, the number of new CINA petitions filed is already 101 while the total number of CINA cases was 305 in 2009. The number of new TPR petitions in FY2010 is 39 to date, while a total of 44 were filed in all of 2009. This is a caseload area that has continued to increase in recent years.

2. **Debt Collection:** The debt collection figures on circle 12 show a significant decrease from 2009. They are closer to the figures for 2008, although still slightly lower. OCA staff states that this is due to two primary factors. First, the current economic decline affects the amount of debt owed and collected. Second, in 2009 the Office pursued and collected some very large debt collection cases that are not typical or likely to be repeated in this fiscal year.

**The Committee may want to discuss how the continued position lapse and abolishment combined with the potential for new functions added to OCA will affect these and other operations in the coming year.** Does OCA anticipate reduced efforts in specific areas, and if so, how can the impact be mitigated?

## II. ETHICS COMMISSION

### OVERVIEW: ETHICS COMMISSION

The County Executive's recommended budget for the Ethics Commission for FY11 is \$163,650 and 1.0 workyear in the County Attorney's office budget; \$154,693 is for salary and benefits for the Executive Secretary and the remainder is for operating expenses. This is a decrease of \$108,740 and 2.0 workyears from FY10.

(in \$000's)	FY09 Actual	FY10 Approved	FY11 CE Recommended	% Change FY10-FY11
<b>Expenditures:</b>				
General Fund	264,310	272,390	163,650	-39.9%
	-	-	-	
<b>TOTAL Expenditures</b>	<b>264,310</b>	<b>272,390</b>	<b>163,650</b>	<b>-39.9%</b>
<b>Positions:</b>				
Full-time	1	3	1	-66.7%
Part-time	2	-	-	
<b>TOTAL Positions</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>-66.7%</b>
<b>WORKYEARS</b>	<b>2.6</b>	<b>3.0</b>	<b>1.0</b>	<b>-66.7%</b>

### Ethics Commission Program

The Ethics Commission administers the County's Code of Ethics by encouraging and enforcing compliance and ensuring the ethical conduct of employees of the Executive Branch, County Council, selected Boards and Commissions, the Revenue Authority, Housing Opportunities Commission, Fire Corporations, and Rescue Squads. The Commission also serves in an advisory capacity to the Washington Suburban Transit Commission. The compliance goal is achieved through the following activities:

- ❖ **Education** – The Ethics Commission provides ethics education and training for County officials and employees and provides computer access to all reporting forms required under the Ethics law.

- ❖ **Financial Disclosure** – The Ethics law requires specific public officials and employees to disclose financial information to avoid potential conflicts of interest. Financial disclosure statements of over 2200 employees and officials are received and reviewed by the Commission staff.
- ❖ **Lobbying Registration** –Lobbyists are required to register and report lobbying activities involving the County government when income or expenditures exceed \$500. Commission staff must verify all registrations, invoice lobbyists for each client and process payments for over 250 lobbyists.
- ❖ **Outside Employment** –Employees and officials are required to obtain approval from the Commission to be engaged in outside employment. Over 1000 of requests for outside employment are received annually and are reviewed by staff for recommendation to the Commission.
- ❖ **Customer Service** – Staff responds to questions from employees, officials and the general public requesting assistance on filing disclosure statements, registering lobbyists, filing complaints, requesting opinions or waivers and seeking advice about ethics issues.
- ❖ **Commission** – The staff provides administrative support to the Commission which consists of five volunteer members.

### **Public Testimony**

Former Commission Chair Laurie Horvitz testified in opposition to the proposed shift of the Ethics Commission into the County Attorney's Office for the following reasons (testimony attached at circles 24-25):

- The budget cuts would undermine the effectiveness and impair the independence of the Commission.
- The activities of the Commission require considerable knowledge of the ethics law by Commission personnel. If the staff is reduced by 66%, then the Commission will not be able to perform all of its mandated functions in a timely or complete manner.
- The Ethics Commission cannot function independently and effectively if its staff is affiliated with the County Attorney's Office and supervised by that Office. By law, the Commission is structured as an independent and bipartisan body. The transfer would allow undue involvement by the County Attorney's Office over the affairs of the Commission. Such involvement is inconsistent with the intended independence of the Commission and applicable law.
- The proposed relocation would have a chilling effect on employees who communicate confidentially with the Commission.
- The Commission cannot perform certain sensitive tasks or supervise outside legal counsel while operating from the offices of the County Attorney.
- The Commission must appear to act independently from the County Attorney's Office and must, in fact, act and decide matters independently. The independence of the Commission and its staff must be preserved to the maximum extent possible.

## **FY11 EXPENDITURE ISSUES**

The major change in the Ethics Commission office budget is the abolishment of 2.0 workyears and the shift of the Executive Secretary for the Commission and its operations to the Office of the County Attorney. The two positions abolished are a Program Specialist I and Program Specialist II who assist the Executive Secretary in the day to day operation of the office and support the activities of the Commission. These positions are bargaining unit members.

### **Executive Rationale**

Council staff posed the following questions to Executive staff:

- What is the reason for moving the Ethics Commission into the County Attorney's office?
- How will the Commission retain its independence?
- Does this move indicate a change in the role of the EC staff toward the Commission?
- Will someone other than *the* County Attorney supervise Ethics Commission staff?
- Who will provide staff support to the EC staff and commissioners?
- Are there workyears available in the CA's office to devote to the EC?
- How familiar are CA staff members with the Commission and its financial disclosure and other processes?

Council staff met with the County Attorney and Executive staff who verbally responded to the questions and explained the consolidation of the Ethics Commission into the County Attorney's office as an effort to reduce costs and streamline processes. The County Attorney has legal and technical resources not currently available to the Ethics Commission and full-time IT support staff that can assist the Commission to improve its processes.

Executive staff believes that the Commission will be as independent as it is now since staff will be supervised by the County Attorney's office rather than the County Executive's office. Executive staff does not believe the role of Commission staff will change. The County Attorney believes that the firewall policy in the Attorney's office will provide the confidentiality required by the Commission and its staff. Commission staff will be supervised by the Human Resources Attorney who currently is Counsel to the Commission and paralegals in the office will assist the Executive Secretary and will quickly become familiar with the financial disclosure and other processes.

### **DISCUSSION QUESTIONS**

The proposed shift of the Ethics Commission into the County Attorney's Office raises several questions:

- Will the Commission and its staff be able to preserve independence if they are dependent on the County Attorney's office for space and staff support?
- Does the downsizing of the Commission staff send the wrong message about importance of the role of the Ethics Commission and diminish the role of the staff?

- Will the Commission be as effective under the supervision of the County Attorney?
- Will the Commission function more effectively under the supervision of the County Attorney?
- Why abolish positions possessing specialized knowledge about a necessary function of County Government?
- Does the staff in the County Attorney's office have time available to support the activities of the Commission and how will conflicts in prioritization of work be resolved?
- How does the County Attorney's office provide the same level of confidentiality afforded to individuals making inquiries at the current Commission office location?
- Does the relocation of the Commission office in the County Attorney's Office and the changes in supervision of the staff conflict with the County Code? (The Code provides that the Commission must be allocated merit system staff, office space, equipment, and supplies within the limits of the Commission's appropriations. The Chief Administrative Officer appoints or assigns staff to the Commission after receiving a recommendation from the Commission. Subject to the general supervision of the Chief Administrative Officer, assigned staff serves at the direction of the Commission to perform duties assigned by the Commission.)<sup>1</sup>

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<sup>1</sup> County Code Section 19A Ethics Commission

5(f) *Administrative Support.*

(1) The Commission must be allocated merit system staff, office space, equipment, and supplies within the limits of the Commission's appropriations. The Chief Administrative Officer appoints or assigns staff to the Commission after receiving a recommendation from the Commission. Subject to the general supervision of the Chief Administrative Officer, assigned staff serve at the direction of the Commission to perform duties assigned by the Commission.

(2) The Commission may ask the County Attorney to provide an opinion on any legal issue relating to the Commission's duties,

(3) The County Attorney must provide the Commission with legal services. However, the County Attorney may employ special legal counsel to the Commission under Section 213 of the Charter. The County Attorney must provide an attorney to prosecute a case before the Commission under Section 19A-10. An individual attorney assigned to provide general legal advice to the Commission must not be an investigator under Section 19A-9 or prosecute a case before the Commission under Section 19A-10 for one year after the attorney's Ethics Commission assignment ends.

(4) The Commission may retain legal services from persons outside the Office of the County Attorney and without the approval of the County Attorney if:

(A) the Commission finds that obtaining independent legal services is necessary for the Commission effectively to perform its responsibilities; and

(B) the County Council approves the Commission's decision to select legal counsel and appropriates sufficient funds to cover the cost of the legal services.

## SCENARIOS FOR ETHICS COMMISSION BUDGET AND STRUCTURE

After discussion of the above questions with the County Attorney, the Committee may wish to consider the following options for the Ethics Commission:

- Approve the shift of the Ethics Commission to the County Attorney's Office as recommended.
- Restore the two abolished Program Specialists positions, adding a total of \$108,740 to the reconciliation list, to preserve the status quo, with the Ethics Commission as a separate office.
- Restore one abolished Program Specialist position, adding approximately \$55,000 to the reconciliation list, and keep the Ethics Commission Office in its current location under the supervision of the Executive office with just 2 positions instead of the current complement of 3.
- Provide for a separate Ethics Division within the County Attorney's Office, abolish the current Manager III position (Executive Secretary) and recreate it as a part-time Attorney position, and restore one Program Specialist position to assist the Ethics Division attorney. This would require adding approximately \$55,000 to the reconciliation list to restore the Program Specialist; however there may be an offset of savings if the cost of a part-time attorney position is less than the current cost of the Manager III.
- Adopt legislation moving the supervision of the Ethics Commission from the Executive Branch and make it independent or place it in the Legislative Branch. This would require adding either \$55,000 or \$108,740 to the reconciliation list to restore some level of staff for the independent office.



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# County Attorney

## MISSION STATEMENT

The mission of the Office of the County Attorney is to act as the chief legal officer of Montgomery County government and to conduct all its legal business.

### *Inter-departmental Transfer*

In July 2010, the Ethics Commission will be merged with the Office of the County Attorney.

## BUDGET OVERVIEW

The total recommended FY11 Operating Budget for the Office of the County Attorney is \$4,692,810, a decrease of \$532,170 or 10.2 percent from the FY10 Approved Budget of \$5,224,980. Personnel Costs comprise 91.1 percent of the budget for 72 full-time positions and three part-time positions for 36.8 workyears. Operating Expenses account for the remaining 8.9 percent of the FY11 budget.

## LINKAGE TO COUNTY RESULT AREAS

While this program area supports all eight of the County Result Areas, the following are emphasized:

- ❖ **A Responsive, Accountable County Government**

## DEPARTMENT PERFORMANCE MEASURES

Performance measures for this department are included below, with multi-program measures displayed at the front of this section and program-specific measures shown with the relevant program. The FY10 estimates incorporate the effect of the FY10 savings plan. The FY11 and FY12 targets assume the recommended FY11 budget and FY12 funding for comparable service levels.

## ACCOMPLISHMENTS AND INITIATIVES

- ❖ **Accomplishment: Debt Collection Unit Revenue Increases** – Through January 2010, the Debt Collection Unit registered \$7.2 million in net deposits from debts owed to the county.
- ❖ **Accomplishment: The new on-line contract resource center is now available on the County's Intranet Site for contract administrators.** The resource center provide contract templates and language for writing contracts.
- ❖ **Initiative: The Office of the County Attorney is working with the Enterprise Resource Planning (ERP) and Finance Department to re-engineer the accounting procedure for posting debt collection into the new ERP Oracle Accounts Receivable system.**
- ❖ **Productivity Improvements**
  - **Electronic Imaging System** - The Office of the County Attorney (OCA) continues to expand the current electronic imaging system. Forfeitures and subrogation files have been scanned and interfaced with the CountyLaw system. The Health and Human Services (HHS) Division has successfully implemented redaction services using Zylfind. The Imaging Project increases productivity by eliminating the need for duplicating paper files for staff that need to work on the files. Imaging of files also saves time compared to searching for paper files - staff can access the files at any time, via a shared drive, simultaneously.
  - **Reduced Publication Costs** - The Office of the County Attorney has placed the "County Attorney Monthly Report" on-line at the department web site which, as a result, has reduced the amount of hard copies that need to be printed; thus printing costs have been reduced.

## PROGRAM CONTACTS

Contact Dennis Via of the Office of the County Attorney at 240.777.6715 or Helen P. Vallone of the Office of Management and Budget at 240.777.2755 for more information regarding this department's operating budget.

## PROGRAM DESCRIPTIONS

### Insurance Defense Litigation

Provides legal defense for cases involving Montgomery County and fourteen local government Self-Insurance Fund participants (including such entities as the Montgomery County Board of Education, City of Rockville, Maryland-National Capital Park and Planning Commission, Montgomery College and the Housing Opportunities Commission) and all of their employees. The attorneys appear regularly before State and Federal courts in Maryland and the District of Columbia for trials and oral arguments and before the Workers' Compensation Commission. These cases involve litigation in the following areas: common law torts; Police civil rights claims; Other Federal and State civil rights - constitutional torts; Americans with Disabilities Act; Individuals with Disabilities Education Act; Workers' Compensation; and employment discrimination.

Program Performance Measures	Actual FY08	Actual FY09	Estimated FY10	Target FY11	Target FY12
Cases closed	815	1,162	1,460	1,200	1,200
Cases received	667	1,150	1,036	1,036	1,036
Countywide Worker's Comp cost per \$100 of payroll	2.29	2.38	TBD	TBD	TBD
Countywide Worker's Compensation cost (\$)	13,963,000	7,993,000	TBD	TBD	TBD
Last settlement amount offered by County	1,272,850	653,872	TBD	TBD	TBD
Last settlement amount offered by plaintiff	526,357,993	4,204,487	TBD	TBD	TBD
Total judgements paid (\$)	56,896	47,017	54,632	54,000	54,600
Total judgements plus settlements (\$)	1,636,309	814,139	TBD	TBD	TBD
Total number of judgements	8	6	TBD	TBD	TBD
Total number of settlements	39	35	TBD	TBD	TBD
Total settlements paid <sup>1</sup>	1,577,413	767,122	TBD	TBD	TBD
Worker's Compensation hearings	2,217	2,492	2,397	2,400	2,400

<sup>1</sup> This unusually high FY07 settlement amount corresponds to a single civil rights case (in which Local Government Tort Liability limits do not apply) where the settlement was for several million dollars

FY11 Recommended Changes	Expenditures	WYs
<b>FY10 Approved</b>	<b>75,440</b>	<b>0.0</b>
Shift: Associate County Attorney III charges from General Fund (Collection Unit) to the Self Insurance Fund (SIF)	-155,240	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	123,450	1.0
<b>FY11 CE Recommended</b>	<b>43,650</b>	<b>0.0</b>

Notes: The changes in dollars in Programs from FY10 to FY11 is related to changing allocations of personnel costs, operating costs, and lapse.

### Health and Human Services

The attorneys in this division act as counsel and give legal advice to the Department of Health and Human Services, including the Office of the Director and Management Services, Adult Mental Health, Aging and Disability Services, Children, Youth and Family Services, Child Welfare Services, Crisis, Income and Victim Services, Emergency Services and Public Health Services. The attorneys also represent Child Welfare Services in the Juvenile Court, in cases involving child abuse and child neglect, and Aging and Disability Services in the Circuit Court, in adult guardianship cases.

Program Performance Measures	Actual FY08	Actual FY09	Estimated FY10	Target FY11	Target FY12
Number of Children in Need of Assistance (CINA) or Guardianship Hearings	2,284	2,619	2,000	2,000	2,000
Number of Adoptions granted	22	57	57	57	57
Number of CINA cases closed	234	278	250	250	250
Number of New Adoption petitions filed	16	57	100	100	100
Number of new CINA petitions filed	255	305	200	200	200
Number of new Termination of Parental Rights (TPR) petitions filed	59	44	44	44	44
Number of Termination of Parents Rights (TPR's) granted	71	30	30	30	30

FY11 Recommended Changes	Expenditures	WYs
<b>FY10 Approved</b>	<b>1,036,310</b>	<b>7.6</b>

	<b>Expenditures</b>	<b>WYs</b>
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-81,700	0.0
<b>FY11 CE Recommended</b>	<b>954,610</b>	<b>7.6</b>

### Finance and Procurement

Acts as counsel and gives legal advice to the County Executive, County Council, and to several County departments, agencies, boards, and commissions. The Division represents the County Government in tax and procurement matters before State, Federal, and local administrative agencies and courts; drafts and reviews agreements, legislation, regulations, and other legal documents; conducts negotiations; and prepares and issues legal opinions.

<b>FY11 Recommended Changes</b>	<b>Expenditures</b>	<b>WYs</b>
<b>FY10 Approved</b>	<b>590,120</b>	<b>5.0</b>
Shift: From DTS to County Attorney's Office - ACAIII	122,540	1.0
Reduce: Lapse - ACAII - Finance & Procurement Division	-96,740	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-59,960	0.0
<b>FY11 CE Recommended</b>	<b>555,960</b>	<b>5.0</b>

Notes: The changes in dollars in Programs from FY10 to FY11 is related to changing allocations of personnel costs, operating costs, and lapse.

### Human Resources and Appeals

Attorneys act as counsel and give legal advice to the following agencies: Montgomery County Fire and Rescue Service, Ethics Commission, Board of Investment Trustees, Office of Human Resources, Department of Correction and Rehabilitation, Office of Public Information, Department of Transportation (Transit Services Division, Taxicab Unit), Human Rights Commission, Board of Appeals, and the Police Department (Internal Affairs Division). Attorneys also defend or prosecute contested cases involving the County, Self-Insurance Fund agencies, and their employees, while pending before State and Federal appellate courts. The mission of the Ethics Commission is to enforce the Montgomery County Code of Ethics that ensures the ethical conduct of individuals who serve in County government.

<b>Program Performance Measures</b>	<b>Actual FY08</b>	<b>Actual FY09</b>	<b>Estimated FY10</b>	<b>Target FY11</b>	<b>Target FY12</b>
Appeals lost	2	4	4	4	4
Appeals won	17	7	14	14	14

<b>FY11 Recommended Changes</b>	<b>Expenditures</b>	<b>WYs</b>
<b>FY10 Approved</b>	<b>817,760</b>	<b>4.0</b>
Shift: Ethics Commission functions to Office of County Attorney	163,650	1.0
Reduce: Lapse - ACAIII - Human Resources & Appeals Division	-147,930	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-117,020	0.0
<b>FY11 CE Recommended</b>	<b>716,460</b>	<b>4.0</b>

Notes: The changes in dollars in Programs from FY10 to FY11 is related to changing allocations of personnel costs, operating costs, and lapse.

### Zoning, Land Use and Economic Development

Represents and advises the County Executive, the County Council, and various County departments, including the Department of General Services, the Department of Transportation, the Department of Housing and Community Affairs, the Department of Economic Development, and the Department of Public Libraries. Represents and advises agencies and commissions, including the Historic Preservation Commission, the Revenue Authority, Community Use of Public Facilities, and the Cable Compliance Commission. Advises the County Executive and County Council regarding telecommunications and cable matters. Represents the County with respect to land acquisitions and real estate transactions. Represents the County before Federal, State, and administrative courts. Drafts legal opinions and amendments to the County code and County regulations.

<b>FY11 Recommended Changes</b>	<b>Expenditures</b>	<b>WYs</b>
<b>FY10 Approved</b>	<b>527,820</b>	<b>4.2</b>
Reduce: Lapse - ACAIII - Zoning, Land Use & Econ. Development Division	-154,470	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-346,690	-2.0
<b>FY11 CE Recommended</b>	<b>26,660</b>	<b>1.2</b>

Notes: The changes in dollars in Programs from FY10 to FY11 is related to changing allocations of personnel costs, operating costs, and lapse.

## Public Interest Litigation

The Division provides litigation and other legal services to County agencies and departments in support of their mission to promote general welfare and protect vulnerable citizens. The Division acts as counsel and gives legal advice to the Police Department, the Departments of Emergency Management and Homeland Security, Environmental Protection, Permitting Services, Consumer Affairs, and Recreation. It also provides counsel to the Office of Landlord and Tenant Affairs, the Historic Preservation Commission, and the Inspector General's Office. The program represents these entities in contested cases before County Board of Appeals and in both State and Federal courts. The program also drafts and reviews agreements, legislation, regulations and other legal documents. Attorneys from the program conduct negotiations, issue legal opinions, and testify before public bodies. It is primarily responsible for the processing and prosecution of code enforcement violations from all departments, agencies, boards and commissions which are presented in the District Court of Maryland. The Debt Litigation or Collection Unit collects all monies owed to Montgomery County that have been referred to the County Attorney, including past due real property taxes, personal property taxes, code enforcement judgments, subrogation claims, bounced checks, unpaid fines, and miscellaneous amounts billed by the County.

Program Performance Measures	Actual FY08	Actual FY09	Estimated FY10	Target FY11	Target FY12
Code Enforcement (\$)	399,451	708,523	63,1672	630,000	630,000
Debt Collection (\$)	23,799,532	43,016,983	12,400,000	12,400,000	12,400,000
Forfeitures (\$)	45,825	94,440	352,262	TBD	TBD
Subrogation (\$)	88,165	104,198	53,120	53,000	53,000

FY11 Recommended Changes	Expenditures	WYs
<b>FY10 Approved</b>	<b>1,098,560</b>	<b>11.0</b>
Reduce: Lapse - ACAIII - Public Interest Litigation	-49,930	-0.5
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-136,860	1.0
<b>FY11 CE Recommended</b>	<b>911,770</b>	<b>11.5</b>

## Support Services

Provide administrative, research, and technical guidance and support to the other programs within the Department. The program is designed to allow for an equitable distribution of work assignments, to cross-train staff, and to evaluate fairly the performance of the program staff. The program provides administrative support to the Risk Management Fund, and revenue support to the Risk Management Fund, Revenue Authority, and Solid Waste Fund.

FY11 Recommended Changes	Expenditures	WYs
<b>FY10 Approved</b>	<b>98,130</b>	<b>2.5</b>
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	44,440	0.0
<b>FY11 CE Recommended</b>	<b>142,570</b>	<b>2.5</b>

Notes: The changes in dollars in Programs from FY10 to FY11 is related to changing allocations of personnel costs, operating costs, and lapse.

## Administration

Provides internal personnel, financial, and operational management for the Office of the County Attorney.

Program Performance Measures	Actual FY08	Actual FY09	Estimated FY10	Target FY11	Target FY12
Average Internal Customer Satisfaction Rating - General and Timeliness <sup>1</sup>	3.1	3.1	3.1	3.1	3.1

<sup>1</sup> Internal Customer Satisfaction Survey Results (Scale of 1 to 4: 3 = Satisfied; 4 = Very Satisfied)

FY11 Recommended Changes	Expenditures	WYs
<b>FY10 Approved</b>	<b>980,840</b>	<b>5.0</b>
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	360,290	0.0
<b>FY11 CE Recommended</b>	<b>1,341,130</b>	<b>5.0</b>

Notes: The changes in dollars in Programs from FY10 to FY11 is related to changing allocations of personnel costs, operating costs, and lapse.

## BUDGET SUMMARY

	Actual FY09	Budget FY10	Estimated FY10	Recommended FY11	% Chg Bud/Rec
<b>COUNTY GENERAL FUND</b>					
<b>EXPENDITURES</b>					
Salaries and Wages	4,010,184	3,697,060	3,605,640	3,252,550	-12.0%
Employee Benefits	1,096,919	1,000,590	960,320	1,020,410	2.0%
<b>County General Fund Personnel Costs</b>	<b>5,107,103</b>	<b>4,697,650</b>	<b>4,565,960</b>	<b>4,272,960</b>	<b>-9.0%</b>
Operating Expenses	712,238	527,330	650,000	419,850	-20.4%
Capital Outlay	0	0	0	0	—
<b>County General Fund Expenditures</b>	<b>5,819,341</b>	<b>5,224,980</b>	<b>5,215,960</b>	<b>4,692,810</b>	<b>-10.2%</b>
<b>PERSONNEL</b>					
Full-Time	71	72	72	72	—
Part-Time	5	3	3	3	—
Workyears	42.8	39.3	39.3	36.8	-6.4%
<b>REVENUES</b>					
Child Welfare FFP Federal Reimbursement	0	338,960	278,110	179,310	-47.1%
Revenue Authority Reimb. for Legal Services	0	45,630	45,630	45,630	—
County Attorney Collection Fee	0	18,990	0	0	—
County Code Subscription Fee	56,406	75,000	75,000	75,000	—
<b>County General Fund Revenues</b>	<b>56,406</b>	<b>478,580</b>	<b>398,740</b>	<b>299,940</b>	<b>-37.3%</b>

## FY11 RECOMMENDED CHANGES

	Expenditures	WYs
<b>COUNTY GENERAL FUND</b>		
<b>FY10 ORIGINAL APPROPRIATION</b>	<b>5,224,980</b>	<b>39.3</b>
<b>Changes (with service impacts)</b>		
Reduce: Lapse - ACAIII - Public Interest Litigation [Public Interest Litigation]	-49,930	-0.5
Reduce: Lapse - ACAII - Finance & Procurement Division [Finance and Procurement]	-96,740	-1.0
Reduce: Lapse - ACAIII - Human Resources & Appeals Division [Human Resources and Appeals]	-147,930	-1.0
Reduce: Lapse - ACAIII - Zoning, Land Use & Econ. Development Division [Zoning, Land Use and Economic Development]	-154,470	-1.0
<b>Other Adjustments (with no service impacts)</b>		
Shift: Ethics Commission functions to Office of County Attorney [Human Resources and Appeals]	163,650	1.0
Shift: From DTS to County Attorney's Office - ACAIII [Finance and Procurement]	122,540	1.0
Increase Cost: Retirement Adjustment	25,350	0.0
Decrease Cost: Lapse - Restore Regular Lapse in CAT to Previous Year Levels	16,120	1.5
Increase Cost: Group Insurance Adjustment	15,070	0.0
Increase Cost: Annualization of FY10 Operating Expenses	430	0.0
Decrease Cost: Printing and Mail Adjustment	-7,910	0.0
Decrease Cost: Annualization of FY10 Personnel Costs	-34,520	0.0
Decrease Cost: Operating Expenses	-103,600	0.0
Decrease Cost: Furlough Days	-124,990	-1.5
Shift: Associate County Attorney III charges from General Fund (Collection Unit) to the Self Insurance Fund (SIF) [Insurance Defense Litigation]	-155,240	-1.0
<b>FY11 RECOMMENDED:</b>	<b>4,692,810</b>	<b>36.8</b>

## PROGRAM SUMMARY

Program Name	FY10 Approved		FY11 Recommended	
	Expenditures	WYs	Expenditures	WYs
Insurance Defense Litigation	75,440	0.0	43,650	0.0
Health and Human Services	1,036,310	7.6	954,610	7.6
Finance and Procurement	590,120	5.0	555,960	5.0
Human Resources and Appeals	817,760	4.0	716,460	4.0
Zoning, Land Use and Economic Development	527,820	4.2	26,660	1.2
Public Interest Litigation	1,098,560	11.0	911,770	11.5
Support Services	98,130	2.5	142,570	2.5
Administration	980,840	5.0	1,341,130	5.0
<b>Total</b>	<b>5,224,980</b>	<b>39.3</b>	<b>4,692,810</b>	<b>36.8</b>

## CHARGES TO OTHER DEPARTMENTS

Charged Department	Charged Fund	FY10		FY11	
		Total\$	WYs	Total\$	WYs
COUNTY GENERAL FUND					
Board of Appeals	County General Fund	86,970	0.5	87,730	0.5
Board of Investment Trustees	BIT 457 Deferred Comp. Plan	68,140	0.5	80,650	0.5
Cable Television	Cable Television	95,470	0.5	97,810	0.5
CIP	CIP	197,310	2.0	363,160	3.0
Finance	County General Fund	164,450	1.0	179,690	1.0
Finance	Self Insurance Internal Service Fund	2,398,660	19.0	2,513,070	19.0
Health and Human Services	County General Fund	170,590	2.2	170,590	2.2
Housing and Community Affairs	County General Fund	44,030	0.5	48,240	0.5
Housing and Community Affairs	Montgomery Housing Initiative	177,610	1.0	179,030	1.0
Human Resources	Employee Health Benefit Self Insurance Fund	7,070	0.1	7,990	0.1
Human Resources	Employee Retirement System	74,420	0.5	78,310	0.5
Intergovernmental Relations	County General Fund	27,810	0.3	28,190	0.3
Parking District Services	Bethesda Parking District	12,510	0.1	20,060	0.1
Parking District Services	Silver Spring Parking District	37,550	0.2	40,000	0.2
Permitting Services	Permitting Services	168,710	1.0	172,250	1.0
Solid Waste Services	Solid Waste Collection	37,790	0.3	47,840	0.3
Solid Waste Services	Solid Waste Disposal	113,360	0.7	111,620	0.7
Technology Services	County General Fund	121,050	1.0	0	0.0
Total		4,003,500	31.4	4,226,230	31.4

## FUTURE FISCAL IMPACTS

Title	CE REC.		(\$000's)			
	FY11	FY12	FY13	FY14	FY15	FY16
This table is intended to present significant future fiscal impacts of the department's programs.						
<b>COUNTY GENERAL FUND</b>						
<b>Expenditures</b>						
<b>Restore Personnel Costs</b>	<b>0</b>	<b>125</b>	<b>125</b>	<b>125</b>	<b>125</b>	<b>125</b>
This represents restoration of funding to remove FY11 furloughs.						
<b>Subtotal Expenditures</b>	<b>0</b>	<b>125</b>	<b>125</b>	<b>125</b>	<b>125</b>	<b>125</b>

## **CHILD AND ADULT PROTECTIVE SERVICES UNIT**

The County Attorney's Division of Health and Human Services represents the Department of Health and Human Services, including Child Welfare Services in Juvenile Court, and Adult Protective Services.

<b>Action- Child Welfare Services/ Juvenile Court</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
Number of Children in Need of Assistance (CINA) or Guardianship Hearings	1712	2284	2617	1368
Number of New CINA Petitions Filed	276	255	305	101
Number of CINA Cases Closed	267	234	278	165
Number of New Termination of Parental Rights (TPR) Petitions Filed	44	59	44	39
Number of TPRs Granted	16	71	30	31
Number of New Adoption Petitions Filed	23	16	57	25
Number of Adoptions Granted	21	22	57	25

The HHS Division also represents the Public Guardianship Program, a highly specialized department within HHS. For adults under 65, the Director of the Department of Health and Human Services may be appointed as guardian of the person. For adults over 65, the Director of the County Office on Aging may be appointed as guardian of the person. For both age groups, Maryland law stipulates that the County may only be appointed as guardian as a last resort, when there are no other viable alternatives.

<b>Action - Adult Protective Services/Circuit Court</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
Number of Adult Guardianship Hearings	48	55	59	34
Number of Adult Guardianship Petitions Filed	13	11	11	12

## CODE ENFORCEMENT

During the month of February 2010, the Code Enforcement team litigated 447 cases in Montgomery County District Court, resulting in judgments totaling \$46,430.00. The team received 233 new citations during this month, as itemized below with the amount of fines sought by those citations. A total of \$397,304.50 was collected in fines from outstanding cases for FY2010. The County closed 180 outstanding cases after collecting fines and/or having violations abated, or referring cases to the Debt Collection Unit, during this month.

### CITATIONS RECEIVED BY DEPARTMENT AND FINES SOUGHT

	No. Citations Received During February	FY10 Year to Date Citations Received	Total Amount of Fines Sought by New Citations During February	FY10 Fiscal Year to Date Fines Sought
Animal Services Division	46	547	\$13,800.00	\$162,280.00
Board of License Commissioners	13	120	\$6,500.00	\$60,250.00
Environmental Protection	16	142	\$5,600.00	\$56,550.00
Fire & Rescue Services	0	11	\$0.00	\$5,550.00
Housing & Community Affairs	58	1355	\$27,350.00	\$629,750.00
Permitting Services	16	290	\$8,000.00	\$147,250.00
Health & Human Services	0	1	\$0.00	\$200.00
County Police	3	53	\$1,050.00	\$23,450.00
Metro Police	31	273	\$3,000.00	\$33,400.00
False Alarm Reduction Unit	26	199	\$9,400.00	\$84,200.00
Taxi Services	24	242	\$3,100.00	\$25,300.00
Ethics Commission	0	0	\$0.00	\$0.00
Office of Consumer Protection	0	4	\$0.00	\$2,000.00
<b>TOTAL</b>	<b>233</b>	<b>3237</b>	<b>\$77,800.00</b>	<b>\$1,230,130.00</b>



# **CITATIONS CLOSED BY DEPARTMENT AND AMOUNTS COLLECTED**

<b>Department</b>	<b>No. of Citations Closed During February</b>	<b>FY10 Year to Date Citations Closed</b>	<b>Total Amount of Fines Paid During February</b>	<b>FY10 Fiscal Year to Date Fines Paid</b>
Animal Services Division	31	607	\$2,150.00	\$39,535.00
Board of License Commissioners	18	191	\$4,725.00	\$49,580.00
County Police	2	115	\$107.50	\$5,631.00
Environmental Protection	19	203	\$4,140.00	\$39,870.00
False Alarm Reduction Unit	12	234	\$5,100.00	\$97,251.00
Fire & Rescue Services	0	18	\$0.00	\$5,422.50
Health & Human Services	0	0	\$0.00	\$0.00
Housing & Community Affairs	32	205	\$3,920.00	\$37,414.50
Metro Police	24	690	\$1,275.00	\$14,493.50
Permitting Services	16	227	\$11,000.00	\$88,625.00
Taxi Services	26	275	\$1,810.00	\$18,982.00
Ethics Commission	0	0	\$0.00	\$0.00
Office of Consumer Protection	0	2	\$0.00	\$500.00
<b>TOTAL</b>	<b>180</b>	<b>2765</b>	<b>\$34,227.50</b>	<b>\$397,304.50</b>

## **PROCUREMENT CONTRACTS**

The Division of Finance and Procurement consistently provides comments and requests for additional information to using departments within 1 or 2 days to expedite the procurement process as much as possible. For purposes of this chart, the number of days includes the entire period from original receipt of the document until the Office signs it for form and legality. The statistics for the January reporting period reflects an average of 4.6 days. The low number of documents may derive from the holidays that occurred during the month and the implementation of the procurement freeze by the Office of Management and Budget.

Contract reviews or amendments that raise issues that require negotiation between the County and the contractor occur less frequently than contract reviews. Those matters often require several weeks to complete, so the handling times are calculated separately from a standard review for form and legality. The category also will be updated less frequently. Claims arise when goods or services are purchased without a contract in place or without a proper encumbrance. Considering the volume of procurement contracts managed by the County, the handful of claims that require attention during the course of a year is commendable.

### Monthly details for contract reviews FY10

<b>Date</b>	<b>Contracts reviewed</b>	<b>Average time</b>
1/16/10 to 2/15/10	47	3.3 days
12/16/09 to 1/15/10	32	4.6 days
11/16/09 to 12/15/09	84	5.2 days
10/16/09 to 11/15/09	65	6.2 days
9/16/09 to 10/15/09	73	6.9 days
8/16/09 to 9/15/09	57	4.7
7/16/09 to 8/15/09	34	5.5 days
6/16/09 to 7/15/09	59	6.2 days
5/16/09 to 6/15/09	96	2.6 days

Annual statistics, negotiations and claims

July through December 2009	9 negotiations completed	Time periods vary based on the complexity of the terms.
January through June 2009	6 negotiations completed	Time periods vary based on the complexity of the terms.
July through December 2008	5 negotiations completed	As of January 2009, 6 negotiations are pending.
July through December 2009	3 claims completed	As of February 2010, 6 claims are pending.
January through June 2009	5 claims completed	As of June 2009, 3 claims remain pending.
July through December 2008	11 claims completed	As of January 2009, 3 claims remain pending.
General performance of contract reviews for FY 09	762 standard reviews for form and legality 64 average per month	Average review 4.6 days
General performance of contract reviews for FY08	565 standard reviews for form and legality 47 average per month	Average review 2.6 days

Please see the following pages for the Procurement Contracts closed from January 16, 2010, to February 15, 2010.

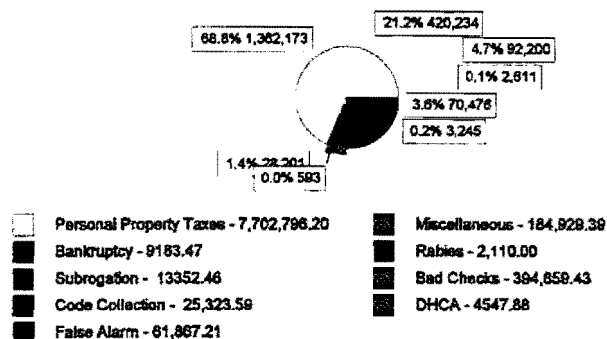
## DEBT COLLECTION UNIT

This report includes figures for all monies collected by the Debt Collection Unit for FY10 from July 1, 2009, through February 28, 2010. The total amount collected for February, 2010, by the Debt Collection Unit is **\$1,492,830.36**. This amount reflects the total amount collected this year for FY10 is **\$8,766,147.32**.

FISCAL YEAR COMPARISON OF COLLECTIONS					
MONTH	2007 GROSS	2008 GROSS	2009 GROSS	2010 GROSS	09/10 Over/(Under)
July	\$ 398,972.48	\$ 1,135,323.19	\$ 2,246,091.25	\$ 1,406,359.43	\$ (839,731.82)
August	\$ 200,979.21	\$ 3,675,213.54	\$ 1,180,731.40	\$ 1,503,362.39	\$ 322,630.99
September	\$ 686,935.83	\$ 1,223,951.95	\$ 1,606,954.51	\$ 715,469.71	\$ (891,484.80)
October	\$ 763,941.36	\$ 2,363,692.70	\$ 1,682,309.83	\$ 792,988.30	\$ (889,321.53)
November	\$ 415,338.90	\$ 1,372,239.16	\$ 4,447,479.03	\$ 944,729.31	\$ (3,502,749.72)
December	\$1,052,708.04	\$ 598,588.23	\$ 1,744,713.75	\$ 1,243,307.70	\$ 501,406.05
February	\$ 357,201.29	\$ 1,747,305.91	\$ 4,750,228.68	\$ 667,100.12	\$ (4,083,128.56)
February	\$ 334,620.99	\$ 1,597,855.34	\$ 2,453,931.76	\$ 1,492,830.36	\$ (961,101.40)
March	\$ 532,156.16	\$ 1,134,585.72	\$ 1,492,096.70		
April	\$1,138,560.07	\$ 1,668,477.02	\$ 4,499,527.24		
May	\$ 920,399.08	\$ 3,395,389.64	\$ 1,547,257.57		
June	\$1,492,729.05	\$ 3,886,909.32	\$ 15,365,661.78		
Totals	\$8,294,542.46	\$23,799,531.72	\$ 43,016,983.50	\$ 8,766,147.32	\$ (10,884,884.23)

### Amount Collected by Case Type

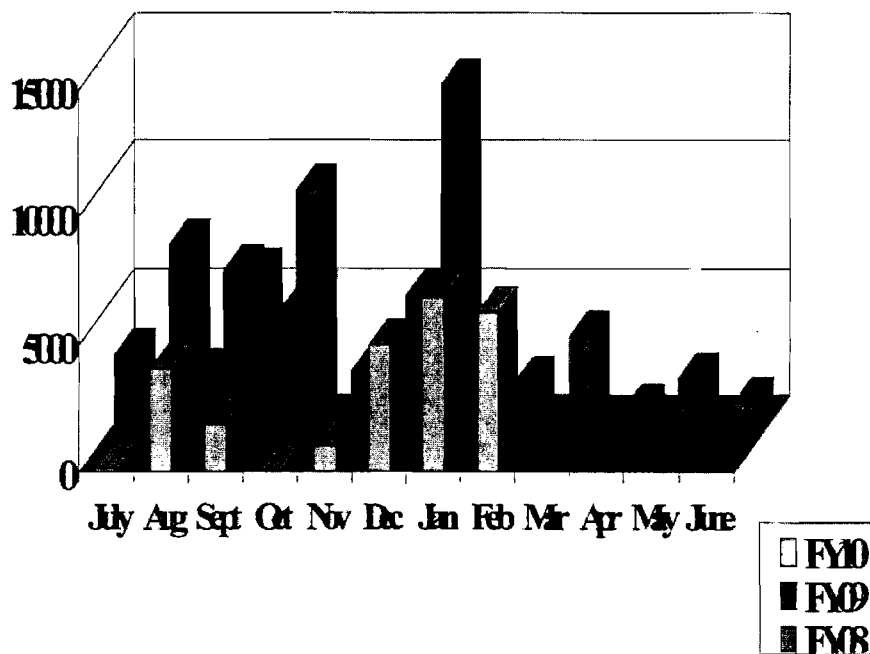
Fiscal Year 2010



# **BAD CHECK AND PERSONAL PROPERTY TAX (PPT) CASE REFERRALS**

		<b>FY2006</b>	<b>FY2007</b>	<b>FY2008</b>	<b>FY2009</b>	<b>FY2010</b>
<b>July</b>	Bad checks PPT	77 0	179 9	0 10	186 25	0 17
<b>August</b>	Bad checks PPT	134 1,441	0 1	191 143	4 36	165 117
<b>September</b>	Bad checks PPT	0 32	237 235	0 660	224 558	2 94
<b>October</b>	Bad checks PPT	324 83	0 109	291 118	0 118	160 1,585
<b>November</b>	Bad checks PPT	0 379	174 233	3 21	244 55	2 49
<b>December</b>	Bad checks PPT	122 3,405	0 13	21 3	10 105	226 109
<b>January</b>	Bad checks PPT	0 1	193 60	349 1,876	234 67	1 155
<b>February</b>	Bad checks PPT	0 4	0 13	209 17	5 175	157 67
<b>March</b>	Bad checks PPT	0 35	59 3,245*	3 47	186 7,778	
<b>April</b>	Bad checks PPT	110 36	0 24	115 4,498	0 83	
<b>May</b>	Bad checks PPT	232 448	182 11	225 9	110 71	
<b>June</b>	Bad checks PPT	0 452	216 17	3 19	136 95	
<b>Total Bad Checks</b>		999	1,422	1,410	1,339	713
<b>Total PPT</b>		5,868	3,981	7,421	9,166	2,193
<b>TOTAL</b>		6,867	5,403	8,831	10,505	2,906
<b>Avg/mo bad check</b>		83	18	117	109	89
<b>Avg/mo PPT</b>		489	331	618	824	274

## CODE JUDGMENTS COLLECTED BY DEBT COLLECTION UNIT



**YEAR TO DATE COLLECTION  
FOR FY10 \$25,323.59**

**\*The Code Judgments figures for the month of March 2010 are not available but will be included in the April 2010 Monthly Report.**

**CASE CLOSEOUTS FROM**  
**JULY 1, 1998, TO FEBRUARY 28, 2010**

The Litigation Division defends the County and other Self-Insurance Fund members in legal actions alleging constitutional and common law torts, employment discrimination, medical malpractice, ADA and IDEA violations, workers' compensation claims and challenges to County laws.

The following summarizes the disposition of 1,434 liability cases that were closed by the Litigation Division from July 1, 1998, through February 28, 2010.

Disposition	Number of Cases (FY 2010)	Number of Cases (Cumulative)	% of Cases (FY 2010)	% of Total Cases (Cumulative)
Voluntary Dismissal	7	175	11%	12%
Resolution by Motion	21	484	35%	34%
(Motion to Dismiss)	17	325	28%	23%
(Motion for Summary Judgment)	4	157	7%	11%
Defense Verdict/Judgment	12	190	20%	13%
Plaintiff Verdict/Judgment	7	79	11%	5%
Settled	14	506	23%	36%
<b>Total</b>	<b>61</b>	<b>1434</b>	<b>100%</b>	<b>100%</b>

### Explanation of Categories

Voluntary Dismissal. Plaintiffs sometimes voluntarily dismiss their cases. They do this for a variety of reasons: we file a dispositive motion against which they decide they will be unsuccessful, new facts come to light that make their success appear unlikely, or other unknown reasons.

Resolution by Motion. A motion is a request (generally in writing) to the court seeking to have the court dismiss a case or render judgment for the moving party. Motions generally contain legal argument in support of the resolution being sought. The two most common motions are motions to dismiss and motions for summary judgment.

Defense Verdict/Judgment. Judgment at trial before a judge or jury that finds in favor of the defense.

Plaintiff Verdict/Judgment. Judgment at trial before a judge or jury that finds in favor of the plaintiff.

Settlement. The parties agree that payment of some funds should be made to the plaintiff to resolve the case and conclude it.

Favorable Outcome. Any case that results in a judgment or verdict in favor of Montgomery County or another Self-Insurance defendant is considered to have a favorable outcome. We also consider any case to have a favorable outcome where we attempted to settle, the plaintiff rejected our offer of settlement, the judge/jury finds in favor of the plaintiff, but awards a figure lower than our last offer.



### **SELECTED LITIGATION ACTIVITIES**

<b>Month</b>	<b>New Lawsuits</b>	<b>Closed Cases</b>
January 2009	6	10
February 2009	11	8
March 2009	7	9
April 2009	7	9
May 2009	9	7
June 2009	5	2
July 2009	8	1
August 2009	5	13
September 2009	21	3
October 2009	11	10
November 2009	10	5
December 2009	6	15
January 2010	8	11
February 2010	5	3

## **APPEALS STATISTICS**

The following tables reflect appellate wins and losses so far this fiscal year, the new appeals and closed appeals, and the distribution of new appeals by agency. For comparison, the same information is included for FY08 and FY09.

### **WINS AND LOSSES (By Date of Decision)**

	<b>FY10</b>	<b>FY09</b>	<b>FY08</b>
<b>Wins</b>	8	7	19
<b>Losses</b>	2	4	2
<b>Remands</b>	-	-	-
<b>Settled</b>	-	-	1
<b>Pending</b>	24	-	-
<b>Withdrawn</b>	1*	1*	1

### **NEW AND CLOSED CASES**

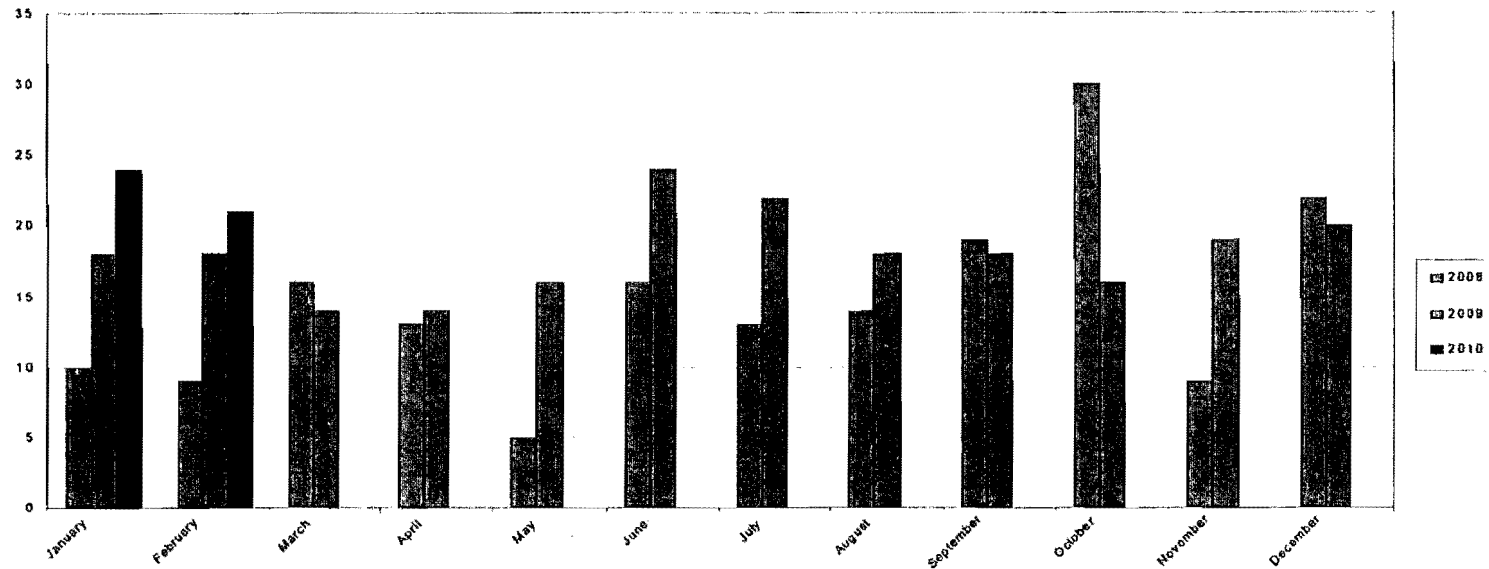
	<b>FY10</b>	<b>FY09</b>	<b>FY08</b>
<b>New (By Date of Appeal)</b>	15	15	19
<b>Closed (By Date of Final Decision)</b>	11	12	23

\*Appeal withdrawn by opposing party.

# NOTICES OF CLAIM BY AGENCY/DEPARTMENT

AGENCY/DEPARTMENTS	Total 2007	Total 2008	Total 2009	Total 2010
Board of Education	27	19	26	5
City of Rockville	2	1	1	3
City of Takoma Park	0	0	3	0
Correction & Rehabilitation	8	7	1	0
County Attorney	0	0	0	1
County Council	0	0	0	1
Environmental Protection	0	2	0	1
Fire & Rescue Commission	1	0	7	0
Fire & Rescue Services	3	5	4	3
General Services	0	0	1	0
Health & Human Services	3	4	3	1
Housing & Community Affairs	2	1	0	0
Housing Opportunities Commission	1	1	3	0
Human Rights Commission	0	0	0	0
Human Resources	0	0	0	2
Libraries	1	0	0	0
Liquor Control	1	1	3	0
Montgomery County Govt.	23	11	4	0
Montgomery College	0	0	2	1
M-NCPPC	2	9	13	3
Permitting Services	0	2	1	0
Police Department	36	42	50	7
Transportation - Ride-On	70	47	49	11
Transportation - Other	21	18	38	5
Recreation	2	4	1	0
Regional Service Centers	0	0	1	0
Revenue Authority	0	0	2	0
Sheriff	2	3	4	1
<b>TOTAL</b>	<b>205</b>	<b>175</b>	<b>217</b>	<b>45</b>

## NOTICES OF CLAIM



The Local Government Tort Claims Act requires any person who has been injured by a local government and who intends to sue to send a Notice of Claim to that local government within 180 days from the date of injury.<sup>1</sup> Without this notice, persons generally are not permitted to sue a local government or government employee.

This chart represents a month-by-month comparison of the Notices of Claim received by Montgomery County from January 2008 through February 2010.

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<sup>1</sup> The Local Government Tort Claims Act is in Sections 5-301 through 5-304 of the Courts and Judicial Proceedings Article of the Maryland Code Annotated. A local government, for purposes of the Act, includes all Maryland counties, Baltimore City and various municipal corporations.

**SUBROGATION CLAIMS RECEIVED**  
**AND DOLLAR AMOUNTS SOUGHT**

Department	No. of Claims Received In February	FY10 Year to Date Claim Claims Received	Total Amount Sought by New Claims In February	FY10 Year to Date Dollars Sought
City of Gaithersburg	0	1	\$0.00	\$766.00
City of Rockville	0	1	\$0.00	\$241.06
City of Takoma Park	0	0	\$0.00	\$0.00
County Police	1	15	\$1,289.17	\$90,314.03
Department of Transportation	0	4	\$0.00	\$4,961.54
Finance	0	0	\$0.00	\$0.00
Fire & Rescue Service	0	0	\$0.00	\$0.00
Health & Human Services	0	0	\$0.00	\$0.00
Housing Opportunities Comm.	0	1	\$0.00	\$11,182.00
M-NCPPC	0	4	\$0.00	\$10,282.22
Mid-County Regional Service Center	0	1	\$0.00	\$7,353.05
Montgomery County Govt.	0	4	\$0.00	\$13,784.64
Montgomery County Public Schools	0	3	\$0.00	\$7,467.80
Revenue Authority	0	0	\$0.00	\$0.00
Sheriff	0	1	\$0.00	\$220.20
<b>TOTAL</b>	<b>1</b>	<b>35</b>	<b>\$1,289.17</b>	<b>\$146,572.54</b>

### **SUBROGATION CLAIMS CLOSED AND PAID\***

<b>Department</b>	<b>No. of Claims Closed In February</b>	<b>FY10 Year to Date Claims Closed</b>	<b>Total Amount Paid In February</b>	<b>FY10 Year to Date Dollars Paid</b>
City of Gaithersburg	1	3	\$0.00	\$2,810.00
City of Rockville	0	3	\$0.00	\$7,019.00
County Police	2	25	\$0.00	\$12,711.46
Department of Transportation	4	5	\$295.60	\$1,064.75
Fire & Rescue Service	0	0	\$0.00	\$0.00
Health & Human Services	0	1	\$0.00	\$499.82
HOC	0	1	\$0.00	\$0.00
M-NCPPC	0	5	\$0.00	\$137.62
Montgomery College	0	0	\$0.00	\$0.00
Montgomery County Govt.	0	6	\$0.00	\$18,968.29
Montgomery County Public Schools	1	2	\$5,003.61	\$5,165.58
Sheriff	0	1	\$0.00	\$0.00
<b>TOTAL</b>	<b>8</b>	<b>52</b>	<b>\$5,299.21</b>	<b>\$48,376.52</b>

**\*Unpaid closed subrogation cases will be referred to Debt Collection for collection after the case is closed. Collection data will be included in Debt Collection figures.**

**WORKERS' COMPENSATION SCHEDULED HEARINGS**  
**MONTHLY COMPARISON**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
January	215	139	155	170
February	158	182	156	157
March	201	296	261	
April	216	191	157	
May	186	200	169	
June	211	169	211	
July	194	227	208	
August	147	211	157	
September	121	152	120	
October	244	142	187	
November	171	209	148	
December	174	234	109	
<b>TOTAL</b>	<b>2,238</b>	<b>2,352</b>	<b>2,03</b>	<b>327</b>

## County Council Public Hearing April 5, 2010

Re: **Testimony of Laurie B. Horvitz Relating to Proposed Cuts to the Ethics Commission's Budget**

Madame President and County Council Members:

Tonight, I am here to speak about proposed cuts to the Ethics Commission's FY 2011 budget. The current proposal would eliminate a dedicated office for the Commission, eliminate two full-time program specialist positions, and relocate the only remaining full-time staff person to the County Attorney's Office.

I am a former Commissioner and two-term Chair of the Ethics Commission. Accordingly, I am familiar with many of the tasks assigned to the Commission in the Montgomery County Code and the very important role that the Commission plays in Montgomery County Government. I have two primary concerns about the budget proposal. First, the budget cuts would seriously undermine the effectiveness of the Commission. Second, the proposed changes would impair the independence of the Commission.

Montgomery County has enacted an impressive ethics law that regulates approximately 10,000 County employees, board members, and commissioners. Currently, more than 2,200 employees file financial disclosure forms throughout the year, over 1,000 employees request outside employment approval, and over 250 lobbyists must register, pay fees, and report activities semi-annually. These activities require considerable knowledge of the ethics law by Commission personnel. In addition, the Commission must consider waiver requests, investigate ethics complaints, and interface with County employees and the public. Paid staff must perform all necessary administrative functions, including (a) the preparation of minutes, (b) preparation of annual reports, (c) the creation and distribution of monthly agendas, and (d) a variety of enforcement tasks necessary to procure compliance from employees, elected officials, and volunteers. The Commissioners are unpaid volunteers who rely very heavily upon paid Commission staff to transact Commission business and to implement mandated programs efficiently and with sensitivity to the confidential character of many issues.

The Ethics Commission is entrusted with tasks that are intended to promote and procure ethical conduct by all regulated personnel. If the Commission's staff is reduced by sixty-six percent (66%), then the Commission will not be able to perform all of its mandated functions in a timely or complete manner.

Perhaps more importantly, the Ethics Commission cannot function independently and effectively if its paid staff is affiliated with the County Attorney's Office and supervised by that Office. By law, the Commission is structured as an independent and bipartisan body. The proposed transfer of Commission staff to the County Attorney's



Testimony of Laurie B. Horvitz  
County Council Public Hearing  
April 5, 2010  
Page Two

Office would allow undue involvement by the County Attorney's Office over the affairs of the Commission. Such involvement is inconsistent with the intended independence of the Commission and with applicable law. The County Charter and County Code both contemplate an independent Ethics Commission that is not subject, in all circumstances, to legal involvement by the County Attorney's Office. *See* Sec. 410 of the County Charter; Sections 19A-5(f)(4) and 19A-5(f)(1) of the Montgomery County Code.


The proposed relocation of the Ethics Commission and staff would have a chilling effect on employees who communicate confidentially with the Commission. The Commission cannot perform certain sensitive tasks or supervise outside legal counsel while operating from the offices of the County Attorney. The Ethics Commission must appear to act independently from the County Attorney's Office and must, in fact, act and decide matters independently.

As a policy matter, the independence of the Commission and its staff must be preserved to the maximum extent possible.

If ethics are important to this County, then the budget proposal should be rejected in its current form.

Thank you for your consideration of these views.

Sincerely,



Laurie B. Horvitz, Esq.  
(301) 951-8400

## **Ethics Commission – staffing options – current laws**

### **§19A-5 Ethics Commission**

\* \* \*

#### **(f) Administrative Support.**

- (1) The Commission must be allocated merit system staff, office space, equipment, and supplies within the limits of the Commission's appropriations. The Chief Administrative Officer appoints or assigns staff to the Commission after receiving a recommendation from the Commission. Subject to the general supervision of the Chief Administrative Officer, assigned staff serve at the direction of the Commission to perform duties assigned by the Commission.

### **§33-4A. Merit system protection board staff.**

- (a) The merit system protection board appoints and removes its executive secretary.
- (b) The executive secretary appoints and removes other staff to the board.
- (c) Appointment and removal under this section must comply with the merit system law.

### **§2-116. Employees, etc. (Board of Appeals)**

There may be appointed and assigned to the county board of appeals such employees, and the chief administrative officer shall make available to the board such services and facilities of the county, as are necessary or appropriate for the proper performance of its duties, and the county attorney shall serve as counsel to the board.

### **§1A-204. Supervision of offices and appointment of heads.**

- (a) Executive Branch.

Each office established under Section 1A-203(a) is under the supervision of an Executive Director who is appointed by the Chief Administrative Officer. Each Executive Director is a merit system employee.<sup>1</sup>

- (b) Legislative Branch.

\* \* \*

#### **(4) Office of Zoning and Administrative Hearings.**

- A. The County Council, by a majority vote of Councilmembers in office, may appoint one or more hearing examiners of the Office of Zoning and Administrative Hearings, and designate a hearing examiner or the Council Staff Director as Director of the Office.

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<sup>1</sup>The Executive branch offices covered by this subsection are specified in §1A-203:

#### **§1A-203. Establishing other offices.**

- (a) Executive Branch. These are the offices of the Executive Branch that are not part of a department or principal office:
  - Office of the Commission for Women
  - Office of Community Use of Public Facilities
  - Office of Emergency Management and Homeland Security
  - Office of Human Rights

- B. The County Council also may retain one or more hearing examiners as independent contractors, and may designate a contract hearing examiner as chief hearing examiner. Chapter 11B does not apply to any contract for hearing examiner services.
- C. The hearing examiners are not merit system employees.
- D. The Director must appoint and supervise the merit system employees of the Office.

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