

PS COMMITTEE # 1
August 1, 2016

MEMORANDUM

July 28, 2016

TO: Public Safety Committee
FROM: Susan J. Farag, Legislative Analyst *SJF*
SUBJECT: Discussion: Police Secondary Employment

Those expected to attend this work session include:

Assistant Chief Luther Reynolds, Montgomery County Police Department (MCPD)
Lieutenant Sean Renauer, MCPD

Overview

Today the Committee will discuss secondary employment for police officers. Secondary employment is governed both by County regulation (attached at ©1-7) as well as by collective bargaining agreement (attached at ©8-14).

All officers who wish to work a secondary job must first seek approval through the Department by making a Secondary Employment Request (Form 307 attached at ©15-16). This request is reviewed by the Chief or his designee. If the officer wishes to engage in security-related secondary employment, he or she must also submit a separate form (©17), agreeing to certain conditions of employment, including the maintenance of workers' compensation insurance and general liability insurance. If this secondary employment security work requires the presence of six or more officers at the site, the secondary employer must agree to hire an additional police sergeant.

The Chief (or designee) may approve the secondary employment request, and designate the approval as indefinite, limited, or for 12 months. At this point, the department submits any secondary employment request that extends longer than six weeks to the County Ethics Commission. The Ethics Commission may approve or deny the request, and will inform the officer directly. No officer may work secondary employment if denied.

While there were no data available on the number of sworn officers who work secondary employment, the Department indicates that most police officers, at some point in their career, work another job.

Restrictions on Secondary Employment

County regulation provides certain restrictions on employment. These restrictions generally address circumstances where there may be a conflict of interest or in some way jeopardize an officer's performance on active duty. There are also some other safety-related restrictions, such as not operating a school bus within six hours of ending an active duty midnight shift. There are restrictions on the use and dissemination of confidential information.

Uniformed secondary employment is prohibited, in certain circumstances, in establishments that sell alcohol or permit gambling. It is also prohibited if working for businesses such as debt collectors, private process servers, property repossessioners, security guard companies, private investigators, and bail bonds, and cannot involve other certain activities such as towing vehicles.

Police are allowed to use most department-issued equipment while on secondary employment, including badge, gun, police radio, and ballistic vest. Police are precluded from using their personal patrol vehicle (PPV) for secondary employment, other than to drive to the employment site.

Benefits of Secondary Employment

Beyond the obvious benefit of permitting police officers to enhance income or pursue other paid professional opportunities, secondary employment benefits MCPD by functioning as a force multiplier. There are many situations where police cannot be deployed while on duty without compromising appropriate coverage of primary police work. For example, if a large event such as a golf tournament requires more security or traffic control than MCPD can provide, the tournament sponsor may hire off duty police officers to supplement coverage.

Potential Concerns with Secondary Employment

Several citizens have complained or raised concerns about police officers in their secondary employment roles. Complaints include using PPVs for patrol, or idling for long periods (and using County-provided fuel). Others have complained of intimidation by uniformed officers where it is not readily apparent that an officer is on secondary duty and not functioning as an active duty sworn police officer.

Discussion Issues

1. How do outside entities request police officers for secondary employment?
2. How are complaints submitted to MCPD regarding incidents that happen while an officer is working secondary employment?
3. Have there been any incidents of officers working secondary employment without approval?
4. Has there been any discussion about changing oversight practices to potentially recoup some of the Departmental costs associated with secondary employment, such as the use of fuel while the PPV is idling?

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Editor's note—This Regulation applies to commissioned (sworn) police officers who are not in the FOP bargaining unit. This also appears as MCPD Function Code 355. This regulation also implements Md. Code, Art. 27, § 729A.

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COMCOR 19A.06.01 Regulations of Secondary Employment (Police)*

***Editor's note**—This Regulation applies to commissioned (sworn) police officers who are not in the FOP bargaining unit. This also appears as MCPD Function Code 355. This regulation also implements Md. Code, Art. 27, § 729A.

19A.06.01.01 Policy

All Department of Police officers who desire secondary employment must comply with the procedures established in this regulation and will not engage in any employment outside the department without the written permission of the Chief of Police and approval from the County Ethics Commission, except while in the approval process. The Ethics Commission adopts and incorporates by reference Article 27 of the collective bargaining agreement between the county and the Fraternal Order of Police in regard to outside employment activities. Department of Police officers who are Fraternal Order of Police bargaining unit members should refer to Article 27 of the collective bargaining agreement regarding secondary employment policies and procedures.

19A.06.01.02 Definitions

- A. **Employment:** Any work, occupation, labor, or profession that results in compensation to the officer.
- B. **Secondary Employment:** Any employment not required by the Montgomery County Department of Police.
- C. **Security-Related Secondary Employment:** Any employment where the officer is hired for the express purpose of protecting the proprietary interests of the employer and can include protecting the employer, employees, or customers.
- D. **Uniformed Security-Related Secondary Employment:** Any employment where the officer is hired for the express purpose of protecting the proprietary interests of the employer and the officer wears a Montgomery County police uniform.
- E. **Officer:** Unless otherwise indicated, refers to a commissioned (sworn) police officer employed by the Department of Police who is the rank of sergeant and above.
- F. **Employee:** Refers to all Department of Police personnel, sworn and non-sworn.
- G. **Department:** Refers to the Montgomery County Department of Police.

19A.06.01.03 Officer Responsibilities

- A. The primary duty, obligation, and responsibility of every officer is to the Department of Police. Officers who are directed to work overtime, or are directed to report to work on their days off, will do so regardless of the fact that outside employment is approved. Outside employment should not become additional full-time employment.
- B. If an officer of the Department of Police owns a business or is in charge of hiring personnel, including department employees and officers of any rank, the officer must disclose this information when application is made for secondary employment.

19A.06.01.04 Request Procedure

- A. Approval from the Chief of Police, or designee, via a Secondary Employment Request (MCP 307), must be obtained by an officer prior to engaging in any outside employment. If the employment is security related, the officer will also submit an MCP 309, "Secondary Employer Agreement for Security-Related Work" prior to engaging in secondary employment.
- B. Approval of both security-related and non-security-related secondary employment of a short, spontaneous, temporary duration that requires immediate acceptance by an officer may initially be granted by the officer's district or unit commander within not more than one business day. The MCP 309 must be completed prior to the officer working any security-related secondary employment. In every instance, the MCP 307 must be submitted as indicated in section IV.A,* above.

***Editor's note**—see [19A.06.01.04.A](#)

- C. An approval request authorizes only such work and conditions as are specifically designated on the request form. Approval or denial will be determined in accordance with this regulation. In those instances where approval is granted, the officer may begin work. Approval will be granted as follows:

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1. Indefinite Approval - Remains in effect until the work is completed or the officer or employer changes the status or nature of the work.
2. Twelve-Month Approval - Remains in effect for 12 months from the date of the Chief of Police's approval. Each officer will be notified, via memorandum, prior to the end of the 12-month approval period. To continue the secondary employment, the officer must submit a new request.
3. Limited Approval - Remains in effect until the employment is completed. This is used for short-term, temporary employment (i.e., one-day event).

D. Denial will be determined initially by the Chief of Police or designee.

E. The Chief of Police, or designee, will submit all requests to the Ethics Commission for approval. The Ethics Commission can approve or deny the request and will notify the applicant directly of its action. An officer may not work the secondary employment in question if denied by the Ethics Commission.

F. All approved secondary employment request forms submitted prior to the effective date of this regulation will remain in effect until their normal expiration unless rescinded for other cause or prohibited by this regulation or by law; questions regarding secondary employment, approval status, or compliance with this regulation or the law may be directed to the Chief, Management Services Bureau.

19A.06.01.05 General Secondary Employment Restrictions

A. Officers shall not engage in any secondary employment which is in conflict with the Montgomery County Government and Department of Police.

B. Officers shall not engage in any outside employment which will adversely affect their ability to perform their duties.

C. Officers shall not engage in any outside employment which presents an unacceptable risk of disabling injury that would limit an officer's return to regular duty. "Unacceptable risk" means any risk that is greater than that required of a sworn officer generally.

D. Officers will not engage in secondary employment during the actual hours for which they are scheduled to work for the county, while on approved sick leave, FMLA, parental leave, disability leave, administrative leave, or professional improvement leave. Officers may not engage in secondary employment during any period while on sick leave, disability leave, and FMLA if the employment can be reasonably construed to delay or preclude full recovery and return to work.

E. Officers will not use any police equipment or exercise any police authority while engaged in secondary employment while their police powers are suspended.

F. Officers will not engage in secondary employment in any capacity for any business that sells, dispenses, or handles alcoholic beverages with the following exceptions: an officer may work for a store, motel, hotel, restaurant, country club, or similar establishment as a security person, desk clerk, or similar capacity, provided no part of the officer's specific duties are related to or involve the bar area where alcoholic beverages are sold or dispensed, the employment does not require "bouncer" duties, and the sale, dispensing, or handling of alcoholic beverages is not the primary business of the establishment.

G. No officer shall engage in business with the Montgomery County Government without first revealing their employment status with the county.

H. Except for uniformed security-related secondary employment, officers will not engage in secondary employment if the authority vested in them as a county employee is a requirement for obtaining or holding employment.

I. Officers will not divulge their association with the Department of Police in the course of their employment as a salesperson.

J. Except as provided in this regulation, officers may not be employed by, or have any ownership interest in, any business subject to the authority of, or doing business with, the police department.

K. No towing service owned and/or operated by off-duty Montgomery County Police officers, of any rank, or employees shall be used for towing of vehicles at the request of on-duty Montgomery County Police officers, of any rank, unless specifically requested by the owner or operator of the vehicle involved.

L. No officer of the department shall operate a school bus within six hours of completing a midnight shift.

M. Officers, in the performance of their secondary employment, will not take advantage of any services provided by the Department of Police unless in the performance of legitimate police action. Under the provisions of the CJIS Law, it is a violation to disseminate criminal record information to non-criminal justice agencies or to anyone when not in the scope of official business. Further, obtaining any information, criminal or non-criminal, can only be done in the same capacity as a private citizen when not for official police activity. Any deviation from this can subject the officer to liability.

N. Officers may not use confidential information gained in county employment for outside financial gain or for any purpose other than use in county employment.

O. Officers, while on duty, may not accept or solicit referrals for their secondary employment.

P. Officers will not distract or coerce other county employees during their scheduled work hours to buy or use products or services sold or offered as part of their secondary employment.

Q. Officers, in the performance of their secondary employment, are permitted to carry/utilize the following county equipment:

1. Weapons/Protective Instruments (carried in an inconspicuous manner unless uniformed):
 - a. Handgun,
 - b. OC spray,

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- c. ASP baton, and
 - d. Maglight flashlight.
2. Other:
- a. Portable radio,
 - b. Ballistic vest,
 - c. Handcuffs,
 - d. MCP badge and credentials,
 - e. PPV (to drive to job site), and
 - f. Baseball cap (uniformed only).

3. Officers, except those prohibited from working uniformed security-related secondary employment in section VII.D,* may wear the brown patrol uniform and authorized issued equipment while engaged in uniformed security-related secondary employment and while going to and from the secondary employment site. If the uniform is worn, the entire uniform along with the Sam Browne belt, pistol, handcuffs, ASP, and portable radio must be worn by the officer.

***Editor's note**—see 19A.06.01.04.D

R. Officers are prohibited from working for any person(s) or any entity owned (at least 5% ownership) by a person, or persons, they supervise or who supervises them as part of their county employment.

19A.06.01.06 Security-Related Secondary Employment Restrictions

In addition to the restrictions listed in sections IV and V* of this regulation, the following restrictions apply to security-related secondary employment:

***Editor's note**—see 19A.06.01.04 and 19A.06.01.05

A. No officer shall work in security-related secondary employment unless the officer has been employed by the Montgomery County Department of Police for at least one year.

B. When the officer determines that an offense report should be initiated, the officer will call an on-duty officer, of any rank, to take the report and initiate an investigation to the same extent as if a private citizen had called the police. This policy is not intended to prohibit an officer witnessing the commission of a crime from taking immediate and appropriate police action. However, once the situation is under control, the officer will call on-duty officers, as described above.

C. The officer will work only as a surveillance guard and, if the officer anticipates a situation where the presence of on-duty uniformed officers, of any rank, would have a calming or deterrent effect, they will be requested.

D. Security-related secondary employment shall be limited to duties customarily associated with those performed by a watchman or guard and shall not include background investigations or any form of investigative surveillance work related to any divorce, separation, or other domestic situation within Montgomery County.

E. No follow-up investigations of previously reported offenses will be handled by off-duty officers, and all information coming to their attention relating to such incidents will be reported to investigating officers, of any rank.

F. While on-duty with the department, the officer will show no preferential coverage to the place of the officer's secondary employment nor, while employed there off-duty, will the officer encourage visitation by on-duty officers and employees, of any rank.

G. Under no circumstances will an officer act as an intermediary between a particular employer and a group of employees employed as watchmen/security guards for the purpose of scheduling, coordinating, or any other similar activity unless the officer has first obtained the appropriate license from the Superintendent of the Maryland State Police, if such license is required.

H. Secondary Employer's Responsibilities

Officers will not be permitted to work security-related secondary employment unless the secondary employer agrees to:

1. Pay officers appearing in court on their day off or during non-regular scheduled working hours for civil incidents arising from off-duty employment activity.
2. Pay the officer by check showing proper deduction for Social Security, if required by law.
3. Provide Worker's Compensation Insurance coverage for the officer, if required by law.
4. Except for non-regular, occasional, or sporadic employment for a private individual, the secondary employer agrees to maintain a comprehensive general public liability insurance policy in a minimum amount of \$500,000, which will cover the officer against any and all claims and/or liability resulting from such employment.
5. Make no attempts to exert any influence regarding a police decision involving whether an arrest should be made.
6. Initiate all formal charges for trespassing and not let the officer initiate such charges.
7. Keep the agreement between the secondary employer and the county in force for the duration of the period specified in the agreement.

19A.06.01.07 Uniformed Security-Related Secondary Employment Restrictions

In addition to the restrictions listed in sections IV, V, and VI of this regulation, the following restrictions apply to uniformed

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security-related secondary employment:

A. Officers are authorized to work uniformed secondary employment only within the boundaries of Montgomery County, Maryland, where the police department normally provides police service. Uniformed secondary employment is prohibited within the City of Takoma Park.

B. Officers may work secondary employment in uniform only as a watchman or surveillance guard or as provided in paragraph F of this section.

C. Officers will not engage in secondary employment where there is a potential conflict of interest between the officer's duties as a police officer and duties for the officer's outside employer.

D. Uniformed secondary employment is prohibited if the officer's police powers are suspended or revoked.

E. Uniformed secondary employment is prohibited in the following circumstances:

1. An officer is under the influence of alcohol or drugs.

2. It is probable that on-duty officers, of any rank, would respond as a result of a demonstration, protest march, sit-in, labor/management dispute, or mass arrest situation.

3. The officer is on leave status identified in section V.D* or in a leave without pay status.

***Editor's note**—see [19A.06.01.05.D](#)

4. The secondary employment establishment sells, distributes, or serves alcoholic beverages.

5. Gambling is occurring in the secondary employment establishment (other than the sale of state lottery tickets by the secondary employer).

6. Uniformed secondary employment must be terminated immediately upon notice to the officer by an appropriate supervisor, that the secondary employer, official of the employing company, or an employer's supervisor becomes the subject of a law enforcement investigation or enforcement action other than a petty offense or traffic charge.

7. Officers may only work uniformed secondary employment on the premises of their secondary employer or on property immediately adjacent to the secondary employer's property.

8. Officers are only authorized to work secondary employment in uniform a maximum of 16 hours in a 40-hour workweek. Days off are excluded.

9. Officers are prohibited from working uniformed secondary employment for debt collectors, private process servers, skip tracers, employers engaged in repossessing property, employers doing pre-employment investigations, bail bonding agencies, employers engaging in the towing of vehicles, and employers engaged in the security guard, private investigator, or private detective business.

F. Officers may work, in a uniformed secondary employment capacity, as a traffic control officer on private property as long as their actions do not take place on, or interfere with, public right-of-ways. Exceptions to this restriction are secondary employment situations where a permit has been issued by the Department of Public Works and Transportation that allows for traffic control on public right-of-ways.

G. In the event the department develops the capability to retain and monitor such information, officers engaging in uniformed security-related secondary employment may be required to immediately notify the Emergency Communications Center at the beginning and end of the work period indicating the employer and the duty location.

19A.06.01.08 Cancellation of Employment

A. Any officer who ceases or cancels secondary employment will forward an MCP 307 to the Chief, Management Services Bureau, if the approval was for an indefinite period of time or if approval was for 12 months and it has not expired. Only Part IV, "Cancellation," of the MCP 307 should be completed.

B. Officers who wish to work secondary employment must comply with these regulations. The Chief of Police has the authority to cancel permission, temporarily or permanently, of any officer engaged in secondary employment who violates these regulations. Officers may not work any secondary employment without the required approvals.

19A.06.01.09 Compliance

All officers who wish to work secondary employment must comply with these regulations and the Chief of Police may discipline any officer who fails to comply with these regulations.

19A.06.01.10 Effective Date

This regulation becomes effective on May 16, 2000

(Administrative History: Reg. No. 8-00 (Method 2); Dept.: Police)

COMCOR 19A.06.02 Administrative Policies and Procedures for Outside Employment*

***Editor's note**—This Regulation applies to all County employees' secondary employment.

19A.06.02.01 Authority

1.0 Chapter 19A of the Montgomery County Code.

19A.06.02.02 Definitions

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2.0 Definitions contained in Chapter 19A are hereby incorporated. See Section 19A-4, Montgomery County Code.

2.1 Confidential Information — Information whether oral or written in the custody of a county employee or an uncompensated appointed official which is not available to the public pursuant to State Government Article Section 10-622 et seq., Annotated Code of Maryland. This information includes personnel records, confidential commercial information and information protected by law.

2.2 County Employee — Any person, including elected or appointed officials (unless excepted in context), who are compensated in whole or in part by the Montgomery County Government or the Revenue Authority, Housing Opportunities Commission, Board of License Commissioners, independent fire departments or rescue squads.

2.3 County Property — All assets of the county, including but not limited to computers, office equipment, telephones, copiers, county letterhead, county cars (including Personal Patrol Vehicles) and police service revolvers.

2.4 Elected or Appointed Official — A person who is elected to office or appointed to a position by the County Executive or the County Council and is not subject to appointment procedures of the Merit System.

2.5 Outside Employment — The employment of a county employee performing work for compensation for other than the County or an agency, or the Revenue Authority, Housing Opportunities Commission, Board of License Commissioners, and independent fire departments and rescue squads. Outside employment shall not include any military, National Guard or volunteer (non-paid) service.

2.6 Supervisor — A county employee who has authority to hire, fire, rate the performance of, and/or direct the day-to-day activities of a subordinate employee.

2.7 Security-Related Outside Employment — Any employment where the County employee is hired for the express purpose of:

- a. Protecting the proprietary interests of the outside employer
- b. Protecting the outside employer's employees or customers: or
- c. controlling vehicular or pedestrian traffic on or near the outside employer's place of business.

2.8 Uniformed Security-Related Outside Employment — The security-related outside employment of a Montgomery County police officer who performs off-duty security services while wearing the Montgomery County Police uniform.

19A.06.02.03 Purpose

3.0 To establish clear and reasonable procedures and policies regulating outside employment for all employees of the county government and appropriate agencies.

3.1 These regulations do not address or supersede any prohibition or need for a waiver when a conflict of interest exists.

19A.06.02.04 Policies

4.0 County employees must receive approval pursuant to these regulations for all outside employment, regardless of whether the employment is performed after hours or during vacation periods.

4.1 County employees shall not engage in outside employment during the hours for which they are scheduled to work for the county or during approved sick, administrative, disability, parental or family and medical leave hours, as defined in the County Personnel regulations and bargaining agreements.

4.2 County employees and uncompensated appointed officials, while on duty, may not accept or solicit referrals or their outside employment, nor shall they distract or coerce other county employees during their scheduled work hours to buy or use products or services sold or offered as part of their outside employment.

4.3 County employees are prohibited from working for any person(s) or any entity in which an economic interest is held by a person(s) the county employee supervises or who supervises the County employee as part of their county employment.

4.4 County employees may not be employed by or have an economic interest in any business subject to the authority of or doing business with the county agency or department for which they work

4.5 County employees and uncompensated appointed officials may not use any county property whatsoever in the discharge of their outside employment including transport to and from their outside employment. Permission may be granted on a case- by-case basis when the employee obtains written approval by the department head pursuant to the regulation of the department or other respective collective bargaining agreement.

4.5.1 County police officers may utilize the following county equipment in the performance of their outside employment but may not do so solely to advance the interests of the outside employer: weapons/protective instruments (handgun, OC spray, ASP baton, Maglight flashlight), portable radio, ballistic vest, handcuffs, MCP badge and credentials.

4.5.2 While engaged in uniformed security-related outside employment, Montgomery County police officers may wear the police uniform and authorized issued equipment.

4.6 The Ethics Commission adopts and incorporates by reference the directives of individual county departments and agencies in regard to outside employment activities except when the Ethics Commission's policies are more restrictive, in which case they shall override any other directives, or when a specific directive is expressly superseded by an Ethics Commission policy.

4.7 County employees and uncompensated appointed officials may not use confidential information gained in county employment for personal financial gain or for any purpose other than use in county employment.

4.8 While a Montgomery County police officer is performing security-related outside employment, the officer shall not:

- (a) encourage visitation by on-duty police employees to his/her place of outside employment; or
- (b) conduct follow-up investigations of previously reported offenses.

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- 4.9 While on duty, a Montgomery County police officer shall not show preferential coverage to the place of the officer's outside employment.
- 4.10 County employees with police powers may not engage in any outside employment which requires a Maryland State Investigator's License; this requirement shall not be applicable to ownership/conduct of a business, which engages in security-related work only.
- 4.11 County employees with Assistant State Fire Marshall powers and responsibilities may not engage in any outside employment in the State of Maryland which involves the establishment and enforcement of fire safety practices, preventive inspection and correction activities, coordination of fire safety programs and critical analysis and evaluation of Maryland fire loss statistics for determination of problems and solutions. Examples include, but are not limited to, conducting investigations for private individuals or entities and testifying in litigation involving fire issues.
- 4.12 Uncompensated appointed officials and county employees in the classifications within Grades S1-S6 and 5-13 are exempt from outside employment approval by the Ethics Commission, except from the classifications listed below:

Data Application Trainee
 Computer Operator Trainee
 Data Entry Operator I & II
 Data Application Specialist I & II
 Legislative Intern

However, all county employees and appointed officials remain subject to the provisions of all other Ethics Commission policies and the provisions of the Montgomery County Code, Chapter 19-A.

- 4.13 A county employee may request a waiver of these policies by the Ethics Commission in accordance with the criteria established in § 19A-8 of the Montgomery County Code.

19A.06.02.05 Procedures for Approval

5.0 Employee:

5.0.1 An employee must submit two completed copies of the outside employment form to his/her department head through his/her immediate supervisor. These forms can be obtained from the Ethics Commission. Each request shall include, but not be limited to, the following information:

- a. Employee's name, department, division, office telephone number, address and work schedule;
- b. Current position title with the Montgomery County Government and brief description of duties;
- c. Outside employer's name, address, telephone number, name of supervisor at outside employment, and nature of business of outside employer;
- d. Position title and description of duties to be performed in outside employment;
- e. Total number of hours proposed to be worked at outside employment each week and proposed work schedule;
- f. Anticipated length of employment (months/years/indefinite);
- g. Licenses or equipment required for outside employment.

5.1 Department Head and Supervisor:

5.1.1 The Department Head and Supervisor shall recommend approval or disapproval of the employee's request and forward the employee's request with recommendations, including specific conditions when appropriate, to the Ethics Commission. If disapproval is recommended, the Department Head or Supervisor shall state the specific reasons for the disapproval.

5.2 Ethics Commission:

5.2.1 The Ethics Commission shall review the request and make a final decision. The Ethics Commission shall then notify the employee and department/agency head in writing of its final decision.

5.3 Elected or Compensated Appointed Official:

5.3.1 Elected officials shall submit requests for outside employment approval directly to the Ethics Commission. Compensated appointed officials shall submit requests for outside employment approval to the Chief Administrative Officer. Elected officials and appointed officials may use either the outside employment request form available at the Ethics Commission office or may submit a memorandum which address all of the policies and procedures set forth in this Regulation.

19A.06.02.06 Provisions

6.1 County employees may begin outside employment when the employment is approved by the department/agency head, with the understanding that continuation of the outside employment is contingent upon final approval by the Ethics Commission. County employees engaged in outside employment without the approval of the department must submit requests immediately in accordance with Ethics Commission procedures. Failure to obtain Ethics Commission approval violates the Ethics Law and County Personnel Regulations and may result in disciplinary action and other penalties as provided by law.

6.2 County employees who have outside employment approval must notify their department/agency head promptly of any changes in the outside employer or the duties involved in the outside employment.

6.3 A county employee who receives approval for outside employment and later transfers to another department (or accepts another

position within the department) must obtain approval from the new department/agency head (or reapply to the current department head) and obtain the approval of the Ethics Commission to continue outside employment. The original approval shall continue for the outside employment if the employee applies for approval within thirty (30) days after the transfer, unless the department/agency head or Ethics Commission denies approval. Otherwise, the approval terminates thirty (30) days after the transfer.

6.4 Employees given outside employment approval for a specific period of time are responsible for requesting reapproval of the outside employment to continue the employment beyond the specified period.

6.5 If there is no question regarding conflict of interest from the department/agency head, a request for outside employment with a duration of six (6) weeks or less may be approved by the department/agency head without review by the Ethics Commission.

19A.06.02.07 Departments/Agencies Affected

7.0 These regulations shall apply to all departments and agencies.

(Administrative History: Reg. No. 25-01 (Method 2); Dept.: Ethics Commission)

SEC. 19A-12 RESTRICTIONS ON OTHER EMPLOYMENT AND BUSINESS OWNERSHIP — REGULATIONS

See also COMCOR 19A.06.01 Regulations of Secondary Employment

See also COMCOR 19A.06.02 Administrative Policies and Procedures for Outside Employment (Employment Outside of the County Service)

SEC. 19A-17 WHO MUST FILE FINANCIAL DISCLOSURE STATEMENTS

19A.17.01 Financial Disclosure

19A.17.01.01 Purpose

Montgomery County's Public Ethics Law identifies with specificity certain County positions the occupants of which are required to file financial disclosure statements. The law also authorizes the County Executive to designate additional positions by regulations issued under method (2) after finding that filing a financial disclosure report is desirable to promote the trust and confidence of citizens in their County government. This regulation implements the law and identifies statutory and County Executive-designated positions required to file financial disclosure statements.

19A.17.01.02 Definitions

CAO means the Chief Administrative Officer or designee.

County Agency or Agency has the same meaning ascribed to it in Chapter 19A of the Montgomery County Code.

Public Employee or employee has the same meaning ascribed to it in Chapter 19A of the Montgomery County Code.

19A.17.01.03 Requirement

A. Public employees who must file annually.

A public employee holding one of the positions identified in the attached schedule at the end of the calendar year must file a sworn annual financial disclosure statement (public, limited public (LP), confidential, or any other statutorily mandated type of filing) for that calendar year under the Public Ethics Law, Article IV, Financial Disclosure. Positions designated as "LP" must file a limited public annual financial disclosure statement under § 19A-17(a)(6), and, if indicated, a confidential financial disclosure statement.

B. Initial Financial Disclosure Statement.

A public employee entering a position on the attached schedule must file an initial financial disclosure statement under § 19A-18(f)(1) within 15 days after the employee begins service in the position, unless, without a break in the continuity of service, the employee's immediate prior position was a filing position in the same Agency. The CAO must submit to the Ethics Commission the identity, position number, job class/working title, user name, email address, Agency, designated reviewer and type of filing required for each public employee who must file an initial financial disclosure statement.

C. Final Financial Disclosure Statement.

On or before the employee's last day in the filing position, the employee must submit a final financial disclosure statement under § 19A-18(f)(2). The CAO must submit to the Ethics Commission the identity, position number, and Agency of any public employee leaving a position on the attached schedule.

D. Designations of newly identified filing positions/Waivers of filing requirement.

The CAO must submit to the Ethics Commission the identity, position number, job class/working title, user name, email address, Agency, designated reviewer, and type of filing for each public employee who must file an initial financial disclosure statement under Section 19A-18(f)(1) even though the employee or the employee's position is not identified on the attached schedule. The CAO shall submit this information to the Ethics Commission immediately after a determination is made that the employee or the employee's position meets the criteria for filing a financial disclosure statement under Section 19A-17(c). Also, the CAO may, for positions given filing status by County Executive designation (rather than by the Montgomery County Code), waive the filing requirement for an employee whose duties no longer meet the criteria for being a filer. The CAO should submit the identity, position number, and Agency to the Ethics Commission immediately after a determination is made that the employee or the employee's position no longer meets the criteria for filing a financial disclosure statement under Section 19A-17(c). All changes to a public employee's filing status made by the CAO must be evidenced by a memorandum attached to the employee's personnel record.

E. Effective Date Of Determination.

Article 27 Secondary Employment

Section A. Definitions.

1. *Employment* - any work, occupation, labor or profession that results in compensation to the employee.
2. *Secondary Employment* - any employment not required by the Montgomery County Department of Police.
3. *Security Related Secondary Employment* - any employment where the employee is hired for the express purpose of protecting the proprietary interests of the employer.
4. *Uniformed Security Related Secondary Employment* - any employment where the employee is hired for the express purpose of protecting the proprietary interests of the employer and the employee wears a Montgomery County police uniform.
5. *Employee* - refers to all POCs, PO Is, PO IIs, PO IIIs, MPOs, and sergeants.

Section B. Secondary Employment

1. All employees who desire secondary employment must comply with the procedures and provisions established in this Article. Except in accordance with this agreement, employees will not engage in any employment outside the department without the required approvals. (See Side Letter: March 15, 1996)
2. The primary duty, obligation, and responsibility of every employee is to the Department of Police. Employees who are directed to work overtime, or are directed to report to work on their days off, will do so regardless of the fact that outside employment is approved. Outside employment should not become additional full-time employment.
3. Requests for approval for unit members who are in a leave without pay status, including unit members who are suspended without pay to work non-uniformed secondary employment, shall be processed by the employee's district/unit commander within not more than one business day. However, the approval process (MCP #307) must be initiated as indicated in §C.1, and the §D. restrictions shall apply. In the event that approval of the written request is subsequently denied, the employee will be required to immediately terminate the outside employment in question.

Section C. Request Procedure

1. Approval from the chief of police or designee via an agreed upon Secondary Employment Request must be obtained by an employee prior to engaging in any outside employment, except as stated in §C.3. (See Side Letter: May 7, 2001.)
2. If there is no question regarding conflict of interest in accordance with this Article, the chief of police shall act upon a request for approval of outside employment and provide notification to the employee within 5 days after the employee submits his/her application. Employees will be notified of approval earlier if such approval is given.
3. For security related secondary employment, an agreed upon Employer Agreement for Security Related Work must be completed by the employee, signed by the secondary employer prior to working the secondary employment, and sent to the chief, Management Services Bureau.
4. Approval of both security related, and non-security related, secondary employment of a short, spontaneous, temporary duration that requires immediate acceptance by an employee, may initially be granted by the employee's district/unit commander within not more than one business day. The agreed upon Employer Agreement for Security Related Work must be completed prior to the employee working any security related

secondary employment. However, in every instance, the approval process must be initiated as indicated in §C.1. In the event that approval of the written request is subsequently denied, the employee will be required to immediately terminate the outside employment in question.

5. An approval request authorizes only such work and conditions as are specifically designated on the request form. Approval or denial will be determined in accordance with this Agreement. In those instances where approval is granted, the employee may begin work. Approval will be granted as follows:
 - a. Indefinite Approval: Remains in effect until the work is completed or the employee or employer changes the status or nature of the work, in accordance with this Agreement. For each indefinite approval, the employer may request that employees confirm their employment. This request will be made no more frequently than every thirty-six months. If the employee has not responded to the initial solicitation within two weeks, the employer will initiate a second solicitation. If the employee fails to respond to the second solicitation within two weeks, the employer may cancel the approval. The employer will notify employees of any cancellation of work approval in writing. This provision applies to all existing and future indefinite approvals.
 - b. Twelve Month Approval: Remains in effect for twelve months from the date of the chief's approval. Each employee will be notified, via memorandum, prior to the end of the twelve-month approval period. To continue the secondary employment, the employee must submit a new request. [See Side Letter.]
 - c. Limited Approval: Remains in effect until the employment is completed. This is used for short term, temporary employment (i.e., one day event).
6. Denial will be determined initially by the chief of police or designee. If denied, the employee may appeal the decision to the chief administrative officer or designee who shall review the action and respond to the employee with a determination within 7 days. Decisions of the CAO or designee may be submitted to arbitration as provided at Article 8, Sections E through H of this Agreement.
7. The Employer will submit all requests, if necessary, to the Ethics Commission for approval. In the event that any request is denied by the Ethics Commission, which has not been denied under C.6. of this Agreement, this Article will be reopened under the provisions of Article 31 §B of this Agreement. The employee may not work the secondary employment in question if denied by the Ethics Commission. [See Side Letter.]
8. All approved forms submitted prior to the effective date of this article will remain in effect until their normal expiration as set forth in section C.4 and 5 above, unless rescinded for other cause, or prohibited by this article.
9. If a department employee owns a business or is in charge of hiring personnel, including department employees, the employee must disclose this information when application is made for secondary employment.
10. Approval for work performed on behalf of the Montgomery County Board of Education (i.e., school, office or agency) shall pertain to all future similar work performed by the employee on behalf of that agency.

Section D. Restrictions

1. Employees shall not engage in any secondary employment which is in conflict with the Montgomery County Government and Department of Police.
2. Employees shall not engage in any outside employment which will adversely affect their

ability to perform their duties.

3. Employees shall not engage in any outside employment which presents an unacceptable risk of disabling injury that would limit an employee's return to regular duty. "Unacceptable risk" means any risk that is greater than that required of a police officer generally.
4. Employees will not engage in secondary employment during the actual hours: for which they are scheduled to work for the county, while on approved sick leave, FMLA, parental leave, disability leave, administrative leave, or professional improvement leave. However, employees may not engage in secondary employment during any period while on sick leave, disability leave, and FMLA if the employment can be reasonably construed to delay or preclude full recovery and return to work.
5. Employees who have had medical restrictions placed upon them as a result of an illness or injury must abide by those restrictions while working secondary employment. Employees with such restrictions may be subject to Section D(3) above. If employees are restricted from wearing their uniform while on-duty, they shall not wear their uniform during secondary employment.
6. Employees will not use any police equipment or exercise any police authority while engaged in any secondary employment while their police powers are suspended.
7. In Montgomery County, employees will not engage in secondary employment in any capacity for any business that sells, dispenses or handles alcoholic beverages with the following exceptions: An employee may work for a store, restaurant, motel, hotel, country club or similar establishment as a security person, desk clerk, or similar capacity, provided no part of the employee's specific duties are related to or involve the bar area where alcoholic beverages are sold or dispensed, the employment does not require "bouncer" duties and the sale, dispensing or handling of alcoholic beverages is not the primary business of the establishment.
8. No employee shall engage in business with the Montgomery County Government without first revealing his/her employment status with the County.
9. Except for uniformed secondary employment, employees will not engage in secondary employment if the authority vested in them as a county employee (to be a police officer) is a requirement for obtaining or holding the employment.
10. Employees will not divulge their association with the department in the course of their employment as a sales person.
11. Except as provided in this article, employees may not be employed by or have any ownership interest in any business subject to the authority of or doing business with the police department.
12. No towing service owned and/or operated by off-duty Montgomery County police employees shall be used for towing of vehicles at the request of on-duty Montgomery County police employees unless specifically requested by the owner or operator of the vehicle involved.
13. School Bus Operator - No employee of the department shall operate a school bus immediately after working a midnight shift.
14. Employees, in the performance of their secondary employment, will not take advantage of any services provided by the department unless in the performance of legitimate police action. (Under the provisions of the CJS Law, it is a violation to disseminate criminal records information to non-criminal justice agencies or to anyone when not in the scope of official business. Further, obtaining any information, criminal or non-criminal, can only be done in the same capacity as a private citizen when not for official

- police activity. Any deviation from this can subject the employee to tort liability.)
15. Employees may not use confidential information gained in county employment for outside financial gain or for any purpose other than use in county employment.
 16. Employees, while on duty, may not accept or solicit referrals for their secondary employment.
 17. Employees will not distract or coerce other county employees during their scheduled work hours to buy or use products or services sold or offered as part of their secondary employment.
 18. PPVs and SOFVs may be driven to and from the job site and used as a stationary observation post but must not otherwise be used in the course of or in furtherance of their secondary employment work. While using the vehicle as a stationary observation post, employees must monitor the police radio as required by this Agreement.
 19. Employees are prohibited from working for any person(s) or any entity owned (at least 5% ownership) by a person, or persons, they supervise, or who supervises them as part of their county employment.
 20. Approval for secondary employment may be suspended by the employer based upon credible information that the secondary employer, official of the employing company, or an employee's supervisor, becomes the subject of a law enforcement investigation or enforcement action other than a petty offense or traffic charge where the focus of the investigation or enforcement action creates a conflict of interest between the secondary employment and the employee's status as a police officer.

Employees will cease employment upon notice by an appropriate supervisor of a suspension pursuant to the above condition.

Employment suspended under this section may be reinstated without need for reapplication, at the conclusion of the law enforcement investigation or enforcement action.

Section E. Security Related Secondary Employment

1. No employee shall work in security related secondary employment unless:
 - a. The employee completes both the Secondary Employment Request and the Employer Agreement for Security Related Work.
 - b. The employee has been employed by the Montgomery County Department of Police for at least one year as an employee as defined in this Article.
2. When the employee determines that an offense report should be initiated, the employee will call an on-duty employee to take the report and initiate an investigation to the same extent as if a private citizen had called the police. This policy is not intended to prohibit an employee witnessing the commission of a crime from taking immediate and appropriate police action. However, once the situation is under control, the employee will call on-duty employees.
3. The employee will work only as a surveillance guard and, if the employee anticipates a situation where the presence of on-duty uniformed employees would have a calming or deterrent effect, they will be requested.
4. Security related secondary employment shall be limited to duties customarily associated with those performed by a watchman or guard, and will not include background investigations or any form of investigative surveillance work related to any divorce, separation, or other domestic situation within Montgomery County.
5. No follow-up investigations of previously reported offenses will be handled by off-duty

employees; all information coming to their attention relating to such incidents will be reported to investigating employees.

6. While on duty with the department, the employee will show no preferential coverage to the place of the employee's secondary employment, nor while employed there off-duty will he/she encourage visitation by on-duty employees.
7. Under no circumstances will an employee act as an intermediary between a particular employer and a group of employees employed as watchmen/security guards for the purpose of scheduling, coordinating or any other similar activity unless the employee has first obtained the appropriate license from the superintendent of the Maryland State Police, if such license is required.
8. Employees will not be permitted to work security-related secondary employment unless the secondary employer agrees:
 - a. To pay officers appearing in court on their day off or during non-regularly scheduled working hours for civil incidents arising from off-duty employment activity.
 - b. To pay the employee by check showing proper deduction for Social Security, if required by law.
 - c. To provide Worker's Compensation Insurance coverage for the employee, if required by law.
 - d. Except for non-regular, occasional, or sporadic employment for a private individual, the secondary employer agrees to maintain a comprehensive general public liability insurance policy in a minimum amount of \$500,000, which policy will cover the employee against any and all claims and/or liability resulting from such employment.
 - e. To make no attempts to exert any influence regarding a police decision involving whether an arrest should be made.
 - f. To initiate all formal charges for trespassing and not let the employee initiate such charges.
 - g. To keep the agreement between the secondary employer and the county in force for the duration of the period specified in the agreement.

Section F. Additional Restrictions - Uniform Secondary Employment

1. Police employees are authorized to work uniform off-duty security only within the boundaries of Montgomery County, Maryland.
2. Employees may work secondary employment in uniform only as a watchman or surveillance guard.
3. Employees will not engage in secondary employment where there is a potential conflict of interest between the employee's duties as a police employee and duties for the employee's outside employer.
4. Uniform off-duty security employment is prohibited if the employee's police powers are suspended or revoked.
5. Uniform off-duty security employment is prohibited in the following circumstances:
 - a. An employee is under the influence of alcohol or drugs.
 - b. It is probable that on-duty employees would respond as a result of a demonstration, protest march, sit-in, labor/management dispute, or mass arrest situation.
 - c. The employee is in a leave status identified in section D. 4, or in a leave without pay

status.

- d. The secondary employment establishment sells, distributes or serves alcoholic beverages unless two or more officers are hired to work and are present the entire time, and provided that no part of the employee's specific duties are related to, or involve the bar area where alcoholic beverages are sold or dispensed, the employment does not require "bouncer" duties and the sale, dispensing or handling of alcoholic beverages is not the primary business of the establishment.
- e. Gambling is occurring in the secondary employment establishment (other than the sale of state lottery tickets by the secondary employer.)
6. Uniform off-duty security employment must be terminated immediately upon notice to the employee by an appropriate supervisor, that the secondary employer, official of the employing company, or an employer's supervisor, becomes the subject of a law enforcement investigation or enforcement action other than a petty offense or traffic charge.
7. Police employees may only work uniform off-duty security on the premises of their secondary employer, or on property immediately adjacent to the secondary employer's property.
8. In the event the County develops the capability to retain and monitor such information, employees engaging in uniform off-duty security employment may be required to immediately notify the Emergency Communications Center at the beginning and end of the work period indicating the employer and the duty location.
9. Employees are only authorized to work secondary employment in uniform a maximum of 16 hours in a forty-hour workweek, days off are excluded.
10. Employees are prohibited from working uniform off-duty security employment for:
 - a. Debt collectors.
 - b. Private process servers.
 - c. Skip tracers.
 - d. Employers engaging in repossession of property.
 - e. Employers doing pre-employment investigations.
 - f. Bail bonding agencies.
 - g. Employers engaging in the towing of vehicles.
 - h. Employers engaged in the security guard, private investigator, or private detective business.
11. If uniformed secondary employment work requires the simultaneous presence of six or more officers at the secondary employment site at one time, the secondary employer shall agree to hire an additional person whose full time position is that of a Montgomery County Police sergeant. The sergeant shall be responsible for supervising the employees at the secondary employment site consistent with the policies and procedures of the department. If no sergeant can be hired, an additional officer shall be hired and the most senior of the officers shall be responsible for supervising the employees at the secondary employment site.
12. Article 27 and Article 2 may be re-opened with consent of the parties for the purpose of establishing a union brokered system for secondary employment.
13. Unit Members may be employed in uniform for the following functions:

- a. Traffic direction to assist with ingress and egress from public or private property, e.g., churches, synagogues, shopping centers. However, whenever a permit is required from a local, state or federal government, the secondary employer must obtain such permit as a condition of employment.
- b. Traffic direction at construction sites, block parties, races, parades and other events provided the secondary employer obtains any required permits.
- c. Traffic monitoring and selective enforcement for a local government, special taxing authority, government entity, provided no county, state or federal permit is required.
- d. Assigned vehicles may be used when the unit member is employed by a local government, special taxing district, or a government entity, provided that the government entity for whom the unit member is working secondary employment agrees to reimburse the County a fair and reasonable rate for such vehicle use. The County has the discretionary authority to determine a "fair and reasonable rate of reimbursement." Although this authority cannot be exercised in an arbitrary manner.
- e. Teaching or instructing a law enforcement topic for a college or university.
- f. Under other reasonable circumstances where the parties agree, is in the interest of public safety.

- 14. Employees may not work in uniform in any capacity for employers engaged in the security guard, private investigator, or private detective business.

Section G. Uniforms and Equipment. Employees, in the performance of their secondary employment, are permitted to carry and utilize the following issued county or otherwise authorized equipment:

- 1. Weapons/Protective instruments (carried in an inconspicuous manner unless uniformed): Handgun; OC spray; baton; and flashlight; electronic control device and other weapons/protective instruments mutually agreed upon by the parties.
- 2. Portable radio; Ballistic vest; Handcuffs; MCP badge and credentials.
- 3. Baseball cap or other headgear (uniformed only).
- 4. Employees may wear the patrol uniform and authorized issued equipment while engaged in uniformed secondary employment and while going to and from the secondary employment site. If the uniform is worn, the entire uniform along with the Sam Browne belt, revolver/pistol, handcuffs, ASP and portable radio must be worn by the officer.

Section H. Cancellation of Employment. Any employee who ceases or cancels secondary employment will notify the employer in writing, indicating cancellation, if:

- 1. Approval was for an indefinite period of time, or
- 2. Approval was for 12 months and it has not expired.

Section I. Traffic Direction. Employees who are hired for traffic direction or traffic control shall wear their issued reflective vest or raingear (as appropriate).



SECONDARY EMPLOYMENT REQUEST

Check One:

- Non-Security Request
Complete I, II, III, V
- Security Request*
Complete I, II, III, V
- Cancellation of Previously
Approved Employment
Complete IV Only

*Security Requests Check One: New Request Renewal

MSB USE ONLY

Application Date

Approval Date

Expiration Date

SECTION I EMPLOYEE

Employee's Name (Last, First, MI) _____ Rank _____ Date of Request _____

Duty Assignment _____ Home Phone (Optional) _____ Work Phone _____ Shift _____

SECTION II EMPLOYER

Corporate/Company Name _____

Corporate/Company Address _____

Name of Agent for Employer, if any _____

SECTION III EMPLOYMENT

Starting Date _____ Duration _____ Work Location _____

Is employment security related? Yes No If yes, MCP 309 must be submitted with this form.

Position Title _____ Duties to be Performed – Describe in Detail _____

Signature of Employee _____

FOP Bargaining Unit members will comply with Article 27 of the Collective Bargaining Agreement. Non-bargaining unit employees will comply with Function Code 355.

SECTION IV CANCELLATION

Cancel my secondary employment approval for:

Employer/Company Name _____ Date of Current Approval _____ Expiration Date _____

Employee Name _____ Employee Signature _____ Date _____

Function Code: 355
CALEA: 22.3.4.e
Proponent Unit: MSB

OVER

15



SECONDARY EMPLOYER AGREEMENT FOR SECURITY RELATED WORK

MSB USE ONLY

Application Date

Approval Date

Expiration Date

Employee's Name (Last, First, MI)

Secondary Employer (Corporate/Company Name)

Corporate/Company Address

It is agreed that the following stipulations will apply to all off-duty employment of Montgomery County Department of Police employees in watchman-security guard capacities.

1. The employee will be paid by check showing proper deduction of Social Security.
2. The employee will be covered by Workman's Compensation Insurance provided by the secondary employer.
3. The secondary employer hereby expressly agrees to maintain a comprehensive general public liability insurance policy in minimum amounts of \$500,000, which policy will cover the above named employee against any and all claims and/or liability resulting from such employment. (Not required for non-regular, occasional, or sporadic employment for a private individual.)
4. The secondary employer will further save harmless Montgomery County from any and all claim or liability resulting from such employment.
5. The secondary employer will make no attempts to exert any influence regarding a police decision involving whether an arrest should be made.
6. All formal charges for trespassing will be initiated only by the secondary employer or his designee, which designee will not include the employee.
7. It is further understood that this agreement shall be in force for a period of one calendar year from approval date and a resubmission of a new agreement shall be executed for reconsideration.
8. The secondary employer will pay officers to appear in court on their day off or during non-regularly scheduled working hours for civil incidents arising from off-duty employment activity.
9. If uniformed secondary employment work requires the simultaneous presence of six or more officers at the secondary employment site at one time, the secondary employer shall agree to hire an additional person whose full time position is that of a Montgomery County Police sergeant. The sergeant shall be responsible for supervising the employees at the secondary employment site consistent with the policies and procedures of the department. If no sergeant can be hired, an additional officer shall be hired and the most senior of the officers shall be responsible for supervising the employees at the secondary employment site.

Signature of Secondary Employer's Agent Date Time Name of Secondary Employee's Agent (Print)

Signature of Employee Date Name of Secondary Employer (Print)

Notes:

1. This form is referred to as the MCP 305 in Article 27, FOP Collective Bargaining Agreement.
2. Prepare original only and forward it with the MCP 307 to the Assistant Chief, MSB.
3. A copy of this form without original signatures will not be accepted.
4. The agent for the secondary employer signing this form must be the same person identified in Section II of the related MCP 307.