

Bill 19-21, *Reports on Settlement Agreements*
County Attorney Testimony
June 22, 2021

Council President Hucker and Councilmembers, good afternoon. My name is Marc Hansen and I am the County Attorney. Thank you for permitting me time to provide you with comments on Bill 19-21.

Bill 19-21 will require the County Attorney to submit each October 1st an annual written report that summarizes the settlement of “claims by or against the County” during the prior fiscal year. The report must also be published on the County’s website.

The Bill’s sponsors indicate that the goal of this legislation is to improve understanding and transparency “of the amount of money that is being paid from County resources to settle complaints against Montgomery County employees, including police officers”.

At the outset, two things bear noting:

- (a) Settlement agreements are generally subject to disclosure under the Maryland Public Information Act. In fact, the Office of the County Attorney routinely receives requests from the media for information about settlement agreements—especially recently, the media has regularly asked for settlement agreements involving claims against police officers.
- (b) OCA currently prepares and publishes on the Count’s webpage aggregate information regarding claims made by and against the County.

Improving transparency is a worthy goal. There are, however, two amendments that I hope the Council will consider:

I. Narrow the class of claims subject to the reporting requirement to “civil rights” claims.

The Bill’s reporting requirement applies to all “claims by or against the County”. This broad standard would apply to the settlement of hundreds of claims, which (if reported on an individual basis), would: (a) add little to the public’s understanding of the conduct of County business; (b) publicly disclose information concerning injuries incurred by County employees in the course of their employment (workers’ compensation cases) and debts owed by individuals to the County

(debt collection cases); and (c) require the expenditure of resources in OCA and Finance to assemble a report that encompasses *all* “claims by or against the County”.

The Council should narrow the reporting requirement to claims made against the County and its employees for an alleged violation of the claimant’s “civil rights”. A “civil rights” claim should be defined in the Bill as an assertion by the claimant that the County (or a County employee) injured the claimant through a violation of the U.S. Constitution, the Maryland Constitution, or a federal, state, or County civil rights statute.

The current Bill, however, would sweep within its ambit a large and diverse universe of non-civil rights claims made by and against the County. These primarily include:

- a) *Workers’ Compensation cases.* OCA represents the County in nearly 2,000 workers’ compensation hearings each year. In 125-170 cases each year, the County stipulates to certain issues (e.g., the area of the body injured, the percentage of impairment, medical treatment, etc.). These stipulations result in a partial settlement of the employee’s claim—although workers’ compensation claims are rarely the subject of a full and final settlement. Reporting on the nature of a named individual employee’s injuries seems unnecessarily intrusive.
- b) *Code Enforcement cases.* The number of code citations annually prosecuted by OCA has dramatically increased. In FY-19 OCA prosecuted over 6,000 code citations. Since the ultimate goal of a civil citation is to obtain compliance from the defendant, the amount of the fine may be reduced in exchange for the defendant voluntarily agreeing to rectify the problem that had led to the issuance of the citation. Many of these settlements literally take place at the courthouse on code enforcement day when the code enforcement attorney may have 50 to 100 citations to prosecute.
- c) *Debt Collection cases.* OCA’s debt collection unit annually closes between 6,000 and 7,000 collection cases. Although OCA tracks the amount owned and the amount collected, OCA does not specifically track whether a case is closed as the result of a settlement. Most collection cases arise in connection with unpaid personal property taxes, false alarm fees, code enforcement and bad checks. Publicly reporting on the amount that a specific individual has paid the County in satisfaction of unpaid taxes seems intrusive.
- d) *Traditional tort claims, which include:*
 - (1) automobile negligence claims (e.g. Ride-on bus/ambulance/ police car involved in a traffic accident);
 - (2) property damage claims (e.g. snowplow hits a mailbox); and

- (3) premises liability claims (*e.g.* claimant slips and falls on icy sidewalk outside a library).

The County publishes on its webpage OCA performance measures; these performance measures provide the public with aggregate information regarding self-insurance fund litigation, workers' compensation claims, code enforcement cases, and debt collection cases. These reports include aggregate information concerning the:

- (a) number of code citations prosecuted; the won/loss ratio with respect to those citations; and the amount of fines collected;
- (b) amount of money collected by OCA; the ratio between the amount of money collected by OCA compared to the amount of debt referred to OCA for collection; and the ratio between the amount of debt collected by OCA and the cost of collecting the debt;
- (c) win/loss ratio in self-insurance litigation; the number of settlements; the number of judgements in the County's favor; and the number of judgements paid by the County; and
- (d) net gain savings realized in workers' compensation claims.

II. Increase the settlement authority of the County Attorney from \$5,000 to \$30,000.

Section 20-2, which Bill 19-21 amends, authorizes the County Attorney to settle a claim for not more than \$5,000 "when [in] the county attorney's judgment it is proper and advisable to do so."

The \$5,000 amount was set in 1978 with the enactment of Bill 32-78. The value of money has changed during the last 43 years and this amount should be increased. In today's dollars, \$5,000 in 1978 is now \$20,500. Moreover, the jurisdictional amount in the Maryland District Court in civil cases is now set at \$30,000. In light of these factors, the Council should amend Bill 19-21 to increase the County Attorney's settlement authority at \$30,000.

The County Executive supports the enactment of Bill 19-21 with the two amendments recommended by the County Attorney.

I look forward to working with Council on this legislation.