



MONTGOMERY COUNTY ETHICS COMMISSION

Kenita V. Barrow
Chair

Mark L. Greenblatt
Vice Chair

Montgomery County Ethics Commission
Annual Report for Calendar Year 2014

I. Introduction

Section 19A-6(f) of the Montgomery County Public Ethics Law requires the Ethics Commission (the Commission) to publish an annual report. The report is to summarize the actions the Commission has taken during the preceding calendar year and describe each waiver it approved and advisory opinion it issued during the year.

The mission of the Commission is to promote the public's trust of County government through the independent administration, including enforcement, of laws designed to ensure the impartiality of County employees, including elected officials, in the execution of their responsibilities. It does this through the administration of three programs: financial disclosure, lobbying disclosure, and outside employment approval -- and through myriad other activities.

The Commission currently has four members which is one short of a full complement under the Public Ethics Law. They, along with the respective dates of their terms' expiration, are:

Kenita V. Barrow, Chair	10/2015
Mark L. Greenblatt, Vice-Chair	10/2016
Claudia Herbert	10/2017
Steven Rosen	10/2015

Claudia Herbert and Joseph Kale, Jr. were appointed to the Commission in January 2014 to replace Nina Weisbroth's and Stuart Rick's expired terms. Subsequently, Joseph Kale, Jr. resigned in August 2014 due to his no longer meeting the residency requirement for

MONTGOMERY COUNTY ETHICS COMMISSION

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membership contained in 19A-5(b)(1) of the Public Ethics Law. The position vacated has not been filled.

In May, Steven Rosen was appointed to replace former member Rachel Brown who resigned in January 2014. Mr. Rosen assumed the remainder of Ms. Brown's term due to expire October 31, 2015. Kenita Barrow was reelected Chair and Mark Greenblatt reelected Vice-Chair of the Commission for calendar year 2015.

In 2014, the Commission was able to build on changes instituted in the prior three years and make substantial progress towards its primary objectives for the year. Going into the year 2014, the Ethics Commission reported the following objectives over and above the expectation to continue to successfully conduct required operations during the year:

- 1) Development of Systemic Ethics Education for County Employees;
- 2) Creation of an Online Outside Employment Application System; and
- 3) Submission to the County Council of Draft Legislation Concerning Financial Disclosure.

The Commission made substantial progress on these objectives. The steps taken to implement these objectives are described in the substantive program sections further below.

The Commission met in regular Public Meetings 10 times during 2014. The Commission also conducted ten Administrative Meetings following regular Public Meetings. (The Commission holds administrative meetings following its regular monthly meetings to consider matters that are non-public.) During the year, the Chair attended a County Council Public Hearing concerning proposed ethics legislation, a work session relating to the Commission, and was on the interview panel for the selection of the Program Specialist II staff position.

Major Objectives for 2015

The Commission will continue to focus on the management of its core programs: the financial disclosure system, the lobbying program and the outside employment approval process. The Commission has three continuing priorities for 2015:

- 1) Continue the Development of Systemic Ethics Education for County Employees
- 2) Implementation of the Outside Employment Online System
- 3) Work to improve County's Ethics Legislation

The education objective is to develop a holistic and strategic approach to ethics education for County employees. There are many challenges associated with such an endeavor, including coordination with different elements of County government and in developing

appropriate content and delivery systems. The Commission will continue to pursue opportunities to seek systemic ethics education for employees in 2015.

In 2014, the Commission, working with the Department of Technology Services, developed a prototype for outside employment requests to be processed online. This system would facilitate the process of submission of outside employment requests and the administration of review processes, including by the Commission itself. In 2015, the Commission anticipates that this system will be fully implemented.

The Commission submitted a legislative proposal which was introduced before the County Council and is currently pending. The Commission plans to work with all concerned parties, particularly Legislative Counsel to the Council and the County Attorney towards improvement of the County's Ethics Laws. The Commission recognizes the complexity of this objective in the context of State requirements.

II. Status of Programs and Operations

Ethics program statistics:

Measures	Actual 2012	Actual 2013	Actual 2014
Number of Formal Opinions, Waivers and Guidance	13	11	6
Number of Lobbyists Registered	161	177	199
Number of Lobbyist Activity Reports	140	216	251
Number of Financial Disclosure Statements for Calendar Year ¹	1741	2034	2037
Number of Outside Employment Requests	926	1157	975

¹ The variance in totals from 2012 to 2013 is attributable to initial financial disclosure reports being accounted for in year filed rather than prior year.

This annual report summarizes the work of the Commission in each of the following areas:

- 1. Financial Disclosure**
- 2. Outside Employment**
- 3. Lobbying**
- 4. Complaints, Investigations and Hearings**
- 5. Advisory Opinions, Interpretation and Advice, and Waivers**
- 6. Education**
- 7. Legislative and Regulatory**
- 8. Outreach**
- 9. Administration**

1. Financial Disclosure:

The Public Ethics Law promotes the public's confidence in the integrity of County employees by requiring certain employees, including elected officials, to file financial disclosure reports that are required to be made publicly available. The ethics law also requires certain other employees to file confidential disclosure reports. The reports detail financial holdings and relationships so that conflicts of interest between an employee's County duties and the employee's personal activities and interests can be identified and addressed. The Public Ethics Law requires filings of financial disclosure reports when individuals are first appointed to a filing position, annually thereafter, and when terminating from a filing position. The Commission prepares financial disclosure forms and makes them available electronically and maintains reports filed by employees; it currently administers the electronic filing system for reporting and coordinates with the Office of Human Resources and all County agencies regarding the status of filers. It also resolves all anomalous circumstances and questions associated with the filing of financial disclosure reports.

There are about 2000 financial disclosure forms completed by County employees each year. Successful program administration is dependent on the accuracy of the database of employees and their status as filers. It is also dependent on the employees who file the forms and on County senior management who are the designated reviewers of forms. Lastly, it is dependent on County human resources liaisons and managers to follow-up with employees who have not filed and to obtain final reports from employees who are terminating from filing positions. Members of certain County boards, commissions, and committees, who are considered "public employees" for purposes of the public ethics law, are also required to file reports. As these persons are not normally tracked in the County's personnel system, a separate tracking system has been established for these persons.

In 2014, the Commission “launched” the annual financial disclosure reporting requirement on the first business day of the calendar year, January 2, 2014. In years prior to 2014, the “launch” occurred no earlier than March 15 and often did not occur before April. The change brought the Ethics Commission “launch” into compliance with the Public Ethics Law’s requirement that the Ethics Commission make financial disclosure forms available at the beginning of the year.

The change in the “launch” dates was enabled by (1) improvements in data integrity in identifying the personnel required to file financial disclosure reports for the annual period just ended and (2) the approach towards the annual Executive Regulation concerning the identification of financial disclosure filers. In 2013, a new process for documenting changes to the list of filers was instituted. This eliminated any question as to whether variances from the list were filing positions. Based on this, and based on processes adopted by Commission staff in 2013, the Commission was confident that the list identifying filers maintained in the financial disclosure system accurately reflected who was required to file an annual financial disclosure report. Commission staff suggested and the County adopted a change to make the filer list in the financial disclosure system the “system of record” for identification of filers for purposes of annual filing, rather than a list generated by the Office of Human Resources from its personnel system, Oracle, and based on review and input and changes by all of the human resource liaisons at County agencies and departments. Using the financial disclosure system’s list of filers for the annual launch also required a significant process change in how the County’s Executive Regulation identifying filers was handled. Prior to 2014, the Executive Regulation identifying who is required to file a financial disclosure was also used to identify filers for the prior year. In 2014, the Executive Regulation was used to designate who would be a filer prospectively rather than, in effect, retroactively. This detaching the Executive Regulation from the identification of filers for the prior year’s filing allowed the Ethics Commission to institute a much more reliable, expedient, and statutorily justifiable approach to identification of filers for annual financial disclosure reports: consistent with the Public Ethics Law, any person in a filing position at midnight on December 31 of a given year is required to file an annual financial disclosure report for the year ended. A list of filers based on this simple approach was and is easy to generate because it exists and is readily available in the financial disclosure system.

These system changes and changes in approach have resulted in the annual financial disclosure reporting occurring in the period contemplated by the Public Ethics Law. In addition, the adjusted process has resulted in the elimination of several unnecessary list reconciliation processes previously used to attempt assurance of accuracy in lists of filers used for launching the annual disclosure requirement.

The changes made to the financial disclosure system have resulted in greater ease in administration of the financial disclosure database, and, consequently, greater opportunity for Commission staff to ensure compliance with requirements. For example, in 2014,

100 percent of those required to file annual disclosure reports covering the year 2013 fulfilled that requirement.

Of additional note, the Ethics Commission proactively addressed issues involving financial disclosure filing dates for candidates for elective office that were driven by State law to ensure that County employees who were seeking elective office in the 2014 elections were not confused by the different due dates for filing for County employees and the much earlier dates for candidates. This involved, among other things, the issuance of a joint press release with the County Board of Elections.

2. Outside Employment: The Public Ethics Law requires that County employees obtain approval from the Commission prior to engaging in any employment other than County employment. The Commission prepares and makes available Outside Employment request forms and administers a process pursuant to which approvals are obtained. The Commission's staff prepares all requests for consideration by the Commission, to include obtaining additional information from requestors and County agencies and conducting preliminary legal analysis of requests. The Commission approves requests, as appropriate, setting conditions on approval as necessary to ensure compliance with ethics requirements, and staff notifies requestors by letter of the disposition of requests by the Commission. The Commission publishes approved Outside Employment information required to be made publicly available by the Public Ethics Law.

The Commission processed 975 requests for outside employment approval in calendar year 2014. Pursuant to the Commission's practice, Commission staff inputs data from the submitted requests onto a master template that provides a vehicle for Commission review of submissions. The manual input of data is extremely detailed and time consuming.

During 2014, the Ethics Commission, working closely with the Department of Technology Services, built a prototype of a new online outside employment system. What has always been a paper request and approval system, with substantial amounts of data input being required by Ethics Commission staff and sometimes others as well, will be, after implementation, an electronic system where data is captured at the beginning of the process and manipulated and moved from place to place as needed to process the request. It should be noted that this system covers everyone except police officers, who fill out separate forms that will require its own system -- which is anticipated to constitute phase II of this project.

The system involves workflow processes and variables that make it somewhat complex. Implementation in 2015 will likely involve a pilot program at two or more departments and agencies. Both paper and electronic applications will be allowed for some period before closing off the paper applications completely.

The old system typically involved an employee downloading and printing out an outside employment form, filling it out manually (and sometimes unintelligibly) and then forwarding it to the employee's supervisor; the supervisor would review and sign the form, and then forward it to the department/agency head; after review the department/agency head would sign and forward the form to the Ethics Commission. The Ethics Commission staff would take the form and input data from the form into an Excel spreadsheet for record keeping purposes and so that the Ethics Commission could review the applications as a group rather than as a pile of separate individual applications. Outside employment could begin after departmental review and approval, contingent on subsequent approval by the Ethics Commission.

The new system involves employees accessing the system, making a new request with personnel data being automatically loaded from personnel systems, the system notifying the employee's supervisor when the request has been filed and providing an opportunity for the supervisor to review the document and forward it to the department/agency head for final departmental review. After the department reviews the information, the information is sent electronically to the Ethics Commission for final review. All necessary data is captured for purposes of providing the Ethics Commission with what it needs, and notices involving statuses of requests are automatically generated. Records and transparency to the status of pending applications is provided for in the system as needed by the requestors, supervisors, department/agency heads and the Ethics Commission. The public will be able to review the approved requests online.

The primary development of this online system was conducted in 2014. The system is expected to be placed into service as a pilot program in the Spring of 2015 with roll-out to all departments and agencies (excluding the MCPD) by January 1, 2016.

3. Lobbying: The Public Ethics Law requires persons meeting certain criteria and thresholds who communicate with County employees to register as lobbyists and to file semi-annual activity reports with the Commission. Annual registration fees are required and are paid to the Commission and processed and deposited into the General Fund.

In 2012, the Commission and the Department of Technology Services worked on an online registration system for lobbyists. Phase I of this system was implemented in December 2012 and all 2013 registrations were filed using the new system. The new system has made registration easier for registrants, allowed data to be captured electronically rather than by manual processes of Commission staff, and promoted transparency for the public in accessing the online data.

Phase II of the project was implemented in June of 2013. This involved building an online reporting system for the semi-annual activity reports registered lobbyists are required to file. Again, this new system simplified the filing process, eliminated several manual processes of Commission staff, and made transparent to the public matters that

had previously been relegated to internal files of the Commission.

These systems have resulted in almost instantaneous availability of lobbying information on the Ethics Commission's website.

<https://www2.montgomerycountymd.gov/Lobbyist/ActivityReport.aspx>

In 2014, the system was adjusted to provide for any exceptions filed by public employees who had been identified as having received a gift in an activity report. This was necessary as the Commission, for the first time, began notifying employees, as required by the County's ethics law, of their being identified in lobbying reports as having had received a gift from a lobbyists. Compliance with this previously unobserved requirement was necessitated by the new transparency to activity reports associated with the online system. (Prior to 2013, Activity Reports were filed away without readily available public scrutiny.)

As a result of having implemented a lobbying filing system with reliable data sets, Commission staff has focused additional time on proactive steps to educate those who might meet registration thresholds in the Public Ethics Law to register as lobbyists.

As the system is easy to use, registering lobbyists' compliance with requirements is very high. For example, 100 percent of required semi-annual reports for 2014 have been filed. This compliance rate is in stark contrast to the system in place prior to 2013 where compliance was irregular and there were no systems in place to measure compliance.

4. Complaints, Investigations and Hearings: Pursuant to the Public Ethics Laws, the Commission receives complaints and, as appropriate: conducts investigations, conducts hearings, makes findings, and imposes sanctions and penalties.

During 2014, no new formal complaints of ethics violations that fell within the jurisdiction of the Commission were received. There were no pending formal complaints or investigations at the close of 2014. Aside from formal complaints, many issues were brought to the attention of the Ethics Commission during 2014 including several "complaints" that did not meet the criteria for filing a formal complaint under the Public Ethics Law. Some of these did not raise issues that were within the jurisdiction of the Commission and were closed or referred to a more appropriate office for disposition. Others were brought to the attention of the Commission and considered and addressed by the Commission. In some of these, the Commission determined that no further action was warranted. In others, the Commission determined that there was insufficient cause to dedicate resources to an Ethics Commission investigation, but nonetheless merited staff follow-up to address possible violations of law, including the Public Ethics Law. Several of these matters were coordinated with the County Attorney and the Inspector General for further action or disposition. Two of these matters were addressed in a December 2, 2014, report of the Inspector General regarding Commissioners of the Montgomery

County Housing Opportunities Commission.

http://www.montgomerycountymd.gov/OIG/Resources/Files/PDF/IGActivity/FY2015/mchoc_misconduct_allegations_final_report_2_dec_2014.pdf. Others resulted in counseling of employees or other personnel action.

5. Advisory Opinions, Interpretation and Advice, and Waivers: The Ethics Commission is expressly authorized to interpret the Public Ethics Law and advise persons as to its application. It does this proactively or in response to or as a result of informal inquiries. In addition, the Commission is authorized to publish advisory opinions and grant waivers of ethics law requirements, as appropriate. The Commission is required to publish its advisory opinions, or, in the event an opinion is not published, state the reasons for not publishing the opinion.

The Commission published one advisory opinion during calendar year 2014 which can be found at:

<http://www.montgomerycountymd.gov/Ethics/Decisions/opinions/2014.html>

and granted four waivers which are published at:

<http://www.montgomerycountymd.gov/Ethics/Decisions/waivers/2014.html>

and issued one guidance memorandum which is published at:

<http://www.montgomerycountymd.gov/Ethics/Decisions/Guidance.html>

Summaries of the opinions, waivers and guidance appear below. The decisions made were limited to the facts presented and no assumption should be made to the application of the opinion to any other circumstances.

Advisory Opinion 14-09-05: An investment advisor inquired whether the ban contained in 19A-24 on contingent compensation applied where the recipient was not a lobbyist or required to register as a lobbyist. The Commission concluded that the contingent compensation prohibition only applies to those who are registered or are required to register as lobbyists.

Waivers 14-03-001 and 14-07-003 addressed substantially similar requests from the prohibition from outside employment with businesses that negotiate or contract with the department with which the requesting employees were affiliated. The Commission determined in each instance that the outside employment activities did not create actual conflicts of interest.

Waiver 14-10-04 is a class waiver concerning the County's donated leave program.

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Montgomery County's Personnel Regulation (MCPR) 17-10 provides a mechanism for employees who have exhausted their accrued leave accounts to seek for themselves, or through others on their behalf, donations of leave from other County employees in connection with an extended illness or injury that causes the employee to be unable to work for more than 7 consecutive calendar days. As a practical matter, to request donated leave, the employee or the employee's representative will solicit a gift from other employees. The Public Ethics Law includes a broad prohibition on the solicitation of gifts to the employee or another person during official work hours, or at a County agency, while identifiable as a public employee, or for the employee's own benefit. 19A-16(a)(2), (3), and (4). While the solicitation prohibition contains a number of exceptions, there is no exception for a solicitation for a donation of leave. The Ethics Commission thought that if a procedural mechanism was employed that shields the recipient of donated leave and the employee's representative, if any, from information about individual contributions of leave, any potential pressure that may have been associated with such requests would be mitigated. Under these circumstances, the Commission concluded that the standards for issuing a class waiver were met and that issuing a class waiver for solicitations of donated leave was in the best interests of the County. The Commission conditioned the class waiver on the use of an arrangement whereby the recipient of donated leave and the employee's representative, if any, is shielded from information about individual contributions of leave.

Waiver 14-11-006 was a waiver to permit a purchasing specialist for the Department of Liquor Control (DLC) to work for the restaurant owned by his family. The family restaurant is licensed to sell liquor in Montgomery County under the authority of the DLC and is regulated by and purchases alcohol from the DLC. The employee represented that he would not be assisting with functions involving the ordering of alcohol, nor would he be in contact with representatives of the Department of Liquor Control while working for the restaurant. In addition, the employee indicated that while working for DLC, he would not be involved in price overrides or for any aspect of licensee enforcement or regulation. The employee has no ordering fulfillment function related to the family restaurant. After reviewing the request for a waiver and the Department's concurrence in and support for the waiver request, the Commission granted the waiver of the prohibition of § 19A-12(b) on the condition the employee does not work on any matter where the restaurant is a party to the matter and, further, on the employee not making any communications on behalf of the restaurant to the DLC.

Guidance Memorandum: The Ethics Commission issued one guidance memorandum interpreting the application of the County ethics law to certain activities of the the Commission on Common Ownership Communities ("CCOC"). The Ethics Commission had been notified, informally and in writing, by unrelated parties of potential conflict of interest concerns related to hearings the were being convened by the Chair of the CCOC. In particular, Panel chairs appointed by the Chair of the CCOC were representing clients before CCOC panels to which they had not been assigned. After consideration of the applicable laws, the Commission concluded that representation of clients by CCOC panel

chairs before the CCOC is inconsistent with the Montgomery County Public Ethics Law, Chapter 19A.

In accordance with Chapter 10B of the Montgomery County Code, the CCOC had established a list of volunteer panelists made up of persons who are “trained or experienced in common ownership community issues.” The list of volunteer panelists was almost exclusively comprised of lawyers practicing in Montgomery County. Many of the lawyers represent clients in matters involving communities of common ownership.

The Commission concluded that panel members are “public employees” as they exercise responsibility in adjudicating matters brought to the CCOC. Because volunteer panel members are “public employees,” volunteer panel members may not be employed by businesses regulated by the CCOC pursuant to Section 19A-12(b)(1) of the Public Ethics Law.

The Commission concluded that the panel chairs are “employed by” the clients they represent before the CCOC. A client who pays for legal services is an employer, and for purposes of 19A-12(b)(1), the lawyer who provides the legal services for that client is deemed to be “employed by” that client. In addition, the Commission concluded that a business with a matter before a CCOC panel is “regulated by the County agency with which the public employee is affiliated.” Therefore, the Commission concluded that volunteer panel members are prohibited from compensated representation of businesses with a matter before a CCOC panel. The Commission also concluded that representation by panel members of clients before CCOC hearing panels that they are not currently sitting on is an employment relationship that could reasonably be expected to impair the impartiality and independence of judgment of the public employee and is prohibited by 19A-12(b)(2), which prohibits such relationships.

The Commission made clear that it was not aware of any impaired judgment of any individual in connection with any particular CCOC panel decision.

The Commission indicated in its guidance that it does not support a proposal to amend either the Public Ethics Law or the CCOC law to enable CCOC panelists to represent parties before CCOC panels to which they have not been assigned.

6. Education: The Commission conducts public education and other information programs regarding the Ethics Law. Commission staff routinely provides individual instruction on filling out and review of financial disclosure forms, outside employment requests and lobbying reports, and other matters falling within its jurisdiction.

In late 2013, the Commission proposed the implementation of a systemic and County-wide approach towards ethics education to promote knowledge of the requirements of the Public Ethics Law, promote program compliance, and to advise employees on pathways

to gain resolution of ethics concerns. The plan was approved by Assistant Chief Administrative Officer, Fariba Kassiri.

The Ethics Commission made incremental progress towards its goal of developing systemic ethics education for County employees in 2014. In April of 2014, the Ethics Commission became a regular participant in the County's orientation of new employees conducted biweekly at the Upcounty Regional Service Center in Germantown. This participation began April 7, with the Commission presenting at 20 separate sessions every other Monday with more than 600 new employees receiving basic information about the Public Ethics Law, its purposes, their obligations as County employees and what to do when confronted by a circumstance implicating the ethics law.

In addition to inclusion in the biweekly new employee orientation, the Commission staff prepared materials for and presented at a mandatory County managers conference featuring ethics requirements (held January 15, 2015), attended by approximately 300 County Management Leadership Service leaders. In addition to Counsel to the Commission, Robert Cobb, serving as the conference's keynote speaker, a Commission member, Claudia Herbert, served as a panelist on a panel established to answer ethics questions posed by the County Attorney, Mark Hansen. The effort will be made to institutionalize the presentation so that it is delivered every 3 years at the managers conference.

Commission staff has made arrangements to present at the Accountability & Ethical Training Classes, a step on the Aspiring Supervisor and Manager Learning Path, and has been revising and preparing educational materials for the Commission's website. These steps reflect progress towards the systemic implementation of ethics education in the County, but this objective will remain a goal for the Commission in 2015.

7. Legislative and Regulatory: The Commission recommends and prepares new ethics legislation and regulations.

The State's Public Ethics Law requires local governments to enact laws similar to the State's for their respective jurisdictions. Prior to 2010, Montgomery County's Public Ethics Law had been considered to be compliant with the State requirement of similarity. In 2010, the State Ethics Law was amended to further mandate that as to elected local officials, local governments' laws must be equivalent to or exceed the requirements of State law with respect to conflict of interest and financial disclosure provisions. Moreover, the 2010 amendments required each local ethics commission to annually certify that their respective local laws are in compliance with the State's requirements with regard to elected officials. The State Ethics Commission staff has communicated that in light of the 2010 law and other factors, including a Court case finding a local jurisdiction's laws not sufficiently similar to the State's law, the State Ethics Commission's view on what constitutes "similar" has narrowed since the time the State Commission viewed Montgomery County's law as meeting the similarity requirement.

The State law requirements for local ethics laws include:

15–804. Conflict of interest laws.

(a) *In general.* — Except as provided in subsection (b) of this section, the conflict of interest provisions enacted by a county or municipal corporation under § 15–803 of this subtitle shall be similar to the provisions of Subtitle 5 of this title, but may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction.

(b) *For elected local officials.* — The conflict of interest provisions for elected local officials enacted by a county or municipal corporation under § 15–803 of this subtitle shall be equivalent to or exceed the requirements of Subtitle 5 of this title, but may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction.

15–805. Financial disclosure laws.

(b) *Similarity to Ethics Law.* — (1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the financial disclosure provisions enacted by a county or municipal corporation under § 15–803 of this subtitle shall be similar to the provisions of Subtitle 6 of this title, but shall be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction. (2) The financial disclosure provisions for elected local officials enacted by a county or municipal corporation under § 15–803 of this subtitle shall be equivalent to or exceed the requirements of Subtitle 6 of this title, but shall be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction.

Representatives of the State Ethics Commission have stated that the State Ethics Commission interprets the clauses at the end of these provisions permitting and mandating modifications as meaning that additional requirements can be imposed that exceed the State requirements, but that local requirements under these paragraphs cannot be different from the State requirements in such a way as to lessen that which is required by State law.

Prior to 2014, Commission staff had examined the differences between State ethics law and the County’s ethics laws and had engaged in exchanges of proposals with State Ethics Commission personnel. These proposals were further refined as a result of further input by the State Ethics Commission and from the Montgomery County Attorney and from the County’s Senior Legislative Counsel. A meeting was held on February 24, 2014, in which Commission staff, State Ethics Commission staff, the County Attorney and Senior Legislative Counsel discussed the then current draft. At this meeting, State

Ethics Commission staff provided general guidance as to what language would be acceptable to the State Ethics Commission. In several instances, the Montgomery County proposal was more specific than State law as to what conduct would be prohibited. The direction from the State Ethics Commission staff was for Montgomery County to follow the State's lead by imposing broad restrictions that could be modified or narrowed in application through interpretation (rather than through exceptions in the law). For example, State law prohibits the solicitation of any gift by an employee. The State recommendation is for Montgomery County to include this broad prohibition in the law, without any exceptions, and through the County's Ethics Commission's interpretation of the prohibition, create what caveats make practical sense. County participants in the meeting were concerned that generic provisions would not provide suitable notice of what conduct is being prohibited. Notice of what constitutes a violation is particularly important where violations are sanctioned by civil and criminal penalties.

Given the State Ethics Commission's insistence on provisions being submitted that meet its requirements, the County's Commission decided to accede to the bulk of the State Ethics Commission staff recommendations on what should be contained in the Commission's proposal for the County's gift and financial disclosure laws. The Commission fully recognized that there may well be those who have views that deviate from those of the State Ethics Commission about what is required by State Ethics Law. The Commission forwarded its proposal with a genuine and vested interest in how the County's law is ultimately enacted. But the County Commission suggested that as it meets once monthly, it cannot be an efficient or appropriate arbiter between the State Ethics Commission and the County Council or County Executive on what should or must be contained in the County's Ethics Law.

The Commission's proposal includes several significant changes from the current Public Ethics Law and adds provisions that exceed State requirements. The new features mandated by State law include that all financial disclosures be made publicly available and that there be increased disclosure for elected officials, particularly as regards valuation of assets.

- The proposal recommends three levels of disclosure, with elected officials providing, consistent with State law requirements, greater disclosure than non-elected senior County officials who are designated by law as filers. The current designation process for identifying filers is eliminated in favor of a static statutory list of filers being identified. A third tier of filers would be designated as filers without the formal method 2 regulatory process existing under current law who would only identify conflicting holdings and reportable gifts.
- The proposal explicitly imposes on the Chief Administrative Officer a requirement to establish an electronic system for submission and management of financial disclosure reports.
- The proposal includes a requirement to disclose sources of fees for services provided by the filer.

- The proposal requires public employees to certify that to the best of their knowledge, there are no conflicts of interests, or alternatively, to identify the interests that may create a conflict of interest.
- The proposal requires public employees to report to the Ethics Commission within 5 days any new interests that may create a conflict of interest and any reportable gifts.

At the request of the Ethics Commission, County Council President Craig Rice sponsored the amendments to the Public Ethics Law, introduced as bill 39-14 on July 29, 2014. The Council subsequently held a Public Hearing on September 16 and scheduled a Government Operations and Fiscal Policy Committee worksession, but that session was postponed and has not been rescheduled. Subsequently, Commission staff has informally, but with the approval of the Commission, forwarded a number of additional suggestions for amendments to the County's ethics law to Legislative Counsel and to the County Attorney. The Commission anticipates that these informal suggestions may present alternative and additional approaches to addressing conflicts of interest and other issues arising under the County's ethics law.

8. Outreach and Other Activities: The Staff also serves as the principal public resource on the County's ethics laws, to include managing a website that reflects Commission programs, activities, and publications such as annual reports, approvals of outside employment requests, lobbying data, and waivers and opinions. The hiring of new personnel has substantially improved the Commission's ability to fulfill its transparency mission.

Commission staff engaged in a number of activities during 2014 to support the ethics program, not otherwise addressed in this report. For example, the staff reviewed the reports of accepted gifts by County agencies in accordance with AP 1-16. AP 1-16 had been established in January 2014 to set standards for authorized officials to use in deciding whether to accept a gift to the County. Such gifts are not considered prohibited gifts pursuant to the County's ethics law. The Commission had recommended the adoption of a policy so that there would be greater clarity as to the appropriate circumstances for accepting gifts to the County and when the authority was exercised. Policy AP 1-16 included a requirement for reports associated with the accepted gifts to be sent to the Chief Administrative Office and for the Ethics Commission to be able to obtain a copy of these reports from the Chief Administrative Officer. The Commission staff periodically requests the reports from the CAO and reviews the reports.

9. Administration: The Staff of the Commission is responsible for assuring that Commission meetings are run in accordance with the Open Meetings Act and other applicable law. The Staff informs and advises the Commission as to all material matters under its jurisdiction; Commission staff are also responsible for budget, procurement, human resources, and resource management for the operation of the office in accordance with Montgomery County policies, and attends required training in these and other office

management areas.

For the Commission:

Respectfully Submitted,



Kenita V. Barrow, Chair

February 27, 2015

Date