



MONTGOMERY COUNTY ETHICS COMMISSION

Susan Beard
Chair

Bruce Romer
Vice Chair

Montgomery County Ethics Commission Annual Report for Calendar Year 2020

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 the waivers it approved and advisory opinions it issued during the year.

The Commission's mission 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. The Commission does this through the administration of three programs: financial disclosure, lobbying disclosure, and outside employment approval -- and through myriad other activities.

The year 2020 was a remarkable and challenging year. With respect to the Ethics Commission, it was remarkable for the ease with which Commission programs and operations transitioned to being executed remotely. This, in large part, was a consequence of prior investment by the County in technology systems to execute Commission programs in financial disclosure, outside employment, and lobbying registration and activity reporting. Remote operations created challenges with respect to certain Commission activities, such as ethics training, traditionally conducted in-person. As discussed further below, Commission staff was able to implement an effective training enterprise using the remote meeting tools offered through Microsoft Teams.

For the Ethics Commission, 2020 was also a remarkable year as the Commission resolved through a consent order ethics issues associated with the former Chief Administrative Officer. This matter was of singular importance to the Commission, and its resolution garnered substantial attention of the County government with renewed focus on strengthening ethical standards for County employees. This attention was manifest in the introduction of two ethics bills. It also provided a point of focus in the execution of the training of County employees of their ethics responsibilities.

As we turn towards 2021, we expect that some of the business systems and methods that the Commission adjusted to in 2020 will be retained while others will be executed in a manner consistent with past practices. We expect that adjusting to new circumstances will be a constant – and believe that the Commission is well-positioned to make changes that are necessary and appropriate to execute its mission.

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

Susan Beard, Vice Chair	10/2021
Bruce Romer	10/2021
Kenita V. Barrow	10/2019
Rahul Goel, Chair	10/2020
Steven Rosen	10/2019

Rahul Goel was Chair of the Commission during 2020, with Susan Beard serving as Vice Chair. At the December 2020 meeting of the Commission, Susan Beard was elected Chair and Bruce Romer was elected Vice Chair for 2021. In accordance with the Public Ethics Law, members whose terms have expired serve until they are reappointed or the Council confirms a successor.

The Commission met in-person at Public Meetings twice, in January and February. The Commission held two other public meetings, both online using the Zoom platform, in August and December. With the exception of the December meeting, a portion of the January, February, and August meetings were held in closed session pursuant to Maryland General Provisions Article 3-305(b). The Commission also met in administrative meetings in March and June to handle confidential matters.

In 2020, the Commission made substantial progress towards its primary objectives for the year. Going into the year 2020, the Ethics Commission reported the following objectives over and above the expectation to continue to successfully conduct required operations during the year:

- 1) Preparing and conducting 2nd generation ethics training for those executive branch financial disclosure filers who are repeating training on the 3-year cycle established in 2017;
- 2) Ensuring Commission staff is sufficient to address staff responsibilities;
- 3) Examining new opportunities for training and educational activities;
- 4) Identifying and recommending adjustments to the Public Ethics Law.

As discussed further below, each of these objectives was successfully implemented.

Training. The executive branch instituted one-hour ethics training for financial disclosure filers in 2017. Those required to take the training are required to take the training once every three years. Commission staff has systems in place to identify and notify those required to retake training to meet the requirement. Going into the year 2020, the Commission realized that a large number of executive branch public financial disclosure filers would be due for training in the normal course of the three year cycle began in 2017. What the Commission staff did not realize

was that the preferred method of providing ethics training – in person – would not be possible due to Covid 19. Beginning in March 2020, Commission staff began examining various delivery systems for conducting training. There are a multitude of online training platforms with varying levels of testing and accountability frameworks. After examining and testing a few of the programs, Commission staff elected to use Microsoft Teams to conduct presentations.

Commission staff concluded that using Microsoft Teams was the simplest solution. While it did not have many of the interactive elements of other systems designed for teaching classes, it is the primary online communication vehicle in the County and it was found to be adequate for oral online communications and sharing PowerPoint presentations. Moreover, the chat feature on Microsoft Teams was found to be a useful vehicle for a coordinated presentation approach, where one Commission staff member would present the content of ethics training, and the other staff member would monitor the chat function for substantive and administrative questions. Training will be further discussed in the Education section below.

Staffing. During 2019, a valued member of the Commission staff took a job with the Circuit Court of Montgomery County reducing the total staff of the Commission to two persons. The Commission delayed refilling the open position to evaluate the need for the position. For purposes of the 2021 budget, the County Executive’s budget absorbed the Commission’s open position, in part to fund a shared services functionality. The Commission benefitted from the use of the Commission’s forfeited position as the shared services function assisted the Commission with the preparation of its 2022 budget. Remaining Commission staff has adjusted to the lost position by taking advantage of the build-out of online systems for Commission programs over the past several years which has resulted in substantially reduced manual data entry. These system improvements included primarily the development of the outside employment online system, including the addition of online outside employment request system for police in 2019, the lobbying registration and activity reporting system and the rebuild of the financial disclosure system. In addition, there have been substantial process changes that have reduced the need for dedicated staff time to resolve anomalies. In the end, the Commission can operate effectively with two staff. The Commission notes that it has no redundancy in staffing its operations, which creates a continuity risk should a staff member depart service to the Commission.

Ethics Legislation. The Commission intended to examine the County’s ethics laws in 2020 for purposes of making recommendations for needed change. Change to the County’s public ethics law received greater focus from the Commission and from others, including the County Council, in the wake of the admission by the then Chief Administrative Officer of violations of the County’s ethics law in July 2020. County Council member Andrew Friedson offered Bill 42-20 and the Ethics Commission recommended additional changes to the ethics law which were introduced by Council President Sidney Katz as Bill 47-20. Mr. Friedson’s bill was enacted in November 2020, and the Commission’s recommended changes were introduced as Bill 47-20 in December 2020.

Education initiatives. The Commission’s objective to introduce new opportunities for ethics training was enabled by the move to online training in 2020 as it created a vehicle for training delivery. Commission staff augmented its training of executive branch financial disclosure filers with online training sessions of Council staff. Also, Bill 47-20 includes a provision that requires

systemic ethics training for County employees. The Commission is hopeful it is able to leverage this new authority to ensure that County employees receive needed ethics training.

Major Objectives for 2021

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 the following priorities for 2021:

1. Implement new ethics legislation, including any systemic training requirements adopted.
2. Assure continuity of Ethics Commission programs and services during the pandemic and afterwards.

II. Status of Programs and Operations

Ethics program statistics:

Performance Measures	Actual 2018	Actual 2019	Actual 2020	Target 2021	Target 2022
Number of Issuances of Formal Opinions, Waivers, or Guidance	15	19	13	13	13
Number of Lobbyists Registered	172	135	148	148	148
Number of Lobbyist Activity Reports	259	219	221	221	221
Number of Financial Disclosure Statements for Calendar Year	1786	1814	1703	1703	1703
Number of Outside Employment Requests	882	2241	1125	1125	1125

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 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 were no major changes to the Financial Disclosure System in 2020. Bill 42-20, passed by the County Council in November, requires disclosure by non-merit and elected public employees with outside employment of sources of fees greater \$1,000 – which means information about clients. This law will be effective in March 2021.

There were 1703 financial disclosure forms completed by public employees in 2020. 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 system has been established to track the status of these persons.

With respect to full-time County employees, there was one hundred percent compliance with the requirement to file annual financial disclosure reports. Those terminating service as full-time

employees were also universally compliant, and the Commission ensures this by having the County withhold the final paycheck of employees until a final disclosure statement has been filed. There are instances where the Commission is not notified of a filing employee's departure from service, and the employee is paid without having filed a final disclosure. Due to notification and enforcement challenges associated with obtaining these reports, on occasion Commission staff treats the last filed report by the filer as a final report. This also occurs with some terminating board, commission, and committee volunteers who terminate service without filing a disclosure report after leaving County service.

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 utilizes the outside employment online system (OEOS) to process requests for outside employment. The system provides a vehicle for review by the employing department's management and the Ethics Commission. 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 email 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.

Up until August of 2019, the OEOS was used only by employees other than police to make requests for outside employment. Sworn police did not use the OEOS and instead used a form created by the Department of Police that conformed to the policies and practices of the Department. Those police forms were then submitted to the Ethics Commission for processing and approval.

The online system addressing police requests for outside employment was implemented in August of 2019. When the Commission first rolled out the OEOS for all County employees other than sworn police, it established that approvals would only be effective for a maximum of three years. As expected, the new electronic form is simple to fill out, does not involve undecipherable handwriting, and can be processed by the police and the Ethics Commission in a much quicker, more manageable and efficient way. And because the system is electronic rather than paper, the manual data processing burden on Commission staff (and Department of Police staff) of keying in data from hundreds of paper forms has disappeared.

The Commission approved 1125 requests for outside employment in calendar year 2020. The reduction from 2019 was anticipated as many of those filed in 2019 were the result of the switch at the Department of Police to the new system, as all pending approvals at the time of the switch were expired with new online requests being required to continue in those outside positions.

A current list of outside employment approvals is incorporated into dataMontgomery's publicly available information of all currently approved outside employment of County employees. This can be found at: data.montgomerycountymd.gov/Government/Outside-Employment/j6hr-

[qfpx/data](#) Employees are notified prior to the expiration of their approvals so that new filings can be made if the employee desire to continue the outside employment.

The Outside Employment Online System (OEOS) allows for substantial benefits in program management as Commission staff has insight to all pending applications for outside employment. Previously, an employee filling out a paper application would submit the paper through the employee's chain of command and the Commission would have no notice or opportunity to ensure the process was operating effectively until it received the paper form after it had been processed by the employee's agency.

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.

Since CY 2013, lobbying registration and activity reporting has been effected through an online application developed by the Commission and the Department of Technology Services. The 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.

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

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

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 on lobbying activity for the last several years (including 2020) 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.

The total receipts for calendar year 2020 are \$15639.42, down from \$18,116.42 in 2019, \$20,500 in 2018 and \$30,625 in 2017. Variances in the numbers of lobbyists required to register is beyond the Commission's control, but is believed to be a function of community interest in land use matters before the County Council, particularly Master Plans.

4. Complaints, Investigations and Hearings: Pursuant to the Public Ethics Laws, the Commission receives complaints and, as appropriate: conducts investigations and hearings, makes findings, and imposes sanctions and penalties. During 2020, the Commission received several allegations of ethics violations and two formal complaints. The two formal complaints that were received were dismissed by the Commission.

Aside from formal complaints, many issues were brought to the attention of the Ethics Commission during 2020 including several “complaints” that did not meet the criteria for filing a formal complaint under the Public Ethics Law. Matters that do not raise issues within the jurisdiction of the Commission are closed or referred to a more appropriate office for disposition. Others are brought to the attention of the Commission and considered and addressed by the Commission. When appropriate, matters are coordinated with the County Attorney, the relevant County agency or the Inspector General. The Commission is authorized to conduct investigations on its own initiative and to bring complaints.

At the beginning of 2020, there was one investigation that was ongoing. This matter involved allegations of ethics violations of the now former Chief Administrative Office, Andrew Kleine. With respect to these allegations, the Ethics Commission engaged the Office of Inspector General to conduct the ethics investigation on behalf of the Ethics Commission in accordance with provisions of the County ethics law. The Inspector General delivered a report of investigation to the Ethics Commission on December 12, 2019.

Subsequently, on July 1, 2020, the Ethics Commission received a proposal from Mr. Kleine to cure violations of the ethics law which Mr. Kleine admitted in the proposal document. The Commission accepted Mr. Kleine’s proposal, which was made public in accordance with its terms. It can be found at:

<https://www.montgomerycountymd.gov/Ethics/Resources/Files/docs/Proposed%20Cure%20and%20Redacted%20IG%20Report%20-%20Kleine%20FINAL.pdf>

At the beginning of 2020, the Commission had two pending matters in Maryland Courts. Both of these concerned Commission dismissals of complaints. One of the matters has been subject to procedural delays and further delays due to Covid. The other involved a complaint the Ethics Commission dismissed in 2018. Subsequently, the complainant appealed the Commission’s dismissal to the Circuit Court. The Circuit Court granted Montgomery County’s Motion to Dismiss the appeal. The matter was appealed to the Maryland Court of Special Appeals and counsel to the Ethics Commission, along with counsel for other defendants, argued in December of 2019 in support of the dismissal by the Circuit Court. In May 2020, the Court of Special Appeals affirmed the dismissal by the Circuit Court and the matter is concluded. The Ethics Commission has recommended changes to the ethics law, incorporated in pending Bill 47-20, clarifying the appealability of Ethics Commission decisions in accordance with the court decisions and the State Ethics Law.

There were no pending formal complaints at the close of 2020.

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 formal or informal inquiries. Commission staff receives a substantial number of informal inquiries from County employees and from members of the public. These questions relate to each of the programs operated by the Commission and with respect to the overall mandate of the Commission under the ethics law.

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 opinions during calendar year 2020, the full text of which can be found at:

<https://www.montgomerycountymd.gov/Ethics/Decisions/Opinions/2020.html>

The Ethics Commission issued 12 waivers, which are published at:

<https://www.montgomerycountymd.gov/ethics/decisions/waivers/2020.html>

Brief summaries of the opinion and waivers appear below. The decisions made were limited to the facts presented and no assumption should be made to the application of any opinion or waiver to any other circumstances.

Advisory Opinion 20-08-011 addressed whether a member of the Commission on Landlord Tenant Affairs (COLTA) could be involved in the organization and operation of a non-profit whose mission abutted the authority of COLTA. The Ethics Commission concluded that the COLTA member could serve the non-profit as the services provided by the non-profit clearly fell outside the jurisdiction of COLTA.

Given proximity of the mission of the non-profit and COLTA, the Ethics Commission provided further advice on avoidance of conflicts of interest and the misuse of the prestige of County office to inappropriately further the interests of the nonprofit.

Waivers.

The Ethics Commission issued 12 waivers in 2020.

All of these waivers related to outside employment activities. A public employee is prohibited from, pursuant to § 19A-12(b)(1)(B) of the Public Ethics Law, being employed by a business that negotiates or contracts with the County agency with which the public employee is affiliated, unless the Ethics Commission grants a waiver. Many employees are notified of the prohibition after they have submitted a request for outside employment, and it has been reviewed by management or the Ethics Commission. In general, outside employment waiver applications are granted where there is no relationship between the conduct of the employee's County duties and the outside employer and the duties performed in the outside position do not relate to the contract between the County and the outside employer. In short, they are approved where there is no actual conflict of interest.

One of the waivers (W20-05-006) addressed, in addition to the prohibition of 19A-12(b)(1)(B), a possible conflict of interest pursuant to 19A-11(a)(1). Applying the standard of 19A-8(a), the

Commission concluded that it was in the County's best interests to grant the waiver as the importance of the County employee fulfilling his or her official duties outweighed any actual or potential harm of conflicts of interest and granting the waiver would not give the public employee an unfair economic advantage over other public employees or members of the public.

Another of the waivers, 20-11-013 was a "class" waiver. This waiver concerned an arrangement for digital forensic examiners assigned to the Montgomery County Department of Police, Electronic Crimes Unit, to teach classes for the National White Collar Crime Center (NW3C). The proposed activity implicated both the prohibition in 19A-12(a)(1)(B) but also the provisions of 19A-14 prohibiting use of the prestige of office and County resources for private gain, as the activity contemplated County resources being used to support the training activity. The Ethics Commission issued the waiver finding that the activity met the applicable waiver standards, but stipulated that where NW3C training is coordinated with the MCPD and conducted in Montgomery County, MCPD employees may not conduct the training for NW3C as an outside employment activity. The County officers could instead conduct this training in a duty status without compensation from NW3C.

These waivers are not discussed in detail here and can be reviewed in full at:
<https://www.montgomerycountymd.gov/ethics/decisions/waivers/2020.html>

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.

Prior to the restrictions resulting from Covid, Ethics Commission staff participated in biweekly orientation sessions for all new County employees. When the Covid restrictions on in-person contact were instituted, Commission staff provided a PowerPoint presentation to the Office of Human Resources covering basic tenets of the ethics law.

Mandatory ethics training for executive branch public financial disclosure filers has been conducted since May of 2017 under the authority of the Chief Administrative Officer. The Office of Human Resources Training and Organizational Development Division has provided support in the implementation of this training and compliance initiative.

Because the training must be taken every three years, all those who had received training in 2017 were due for training. This meant, in essence, that over one thousand executive branch employees were required to take one-hour ethics training. Because prior to Covid restrictions being implemented, all training was conducted in person, this meant that a new vehicle for training delivery was required. After experimenting with several different online training vendors and delivery systems, Commission staff decided to use the Microsoft Teams platform for training delivery. While Microsoft Teams is not a learning management system nor is it specifically designed for a systemic training enterprise, it provided a basic platform for delivery of ethics training. In particular, the Microsoft Teams platform allowed online presentation by Commission staff, along with appropriate PowerPoints. Further, it allowed through its chat feature for Commission staff to monitor both technical problems of attendees in participation and

substantive ethics questions so that the primary presenter could present without unnecessary distraction. The online sessions began in May of 2020 and increased in frequency into the fall. In all, Commission staff conducted approximately 50 training sessions training close to 1400 employees. In addition to executive branch financial disclosure filers, Commission staff conducted two training sessions for Council staff.

In addition to the training being monitored through OHR's learning management system, the Ethics Commission is tracking compliance and notifying, with the help of HR liaisons, those who have yet to take the training. Commission staff is not allowing persons who show up for training more than 10 minutes late to enter the training sessions and Commission staff tries not to extend credit to those who miss a substantial portion of a session, such as those who leave early to address other business. Where the Commission is able to identify such employees, the employee is notified that they are not receiving credit and are informed that they may attend the portion of the session that they missed. In short, the Commission staff is treating the training as a compliance program.

The Commission will continue the program as follows:

- The Commission will notify new executive branch employees entering filing positions of their obligation to take the training within 6 months of the date the employee began in an executive branch public filing position.
- The Ethics Commission will conduct monthly or as needed training sessions in either online or after Covid restrictions are lifted at human resources training facilities or at another suitable location.
- Those who have taken the training will be notified when 3 years has passed and training is required to be taken again.
- The Chief Administrative Officer's office will be notified periodically (not less than annually) of those persons who are required to take the training but have not and any who have failed to take the training within the required timeframe. In instances where there is systemic failure of an agency's employees to take the training, the agency director will be notified of the issue.

Pending Bill 47-20 includes a provision that requires systemic ethics training for County employees. The Commission to be able to leverage this authority, if enacted, to ensure that County employees receive needed ethics training.

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

In 2020, the Commission sought to amend the ethics law to address a number of procedural and substantive deficiencies of existing law. The Commission prepared legislation that was submitted to the County Council for consideration in September 2020. Commission staff also worked with Councilmember Friedson and his staff in connection with a bill that Mr. Friedson sought to introduce to address various concerns associated with the misconduct of the prior Chief Administrative Officer. This became bill 42-20 which was enacted in November 2020.

Subsequently, Councilmember Katz introduced the Ethics Commission's proposed legislation, except provisions that had already been addressed in Mr. Friedson's bill were excised from what Mr. Katz introduced as Bill 47-20.

Bill 42-20 and the various documents considered by the County Council in connection with it can be found at:

<https://apps.montgomerycountymd.gov/ccllims/BillDetailsPage?RecordId=2680&fullTextSearch=42-20>

Bill 47-20 and the documents associated with that pending legislation can be found at:

<https://apps.montgomerycountymd.gov/ccllims/BillDetailsPage?RecordId=2685&fullTextSearch=47-20>

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.

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,



Susan Beard, Chair

2/25/2021

Date