MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen *Chair*	Kenita V. Barrow *Vice Chair*

Montgomery County Ethics Commission
Annual Report for Calendar Year 2015

March 1, 2016

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:

Steven Rosen, Chair	10/2015*
Kenita V. Barrow, Vice Chair	10/2015*
Barbara Fredericks	10/2017
Claudia Herbert	10/2017

*While the appointments of Kenita V. Barrow and of Steven Rosen have expired, pursuant to and consistent with County practice, the two of them are continuing in their positions pending the appointment process.

Barbara Fredericks was appointed to the Commission in July 2015 to fill the unexpired term of Joseph Kale, Jr., who resigned in August 2014. Mr. Mark Greenblatt resigned in September of 2015, and the position vacated by him as yet has not been filled.

In 2015, the Commission made substantial progress towards its primary objectives for the year. Going into the year 2015, the Ethics Commission reported the following objectives over and above the expectation to continue to successfully conduct required operations during the year:

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 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 2015. 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.)

Major Objectives for 2016

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 2016:

1) Continue the Development of Systemic Ethics Education for County Employees
2) Development of a New Online Financial Disclosure System
3) Work to Institute Ethics Regulations that Implement a Suitable Framework for Implementation of the Ethics Program

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 2016.

The Financial Disclosure System (FDS) is in critical need of updating. The FDS is currently hosted on Windows 2003 web servers, which are no longer supported by Microsoft. The Department of Technology Services recommends that the FDS application be upgraded to a new ASP.NET application and deployed to a web server that is supported.

In the context of this major system work being implemented, Commission staff anticipates that there will be opportunities to improve the usability of the system for filers, especially in the context of the changes to the Public Ethics Law as regards financial disclosure that went into effect October 30, 2015, as discussed further below.

II. Status of Programs and Operations

Ethics program statistics:

Performance Measures	Actual 2013	Actual 2014	Actual 2015	Target 2016	Target 2017
Number of Issuances of Formal Opinions, Waivers, or Guidance	11	6	17	17	17
Number of Lobbyists Registered	177	197	230	230	230
Number of Lobbyist Activity Reports	216	249	350	350	350
Number of Financial Disclosure Statements for Calendar Year	2034	2037	1651	1651	1651
Number of Outside Employment Requests	1157	977	1089	1089	1089

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 statements. The statements 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. The Public Ethics Law requires filings of financial disclosure statements 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 statements.

In 2015, major changes to the financial disclosure provisions in the Public Ethics Law were enacted. As a consequence, Ethics Commission staff, working closely with the Department of Technology Services, made significant changes to the online filing system to address the statutory changes. This was a major project for the office that touched every aspect of the financial disclosure program. Every page of every form, instruction, notice and document related to the filing process were revised and updated. Process changes were made and online procedures and forms recoded. The changes in law became effective on October 30, 2015; in order to make the system changes and transition to the revised form and procedures, the Commission staff suspended filing of initial disclosures from October 2015 to January 4, 2016. All persons affected by the suspension of filing of initial disclosures were notified on January 4, 2016, of their obligation to file their initial financial disclosure using the revised online form and procedures.

There were about 1700 financial disclosure forms completed by County employees in 2015. 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 Ethics Commission coordination with 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 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 2015, the Commission "launched" the annual financial disclosure reporting requirement (for filings relating to calendar year 2014) on the first business day of the calendar year, January 2, 2015. In years prior to 2014, the "launch" occurred no earlier than March 15 and often did not occur before April. The change in the "launch" dates was enabled by several process changes which were detailed in prior annual reports.

As in 2014 and 2013, in 2015 there was one hundred percent compliance with requirements to file initial and annual financial disclosure statements. With respect to full-time county employees terminating from service in a position required to file a financial disclosure statement, there was one hundred percent compliance with the requirement to file a final financial disclosure, except in a very few instances where the Commission was not promptly notified of filing employees' departure from service. The County's ethics law provides that terminating filers are not to be paid their final paycheck until their final financial disclosure statement has been filed. In the usual course, the Ethics Commission is notified that a filing employee is terminating employment with the County, and Commission staff, working with the Department of Finance, ensures that employees do not receive a final pay check until a final disclosure has been filed. Where a filer terminates service without this statutory remedy available (such as when the final paycheck has already been paid prior the Ethics Commission being notified of the employee's departure), due to notification and enforcement challenges associated with obtaining these reports, Commission staff may treat the employee's last filed annual report as a final report.

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. In 2015, the Commission approved 1089 requests for outside employment approval in calendar year 2015, with 823 of those approvals relating to uniformed police and 266 for employees of the County other than uniformed police.

The Commission administers the process pursuant to which requests for outside employment approvals are sought. 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.

During 2014, the Ethics Commission, working closely with the Department of Technology Services, built a prototype of a new online outside employment request system. The old process for submission and approval 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 online 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 can review the approved requests online.

Originally it was contemplated that the new system would be rolled out as a pilot program at a couple of agencies with full implementation delayed until January 1, 2016. Due to confidence developed during testing and challenges associated with running mixed paper and online systems, instead of running a pilot, the Commission implemented the system County wide all at once with applicability to all County employees except uniformed police officers (to whom a different set of rules apply due to the collective bargaining agreement between the Montgomery County Police Department and the Fraternal Order of Police Montgomery County Lodge, #35.) The new system was launched on June 24, 2015. The system implementation was successful with no major glitches.

As a result of the launch of the system, compliance with outside employment approval requirements immediately increased. (During 2015, 99 applications were processed and approved in the first half of the year prior to the implementation of the new system and 167 were processed in the second half of the year utilizing the new system). Total approvals for 2015 for employees other than uniformed police was 266 which was up from the total of 139 in CY14, 168 in CY 13 and 137 in CY 2012.

The new system 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.

The Commission thanks and commends the Department of Technology Service for its expertise and assistance in implementing this new system.

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

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 2015 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 Ethics Commission has charged a lobbying registration fee for five years beginning in FY 2011. Since FY13, registration numbers have increased substantially and receipts of registration fees have more than doubled, from $13,500 in FY 2013, to almost $31,000 in FY 2015. The Commission believes the increase in registrations is, among other things, attributable to the ease of compliance through the online system and proactive management of the lobbying registration program to include identification of possible lobbyists who may be required to register and notification of those persons by the Commission of lobbying registration requirements. Also, beginning with calendar year 2013 registrations, the Commission required that a fee be paid for each lobbyist identified on a registration, not just the registering lobbyist. This contributed to the increase in fee receipts.

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 2015, no new formal complaints of ethics violations that fell within the jurisdiction of the Commission were received. There were no pending formal complaints at the close of 2015. Aside from formal complaints, many issues were brought to the attention of the Ethics Commission during 2015 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. The Ethics Commission opened one matter for confidential investigation as only through investigation could the ethics issues raised be resolved. This investigation was still open at the end of 2015.

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 advisory opinions and waivers are required to be summarized in the annual report for the year in which they are issued.

The Commission published six advisory opinions during calendar year 2015, five of which can be found at:

http://www.montgomerycountymd.gov/Ethics/Decisions/opinions/2015.html

The sixth opinion was not published, as the Ethics Commission determined pursuant to its authority in 19A-7 that privacy interests clearly and substantially outweigh the public's need to be informed about the Commission's action through publication of the opinion. This unpublished opinion is summarized further below.

The Ethics Commission issued 14 waivers, which are published at:

http://www.montgomerycountymd.gov/Ethics/Decisions/waivers/2015.html

Three of the advisory opinions and three of the waivers were published as joint advisory opinions and waivers. Those are Advisory Opinion/Waivers 15-02-003, 15-02-004, and 15-08-010.

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

Advisory Opinion 15-02-003/Waiver 15-02-003: The threshold question was whether ownership of $1000 or more of stock of a public company constitutes an "economic interest" as that term is defined in the conflict of interest provisions at 19A-11. The Ethics Commission, noting the ambiguity of the ethics law on this point, concluded that "economic interest" did include ownership of $1000 worth of stock in a public company. The Ethics Commission then waived the application of the prohibition of 19A-11 with respect to an employee's work on a matter which affects a business in which the employee had an economic interest, as issuing the waiver was in the County's best interest and the stock holding would be affected in only a speculative and *de minimis* way, if at all. This opinion also found that the specific conflict of interest provisions applicable to Board of Appeals members in 2-109 did not apply given the facts presented.

Advisory Opinion 15-02-004/Waiver 15-02-004: The Ethics Commission determined that a Board of Appeals member's position on the executive committee of the Maryland chapter of a national organization was sufficient to implicate the restriction in 19A-11 concerning participation in matters affecting an organization in which the employee is an officer or director. The Ethics Commission then waived the conflict of interest prohibition based on the best interests of the County and the absence of concerns about any inappropriate economic advantage.

Advisory Opinion 15-08-010/Waiver 15-08-010: The Ethics Commission considered whether public employees must seek outside employment approval from the Ethics Commission with respect to employment with employee unions. The Commission determined that outside employment approval was required to be obtained and denied the request for a waiver of this requirement. Further, the Commission determined that compensated employment of a public employee by an organization certified to represent and collectively bargain with the employee's employing agency is prohibited, unless waived by the Commission. The Commission determined that 19A-12(b) is waived for the class consisting of those persons compensated to be employee representatives of organizations certified to represent and collectively bargain with the employee's employing agency. The Ethics Commission decided that the fact an employee representative is compensated by a union to execute a function that is deemed by law to be in the public interest does not create a conflict of interest. Also, the Ethics Commission decided receiving union pay for being a County employee who has been elected to be an official of a union is not a use of the prestige of office for private gain.

Advisory Opinion 15-03-006: In the instance of the ownership by a County Council member's spouse of a child care business, the Ethics Commission concluded that any impact of Bill 11-15, Child Care Expansion and Quality Enhancement, on the Councilmember's spouse's business would be so speculative that there is no "effect" on the spouse's business. Whether a particular bill or legislative action will "affect" an economic interest distinct from its effect on the public generally is a fact specific inquiry. The Commission determined that while the objective of the Bill is likely to facilitate the expansion of child care services in the County, the notion that this expansion could affect (positively or negatively) the spouse's established, 16-year-old child care business appears to the Commission as being not only speculative, but unlikely.

Advisory Opinion 15-08-011: The Commission on Common Ownership Communities (CCOC) sought a waiver of the application of the conflict of interest provisions of 19A-12(b)(2) with respect to volunteer panel chairs' service as attorneys for private clients before CCOC panels. This request was made with reference to a prior Commission guidance "Guidance on Representation of Clients before the Commission on Common Ownership Communities by CCOC Panel Chairs" issued on April 10, 2014. That guidance found that representation by volunteer panel members of clients before CCOC hearing panels that they are not currently sitting on is prohibited by 19A-12(b)(2) of the Montgomery County Public Ethics Law. The Commission declined the request for a waiver from the CCOC on the basis that with the waiver in place panel chairs whose livelihood could include representing homeowner associations before CCOC panels, would be permitted to sit in judgment of disputes between homeowners and homeowners' associations. The Commission did not think this circumstance was appropriate for a class waiver.

The sixth advisory opinion, 15-09-017, which is unpublished, concerned whether a department could hire a former employee of the department to provide services to the department at a time when that former employee had recently had a private contract, unrelated to County issues, with the department head. The identification of the need for services and the recommendation by a current County employee of the former employee as a source for those services did not involve the department head, although approval of the transaction required action from the department head. The Ethics Commission determined that 19A-11(a)(2)(E), concerning taking County action involving persons with whom an employee has a private contract, was not implicated as the private contract was no longer in force. Furthermore, the Commission determined that the provisions concerning misuse of prestige of office for private gain at 19A-14(a) were not implicated because the department head was merely accepting the recommendation of a subordinate and was not involved in identifying or suggesting that the former employee with whom the department head had recently had a contractual relationship be included in the recommendation.

Waivers

In addition to the waivers issued in connection with advisory opinions identified above, the Ethics Commission issued 11 additional waivers.

Four waivers, as listed below, involved the prohibition of 19A-12(b)(1)(B) prohibiting employees from engaging in outside employment with businesses that contract with the employees' employing agencies. This prohibition can be waived by the Ethics Commission where it finds that there is no actual conflict of interest. The Ethics Commission determined that there was no actual conflict of interest with respect to the outside employment activity of several DHHS employees resulting in the granting of the following waivers:

Waiver 15-02-001, for outside employment at Adventist Rehabilitation Hospital,
Waiver 15-04-007, for outside employment at Medstar Montgomery Medical Center
Waiver 15-08-012, for outside employment at Aspire Counseling
Waiver 15-09-015, for outside employment at Shady Grove Adventist Hospital

In addition, in Waiver 15-02-002, the Ethics Commission waived a DHHS employee's outside employment and ownership interest in an assisted living home. The home is licensed by DHHS and receives a stipend from DHHS for the housing and care of one resident. The Commission found that the proposed outside employment and ownership interest were unlikely to create an actual conflict of interest as long as the employee did not work as a DHHS employee on any matter where the assisted living home was a party to or would be affected by the matter and, second, on the employee's not making any communications on behalf of the assisted living home to DHHS or its employees.

In Waiver 15-03-005, the Ethics Commission granted a waiver of the outside employment prohibition of § 19A-12(b)(1)(B) to a manager with the Montgomery County Department of Correction and Rehabilitation (DOCR) so that she could conduct audits for the American Correction Association (ACA). DOCR contracts with the ACA to conduct reaccreditation audits every three years. The employee was not involved in the County obtaining services from ACA and is committed to avoiding being involved in audits for ACA in the State of Maryland.

In Waiver 15-05-008, the Ethics Commission granted a waiver to an attorney in the County Attorney's office who was assigned to address issues associated with the merger application of Exelon Corporation to acquire Pepco Holdings, Inc. The holdings of Exelon stock were not substantial enough to create a concern about a conflict of interest.

In Waiver 15-07-009, the Ethics Commission granted a waiver of the post-employment provision of § 19A-13(b) of the Public Ethics Law. The Ethics commission found that while the requesting employee had significantly participated in a contract matter involving the contractor, the Commission was assured that that the former employee will not be required to work on or be assigned to any projects involving the employee's former agency, the Department of Environmental Protection. The Commission conditioned the waiver upon a commitment of the former employee not to work on any DEP projects for two years from the date of his termination from his County employment.

In Waiver 15-08-013, the Ethics Commission waived the prohibition of § 19A-12(b)(1)(B) so a Captain in the Montgomery County Fire Department, can be employed by Digging and Rigging, Incorporated, which has contracts with Montgomery County agencies, including the Montgomery County Fire and Rescue Service. As a Fire Captain, the employee is not involved in requesting or approving contracts for work to be performed for the County. And when working with Digging and Rigging, the employee would operate as a crane and truck operator on projects that are unrelated to contracts Digging and Rigging has with Montgomery County.

In Waiver 15-08-014, the Ethics Commission waived the prohibition of 19A-12(b)(1)(B) for a Correctional Officer at the Montgomery County Correctional Facility (MCCF) in Boyds, Maryland so the employee could work for Plum's Hair Gallery, which contracts with the Montgomery County Department of Corrections (MCDOCR).

In Waiver 15-09-16, the Ethics Commission waived the prohibition on outside employment so that an attorney in the Litigation Division of the County Attorney's Office could work with the City of Rockville. The City of Rockville engages the County Attorney's office to handle workmen's compensation matters. The attorney is not involved in County matters involving the City of Rockville.

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 2015. 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 activity was conducted at all of the orientation sessions conducted by the County in 2015, with approximately 700 new employees receiving the training.

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, Marc Hansen. An 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 2016.

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

In 2015, the County enacted significant changes to the County's Public Ethics Law. The changes were primarily a result of requirements imposed by State law. The State's Public Ethics Law requires local governments to enact local ethics laws similar to and in certain respects equivalent to the State's. 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.

While State law provides that local laws "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 this as meaning that local requirements 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 recommended that Montgomery County 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.

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. In 2015, the draft bill was amended to incorporate changes recommended by Council staff and the County Attorney's office.

The Ethics Commission communicated six points regarding Bill 39-14 as amended, and in general communicated that Staff Amended Bill 39-14 as proposed would be a step backward in promoting a County government free from improper influence. The Commission stated in a letter dated June 29, 2015:

> the proposed amendments adopt weaker Maryland State approaches to ethics law while retaining a provision from current Montgomery County law permitting limited use of public office for private gain that is not consistent with, as regards this provision, more stringent State requirements. The County's Ethics Commission recommends that the County use the opportunity of amending the County ethics law to improve how potential

> conflicts of interest in County government are identified and addressed rather than to weaken the County's ethics law.

In particular, the Ethics Commission objected to County elected officials being permitted to participate in charitable fundraising "while identifiable as an elected official." This provision, which was in existing County law, essentially allowed elected officials, and only elected officials, to use the prestige of their office to advance the interests of private charities with business interests before the County.

The Commission also expressed its view that County employees should not be authorized by the ethics law to attend parties and other events hosted by restricted donors unless there is a clear County interest in the employee's attendance at the event, with the determination as to the County's interest being made by persons other than the employee whose attendance is being sought (such as a person up the employee's chain of command or a designated official for making such determinations).

The Commission expressed that the proposed deletion of the obligation for reviewing financial disclosure for "conflicts of interest or potential conflicts of interests" would drop from Montgomery County law the primary useful reason for having financial disclosure – so that employees could work with and through a review process at their agencies to avoid conflicts of interest.

The Ethics Commission indicated that the deletion of the requirement in the proposed bill to provide information about sources of income in the provision of legal or other professional practices eliminates insight as to who is paying its public officials, particularly its elected officials.

The Ethics Commission also recommended that employees certify in filing a financial disclosure that to the best of their knowledge there is no conflict of interest. Agencies were also to consider whether a conflict of interest is disclosed. With the deletion of these provisions, the financial disclosure becomes a paperwork exercise where information is disclosed, but no substantive review occurs. While there is a notion that public disclosure is itself cleansing, the public has shown little interest in the public financial disclosure reports of employees and cannot be considered to be a check in identifying conflicting holdings of employees or aiding them in avoiding conflict of interests or other ethical challenges.

None of these concerns identified by the Ethics Commission were changed in the bill that passed and was enacted with an effective date of October 30, 2015.

One concern raised by the Ethics Commission that resulted in a change in the final bill concerned disclosure of assets of an immediate family member. Pursuant to State law, disclosure of these assets is only required if the assets are under the control of the filer, otherwise they are not reportable. The proposed provision was consistent with State law and the model provisions recommended by the State and was part of the Ethics Commission's original proposal. However, the Commission realized later that this approach substantially narrows the scope of disclosure and provides an avenue for circumvention of disclosure altogether; all a filer would need to do to avoid disclosure is to transfer the filer's funds to a family member such as a spouse, then no disclosure of the assets purchased with those funds would be required – even where conflicting assets were purchased with the funds. The Council adopted the change recommended by the Commission to include disclosure of assets of immediate family members.

The primary changes to the law in Bill 39-14 concerned gifts and financial disclosure requirements:

The exception to the gift prohibition for meals and beverages was expanded to allow for such gifts at events attended by 20 or more persons and narrowed to require the presence of the donor with respect to the consumption of all gifts of meals and beverages.

The ceremonial gift exception was limited to "insignificant" monetary value (a term not defined in the law), rather than $100. The gift no longer need commemorate an event or achievement associated with the employee. The exception for nominal gifts now provides that such gifts may not cost more than $20, rather than $10. Books and other informational or advertising items can only be worth $20, rather than $25. Permissible honoraria is now defined as involving speaking or participating at a meeting, but only if the speech or participation is not related to the employee's official position. A gift to an elected official for certain events no longer include sports events, and each event must have at least 20 participants; the invitation must come from the event sponsor rather than a third party.

With respect to Financial Disclosure, confidential financial disclosure statements were eliminated—all statements are publicly filed. The level of required disclosure was increased for elected officials and in many respect decreased for other filers. Some changes were made regarding who is required to file disclosures and the process for designation of additional filers beyond those specifically identified in the law.

Some substantive changes were enacted regarding what is required to be disclosed. Filers must now report real estate interests regardless of the property's location. Indebtedness now need be reported only if the creditor is doing business with the County. Filers need not report ownership of exchange traded funds.

In the real property section, the cost of the property is no longer required (except for elected officials who will continue to provide that information). Also, all real estate held (regardless of location) must now be listed.

In the section regarding ownership of corporations, partnerships, or other business interests, the value of holdings like stocks and how much was paid for them is no longer required to be disclosed (except for elected officials.)

The income section now excludes unearned income and also excludes income from County employment.

The threshold for reportable gifts from "restricted sources" has changed to gifts worth more than $20. Gifts to employees from restricted sources worth more than $20 must be disclosed regardless of whether they have been accepted pursuant to an exception under the gift law (19A-16(d)).

Indebtedness to and positions with persons "doing business with" the County is required to be reported. Also, if a source of income of an employee (or immediate family member) is "doing business with the County" that fact is required to be disclosed. For purposes of reporting, doing business means entering contracts, grants or other agreements involving the exchange of at least $1,000 for goods and/or services. It does not include routine payments of fees, taxes, or use of County provided programs or services, even where payments may be involved, such as through an application for a permit.

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.

Respectfully Submitted,

Steven Rosen

Steven Rosen, Chair