



Montgomery County Government

THE MONTGOMERY COUNTY HUMAN RELATIONS COMMISSION

	<u>Page</u>
Executive Summary	i
I. AUTHORITY, SCOPE, METHODOLOGY AND ACKNOWLEDGEMENT.	1
A. Authority	1
B. Scope and Organization of the Report	1
C. Methodology	1
D. Acknowledgment	2
II. BACKGROUND	2
III. THE HUMAN RELATIONS LAW AND COMMISSION	3
A. Overview	3
B. Acts of Discrimination Prohibited	3
C. Discrimination in Places of Public Accommodation	4
D. Discrimination in Real Estate	4
E. Discrimination in Employment	5
F. Applicability of the Human Relations Law Within the County	5
G. Commission Membership, Organization, Duties, and Staff	6
H. Staff Support for the Commission on Human Relations	8
IV. HUMAN RELATIONS COMMISSION COMPLAINT PROCESSING PROCEDURE	10
A. Overview	10
B. Intake	10
C. Fact-Finding	11
D. Investigation	12
E. Executive Director's Actions	12
F. Hearings	13
G. Hearing Examiner	14
H. Awards and Remedies	14
I. Appeal	14
J. Enforcement	15
K. Summary of Complaint Cases	15
V. HUMAN RELATIONS COMMISSION COMMUNITY RELATIONS ACTIVITIES	17
A. Overview	17
B. Current Programs and Activities	17
C. Funding of Community Relations Programs	18

	<u>Page</u>
VI. COMMISSION'S RELATIONSHIP TO OTHER FEDERAL, STATE, AND LOCAL HUMAN RELATIONS/RIGHTS AGENCIES	19
A. Overview	19
B. Federal	19
C. State of Maryland	20
D. Human Rights Agencies in Other Counties	21
E. Local	21
VII. EVALUATION OF THE HUMAN RELATIONS COMMISSION	22
A. Overview	22
B. The Lack of Consensus on the Commission of its Immediate Objectives and Long-Term Goals	23
C. Open Discord Between a Majority of the Commission Members and Management of the Office of Human Relations Commission (OHRC)	23
D. Overemphasis on the Independence of the Office of the Human Relations Commission	28
E. Existence of an Unauthorized Camp Fund	29
F. Inordinate Backlog of Unresolved Complaint Cases	30
G. Minimal Oversight of OHRC Management and Staff	34
H. Low Employee Morale	35
I. Unorganized and Out-of-Date Human Relations Legislation	36
VIII. CONCLUSIONS	40
IX. RECOMMENDATIONS	41
X. AGENCY AND OTHER COMMENTS*	42

Tables

Table 1	3a
Table 2	9a
Table 3	10a
Table 4	11a
Table 5	11b
Table 6	13a
Table 7	13b
Table 8	14a
Table 9	16
Table 10	16
Table 11	19a

- Exhibit A:** Commission on Human Relations Legislative History
Exhibit B: Chapter 27, Human Relations and Civil Liberties (Excerpt)
Exhibit C: Organization Chart of the Human Relations Commission

* Additional comments of a member of the Human Relations Commission are attached at end of this report.

EXECUTIVE SUMMARY

In February 1962, the County Council enacted an ordinance making it illegal to discriminate in places of public accommodation located in Montgomery County on account of race, color, religion, ancestry, or national origin. The resolution also directed a recently created Commission on Human Relations to carry out the mandates of the ordinance. Thus, the County embarked on a series of actions to eliminate discrimination, prejudice, intolerance, and bigotry a full two years ahead of the Congress of the United States.

In the three decades since that first ordinance, the County has taken many actions expanding the law to include discrimination based on sex, age, handicap, marital status, sexual orientation, presence of children, source of income, and retaliation, and adding employment and real estate to the activities covered by the law. During the same period, the Commission was provided merit staff to assist in carrying out its expanded mission. The Commission currently has a staff of 20, and an operating budget (FY94) of \$1,232,570.

This report examines the organization and operations of the Human Relations Commission; the relationship between, and responsibilities of the Commission and the Office of the Human Relations Commission; and evaluates the activities of the Commission and the Office.

The major conclusion of this evaluation by the Office of Legislative Oversight (OLO) is that, while staff and volunteer members of the Commission continue to be strongly committed to the elimination of prejudice, intolerance, and bigotry, the energy and vitality of the Commission are not evident. Among the problems identified by OLO that contribute to this loss of energy and vitality are:

- The lack of consensus on the Commission of its immediate objectives and long-term goals;
- Open discord between a majority of the Commission members and management of the Office of the Human Relations Commission;
- Overemphasis on the independence of the Office of the Human Relations Commission;
- Inordinate backlog of unresolved complaint cases;
- Minimal oversight of OHRC management and staff;
- Low employee morale; and
- Disorganized and confusing human relations legislation.

AUTHORITY, SCOPE, METHODOLOGY AND ACKNOWLEDGEMENT

A. Authority

Council Resolution No. 12-1202, subject; FY94 Work Program of the Office of Legislative Oversight, adopted July 13, 1993.

B. Scope and Organization of the Report

1. Scope. To examine the organization and operations of the Human Relations Commission (HRC); the relationship between, and responsibilities of the Commission and the Office of the Human Relations Commission (OHRC); the possible overlap with other County agencies and committees; and other areas related to the mission and duties of the HRC.

2. Organization of the report. This report is organized as follows:

Chapter II: A discussion of the background of the Human Relations Commission (HRC).

Chapter III: An examination of the prohibited acts of discrimination and a description of the current organization, management and operation of the HRC and the Office of the Human Relations Commission (OHRC).

Chapter IV: A description and five-year history of the OHRC complaint processing procedure.

Chapter V: A description of the OHRC community relations activities.

Chapter VI: An overview of the Commission's relationship to other Federal, State, and local human rights agencies.

Chapter VII: An evaluation of the Human Relations Commission: the Commission, the Commission panels, and the OHRC.

Chapter VIII: Presentation of OLO's conclusions.

Chapter IX: Presentation of OLO's recommendations.

Chapter X: Agency and Other Comments.

C. Methodology

This project was conducted by the Office of Legislative Oversight (OLO) during August-November, 1993, using an evaluation design that included a variety of fact-finding and research methods:

- Review of past and current County laws, policies, regulations and procedures relating to the Human Relations Commission and the whole area of civil rights.

- Review of the current organization and operations of the Human Relations Commission, to include activities of the members of the Commission and the Commission panels, and the staff of the Office of the Human Relations Commission (OHRC).
- Over 85 interviews with current and past Commission members; current and past OHRC personnel, representatives of the Maryland Commission on Human Relations, and the Baltimore District Office of the Federal EEOC; Executive Directors of five adjacent County Human Relations/Rights Commissions; and staff of the several County and bi-County departments and offices that have official relations with the HRC.

D. Acknowledgment

OLO wishes to acknowledge the full cooperation and courteous support from Commission members, OHRC staff, and others who were interviewed for this evaluation. OLO particularly appreciates their candor and forthright views. **Finally, as with all OLO reports, this report solely represents the analyses, findings, and conclusions of the writer.**

II. BACKGROUND

On July 12, 1960, the Montgomery County Council adopted Resolution No. 4-1776, which established a Commission on Inter-Racial Problems to communicate with those who opposed the integration of public facilities such as restaurants, recreation and amusement centers, hotels, and hospitals. The Commission was the first such organization in Maryland to address the problem of discrimination. In August, 1960, the Council adopted a resolution that changed the name of the Commission on Inter-Racial Problems to the Commission on Human Relations.

Shortly thereafter, the Council enacted Ordinance No. 4-120, effective February 15, 1962, which made it illegal to discriminate in places of public accommodation located in the County on account of race, color, religion, ancestry, or national origin. Additionally, the Ordinance formally directed the Commission on Human Relations to carry out the mandates of the Ordinance. Thus the County was two years ahead of the Congress of the United States in enacting anti-discrimination legislation. It was not until 1964, that the Congress enacted the Civil Rights Act, the Federal statute that prohibits discrimination in employment and public accommodations, and created the Equal Employment Opportunity Commission (EEOC).

Ordinance No. 4-120 was the first of what was to be a number of actions by the Montgomery County Council addressing discrimination and providing for a citizen Commission (and eventually a supporting staff) to oversee and enforce the laws. Over the three decades since 1962, there have been a number of amendments and revisions to that first public ordinance. At Exhibit A is a chronology of the many changes to the County's Human Relations law.

III. THE HUMAN RELATIONS LAW AND COMMISSION

A. Overview

The current authority for the Human Relations Commission (HRC) (a term used interchangeably with the Commission on Human Relations in the County's law and in other written documents) is Article I, Commission on Human Relations, Chapter 27, Human Relations and Civil Liberties, of the Montgomery County Code, 1984. (At Exhibit B is an extract of County Code Chapter 27, Article I and Article IX). In the thirty years since the enactment of the first County human relations ordinance, the types of discrimination covered by the law have increased, the areas where discrimination is prohibited have expanded, and the composition and duties of the Commission have changed. The statement of public policy in the current County law regarding discrimination is as follows:

"(a) It is the public policy of Montgomery County:

(1) To eliminate discrimination, prejudice, intolerance, and bigotry that exists as described in this article:

a. On account of race, color, sex, religious creed, ancestry, national origin, handicap, marital status, or sexual orientation in housing, employment, and public accommodations;

b. On account of age in employment;*

c. On account of the presence of children in housing;* and

(2) That the discrimination, described in paragraph (1):

a. Is injurious to and threatens the health, safety, and welfare of persons in this county;

b. Is contrary to the purposes of a free, democratic society;" (Code Section 27-1)

The law acknowledges that the prohibitions contained in the above public policy are similar, but not necessarily identical, to those contained in Federal and Maryland Law. However, the prohibitions are ". . . intended to assure that a complaint [of discrimination] filed under this article [Article I, Code Chapter 27] may proceed more promptly than possible under either Federal or State law." (Code Section 27-1(c)). Thus, the County's Human Relations law was created neither to duplicate the processes in Federal or State law, nor to provide for reprocessing a complaint after it has been fully adjudicated under a similar Federal or State law.

B. Acts of Discrimination Prohibited

The County's Human Relations law prohibits discrimination in places of public accommodation, real estate (housing and commercial), and employment on the basis of twelve separate categories. In addition, the law also prohibits retaliation in the areas of employment and real estate. Table 1, page 3a, outlines the types of discrimination covered under the County's Human Relations Law.

* There are two omissions in the current statement of public policy: age discrimination also applies to housing; and source of income discrimination applies to housing. (Code Section 27-12(a)(1))

Table 1

Human Relations Commission
Types of Discrimination Covered
Under the Human Relations Law
Chapter 27, Montgomery County Code

<u>Category</u>	<u>Public Accommodation</u>	<u>Real Estate^{a)}</u>	<u>Employment</u>
Race	C	C	C*
Color	C	C	C*
National Origin	C	C	C*
Ancestry	C	C	C*
Sex	C	C	C*
Religious Creed	C	C	C*
Age	NC	C	C
Handicap	C	C	C*
Marital Status	C	C	C
Sexual Orientation	C	C	C
Presence of Children	NC	C	NC
Source of Income	NC	C ^{b)}	NC
Retaliation	NC	C	C*

Notes: C = Covered by law.

NC = Not covered by law.

a) = Real estate includes housing and commercial real estate.

b) = Source of income applies only to housing, not to commercial real estate.

* = These categories of employment complaints can be dual filed with the Federal EEOC.

Source: Montgomery County Code, Chapter 27, Human Relations and Civil Liberties.

C. Discrimination in Places of Public Accommodation

The County's Human Relations law applies to discriminatory practices in places of public accommodation such as restaurants where food and drink are served; inns, hotels and motels; retail stores and service establishments; hospitals; places of amusement, recreation and sports; and other places of public assembly. However, the law does not apply to ". . . any accommodations which make distinctions based upon sex including such facilities as private schools, rest rooms, dressing rooms, locker rooms, or other dressing facilities" (Code Section 27-8).

As indicated in Table 1, discrimination based upon age, presence of children and source of income are not included. Consequently, places of public accommodation such as night clubs and health spas that limit attendance to a specific age group and/or marital status are permitted. Also, the law does not specifically address the issue of retaliation in public accommodation cases.

As part of the order of a Commission panel in a complaint hearing where discrimination has been substantiated, the person or firm determined by the Commission panel to have violated the provisions of the County's law against discrimination in places of public accommodation can be required to correct the segregated conditions that led to the complaint. In addition, the complainant may be compensated in the form of damages for any financial loss resulting from the discriminatory act, damages for humiliation and embarrassment suffered (not to exceed \$1,000), and for reasonable attorney's fees.

D. Discrimination in Real Estate

This section of the County's human relations law is divided into housing (a facility used as a residence or sleeping place) and commercial real estate. The law applies to a variety of activities usually associated with real estate to include selling, leasing, subleasing, renting, furnishing, advertising, and financing (loans, rates, terms, amount of deposit, etc.). Except for the fact that "source of income" does not apply to commercial real estate, all categories of discrimination apply to both groups.

There are three general limitations on the applicability of the law to housing. First, the provisions do not apply to the rental or leasing of any part of a one or two-rental dwelling unit in which the owner is a bonafide resident. Second, the rental or leasing of a dwelling by any religious group when the rental or leasing is connected with carrying out religious activities. Third, the prohibitions against discrimination on account of age or the presence of children have several exceptions, such as housing for the elderly, retirement communities, etc. The law also includes provisions concerning the posting of notices of the County's law against discrimination and the submitting of reports to the HRC relating to rental practices by real estate brokers.

As in the case of complaints of discrimination in places of public accommodation, the human relations law includes provisions for the imposing of penalties for damages as compensation to a successful complainant for any financial loss, humiliation and embarrassment suffered (\$1,000 limit), and for reasonable attorney's fees.

E. Discrimination in Employment

This portion of the County's human relations law applies to acts of discrimination by employers, employment agencies, and labor organizations. As with the provisions relating to public accommodation and real estate, there are limitations to employment discrimination in the law. First, the law is limited to businesses and enterprises that employ more than six employees within the County. A second limitation applies to employment where a specific characteristic (religious creed, age, sex, etc.) is a bonafide occupational qualification necessary to the normal operation of the business or performance of the job. Another limitation applies in the case of religious organizations where employment is either granted or denied on the basis of religious creed, or when the position requires performance of religious functions. Finally, the law includes exceptions to employment on the basis of sexual orientation under special circumstances such as working with minors of the same gender.

Similar to the section of the law on real estate, there are specific requirements for the posting of notices, the submission of reports, and the maintenance of certain employment records. Also, the law authorizes a Commission hearing panel to award penalties and monetary compensation where discrimination in employment has been substantiated. In addition to reasonable attorney's fees, damages in the form of compensation for humiliation and embarrassment suffered (\$1,000 limit), and lost income, the Commission Employment Panel may order hiring, reinstatement, upgrading, and a variety of other awards (back pay, admission to a labor organization, training, etc.) to the complainant.

F. Applicability of the Human Relations Law Within the County

The provisions of the County's law prohibiting discrimination is applicable throughout the County except within the corporate limits of municipalities that have not adopted the County's law. Currently, six municipalities have not: the Towns of Barnesville, Glen Echo, Laytonsville and Poolesville; Chevy Chase Village; and the City of Rockville. The City of Takoma Park has adopted the County's ordinance only for that portion of the city that is in Montgomery County.

Also, the County's law is not applicable to employment related discrimination complaints of an agency that is an instrumentality of the Federal government or the State of Maryland. This latter category would include: the Board of Education, Maryland-National Capital Park and Planning Commission, Housing Opportunities Commission, Washington Suburban Sanitary Commission, Sheriff and Courts, and the State employees of the Department of Social Services.

The City of Rockville has its own Human Rights Commission that processes discrimination complaints occurring in that city. A complaint of discrimination alleged to have occurred in the other five municipalities must be filed with the appropriate Federal or State human rights agency.

It is important to note that jurisdiction for processing a complaint alleging discrimination is determined by the geographical location where the act of discrimination is alleged to have occurred, and is not determined by the residence of the complainant. For example a resident of Poolesville can file a complaint with the County's Human Relations Commission if the alleged discrimination occurred in Silver Spring, Bethesda, or any other area of the County covered by the law. However, if the alleged discrimination occurred in Poolesville, the complaint would have to file with a Federal or State human rights agency.

G. Commission Membership, Organization, Duties, and Staff

1. Membership and compensation. The Commission on Human Relations is composed of fifteen citizen members, the maximum authorized by the law. Members are appointed by the County Executive and confirmed by the County Council. Members serve three-year staggered terms without compensation (see discussion on compensation below). Although not specifically stated in the law, membership on the Commission has been limited to residents of the County. The qualification for membership as stated in the law is: "The members should be men and women who are broadly representative of racial, religious and ethnic groups of the County" (Code Section 27-2(a)).

2. Officers, meetings and quorum. The Chairperson of the Commission is designated by the County Executive from a list of recommended persons submitted by the Commission. In the absence of an appointment by the Executive, the Commission may elect a chairperson.

Meetings are held at regular intervals, but not less frequently than once every month, with a majority of the members constituting a quorum. Under the provisions of County Code Section 2-148, continuation of membership is contingent upon regular attendance at Commission meetings.

3. Compensation. Prior to January 1991, there was a provision in the human relations law (Code Section 27-5) that authorized compensation to members of the Commission if approved by Council resolution. There is no record of a Council resolution being adopted or of any Commission members being compensated. In January 1991, Bill 46-90 repealed Code Section 27-5, and with it any reference in the law to compensation.

4. Commission duties and responsibilities. The County law authorizes broad powers and duties to the Commission. Although modified over the years to encompass additional protected categories, the Commission's duties are essentially the same as originally legislated in 1962. The salient duties and responsibilities include:

a) Research, assemble, and disseminate educational materials and data relating to activities and programs which will assist in the elimination of prejudice, intolerance, bigotry, and discrimination; and conduct educational programs and meetings to promote equal rights and opportunities;

- b) Work to remove inequities due to discrimination;
- c) Study and investigate conditions which may result in discrimination, prejudice, intolerance, and bigotry;
- d) Advise the County Executive, the County Council, residents, and governmental departments on matters involving racial, religious or ethnic prejudice, intolerance, discrimination, and bigotry, and recommend legislation and programs to insure equal rights;
- e) Initiate or receive and investigate complaints of discrimination, seek conciliation and, if warranted, hold hearings and make recommendations on such complaints;
- f) Adopt regulations, and make quarterly reports and an annual report to the County Executive and the County Council; and
- g) Proceed with other programs to relieve group tension and/or adverse intergroup activities which may result from causes not related to race, sex, religious creed, etc., provided the County Executive does not disapprove such programs.

5. Organization. Associated with the Commission on Human Relations are two panel groupings: Commission Panels and Hearing Panels.

a) Commission Panels. In addition to appointing members to the Commission, the County Executive appoints, and the County Council confirms, members to three-year terms on three Commission panels: places of public accommodation, housing, and employment.

- Composition and Chairs. The Commission Panel on Public Accommodation and Panel on Housing are each made up of three members. For each of these panels, at least two members must be selected from among the full Human Relations Commission membership and the third panel member may be selected either from the community-at-large, or from among the full Commission membership. The Commission Panel on Employment is made up of five members. One member must be selected from the Commission for Women, at least two members from the full Human Relations Commission membership, and two members either from the community-at-large or from the full Commission membership. The chairperson for each of these Commission panels must be a member of the full Human Relations Commission.

- Quorum. A quorum for meetings of any of the Commission panels is the majority of the members assigned to the panel.

- Duties. The sole duty of the Commission panels is ". . . to carry out the adjudicatory and enforcement functions pertaining to alleged violations . . ." of the Code in the panel's particular area. (Code Section 27-2(b)).

Compensation. Since FY87, the Commission budget has included funds to compensate members of the Commission panels at the rate of \$35 per meeting, up to a maximum of \$3000 per year. In late 1986, the Office of Management and Budget approved a Commission staff request for funds to

reimburse the 11 members of the Commission Panels at the \$35 per hearing rate, and funds were included in the Commission's FY87 operating budget. Since that time, funds have been included in subsequent annual budgets of the Commission, and payments have been made to those Commission panel members who have requested compensation. OLO has not been able to find any specific Council authority to compensate members of Commission panels.

b) Hearing Panels. A 1986 amendment added hearing panels to the human relations law. Prior to the amendment, hearings were conducted by the appropriate commission panel. After the amendment, the chairperson of a commission panel could either designate the commission panel as the hearing panel, or appoint a hearing panel from eligible Commission and panel members.

- Composition. A hearing panel must consist of not less than three and no more than nine members, with at least one member being a member of the Commission panel that has jurisdiction over the complaint, and at least one who is a member of the Commission. The chairperson of a hearing panel must be a member of the Commission.

- Quorum. A majority of the members of an appointed hearing panel constitutes a quorum.

- Duties. The hearing panel conducts hearings under the provisions of Code Section 27-7, and Article I, Code Chapter 2A, Administrative Procedures Act.

- Compensation. There is no authority in the current law to compensate members of a hearing panel.

6. Hearing examiners. The law provides that hearings can be held before a hearing examiner in lieu of a hearing panel (Code Section 27-7(e)(9)). The Council authorized the use of hearing examiners in 1977 (Bill 46-76), and their use was confirmed by a County Charter amendment in 1986.

7. Commission committees. In addition to panels, Commissioners, augmented by representatives from the community-at-large, may serve on special committees created by the Commission.

H. Staff Support for the Commission on Human Relations

1. Authority for staff support. The 1962 ordinance that created the Commission on Human Relations (Council Ord. 4-120) specified that the County Manager or designee would serve as the Executive Director of the Commission. In 1967, the Executive Director position was changed to that of Executive Secretary, to be filled by a member of the County Manager's staff. The primary duty of the Executive Secretary was to ". . . serve as Executive Secretary of the Commission on Human Relations, and . . . assist the various Commission Panels as shall be required" (Council Ord. 6-56). In the ordinance there was also a provision for additional staff as funds were provided by the Council. With the Charter change creating a County Executive in 1970, the assignment of additional staff became the prerogative of the County Executive.

In 1986, legislation was enacted designating support staff for several commissions and boards as "offices". Thus the staff component for the Commission was designated the Office of the Human Relations Commission (OHRC). (At Exhibit C is the organization chart of the Human Relations Commission).

2. Personnel complement. In 1972, ten years after creating the Commission, the staff complement of the Commission consisted of two full-time and two part-time positions, which included the Executive Secretary, for a total of three workyears. Ten years later, in 1982, the staff had grown to 14 full-time positions and 14 workyears. At this writing, the approved FY94 staff complement is 19 full-time and one part-time positions and a total of 19.5 workyears. At Table 2, page 9a, is presented the approved personnel complements of the Human Relations Commission from FY72 to the present. In addition, for the past six years the staff has been augmented with a full-time receptionist through a contract with a temporary manpower firm.

3. Organization. The Office of the Human Relations Commission (OHRC), consists of three activities: Administration and Direction, Compliance (complaint processing), and Community Relations (community relations, education and training).

a) Administration and direction. Supervision of the staff is by an Executive Director (the title was changed from Executive Secretary in 1984). The Executive Director is a merit position, under the supervision of the Chief Administrative Officer (CAO). The Executive Director is the only Commission staff person assigned duties in the law; specifically, three areas: Code Section 27-4 directs the Executive Director to ". . . assist the Commission Panels as determined by law", and ". . . assist the Commission in carrying out the provisions of [the law]"; Code Section 27-7 specifies the role of the Executive Director in receiving, investigating, determining a finding, conciliating, and supporting the hearing process; and Code Section 1A-204(a), places the staff of the OHRC under the supervision of the Executive Director.

b) Compliance. The investigative functions of the Commission are carried out by the Compliance Section. The current personnel complement of this section is ten full-time positions: a supervisor, seven investigators, one administration aide, and a legislative intern. All activities associated with the intake, investigation, processing, and final determination of complaints are the responsibility of this section. (The next chapter in this report discusses the complaint processing procedure in detail.)

c) Community Relations. The training, outreach, and community relations responsibilities of the Commission are carried out by the Community Relations Section. The current personnel complement of this section is eight full-time positions: a supervisor, five community relations specialists, two full-time administrative positions; and one part-time administrative position. The section's community relations activities include Asian and Latino outreach; hate/violence monitoring, reporting, and victim assistance; support of the Committee on Hate/Violence and the Partnership Board; public information, education, and training; and a number of special human relations programs such as Dialogue for Police and Minority Communities, Human Relations

Table 2

Human Relations Commission
Approved Personnel Complements
FY72 - FY94

FY	Positions			WY
	Full Time	Part Time	Total	
72	2	2	4	3.0
73	6	0	6	6.0
74	6	0	6	7.2
75	9	0	9	8.9
76	9	0	9	9.1
77	9	0	9	9.0
78	10	2	12	11.0
79	13	2	15	14.0
80	15	0	15	15.0
81	15	0	15	14.8
82	14	0	14	13.5
83	14	0	14	13.7
84	15	2	17	16.0
85	15	0	15	15.0
86	15	1	16	15.5
87	16	1	17	16.5
88	17	0	17	17.0
89	17	0	17	17.0
90	19	1	20	19.2
91	21	2	23	21.7
92	18	2	20	19.0
93	18	1	19	18.5
94	19	1	20	19.5

* In some fiscal years, the 11 Commission Panel members were included in the part-time complement. For consistency, the 11 Commission Panel members have not been included in the totals.

Source: Approved Personnel Complements, FY72 through FY94.

Camp for Teens, and the STOP program for juveniles who have committed hate/violence crimes. Finally, standard administrative support activities (personnel, budget, etc.) for the Commission are also the responsibility of this section. (A detailed discussion of the Community Relations Section is presented in Chapter V.)

4. Funding. The Human Relations Commission is funded primarily from the General Fund. The County also annually receives approximately \$50,000 in grant funds through a contract with the Federal Equal Employment Opportunity Commission (EEOC) for processing dual filed employment complaints. Prior to FY93, the County also received a grant from the Department of Housing and Urban Development (HUD) for processing housing complaints. However, changes in the Federal grant guidelines relating to public funds being used to pay for legal counsel for certain court cases, resulted in the County, along with the State and other counties, choosing not to continue the contract. The grant amounted to about half of the EEOC grant, approximately \$25,000 a year. At Table 3, page 10a, is a history of Commission revenues and expenditures for the most recent five fiscal years.

IV. HUMAN RELATIONS COMMISSION COMPLAINT PROCESSING PROCEDURE

A. Overview

The single largest expenditure of time and funds by the Commission staff is in the administration and processing of complaints of discrimination in employment, real estate, and public accommodation. The steps in the complaint process are described in this chapter of the report, and presented in a series of tables that reflect the complaint caseload over the most recent five fiscal years.

The average approved personnel complement of the Compliance Section for the same five fiscal years was 9.8 positions: one supervisor, an average of 7 investigators, and an average of 1.8 administrative aides. In processing complaints, the Compliance staff works independently of the Commission and Commission panels in filing, investigating, and, where possible, conciliating a complaint.

B. Intake

The Human Relations Commission (HRC) receives many inquiries each day from persons who have problems that they feel relate to some form of discrimination. The first requirement in the intake step is to determine through questioning whether an act of discrimination covered under the law has occurred. Many of the inquiries concern problems unrelated to discrimination (e.g., need for food stamps, a landlord-tenant problem, questions relating to alien status and American citizenship). However, if the problem relates even remotely to discrimination, then a determination must be made whether the act of discrimination is addressed under the County's law.

Over many years, and thousands of inquiries, the Compliance staff estimates that a typical breakdown of 100 inquiries is as follows:

Table 3

Human Relations Commission
Budgets vs. Actual Expenditures
FY89 - FY93
with FY94 Approved Budget

	FY89	FY90	FY91	FY92	FY93	FY94 Budget
Budgets*						
Personnel Services	\$ 826,648	\$ 972,658	\$1,122,107	\$1,030,599	\$1,088,314	\$1,088,430
Operating Expense	181,931	181,692	177,700	161,736	100,608	100,140
Capital Outlay	23,044	17,014	15,860	14,789	7,276	44,000
Totals:	\$1,031,623	\$1,171,364	\$1,315,667	\$1,207,124	\$1,202,198	\$1,232,570

Expenditures					
Personnel Services	\$ 780,843	\$ 894,574	\$ 963,793	\$ 943,911	\$1,037,027
Operating Expense	109,121	122,139	104,787	94,798	81,246
Capital Outlay	19,792	13,607	311	13,277	7,276
Totals:	\$ 909,756	\$1,030,320	\$1,068,891	\$1,051,986	\$1,125,549

Unexpended Budgets	\$ 121,867	\$ 141,044	\$ 246,776	\$ 155,138	\$ 76,649
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* All budget figures include prior year encumbrances, when applicable.

Sources: FY89-FY93: Comprehensive Annual Financial Report, Exhibit B-3.

FY94: Council Resolution 12-1116, adopted May 25, 1993, as modified by OMB revision to allocate the Compensation Pay Adjustment and Group Insurance Adjustment NDAs.

- Approximately 55 are assisted informally, usually by answering questions, explaining the law, sending an information pamphlet or brochure or by just plain letting the person talk about the problem;

- Another 25 are referred to a County or State agency for assistance, such as the Department of Social Services, the Commission on Aging, the Commission on Persons with Disabilities, the Housing Opportunities Commission, the Office of Landlord/Tenant Affairs;

- Another 10 relate to discriminatory acts, but are either determined not to be in HRC's jurisdiction (i.e., occurred prior to the one-year statute of limitations, or in one of the six municipalities that have not adopted the County's law), or are best handled by another agency such as the Federal EEOC, the Maryland Human Relations Commission, or the MCPS Human Relations Department;

- The remaining 10 are accepted by the HRC for the full intake procedure.

Thus, typically an average of 90 out of every 100 inquiries received at the Commission do not result in further processing beyond an initial informal interview. Although considerable staff time is devoted to answering these 90 inquiries, a beneficial service is provided the community.

The ten complaints accepted by the HRC (out of the original 100 inquiries) are next put through a lengthy and indepth procedure that requires the complainant not only to demonstrate the type of discrimination alleged, but also to demonstrate that some harm resulted from the alleged discriminatory act (denial of job promotion, refusal of service or admittance in a public accommodation, denial of housing, etc.). Of the ten complaints accepted, approximately half meet the criteria of a bonafide complaint, and are eventually sworn to, signed, and filed, or "docketed", as a formal complaint.

The remaining five complaints are not officially docketed for a variety of reasons, to include: failure by the complainant to substantiate that the alleged discrimination occurred, or that the complainant suffered harm; refusal by the complainant to swear to and sign the complaint once it is prepared; or failure of the complainant to follow-up and return to HRC and sign the complaint.

In summary, approximately five percent of the inquiries received by the HRC result in officially "docketed" cases. At Table 4, page 11a, is a record of docketed cases in the three categories of discrimination, and at Table 5, page 11b, is a breakdown of those docketed cases on the basis of the type discrimination alleged, each for the most recent five fiscal years.

C. Fact-Finding

Once a complaint is docketed, the compliance staff notifies the respondent and requests appropriate records and documentation. The investigator may conduct a fact-finding conference with the complainant and respondent (and their counsel if desired). The Commission has the authority

Table 4

Human Relations Commission
Formal Complaints Docketed (Filed)
FY89 through FY93

Category	FY89	FY90	FY91	FY92	FY93	Five-Year Average (%)
Employment	217	261	235	249	233	239 (79.7)
Real Estate/Housing	54	45	29	33	31	39 (13.0)
Public Accommodations	22	25	14	24	27	22 (7.3)
Totals:	293	331	278	306	291	300 (100.0)

Source: The Human Relations Commission Staff.

796/15

Table 5

Basis for Complaints Docketed (Filed)^{a)}
FY89 through FY93

Category	FY89	FY90	FY91^{b)}	FY92	FY93	Four-Year Average (%)
Race	149	148		137	140	144 (33.3)
Color	18	17		30	13	20 (4.6)
National Origin	51	49		47	49	49 (11.3)
Ancestry	30	20		32	30	28 (6.5)
Sex	67	90		64	81	76 (17.6)
Religious Creed	8	11		5	8	8 (1.9)
Age	34	33		22	13	26 (6.0)
Handicap	35	62		42	51	48 (11.1)
Marital Status	5	10		5	4	6 (1.4)
Sexual Orientation	3	15		6	4	7 (1.6)
Presence of Children	16	6		5	3	8 (1.9)
Source of Income	Note c)	Note c)		8	8	-- --
Retaliation	11	8		16	13	12 (2.8)
Totals:	427	469		419	417	433 (100.0)^{d)}

Notes: a) Totals of complaints by category exceeds total complaints filed as presented in Table 4 because many complaints cite more than one basis for the complaint, e.g., race and color; race and sex.

b) Detailed data is not available at HRC for FY91.

c) This category was not a basis for a discrimination complaint in these fiscal years.

d) May not equal 100% due to rounding.

Source: The Human Relations Commission Staff.

to compel attendance at the conference and the production of documents through the issuance of summons and subpoena. The purpose of the fact-finding conference is to serve as an initial step in the process of resolving the complaint through a predetermined settlement, or in other words, a no-fault settlement between the complainant and the respondent.

Although, a fact-finding conference is not suitable for every complaint, the conferences have often been used in the past with success by the investigators. When OLO conducted an evaluation of the HRC in 1981, the fact-finding conference was singled out by OHRC management and staff as a successful means of resolving complaints. For instance, in FY79 and FY80, 16 percent and 26 percent, respectfully, of the cases closed were through predetermined settlements arranged predominantly during fact-finding conferences.

In recent years, the fact-finding conference has all but been eliminated from the complaint process. In FY92 and FY93, only five percent and three percent, respectfully, of the case closures were through a predetermined settlement. The reason given by OHRC management for curtailing the use of fact-finding conferences is the loss of clerical support to record the conferences.

D. Investigation

The investigation of a complaint represents the largest expenditure of time in the complaint process. Depending on the nature of the complaint, an investigation can include a variety of activities: on-site visits, interviews of principals and others familiar with the issues, research of records and documents, and review of case law.

An investigation is conducted in confidence and without publicity. However, the identity of the complainant is disclosed to the respondent, and the two may mutually agree in writing to the selective release of information about the case.

When the investigation is complete (there is no legislated time limit for an investigation), a written investigation report and a Letter of Determination (LOD) are prepared. After the report of the investigation is approved by the Compliance supervisor, the case file, together with the LOD, is forwarded to the Executive Director for a determination of whether reasonable cause exists to believe a violation of the human relations law has occurred. At the same time, the complainant and the respondent receive a synopsis of the investigator's written findings.

E. Executive Director's Actions

The investigator's findings and LOD are reviewed by the Executive Director, who must make a "reasonable grounds" determination.

1. Finding of no reasonable grounds. If the Executive Director determines that the complaint lacks reasonable grounds upon which to base a violation of the human relations law, the Director informs the complainant of that decision. At that point, the case is closed unless the complainant elects to appeal the Director's decision to the appropriate Commission panel.

If an appeal is made, the law currently states that: "The panel shall make the final determination whether or not to dismiss the complaint" (Code Section 27-7(d)). Recently, the interpretation of this brief statement has caused considerable friction between the Chairman of the Commission Employment Panel and the Executive Director, and has generated a legal opinion from the County Attorney. This issue is discussed in detail in Chapter VII.

2. Finding of reasonable grounds. If the Executive Director determines that there is reasonable grounds to believe a violation of the law has occurred, an attempt is made to conciliate the matter in an informal, confidential conference between the Executive Director, the complainant, and the respondent (with counsel if desired). By law, the Director has 180 days after the finding of reasonable cause to reach conciliation, with a 30-day extension beyond the 180 days if circumstances warrant (Code Section 27-7(c)). This is the first legislatively imposed time limit in the entire complaint process.

If a conciliation is reached, the terms of the settlement are reduced to writing and incorporated into an enforceable order by the Commission. If a conciliation settlement is not reached within the above time limit, the Executive Director must notify the appropriate Commission Panel, which in turn must move "promptly" to schedule a hearing to determine whether a violation of the law has been committed.

At Table 6, page 13a, is a record of the number of formal complaints closed by category in the most recent five fiscal years; and at Table 7, page 13b, is a record of the reasons for closing those cases, for four of those fiscal years.

F. Hearings

If the Executive Director fails to conciliate a complaint after a good faith attempt, the Director must notify the chairperson of the appropriate Commission panel. The Commission panel must thereafter schedule a hearing promptly to determine whether a violation of the law has been committed (Code Section 27-7(e)(1)). The chairperson of the appropriate Commission panel has three possible hearing options:

- Designate the Commission panel as the body to conduct the hearing;
- In consultation with the chairperson of the Commission, appoint a special hearing panel of from three to nine members, selected from eligible Commission and Commission panel members; or
- With the approval of the chairperson of the Commission, designate a hearing examiner to conduct the hearing.

Administrative hearings are prepared and conducted de novo in accordance with Code Section 27-7(e) of the human relations law and Code Article I, Chapter 2A, The Administrative Procedures Act. The burden of going forward with the evidence is on the complainant, with neither law imposing a time limit for the completion of the hearing. Generally, hearings are open;

Table 6

Human Relations Commission
Formal Complaints Closed
FY89 through FY93

Category	FY89	FY90	FY91	FY92	FY93	Five-Year Average (%)
Employment	132	165	173	134	136	148 (74.0)
Real Estate/Housing	45	56	30	27	20	36 (18.0)
Public Accommodations	9	25	20	18	8	16 (8.0)
Totals:	186	246	223	179	164	200 (100.0)

Source: The Human Relations Commission Staff.

796/17.

Table 7

Human Relations Commission
Basis for Complaints Closed
FY89 through FY93

<u>Reason for Closing</u>	<u>FY89</u>	<u>FY90</u>	<u>FY91^{a)}</u>	<u>FY92</u>	<u>FY93</u>	<u>Four-Year Average(%)</u>
No Reasonable Grounds	91	123		105	82	100 (51.8)
Reasonable Grounds/Conciliated	4	15		9	7	9 (4.7)
Withdrawal (Settlement) ^{b)}	41	35		25	33	33 (17.1)
Predetermination (Settlement) ^{c)}	17	37		10	5	17 (8.8)
Complaint Withdrawn ^{d)}	12	8		12	7	10 (5.2)
Administrative Closure ^{e)}	21	25		18	30	24 (12.4)
Totals:	186	243	223	179	164	193 (100.0)

Notes:

- a) Detailed data not available at HRC for FY91.
- b) Complaint settled with respondent without the involvement of HRC; consequently, HRC cannot enforce the settlement.
- c) Complaint settled with respondent with the involvement of HRC; consequently, HRC can enforce the settlement.
- d) Examples include loss of interest by complainant, complainant has found other employment or housing, etc.
- e) Examples of administrative closures are: lack of jurisdiction, complainant cannot be located or fails to cooperate in investigation, respondent files for bankruptcy, etc.

Source: The Human Relations Commission Staff.

796/18

all parties and the hearing panel may be represented by counsel; all testimony and evidence is given under oath; and a full record of the hearing is maintained. The hearing panel (or hearing examiner) is authorized to conduct a closed hearing upon written request of either party; however, whether open or closed, the decision and order of the hearing panel must be made public within 45 days after closing the hearing and the record of the case.

If the hearing panel finds no evidence of discrimination, the hearing panel publishes its findings and issues an order dismissing the complaint. The Commission panel that appointed the hearing panel has jurisdiction over the complaint, reviews the decision and order, and must either adopt, reverse, modify, or remand the order. The decision and order of the Commission panel is a final decision of the Human Relations Commission

If the hearing panel finds that there was discrimination, it must issue and serve on the respondent a decision and order, accompanied by findings of fact and conclusions of law, requiring the respondent to cease and desist from the unlawful discriminatory practice. In addition, the panel can order the award of damages and other remedies. As in the case of a finding of no discrimination, the decision and order is reviewed by the Commission panel that appointed the hearing panel and either adopts, reverses, modifies, or remands the order. Again, the decision and order of the Commission panel is a final decision of the Human Relations Commission.

At Table 8, page 14a, is a breakdown of the hearings that have been held in the most recent five fiscal years.

G. Hearing Examiner

If the hearing is held before a hearing examiner in lieu of a hearing panel, the hearing follows the same procedure as that of a hearing panel. When the hearing is concluded, the hearing examiner must forward a recommended decision and order, including any recommendations for awards and damages, to the appropriate Commission panel. As with the decision and order of a hearing panel, the Commission panel can either adopt, reverse, modify, or remand the recommended decision and order, and then issue its order, which is the final decision of the Human Relations Commission.

H. Awards and Remedies

The law provides for a variety of awards and remedies, some particular to the specific area of discrimination, i.e. employment, housing, and public accommodation. Generally, the monetary awards are provided in the law, to include the awarding of attorney's fees. In addition, damages can be awarded for humiliation and embarrassment suffered in an amount not to exceed \$1,000.

I. Appeals

Decisions and orders of the Human Relations Commission can be appealed to the Circuit Court of Montgomery County. In the most recent five fiscal years, two decisions have been appealed to the Court, one by a respondent and the other by a complainant. In both instances, the Court upheld the Commission's decision and order.

Table 8

Human Relations Commission
Completed Panel Hearings
FY89 through FY93^{a)}

Category	FY89	FY90	FY91	FY92	FY93
Employment	3	1	0	0	1
Real Estate/Housing	0	0	0	0	0
Public Accommodations	0	0	1	0	0
Totals:	3	1	1	0	1

Note: a) Pursuant to Code Section 27-7(e)(9), all six hearings completed in FY89 through FY93 were referred to the Hearing Examiner who conducted the hearing and made recommendations to the appropriate panel.

Source: The Human Relations Commission Staff.

796/19

J. Enforcement

If after 30 calendar days following service of the Commission's order it is not complied with, the matter is certified to the County Attorney for enforcement.

K. Summary of Complaint Cases

A review of the tables in this report reveal the following concerning complaint cases over the most recent five fiscal years, FY89-FY93:

- An average of 300 cases were filed each fiscal year. The overwhelming majority of the cases (80 percent) concerned employment discrimination (Table 4 - page 11a).
- Of the 13 categories of complaints (Table 1), an average of four of the five fiscal years reveals that race was alleged in one-third of the cases. The next highest category was sex (18 percent), with national origin and handicap the next higher categories (each 11 percent) (Table 5 - page 11b).
- An average of 200 cases were closed each fiscal year, with employment cases accounting for three-quarters of the cases (Table 6 - page 13a).
- Of six possible reasons for closing a case, an average of four of the five fiscal years reveals that the one most cited (52 percent) was "No reasonable grounds". The next highest category (17 percent) was "Withdrawal (Settlement)", that is, the complainant and respondent settled without the involvement of the Commission. Administrative reasons accounted for 12 percent of the closures (Table 7 - page 13b).
- Few cases actually went to public hearing. In the same five fiscal years, only six cases, five employment and one public accommodation, went to public hearing. All six hearings were conducted by a hearing examiner (Table 8 - page 14a).

Because one-third more cases were docketed than were closed, there is currently a substantial backlog of open cases. As of the end of September 1993, there were 575 open cases over one year old (Tables 9, page 16) and the six current compliance investigators had a combined case load of 716 active cases (Table 10 - page 16).

Table 9

Human Relations Commission
Backlog of Open Cases More Than One Year Old
Cases Were Docketed (Filed) in
CY 1988 - CY 1992
(As of September 30, 1993)

<u>Calendar Year When Docketed</u>	<u>Employment</u>	<u>Real Estate/Housing</u>	<u>Public Accommodation</u>	<u>Total</u>
1988	15	0	3	18
1989	61	1	7	69
1990	114	6	1	121
1991	165	0	14	179
1992	164	6	18	188
Total (%)	519 (80.2)	13 (2.3)	43 (7.5)	575 (100.0)^{a)}

a) May not equal 100% due to rounding.

Source: The Human Relations Commission Staff Investigators.

Table 10

Human Relations Commission
Current Case Load of Investigators
(As of September 30, 1993)

<u>Investigator</u>	<u>Employment</u>	<u>Real Estate/Housing</u>	<u>Public Accommodation</u>	<u>Total</u>
#1	155	5	17	177
#2	58	4	9	71
#3	87	7	6	100
#4	137	5	8	150
#5	97	5	5	107
#6	98	4	9	111
Total: (%):	632 (88.3)	30 (4.2)	54 (7.5)	716 (100.0)

Source: The Human Relations Commission Staff Investigators.

V. HUMAN RELATIONS COMMISSION COMMUNITY RELATIONS ACTIVITIES

A. Overview

The Human Relations Commission is involved in a wide variety of community relations activities. In recent years, practically all of these activities have been carried out by the staff of the Office of the Human Relations Commission (OHRC). This is in sharp contrast to the period of the early 1980's when OLO conducted an evaluation of the Commission. At that time, many Commission members, acting primarily through their committees, were involved with the OHRC staff in accomplishing the duties and activities of the Commission. These activities included: participation in fairs, workshops and community forums; staffing a speakers bureau; membership and participation on other agency advisory boards, committees, and commissions; and participating in the Network of Neighbors, a program that went into the community to combat the effects of hate groups and acts of hate/violence.

B. Current Programs and Activities

The staff of the Community Relations Section is currently involved in the following major programs and activities:

1. Outreach. Two of the section's staff are involved in Asian and Latino outreach programs. These programs enable staff who are knowledgeable with the language and the culture of these minorities to work with their respective communities and assist the residents, conduct training, counsel victims of hate/violence acts, and a myriad of other activities. They also assist persons unfamiliar with the language to file complaints of discrimination and interpret the County's laws and regulations.

2. Hate/violence monitoring, reporting, and victim assistance. This program is designed to assist victims of acts of hate/violence, and those who may have witnessed a hate/violence act. Hate/violence statistics are also maintained in conjunction with the Police Department and other public agencies.

3. Staff support to the Partnership Fund and Board. The Community Relations Section is responsible for administering the Partnership Fund and supporting the Partnership Board. The Partnership Fund compensates victims for property damage suffered as a result of a hate/violence act. The seven-member Partnership Board solicits private contributions for the Fund, publicizes the existence of the Fund, and approves payments from the Partnership Fund (Code Section 27-26F) to compensate for property damage to victims.

4. Staff support to the Committee on Hate/Violence. In August 1991, the Council enacted legislation creating a Committee on Hate/Violence, (see extract at Exhibit B, Code Section 27-63). The legislation implemented the Council's decision in the FY92 budget to formally establish a County committee to focus on the problem of hate/violence, and to assume responsibility for existing programs of the Sensitivity Awareness Symposium

Task Force. The specific major duties of this 21-member committee (15 of whom are voting members) are to: promote educational activities that demonstrate the positive value of ethnic and social diversity in the County; develop and distribute information about hate/violence; and advise and recommend policies, programs, and legislation to reduce the number of incidents of hate/violence. It should be noted that in the two years that the Partnership Board and the Committee on Hate/Violence have been in existence, neither have met with the Commission on Human Relations.

5. STOP program. The STOP program is an educational program for juveniles who have committed acts of hate/violence. Under the program, the juveniles and their parents must complete 15 hours of education, and the juveniles must complete 40 hours of community service.

6. Public information and human relations training. Public information provides a variety of brochures, reports, pamphlets, and posters, many in the native languages of County residents. The training program includes two workshops, Cultural Awareness and Hate/Violence. Training is provided primarily to County employees; however, other public agencies and private organizations are also served.

7. Human Relations Camp. Initiated in 1986, this program brings together students in the 15 to 17-year age group from diverse racial, religious, ethnic, and socio-economic backgrounds for a weekend experience in interracial and intercultural understanding. The camp challenges the students to examine their attitudes and perceptions of persons different from themselves. Located in a retreat setting in adjacent Counties, the camp is conducted twice a year. Since 1986, approximately 800 students have attended. All students become members of the Network of Teens program and are capable of assisting with a hate/violence incident; some have become camp counselors; and many have interned at HRC.

8. Dialogue for Police and Language Minority Communities and Dialogue for Police and Minority Communities. These programs assist the police in their work and interactions with Latino, Asian, and African-American communities, and help members of these communities learn about police work. The programs were developed by OHRC staff to reduce tension and conflict and open lines of communication between the police and these communities.

9. Conflict resolution/mediation. The Community Relations staff also assists in resolving/mediating conflicts between communities and County agencies. Staff efforts have included community meetings in response to specific incidents.

C. Funding of Community Relations Programs

With three exceptions, all community relations activities and programs are funded from the operating budget of the Human Relations Commission. The first exception is the Partnership Fund for victims of hate/violence. This program is funded by a combination of private contributions, public funds from the County, and a County two-for-one match of private contributions. All monies associated with the fund, both public and

private, are accounted for in the County's Expendable Trust Fund. Since the fund was activated in FY87, \$13,470 has been distributed in 42 claims, for an average award of \$320 per claim. At the end of FY93, the balance of the fund was \$57,000.

The second exception concerns another program associated with the County's efforts to address acts of hate/violence. The Committee on Hate/Violence has been authorized to draw on the remaining funds of an account that supported the former Sensitivity Awareness Day. As reported in the County's Subsidiary File Report, the fund balance at the end of FY93 was \$10,950.

The third exception relates to the Human Relations Camp program. Staff costs associated with preparing and planning for this "Teen Camp" are funded from the Commission's budget. Funds to actually conduct the camp comes from contributions to the Montgomery County Human Relations Camp Fund. This fund was created and is maintained by the OHRC, and is not authorized in County law or regulation, and is not accounted for or audited by the Finance Department. (This Camp Fund is evaluated in Chapter VII of this report.)

VI. COMMISSION'S RELATIONSHIP TO OTHER FEDERAL, STATE, AND LOCAL HUMAN RELATIONS/RIGHTS AGENCIES

A. Overview

Anyone believing that he or she has been the victim of a discriminatory act may file a complaint with any human rights enforcement agency having jurisdiction over the specific discriminatory act in the geographical location where the alleged act occurred. Many acts of discrimination can be filed with more than one agency. When a dual filing occurs, the complaint is processed by one agency according to memoranda of understanding or contractual arrangements.

Equal rights legislation at the State and Federal level have mechanisms for enforcing anti-discrimination laws and processing complaints. As stated earlier in the report, Montgomery County's human relations law predates both State and Federal efforts; and while substantially similar, the County's law is not identical to their laws. There are differences in the categories covered by the laws and in the procedures of the various agencies for processing complaints. At Table 11, page 19a, is a summary of the types of discrimination addressed by other human rights agencies.

B. Federal

In the three decades since the Civil Rights Act of 1964, the Congress, and the President in Executive Orders, have enacted a number of laws and orders dealing with discrimination. The 1964 Act addressed discrimination in places of public accommodation. Subsequent titles to the Civil Rights Act have addressed discrimination in employment and housing. Employment discrimination complaints are investigated by the Federal Equal Employment Opportunity Commission (EEOC). The Baltimore District Office of the EEOC serves Montgomery County. (Note: There are a number of other Federal Acts

Table 11

Agency Responsibility
by Type Discrimination

Agency	Employment	Real Estate/ Housing	Public Accommodation
M.C. Human Relations Commission ^{a)}	x	x	x
U.S. Department of Justice	x	x	x
U.S. Equal Employment Opportunity Commission	x		
U.S. Department of HUD		x	
Maryland Commission on Human Relations	x	x	x
Rockville Human Rights Commission	x	x	x
MCPS Human Relations Department (HRD) ^{b)}	x		

Notes: a) Responsibility is limited to acts occurring in the County at large and in the municipalities that have adopted the County's ordinance.

b) Only MCPS employees. In addition, MCPS HRD also accepts complaints of discrimination under Title IX, Educational Amendments of 1972, which prohibits sex discrimination in educational institutions and programs receiving Federal funds. The Federal enforcement agency is the Department of Education.

Source: The Office of Legislative Oversight.

796/40

that address specific types of discrimination in specific environments. Examples include: discrimination in public education; the Equal Pay Act prohibiting sex discrimination in salaries; and age discrimination in employment.) The Department of Justice is the enforcing arm for all Federal discrimination cases.

C. State of Maryland

Article 49B of the Annotated Code of Maryland, outlines the civil rights provisions for the State of Maryland. The Article provides for a nine-member Commission on Human Relations, an Executive Director, and staff to enforce the provisions of the Act. The duties of the Commission include conducting surveys and studies, holding hearings, submitting reports to the Governor and General Assembly on human relations matters, serving as an appeals board for the review of decisions by the hearing examiner, and, through the Commission staff, investigating complaints of discrimination.

The primary duty of the Executive Director and staff of the State's Commission is to receive and process discrimination complaints. Budget reductions over the past five years have halved the staff, with the result that emphasis is almost totally on compliance, with no specific staff member dedicated to community relations projects.

The State Commission's complaint process is similar to the County's; however, there are some differences:

- A complaint must be filed with the State's Commission within six months from the date of occurrence of the alleged discrimination, while the County law permits filing within one year from occurrence.
- A finding of no reasonable grounds is made by the investigative staff, which can be appealed by the complainant to the Executive Director, whose decision is final. There is no provision to appeal the Executive Director's decision to the Commission. In the County's procedure, the Executive Director makes the determination of no reasonable grounds, and that decision can be appealed by the complainant to the appropriate Commission panel.
- A finding of reasonable grounds and a failure to conciliate results in the Executive Director certifying the case for public hearing. All public hearings are tried in the State Office of Administrative Hearings before an Administrative Law Judge (hearing examiner). In the County's process, the appropriate Commission panel can conduct the hearing, appoint a special hearing panel, or refer the case to a hearing examiner.
- The decision of the State's Administrative Law Judge is reduced to a provisional order, delivered to all parties, and, if not appealed within 30 days, becomes the final order. An appeal of the provisional order may be made to a three-member Commission Appeal Board appointed by the chairperson of the Commission. Within 180 days, the Appeal Board must affirm, reverse, or modify the provisional order. In the County, the Commission panel receives a recommended decision and order from either a hearing panel or a hearing

examiner, and the decision of the Commission panel is the final decision of the Commission. The decisions of both the State's Commission Appeal Board and the County's Commission can be appealed to the courts.

D. Human Rights Agencies in Other Counties

All counties in the areas immediately adjacent to Montgomery County have volunteer human rights/relations commissions, and most have support staff. Not surprisingly, Fairfax and Arlington Counties in Virginia, Prince Georges and Howard Counties in Maryland, and the District of Columbia provide staff to support their respective Commissions. (Frederick and other smaller counties have volunteer commissions, but only minimal staff, usually only an Executive Director/Secretary.)

With one difference, the staff of the commissions in the larger counties operate in a manner similar to the County's Office of the Human Relations Commission, that is, their major effort is in receiving and processing complaints. However, there is a major difference in the area of community relations. In all the other counties, few if any staff are dedicated to community relations programs. Activities in that area that are provided (outreach, speaking engagements, public appearances, etc.), are provided by the Executive Director or volunteer commissioners.

E. Local

In addition to the Human Relations Commission, three other agencies are involved in civil rights activities in the County: The City of Rockville's Human Rights Commission, the Montgomery County Public School's Human Relations Department, and the Police Department's Community Relations Section.

1. City of Rockville's Human Rights Commission. The Commission is responsible for the enforcement of civil rights within the corporate limits of Rockville. No other municipality in the County has a commission or similar body to receive and process complaints in employment, housing, or places of public accommodation. The categories of discrimination covered under the City's human rights law are the same as the County's with the exception that the City's law does not have source of income as a basis for discrimination in housing.

The Rockville Human Rights Commission has staff assigned to receive, investigate, and bring to public hearing complaints of alleged discrimination. The City's Commission calls upon the County's Human Relations Commission for assistance in hate/violence and other community relations activities; however, there is no formal relationship or coordination program between the Rockville Human Rights Commission and the County's Human Relations Commission.

2. Department of Human Relations, MCPS. The school system's Human Relations Department (HRD) is staffed to enforce the various Federal laws addressing discrimination in employment and in educational services due the handicapped. A major effort of the Department is in the development and implementation of human relations training programs for management, educators,

and students. In accomplishing its training mission, the Department receives assistance from the staff of the Community Relations Section of the Office of the Human Relations Commission. The HRD also receives support from the Commission in cases of hate/violence and anti-social behavior.

The Department also has responsibility for ameliorating complaints of discrimination by MCPS employees and students. HRD also performs an investigative function; however, should the complainant not be satisfied after completing the investigation, or as a result of a proffered settlement, the complainant's only recourse is to formally file the complaint with a Federal or State agency, because the County's Human Relations Commission has no authority to process complaints from MCPS employees.

3. Montgomery County Police Department's Community Relations Section. The MCPD's Community Relations Section works directly with citizens on complaints between neighbors and with complaints concerning police activities. In addition, an officer from the MCPD's Community Relations Section is a non-voting member of the Committee on Hate/Violence.

VII. EVALUATION OF THE HUMAN RELATIONS COMMISSION

A. Overview

In March, 1981, the Office of Legislative Oversight (OLO) completed an indepth study of the Human Relations Commission (HRC) and issued a report on its findings. The major conclusion of the OLO report was as follows:

"The Montgomery County Human Relations Commission is one of the most vital and constructive agencies serving the community. Through a long history of dedicated effort by community conscious volunteers and staff, the Human Relations Commission has made a significant contribution to the advancement of civil rights in the community."

After completing this current evaluation of the Commission, OLO is unable to come to the same conclusion. Although OLO acknowledges that staff and volunteer members of the Commission continue to be strongly committed to the elimination of prejudice, intolerance, and bigotry, the previous energy and vitality of the Commission (both volunteer and staff) are simply not evident.

In earlier chapters of this report, OLO described the current human relations law and discussed the organization, functions, operations, and funding of the Commission. In the course of that discussion, problems with the law and the activities of the Commission and its staff were identified. This chapter of the report presents an indepth discussion and analysis of these problems:

- The lack of consensus on the Commission of its immediate objectives and long-term goals.
- Open discord between a majority of the Commission members and management of the Office of the Human Relations Commission;

- Overemphasis on the independence of the Office of the Human Relations Commission;
- Existence of an unauthorized camp fund;
- Inordinate backlog of unresolved complaint cases;
- Minimal oversight of OHRC management and staff;
- Low employee morale; and
- Disorganized and confusing human relations legislation.

B. The Lack of Consensus on the Commission of its Immediate Objectives and Long-Term Goals

In recent years, the Commission on Human Relations has not developed or articulated a set of near or long-term objectives and goals. The one initiative that the Commission has put forward is a Mentoring Program. The program has included a 1991 forum entitled, "Building Bridges of Understanding", the creation of a task force to develop a network of persons and organizations interested in mentoring the County's youth, and the preparation of a survey to be administered through the Montgomery County Public Schools system (MCPS).

To date, the effort to establish a mentoring program has been supported by private organizations and MCPS. OHRC has provided clerical, reproduction, mailing, and other administrative services.

It must be noted that the current Commission, under new leadership, met in mid-October and acknowledged the need to set objectives and goals. The newly appointed Chairman of the Commission has appointed a committee to formulate a set of annual goals.

C. Open Discord Between a Majority of the Commission Members and Management of the Office of the Human Relations Commission (OHRC)

Differences between the Commission and the Executive Director of the Commission are not new. A review of the opinions issued by the County Attorney over the past two decades reveals that the County Attorney periodically intervened to opine on the respective duties and authority of the two entities. However, beginning in the mid-1980s, the tension and discord within the Commission associated with those differences became more strident and more public.

In response to questions by the Council's Health and Human Services (HHS) Committee during its review of the Commission's FY93 operating budget, the Executive Director described the variance between the staff's duties and authority and that of the Commission. The Executive Director stated that as the size of the OHRC staff has increased, there has been less for the Commissioners to do. He also stated that he had previously suggested to the Chief Administrative Officer that the Commission and the staff be separated into two independent organizations.

The discord between the Executive Director and a majority of the Commission members, has been described by several witnesses in such terms as "dysfunctional", and "protracted". The following are some examples of actions and occurrences that have contributed to that discord:

- Disagreement over the authority of the Commission to oversee and evaluate the activities of OHRC staff;
- Elimination by the Executive Director of staff support at the monthly Commission meetings;
- Proposal by the Executive Director to separate the activities of OHRC from those of the Commission;
- Suggestion by the Executive Director to eliminate all Commission panels; and
- Differing interpretations concerning a Commission Panel's authority to make a reasonable cause finding after the Executive Director has determined there is no reasonable basis for concluding discrimination occurred.

1. Disagreement over the authority of the Commission to oversee and evaluate the activities of OHRC staff. The Commission and the Executive Director disagree over the extent of oversight the Commission can exercise over the OHRC staff, especially relating to the preparation of the annual budget and the day-to-day performance of the staff. The Commission cites the general language of the human relations law, and the particular reference in Code Section 27-4(c) relating to the Commission's role in the preparation of the budget, as its authority to oversee the activities of the OHRC staff and influence the Commission's annual budget submission. The Executive Director counters by citing several County Attorney opinions and guidance from the Director of the Office of Management and Budget as evidence that the Commission has no authority over the day-to-day activities of the OHRC merit staff, and only an advisory role in the development of the Commission's budget.

In OLO's opinion, quarreling over the issue of Commission oversight of the staff and budget is unfortunate in that the parties have permitted the matter to get totally out of hand. Within the County are numerous examples of commissions and their support staff working in an efficient, cooperative, and amiable manner.

It is OLO's further opinion that the Commission recently overstepped its advisory role when it attempted to influence the decision of the Executive Director concerning disciplining a member of the OHRC staff. The opinions of the County Attorney are both explicit and consistent concerning the prohibition against Commission involvement in the day-to-day operations of the OHRC staff. However, the Executive Director's reluctance to share budgetary information that is generally available to the public, and his resistance to Commission oversight or accountability of OHRC, appear extreme.

Through the years, the legal opinions of the County Attorney have contained clear, reasonable, and consistent guidance on what should be the relationship between the two entities. The following excerpts from a 1975, County Attorney opinion is an example of that guidance:

- Regarding the Commission and the annual budget: While the County Executive has final authority to propose the HRC budget, " . . . in Section 27-6(a)(4), the [Human Relations] Commission is granted the authority and mandated 'to recommend such procedures, program or legislation as it may deem necessary and proper to promote and insure equal rights . . .'" Also, " . . . the performance of this duty would necessitate budgetary considerations based not only on past performance but future needs."

- Regarding Commission oversight: The Commission has the mandated duty: "To render at the request of the [County] Executive . . . written or oral reports . . . summarizing its activities; goals, needs and recommendations". And later: ". . . Without an evaluation of the effectiveness of ongoing procedures and policies of the staff and the Commission such recommendations would be valueless."

- Overall opinion: "Clearly cooperation between the Commission and staff is an essential element to promote the statutory goals delineated in Chapter 27 [the human relations law]".*

2. Elimination by the Executive Director of staff support at the monthly Commission meetings. In January 1993, the Executive Director informed the Commission that, because of budget reductions, a member of the OHRC staff would no longer attend the monthly evening meetings of the Commission to take notes, operate the recorder, or prepare the minutes. Although OHRC staff prepared the meeting room, provided recording equipment and blank tape, transcribed the tapes, and distributed the minutes, many members of the Commission perceived the elimination of direct staff support as another example of separating OHRC staff from the Commission.

In response to OLO queries concerning this matter, the Executive Director cited as reasons for discontinuing the staff support: the lack of overtime funds; the absence of authorization from OMB to use compensatory time; and the prohibition in the union contract against directing employees in the bargaining unit to work flex hours. The decision on staff support was reversed in October, 1993, when the Executive Director informed the Chairman of Commission that staff support at the monthly Commission meetings would be resumed.

3. Proposal by the Executive Director to separate the activities of the OHRC staff from those of the Commission. During discussions before the Council's Health and Human Services (HHS) Committee in April 1992, on the Commission's FY93 budget, the Executive Director stated that, in response to a

* County Attorney Opinion No. 75.048, May 19, 1975, Opinion: Authority of Human Relations Commission to Formulate its Annual Budget and to Periodically Assess the Effectiveness of the Commission and its Staff

request from the Chief Administrative Officer for organizational suggestions, he had proposed that the staff of the Human Relations Commission be separated from the Commission and organized into an independent Office of Civil Rights. Citing the Federal EEOC-Human Relations Commission as a model, the Executive Director envisioned that the County's new Office of Civil Rights would perform the functions now performed by OHRC and also the enforcement functions of the human relations law. The Commission would become a separate and independent advisory body to the Executive and Council.

While nothing apparently came of the suggestion, members of the Commission perceived the Director's proposal as further proof that it was his goal to have the law changed to permanently separate the staff from the Commission.

4. Suggestion by the Executive Director to eliminate all Commission panels. In 1967, Council amended the human relations law to create Commission panels for each of three categories: public accommodation, housing, and employment (Council Ord. 6-56). The purpose of the panels was to carry out the adjudicatory and enforcement functions of the Commission. In subsequent years the Council again amended the legislation to authorize the use of hearing examiners and special hearing panels to adjudicate cases. In the most recent five fiscal years, the Commission has exclusively used a hearing examiner for all its hearings. However, in the current fiscal year, FY94, two hearings have been (or will be) heard by the Commission Employment Panel.

Recently, the Executive Director and at least one Commission member have suggested the elimination of all Commission panels and the exclusive use of a hearing examiner to conduct all hearings. The major reasons cited for eliminating the Commission panels include: hearings before a hearing examiner are usually quicker; a hearing examiner is skilled in the conduct of administrative hearings; and costs of the hearings are absorbed in the hearing examiner's budget.

The majority of the Commission members interviewed oppose eliminating the Commission panels. The major reasons for their opposition include: the panels fulfill a fundamental tenet of the human relations law that the adjudicatory and enforcement functions pertaining to alleged acts of discrimination be performed by citizen representatives of the community; and the Commission panels serve as an appellate body for those complainants whose complaints have been found to lack reasonable grounds that discrimination had occurred.

5. Differing interpretations concerning a Commission Panel's authority to make a reasonable cause finding after the Executive Director has determined there is no reasonable basis for concluding discrimination occurred. The most current and discordant controversy relates to the Executive Director's authority to issue a determination that a complaint lacks reasonable grounds upon which to base a violation of the human relations law. The controversy has greatly exacerbated the already strained relations between the Commission and the OHRC staff.

Prior to 1984, the Executive Director only had authority to recommend a determination of no reasonable grounds, with the appropriate Commission panel making the actual determination. In a 1984 amendment to the

law, the Council unanimously enacted legislation (Bill 65-83) giving the Executive Director authority to make a reasonable grounds determination, and giving the complainant the right to appeal that determination to the appropriate Commission panel.

As discussed earlier in the report, over 50 percent of the complaint cases closed in recent fiscal years have been by a determination that there was no reasonable grounds that a violation of the law had occurred (Table 7). The supervisor of the Compliance Section estimates that, in the most recent five fiscal years, FY89-FY93, a total of 77 of all findings of no reasonable grounds (approximately 15 percent) were appealed, of which only four (5 percent) were not affirmed by the appropriate Commission panel. One of the four cases was remanded to the Executive Director, where it was eventually settled. A second case was sent to a hearing examiner, but was settled before a hearing was scheduled. In the other two cases, the Employment Panel has made a "reasonable cause" finding and has scheduled public hearings.

The decision of the Employment Panel to find reasonable cause in these two cases has led to a contentious debate between the Executive Director and the Chairman of the Employment Panel, which has generated a County Attorney opinion on the issue. In a September 27, 1993, opinion, the County Attorney concluded that the human relations law does not specifically give a Commission panel or a hearing panel the authority to make a reasonable grounds finding. The controversy continues, however, because the Chairman of the Commission's Employment Panel (who is also the Chairman of the Commission) has challenged the County Attorney's opinion.

OLO believes that the County Attorney has presented the more convincing argument. However, OLO acknowledges that the language in the law concerning this issue is inadequate and confusing. Accordingly, later in this chapter, OLO suggests specific amendments to clarify the law on this matter.

6. Summary. The relationship between a majority of the Commission and OHRC management is strained and characterized by a lack of cooperation and a dearth in meaningful communication. The discordant situation within the Human Relations Commission has had several unfortunate consequences: an almost total cessation of new program initiation, an unusually high number of resignations by both Commission and Commission panel members, confusion and declining morale within the Commission staff, and an absence of vitality in the Human Relations Commission.

There is a desperate need for a change in attitudes and relationships in the Human Relations Commission. The opinion of the County Attorney over a decade ago in a 1981 memorandum appears most applicable today:

"Clearly, the Commission cannot function effectively unless it and the Executive staff cooperate. Thus, it would seem advisable for the two to jointly agree upon the method and manner in which they operate."*

* County Attorney memorandum, dated March 6, 1981, subject: Legality of Human Relations Commissioners Adopting Guidelines Initiated by the Executive Secretary.

D. Overemphasis on the Independence of the Office of the Human Relations Commission.

Amendments to the Montgomery County Code in 1986 officially designated as "offices" the staff support components of three commissions/boards (Code Section 1A-203). Included in this designation was the staff component of the Human Relations Commission. The designation was intended to clarify the supervisory relationship between the staff elements of those entities and the Chief Administrative Officer, and was not intended to alter the support relationship between the staff elements and their respective boards and commissions.

All references to, and official actions by the affected boards and commissions continue to be under the official title of the particular board or commission. Thus, the personnel complements, operating budgets, and Council appropriation resolutions continue to be identified by the title of the particular board or commission. With one exception, the official correspondence and references to those boards and commissions continue to be under the official title of the particular board or commission.

The one exception is the Human Relations Commission. Official correspondence prepared by the OHRC staff, but related to the functions and activities of the Human Relations Commission is on stationary with the letterhead: "Office of the Human Relations Commission". The other boards and commissions do not reflect the "office" title. Likewise, the organizational charts prepared by OHRC and published in the personnel complement and operating budget of the Human Relations Commission reflect an "Office of the Human Relations Commission"; whereas the same organization charts of the other boards and commissions do not highlight a separate "office", but simply indicate a staff administrative support element.

These examples may appear to some to be a minor issue; however, when considered in the context of the deteriorated relationship between the Human Relations Commission and its support staff, OLO believes it is a significant matter. The emphasis on an "Office" within the HRC has generated a mind set and operational attitude on the part of OHRC management that the Office of the Human Relations Commission is totally independent of, and not accountable to the Commission.

The disagreements and resulting tensions between the Executive Director and a majority of the Commission members over the role of the Commission in the development of the HRC budget, the discord generated by the elimination of staff support at Commission meetings, and the dissonance resulting from the Executive Director's proposal to create a separate Office of Civil Rights, are all exacerbated by management's overemphasis on an independent "Office" of the Human Relations Commission isolated from the "Commission" on Human Relations.

E. Existence of an Unauthorized Camp Fund

Currently, the Office of the Human Relations Commission administers, in addition to its operating budget, three funds; two are authorized funds and the third is unauthorized:

- Partnership Fund for victims of hate/violence, authorized by Code Section 27-26F;
- Funds remaining from the former Sensitivity Awareness Day Fund which Council has authorized OHRC to use to support programs of the Committee on Hate/Violence; and
- The Montgomery County Human Relations Camp Fund, more commonly referred to as the "Teen Camp Fund", which supports the OHRC sponsored Teen Camp.

Initiated in 1986, the Teen Camp is held two times a year. Personnel support to plan and prepare for the camp is provided by OHRC staff during normal work hours. Support to actually run the weekend camps is provided by OHRC staff and college and high school volunteers. OHRC does not keep a record of the actual hours or the cost associated with the staff's contribution to the camps; however, OHRC estimates that approximately four members of the Community Relations Section contribute 0.3 workyears to planning and preparing for the two camp sessions. Funds to actually conduct the camp (e.g., transportation, food, camp rental) come from cash contributions to the Montgomery County Human Relations Camp Fund.

OLO could find no authority in the County Code, a Council Resolution, or an Executive Order for the Camp Fund. There is no record of the Camp Fund in the County's accounting documents; nor is there any record that the County has ever audited the fund. The fund is in a non-interest bearing account at a local bank; maintained by a staff member of the Community Relations Section; and the persons authorized to draw on the account are the Executive Director and the Community Relations Section supervisor.

An OLO review of the fund records and bank statements reveals that the balance in the Camp Fund just prior to the October 1993 camp was approximately \$10,000. All expenditures from the fund appear to relate to the operations of the camp (camp and bus rental, food, incidentals, etc.).

The majority of the deposits into the Camp Fund are contributions from either private citizens or businesses. Most of the business contributions appear to be in appreciation for training sessions provided by OHRC staff. However, OLO noted that two of the deposits to the Camp Fund, one for \$1,000 and the other for \$1,500, were by government checks drawn on the appropriated fund accounts of two public agencies, one County and one bi-County. In response to OLO queries, management of OHRC and the affected agencies identified the deposits as voluntary contributions in appreciation for training classes presented by OHRC staff during normal working hours to employees of the two public agencies.

OLO notes that, in an attempt to find additional resources to expand the Teen Camp program, the Commission has been working internally to prepare documentation to create a private, non-profit funding source. To date, nothing has been proposed to County officials on this matter.

F. Inordinate Backlog of Unresolved Complaint Cases

In Chapter IV, the current OHRC procedure for processing complaints was discussed in detail and displayed in a series of tables. A summary of that discussion reveals that the process is slow and not closely managed, with the result that there is an inordinately large backlog of cases. In the following paragraphs, OLO analyzes possible causes for this backlog, and suggests actions to improve the complaint resolution process and reduce the total processing time.

1. **Intake**. Each duty day, one of the six currently assigned investigators is assigned responsibility for complaint intake. This duty entails receiving all walk-ins and calls to the OHRC receptionist that appear to relate to discrimination. Testimony from the six investigators indicate that the intake assignment involves a full day's commitment with a concomitant loss of time devoted to investigations.

The intake step involves the following: briefly interviewing the person, either over the phone or in-person; usually referring the person to another agency to handle his/her particular problem; and, in those instances where the person appears to have a problem relating to discrimination, receiving and writing-up the complaint.

As discussed earlier, the overwhelming majority of the queries do not concern a bonafide complaint, but rather a variety of situations and problems unrelated to the human relations law and the complaint resolution process. Examples of such queries include requests for information on food stamps, the availability of affordable housing, complaints of child or spousal abuse, eligibility for welfare assistance, and the like. Although the number of bonafide complaints received each day are only approximately five percent of the queries, responding to all queries distracts the investigator from his/her regular investigative duties an average of one day out of every six.

It would appear that the professional investigator's time could more efficiently be used investigating open cases. An administrative assistant position requiring less technical experience than an investigator could be used to perform the initial intake step and respond to questions. In those instances where the caller or walk-in appears to have a bonafide complaint, an investigator could be on stand-by to receive and thoroughly analyze the information.

2. **Fact-finding**. Considered previously by OHRC management as a valuable tool in resolving complaints and generating a predetermination settlement, the fact-finding step has been almost totally abandoned in recent years. The reasons given by OHRC management for discarding this step are two: loss of clerical personnel to record and type the results of the fact-finding session, and an OHRC conclusion that fact-finding has only limited success.

The first argument relating to a lack of clerical personnel to support the sessions is the least convincing. Every agency OLO surveyed conducts fact-finding without clerical support, relying on the investigator to conduct the session, record pertinent information, and summarize the results of the conference. The use of clerical staff to record fact-finding sessions is a luxury that need not be replicated in order to restore the fact-finding conference that was highly successful in the past.

As for the second reason, OLO recognizes that fact-finding does not apply to all complaint cases, and that fact-finding sessions do not always result in a predetermination settlement. Nonetheless, there is ample evidence that fact-finding has value in some complaint cases. First, there is the past record of success with fact-finding by OHRC. As discussed previously in this report, the number of cases closed with a predetermined, no-fault settlement, attained primarily through a successful fact-finding conference, averaged 20 percent of the case closures in the two-year period FY79-FY80. In contrast, the average percentage of predetermined settlement case closures in the most recent two-year period, FY92-FY93, was only four percent.

Another reason OLO believes the fact-finding conference should be reinstituted in the complaint process relates to a pending new OHRC program that will involve the use of volunteer mediators from the Montgomery County Bar Association. Those who have experience in fact-finding agree that a scheduled fact-finding conference is a legitimate pretext to bring the parties in the complaint together and attempt mediation.

3. Investigation. The investigation of a complaint involves the single largest expenditure of time in the complaint resolution process. A review of the tables in Chapter IV reveals that the average number of complaint cases that OHRC has closed in the most recent five fiscal years is one-third less than the number of cases OHRC has docketed (filed). As a result, OHRC currently has a backlog of several hundred cases. The standard response when OHRC management has been questioned on how to reduce the backlog consistently has been to request authorization to hire more investigators. While this may be one way to reduce the backlog, it is both unimaginative and infeasible in this period of reduced budgets.

Recently, as part of the Council's review of the OHRC FY94 operating budget, OHRC management was asked to analyze its programs to determine whether they could be performed in a more efficient way. OHRC management responded that its analysis of the programs resulted in a finding that "... with our current staffing pattern, the [OHRC] programs could not be performed in a better, more efficient way". OLO does not agree with that analysis, and suggests that there are a variety of management improvements that would reduce the average time to investigate a complaint, and would contribute to the reduction of the current backlog of cases. Specifically, OLO suggests the following:

- Implement the two changes previously suggested: free up investigative time by replacing an investigator with an OHRC administrative employee to receive the initial intake call; and reinstitute the fact-finding conference in those cases where the chances of a predetermined settlement appear favorable.

- Expedite the introduction and use of word processing. The OHRC has been slow to take advantage of professionals using word processing, thereby reducing the dependency on clerical support to type the investigation report and Letter of Determination. During the 1980s, few word processors were acquired by OHRC management, and those that were acquired were centralized in one room, an arrangement that most of the investigators found not conducive to productive use. In addition, OHRC management did not require that the investigators receive word processing training.

Also during the 1980s, OHRC management reduced the complement of clerical support personnel. In FY80, clerical positions constituted 47 percent of the OHRC complement; by FY85, the clerical complement was 27 percent; and currently it is only 18 percent. Thus, over the past decade, clerical support for the investigators has been reduced, while at the same time investigators were neither trained in, nor required to use the word processors that were available within OHRC.

- Install voice mail on investigator's phones. Voice mail is a beneficial tool when investigating complaint cases. Currently only the three OHRC managers have voice mail. Calls to all other OHRC personnel, including investigators, must be routed through a single receptionist. The availability of voice mail would enable investigators to receive accurate information directly, and not relayed through a receptionist, and would reduce the number of return calls that investigators must now make.

- Consider the reallocation of personnel, both clerical and professional. OHRC management often acknowledges the lack of clerical support as a major reason for the current backlog of open complaint cases. However, in recent years OHRC management has responded to budget reductions by eliminating clerical positions without a concomitant introduction of alternatives, such as additional word processors.

As for professional personnel, it has been the decision of OHRC management to maintain the two sections of OHRC at near equal size: 10 positions (10 workyears) in the Compliance Section and nine positions (8.5 workyears) in the Community Relations Section. No other human relations organization that OLO studied has a similar arrangement. All of these organizations had a compliance-to-community relations personnel ratio of three or four compliance personnel for each community relations person; and at the State Human Relations Commission, community relations activities are an additional responsibility of management in that no staff is assigned exclusively to community relations activities.

- Increase use of volunteers. While many volunteers serve on the Commission and the Commission panels, few have volunteered for duties within OHRC. OLO believes that the challenging and worthwhile nature of OHRC's duties would attract volunteers, especially from the retired professional classes. The professional training and experience of volunteers from this group could augment the staff of the Compliance Section in such duties as intake, legal research, and professional writing.

- Establish decision points in the investigative step of the complaint process. Currently there is no time requirement to complete an investigation. Further, with the exception of cases that are dual-filed with EEOC, there appears to be no decision points during the investigative step for management to evaluate the progress of the investigation and the probability that sufficient facts are available to reach a determination. The use of off-the-shelf computer software would enable OHRC management to introduce a monitoring and decision point system.

An analysis of the data at Table 7 (page 13b) reveals that in over half the cases closed in four of the most recent five fiscal years was on a finding that there was "no reasonable grounds" upon which to believe a violation of the law had occurred. One can only speculate that a more thorough analysis of the merits of a case at the intake stage, and a closer monitoring of the case during the investigative stage might have permitted an earlier indication of the eventual outcome of these "no reasonable grounds" cases.

- Develop an evaluation questionnaire that would be sent to all parties to a complaint, requesting comments on OHRC's complaint processing procedure. The Office of Consumer Affairs currently uses such a questionnaire to evaluate its complaint-handling procedures. (OLO did not survey individual parties to complaints for their personal evaluation of the complaint process. Considering the inordinate backlog of cases, OLO concentrated on analyzing how to improve the complaint processing procedure. However, it should be noted that the Compliance Manager of the Baltimore District Office of the Equal Employment Opportunities Commission (EEOC) reported that cases investigated by the HRC Compliance Section under the County-EEOC contract are consistently of high quality.)

- Establish required performance standards for investigators. Apparently, there once existed a case performance standard for investigators in the Compliance Section. Investigators testified that there was an informal goal of closing six cases per month. However, the six-cases-per-month goal is not a formal standard against which the individual performance of an investigator is evaluated, for sometime in the past OHRC management agreed to the investigators' request not to set any formal performance standards. Consequently, with no agreed upon performance standards with which to evaluate performance, annual individual employee performance appraisals have not been prepared for investigators in the past decade.

Despite the apparent existence of an informal six-cases-per-month goal, an analysis of the data at Table 7 reveals that the average number of cases closed by each of the six investigators in the five fiscal years FY89-FY93, was 2.8 cases a month.

OLO is not proposing any specific finite number of cases that an investigator should close each month. However, 2.8 cases per month appears quite low, especially if there is an OHRC-established informal goal of six case closures per month. Also, the minimum performance standard for investigators in other human rights agencies OLO visited ranges between four and six case closures per month. It should be noted that if OHRC

investigators had a productivity standard of 4.2 case closures per month during the most recent five fiscal years, the number of cases closed would have kept pace with the number of cases docketed (filed).

4. Summary. It is OLO's opinion that the lack of innovative management, coupled with the absence of formal written performance standards, has contributed to the inordinate large backlog of unresolved complaint cases.

G. Minimal Oversight of OHRC Management and Staff

Earlier in this chapter, OLO discussed the long standing disagreement between OHRC management and the Commission over the Commission's authority to oversee the activities of the Office of the OHRC staff. Through the years, that disagreement has generated a number of opinions from the County Attorney on the issue. A review of those opinions clearly indicate that the Commission has no legal authority over the day-to-day activities of the staff of OHRC. To quote the latest County Attorney opinion of September 27, 1993, "Under Montgomery County law, the Commission on Human Relations, created by Montgomery County Code, 1984, Section 27-2, has no authority to supervise, evaluate, or monitor the daily work performance of the staff of the Office of the Human Relations Commission".*

In OLO's opinion the County Attorney's interpretation of the limits on the Commission's oversight authority is correct, for it is consistent with the legal limitations that are imposed on all boards, committees, and commissions that have essentially an advisory role not unlike the HRC. However, it is also OLO's opinion after completing this evaluation of the organization and operations of the Office of the Human Relations Commission, that no person or entity is exercising effective oversight of OHRC management; and there is only minimal oversight by OHRC management of OHRC staff. The indications of the lack of oversight include the following:

1. No employee performance evaluations. Contrary to the requirements of Administrative Procedure 4-12, Performance Planning and Appraisal, that each merit employee receive at least one performance review in each twelve month period, there is no record in the Personnel Department's OHRC employee files that either the Executive Director or any other merit employee in OHRC has received a performance review in the past decade. (Note that some employees in the Community Relations Section have received a performance rating as part of the requisite justification for receiving an annual monetary award.)

2. Management's lack of concern over the backlog of complaint cases. With the exception of questions raised by the Council's Health and Human Services Committee during its annual review of the HRC operating budget, OLO could find no evidence of any concern over the large backlog of complaint

* County Attorney memorandum, dated September 27, 1993, subject: Request for County Attorney Opinion.

cases in OHRC. OHRC management and those responsible for overseeing OHRC management have apparently accepted the philosophy of OHRC management that OHRC operations are immune from oversight. That philosophy is best summarized in a recent statement by the Executive Director: "The confidential and sensitive nature of the OHRC's work . . . necessitates autonomy from external influences, pressure, or interference".*

3. HRC regulations not subject to Council approval and review. As required by Code Section 27-6A(a)(7), current HRC regulations, such as the Rules of Procedure for HRC Panels and Real Estate Reporting Procedures, have not been adopted under Method (2) of Code Section 2A-15. Consequently, the HRC procedures have not been subject to the legally mandated quadrennial review by the Council (Code Section 2A-21(a)).

4. Existence of an unauthorized fund. For the past seven years, OHRC has maintained an unauthorized Camp Fund.

5. Failure to publish an annual report. The requirement that the HRC publish an annual report (Code Section 27-6A(a)(8)), has not been complied with since 1989. (Note that in late September 1993, the Annual Report for 1992 was published.)

6. Low employee morale. A protracted period of low employee morale has been permitted to continue unchallenged within OHRC (see below).

OLO would suggest that, in addition to the typical methods and techniques of overseeing operations of the Office of the Human Relations Commission (OHRC), the Executive should transfer OHRC from the Community Rights Group to the Human Services Secretariat. Such a transfer would not only recognize that the mission and thrust of the Commission is like other agencies in the Human Services Secretariat, but also would increase accountability over the OHRC. Likewise, the change in the FY94 operating budget that grouped the Commission with the County's public safety agencies should be corrected.

H. Low Employee Morale

It is a matter of common knowledge that employee morale in OHRC is low. As in all cases of employee morale, the factors contributing to both good and low morale are usually many and varied. In the instant case of the OHRC employees, OLO suggests that the following factors, all of which directly relate to OHRC management and operations, are contributing to the low employee morale:

* OHRC memorandum from the Executive Director to the Council Deputy Staff Director, dated April 13, 1993, subject: Council Review of the FY94 Operating Budget.

1. Employee working out of class. At least one employee has been permitted to work out of class. Permitting that situation to continue has adversely affected not only the morale of the employee who is working out of her position classification, but also the employee who has been denied the duties associated with her position classification.

2. Intra-office conflict. The working relations between the employees of the two OHRC operating sections is strained and characterized by open criticism of the others workload and performance. This situation is exacerbated by an apparent "hands-off" policy by OHRC management regarding the manner in which each section is managed. As an example, employees of the Community Relations Section have been given monetary performance awards, while employees of the Compliance Section have not received any monetary awards.

3. Confusion over staff relationship with Commission. The disagreement and discord between a majority of members of the Commission and OHRC management has adversely affected OHRC staff operations and morale. Staff personnel interviewed by OLO are confused as to what should be their position in the office's relationship with the Commission.

I. Unorganized and Out-of-Date Human Relations Legislation

The last problem concerns the basic Commission on Human Relations legislation. In the three decades since the Council enacted the first human relations ordinance, there have been almost 30 amendments and changes to the human relations law (see Exhibit A). These amendments reflect the enactment of Federal civil rights legislation and the sensitivity of the County to human rights issues.

A thorough review of the County's human relations legislation, Article I, Code Chapter 27 (see Exhibit B), reveals a need for a complete revision and rewrite of the law. Almost everyone OLO interviewed who has had occasion to refer to the law has commented on its disorganized layout and out-of-date provisions. Outlined below are some of the more salient shortcomings in the human relations law as currently reflected in the County Code, together with OLO suggested improvements:

1. Omissions in the statement of public policy. There are two omissions in Code Section 27-1(a), the statement of public policy: Age discrimination applies to housing; and discrimination on the basis of source of income also applies to housing.

2. Qualification for membership on the Commission. Currently, Code Section 27-2(a) specifies that, "The members [of the Commission] should be men and women who are broadly representative of racial, religious and ethnic groups of the county". This language has been in the law for two decades, and does not reflect the expanded application of the current human relations law. OLO would suggest that the qualifications be changed to reflect that members should be residents and be broadly representative of the citizens of the County.

3. Relationship between the Commission and the Executive Director.

Code Section 27-4 simply directs the Executive Director to "assist" the Commission and the Commission panels in carrying out their respective legal mandates. The simplicity of that directive has led to an overly restrictive interpretation by the Director of how much he should "assist" the Commission, and an overly ambitious interpretation by the Commission of how much "assistance" it should receive from the Executive Director. Code Section 27-4 should be more specific in the responsibilities of the Executive Director, and the authority of the Commission.

4. Multiplicity of hearing options. The original 1962 ordinance gave the Commission the authority to conduct hearings and issue decisions and orders. In 1967, the human relations law was amended to create three Commission Panels, one each for public accommodation, housing, and employment, to carry out the adjudicatory and enforcement functions pertaining to alleged violations in their respective areas. The amendment also empowered the appropriate Commission panel to conduct hearings. Ten years later, in 1977, the law was amended to authorize hearing examiners to conduct hearings and issue recommended decisions and orders to the appropriate Commission panel. Finally, in 1986, the law was again amended to establish hearing panels to conduct discrimination hearings, and, like hearing examiners, issue recommended decisions and orders to the appropriate Commission panel. Thus, the law currently provides for three hearing entities.

The confusion generated by so many hearing options has led the Executive Director and a minority of Commission members to advocate abolishing all panels and use only hearing examiners to conduct hearings. OLO does not agree with abolishing hearing panels. The major reasons for not abolishing the Commission panels are two. First, the Commission panels serve as an appellate body for those complainants whose complaints have been found to lack reasonable grounds that discrimination had occurred. Second, the panels fulfill a fundamental tenet of the human relations law that the adjudicatory and enforcement functions pertaining to alleged acts of discrimination be performed by citizen representatives of the community.

However, OLO does recommend that the current number of hearing options be reduced, that the composition of all hearing panels be standardized to three members, and that the hearing process be simplified. OLO's suggested modifications would be to authorize the Commission as a whole to select one of two hearing actions: either refer the hearing to a hearing examiner who would conduct the hearing and recommend a decision and order to the appropriate three-member Commission panel; or assign the hearing to the appropriate three-member Commission panel. These improvements would require amendments to Code Sections 27-2(b), 27-7(e), and 27-7(f).

5. Action by the Commission to an appeal of the decision by the Executive Director of "no reasonable grounds". As this report is being written, the Executive Director and the Chair of the Commission Employment panel are engaged in a dispute over the legal authority of a Commission panel when a complainant appeals the decision by the Executive Director that the complaint lacks reasonable grounds upon which to base a violation of the human relations law. Under Code Section 27-7(d), the only guidance for the Commission panel is: "The panel shall make the final determination whether or not to dismiss the complaint."

Historically, such an appeal by a complainant to a Commission panel has occurred in about 15 percent of the no reasonable grounds determinations. Commission panels have affirmed the Executive Director in 95 percent of those appeals. In mid-1993, the Commission Employment Panel ruled in two "no reasonable grounds" appeals that there was in fact reasonable cause to base a discrimination violation, and in each case ordered a hearing. This was the first time a Commission panel took such an action.

The Executive Director believed that the panels did not have legal authority to make a finding that there was in fact reasonable grounds. Accordingly, the Director requested an opinion from the County Attorney. In a September 27, 1993, opinion, the County Attorney found that a Commission panel does not have the authority to make a reasonable grounds finding; and a panel's authority under the law is either to dismiss the case or remand it back to the Executive Director for further investigation. As of this writing, the issue is still being debated, as the Chair of the Commission Employment Panel has challenged the County Attorney's opinion.

To avoid a future recurrence on this issue, OLO suggests that the Code Section 27-7(d) be revised to specify the authority of a Commission panel. It would appear that the intent of the law was to give the Executive Director authority to make a no reasonable grounds determination, subject to appeal to the appropriate Commission panel. What is lacking is a clear description of the Commission panel's authority in such appeals. OLO suggests that a Commission panel be limited to either affirming the Director's finding, remanding the case back for further investigation and/or clarification, or directing a hearing to determine whether there is in fact reasonable grounds upon which to base a violation of the law.

6. Compensation. As discussed earlier, OLO can find no legal authority to compensate members of Commission panels for other than out-of-pocket expenses; and the legal authority to compensate members of the Commission was repealed in 1991. However, Commission panel members who apply continue to receive compensation at the rate of \$35 per meeting. Because few Commission panel members have requested compensation, outlays have been small. In FY93, a total of \$700 was paid to two members for attending 20 meetings; and in FY94, only one payment of \$35 has been disbursed as of October 1993. The law should be revised to specifically exclude any compensation (except for reasonable expenses) for all members of the Commission and its panels.*

* A possible reason why OHRC has continued to honor requests for compensation is that the OHRC continues to distribute a handbook, popularly referred to as the "Blue Book", that contains a copy of the human relations law, the Administrative Procedures Act, and various HRC resolutions and procedures. Unfortunately the book is out of date. Amendments to the human relations law enacted in 1984 are not reflected in the book. Also, despite the fact that Code Section 27-5 authorizing compensation was repealed in 1991, it still appears in the copy of the law reprinted in the Blue Book.

7. Real Estate reporting. Code Section 27-13(b) requires that every real estate broker, salesperson, and person ". . . who owns or manages any building containing two (2) or more rental units . . ." must submit such reports relating to housing that the Commission may prescribe in regulations. For several reasons, the provisions in the human relations law assigning this housing survey to HRC should be repealed. First, Code Section 27-13(b) requires that owners and managers of buildings containing "two or more rental units" must submit a report. For an unexplained reason, the HRC regulation raises the reporting threshold to 25 or more rental dwellings. Second, the HRC regulation concerning this requirement was adopted by the Commission in 1981, however, the regulation neither came before the Council as a Method (2) regulation, nor has been submitted to quadrennial review. Third, although highlights have been distributed, OHRC has not published the results of its annual survey since 1989.

However, a primary reason for repealing the real estate reporting requirement in the human relations law is that the Code designates another agency to centralize the collection of housing data. Code Chapter 29, Landlord-Tenant Relations, specifies that the County Executive should establish procedures to collect and analyze housing data for rental dwellings in the County and ". . . shall make every effort to centralize such data collection functions to minimize the burden for landlords". Should there continue to be a requirement for the data in the HRC survey, the Office of Landlord-Tenant Affairs (OLTA) could collect such data as part of its annual surveys and provide the Commission with the results.

Finally, transferring the real estate reporting requirement from the Commission on Human Relations to OLTA would reduce the current work requirement in OHRC by 0.5 workyears, without a concomitant increase at OLTA.

8. Change of words in the codified version of the law. In researching the legal authority for the Commission to accept a complaint alleging coercion or retaliation for lawfully opposing an act of discrimination, OLO was referred by OHRC staff to Division 3, Discrimination in Employment, of Article I, Chapter 27, specifically, Code Section 27-19(b). An extract of that section of the law in the HRC Blue Book (see previous footnote), states that the coercion and retaliation provision is applicable to "this article". The significance of the word "article" is that the coercion and retaliation language would also apply to the public accommodation and real estate divisions in Article I.

However, OLO's review of the official codified version of the law reveals that everywhere the word "article" appears in the HRC Blue Book, the word "division" appears in the Code. The significance of this change of words is that coercion or retaliation applies only to the employment division of Article I. After reviewing all the Bills that form the basis of the particular section of the County Code, OLO found that they all used the word "article" and not "division". The confusion surrounding this matter should be corrected.

VIII. CONCLUSIONS

- A. While individual volunteer members and support staff continue to be committed to the elimination of prejudice, intolerance, and bigotry, the Montgomery County Commission on Human Relations presently does not demonstrate the vigor, creativity, and focus that characterized Commissions in the past.
- B. The primary reason for the Commission's lack of creative activity and focus is the discord and dissonance between a majority of the Commission members and the management of the Office of the Human Relations Commission (OHRC). This discord and dissonance is manifested in incidents such as:
- Disagreement over the authority of the Commission to oversee and evaluate the activities of the OHRC staff;
 - Elimination by the Executive Director of staff to support the monthly Commission meetings;
 - Proposal by the Executive Director to separate the activities of OHRC from those of the Commission;
 - Proposal by the Executive Director to eliminate all Commission panels; and
 - Differing interpretations concerning a Commission Panel's authority to make a reasonable cause finding after the Executive Director has determined there is no reasonable basis for concluding discrimination occurred.
- C. The discordance that presently characterizes the relationship between a majority of the Commission members and management of the Office of the Human Relations Commission (OHRC) is exacerbated by:
1. The overemphasis by OHRC management on the independence of the Office of the Human Relations Commission;
 2. Minimal oversight of OHRC management and staff;
 3. Low employee morale; and
 4. The disorganized and confusing condition of the current human relations law, Montgomery County Code, 1984, Chapter 27, Human Relations and Civil Liberties, Article I, Commission on Human Relations.
- D. For the past seven years, the Human Relations Commission has sponsored a highly publicized and successful Teen Camp program; however, the program is financed by an unauthorized fund that is not subject to the County's accounting, auditing, or internal control requirements.

- E. The complaint processing procedure of the Office of the Human Relation Commission (OHRC) is characterized by long delays and inefficient practices with the result that there exists an inordinately large backlog of open complaint cases. Among the reasons for this situation are:
1. Investigators have been diverted from working on open cases to perform intake duties which requires responding to queries of perceived acts of discrimination;
 2. Abandonment of the fact-finding conference that focused the parties to the complaint on the issues and provided an opportunity for mediating of the complaint;
 3. There are no decision points within the investigative stage of the complaint process for the compliance supervisor to evaluate the progress of the investigation.
 4. The compliance supervisor has neither established nor required formal, written performance standards for the investigators as they relate to completing complaint cases; and
 5. At the same time clerical support for the Compliance Section was being reduced, limited word processing equipment was available to the investigators; however, only half of the investigators took advantage of the word processing training that was offered.

IX. RECOMMENDATIONS

- A. Members of the Commission on Human Relations and management of the Office of the Human Relations Commission (OHRC) should abandon their current discordant and polarized relationship, and enter into a cooperative rapport that concentrates on developing viable goals and initiatives to eliminate discrimination, prejudice, intolerance, and bigotry in the County.
- B. The current overemphasis on the independence of the Office of the Human Relations Commission (OHRC) should be abandoned, and substitute instead an emphasis on OHRC's mandated responsibility to support and assist the Commission on Human Relations.
- C. Office of the Humans Relations Commission (OHRC) management should take immediate steps to correct the conditions that are contributing to low employee morale.
- D. The Human Relations Commission should be assigned to the Human Services Secretariat so as to unite the Commission with other human services agencies and provide a higher measure of oversight of OHRC management.
- E. Steps should be initiated to formally authorize the existence of the Teen Camp Fund, and bring the fund under the County's accounting and auditing controls.

- F. Efficiencies should be incorporated into the complaint process to reduce the time required to resolve new complaints and to eliminate the current inordinate backlog of open complaint cases.
- G. Montgomery County Code, 1984, Chapter 27, Human Relations and Civil Liberties, Article I, Commission on Human Relations, should be reviewed and rewritten. Among the provisions of the law that require clarification and/or correction are:
1. Omissions in the statement of public policy (Code Section 27-1(a));
 2. Qualifications for membership on the Commission (Code Section 27-2(a));
 3. The relationship between the members and the Executive Director of the Commission on Human Relations (Code Section 27-4);
 4. A multiplicity of hearing options (Code Sections 27-2(b), 27-7(e), and 27-7(f));
 5. Options available to the Commission panels when a complainant appeals the determination by the Executive Director that a complaint lacks reasonable grounds upon which to base a violation of the human relations law (Code Sections 27-7(d));
 6. Compensation for members of the Commission and members of the Commission panels;
 7. Authority of the Office of the Human Relations Commission to survey owners and managers of rental units (Code Section 27-13(b)); and
 8. Language in Division 3 of Article I relating to the application of the prohibition against coercion and retaliation, as to whether the prohibition applies only in the Division or throughout the entire Article (Code Section 27-19(b)).

X. AGENCY AND OTHER COMMENTS

A draft of this report was circulated to all members of the Human Relations Commission (HRC), the Chief Administrative Officer, the Executive Director of HRC, and appropriate staff of the Executive Branch. Comments were received from the County Executive, the Chairman of the Human Relations Commission, and the Executive Director of HRC.

This final report incorporates all technical corrections. The comments and opinions of those responding to the draft report are included in their entirety beginning on page 43. (In some instances page references in the comments do not match the page numbers in this final report.)



Montgomery County Government


ROCKVILLE, MARYLAND 20850

Neal Potter
County Executive
(301) 217-2500
TTY 217-6505

MEMORANDUM

January 31, 1994

TO: Andrew Mansinne, Jr., Director, Office of Legislative Oversight

FROM: Neal Potter, County Executive 

SUBJECT: DRAFT OLO Report #94-2, The Montgomery County Human Relations Commission

Thank you for the opportunity to comment on the Draft OLO Report #94-2, The Montgomery County Human Relations Commission. While this report addresses many of the overall complexities involving the organization and operations of the Montgomery County Human Relations Commission, it provides an excellent compilation of information along with useful recommendations. Your analysis and insights provide a valuable dimension to the debate.

I feel that it is important to acknowledge that the Montgomery County Human Relations Commission is considered one of the best Offices of Civil Rights in the country. During the past decade, the Office of the Human Relations Commission has received numerous National Association of Counties' County Achievement Awards, has been cited for dedicated service to the Fair Housing Assistance Program by Region III of the U.S. Department of Housing and Urban Development, and received the District Director's Award from the Baltimore District Office of the U.S. Equal Employment Opportunity Commission (EEOC). During the past ten years, the Office of the Human Relations Commission has obtained over \$2.3 million in relief for complaints through the discrimination complaint process.

I recognize the need to resolve existing problems resulting from conflicts between some Commissioners and the management of the Office of the Human Relations Commission. I will be evaluating several options to address these problems in the coming months.

- o I will designate someone on my staff to lead an effort to clarify the relationship between the Commission and the Office.
- o I will designate someone outside the Office of the Human Relations Commission staff to review the policy, organizational, and legislative issues that you raised in your report.
- o I will request legislation to change the Executive Director from a merit position to a non-merit position. In the interim, I intend to appoint an Acting Executive Director to facilitate the transition as Alan Dean retires after a long and distinguished career. He/she can also help improve the working relationships within the Office of the Human Relations Commission.

Andrew Mansinne, Jr.
January 31, 1994
Page 2

It is my opinion that the Office of the Human Relations Commission should not be assigned to the Human Services Secretariat. The Office is clearly a regulatory agency which has jurisdiction over a number of County departments and agencies. It would be inappropriate and possibly a conflict of interest for a County department or agency to be specifically responsible for oversight of its management.

In response to your recommendations, I do believe that several actions, some of which have already been taken, will improve the operations of the Office of the Human Relations Commission. We will enhance the methods and techniques of overseeing the operations of the Office of the Human Relations Commission. From his participation in a working group with the Executive Directors of the Office of Consumer Affairs and the Office of the Commission for Women, the Executive Director has been learning more effective and efficient management procedures and successful techniques for staff/board/commission interactions. The Acting Executive Director will continue to participate in these meetings. The Office of the Human Relations Commission is formalizing its performance standards for completing complaint cases. We will coordinate an effort involving the Human Relations Commission staff and senior managers from the County's various regulatory agencies to improve the Human Relations Commission's complaint process. The Finance Department will create an escrow account for the Teen Camp Fund and we will study the appropriateness and benefits of the Teen Camp program.

The specific comments from the Executive Director, Human Relations Commission are attached. Thank you again for providing us with the opportunity to review and comment on the draft report.

NP:DJS

Attachment



Montgomery County Government

MEMORANDUM

January 31, 1994

TO: Andrew Mansinni, Director
Office of Legislative Oversight

FROM: Stephen M. Nassau, Chairman *SMN*
Human Relations Commission

SUBJECT: Response of the Montgomery County Human Relations
Commission to Draft OLO Report 94-2.

On behalf of the Montgomery County Human Relations Commission¹, I am sending you this Response to the Draft Report dated January 1994 evaluating the organization and operations of the Commission.

At the outset, the Commission commends and congratulates the OLO for the thoroughness and depth of the analysis and the extremely professional way in which the study was conducted. The resulting Report is quite impressive and will undoubtedly be very useful in improving the operations of the Commission and the delivery of its services.

In the view of the members of the Commission, however, a number of the recommendations made in the Report do not go far enough to resolve many of the difficulties which the Report identifies.

Part I of this Response discusses the most significant problems which the Commission has with the recommendations contained in Part IX of the Report. Part II is a section by section commentary on Sections I through VIII setting forth explanations, corrections and comments of the Commissioners, where appropriate.

¹ One Commission member, James Blinkoff, has submitted separate views.

PART I. RECOMMENDATION SHORT-FALLS:

Recommendations A and B - Commission/Staff Polarization; Independence of OHRC.

These two recommendations relate to the relationship between the Commission and its staff, which is at the root of many of the other problems discussed in the Report. As the Report indicates, the Executive Director in the past has recommended that the Commission be divided into two separate agencies, one of which would be the Office of the Commission and the other of which would be the Commission itself. Although no action was ever taken on this proposal, many of its features have come about on a de facto basis. Thus, to a significant extent, the entity known as the Human Relations Commission operates under a dual agency fiction: One unit, the Office of the Human Relations Commission (OHRC), performs, in its own name, the duties and responsibilities which the law confers upon the Human Relations Commission. The staff operates with virtually all the budgetary resources which the County Council appropriates for the Human Relations Commission. In carrying out this program the staff has neither sought nor welcomed input or guidance from the Commission. The second unit, the Commissioners appointed by the County Executive and charged with the full range of duties defined in the law, functions to the extent it can without any significant support of personnel or funds.

Recommendation A's suggestion that the Commissioners and the management staff of the Commission "should abandon their current discordant and polarized relationship, etc." is so general that it provides no guidance. Unless and until the structural dichotomy between staff and Commissioners is resolved, the problems are likely to continue.

It is true, as the Report documents, that Chapter 27 of the Montgomery County Code is unclear and inconsistent in many areas. There is, however, no cloud over the provisions that refute the dual agency fiction. Section 27-1 makes crystal clear the County's public policy with respect to human relations, and the goals and objectives it seeks to have implemented. It is equally clear that the Human Relations Commission, which is established in Section 27-2, and whose duties are set forth in Section 27-6, is intended to be the primary instrument for this implementation. It is also clear that the Commission, the entity in whose hands wide-ranging responsibilities have been placed by the law, consists of Commissioners appointed by the County Executive and approved by the County Council.

The Executive Director and staff are directed by Section 27-4 of the Law to assist the Commission and the Commission Panels. Nowhere does the legislation confer upon staff the authority to supplant the Commission, pursue programs other than those

authorized by the Commission, refuse to cooperate with the Commission or substitute its judgment for that of the Commission.² Efforts of the Commissioners over the last few years to reclaim a measure of their statutory authority have been met with a recalcitrance and opposition.

It is the misapplication of the authority specified in the Law, not discord between staff and Commissioners, which is the basic problem confronting the Commission. Short of a recommendation calling uncompromisingly for the restoration of appropriate Commissioner and staff roles with respect to the establishment of program goals, the approval of program initiatives, and accountability for program performance, this portion of the OLO report will be wide of its mark.

Recommendation D - Oversight of OHRC Management

The Commission would need more information regarding the implications of the suggested reorganization before it can make a meaningful comment on this proposal. Whatever supervisory lines of authority are established within the County Government, however, a distinction must be made clearly between administrative oversight and program oversight. As indicated above, oversight of the Commission's programs, as directed in the Commission's behalf by the Executive Director, should be the responsibility of the Commissioners, consistent with the specific mandate of the statute.

It is always been the Commission's position that program oversight in no way embraces supervision of day-to-day performance of the staff, which is the responsibility of the Executive Director and his/her supervisors within the County government. Program oversight refers to a joint staff-commissioner process for determining program goals, planning annual program objectives, setting program priorities, allocating resources among priorities, and periodic review of progress. It is this relationship which must be restored.

Recommendation E - Teen Camp Fund

The authorization for this program should have been determined within a comprehensive program planning process which defines needs, proposes priorities and makes recommendations, for Commission approval. The teen camp may indeed be an excellent program, but it has never been evaluated. Its renewal should be placed before the Commission, along with relevant data, so that

² As the OLO Report indicates, of the three areas which touch on staff responsibilities, two pertain to providing support to the Commission and its Panels. The third delineates specific functions within the compliance process.

its priority can be considered in the light of other unmet needs that might be gratified with an additional one-third of a work year.

Recommendation F - Efficiency of the Complaint Process

Determination of what efficiencies might be adopted within the compliance process should be preceded by a thorough evaluation of the current operation. The evaluation, which should be conducted by experienced compliance professionals, should include the perceptions of community leaders as well as former successful and unsuccessful complainants and respondents.

A companion evaluation should be made of the programs and activities of the Community Relations Section so that a determination may be made as to whether relative priorities would permit a transfer of positions from one section to the other.

Recommendation G - Revision of Legislation

3. See comment on Recommendations A & B above.
4. See Part II., Commentary on §VII.I.4., below.
5. See Part II., Commentary on §VII.I.5., below.
6. See Part II., Commentary on §III.G.5., below.

7. There is no necessity for the HRC to be the surveying agency, but whatever survey of housing is conducted should include those questions that would illuminate the problem of discrimination in housing and real estate. Data is needed in this area where tests conducted by volunteer freedom of residence agencies have reported extensive discrimination, but where the HRC has not been receiving many complaints.

In addition to the legislative recommendations in the OLO Report, the following should also be considered to the extent not covered by those recommendations:

1. Earmarking of funds for programs, projects and activities of the Commissioners; and
2. Dedicated assignment of staff to assist the Commissioners in the performance of their programs, projects and activities.

PART II. SECTION BY SECTION COMMENTARY:

P. 3. §III.A., ¶ 1. Overview. Although the statement is made here that the composition and duties of the Commission have changed over the last 30 years, on page 6, at §III.G.4., it is stated that the Commission's duties are essentially the same as originally enacted.

P. 3a. Table 1. Types of Discrimination Covered. Some of the essential differences in coverage between the Montgomery County and Federal laws should be noted here. In particular, an employment discrimination claim involving an employer with between 7 and 14 employees (or in the case of disability, between 7 and 24 employees) is covered by the Montgomery County law and not the Federal Equal Employment laws. Also, an age discrimination claim under the Federal Age Discrimination in Employment Act (ADEA), may be brought only by a person over the age of 40, while the Montgomery County law may be brought by any person regardless of age. A complaint must be filed with the Federal EEOC within 180 days after the occurrence complained of; the Montgomery County law provides for a one year period for filing.

P. 5. §III.E. ¶1. Discrimination in Employment. The last sentence of the first paragraph of this section should be more precise regarding the exception regarding sexual preference. The exception allows an employer to refuse to hire someone for advocacy of homosexuality or bi-sexuality where the job involves working with minors of the same gender.

PP. 7-8 §III.G.5.a) Commission Panels - Compensation. Until recently the Human Relations laws provided for the compensation of panel members at the rate of \$35 per meeting. Apparently, this was taken out of the law, although the compilation of Human Relations laws still reflects this provision. Most panel members have donated their time without requesting any compensation. However, the provision for payment is important to assure that persons who would be unable to serve without such compensation will be able to do so.

P.8. §III.G.5. Hearing Examiners and 6. Commission Committees. These should be renumbered as Subsections 6. and 7. respectively. There are several Commission committees currently working on programs of the Commission.

PP. 8-9. §III.H.1. Authority for Staff Support. The only place in the County laws where reference is made to an "Office of the Human Relations Commission" is in the portion of the Code dealing with the supervisory structure for County staff. There is no reference to such "Office" in the Human Relations laws themselves, which refer only to the Commission, the Executive Director of the Commission and additional staff. When discussing

matters involving the Human Relations Commission, care must be taken to distinguish between the Commission as an entity comprised of Commissioners and staff, the Commission as referring to the fifteen Commissioners only, and the staff of the Commission.

P.9. §III.H.3.b). Organization - Compliance. The statement that the Compliance Section of the staff of the Commission is responsible for "the final determination of complaints..." is incorrect. This is true only when the staff determines that a complaint shall be dismissed and the complainant does not take any steps to appeal that determination. Where, however, the staff determines that the complaint should be dismissed, and the complainant requests review of that determination by a Commission Panel pursuant to Section 27-7(d) of the Montgomery County Code, the staff determination is merely a recommendation to the Panel, which may dismiss the complaint if "the Panel determines that the complaint lacks reasonable grounds to believe a violation of the law has occurred." Human Relations Commission Regulation §3.5. Section 27-7(d) of the law provides that where the complainant has requested an appearance before a Commission Panel after a no-reasonable cause finding by the staff, "The Panel shall make the final determination whether or not to dismiss the complaint." In those cases where the staff makes a "reasonable grounds" determination, the case is sent to a Commission Panel for a public hearing on the merits.

PP. 11-12. §IV.C. Fact-Finding. Upon discovering that the staff was no longer conducting fact finding conferences as part of the investigative process, the Commissioners recommended that the staff continue the conferences employing available alternative means for recording, such as using tape recorders or the having the investigator keep notes of the conference. The Commissioners urged the Executive Director to consider reinstitution of fact finding conferences since they appeared to be desirable devices to simplify issues and to bring about early settlements.

P. 13. §IV.F. Hearings. Section 27-7(e)(2) of the Code provides that the Panel Chairperson shall consult with both the Commission Chairperson and the Executive Director in choosing a Hearing Panel.

P. 14a. Table 8. Panel Hearings. During FY93, the Employment Panel held a hearing which was not completed during that fiscal year.

P. 15. §IV.K. Summary of Complaint Cases. (last bullet). See comment re Table 8 above.

P. 20. §V.D. Human Rights Agencies in Other Counties. (2nd sentence). A verb appears to be missing in this sentence.

P. 22. §VII.A. Evaluation of the Commission - Overview. ¶2. The Commissioners strongly disagree with the assertion that they lack energy and vitality. Unfortunately, a great deal of those resources have been required to be spent in recent years in dealing with internal problems of the respective roles of the Commissioners and staff and in attempting to reassert their right to function as they believe the statute mandates. As just one example of this, the Commissioners have had to fight just to be notified when the Commission's budget was to be considered by the Executive Office and by the County Council, despite the provision of Section 27-4(c) of the law which provides that the Commission is to make recommendations on the budget to the County Executive. The Commissioners have been provided with virtually no staff support and no funds for their programs and activities. The battles over matters such as these have diverted the Commissioners' ability to develop the number and quality of substantive programs they wished to and has resulted in a great deal of frustration and the resignation of a number of Commissioners, including at least one former Chairperson. Despite this, the Commissioners have been engaged in a substantial number of programmatic efforts and projects, including the following:

1. Without invitation, Commissioners insisted on attending a budget meeting between staff and the County Executive. The Commissioners urged that the Commission be appropriated funds beyond those requested by the Executive Director to provide for staffing of Commissioner activities and for increased staff assistance to the Teen Camp. The Commissioners' requests were granted. (Unfortunately, the Commissioners were subsequently advised that such additional staffing could not be implemented due to a hiring freeze.)

2. Commissioners successfully supported staff attempts to obtain funds for the computerization of staff activities.

3. After the Maryland Court of Appeals invalidated a portion of the County's Human Relations Laws giving citizens the right to file private law suits based on the County law, Commissioners organized an effort to reinstitute the provision as a State law, lobbied for the bill, and saw it successfully enacted into law.

4. Commissioners have established an award and scholarship fund for high school students who have done the most to further the cause of human relations in the County.

5. As a result of presentations by awardees of the high school scholarship fund, the Commissioners advised the Superintendent of Schools of a perceived problems with minorities being prepared for advanced placement and honors courses. The Superintendent responded with the establishment of a special

project to investigate and report on the problem.

6. The Commissioners have initiated and coordinated a County-wide program for mentoring of young males.

7. The Commissioners have initiated and coordinated a program to advance the cause of multi-culturalism in the County.

8. The Commissioners proposed legislation to the County Council to increase the damages available under the county's discrimination laws to those available in Federal law.

9. The Commissioners have adopted a resolution recommending that the County Council delete the exception in the County Human Relations Laws regarding the advocacy of alternative sexual preferences.

10. The Commissioners are presently putting together a public program with leading authorities to consider the trends away from an integrated society.

11. The Commissioners are presently putting together a program to put minority communities together with representatives of the press to consider problems of understanding between them.

12. The Commissioners plan to establish a private foundation for the purpose of obtaining private funds for support of programs such as the teen camp and the activities of Commissioners.

13. The Commissioners attempted to formalize the rules and procedures for panel cases. Staff opposition resulted in the suspension of such efforts, but the Commissioners intend to renew them.

14. The Commissioners are in the process of putting together a reporting format for case processing which will allow them to have increased information regarding backlogs and the efficacy of the enforcement process.

15. The Commissioners are presently in the process of putting together a project to investigate the issue of whether there is discrimination in hiring in the restaurant business in the County.

16. The Commissioners are presently in the process of putting together a public hearing for minority communities and other interested persons to testify about conditions affecting them in the County.

17. The Commissioners have scheduled representatives of communities, government agencies and others to make presentations

at the Commission's regular monthly meetings, to assist the Commissioners can in keeping informed of events and conditions in the County.

18. The Commissioners have made recommendations to the staff regarding the advisability of reinstituting fact-finding conferences as part of the investigative process.

The above list is not exhaustive, but it does demonstrate that the Commissioners hardly lack energy and vitality. Unfortunately, many of their efforts have been frustrated by a lack of funds by which to see their projects to fruition, by a lack of any significant staff support and by a staff that seemed determined to keep the Commissioners from having any influence or effect on the operations of the office of the Commission.

It should be remembered that the Commissioners are all uncompensated volunteers. Most have full time jobs and many other commitments and demands on their time. What should be noted is how much the Commissioners have accomplished and how many of them have persevered and continued to be dedicated to the accomplishment of the Commission's goals, despite the lack of resources and the roadblocks and hindrances in their way.

PP. 22-23. §VII.B. Evaluation - Lack of Consensus re Goals. The Report speaks of a lack of consensus on immediate objectives and long term goals. It cites as the lone exception the development of a mentoring program called "Building Bridges of Understanding." Actually, this reference pertains to two programs, each emerging from sequential annual program planning retreats. The program described is known as the Mentoring Program. Building Bridges of Understanding refers to a second program. They are distinctly different efforts. Each of these programs is continuing currently, as authorized by the annual planning retreat conducted last October.

The Report is correct in stating that no HRC funds have been allocated to either program except for mailing expenses. Nor has there been any notable staff participation in these efforts. Without staff participation, progress on the follow-up phases of both these programs has been slower than it should have been.

The Mentoring Program emerged from the planning decision to examine the plight of the alienated young male in Montgomery County. This program resulted in the creation of a Mentoring Task Force, structurally independent of the Commission, but continuing to work under its leadership. There were 18 Task Force meetings in 1992 and 11 in 1993. Its objective is to play a coordinating role among mentoring groups, stimulating the creation of new ones and facilitating the sharing of information.

The Building Bridges of Understanding program developed an initial Multi-Cultural Conference, planned by a broad-based planning committee headed by the HRC, which in 13 planning sessions, developed and then conducted a Community Multi-cultural Symposium.

As the foregoing indicates, the Commission has not been derelict in considering long and short term objectives and planning programs. Quite the opposite. The long term goals of the Commission are set forth in the law. The medium and short term goals are established at the annual planning retreats of the Commissioners. At these retreats the Commissioners consider the community relations needs of the County and how the Commission can most usefully address them. The plight of the young male, and the tendencies toward increasing ethnic segregation in American society, emerged as program needs through this very deliberate planning process. The development of the Mentoring Task Force as an independent implementing agency also stemmed from an informed planning approach which recognizes the need to leverage our small resources and the value of drawing the community into planning and implementing programs.

As a result of actions taken at its 1992 retreat, the Commission formulated, debated and adopted a Mission Statement that sets forth its goals and objectives. At the retreat held this past fall, the Commissioners decided to focus on two significant programs, one dealing with the increasing movement away from an integrated society, one dealing with press-minority community relations. In addition, the Commissioners determined to proceed to expand the high school awards program and to keep working on clarifying the Commissioner-staff relationship problems. And, of course, they must always be ready to deal with new issues as they may develop.

P. 23. §.VII. C. Discord Between Commission and Office. The discord between the Commissioners and staff is not the result of the Commissioners having less to do. It is, rather, a consequence of Commissioners believing that they have a responsibility under the law to ensure that the Commission (i.e., Commissioners and staff) does the best that it can to carry out the mandate of the law to eliminate discrimination and prejudice. This has caused the Commissioners to become increasingly interested in how the effectively the mission of the agency was being carried out, in the development of the programs of the agency and in the development of the agency's budget. As the Commissioners spent more time and effort in attempting to make sure that the Commission as a whole was functioning properly and effectively in the public interest, the hostility of the senior staff grew.

P. 24. §VII.C.1. Oversight and Evaluation of Staff. It is not correct to indicate that the Commissioners have asserted a

right to direct or oversee the day-to-day activities of the staff of the Commission. Recently, the Chairperson of the Commission wrote to the County Attorney stating that the Commissioners had no disagreement with the Executive Director's view that this was his prerogative, and not the Commissioners. However, this does not mean the Commissioners do not have the responsibility and right to determine whether the activities of the staff are in accord with the Commission's goals and objectives as stated in the law. In this respect, the Commissioners became concerned regarding the suspension of fact finding conferences and made inquiries and recommendations on the matter. Should the Commissioners determine that this is an important procedure in the administration of the law and in obtaining the early resolution of complaints that is not being used, they have a responsibility to so inform the Executive Director and, if he does not react, to advise the County Executive so that he can take such action as he deems appropriate. Similarly, the Commissioners are seeking to obtain much more statistical information (similar to that contained in the OLO Report) about case processing, so they can determine if cases are being handled in as speedy, efficient and effective manner as possible. If the Commissioners were not able to obtain information about such matters, make recommendations to the staff and inform the County Executive's Office of the issues they see, they would be unable to carry out their duties under the law. This is not day-to-day management; it is the exercise of their responsibility to assure that the staff operates the programs it is charged with managing properly.

The Report misstates the actions of the Commission in reporting that it attempted to influence the decision of the Executive Director concerning the discipline of a member of the staff. In that case, the Commissioners brought the staff member's admitted offense (changing the wording and substance of an official Commission Panel Decision and Order and signing the Panel Chairperson's name to it without authorization) to the Executive Director's attention with a request that he inform the Commissioners of any actions he had taken as a result. The Commissioners took these steps because of their view of the seriousness of the offense. When the Executive Director reported back to the Commissioners that he had taken action he deemed appropriate, but could not inform them what that was, several Commissioners considered the offense of a significant enough magnitude to bring it to the attention of the County Executive, for the purpose of allowing him to determine if the matter was handled properly at the staff level and to alert him regarding the matter in the event any serious repercussions developed. The Commissioners did not instruct the Executive Director what to do regarding the matter or the amount of discipline, if any, to impose. They would have been derelict in their duties, however, if they did not bring the matter to his attention. And many Commissioners felt they would be remiss if they did not bring it

to the attention of the County Executive once they were unable to determine if any significant discipline had been handed down.

It should be noted that the Commission was concerned not only with the action itself, but with the fact that the agency was being managed in such a way that such an incident could have occurred in the first place.

The Commissioners have been virtually frozen out of the budgetary process, despite the authority granted to them in Section 27-6(a)(4) of the law, and despite their repeated requests to be involved at every step of the process.

P. 25. §VII.C.2. Staff Support. The lack of administrative support for Commissioner activities has caused the Chairperson and other Commissioners to use their own resources (such as secretarial assistance, mailings, copying, etc.) to accomplish Commission and Panel business. This is unfortunate and unfair, not only to these persons, but also to those who may wish to serve in Commission positions but do not have such resources available to them.

PP. 26-27. §VII.C.5. Reasonable Grounds Determination. It should be noted that on October 1, 1993, the Commission Chairperson sent the County Attorney a request for an opinion posing the following questions raised as a result of the County Attorney's September 27, 1993, opinion:

(1) If a Commission panel may not make a reasonable grounds finding, what is the legal standard that should be used in determining whether or not a complaint should be dismissed, as mandated by Section 27-7(d) of the Montgomery County Code?

(2) If a Commission panel determines that a complaint should not be dismissed for reasons which would not be affected or influenced by a further investigation, what is the purpose of remanding the case for further investigation and what should be stated by the panel as the reason for remanding such a case?

(3) If, after a remand for further investigation, the Executive Director still recommends dismissal of the complaint and the panel still determines that the complaint should not be dismissed, must the panel remand the case back to the Executive Director again and must this process be repeated indefinitely?

(4) Assuming the panel continues not to agree with the Executive Director's recommendation of dismissal after however many remands are required (see Question No. 3), who has the authority to make the final determination whether or

not to dismiss the complaint?

(5) If a statutory provision (such as Montgomery County Code §27-7(d)) and a provision of a Rule (such as Rule 3.5 of the Rules of Procedure for the Montgomery County Commission on Human Relations Panels) are in conflict, and the Rule expressly states it is "supplementary to the provisions and requirements of" the law, which provision has precedence?

(6) Two cases are now pending before hearing panels of the Commission. Both cases were sent to hearing upon reversal of a no reasonable cause finding of the Executive Director by the Employment Panel of the Commission. What is the status of these proceedings in light of your September 27, 1993 opinion? What should the parties in these cases be told?

As of January 31, 1994, the County Attorney had provided no answers to these questions.

P. 27. §VII.C.6. Summary. The Commissioners have attempted to resolve the problems between them and the staff by communication and cooperation. They were unsuccessful in obtaining significant improvement by such methods. Despite this, however, as discussed above, it is inaccurate to state that there has been a cessation of new program initiation.

In the operation of most successful organizations with full-time staff and appointed or elected boards, the two operate in a mutually cooperative symbiotic relationship. Usually the staff will make recommendations for programs to the board, supply it with the necessary information and data, and implement the program after the board has made the decision. Hopefully, Commissioners and staff can start on the road to a mutually successful mode of operation such as this.

PP. 27-28. §VII.D. Independence of Office. While seemingly only a minor incidental irritant, the OLO Report correctly assesses the significance and symbolism of the staff's establishment over the years of an independent identity and consequent intentional diminution of the role and function of the Commissioners. It has been the Commissioners' recent attempts to reverse these actions that has led to the discord that represents a large part of the Report.

PP. 34-35. §VII.G. Oversight of Management and Staff. While the Commissioners have recognized that they do not have the authority to oversee the day-to-day operations of the staff, they clearly have the right to evaluate the "effectiveness of ongoing procedures and policies of the staff." (see p. 25 of the Report). In this regard, the Commissioners have been seeking

more meaningful information about staff caseloads, processing times and backlogs, so that they can make recommendations to reduce those backlogs.

The problems reviewed in the Report would not automatically be solved by an administrative transfer of the staff. Rather, the right of the Commissioners to obtain assistance, funds and information and to make recommendations regarding programs and staff activities should be clarified and strengthened, whatever supervisory lines of authority are established.

PP. 35-6. §VII.H.3. Staff Relationship with Commission. The Commissioners have requested, but have not yet obtained, a staff member whose time (fully or partially) is dedicated to providing administrative support to the Commissioners. While supervisory authority of such employee would be maintained in the normal channels, the work relationship between the staff person and the Commissioners would be clarified by having the person reporting to the Commissioners. Such a staffing arrangement would not resolve the fundamental problems discussed in the Report, but it would be a step toward improving the situation.

PP. 36-37. §VII.I.4. Hearing Options. The indicated multiplicity of hearing options does not in fact exist. As the law presently is written and administered, public hearings on the merits of a case are to be held before a Hearing Panel or, at the discretion of the Chair of the Commission Panel, before a Hearing Examiner. The official final decision is made by the Commission Panel.

PP. 37-38. §VII.I.5. No Reasonable Grounds Determination. The recommendation that the Commission Panel can direct a hearing to determine whether there are reasonable grounds, would work a significant hardship if the suggestion contemplates a full evidentiary hearing, since a second full hearing on the merits would be required if reasonable cause was found. The proposal might work if the suggested "reasonable cause" hearing could be handled in a limited and expedited manner. The proposal is worth considering to resolve the discord over this issue.

P. 38. §VII.I.6. Compensation of Panel Members. See §III.G.5. above.

PP. 40-41. §VII. Conclusions. Many of the conclusions should be modified to reflect the above comments.



Montgomery County Government

MEMORANDUM

January 28, 1994

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

VIA: Deborah J. Snead *Deborah J. Snead*
Assistant for Audits and Evaluations
Alan P. Dean

FROM: Alan P. Dean, Executive Director
Office of the Human Relations Commission

SUBJECT: Draft OLO Report #92-4, The Montgomery County Human Relations Commission

We take exception to many of the conclusions and facts used in this OLO report and we have addressed them seriatim. Our major objections are aimed at the contention that the OHRC management staff are primarily responsible for the discord between the HRC and the OHRC, that OHRC management has "overemphasized" the independence of the OHRC from the HRC and that OHRC management has no concern for the backlog of discrimination complaints.

The OHRC has taken many steps over the years to smooth out the relations with the HRC through various proposals and even County Attorney opinions but the HRC has not liked the initiatives or the opinions. That is not our fault. The OHRC has never "overemphasized" the independence of the OHRC from the HRC, we have merely pointed out where certain functions are performed and that the HRC has no "oversight" over employees. These are supported facts which the HRC does not like. Again this is not our fault. We have never made a formal written proposal to eliminate the Commission. We have responded to inquiries from the Health and Human Services Committee of the County Council and the County Executive about various means to streamline operations. We suggested separating the Commission from the OHRC but the Commission's responsibilities and rights would have been preserved. We will demonstrate our concern over the complaint backlog by showing the actions we have taken to bring more resources to bear on this problem and by challenging OLO's facts with respect to complaint investigations.

Office of the Human Relations Commission

164 Rollins Avenue, Rockville, Maryland 20852-4067
Administration 301/468-4260; Compliance 301/468-4265; TTY 301/530-6436; FAX 301/468-4130

Please find below the comments of the Office of the Human Relations Commission to the Draft OLO Report. I have also included attachments for your reference.

EXECUTIVE SUMMARY

Open discord between a majority of the Commission members...

The following list of memoranda are staff attempts to improve staff/Commissioner relationship:

Memorandum of May 15, 1992 re: Method and manner Commissioners, Panel Members and OHRC staff operate, to ensure that the Commission functions effectively; memorandum of June 29, 1992 re: Response to Commissioners' request to develop plans for areas of concern; memorandum of October 28, 1992 re: Budget information sharing with Advisory Boards and Commissions; memorandum of February 15, 1993 re: FY94 Budget Issues; and memorandum of October 19, 1993 re: Efforts to Improve OHRC and HRC relationship.

The memorandum dated May 15, 1992 from the Executive Director to HR Commissioners and Panel members was to ensure that the Commission functions effectively. This document served to update the members with regard to the County Attorney's Opinion on issues dealing with the Commissioners and staff.

On June 29, 1992 the Executive Director responded to the Commissioner's request to develop plans for areas of concern. This memorandum described how the Commission and staff are structured, duties under Chapter 27 of the County Code, description of the six committees that formerly existed; the studies that had been conducted, information on previous approaches to Commission meetings and a list of Boards, Committees and Commissions the former HR Commissioners had interacted with on a monthly basis.

A memorandum dated October 28, 1992 from the Director of OMB was distributed to the Commissioners. The subject was "Budget information sharing with Advisory Boards and Commissions". Included in the communications are the following statements:

- o The Executive affirms that submission details and other budget materials are confidential while the Executive weighs budget decisions.
- o Plan informal sessions with interested parties to share the Executive's budget recommendations once they are published, and prior to the Council public hearings, in order to help the groups develop their testimony before the Council.

On February 15, 1993 a memorandum was issued to the Commissioners; the subject was FY94 Budget issues. The HRC chair requested that the material be reviewed for a discussion at the February 22 HRC meeting. They were informed that Mr. Potter, requested that they notify him of any concerns or position regarding the FY94 proposed budget as soon

as possible. The material relates to the budget as recommended to Mr. Potter by OMB. We included an explanation of each operating expense item affected by OMB's proposal.

On October 19, 1993 the Executive Director sent a memorandum to the HRC Chair; the subject was efforts to improve OHRC and HRC relationships. Included in the memo were the following:

- o Provide staff to operate the tape recorder for the Commission meetings.
- o Each Wednesday from 9:30 to 10:30 the Executive Director would be available to meet with any Commissioner or Panel member to discuss any matters of concern. Advance notice was encouraged for the meeting and time to conduct any research needed prior to the meeting.
- o Commissioner and Panel members were encouraged to provide input for the FY94 Budget.
- o The committees established by the HRC to work with the staff have held one meeting with the Community Relations/Administration Division and one meeting with the Compliance Division. The committee formed to work with the Executive Director has not scheduled a meeting. It would be helpful if the committee met with the Executive Director and Division Directors on a quarterly basis.

The FY92 Budget submission included \$4,920 for meetings, conferences and training. The HRC budget was reduced \$4,920 to meet the MARC. We stated in the impact: The Commissioners, Board members and Committee members ability to conduct outreach efforts on initiate actions within the community will be significantly reduced. This will result in a decrease in overall effectiveness.

The above memoranda demonstrates the efforts by the staff to reduce or eliminate the discord. There is no documentation to the staff from the Commission members.

p. 9, #3, b). Compliance. The personnel complement includes one administrative aide for Compliance. While this correctly reflects the organizational chart, it is not the entire reality as played out day-to-day. The Executive Administrative Aide not only provides support to the Department Head, this person provides support to the Compliance Division. The contractual employees who assist with receptionist duties also support the Compliance Division's work. In addition to the receptionist, the Office has generally employed another contractual aide just to assist the Compliance Division.

p. 9, #3, c). Community Relations. The two full-time administrative positions are misleading. The Executive Administrative Aide does not provide support for Community Relations work. The one part-time administrative position provides minimal support for Community Relations work; she is principally assigned to support the Committee on Hate/Violence and the Commissioners. Only when there is no work for those entities is this position available to assist staff. The majority of the staff support rendered by this position has

been dedicated to Compliance not Community Relations. In reality, there is only one support position that supports the Community Relations Division, and that is the full-time Office Services Manager.

HUMAN RELATIONS COMMISSION COMMUNITY RELATIONS ACTIVITIES

p. 17, A. Overview In making a comparison to the Commission's community activities in the early 1980's, the draft report implies that the Commission no longer enjoys the opportunities to be involved. In fact, Commissioners have frequently been invited to participate in the activities listed. In most cases, Commissioners do not volunteer when informed or do not show up after indicating their willingness to participate. The staff has generally been assisted by one or two, no more than three Commissioners at community events over the past couple of years. At one community meeting, a few Commissioners expressed open displeasure at the staff's efforts, thus taking an opposite stance from the meeting's stated purpose.

p. 17, B, #2. Hate/Violence ... This section fails to mention the staff's responsibilities related to ensuring the Memoranda of Understanding with all law enforcement agencies in the County as well as the school system; the staff's assistance to the police departments in responding to crimes/incidents; and the liaison relationship between the staff and the State's Coalition Opposed to Violence and Extremism, the Governor's Committee on Bias, the ADL, and the state and local HRCs. The OHRC Hate/Violence programs and services have served as models for jurisdictions throughout the country.

p. 17, B, #3. Staff support to the Partnership Fund and Board. The draft report fails to mention the staff's responsibility to conduct an investigative review of each incident, write a report including a recommendation regarding compensation, and presenting the staff recommendation to the Board.

pp. 17-18, B, #4. Staff support to the Committee on Hate/Violence. The draft report fails to mention that the Council approved a part-time Office Services Manager to provide staff support to this Committee. In addition, at least one member of the staff is designated as a non-voting member of the Committee. The staff assists the Committee with mailings, minutes, and other related activities. The staff provided the Commission with reports in the monthly Executive Director's report regarding the passage of the legislation as well as plans for implementation of the Committee. The Commission has, in each monthly Executive Director's report, advanced notice of H/V Committee meetings. To date, the Commissioners have not inquired as to the Committee's activities nor have they expressed an interest in attending a Committee meeting. In its initial start-up phase, the Committee requested reports from various groups in the County to educate them on hate/violence matters. The Committee did not include the Commission in the list.

p. 18, last Parg. The report refers to the Montgomery County Human Relations Camp Fund. There is no such "Fund." There is an "account" at Nations Bank. This account is a non-interest bearing account and is listed as "Montgomery County Human Relations Camp." During the first year of the Camp program, all contributions were made directly to Camp Mar-Lu-Ridge on behalf of the program. In an effort to have the flexibility to use other facilities, such as Camp Letts, and to secure other means of transportation (the County no longer allowed the use of Ride-On buses), a separate account was established.

p. 23, 2nd Parg. Contrary to the OLO statement that no staff or funds were dedicated to the Mentoring program, staff support and funding to the Montgomery County Mentoring Task Force have included the following: Clerical support by the Office Services Manager, Executive Administrative Aide and other OHRC Aides which include all levels of administrative duties; typing correspondence, memos, labels, agendas, envelopes; maintenance and updating of computer generated mailing lists; extensive mailings to Mentors, Commissioners and community members; maintenance of Mentoring files; telephone notifications of meetings; extensive copying and the office serves as the "point of entry" for responding to inquiries from the general public. Funding to the Mentoring Task Force includes: the cost of mailings (monthly average of 50-100 pieces); general office supplies (paper, envelopes etc.); staff hours dedicated to perform needed functions (several per week); the use of automation equipment; and the after hours use of OHRC facility.

The Mentoring Task Force does not actually "mentor" anyone but is dedicated to accumulating data on organizations which offer Mentoring programs.

OPEN DISCORD BETWEEN COMMISSION AND STAFF

p. 23, C. Documentation provided earlier in the response established that the Executive Director never created a written proposal to separate the activities of the staff from those of the Commission nor is there a written proposal by the Executive Director to eliminate all Commission Panels; and differing interpretations of the Panel's authority to determine that a complaint has reasonable grounds upon which to base a violation of the Human Relations Law was clarified by a County Attorney's opinion.

The Executive Director and the Director of Administration and Community Relations devoted substantial time and related memoranda to the Commissioners regarding the budget. The material provided included copies of OMB forms for operating expenses. The staff was advised by OMB that it should not have included such specific forms. But the information provided was still well beyond that provided to the public at that stage of budget preparation. An appointment was made for Commissioners to meet with the HRC budget analyst at their convenience. The Commissioner did not keep the appointment and did not call to cancel.

The quote (The confidential and sensitive nature of the OHRC's [Office of the Human

Relations Commission] work. . . necessitates autonomy from external influences, pressure, or interference.) did not in any manner relate to the Commissioners or their involvement in the budget process. This quote has been excerpted from a memo to the Council staff in response to the possibility of changing OHRC's assignment from the HHS Committee to another and aligning OHRC with the Office of Consumer Affairs and the Commission for Women. The quote is, therefore, used totally out of the intended context.

Commissioners are provided with a detailed staff report on each month's activities. The format for this monthly report has been changed at the request of the Commissioners. They question any portion of the report that requires clarification.

The OHRC staff prepares the room for each Commission meeting. This includes set-up of the recording equipment, microphones, etc. The only thing Commissioners had to do was to turn on the recorder and put in the tapes. The report states "... when requested, OHRC staff typed and distributed minutes." The staff always assumed the responsibility of typing and distributing the minutes. This paragraph leads the reader to believe that the Commissioners had no assistance with the recording of meetings and that they had to "request" assistance with the minutes. This is incorrect. After the Commission complained about not having a staff person to assist with recording the minutes at meetings, staff was reassigned for this purpose.

The Executive Director never proposed in writing that the staff be separated from the Commission. This subject arose on April 2, 1992 in response to questions from members of the County Council's HHS Committee regarding the size of the 15-member Commission and its Panels to determine whether adjustments would be beneficial and whether other organizational mechanisms had been considered, specifically in terms of Commission structure, etc. The discussion included the possibility of a Human Relations Commission as a separate unit dealing with human relations in general and an Office of Civil Rights with a focus toward law enforcement in discrimination and hate/violence. The HHS Committee discussed whether a change could be made and the need for a thorough review and that there be a response about why it is not being formally proposed. HHS Committee requested that the Executive be advised that this Committee is interested in a reconfiguration of the HRC, etc. On April 20, 1992 the Executive Director wrote the HHS Committee stating it is not appropriate to pursue reorganization at this time because there is no consensus from the Commission on this issue.

The issue resurfaced as Commissioners challenged County Attorney and OMB Director's opinions regarding day-to-day operations of the office and interpretation of law.

There was no written proposal from the staff submitted to the Executive, the Council or to HRC.

p. 26, #5.. This section is incorrectly described. There was never any dispute over the Executive Director's authority to issue a "no reasonable grounds" determination. The dispute is whether a Panel can find "reasonable grounds" to believe discrimination occurred without a hearing as a response to a Complainant's challenge of the Executive Director's "no reasonable grounds" determination. The body of this section is correct but the summary statement at its head is incorrectly stated.

p. 27, D. Overemphasis on the Independence of the Office of the HRC. There has never been an overemphasis on the independence or separation of the staff from the Commission. The distinction was merely an effort to define functions, since many activities are specifically reserved to the Executive Director and the staff, and to clarify the accountability of the staff. The role of the Commission in the development of the budget was described by the County Attorney and OMB, the Executive Director has a right to an opinion on the reorganization of the office and the Commission and staff assistance to the Commission has always been available. This is an issue of "control" and the control of the staff rests with the Executive Director, the Chief Administrative Officer and the County Executive. The OLO report acknowledges that the role of the Commission has been reasonably defined so we fail to see how a distinction between the Office and the Commission can exacerbate tensions when the Commission is in no way diminished by the distinction unless "control" is the heart of the matter.

p. 29, 2nd Parg. Existence of Unauthorized Camp Fund. From the establishment of the account, the authorized signatures on the account were both the Executive Director and the Community Relations supervisor. The Community Relations Supervisor assigned one of the Community Relations staff members the day-to-day responsibility for accepting contributions, depositing contributions, and accounting related to deposits and disbursements. Separate files for deposits and disbursements have been maintained since the inception of the account.

p. 29, 3rd parg. "However, there were cancelled checks reimbursing OHRC staff personnel for out-of-pocket camp expenses that did not have accompanying documentation to support the outlays. We are at a loss as to what is referenced by this statement. At the time of the OLO investigation, all Camp bank account statements were made available for review. While mention was made of the reimbursements to staff, there is no recollection of a request to review Camp receipts. All receipts are kept in individual Camp sessions binders and these were not reviewed. We are not aware of any reimbursements that are not supported by receipts. The referenced statement implies the potential for unauthorized expenditures or reimbursements. Since every effort has been made to assure the proper use of contributions to the Camp program, this statement is particularly disturbing. It could also prove damaging to future efforts to secure support for the program.

P. 29, F. Inordinate Backlog of Unresolved Complaint Cases. The OHRC (Compliance) has been cited for "12 years of Dedicated Service to the Fair Housing Assistance Program" by Region III of the U.S. Dept. of Housing and Urban Development in recognition of our fair housing enforcement effort. On December 9, 1992 the OHRC (Compliance) received the District Director's Award from the Baltimore District Office of the U.S. Equal Employment Opportunity Commission (EEOC) "in Recognition of Sustained Commitment to the Goal of Equal Employment Opportunity and cooperative efforts ...in the Enforcement of Laws Prohibiting Discrimination..." The OHRC has also achieved a virtual 100% acceptance rate for its complaint investigations with EEOC. During the past 10 years the OHRC has obtained \$2,350,000 in relief for complainants through the discrimination complaint process. The OHRC offers preventive discrimination education courses to both the public and private sectors and as an example provides the only scheduled comprehensive cultural awareness/fair housing training for real estate professionals in the entire metropolitan area in conjunction with Consumer Affairs and Landlord-tenant Affairs.

Yes, we agree there is a backlog of complaints awaiting final resolution but we maintain that additional investigators and aggressive mediation techniques are the best means to dissolve this backlog. All complaints are under investigation; Respondents have been notified and responses to requests for information have either been received or are pending. No cases are waiting to be assigned investigators. The time factor is used up in examining the Respondent's defenses and Complainant's witnesses and rebuttal data.

Once a complaint is accepted the Respondent has the obligation to produce evidence to support its usual contention that no discrimination occurred. Once this is done the Complainant is informed of Respondent's position and given an opportunity to challenge it. The OHRC's most important work is the verification of Respondent's defenses and Complainant's rebuttal. This verification and investigation process involves document searches, witness interviews, site evaluations and numerous other techniques which consume enormous amounts of time.

p. 30, #1. Intake. Intake duties are performed by investigators and this is valuable time which is not devoted to already docketed complaints. However, the intake process itself is part of the overall complaint investigation since it is at this point that the agency commits its resources to investigate and resolve particular issues. Almost all civil rights enforcement agencies including the EEOC use case processing investigators in rotation on intake. We had one investigator specifically dedicated to intake for many years until she retired in 1993. We would welcome a dedicated intake person as Mr. Mansinne suggests but we note that this would require a new position and an increase in the budget unless some other existing staff position were converted to this purpose and their function lost. From previous experience with a dedicated intake person we can state that the crush of activity at this position is so great that occasional relief from other investigators is still required.

p. 30, #2. Fact-Finding. Fact-finding conferences have not been totally abandoned. They are still used at the discretion of the investigator. At one time about 10 years ago they were used at some point for most cases but our experience has shown that the time spent on the conferences did not significantly increase the voluntary settlement rate for complaints. The conference is a meeting between the parties to a complaint and the assigned investigator to discuss and define the disputed and undisputed elements of a case and to negotiate settlement. Due to the time it takes to perform a complete investigation, the parties are encouraged to settle during a conference whenever possible.

The evaporation of clerical support was a secondary reason for the reduction in fact-finding conferences. The main reason was because we were able to increase the voluntary settlement rate during the investigation through more aggressive techniques without the time consuming fact-finding conferences. A case can be settled in any of three ways: by a predetermination settlement (PDS), a withdrawal with stated benefits or a simple withdrawal. Using the figures on Table 7 the reader will note that the three above categories amounted for 31% of all closures over the most recent four year period. Withdrawals with settlement and PDS agreements together accounted to 26% of all closures. Mr. Mansinne has only considered cases closed by PDS agreements in his draft when he states that only 4% of the cases closed between FY92 - FY93 were settlements. Most settlements are not recorded on PDS agreements but our overall settlement rate is still around 30% which exceeds the 20% average noted in the OLO report during FY79 - FY80.

p. 31, #3. Investigations. The Investigations of discrimination Complaints has always been a very time consuming activity. Beginning with the intake process which requires an extensive interview with the Complainant to the notification of the Respondent and the preparation of a Request for Information (RFI), the receipt of Respondent's response to the RFI, the preparation of a summary of the Respondent's response for transmission to the Complainant, receipt of Complainant's rebuttal, verification of the Respondent's defenses and Complainant's rebuttal, solicitation, receipt and examination of surrebuttal and final complaint analysis leading to a Determination, many, many hours are invested in each complaint. Multiply this effort by several hundred individual complaints compounded by the complexity of each allegation and the fact that many persons file complaints on more than one basis (i.e.: race, sex and religion, or disability and age, or sex and marital status, or national origin, source of income and presence of children) and it is evident that much time and effort is required to analyze and investigate each allegation and each basis.

Yes, we have consistently requested more money to hire additional investigators because the full investigation process is so time consuming and requires actual highly qualified persons to perform the work. We disagree with the facts and the significance of the OLO suggestions to expedite the investigative process and we will discuss these point by point.

p. 31, 6th parg. Expedite the introduction and use of word processing. We have

consistently requested funds in our budget for word processing (WP), and computer equipment over the last ten years and most of these funds have been consistently denied or reduced by the Office of Management and Budget (OMB). Plans by the Department of Information Systems and Telecommunications (DIST) to equip this office with the latest electronics have been obstructed and reduced by OMB. At one point during the last five years when we had proposed a plan to equip the office with electronics using around \$200,000 in contract money from HUD and EEOC, OMB decided to transfer the money to the General Fund instead. Up until the end of 1993 we only had the use of old WANG (OIS) equipment which we were told was the oldest and the most antiquated in the entire county government. New IBM equipment was just purchased and installed in late 1993 but only a portion of the staff has the equipment.

It is true that the investigators were never required to use the WP system but training was available for anyone who wanted to use it and approximately half of the investigators did use the WP equipment. We assert that the use or lack of use of WP equipment has no bearing on the time required to investigate a complaint. The WP equipment itself does not investigate anything; it merely assists those investigators who wish to key in data rather than write it after they have accumulated it.

p. 31 Last paragraph. "... OHRC management reduced the complement of clerical support personnel." Documentation supports OHRC's contention that all personnel reductions were the result of budgetary constraints. Positions were frozen by OMB. Any implication that OHRC management had no desire or interest in keeping these positions is unfounded.

p. 32, 2nd parg. Voice mail on investigator's phones. While not denying that voice mail can be a beneficial tool we still see no connection between voice-mail and more efficient investigations. The office has eight telephone lines and written messages are taken for persons who are not available. The OHRC is not connected to the Erickson system which operates in the County Government Center in Rockville where OLO is located because of our size and geographic location, so voice-mail here means obtaining and paying for seven separate telephone lines (one for each investigator) and a C&P Telephone voice-mail option for each line. This is very expensive, since we pay commercial rates, and there is no money placed in our budget for this purpose. Other County Departments such as Social Services are in similar situations and only supply voice mail to essential personnel. We concede that voice-mail may be a more efficient way to run the office reception function and we will examine it when resources permit.

p. 32, 3rd parg. Reallocation of personnel. No other human rights organization in the immediate area has the number of community relations programs which the OHRC has initiated. These programs are valuable and are part of our two pronged attack on bigotry and discrimination: law enforcement for behavior modification and prosecution and community relations for increased awareness, sensitivity and attitude adjustment. These two sections

should be maintained at the current ratio.

p. 32, 5th parag. Use of Volunteers. The OHRC does use Volunteer labor. We have standing requests for volunteers at the Montgomery County Volunteer Bureau and various colleges and universities throughout the area. We have used volunteers as intake officers (we have currently a retired attorney doing intake and conciliation work) and in many other capacities but because of the training and nature of our work we do require a minimum commitment of 8 hours a week over a 6 month period for volunteers. Many volunteer applicants have full-time jobs and want to work on evening and weekends when we do not conduct business. Other prospective volunteers are between jobs and looking for something to occupy their time temporarily. Many law students are searching for paid internships. We use volunteers when we can attract them but our experience over many years leads us to believe that volunteers generally do not have the time to investigate complaints.

p. 32, 7th parag. Decision points in the investigation. There are decision points in the investigation process. Investigators have a 13 point checklist detailing what is expected before a complaint can be submitted for final review. This works well.

There is no way to tell at intake when a complaint will be resolved with either a "reasonable grounds" or a "no reasonable grounds" finding. A Complainant has to make a prima facie case by showing that a violation of the law may have occurred to start an investigation. Our intake procedure already efficiently screens out those complaints which are not jurisdictional. Once the investigation begins the 13 point checklist serves to indicate how the investigation proceeds. Earlier in this report on pages 10 and 11 the OLO has described the "lengthy and indepth" intake procedure so we fail to understand how the same procedure on page 33 now calls for a "more through analysis...of a case at the intake stage" since only about 5% of the inquires we receive actually become formal complaints now.

p. 33, 3rd parag. Evaluation questionnaire. This is good advise. We had previously obtained a copy of the Consumer Affairs questionnaire and were going to adopt it for our use.

p. 33, 4th parag. Performance standards for investigators. There are informal performance standards (4-6 case closure per month) for investigators. There are no formal performance evaluations but this is being corrected. The informal standards work well and since they are goals they are also flexible because they take into consideration the complexity of some cases which might prevent an investigator from producing a certain number of case closures per month. A formal performance standard would also have to maintain the same flexibility.

We do differ with OLO on the number of investigators available to investigate cases during the FY89-FY93 period. The OLO report counts authorized positions but due to turnover and other factors there were times when there were 5 or fewer investigators available to resolve

cases. Due to resignations, retirements, etc. we hired new investigators in 1990, 1992, and 1993. It takes about 6 months through the County personnel system to fill a position so for the three vacancies we were without a case resolution investigator for at least 18 months or one and a half years during this period. New investigators have to be trained and it takes one about 6 months to one year to reach full performance status. This would make us miss (for 3 positions) another 18 months or one and a half years of production (minimum) during their training period. We would note here that the last three investigators hired included two attorneys and one licensed private investigator. Case production was further hindered when three investigators endured significant personal traumas during this period which we elected to accommodate.

During the FY89 - FY93 period we were actually working with 4-5 investigators not the 6 authorized positions described in the OLO report. With this case resolution staff we were actually producing between 3.3 and 4.1 cases per investigator per month which is very close to our minimum informal standard and the suggested OLO standard of 4.2 cases per investigator per month.

p. 33, #4 Summary. OLO's opinion that lack of innovative management, absence of formal performance standards and management's lack of concern have caused the backlog of complaints is clearly erroneous and unsupported by any facts. We have refuted every contention. We have a backlog of complaints because a lot of complaints are filed and we do not have the investigate staff to address them. The FY89 - FY93 period which OLO uses to demonstrate complaint activity represents the years where we had large increases in the number of complaints filed. Prior to FY89 the most complaints ever filed were recorded in FY88 at 250. Prior to FY88 we generally received between 150 to 175 complaints per year. The average number of complaints filed from FY89 through FY93 was 300 (Table 4) which is nearly double the number of complaints filed each year prior to FY89. Investigative staff did not increase proportionately to handle this increase. For comparison, the Fairfax County VA. Human Rights Commission, with similar complaint receipts, has 10.5 investigators. OHRC management has been negotiating for the last two years with the Montgomery County Bar Association to establish a voluntary mediation program to help resolve complaints. This project is now ready to begin and the first training for the volunteer attorney mediators will take place on February 15, 1994.

This voluntary mediation project will provide yet another method to achieve more rapid case resolutions. The existence of a backlog has never been a secret and we have persistently informed the County Council and the Executive of the need for assistance as we have described earlier. These are not the actions of persons who are not concerned about the central law enforcement function of this office.

p. 34 - #2. Management's lack of... Management's concern for the backlog of complaints is reinforced everyday as we take calls and respond to letters from both Complaints and

Respondents with cases in the backlog. Our concerns have been shared with Commissioners, the Executive Branch, and the County Council. Every budget consideration has included our great concern over the backlog. Management has explored many methods of reducing the backlog. Funds provided for Compliance have been withdrawn due to budgetary limitations, imposed by state shortfalls.

p. 35 - H. Low Employee Morale... I take exception to the sentence "It is a matter of common knowledge that employee morale in OHRC is low." It is a matter of common knowledge that employee morale in the County Government is low. There was no mention of the stress factor associated with a law enforcement agency. We deal with negatives every day. There are a number of external factors that contribute to low morale such as no training funds; no COLA; limited awards; limited automation equipment; increased work load in complaints, hate/violence, and community and group tension. Agencies without our stress related work load, share low morale.

Most of the staff is involved in the type of activity where it is force to mediate and resolve or intervene in disputes. The number and intensity of the disputes increases while the parties to the dispute become more strident. The staff is always in the middle and sees that additional support for the increased workload is not forthcoming. Every year OMB begins the budget process with a proposal to cut existing staff while the Executive and Council have not proposed cost-of-living increases for County government employees for the last four years. We have specifically shown in this response that OHRC efforts to obtain increased support for the staff have been unsuccessful. We note here a recent report on the state of public employees in Maryland *which noted that the number of public employees had fallen precipitously enough to threaten essential service delivery. Many factors contribute to employee morale and some of these are not within the control of OHRC management. We have implemented the Total Quality Management program (TQM) for staff at OHRC and we will continue to address those items within our control.

p. 36 - I. Unorganized and Out-of-Date Human Relations Legislation. The original law was written at a time when there were 9 Commissioners and one part-time Executive Secretary. The first full-time Director and typist were hired seven years before additional staff were hired. Currently there are 15 Commissioners, 11 Panel Members, 7 members of the Partnership Board for Hate/Violence Victims, 15 members of the Committee on Hate/Violence, as well as 20 staff position dealing with a basic law that was written for 9 Commissioners and a part-time Executive Secretary.

* Source - Maryland Office of Planning

We agree that the Human Relations Legislation needs to be rewritten for many of the same reasons as detailed in the OLO Report. We do not believe the Executive Director has been "overly restrictive" in assisting the Commission in light of the documented attempts to work with the Commission and legal opinions from the County Attorney. However, we are convinced the legislation needs to be rewritten to legally define the relationship.

Our suggestion to cure the confusion over hearing options and appeals of "no reasonable grounds" decisions is to abolish the panels. We believe OLO's recommendation serves only to confuse the matter further because at one point, OLO recommends a complete rewrite to recognize current realities but also wants to keep the intent of the current law to involve citizens representative of the community.

The current law was written 30 years ago when there was practically no civil rights legislation or judicial precedent and citizens were relied upon to use their "common sense" to do what was right. Today what passes for common sense may not always be legal as there is substantial legal precedent and considerably more legislation to apply than existed 30 years ago. Currently there are no qualifications for persons who wish to serve as Panel members, and we believe the time is here to professionalize this area of enforcement. We advocate establishing a separate Office of Civil Rights (OCR) to include the Compliance and Community Relations functions. All Panel hearings would be held by the Office of Zoning and Administrative Hearings (The current hearing examiner). Investigative determinations would be issued by the Compliance Division and appeals of these determinations would be heard by the Executive Director, who would have no previous contact with the facts of the case. This is a fairly common construction and is similar to the method used by the Maryland Commission on Human Relations. The Commission could be established separately as an advisory body to function in much the same way as the United States Commission on Civil Rights (USCCR).

With respect to Compensation for Panel members, the OHRC was never told that the legal authority to compensate Panel and Commission members had been repealed. For the last two years we had removed this money from our budget in an attempt to economize only to have the line item replaced by OMB, which apparently was also unaware of this repeal.*¹

The Real Estate Reporting Regulation remains a valuable tool during the investigation of real estate discrimination complaints. We have no objection to OLTA actually collecting this information, and we have had several informal discussions with them about this prior to the OLO Report.

¹Amendments to the Human Relations law enacted in 1984 are included in the "Blue Book" (sexual orientation, et. al.)

Commission on Human Relations
Legislative History

- 1961 LMC, P. 29, Resolution No. 4-1776 - adopted July 12, 1960, created the County Council Commission on Inter-Racial Problems.
- 1961 LMC, p. 44, Resolution No. 4-1856 - adopted August 9, 1960. Changed the name of the Commission on Inter-Racial Problems to the Commission on Human Relations.
- Ordinance No. 4-120, §4 - adopted January 16, 1962. Made discrimination in places of public accommodation illegal; and created the Commission on Human Relations with power to investigate complaints of such discrimination a limited number of categories (race, color, ancestry, etc.).
- MC Code 1965, Chapter 77. Set nine member commission (five for a quorum). Title of Chapter: "Anti-Discrimination". Public Accommodations included. Hearings conducted before the whole Commission.
- Ordinance No. 6-42, - adopted July 20, 1967. First Fair Housing Ordinance effective.
- Ordinance 6-43, - adopted July 25, 1967. Provided amendments relating to public accommodations.
- Ordinance No. 6-56, - adopted October 4, 1967. Changed membership on Commission to between nine and fifteen members, established Commission Panels, and provided for the position of Executive Secretary to the Commission. (First reference to Executive Secretary recommending dismissal for no reasonable grounds with panel actually dismissing.)
- 1968 - LMC Chapter 19 (Bill 18). Added housing to public accommodations.
- 1969 LMC Chapter 33, §1 (Bill 46-69). General revisions to Human Relations Commission law to include re-enacting Public Accommodations Law and establishing 9-15 members on the Commission.
- 1972 LMC Chapter 21, §1 (Bill 31-71). Added "sex" to discrimination categories.
- 1973 LMC Chapter 9, §1 (Bill 1-73). General provisions applying to the human relations law.
- LMC 1973, Chapter 32, §1 (Bill 62-73). Added clarification language to the Employment division of the law.
- LMC 1974, Chapter 18, §1 (Bill 24-74). Miscellaneous provisions added to the Employment division, to include not discriminating against volunteers.
- 1977, LMC, Chapter 30, §1 (filed in LMC September Legislative Session 1976). (Bill 46-76). Added Hearing Examiner in lieu of Commission Panel to hear case. Added "age" and "marital status" to discrimination categories; provided for one-year statute of limitation; and allowed compensation for Commissioners.

- 1978 IMC, Chapter 6, §1-3 (Bill 19-77). Added handicap (physical, mental, or emotional impairment) to the category of discriminatory acts.
- 1979, IMC, Chapter 17, §3, 4 (June Legislative Session 1978) - (Bill 30-78). This bill was to conform HRC hearing procedures to changes to Chapter 2A.
- 1979 IMC, Chapter 52, §1, 2 (Bill 1-79). Made several amendments to the Employment Division.
- 1983 IMC, Chapter 22, §32 (Bill 42-82). Dealt with civil citations for violating confidentiality.
- 1984 IMC, Chapter 24, §30 (Bill 46-83). Miscellaneous amendments to Code Chapter 27.
- 1984 IMC, Chapter 26 (Bill 65-83). Added sexual orientation to discrimination categories. Changed title of Executive Secretary to Executive Director, and gave the Executive Director authority to dismiss, subject to complainant appealing to panel, on the basis of "no reasonable cause".
- 1986 IMC, Chapter 29, §2 (Bill 29-85). Amendments to Code Chapter 27, with emphasis on establishing hearing panels.
- 1986 IMC, Chapter 37, §3 (Bill CR A-85). Creates the Office of the Human Relations Commission. Also, directs Executive Director to assist the Commission Panels.
- 1988 IMC, Chapter 4, §1 (Bill 20-87). Generally amended law on discrimination in real estate.
- 1990, IMC Chapter 5, §1 (Bill 32-89). Makes intimidation because of sexual orientation illegal.
- 1990, IMC, Chapter 31, §1 (Bill 1-90). Various amendments to Chapter 27 to include increasing civil liability to victims of property damage, and making intimidation because of handicap illegal.
- 1991 IMC, Chapter 2, §1 (Bill 10-90). Generally amended Partnership Fund Law and removed sunset provision.
- 1991, IMC, Chapter 3, §1 (Bill 70-90). Amended Fair housing law to prohibit discrimination based on source of income.
- 1991 IMC, Chapter 9, §1 (Bill 46-90). Miscellaneous amendments to Code Chapter 27 to include repeal of compensation Section 27-5.
- 1991 IMC, Chapter 27, §1 (Bill 26-91). Created Committee on Hate/Violence and directed staff of the Human Relations Commission to provide staff support to the Committee.

EXTRACT

Chapter 27.

HUMAN RELATIONS AND CIVIL LIBERTIES.

(Article I and Article IX)

Article I. Commission on Human Relations.

- § 27-1. Statement of policy.
- § 27-1A. Reserved.
- § 27-2. Created; membership, appointments and term of office of members; commission panels.
- § 27-3. Officers; meetings; quorum; voting.
- § 27-4. Executive director; additional personnel; budget preparation.
- § 27-5. Reserved.
- § 27-6. Duties generally.
- § 27-6A. Definitions generally.
- § 27-7. Administration and enforcement.
- § 27-7A. Disclosure of sexual orientation.
- § 27-7B. Marital status.

Division 1. Discrimination in Places of Public Accommodation.

- § 27-8. Applicability of division.
- § 27-9. Prohibited acts.
- § 27-10. Penalties.

Division 2. Discrimination in Real Estate.

- § 27-11. Definitions.

Subdivision A. Discrimination in Housing.

- § 27-12. Unlawful practices.
- § 27-13. Posting of notices; reports to be filed.
- § 27-14. Penalties and monetary awards.
- § 27-15. Limitations upon applicability of division.
- § 27-16. Licensing and licensing authorities.

Subdivision B. Discrimination in Commercial Real Estate.

- § 27-16A. Unlawful practices.
- § 27-16B. Exemptions.
- § 27-16C. Enforcement.

Division 3. Discrimination in Employment.

- § 27-17. Declaration of policy.
- § 27-18. Definitions.
- § 27-19. Unlawful employment practices.
- § 27-20. Rights of complainant; civil action by county attorney.
- § 27-21. Procedure for complaints against county.
- § 27-22. Notice to be posted; reports and records.
- § 27-23. Reports and records of person being investigated, etc.
- § 27-24. Action against licensees, etc., found in violation of division.
- § 27-25. Penalties and monetary awards.
- § 27-26. Standards of proof.

Division 4. Intimidation.

- § 27-26A. Actions subject to civil liability.
- § 27-26B. Statutory civil liability.
- § 27-26C. Parental liability.
- § 27-26D. Alternative service; anti-hate/violence fund.
- § 27-26E. Enforcement before commission.
- § 27-26F. Partnership Fund for victims of hate/violence.

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Article IX. Committee on Hate/Violence.

- § 27-63. Committee on Hate/Violence.

ARTICLE I. COMMISSION ON HUMAN RELATIONS.*

Sec. 27-1. Statement of policy.

(a) It is the public policy of Montgomery County:

(1) To eliminate discrimination, prejudice, intolerance, and bigotry that exists as described in this article:

a. On account of race, color, sex, religious creed, ancestry, national origin, handicap, marital status, or sexual orientation in housing, employment, and public accommodations;

b. On account of age in employment;

c. On account of the presence of children in housing; and

(2) That the discrimination, described in paragraph (1):

a. Is injurious to and threatens the health, safety, and welfare of persons in this county;

b. Is contrary to the purposes of a free, democratic society;

c. Is illegal and should be abolished; and

(3) That the prejudice, intolerance, and bigotry, described in paragraph (1) only refers to persons who do not treat individuals with the basic respect that the individuals deserve as human beings.

(b) It is not the public policy of Montgomery County:

(1) To advocate, encourage, promote, or endorse any particular race, color, sex, religious creed, ancestry, national origin, marital status, age, or sexual orientation including homosexuality; or

(2) To promote the absence or presence of children in housing; or

(3) To eliminate the legitimate rights of citizens to safeguard their communities and work places from public conduct that is contrary to accepted community standards of public decency.

*Editor's note—Article I of this chapter, originally amended by creating subtitles within the article, has been revised by changing subtitles to divisions as is done for the remainder of the Code.

Cross reference—Regulations of county commission on human relations, app. K.

State law reference—Maryland Commission on Human Relations, Anno. Code of Md., art. 49B.

HUMAN RELATIONS AND CIVIL LIBERTIES

§ 27-1A

(c) The prohibitions in this article are substantially similar, but not necessarily identical, to prohibitions in federal and state law. The intent is to assure that a complaint filed under this article may proceed more promptly than possible under either federal or state law. It is not county policy, however, to create a duplicative or cumulative process to those existing under similar or identical state or federal laws. Once a complaint is fully adjudicated under a similar or identical state or federal law, the complaint should not be reprocessed under this article if the effect is duplicative or cumulative. (1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 1; 1978 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 26, § 1.)

Sec. 27-1A. Reserved.

Editor's note—Section 27-1A, relating to the applicability of this chapter within incorporated municipalities, derived from 1974 L.M.C., ch. 53, § 1, and 1984 L.M.C., ch. 26, § 2, was repealed by § 18 of 1985 L.M.C., ch. 31. See § 2-96.

Sec. 27-2. Created; membership, appointments and term of office of members; commission panels.

(a) *Commission on human relations.* The commission on human relations is established. The commission has not less than 9 members and not more than 15 members. The members are appointed and may be removed for cause by the county executive with the approval of the county council. The members should be men and women who are broadly representative of racial, religious and ethnic groups of the county. The terms of the members is 3 years. Each member of the commission continues to serve until his or her successor has been appointed and approved.

(b) *Commission panels; appointment, duties, term of office.*

(1) The county executive, with the approval of the county council, must appoint commission panels on public accommodations, housing, employment, and any further panel as determined by law.

(2) Panel members must be appointed for a term of three

(3) years except that panel members may be removed by the county executive for cause. Each panel member continues to serve after the term expires and until a successor has been appointed and has qualified.

(3) A quorum for a meeting of a panel is the majority of the members assigned to the panel.

(4) The commission panels on housing and public accommodations consists of at least two (2) members of the commission on human relations and one (1) member of the community at large or an additional member of the commission to carry out the adjudicatory and enforcement functions pertaining to alleged violations of this article in housing and public accommodations respectively.

(5) The commission panel on employment consists of at least two (2) members of the commission on human relations, one (1) member of the commission for women, and two (2) members of the community at large or two (2) additional members of the human relations commission to carry out the adjudicatory and enforcement functions pertaining to alleged violations of the subtitle on employment.

(6) For the purpose of conducting hearings under section 27-7(e), each member of the commission appointed under section

27-2(a) and each member of a commission panel appointed under section 27-2(b) is eligible to serve as a member of a hearing panel. If a commission member or panel member is serving on a hearing panel at the time the term of the member expires, the member may continue to serve on and participate in the decision of the hearing panel until the hearing panel renders a final decision in the controversy pending at the time the member's term expires.

(7) A panel member must not participate in any investigation of an alleged violation before the respective panel or in any conciliation proceedings prior to a hearing on the merits.

(8) The commission panels, hearing panels, and their staff must cooperate with all governmental agencies concerned with its respective subject matter.

(9) As part of its annual budget submission, the commission must report the number of complaints filed during the previous fiscal year and the nature and disposition of each complaint.

(10) The commission panels may adopt, under method (2) of section 2A-15 of this Code, executive regulations that the commission deems necessary to effect the provisions of this article.

(11) The chairperson of each commission panel or hearing panel must be a member of the commission and be appointed by the commission after recommendation of the chairperson of the commission. (Mont. Co. Code 1965, § 77-1; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 28, § 10; 1977 L.M.C., ch. 30, § 1; 1986 L.M.C., ch. 39, § 1; FY 1991 L.M.C., ch. 9, § 1.)

Editor's note—A rule adopted by the human relations commission which required landlords with twenty-five (25) or more rental units to report quarterly on minority tenants, etc., was upheld against constitutional challenges in Montgomery County v. Fields Road Corporation, 282 Md. 575, 386 A.2d 344 (1978).

Cross reference—Boards and commissions generally, § 2-141 et seq.

Sec. 27-3. Officers; meetings; quorum; voting.

The county executive shall designate a member of the commission on human relations to be chairperson and, in the absence of any member being designated, the commission may elect a chairperson notwithstanding its authority to elect such other officers as it may deem necessary. The commission shall submit a list of recommended persons for the position of chairperson to the

county executive for his consideration. The commission shall hold meetings at regular intervals but not less frequently than once every month. A majority of the members of the commission shall constitute a quorum for the transaction of business, and a majority vote of those present at any meeting shall be sufficient for any official action taken by the commission. (Mont. Co. Code 1965, § 77-2; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 1.)

Sec. 27-4. Executive director; additional personnel; budget preparation.

(a) The executive director of the commission on human relations shall assist the commission panels as determined by law.

(b) (1) Other personnel and facilities may be authorized by the county executive to assist the commission in carrying out the provisions of this article. The commission may, with the approval of the county executive, engage the services of volunteer workers and consultants without salary, who may be reimbursed out-of-pocket expenses incurred in the course of performing such services. Services of an individual as a volunteer worker or consultant pursuant to this article shall not be considered as service of employment bringing such individual within any merit system of the county or state.

(2) If the commission and the county attorney determine that a representational conflict exists within the county attorney's office, then the county attorney may employ special legal counsel to represent the commission. However, the county attorney may only employ special legal counsel to represent the commission after approval of the selection of that counsel by the commission and the county council.

(c) In proposing a budget for the operation of the commission and in selecting other personnel and facilities, the county executive shall take into consideration the recommendations of the commission. (Mont. Co. Code 1965, § 77-3; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 1; 1984 L.M.C., ch. 26, § 3; 1986 L.M.C., ch. 37, § 3.)

Sec. 27-5. Reserved.

Editor's note--Section 27-5, relating to compensation and expenses of members of the commission on human relations, was repealed by FY 1991 L.M.C., ch.

9, § 1. The section was formerly derived from Mont. Co. Code 1965, § 77-4; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; and 1977 L.M.C., ch. 30, § 1. See § 2-145.

Sec. 27-6. Duties generally.

(a) The commission on human relations shall have the power and it shall be its duty:

(1) To research, assemble, analyze and disseminate pertinent data and educational materials relating to activities and programs which will assist in the elimination of prejudice, intolerance, bigotry and discrimination and to institute and conduct educational and other programs, meetings and conferences to promote equal rights and opportunities of all persons regardless of their race, color, religious creed, ancestry, national origin, sex, age, marital status, handicap, or sexual orientation and to promote goodwill, cooperation, understanding and human relations among all persons. In performance of its duties, the commission shall cooperate with interested citizens, racial, religious and ethnic groups, community, business, professional, technical, educational and civic organizations.

(2) To cooperate with the county executive; and all governmental agencies concerned with matters within their jurisdictions.

(3) To study and investigate by means of public or private meetings, conferences and public hearings, conditions which may result in discrimination, prejudice, intolerance and bigotry because of race, color, religious creed, ancestry, national origin, sex, age, marital status, handicap, or sexual orientation.

(4) To advise and counsel the residents of the county, the county council, the county executive and the various departments of county, state and federal governments on matters involving racial, religious or ethnic prejudice, intolerance, discrimination and bigotry and to recommend such procedures, program or legislation as it may deem necessary and proper to promote and insure equal rights and opportunities for all persons, regardless of their race, color, religious creed, ancestry, national origin, sex, age, marital status, handicap, or sexual orientation.

(5) To work to remove inequalities due to discrimination, prejudice, intolerance and bigotry on such problems as housing,

recreation, education, health, employment, public accommodations, justice and related matters.

(6) To initiate or receive complaints of discrimination, prejudice, intolerance and bigotry from any person or group because of race, color, sex, age, marital status, religious creed, ancestry, national origin, handicap, or sexual orientation which deprives that person or group of equal rights, protection or opportunities. To investigate complaints, seek conciliation of such complaints and, if warranted, to hold hearings and make recommendations on such complaints.

(7) To adopt such regulations under method (2) of section 2A-15 of this Code as may be necessary to carry out the purposes and provisions of this article; to keep a record of its hearings; activities and minutes of all meetings. The records and minutes shall be on file with the executive director of the commission and open to the public at reasonable business hours upon request.

(8) To render at the request of the executive or within thirty (30) days following each quarter of the calendar year preliminary written or oral reports of its activities and recommendations to the county executive and the county council and a final written yearly report summarizing its activities, goals, needs and recommendations.

(b) Despite the foregoing provisions of this law, the commission is authorized to proceed with other programs which will seek to relieve group tension and/or adverse intergroup activities which may result from causes not related to race, color, sex, religious creed, ancestry, national origin, age, marital status, handicap, or sexual orientation; provided, that such action is first submitted to the county executive; and further provided, that the county executive does not disapprove of such action. (Mont. Co. Code 1965, § 77-5; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1974 L.M.C., ch. 19, § 1; 1977 L.M.C., ch. 30, § 1; 1978 L.M.C., ch. 6, § 2; 1984 L.M.C., ch. 24, § 30; 1984 L.M.C., ch. 26, § 4.)

Sec. 27-6A. Definitions generally.

For the purposes of this article, the following words and phrases shall have the meaning ascribed to them:

(a) *Handicap* means a physical, mental, or emotional impairment or perception by others of such condition of any person

to which reasonable accommodation can be made and which substantially limits one (1) or more major life activities. The term also includes but is not limited to the following: Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one (1) or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; alcoholism or prior drug dependency or current medically supervised drug dependency; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) *Presence of children* means the existence in a household of an individual under the age of eighteen (18) years.

(d) *Reasonable accommodation* means the effort to make suitable a working, recreational or living environment for a handicapped person without danger to any person's health or safety or without undue hardship or expense to a business or other activity making such accommodation. In rental housing, the landlord may impose special conditions upon a handicapped tenant, the purpose of which is to protect the health and safety of the tenant and other residents of the facility. Such conditions and agreement thereto by the tenant shall be in writing. The commission shall provide by regulation adopted under method (2) of section 2A-15 of this Code, a procedure by which those persons covered by the provisions of this article may apply to the human relations commission for a declaratory ruling as to whether or not a proposed accommodation is reasonable. The procedure for such declaratory ruling shall include all due process safeguards. Any person aggrieved by such ruling shall have the right to appeal to the circuit court for Montgomery County under the provisions of Maryland rule B. Such an appeal shall also include full appellate review by the appeal courts of Maryland. The commission may also prescribe by regulation, adopted under method (2) of section 2A-15 of this Code, guidelines under which pre-employment or pre-rental inquiries may be made of handicapped individuals, the purpose of which is to determine the measures necessary to pro-

fect the health and safety of handicapped persons and others. Any inquiry so permitted shall not be used as a basis for discriminatory practices made unlawful by this article; provided, however, the results of such inquiries may form the basis for a determination of reasonable accommodation.

(e) *Sexual orientation* means male or female homosexuality, heterosexuality, or bisexuality

(1) by practice between consenting individuals over the age of eighteen (18) years; or

(2) by inclination. (1978 L.M.C., ch. 6, § 3; 1984 L.M.C., ch. 24, § 30; 1984 L.M.C., ch. 26, § 5.)

Sec. 27-7. Administration and enforcement.

(a) *Filing of complaints.* Any person subjected to a discriminatory act or practice in violation of this article or any group or person acting on behalf of another may file with the executive director a complaint in writing, sworn to or affirmed, which shall state the name and address of the person alleged to have committed the violation complained of and the particulars thereof, and such other information as may be required by commission rules or procedures. Any commissioner may initiate a complaint in the commissioner's name in the same manner. The commission may also initiate or corroborate complaints on the basis of testing carried out by its staff or volunteers authorized by the commission. After receipt by the commission of the complaint, a copy or synopsis thereof shall be expeditiously forwarded to the respondent; provided, however, if the executive director deems it necessary to corroborate the complaint by testing, notice to the respondent of the complaint shall be forwarded promptly after completion of said testing. Any complaint must be filed within one (1) year of the alleged discriminatory act or practice except those acts or practices which are continuing in nature. Filing with any federal or state agency charged with civil rights enforcement shall constitute a filing hereunder.

(b) *Investigation.* Upon the filing of a complaint, the executive director shall make such investigation as deemed necessary to ascertain appropriate facts and issues. In the event, as part of the investigation, a fact finding conference is scheduled, both complainant and respondent shall attend. Failure to attend may result in either dismissal of the complaint or an entry of default

as described in rule 3.4(a) of the Rules of Procedure for the Montgomery County Commission on Human Relations panel. During the investigation of any complaint alleging a violation of this article, and until said matters reach the stage of hearings, the activities of the commission, the executive director or staff thereof in connection with said investigation shall be conducted in confidence and without publicity. Any and all statements, matters or materials gathered during the investigation, including the identity of the complainant and the respondent, shall be held confidential until certified to the panel for hearing by the executive director, except that:

(1) Any information may be released at any time if the release has been agreed to in writing by both the complainant and the respondent;

(2) The identity of the complainant may be disclosed to the respondent at any time;

(3) The identity of the complainant and respondent may be made public after the parties have been notified that a hearing on their case has been scheduled, whether the hearing is public or private;

(4) Upon certification of a case for hearing, documents or materials gathered during the investigation and intended for use at hearing shall be available to the parties before the commission under the provisions of the county administrative procedures act although any investigatory materials which the commission or staff determines to be of a privileged or confidential nature and which are not to be presented or used at the hearing shall not be released to any party.

The results of the investigation shall be reduced to written findings and the executive director shall determine whether or not reasonable cause exists to believe a violation of this article has occurred. A synopsis of the written findings shall be sent to both the complainant and the respondent.

(c) *Conciliation.* If the executive director determines that there are reasonable grounds to believe a violation has occurred, the executive director shall attempt to conciliate the matter, provided however, no determination that reasonable grounds exist that discrimination occurred shall be based on any statistical differences in the incidence of persons of a particular sexual orientation in the general population as opposed to in the activity

where such discrimination is alleged. Conciliation conferences shall be informal and nothing said or done during such initial conferences shall be made public unless the parties agree thereto in writing. The terms of conciliation shall be reduced to writing and incorporated into an enforceable order executed on behalf of the commission by the chairperson or acting chairperson. If conciliation has not occurred within one hundred eighty (180) days after a finding of reasonable grounds, or if the executive director determines from the circumstances at that point that conciliation attempts would be fruitless, the executive director shall promptly notify the appropriate commission panel which shall, thereafter, expeditiously schedule a hearing. In the event that the executive director deems that circumstances warrant an extension of this one-hundred-eighty-day period, the executive director shall extend the time for notifying the commission panel an additional thirty (30) days.

(d) *Decision of executive director.* If the executive director determines that the complaint lacks reasonable grounds upon which to base a violation of the article, the executive director shall so inform the complainant. The complainant may pursue the matter further and appear before the commission panel. The panel shall make the final determination whether or not to dismiss the complaint.

(e) *Hearings.*

(1) If the executive director fails to conciliate a complaint after good faith attempts, the executive director must notify the appropriate commission panel immediately and the commission panel must thereafter schedule a hearing promptly to determine whether a violation of this article has been committed.

(2) After consultation with the commission's executive director and the chairperson of the commission, the chairperson of the commission panel must appoint a hearing panel to hear the complaint. The chairperson must select from those commission and panel members eligible to serve on a hearing panel under section 27-2(b)(6). The hearing panel must consist of not less than three (3) nor more than nine (9) members. At least one (1) member of the hearing panel must be a member of the commission panel that has jurisdiction over the complaint and at least one

(1) member of the hearing panel must be a member of the commission. This requirement may be satisfied by the same individual if the individual is a member of both the appropriate commission panel and the commission.

(3) Thereupon, the hearing panel must serve upon all interested parties a statement of charges and a notice of the time and place of hearing.

(4) The respondent or the respondent's authorized counsel may file the statements or motions with the hearing panel prior to the hearing date as it deems necessary in support of its position.

(5) The interested parties may have the assistance of an attorney.

(6) A hearing may be held if a quorum, which consists of a majority of the members of the hearing panel, is present. Any member of the hearing panel who is absent from a hearing may participate in the hearing panel's decision if the member certifies that the member has read the transcript of the hearing from which the member was absent.

(7) The parties may present testimony and evidence and the right to cross-examine witnesses will be preserved. All testimony and evidence must be given under oath or by affirmation.

(8) The hearing panel must keep a full record of this hearing, which record is public and open to inspection by any person, and upon request by any principal party to the proceeding, the hearing panel must furnish the party a copy of the hearing record, if any, at the costs as the hearing panel deems appropriate. Provided, however, upon the written request of any party, the hearing panel may grant a private hearing. In the event the hearing panel grants a private hearing, all matters related to it, except the final decision of the hearing panel, must be confidential, unless the matter is subjected to court review under the provisions of subsection (g) or (h) of section 27-7.

(9) In the event the commission panel chairperson, after consultation with the commission panel, determines, under the circumstances, that the hearing should be held before a hearing examiner in lieu of a hearing panel, the panel chairperson with the approval of the commission chairperson, may designate as the hearing examiner, either the county hearing examiner, ap-

pointed pursuant to section 2-139* of the Montgomery County Code, as amended, or to the extent the budget so allows, another professional qualified under standards established by the commission.

(f) Commission decision and order.

(1) If at the conclusion of the hearing, the hearing panel determines that a respondent has engaged in unlawful discriminatory practice or has otherwise violated the provisions of this article, the hearing panel must issue and cause to be served on the respondent a decision and order, accompanied by findings of fact and conclusions of law, requiring the respondent to cease and desist from the unlawful discriminatory practice, and to take affirmative action and prospective relief as is necessary to effectuate the purposes of this chapter or to eliminate the effects of the discriminatory practice and any other relief elsewhere provided in this article.

(2) If at the conclusion of the hearing the hearing panel determines upon the preponderance of the evidence of record that the person complained against has not violated this article, the hearing panel must state and publish its findings and issue its order dismissing the complaint.

(3) The hearing panel must forward to the commission panel that has jurisdiction over the complaint, to the executive director, and all parties its decision and order.

(4) The commission panel that appointed a hearing panel must review the decision and order of the hearing panel. The commission panel must either:

- a. Adopt the recommended decision and order;
- b. Reverse the recommended decision and order;
- c. Modify the recommended decision and order; or
- d. Remand the recommended decision and order.

(5) The decision and order of the commission panel is a final decision of the commission.

(6) If the hearing has been held before a hearing examiner in lieu of a hearing panel, the hearing examiner must forward to the commission panel a recommended decision and order including, if applicable, recommendations as to the award of damages. The commission panel may, after consideration of the recommended

decision and order, adopt, reverse, modify, or remand the recommended decision and order of the hearing examiner and then so issue its order in the manner that is provided for the commission panels. The order must include notice that if the commission panel determines that the person complained against has not after thirty (30) calendar days following service of the commission panel's order complied with the order, the commission panel will certify the matter to the county attorney for enforcement.

(g) Appeal. Any person aggrieved by a subsection (f) of section 27-7 decision and order may appeal to the circuit court for Montgomery County for review of such action pursuant to chapter 1100, subtitle B, of the Maryland Rules of Procedure.

(h) Enforcement. Upon noncompliance with any commission order, summons or subpoena, the commission through its panels, chairperson or executive director will certify the matter to the county attorney for enforcement. The county attorney shall promptly institute civil proceedings, including the seeking of such restraining orders and temporary or permanent injunctions as are necessary and possible to obtain compliance with the commission's order, summons or subpoena. In the event of an appeal filed under subsection (g) of section 27-7, such enforcement action shall be stayed. In the event an appeal is not filed in a timely manner, the party failing to appeal shall be considered to have waived any rights for judicial review of the record supporting the commission's order. In addition to any other court enforcement proceeding, any beneficiary of a panel order may institute judicial proceedings to enforce such order as it affects said beneficiary.

(i) Interim relief. If at any time after a complaint has been filed the commission determines that appropriate civil action to preserve the status quo or to prevent such irreparable harm is necessary, the commission may certify the matter to the county attorney for necessary action to preserve such status quo or to prevent such irreparable harm, including but not limited to temporary restraining orders and preliminary injunctions.

(j) Summons, etc. In the administration, investigation and enforcement of these various subtitles, the commission, commission panels and the executive director shall have authority to issue summonses and subpoenas to compel the attendance of all witnesses and the production of all documents, books, papers,

*Editor's note—It should be noted that § 2-139 was repealed by 1986 L.M.C., ch. 37, § 4.

records and other evidence deemed relevant and necessary to any proceeding hereunder and conduct such discovery procedures which may include the taking of interrogatories or depositions. The failure to comply with a summons or subpoena issued hereunder shall subject the offending person to an enforcement action under subsection (h) of section 27-7.

(k) *Other commission panel awards and remedies.* In addition to the other awards and relief which are hereinafter provided, the commission panel may, in accordance with the standards of proof set forth in section 27-26, also make the following monetary orders determined by the commission panel from the evidence of record as the actual damages, costs or losses involved or in such amounts as may be specified below:

(1) The complainant may be awarded reasonable attorney's fees. In determining the reasonableness of attorney's fees claimed by the complainant, the commission panel shall consider the following factors:

- a. Time and labor required;
- b. The novelty and complexity of the case;
- c. The skill requisite to perform the legal service properly;
- d. The preclusion of other employment by the attorney due to acceptance of the case;
- e. The customary fee;
- f. Whether the fee is fixed or contingent;
- g. Time limitations imposed by the client or the circumstances;
- h. The experience, reputation and ability of the attorneys; and
- i. Awards in similar cases.

(2) Should the complainant's personal property be damaged, the complainant may be awarded damages not exceeding any expenses actually incurred in repairing the damage or in replacing the property, if such replacement is found by the commission panel to be necessary.

(3) If the complainant was required to incur travel expenses between places that would not have been incurred but for unlawful discriminatory acts or practices of respondent, the complainant may be awarded damages not exceeding such expenses. The use of the complainant's automobile shall be compensated at the rate current at the time of the violation for county employees' use

of a private automobile for official business. Expenses shall not be awarded to the extent that they have been reimbursed from another source.

(4) Damages may also be awarded to compensate complainant or respondent for humiliation and embarrassment suffered in an amount determined by the commission panel to be appropriately and reasonably warranted considering all of the circumstances, but in no event shall the amount be in excess of one thousand dollars (\$1,000.00).

(5) In the event an award of damages is made, respondent may be ordered to pay to the complainant interest at the current rate on the loss of the use of any monies arising from the act of discrimination, from the date of the discriminatory act to the date of the commission panel or judicial order, whichever is later.

(l) *Penalty for violation of confidentiality.* Any member of the commission, the executive director or the staff thereof who violates the confidentiality provisions of this section 27-7 shall be subject to punishment for a class A violation as set forth in section 1-19 of chapter 1 of the County Code. (Mont. Co. Code 1965, § 77-7; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 1; 1979 L.M.C., ch. 17, §§ 3, 4; 1983 L.M.C., ch. 22, § 32; 1984 L.M.C., ch. 26, § 6; 1986 L.M.C., ch. 39, § 2.)

Sec. 27-7A. Disclosure of sexual orientation.

None of the provisions of this article permit any person to require another person to disclose a personal sexual orientation,

unless the information is necessary to complete a report required by law. The information gathered for reports is confidential. (1984 L.M.C., ch. 26, § 7A.)

Sec. 27-7B. Marital status.

In this article, an unmarried couple has a marital status of unmarried. (1984 L.M.C., ch. 26, § 7A.)

DIVISION 1. DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION.*

Sec. 27-8. Applicability of division.

This division applies to discriminatory practices in places of public accommodation within the territorial limits of the county, and shall apply and be applicable to every place of public accommodation, resort or amusement of any kind in the county whose facilities, accommodations, services, commodities or use are offered to or enjoyed by the general public either with or without charge, and shall include, but not be limited to, the following types of places, among others: All restaurants, soda fountains and other eating or drinking places and all places where food is sold for consumption either on or off the premises; all inns, hotels and motels, whether serving temporary or permanent patrons; all retail stores and service establishments; all hospitals and clinics; all motion picture, stage and other theaters and music, concert or meeting halls; all circuses, exhibitions, skating rinks, sports arenas and fields, amusement or recreation parks, picnic grounds, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool rooms and swimming pools; all places of public assembly and entertainment of every kind; but shall not include any accommodations which are in their nature distinctly private, or those accommodations which make distinctions based upon sex including such facilities as private schools, rest rooms, dressing rooms, locker rooms, or other dressing facilities. (Mont. Co. Code 1965, § 77-9; Ord. No. 6-43; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1.)

*State law reference—Discrimination in places of public accommodation, Anno. Code of Md., art. 49B, §§ 11, 11B.

Sec. 27-9. Prohibited acts.

It shall be unlawful for any owner, lessee, operator, manager, agent or employee of any place of public accommodation, resort or amusement within the county:

(a) To make any distinction with respect to any person based on race, color, sex, marital status, religious creed, ancestry, national origin, handicap, or sexual orientation in connection with admission to, service or sales in, or price, quality or use of any facility or service of any place of public accommodation, resort or amusement in the county.

(b) To display, circulate or publicize or cause to be displayed, circulated or publicized, directly or indirectly, any notice, communication or advertisement which states or implies that any facility service, commodity or activity in such place of public accommodation, resort, or amusement will not be made available to any person in full conformity with the requirements of subsection (a) of this section or that the patronage or presence of any person is unwelcome, objectionable, unacceptable or not desired or solicited on account of any person's race, color, sex, marital status, religious creed, ancestry, national origin, handicap, or sexual orientation. (Mont. Co. Code 1965, § 77-10; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1978 L.M.C., ch. 6, § 4; 1984 L.M.C., ch. 26, § 8.)

Sec. 27-10. Penalties.

As a part of its order in a discrimination case, the commission panel may require the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons by the respondent. The commission panel may also order such other affirmative or prospective relief as, in the judgment of the panel, effectuates the purposes of this article or is necessary to eliminate the effects of the discriminatory practice. The commission panel may further grant monetary awards determined by the panel from the evidence of record as the actual damages, costs or losses involved or in such amounts as may be specified below:

(a) If the complainant and/or family are denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodations, complainant may be reimbursed in accordance with the

standards of proof set forth in section 27-26 for all expenses and compensated for all damages resulting from the unlawful discrimination including, but not limited to, the following provisions:

(1) If the complainant has been required to pay prices or charges for the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation in excess of those prices or charges normally levied by respondent, the complainant may be awarded damages not exceeding the excess prices or charges actually paid.

(2) If the complainant is denied the full and equal enjoyment of goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation and the complainant thereby loses an expected financial benefit or is otherwise hindered or damaged in the complainant's trade or occupation, the complainant may be awarded damages as compensation for such losses.

(3) If the complainant and/or family are denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation and the complainant and/or family are inconvenienced thereby, whether it be through the necessity of seeking other nondiscriminating places of public accommodation or otherwise, the complainant may be awarded damages for economic losses in any amount proved by competent evidence.

(b) The payment of those awards as authorized in section 27-7 of this article. (Mont. Co. Code 1965, § 77-11; Ord. No. 6-57; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 3.)

B-11

DIVISION 2. DISCRIMINATION IN REAL ESTATE.*

Sec. 27-11. Definitions.

In this division the following words and phrases have the meanings indicated:

(1) *Commission*: County commission on human relations.

(2) *Dwelling*: Any building, facility or structure or portion thereof which is designed, intended or arranged for use or occupancy as a home, residence or sleeping place of one (1) or more individuals.

(3) *Executive director*: A member of the county executive's staff or the county executive's designee appointed to serve in the executive director's capacity.

(4) *Housing*: Any building, facility or structure or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one (1) or more individuals, groups or families and any vacant land offered for sale or lease for the construction or location thereon of such building, facility or structure.

(5) *Lending institution*: Any bank, insurance company, savings and loan association or any other person or organization regularly engaged in the business of lending money or guaranteeing loans.

(6) *Person*: One (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

*Editor's note—Section 1 of 1988 L.M.C., ch. 4, changed the title of this division from "Discrimination in Housing" to "Discrimination in Real Estate."

A prior fair housing law was held invalid because it was not adopted by the council while meeting in legislative session in *Scull v. Montgomery Citizens League*, 249 Md. 271, 239 A.2d 92 (1968).

A fair housing ordinance was held to be within the legislative powers of the council in *Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 252 A.2d 242 (1969).

Cross reference—Recording of racial, etc., covenants, § 12-20.

State law reference—Housing discrimination, Anno. Code of Md., art. 49B, § 23.

(7) *Real estate*: Any interest in land or anything permanently attached to land. "Real estate" includes residential and commercial property.

(8) *Commercial real estate*: Any real estate used for business, industrial, agricultural or mixed-use purposes.

(9) *Real estate broker*: Any person duly licensed as a real estate broker in accordance with the provisions of article 56, Annotated Code of Maryland, 1957.

(10) *Real estate salesperson*: Any person duly licensed as a real estate salesman in accordance with the provisions of article 56, Annotated Code of Maryland, 1957.

(11) *Source of income*: Any lawful source of money, paid directly or indirectly to a renter or buyer of housing, including:

(A) any lawful profession or occupation;

(B) any government or private assistance, grant or loan program;

(C) any gift, inheritance, pension, annuity, alimony, child support, or other compensation or benefit; or

(D) any sale or pledge of any property or interest in property.

(Mont. Co. Code 1965, § 77-12; Ord. No. 6-57; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 5; 1984 L.M.C., ch. 26, § 9; 1988 L.M.C., ch. 4, § 1; CY 1991 L.M.C., ch. 3, § 1.)

*Subdivision A. Discrimination in Housing**

Sec. 27-12. Unlawful practices.

It is an unlawful housing practice and a violation of this division:

(a) For any person, real estate broker, or real estate salesperson:

(1) To refuse to sell, lease, sublease, rent, assign, or otherwise transfer, or to refuse to negotiate for the sale, lease, sublease, rental, assignment, or other transfer of the title, leasehold

*Editor's note—Section 1 of 1988 L.M.C., ch. 4, designated §§ 27-12–27-15 as subdivision A.

Cross references—Coordination of fair housing activities by department of housing and community development, § 2-27B; interagency fair housing coordinating group, § 2-27C.

or other interest in any housing or to represent that housing is not available for inspection, sale, lease, sublease, rental, assignment, or other transfer when in fact it is so available, or otherwise to deny or withhold any housing from any person because of race, color, religious creed, ancestry, national origin, sex, marital status, handicap, presence of children, source of income, sexual orientation, or age.

(2) To include in the terms, conditions, or privileges of any sale, lease, sublease, rental, assignment, or other transfer of any housing, any clause, condition, or restriction discriminating against any person in the use or occupancy of such housing because of race, color, religious creed, ancestry, national origin, sex, marital status, handicap, presence of children, source of income, sexual orientation, or age.

(3) To discriminate in the furnishing of any facilities, repairs, improvements, or services, or in the terms, conditions, privileges, or tenure of occupancy of any person because of race, color, religious creed, ancestry, national origin, sex, marital status, handicap, presence of children, source of income, sexual orientation, or age.

(b) For any lending institution to discriminate in lending money, guaranteeing loans, accepting a deed of trust or mortgage, or otherwise making available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair, or maintenance of any housing or to discriminate in the fixing of the rates, terms, conditions, or provisions of any such financial assistance, or in the extension of service in connection therewith because of race, color, religious creed, ancestry, national origin, sex, marital status, handicap, presence of children, source of income, sexual orientation, or age.

(c) For any person with respect to any prohibited act specified in subsection (a) or (b) relating to any housing, to publish or circulate, or to cause to be published or circulated, any notice, statement, listing, or advertisement, or to announce a policy, or to use any form of application for the purchase, lease, rental, or financing of any housing, or to make any record or formal business inquiry in connection with the prospective purchase, lease, rental, or financing of any housing which indicates reliance, determination, or decision based on race, color, religious creed, ancestry, national origin, sex, marital status, handicap, presence of

children, source of income, sexual orientation, or age. However, this must not preclude the use of a logo or other means of advertising to advise handicapped persons that the property is suitable or adapted to use by handicapped persons.

(d) For any person to assist in, compel, or coerce the doing of any act declared to be an unlawful housing practice under this division, to obstruct or prevent enforcement or compliance with the provisions of this division, or to attempt directly or indirectly to commit any act declared by this division to be an unlawful housing practice.

(e) For any person:

(1) To induce or attempt to induce any person to transfer an interest in any housing by representations regarding the existing or potential proximity of real property owned, used, or occupied by any person of any particular race, color, religious creed, ancestry, national origin, handicap, presence of children, source of income, sexual orientation, or age, by direct or indirect methods.

(2) To promote, induce, influence, or attempt to promote, induce, or influence by the use of postal cards, letters, circulars, telephone, visitation, or any other means, directly or indirectly, a property owner, occupant, or tenant to list for sale, sell, remove from, lease, assign, transfer, or otherwise dispose of any housing having the effect of inciting neighborhood unrest, community tension, or fear of racial, color, religious, nationality, or ethnic change in any street, block, neighborhood, or any other area by referring to the race, color, religious creed, ancestry, national origin, handicap, presence of children, source of income, sexual orientation, or age of actual or anticipated neighbors, tenants, or other prospective buyers or occupants of any housing.

(3) To cause to be made any untrue or intentionally misleading statement, advertise, or in any other manner attempt to incite neighborhood unrest, community tension, or fear of racial, color, religious, age, nationality, or ethnic change in any street, block, neighborhood, or any other area to obtain a listing of any housing for sale, rental, assignment, transfer, or other disposition where such statement, advertising, or other representation is false or materially misleading or where there is insufficient basis to judge its truth or falsity to warrant making the statement, or to make any other material misrepresentations in order to obtain

such listing, sale, removal from, lease, assignment, transfer, or other disposition of such housing.

(4) To make any representation to any prospective purchaser or lessee that any housing in a particular block, neighborhood, or area may undergo, is undergoing, or has undergone a change with respect to racial, color, religious, nationality, presence of children, source of income, handicap, sex, sexual orientation, age, or ethnic composition of such block, neighborhood, or area.

(5) To place a sign or display any other device either purporting to offer for sale, leasing, assignment, transfer, or other disposition, or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer, or otherwise dispose of any housing that is not in fact available or offered for sale, lease, assignment, transfer, or other disposition.

(6) To induce or attempt to induce the sale or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, color, religious creed, ancestry, national origin, handicap, presence of children, source of income, sexual orientation, or age in the area will or may result in:

(A) The lowering of property values;

(B) A change in the racial, color, religious, age, nationality or ethnic composition of the block, neighborhood, or area in which the property is located;

(C) An increase in criminal or antisocial behavior in the area; or

(D) A decline in quality of the schools serving the area.

(f) For any person to cause or coerce, or attempt to cause or coerce, retaliation against any person because such person has lawfully opposed any act or failure to act that is a violation of this division or has, in good faith, filed a complaint, testified, participated, or assisted in any way in any proceeding under this subtitle, or prevent any person from complying with this division.

(g) For any person, real estate broker, or real estate salesperson to deny any other person or real estate broker or real estate salesperson access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of buying, selling, or renting housing in the county, or to discrimi-

nate against that person in the terms or conditions of such access, membership, or participation on account of race, color, religious creed, national origin, sex, marital status, ancestry, handicap, presence of children, source of income, sexual orientation, or age. (1968 L.M.C., Ex. Sess., ch. 19, § 1; 1977 L.M.C., ch. 30, § 6; 1978 L.M.C., ch. 6, § 5; 1984 L.M.C., ch. 26, § 10; 1988 L.M.C., ch. 4, § 1; CY 1991 L.M.C., ch. 3, § 1.)

Sec. 27-13. Posting of notices; reports to be filed.

(a) A notice prepared by the commission, that summarizes this division and tells how to file a complaint, must be posted by:

(1) Each real estate broker and lending institution in a conspicuous place where the terms of a sale or lease of real estate is normally negotiated; and

(2) Each person who operates a multi-unit residential building that contains more than two (2) units in a conspicuous place where the rental of a rooming unit is normally negotiated.

(b) Every real estate broker, every real estate salesperson, and every person who owns or manages any building containing two (2) or more rental units must submit to the commission, at the time and in a manner to be prescribed in regulations by the commission after notice and public hearing, such reports relating to housing under their control as the commission deems necessary to effectuate the purposes of this division. Failure to file such reports and the furnishing of false information is a violation of this division and subject to the enforcement provisions of subsection (h) or (i) of section 27-7. The identity of persons and housing contained in reports submitted under this section must be confidential and subject to the penalty provision of subsection (l) of section 27-7.

(c) Every person subject to the provisions of subsection (b) must also prepare and retain for a period of one hundred twenty (120) days from the date of submission to them all applications made for rental of housing and prepare and retain such other records, prescribed in regulations by the commission, as the commission deems necessary for the filing of reports under subsection (b).

(d) Any violation of this section is a class A violation. Each month that a violation continues to exist constitutes a separate

offense. The human relations commission is responsible for enforcing this section. (1968 L.M.C., Ex. Sess., ch. 19, § 1; 1974 L.M.C., ch. 19, § 2; 1977 L.M.C., ch. 30, § 6; 1978 L.M.C., ch. 6, § 6; 1984 L.M.C., ch. 26, § 11; 1988 L.M.C., ch. 4, § 1.)

Sec. 27-14. Penalties and monetary awards.

(a) Upon a finding that a violation of this division has been committed, a commission panel may order, if appropriate, the sale or rental of the real estate sought by the aggrieved person or a like unit of real estate.

(b) The commission panel may also make the following monetary awards determined by the panel from the evidence of record in accordance with the standards of proof set forth in section 27-26 as the actual damages, costs, or losses involved or in such amounts as may be specified below:

(1) If the complainant or the complainant's family must pay an increased rental for similar real estate, the complainant may be awarded damages not exceeding the excess rent actually paid during the period of violation, or during the period which the complainant is obligated by lease to pay to a third party, whichever is greater. However, the damages awarded must be limited to a maximum period of two (2) years. If similar real estate is unavailable, the damages must be that amount determined as a reasonable alternative by the panel, but in no event may the amount exceed the actual difference between the rent of the real estate denied and the real estate subsequently rented by the complainant.

(2) If the complainant must pay a purchase price for real estate in excess of prices contemporaneously paid for similar real estate in the same or similar area or neighborhood by persons not unlawfully discriminated against, the complainant may be awarded damages not exceeding the excess price actually paid.

(3) If an offer of the complainant to purchase real estate is unlawfully rejected by respondent for an equal or lower offer from another purchaser, then the complainant may be awarded damages not exceeding the difference between the offer and the actual cost to complainant for similar alternative real estate.

(4) If the complainant has been prevented from making an offer to purchase real estate, then the complainant may be awarded

damages not exceeding the difference between the intended offer and the actual cost to complainant for similar alternative real estate.

(5) If the complainant or the complainant's family must move all or part of their personal or business property, or store said personal or business property, or secure temporary quarters for the family or business, the complainant may be awarded damages not exceeding moving and storage expenses for temporary quarters.

(6) If the complainant must obtain financing at a higher rate of interest, the maximum amount of damages on this cost is the present worth of the increased interest cost to the complainant.

(7) Other economic losses proven in accordance with the standards set forth in section 27-26.

(8) The payment of those awards provided in section 27-7. (1972 L.M.C., ch. 23, § 1; 1974 L.M.C., ch. 19, § 3; 1977 L.M.C., ch. 30, § 6; 1988 L.M.C., ch. 4, § 1.)

Sec. 27-15. Limitations upon applicability of division.

(a) This division does not apply to:

(1) The rental or leasing of a part of a dwelling in which the owner is residing; provided, that the dwelling must continue to be used by the owner thereof as a bona fide residence for himself or herself and any member of his or her family; provided further, that the dwelling does not contain more than two (2) rental or leasing units.

(2) The rental or leasing of a dwelling by any religious corporation, association, or society to a person of a particular religion whose rental or leasing therein is connected with the carrying on by such corporation, association, or society of its purely religious activities.

(b) The prohibitions in this division against discriminating on account of age or the presence of children do not apply to:

(1) Housing facilities for the elderly that are required by federal, state, county, or municipal regulations to restrict occupancy to individuals of a minimum age and other members of their household over the age of eighteen (18) years;

(2) Housing facilities whose declaration, bylaws, charter, or other incorporating documents restrict that housing to occu-

pancy by individuals sixty-two (62) years of age or older and other members of their household over the age of eighteen (18) years;

(3) Retirement communities that are located in a planned retirement community zone as described in section 59-C-7.4 of this Code;

(4) Housing facilities that the human relations commission determines limited the occupants of the housing facility to adults on or before February 5, 1984; and

(5) Housing facilities, subsidized in whole or in part by the county, that provide:

a. Housing for adults and children who are undergoing a transition in their lives because of a change in their family relationships;

b. Child care services;

c. Career guidance; and

d. Counseling services.

(c) The provisions of this division do not require a person to:

(1) Violate or contribute to the violation of laws restricting the occupancy of a dwelling unit to a maximum number of people; or

(2) Enter into a contract with a person under the age of eighteen (18) years.

(d) The prohibitions in this division against discriminating because of source of income do not prohibit:

(1)(A) a commercially reasonable verification of a source and amount of income, or

(B) a commercially reasonable evaluation of the stability, security, and creditworthiness of any source of income; or

(2)(A) the eviction of or refusal to rent to any person because of that person or a family member's drug-related criminal activity or violent criminal activity, or

(B) the refusal to consider income derived from any criminal activity.

(1968 L.M.C., Ex. Sess., ch. 19, § 1; 1972 L.M.C., ch. 23, § 2; 1977 L.M.C., ch. 30, §§ 7, 8; 1984 L.M.C., ch. 26, § 11A; 1988 L.M.C., ch. 4, § 1; CY 1991 L.M.C., ch. 3, § 1.)

Sec. 27-16. Licensing and licensing authorities.

(a) Whenever it appears that the holder of a license or franchise issued by any agency or authority of the state or county is

a person found to be after proper hearing in violation of this division, the commission may take such action it deems advisable or desirable, notwithstanding any other action it may take or may have taken under the authority of this division, and may refer to the proper licensing agency or authority the facts and identities of all persons involved in that finding for such action as the agency or authority in its judgment considers appropriate based upon the facts thus disclosed to it.

(b) Nothing in this division shall be deemed to relieve any agency or authority of the state or county of its obligation to take immediate and independent action regarding a matter filed with it that also may be the subject of a complaint filed with the commission.

(c) When a complaint is filed against a person licensed by the real estate commission of Maryland and the executive director shall find that reasonable grounds exist to believe the law has been violated, the executive director shall transmit promptly a copy of his or her findings and the complaint to the real estate commission of Maryland for such action as the commission, in its judgment, considers appropriate. The executive director shall promptly forward to the real estate commission the final disposition of complaints previously forwarded to the commission. (1968 L.M.C., Ex. Sess., ch. 19, § 1; 1977 L.M.C., ch. 30, §§ 7, 8; 1984 L.M.C., ch. 26, § 12.)

B-16

Subdivision B. Discrimination In Commercial Real Estate

Sec. 27-16A. Unlawful practices.

It is an unlawful practice and a violation of this division:

(a) For any person, real estate broker, or real estate salesperson, because of race, color, religious creed, ancestry, national origin, sex, marital status, handicap, presence of children, sexual orientation, or age, to:

(1) Refuse to see, lease, sublease, rent, assign, or otherwise transfer, or refuse to negotiate for the sale, lease, sublease, rental, assignment, or other transfer of commercial real estate, or represent that commercial real estate is not available for inspection, sale, lease, sublease, rental, assignment, or other transfer when in fact it is so available, or otherwise deny or withhold commercial real estate from any person.

(2) Include in the terms, conditions, or privileges of any sale, lease, sublease, rental, assignment, or other transfer of commercial real estate any clause, condition, or restriction discriminating against any person in the use or occupancy of such real estate.

(3) Discriminate in the furnishing of any facilities, repairs, improvements, or services, or in the terms, conditions, privileges, or tenure of occupancy.

(b) For any lending institution, because of race, color, religious creed, ancestry, national origin, sex, marital status, handicap, presence of children, sexual orientation, or age, to:

(1) Discriminate in lending money, guaranteeing loans, accepting a deed of trust or mortgage, or otherwise making available funds to acquire, construct, alter, rehabilitate, repair, or maintain commercial real estate.

(2) Discriminate in fixing the rates, terms, conditions, or provisions of any such financial assistance, or in extending service in connection therewith.

(c) For any person, real estate broker, or real estate salesperson, with respect to any act prohibited in subsection (a) or (b), to publish or circulate, or to cause to be published or circulated, any notice, statement, listing, or advertisement, or to announce a policy, or to use any form of application for the purchase, lease, rental, or financing of commercial real estate, or to make any record or business inquiry in connection with the prospective

purchase, lease, rental, or financing of commercial real estate which indicates reliance on or a decision based on race, color, religious creed, ancestry, national origin, sex, marital status, handicap, presence of children, sexual orientation, or age. However, this subsection does not preclude the use of a logo or other means of advertising to advise handicapped persons that any commercial real estate is suitable or adapted to use by handicapped persons.

(d) For any person to assist in, compel, or coerce the doing of any unlawful practice under this subdivision, to obstruct or prevent enforcement or compliance with this subdivision, or to attempt directly or indirectly to commit any unlawful practice.

(e) For any person, real estate broker, or real estate salesperson, to:

(1) Induce or attempt to induce, by direct or indirect methods, any person to transfer commercial real estate by representations regarding the existing or potential proximity of real estate owned, used, or occupied by any person of any particular race, color, religious creed, ancestry, national origin, sex, marital status, handicap, presence of children, sexual orientation, or age.

(2) Represent to any prospective purchaser or lessee that any commercial real estate in a particular area may undergo, is undergoing, or has undergone a change with respect to racial, color, religious creed, ancestry, nationality, marital status, handicap, presence of children, sex, sexual orientation, ethnic composition, or age of occupants of such area.

(3) Place a sign or display any other device either purporting to offer for sale, lease, assignment, transfer, or other disposition, or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer, or otherwise dispose of any commercial real estate that is not in fact available or offered for sale, lease, assignment, transfer, or other disposition, because of race, color, religious creed, ancestry, national origin, sex, marital status, handicap, presence of children, sexual orientation, or age.

(f) For any person, real estate broker, or real estate salesperson to cause or coerce, or attempt to cause or coerce, retaliation against any person because such person has lawfully opposed any act or failure to act that is a violation of this division or has, in good faith, filed a complaint, testified, participated, or

assisted in any way in any proceeding under this subdivision, or prevented any person from complying with this division.

(g) For any person, real estate broker, or real estate salesperson to deny any other person or real estate broker or real estate salesperson access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of buying, selling, or renting commercial real estate, or to discriminate against that person in the terms or conditions of such access, membership, or participation because of race, color, religious creed, national origin, sex, marital status, ancestry, handicap, presence of children, sexual orientation, or age. (1988 L.M.C., ch. 4, § 2.)

Sec. 27-16B. Exemptions.

(a) Section 27-16A does not apply to religious institutions or organizations or charitable or educational organizations operated, supervised, or controlled by religious institutions or organizations which give preference to members of the same religion in a real estate transaction, as long as membership in such religion is not restricted by race, color, sex, or national origin.

(b) In the case of age, the following is not an unlawful practice:

(1) Inquiring about a person's age to determine a pertinent element of credit-worthiness;

(2) Using empirically derived credit systems that consider age if such systems are based on statistically sound data;

(3) Offering credit life insurance or credit disability insurance, in conjunction with any mortgage loan, to a limited age group;

(4) Refusing to grant a mortgage loan to a person under the age of eighteen (18) years. (1988 L.M.C., ch. 4, § 2.)

Sec. 27-16C. Enforcement.

(a) If the executive director, with respect to a violation of this subdivision, (1) fails to conciliate a complaint after the parties have, in good faith, attempted such conciliation, or (2) fails to effect an assurance of discontinuance or settlement agreement, or (3) determines that a complaint is not susceptible of conciliation, in addition to the authority provided in section 27-7, the

executive director may (1) transmit the matter to the county attorney for appropriate legal action, or (2) advise the complainant of the complainant's right to initiate appropriate legal action.

(b) Nothing in this subdivision prevents any person from exercising any right or seeking any remedy to which that person is otherwise entitled, or from filing any complaint with any other agency or court. If an action involving the same parties is pending before any other agency or court, the commission must advise the complainant to incorporate the allegations of the complaint in the previous action where appropriate.

(c) Any person discriminated against under section 27-16A may initiate a civil action in any court of appropriate jurisdiction. (1988 L.M.C., ch. 4, § 2.)

DIVISION 3. DISCRIMINATION IN EMPLOYMENT.

Sec. 27-17. Declaration of policy.

The council finds that discrimination in employment because of race, color, religious creed, ancestry, national origin, age, sex, marital status, handicap, or sexual orientation adversely affects the health, welfare, peace and safety of the community. Persons subject to such discrimination suffer unemployment and under employment resulting in low family income, overcrowded housing, poor health conditions, antisocial behavior, poverty, and lack of hope, injuring the public welfare, placing a burden upon the public treasury to ameliorate the conditions thus produced and creating conditions which endanger the public peace and order. The public policy of Montgomery County is declared to be to foster equal employment opportunity for all without regard to race, color, religious creed, ancestry, national origin, sex, marital status, age, handicap, or sexual orientation and strictly in accord with their individual merits as human beings. (1974 L.M.C., ch. 9, § 1; 1977 L.M.C., ch. 30, § 9; 1978 L.M.C., ch. 6, § 7; 1984 L.M.C., ch. 26, § 13.)

Sec. 27-18. Definitions.

As used this division, the following words and phrases shall be defined as follows:

(a) *Person* includes one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal rep-

representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries and their officers and agents.

(b) *Employer* includes any person, whenever situated, who employs more than six (6) employees within the county, either for compensation or on a volunteer basis, or who recruits individuals within the county to apply for employment within the county or elsewhere; the term shall include Montgomery County and its instrumentalities and agencies.

(c) *Employment agency* includes any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer.

(d) *Labor organization* includes any organization, agency, employee representation committee, group, association or plan in which employees participate directly or indirectly and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms, conditions or privileges of employment and any agent thereof, and any conference, general committee, joint or system board or joint council which is subordinate to a national or international labor organization.

(e) *Employee* includes any individual employed by an employer, either for compensation or on a volunteer basis and any person seeking or applying for employment.

(f) *Religious creed* includes all aspects of religious observances and practices, as well as belief.

(g) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of, or on the basis of pregnancy, childbirth or related medical conditions. (1974 L.M.C., ch. 9, § 1; 1975 L.M.C., ch. 18, § 1; 1977 L.M.C., ch. 30, § 9; 1979 L.M.C., ch. 52, § 1; 1984 L.M.C., ch. 26, § 27-18.)

Sec. 27-19. Unlawful employment practices.

(a) It shall be an unlawful employment practice to do any of the following acts because of the race, color, religious creed, ancestry, national origin, age, sex, marital status, handicap, or sexual orientation of any individual or because of any reason that would not have been asserted but for the race, color, reli-

gious creed, ancestry, national origin, age, sex, marital status, handicap, or sexual orientation of the individual:

(1) For an employer:

a. To fail or refuse to hire or fail to accept the services of or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment.

b. To limit, segregate, or classify employees in any way which would deprive or tend to affect adversely any individual's employment opportunities or status as an employee.

(2) For an employment agency to fail or refuse to refer for employment, to assign job classifications to, or to classify or refer for employment, or otherwise to discriminate against, any individual.

(3) For a labor organization:

a. To exclude or to expel from its membership or otherwise to discriminate against any individual.

b. To limit, segregate, or classify its membership or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of equal employment opportunities, or would affect adversely the individual's employment opportunities or status as an employee, or as an applicant for employment.

c. To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(4) For any employer, labor organization or joint labor-management committee controlling apprenticeship or other training programs to discriminate against any individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(b) It shall be a violation of this division for any person to cause or coerce or attempt to cause or coerce, directly or indirectly, retaliate against any person because such person has lawfully opposed any act or failure to act that is a violation of this division or has, in good faith, filed a complaint, testified, participated or assisted in any way in any proceeding or investigation under this division or to prevent any person from complying with this division. It shall also be a violation of this division for any person to assist in, compel or coerce the doing of any act declared to be an unlawful employment practice under this division, or to obstruct or prevent enforcement or compliance with the provisions of this

division, or to attempt directly or indirectly to commit any act declared by this division to be unlawful employment practice.

(c) It shall be a violation of this division for any person, employer, labor organization or employment agency to print or publish or cause to be printed or published, any notice or advertisement relating to employment by such employer, or membership in or any classification or referral for employment by such labor organization, or relating to any classification or referral for employment by such employment agency, indicating any preference, limitation or specification based on race, color, religious creed, ancestry, national origin, age, sex, marital status, handicap, or sexual orientation except that such a notice or advertisement may indicate a preference, limitation or specification which is a bona fide occupational qualification for employment reasonably necessary to the normal operation of the particular business or enterprise.

(d) Notwithstanding any other provision of this division, it shall not be an unlawful employment practice:

(1) For an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs, to admit or employ any individual in any such program, on the basis of race, color, religious creed, age, sex, marital status, national origin, ancestry, handicap, or sexual orientation in those certain instances where such basis is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

(2) For a religious corporation, association or society to hire and employ employees of a particular religion to perform purely religious functions;

(3) For an employer to deny employment on the basis of religious creed in those cases when the observance, practice or belief cannot be reasonably accommodated by an employer without causing undue hardship on the conduct of the employer's business; and

(4) For an employer to deny employment on the basis of advocacy of homosexuality or bisexuality, in those cases when

the scope of employment requires the employee to work with minors of the same gender.

(e) Notwithstanding any other provision of this division, it shall not be unlawful for any employer to observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as retirement, pension or insurance plan, which is not a subterfuge to evade the provisions and purposes of this division, except that no such employee benefit plan shall excuse an employer's failure to hire any qualified person.

(f) The provisions of this division that prohibit discrimination in employment on the basis of sexual orientation do not apply to:

(1) Positions of employment that are related to religious activities of an employer if:

a. The employer is:

1. A religious corporation, association, or society;

2. An organization that is affiliated with a religious corporation, association, or society; and

b. The primary purpose of the religious activity is not commercial; and

(2) Any position of employment in a religious school. (1974 L.M.C., ch. 9, § 1; 1974 L.M.C., ch. 34, § 1; 1975 L.M.C., ch. 18, § 2; 1977 L.M.C., ch. 30, § 9; 1978 L.M.C., ch. 6, § 8; 1979 L.M.C., ch. 52, § 2; 1984 L.M.C., ch. 26, § 15.)

Sec. 27-20. Rights of complainant; civil action by county attorney.

(a) Any person who has been subjected to any act of discrimination prohibited under this division shall be deemed to have been denied a civil right and shall be entitled to sue for damages, injunction or other civil relief, including reasonable attorney's fees; provided, however, that no suit shall be commenced until forty-five (45) days after a complaint alleging such an act of discrimination has been filed with the commission; and provided further, that if any proceedings with respect to such complaint are still pending before the executive secretary of the commission, the court may, in its discretion, stay proceedings before it for not more than sixty (60) days pending resolution of the complaint. In addition to any judicial enforcement provided elsewhere in this division, in any case in which the commission panel de-

Supp. No. 1

termines that the person complained against has violated this division, the commission panel may certify the matter to the county attorney to seek any available state or federal judicial relief in any court of competent jurisdiction on behalf of the person subjected to such violation and, where appropriate, on behalf of residents of the county similarly situated.

(b) In any case in which an employer, employment agency or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (a) of this section, the county attorney may commence proceedings to compel compliance with such order.

(c) Whenever the county attorney has reasonable cause to believe that any person is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this division, the county attorney may originate a civil action in the appropriate court by signing and filing with that court a complaint setting forth facts pertaining to such pattern or practice, and requesting back pay or such other relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as are deemed necessary to insure the full enjoyment of the rights herein described. (1968 L.M.C., Ex. Sess., ch. 19, § 1; 1972 L.M.C., ch. 23, § 6; 1977 L.M.C., ch. 30, §§ 7, 11.)

Sec. 27-21. Procedure for complaints against county.

(a) In any case in which the county or any of its instrumentalities or agencies is alleged to be in violation of any of the provisions of this division, a complaint may be filed with the commission as hereafter provided or, at the sole discretion of the aggrieved party, directly with a court of competent jurisdiction. Any merit system employee who elects to file a complaint under this section shall not be entitled to a duplicative merit system grievance review and shall be, therefore, deemed to have waived the right to have the same matter reviewed by the merit system protection board as may be otherwise provided by law or regulation.

(b) The complaint shall be processed in accordance with the procedures contained in section 27-7. In addition to other remedies authorized by law, the commission shall have authority upon completion of its process to forward to the chief administra-

Supp. No. 1

tive officer an order requiring the county to grant to the employee such relief as the commission deems appropriate and within its authority to order against private employers. The chief administrative officer, subject to any ensuing judicial review, shall implement the order. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11; 1979 L.M.C., ch. 24, § 3; 1982 L.M.C., ch. 40, § 1.)

Sec. 27-22. Notice to be posted; reports and records.

(a) Every employer, employment agency and labor organization shall post and keep posted in conspicuous places upon its premises, where notices to employees, applicants for employment and members are customarily posted, a notice in such form and language as shall be approved by the commission, setting forth, in summary, the pertinent provisions of this division, and information pertinent to the filing of a complaint.

(b) Every employer, employment agency and labor organization, subject both to this division and to title VII of the Civil Rights Act of 1964, shall furnish to the commission all reports that may be required by the equal employment opportunity commission established under the Civil Rights Act of 1964.

(c) Every employer, employment agency and labor organization subject to this division shall preserve all regularly kept personnel or employment records (including, but not necessarily limited to, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination rates of pay or other terms of compensation and selection for training or apprenticeship) for the term of the employee's employment and a period of six (6) months following termination of employment. Where a charge of discrimination has been filed against an employer, employment agency or labor organization under this division, the respondent shall preserve all personnel records, including employment applications, relevant to the charge or action until final disposition of such charge or action. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11.)

Sec. 27-23. Reports and records of person being investigated, etc.

In connection with any investigation of a complaint filed under this division, the commission's executive director or a duly designated representative may request such reports and perti-

nent records of any person being investigated or proceeded against that may relate to unlawful employment practices covered by this division and is relevant to matters raised in the complaint or is relevant to matters like or related to those raised in the complaint, and shall have the right to interview such persons as may be deemed necessary in carrying out the purposes of this division. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11; 1984 L.M.C., ch. 26, § 16.)

Sec. 27-24. Action against licensees, etc., found in violation of division.

(a) Wherever it appears that the holder of a license or franchise issued by any agency or authority of the state or county is a person found to be, after proper hearing, in violation of this division, the commission may take such action it deems advisable or desirable, notwithstanding any other action it may take or may have taken under the authority of this division, and may refer to the proper licensing agency or authority the facts and identities of all persons involved in that finding for such action as the agency or authority in its judgment considers appropriate based upon the facts thus disclosed to it.

(b) When a person doing business under contract with an agency or authority of the county or the state has been found, after proper hearing, to be in violation of this division, the commission may transmit a copy of the findings and the complaint to the appropriate agency or authority for such action as it considers appropriate. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11.)

Sec. 27-25. Penalties and monetary awards.

Upon a finding by the commission panel that there has been a violation of this division, it may order, in its discretion, and if appropriate, the hiring, reinstatement or upgrading of employees, with or without back pay; admission or restoration to membership in any respondent professional associations or labor organizations; or admission to and participation in a program, apprenticeship training program, on-the-job training program or other occupational training or retraining program. The commission panel may also order such other affirmative or prospective

relief as, in the judgment of the panel, effectuates the purposes of this division or is necessary to eliminate the effects of the discriminatory practice. The commission panel may in accordance with the standards of proof set forth in section 27-26 also make the following monetary awards determined by the commission panel from evidence of record as the actual damages, costs or losses involved or in such amounts as may be specified below:

(a) The complainant may be awarded damages not exceeding all income that would have been received from an employer or any other source of income, whether or not that employer or source of income is a respondent hereunder. Included therein shall be income for overtime work that would have been available to the complainant under normal work conditions and work routine, on an estimated basis, during the period of violation. This category shall also include the monetary equivalent of all sick leave, annual leave, retirement benefits, annuities, health benefits and every other normal and usual employee benefit, lost during the period of violation; provided, however, back pay liability shall not accrue from a date more than two (2) years prior to the filing of a charge with the commission. Interim earnings, unemployment compensation and/or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(b) Should the complainant be denied employment and necessarily incur expenses in order to secure other employment, including, but not limited to employment agency fees, training fees, certification fees and the cost of uniforms or other equipment necessary for new employment, the complainant may be awarded damages not exceeding such expenses. If the complainant is denied employment and thereafter loses the benefit of expenses incurred in anticipation of gaining said employment, the complainant may be awarded damages equal to such expenses, including but not limited to employment agency fees, training fees, certification fees, cost of uniforms or other equipment necessary for the employment.

(c) The payment of those awards provided in section 27-7 of this article.

(d) No award or penalty shall permit or require the fashioning of any remedy requiring any sort of quota for the activity wherein such discrimination is founded upon any particular sex-

ual orientation. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11; 1984 L.M.C., ch. 26, § 17.)

Sec. 27-26. Standards of proof.

(a) An award of compensatory damages or attorney's fees pursuant to this division shall be made only upon written petition or written amendment thereof of the complainant, whether it be made prior to or during the hearing, specifying the type and amount of damages claimed.

(b) Any award made for expenses compensable under this division shall be made only upon the production of documentary evidence of such expenses, including but not limited to bills, receipts, canceled checks and invoices; provided, however, if such documentation cannot reasonably be produced, an award may be made upon reasonable and credible testimony and evidence.

(c) Any award made for damages compensable under all other sections of this division shall be made only upon reasonable and competent evidence that the damages resulted from the respondent's unlawful discriminatory acts or practices and also will permit the panel to ascertain a reasonable basis for fixing the monetary value of the claimed injury. (1977 L.M.C., ch. 24, § 5; 1977 L.M.C., ch. 30, § 12.)

DIVISION 4. INTIMIDATION*

Sec. 27-26A. Actions subject to civil liability.

Any person who:

(a) participates in burning any cross or other religious symbol (including a simulation of any religious symbol) on any property in the County unless the property owner expressly consents to the burning; or

(b) willfully and maliciously destroys, injures, or defaces another person's real or personal property, or willfully and maliciously injures or harasses another person, or participates in burning any religious symbol (including a simulation of any religious symbol), with the intent to intimidate or attempt to in-

*Editor's note—Section 1 of 1990 L.M.C., ch. 5, changed the title of this division from "Racial and Religious Intimidation" to "Intimidation."

timidate any person because of race, religion, national origin, handicap, or sexual orientation is liable under section 27-26B. (1983 L.M.C., ch. 26, § 1; 1990 L.M.C., ch. 5, § 1; 1990 L.M.C., ch. 31, § 1.)

Sec. 27-26B. Statutory civil liability.

A person who commits any act described in Section 27-26A is civilly liable for:

(a) \$2,000 per incident, or a higher amount of actual damages, including damages for humiliation, embarrassment, and emotional distress, to the victim or victims of the act; and

(b) \$1,000 to the County for damage to the peace and the peace of mind of County citizens. (1983 L.M.C., ch. 26, § 1; 1990 L.M.C., ch. 31, § 1.)

Sec. 27-26C. Parental liability.

(a) In any case in which the trier of fact finds that a child has committed any act described in section 27-26A above, a judgment may be entered against the parent, parents or legal guardian of the child, other than a foster parent or public agency, for an amount not to exceed five thousand dollars (\$5,000.00), whether imposed under this or any other law, for all damages arising out of a single incident, including any statutory restitution provided in section 27-26B above. No liability shall be imposed on a parent unless the parent has been afforded a reasonable opportunity to be heard and to present appropriate evidence in his behalf.

(b) The liability provided for in subsection (a) above may be imposed upon the child himself, depending upon his age and circumstances, in which case the child's liability shall precede the liability of the parent. (1983 L.M.C., ch. 26, § 1.)

Sec. 27-26D. Alternative service; anti-hate/violence fund.

(a) Any civil monetary liability to Montgomery County imposed pursuant to this division, upon a child or an adult, may be paid in kind by the performance of alternative community service, as provided by the county executive by regulation adopted under method (3) of section 2A-15 of this Code.

(b) Any monies received by Montgomery County as restitution under this division shall be deposited to the anti-hate/violence fund created in section 35-13A, and if the anti-hate/violence fund no longer exists, into the general fund. (1983 L.M.C., ch. 26, § 1; 1984 L.M.C., ch. 24, § 30.)

Sec. 27-26E. Enforcement before commission.

Unless a court proceeding involving an alleged violation of section 27-26A has disposed of the issue of civil liability under sections 27-26B through 27-26D, such liability may be decided and statutory civil restitution ordered by a hearing examiner appointed by the commission in an action commenced by (1) the county, or (2) the person claiming the restitution. An action commenced hereunder shall be initiated by the filing of a complaint by either the commission or the person claiming restitution. Prior to the appointment of a hearing examiner, the matter shall be investigated pursuant to section 27-7 of this chapter. In the event the matter goes to hearing the adjudication shall be conducted, pursuant to chapter 2A, by the hearing examiner appointed by the commission. Any judicial adjudication that an act described in section 27-26A or comparable state law has been committed shall operate as *res judicata* in a proceeding brought under this section involving the same acts. (1983 L.M.C., ch. 26, § 1; 1984 L.M.C., ch. 26, § 18.)

Sec. 27-26F. Partnership Fund for victims of hate/violence.

(a) *Fund established.*

(1) There is a Partnership Fund for victims of hate/violence.

(2) The Fund is created to help victims of hate/violence to repair or replace the victim's property damaged by the hate/violence incident.

(3) The Commission on Human Relations must define what conduct is an act of hate/violence.

(4) The County Executive must determine who will administer the Partnership Fund.

(b) *Board established.*

(1) The Partnership Board has 7 members from the private sector appointed by the County Executive and confirmed by the County Council.

ARTICLE IX. COMMITTEE ON HATE/VIOLENCE.

§ 27-26F

MONTGOMERY COUNTY CODE

(2) Each member is appointed for 3 years. At the end of a term, a member continues to serve until a successor is appointed.

(3) A member of the Partnership Board is not paid for their service.

(c) *Contributions.*

(1) The Fund may accept private contributions. The Board should solicit private contributions to the Fund. The Board may spend up to 10% of the Fund to publicize the Fund and solicit private contributions.

(2) The County must contribute \$25,000 per year to the Fund to the extent that funds are appropriated.

(3) The County government must also contribute \$2 for every \$1 of private contributions to the Fund, up to an additional \$30,000 per a year, to the extent that funds are appropriated.

(d) *Victim compensation.*

(1) The Board may pay a victim of hate/violence up to \$2,000 from the Fund to repair or replace the victim's property damaged by the hate/violence incident.

(2) A victim of hate/violence may not receive more than \$5,000 from the Fund in any 12-month period.

(e) *Reduction of compensation.* The Board must reduce any payment from the Fund by any amount the victim receives or is entitled to receive from any private or public source as compensation for damages from the hate/violence incident.

(f) *False claims.* Any person who makes a false claim under this Section:

(1) commits a Class A violation; and

(2) must reimburse the Fund for any payments received under this Section.

(g) *Regulations.* The County Executive may adopt regulations to implement this Section under method (2). (1987 L.M.C., ch. 3, § 1; FY 1991 L.M.C., ch. 2, § 1; FY 1991 L.M.C., ch 9, § 1.)

Sec. 27-63. Committee on Hate/Violence.

(a) *Members.* The County Executive must appoint, subject to confirmation by the County Council, a Committee on Hate/Violence. The Committee consists of 15 voting members and 6 ex-officio nonvoting members. Each voting member must, when appointed, reside in the County.

(1) *Voting members.* The voting members must broadly reflect the geographic, economic, and social diversity of the County.

(A) At least 9 voting members should be identified with ethnic or other groups in the County frequently subject to acts of hate/violence.

(B) At least 2 voting members should be parents of school-age children.

(C) At least one voting member should be identified with the County business community.

(2) *Nonvoting members.* The County Council, County Executive, Department of Police, Human Relations Commission, Montgomery County Public Schools, and Montgomery College, should each designate an ex-officio nonvoting member of the Committee.

(3) *Term.* Each voting member serves a 3-year term. A voting member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified.

(4) *Compensation.* Voting members receive no compensation for their services.

(5) *Removal.* The County Executive, with the consent of the County Council, may remove a voting member for neglect of or inability to perform the duties of the office, misconduct in office, or serious violation of law. Before the Executive removes a member, the Executive must give the member notice of the reason for removal and a fair opportunity to reply. Section 2-148(c) applies only to voting members of the Commission.

(b) *Chair and Vice Chair.* The Committee must annually elect one voting member as chair and another as vice chair, and may elect other officers.

(c) *Meetings.* The Committee meets at the call of the chair as often as required to perform its duties, but at least 10 times each year. The Committee must also meet if a majority of the voting members file a written request for a meeting with the chair at least 7 days before the proposed meeting. A majority of the voting members are a quorum for the transaction of business, and a

majority of the voting members present at any meeting may take any official action.

(d) *Staff.* The Office of the Human Relations Commission must provide the Committee with staff, offices, and supplies as are appropriated for it.

(e) *Duties.* The Committee must:

(1) adopt rules and procedures as necessary to perform its functions;

(2) keep a record of its activities and minutes of all meetings, which must be kept on file and open to the public during business hours upon request;

(3) develop and distribute information about hate/violence in the County;

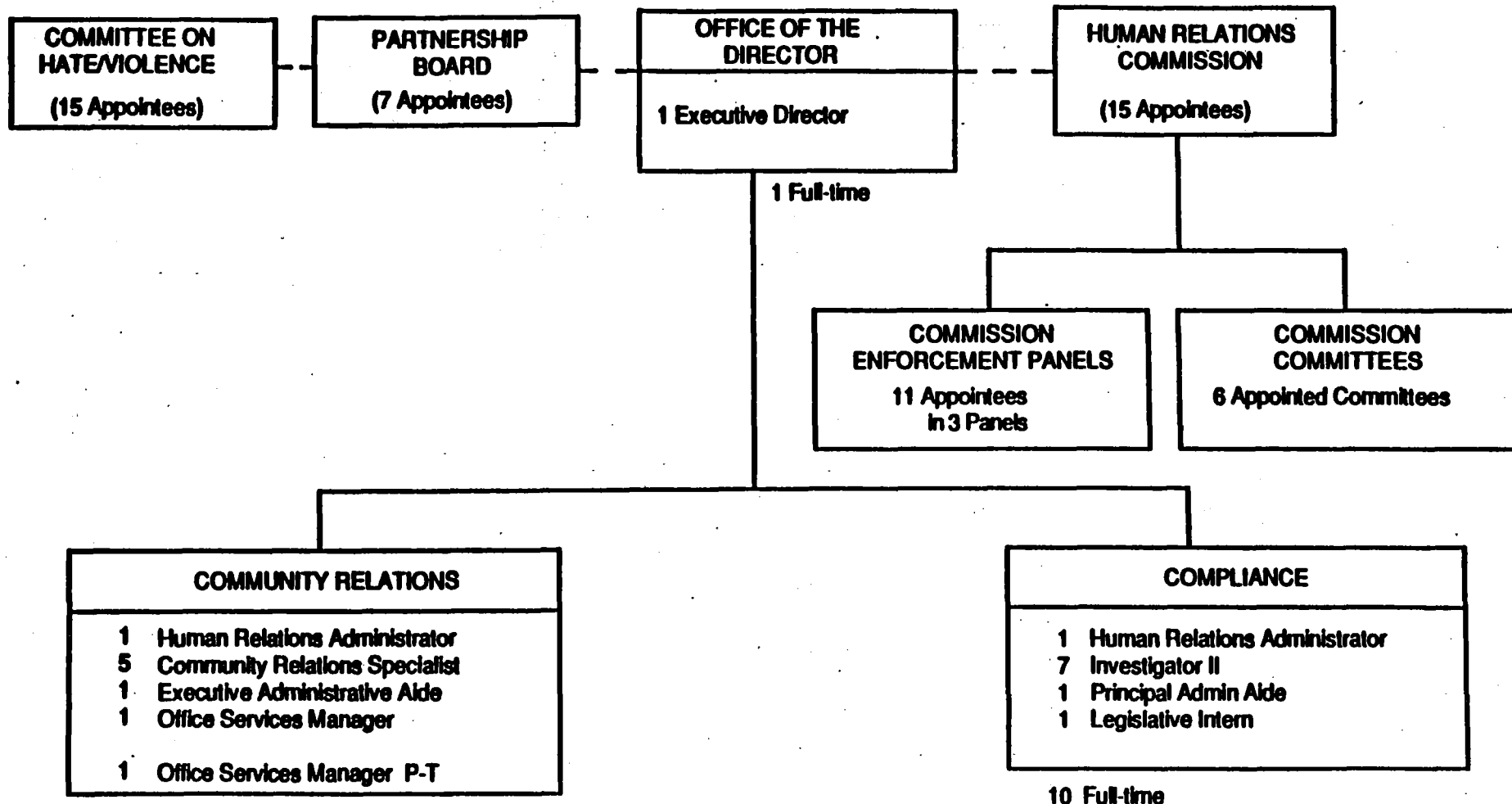
(4) promote educational activities that demonstrate the positive value of ethnic and social diversity in the County;

(5) advise the County Council, the County Executive, and County agencies about hate/violence in the County, and recommend such policies, programs, legislation, or regulations as it finds necessary to reduce the incidence of acts of hate/violence; and

(6) submit an annual report by October 1 to the County Executive and the County Council on the activities of the Committee, including the source and amount of any contribution received from a public or private source to support the activities of the Committee.

(f) *Contributions.* The Committee may solicit and accept contributions from public and private sources to support the activities of the Committee notwithstanding any provision of Chapter 19A to the contrary. Committee staff must not solicit or accept contributions for the Committee, but may be assigned administrative tasks related to Committee fundraising. (CY 1991 L.M.C., ch. 27, § 1.)

HUMAN RELATIONS COMMISSION



8 Full-time
1 Part-time

DEPARTMENTAL SUMMARY

19 Full-time
1 Part-time
19.5 Workyears

10 Full-time

Source: Approved FY94 Personnel Complement

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January 21, 1994

Mr. Andrew Mansinne, Jr.
Director, Office of Legislative Oversight
100 Maryland Avenue
Rockville, MD. 20830

Re: DRAFT OLO Report 94-2, The Montgomery County Human Relations Commission (January 3, 1994)

Dear Mr. Mansinne:

I appreciate your forwarding me a draft of the OLO Report on The Montgomery County Human Relations Commission and soliciting my comments. I have not been involved in the day-to-day operations of the Office of Human Relations and, as you point out, any attempt to supervise the day to day operations by me or my fellow Commissioners would be improper under the Code. Accordingly, the focus of my comments is on the future role of Commission Panels and the continuing symbiotic relationship between the Office of Human Relations Commission (OHRC) and the Commissioners.

I. COMMISSION PANELS.

I have previously circulated to the Commission (and provided OLO) a memorandum on my reasons for concluding that the panel system in the current HRC law needs more substantial changes than recommended in the Draft Report. A copy of my May 19, 1992 memo is attached, and incorporated in this response.

A. Appeal to Commission Panel of "no reasonable grounds finding." The OLO Report recommends that the law on a Commission Panel's authority, when considering an appeal from the Executive Director's "no reasonable cause" finding, be clarified so that the Panel is limited to "either affirming the Director's finding, remanding the case back for further investigation and/or clarification, or directing a hearing to determine whether there is in fact reasonable grounds upon which to base a violation of law." (DR p. 38) The Report does not address what happens if after this initial hearing the Panel concludes this is "reasonable cause." Is another hearing necessary to determine if

Mr. Andrew Mansinne, Jr.

Page 2

January 21, 1994

discrimination in fact occurred? While I agree changes similar to those recommended by OLO should be made, if appeals from a "no reasonable cause" finding are to be retained, I believe that the law should be amended to eliminate such appeals.

The principal reason why I believe the law should be changed in this area is summed up in the statement on page 37 of the Draft Report that "Commission Panels have affirmed the Executive Director in 95 percent of those appeals." It is not clear what happened in the other 5% of the appeals, but I assume they include those cases which the Panel has sent back for further investigation and, perhaps, the two cases in which the Employment Panel has ordered hearings despite the Executive Director finding of "no reasonable cause." Since the Employment Panel still has under consideration these two cases, we do not know their ultimate finding. I am informed, however, that in all the other cases sent back for further review, a finding of "no reasonable cause" was ultimately affirmed.

If we are to continue to provide complainants with an opportunity to appeal a "no cause finding" to a "citizen panel," we at least owe the complainants a "truth in advertising disclosure" that in 95% of the case, the citizen panel has affirmed the Executive Director's conclusion, and further, that even those cases sent back for additional investigation do not result in a modification of the Executive Director's initial finding. Otherwise we are creating, unwittingly perhaps, but nonetheless creating, a false hope in these complainants for which I can see no justification.

In order to decide whether there is a continuing benefit to permitting appeals to a Commission Panel from a "no cause finding" we need to examine what changes have occurred since the law was first adopted and why today 95% of the appeals result in an affirmance of the Executive Director's determination. The following, which I believe are relevant to OLO's inquiry, are not discussed in the OLO Draft Report:

1. When the Commission Panels were first established there was, as the OLO Report relates, no professional staff which could investigate thoroughly the complaint, interview witnesses and make detailed findings of fact. (Maybe the Executive Secretary could do this in a few cases, but certainly not in the majority of complaints.) Moreover, the law required that the Panel make the final decision with respect to all determinations made by the Executive Secretary, not just those in which there was a "no cause" finding.

Mr. Andrew Mansinne, Jr.

Page 3

January 21, 1994

2. Under these circumstances, the record upon which the Executive Secretary based its finding was more manageable, but also less thorough. The Commission Panel, by necessity, had to and was able to explore with the Executive Secretary in considerable detail all the reasons which led to the initial decision, and could suggest additional avenues of investigation. It might not have been as good as system as we have now, but it worked reasonably well as the County, against the active resistance of a number of powerful citizens, began its attempt to eradicate the evils of discrimination. While the battle against discrimination has not been won, at least we are no longer debating whether government should be involved in this effort.

3. Fast forward to 1994. There is now a professional and trained staff consisting of an administrator and seven full time investigators who are responsible for investigating and complying a record on each complaint. While the OLO Report is at times critical of the Compliance Division's control of its caseload, the Report does not contain any suggestion that the staff's work product with respect to individual investigations is in any way deficient. This alone may suggest why there is a 95% percent affirmance rate, -- 100% if the cases which are affirmed after being sent back for further review are included.

4. Given the extent of the staff's investigation prior to the Executive Director's "no cause finding," a Commission Panel reviewing that finding faces significant impediments which are not understood by (or even disclosed to) to the complainant. It is fundamentally unfair to the staff and the respondent (and, for different reasons, see "truth in advertising" analogy above, to complainant) to expect the Panel, based solely on the Executive Director's letter of determination, the complainant's written response and a 30 minute to one hour, informal unstructured hearing, to make a reasoned and rationale judgment about the quality of the staff's investigation. The Panel has not interviewed any witnesses and does not have access to the record the staff has compiled. Thus, the Panel simply does not have enough information to make an informed judgment at variance with the staff's conclusion, which -- unlike the Panel's -- is the result of a through investigation.

5. If we desire to retain appeals from the "no cause finding", the only viable, meaningful alternatives are to make the entire record available to the Panel before the appeal, or to provide both the complainant and respondent with an opportunity to file legal arguments challenging or supporting the staff's conclusions, or probably a combination of both. This of course would result in a de facto hearing and the Council would have to

Mr. Andrew Mansinne, Jr.

Page 4

January 21, 1994

make a judgment that the additional cost to the complainant and the respondent, and to the County in defending the staff's position, is cost effective.

There is an additional, albeit secondary reason, for my questioning the OLO's conclusion that the only minor surgery is necessary with respect to the "no cause appeal." (See pgs 2-5 of my May 19, 1992 memo.) One of the basic findings of the Draft Report is the tension and lack of co-operation which exists between the OHRC and the Commission. The "no cause" appeal, even with the amendments suggested by OLO, is tailor made to strain the relationship between the Commission Panel, whose only function in the "no cause hearing," unless they want to be accused of being a "rubber stamp," is to discover instances in which the staff did not do a through job in investigating the initial complaint, or at least overlooked salient issues which should have been considered.

B. Hearing Panels. While the OLO Draft Report does not recommend abolishing the "reasonable cause" hearing panels, the Report does recommend a substantial restructuring of the hearing process after a "reasonable cause" finding. Specifically, OLO recommends that in case of "reasonable cause" hearing the Commission's options should be to "refer the hearing a hearing examiner ... or to assign the hearing to the appropriate three-member Commission Panel." (DR p. 37)

I disagree with the recommendation that the Commission be permitted to by-pass the hearing examiner and refer the dispute to a three-member commission panel for the de novo hearing. Instead, I would recommend that all hearings be initially referred to a hearing examiner, but that the final decision be rendered by a three-member Commission Panel, based upon the record created by the hearing examiner. I would also authorize the Commission Panel to hear live testimony from any witnesses who appeared before the hearing examiner and whose credibility is judged critical to a determination of the facts in dispute. This modification to OLO's recommendation would result in a procedure for hearing "reasonable cause" cases which is substantially similar to "reasonable cause" procedure adopted by State Human Relations Commission (DR p. 30).

My reasons for suggesting this modification to OLO's recommendation are discussed in my May 19, 1992 memo (which is attached to this letter) (pgs. 6-8) and consist primarily of my own experience in serving on a number of de novo "reasonable cause" hearings, which I thoroughly enjoyed. However, for the reasons set forth in that memo, I have reluctantly concluded a hearing examiner is better positioned to ensure that parties

Mr. Andrew Mansinne, Jr.
Page 5
January 21, 1994

receive a timely and professional hearing. A review by appropriate Commission Panel of the hearing examiner's finding (with the option of hearing live testimony from the principal witnesses) would still "fulfill [the] fundamental tenet of human relations law that adjudicatory and enforcement functions pertaining to alleged acts of discrimination be performed by citizen representatives of the community." (DR p. 37)

The OLO Report does not explain why it has recommended that the law retain the option of permitting a three-member hearing panel from conducting the de novo hearing, and I respectfully suggest that these reasons should be articulated. Among the questions which are not addressed by the Draft Report and which seem to me to be relevant to its conclusion are the following:

1. What deficiencies in the Maryland State Commission procedure did OLO find that led OLO to reject this model?

2. How do the other jurisdictions which were reviewed by OLO deal with "reasonable cause" hearings? What has been their experience with de novo hearings conducted by Commissioners as opposed to a hearing examiner?

3. The OLO Draft Report notes (Table 8) that all six hearings in FY89 - FY93 were referred to the Hearing Examiner. Has OLO interviewed any litigants and counsel involved in any pre-FY89 hearings to ascertain their opinion on the efficiency of such hearings? Have any similar interviews been conducted with the parties involved in the FY89 - FY93 hearings held before the hearing examiner? How do their opinions and experiences compare?

4. The OLO Draft Report also notes that in the current fiscal year, FY94, "two hearings have been (or will be) heard by the Commission Employment Panel." (DR p. 26) While OLO may not want to discuss the hearing process with the parties to these two pending cases, certain aspects of these hearings are a matter of public record. For example:

Case 1: Despite the fact that investigations by both the Executive Director and the Office of Federal Contract Compliance Programs found no reasonable grounds to believe discrimination occurred, the Employment Panel ordered a hearing on June 5, 1992 to determine if reasonable cause was present. The first hearing was held in January, 1993, and the last of nine separate hearings occurred in April 1993. Eleven month after the last hearing, and eighteen months after the Panel initially decided to hold its hearing, the Employment Panel has still not made any findings or conclusions in this case. While the panel

Mr. Andrew Mansinne, Jr.

Page 6

January 21, 1994

members may be volunteering their time, I presume that the parties and/or the County have to pay the costs and expenses, including legal fees, associated with the preparation of, and attendance at, each of the nine hearings, as well as the cost of any post-hearing briefing.

Case 2: This too is a case in which the Executive Director concluded there were no reasonable grounds to believe discrimination occurred. The Employment Panel concluded that there was "reasonable cause" to believe discrimination had occurred and set the case for a hearing on September 25, 1992. The first hearing date is scheduled to take place April 25, 1994, exactly 18 months after the hearing was ordered. Subsequent hearings are tentatively set for the evenings of April 26, 27, and 28.

Case 2 is the matter which gave rise to the County Attorney's September 27, 1993 opinion (DR. P. 27), in which she concluded that a Commission Panel has no authority to overrule the Executive Director and find "reasonable cause." When I last discussed this issue with the Chair of the Employment Panel, he said the Panel did not consider itself bound by this opinion and intended to proceed with the hearings. He also stated that the Panel had not yet decided whether to inform the parties of the County Attorney's conclusions. *(See attached Jan 25th postscript from the writer)*

The delays and additional expenses inflicted on the parties in the above examples undoubtedly stem in large measure from the need to coordinate so many schedules. They also give further credence to the concerns articulated in my May 19, 1992 memo, which led me to conclude that all de novo hearings should be conducted in the first place before the hearing examiner. If the OLO recommendation is adopted, and the Commission is authorized to, and does in fact, refer the fact finding hearings to a Commission Panel, this pattern will inevitably continue. Why does OLO conclude that the interminable process and added expenses evidenced by these most recent experiences should be tolerated in a revised law?

II. THE EEOC MODEL

The Draft Report rejects the Executive Director's proposal that: (i) the symbiotic relationship between OHRC and the Commissioners be broken, (ii) there be created a separate Office of Civil Rights, and (iii) the Commission itself become a separate and independent advisory body to the Executive. (DR p.24, 25, 41). The only reason I can find in the Draft Report for this conclusion is that "[w]ithin the County are numerous

Mr. Andrew Mansinne, Jr.
Page 7
January 21, 1994

examples of commissions and their support staff working in an efficient, cooperative and amiable manner." (DR p.24)

While I do not doubt the correctness of this observation, I am not convinced that this observation alone is a satisfactory substitute for an analysis of the Executive Director's proposal on its merits. The Draft Report does not identify these commissions, so there is no way to determine if they are indeed analogous situations. For example, to what extent are the responsibilities of these comparison agencies similar to those of the OHRC? On the surface, at least, the responsibilities of the OHRC compliance division in enforcing an increasingly sophisticated and technical body of law, and techniques employed by the professionally trained Community Relations division to maintain and foster better relations among and between the diverse communities within the County, suggest unique and special circumstances. Also unknown is the extent to which the growth of staff responsibilities since the initial creation of these other County commission parallel the experience of OHRC and the Commission.

It should also be obvious, but is worth stating, that the proposed reorganization would in no way hinder (indeed it might facilitate) the adoption of the management reforms advanced in other sections of the Draft Report. Nor for purposes of determining the most appropriate organization for the County's future civil rights activities is it relevant whether OHRC or the Commissioners are more responsible for the various "turf battles" outlined in the Draft Report.

Much of what I have previously written regarding the continuing role of the Commission Panels is relevant to whether there should be a continued symbiotic relationship between the Compliance Division and the enforcement arm (to wit: the Commission Panels). Indeed to the extent that the Commission or its panels continue to review Executive Director findings, there is a due process advantage (although not one that rises to a constitutional level) of obliterating any organizational unity between the finder of fact (the Executive Director) and the reviewing authority (the Commission Panels).

For these reasons, this portion of my critique of the OLO Draft Report is limited to the relationship of Commission and the Community Relations division of OHRC. Once again, I am compelled to start my analysis with the conditions which existed when the Commission was first authorized in 1961. When the Commission was first created and until the later part of the 1970's, there was no professional community relations staff available and, therefore, all community relations activity by necessity had to

Mr. Andrew Mansinne, Jr.

Page 8

January 21, 1994

be conducted by the commissioners. No one questions that the Commissioner's contributions were well meaning, useful and better than doing nothing, but the question remains as to whether the volunteer commissioners can perform these functions as well as trained professionals.

The OLO Draft Report opens its discussion of the HRC's Community Relations division with the following observation: "The Human Relations Commission is involved in a wide variety of community relation activity. In recent years, practically all of these activities have been carried out by the staff of the Office of Human Relations Commission (OHRC). This is in sharp contrast to the period of the early 1980's when OLO conducted an evaluation of the Commission." (DR p. 18) It also contrasts with the role of the Commissioners in the 1960's and 1970's. What the Draft Report does not discuss, however, is why the staff has supplemented the volunteer commissioners and whether the use of a professional trained community relations staff has proved more efficient and produced a more substantial positive impact upon the citizens of Montgomery County.

In the past Commissioners were actively engaged in the following activities: "participation in fairs, workshops and community forms; staffing a speakers bureau; membership and participation on other agency advisory boards, committees, and commission; and participating in the Network of Neighbors." (DR p.17) While all these are worthwhile endeavors, they are when compared to the current programs and activities which OHRC's professional community relations staff has undertaken of limited scope and revolve around talking, intellectualizing, and brainstorming rather than actively seeking understanding and change among those most adversely effected by the residue of bigotry which still exists in the County.

There is, without question, a place for the type of activities in which the Commissioners have previously engaged, but as between giving the staff free rein to pursue its programs or furthering the profile of the Commissioners, I would select the former. It is significant that despite its generally critical tone, the OLO Report does not question the quality of efforts by, or the success of, the Community Services Division. Unfortunately, however, the tone of the Report obscures this fact. What is ironic about the OLO's rejection of the EEOC model is that adoption of the Executive Director's proposal would make it easier for the Commissioners to resume their former roles without endangering the work being done by the professional staff.

Mr. Andrew Mansinne, Jr.

Page 9

January 21, 1994

In this regard, let me make several additional observations about the OLO Report's recommendation on the increased use of the volunteers with the OHRC office.

1. In comparing the activities of other Human Relations Commissions in the metropolitan area, OLO noted that most of the commissions operate in a manner similar to the Montgomery County HRC except in the area of community relations. "In all the other counties, few if any staff were dedicated to community relations programs. What efforts were expended in that area (outreach, speaking engagements, public appearances, etc.) were by the Executive Director or volunteer commissioners." (DR p. 20). The Draft Report, however, contains no discussion of whether the Montgomery County model is better, of whether this reflects a deliberate policy decision by these counties, as opposed to being the result of political opposition to an expanded community relations staff or budgetary realities, nor does it reflect the views of the Executive Directors of the other agencies on this issue. Without this supporting information, I respectfully suggest, the OLO's conclusion is not persuasive.

2. A couple of years ago, there was a racially charged attack in Wheaton which caused considerable anxiety in the neighborhood. The OHRC staff conducted a series of seminars in a neighborhood church and make a special attempt to have Commissioners attend and participate in these seminars. A quarter to a third of the Commissioners did attend at least one seminar.

The staff ran the meeting. At one point, the staff divided the attendees into various groups (each headed by a staff member or commissioner) and asked each group to engage in a form of role playing. What I found striking was that while the community members found the exercise valuable, most Commissioners criticized the staff for engaging in an unsophisticated, meaningless charade which they found to be of little value. I understand the reaction of my fellow commissioners. We consider ourselves cognizant of the underlying issues and tend frequently to find role playing demeaning and unproductive. But the point is that we lack the training and educational underpinnings which has led professionals in this field to conclude role playing is an effective exercise. Indeed, Commissioners generally lack the specialized educational training and practical experiences of the staff as well as the staff's exposure to current literature and continuing educational seminars. Nonetheless, we sometimes think that because we are Commissioners, appointed by the Executive with the consent of the County Council, we know more than the professionally trained staff.

Mr. Andrew Mansinne, Jr.

Page 10

January 21, 1994

3. The experience cited above, as well as other examples, raises some question about relying too heavily upon volunteers for "duties within OHRC." (DR p. 32) While I agree the increased use of volunteers should be explored, we must recognize, it is not without its cost. Volunteers to be effective have to be adequately trained, otherwise the staff will spend more time undoing volunteer mistakes than if the staff did the work in the first place. Second, volunteers have to be prepared to make a significant commitment, both on a per week basis, and over a period of time. If they do not, the time spend training them, and the time it takes for the volunteer to become efficient in the job, will be wasted. Finally the volunteer has to recognize that his or her role is to support the staff and therefore he or she is in a subordinate position. This may be difficult for some professionals who are used to being leaders or executives and may be particularly difficult if Commissioners serve as volunteers, since as the OLO Report makes abundantly clear, a major source of the current tension between the OHRC and the Commissioners is Commissioners' belief that they have already become subordinated to the staff.

Finally, I am disappointed that the OLO Report omits any discussion of the many positive results, awards, kudos which the Office has received over the past decade. Given the conclusions you reach, I would not expect the OLO Report to repeat the glowing accolades contained in its 1981 Report. I do think, however, that the Report should have balanced its conclusions with some positive examples of the Office's successes and should have acknowledged that it continues to be recognized as one of the nation's premier offices of civil rights.

I know that you will carefully consider the issues raised in this response. I am hopeful that it will result in some modification to the Draft Report, but in any event I would appreciate your including this response with the materials you submit to the County Council.

Very truly yours,



James B. Blinkoff

JBB:je

CC: Mr. Alan P. Dean

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January 25, 1994

Mr. Andrew Mansinne, Jr.
Director, Office of Legislative Oversight
100 Maryland Avenue
Rockville, MD. 20830

RE: Draft OLO Report 94-2

Dear Mr. Mansinne:

At last evening's meeting of the Human Relations Commission, Steve Nassau reported that the Employment Panel had supplied the parties in a pending case with a copy of the County Attorney's September 27, 1993 opinion. While this does not alter any of the conclusions in my January 21, 1993, letter to you, I thought I should add this postscript to the last sentence in the second full paragraph on page 6 of that letter.

Sincerely yours,


James B. Blinkoff

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**TO: All Commissioners and Panel Members
CC: Alan P. Dean, Michael F. Dennis, Eric P. Johnson
FROM: James B. Blinkoff
RE: Commission Panels
DATE: May 19, 1992**

As most of you know, Steve Nassau and I have diametrically opposed views as to the value of the Commission Panels in Employment, Housing and Public Accommodations. Toward the end of the May 11 meeting, Steve again defended the panels and, given the lateness of the hour, several commissioners conveyed their desire that I not demand equal time.

It was agreed, however, that the panel question should be thoroughly aired at a future commission meeting. In anticipation of such a debate, I have taken the trouble and liberty of setting forth my views so that commissioners will be able to consider them ahead of time.

Steve Nassau's position is summarized in the testimony he gave before the HHS Committee on April 20:

And the Panels play an extremely important role in providing citizen review of the staff's decisions on discrimination complaints. Like a jury, the Panels are designed to render common sense justice, which the bureaucracy may not be able to do. The Hearing Examiners may be more experienced in holding hearings. But that does not mean they provide greater justice than the Panel which can just as easily tell who is lying and who is telling the truth. The Panels bring a sensitivity and a wisdom to the process that would otherwise be lost. The Panels operate at minimal cost and provide complainants with the opportunity for their cases to be heard by fellow citizens.

I too support motherhood, baseball and apple pie. And, despite the Rodney King verdict, I share some of the sentiments which underlie Steve's defense of the panels. My conclusion that the panels in 1992 do not, and cannot, effectively perform the function for which they were created in 1962 is the result of pragmatic, rather than philosophical, differences with Steve.

In discussing the panels' contribution we need to acknowledge the panels no longer serve as the Commission's principal enforcement arm. Most complaints are resolved without panel involvement, and to understand the current controversy, we must start with cases in which the panels are no longer involved.

I. Administrative Dismissal. A few complaints filed with the OHRC may be dismissed early in the process for procedural reasons or because the complainant does not pursue his or her complaint. An example of a dismissal for a procedural reason would be lack of jurisdiction. Thus, in an employment case, if the discrimination occurred in the City of Rockville or involves the school system, the OHRC has no authority to hear the case. Another cause for dismissal would be the complainant's refusal to sign a verified complaint. When the Human Relations Law was first enacted, the Panel itself made the administrative determination to dismiss the case; today, these cases are dismissed at the staff level and are not reviewed by the panel. There is no controversy with respect to the treatment of these cases. If a complainant questions the staff's dismissal of the complaint, he or she may appeal, in which event the discussion on "no-cause" findings would be applicable.

II. Conciliation, compromise, settlement. The majority of complaints ultimately fall into this category. A complaint is filed, the staff conducts an investigation and facilitates a resolution. The resolution can take many forms. For example, the complainant may withdraw the complaint because he or she acknowledges that no discrimination occurred, or the respondent may agree that discrimination did occur and take corrective action. Another possibility is that the parties (with or without staff prodding) may reach an "out of court settlement" in which the complainant agrees to withdraw the complaint in exchange for a negotiated consideration. When the Human Reactions law was first enacted, panel members were involved in the dispute resolution process and were required to review and approve each settlement. Today, the panel plays no role in these cases and I again am not aware of any controversy over their lack of participation.

III. Adverse finding; no appeal. In a few cases the staff and executive director may find in favor of either the complainant or the respondent, and while the losing party disagrees with the finding, that party may chose not to appeal. Once again, in the beginning, the panels were involved in these decisions, whereas today they are not even informed of the decision. No person, to my knowledge, is suggesting any change with respect to these cases.

IV. No cause finding and appeal. The staff, after investigation, concludes that there is no basis in the record for finding that the respondent discriminated. This does not mean that staff agree with the respondent's employment (housing,

public accommodations) practices, but only that these practices do not violate the Human Relations Law. The executive director, after review, affirms the staff's finding and issues a so-called "no cause" letter. The complainant is dissatisfied and exercises his or her right to appeal the no-cause finding to the panel.

Controversy at last! As I understand Steve's position, this is one of the circumstances where the panel can "render common sense justice, which the bureaucracy may not be able to do." Maybe -- although I'm not quite so cynical about the OHRC staff. But let us review the process in more detail:

a. The complainant is invited to make a 20 minute presentation to the panel at an informal hearing. In actual practice the complainant is allotted at least twice that amount of time. In the majority of cases, the complainant is not represented and, quite naturally, attacks the staff's investigation and the executive director's findings in every way he or she can. I have no doubt that most complainants honestly believe that he or she has been victimized a second time -- this time by incompetent bureaucrats -- and that a grave injustice has been done to them.

b. The panel members take their job, as they should, seriously and do everything within their power to give the complainant a through and attentive hearing. They try even harder to convince the complainant that he or she will receive a through and fair review of the staff's adverse findings. Because the odds are stacked against the complainant, the panel intuitively often acts as the complainant's advocate, especially for those who appear without counsel.

c. At the same time, panel members respect the staff's professionalism and the staff's adverse conclusions are viewed as presumptively correct. However, there is considerable tension between the panel's desire to give the complainant another opportunity to demonstrate discrimination and the panel member's respect for the staff. Frequently this tension is resolved by the panel aggressively cross-examining and second guessing the staff's investigative prowess. Not only is the staff placed in a defensive posture, but it views the panel's aggressiveness as a personal attack on their competency. Even lower court judges do not like to be reversed and often take an appellate court's reversal as a personal affront.

d. The strain between the staff and the panel is compounded by the fact that the panel only considers cases in which there is a dissatisfied and critical complainant. The panel never sees or reviews the many cases where the complaint is resolved in favor of the complainant. No one on the panel wants to be perceived as a rubber stamp. Thus, in order to develop a sense of self-worth, panel members have a natural tendency to try and discover instances where the staff did not do a through job

in investigating the initial complaint. More often than not, the staff believes the panel has, at best, engaged in Monday morning quarterbacking and, at worst, created allegations of incompetency to justify their existence.

e. Despite the abilities of individual panel members, the panel cannot effectively review the staff's investigation. In the first place there are serious questions about the extent panel members may review the staff's investigative file which, at this stage, still is deemed confidential. But even if we assume, that the panel is entitled to full access to the file, the panel would have to retrace the staff's investigation (which should include talking directly to relevant witnesses and giving the respondent an opportunity to explain potential concerns raised by this new investigation) in order to properly conclude that the staff's no cause conclusion was erroneous.

f. In fact, the panel does not take this course. Instead, if the panel has any questions about the staff's findings, it sends the case back to the staff for further investigation. Now the staff is really on the defensive and, human nature being what it is, it would take an extraordinary circumstance for the staff to conclude on re-investigation that its original finding was erroneous.

g. A natural consequence of this process is an ever increasing tension between the panel and the staff, which might be an acceptable price to pay, if miscarriages of justice were averted as a result. But even the advocates of the panel review process concede that in the vast majority of cases (I believe, "98 or 99 out of 100" is the accepted odds given by panel advocates), the staff decision will be affirmed.

h. The rare case in which the staff's conclusions might be "reversed" are, again according to panel advocates, most likely the result of an honest difference of opinion as to the interpretation of certain facts or the credibility of certain witnesses. But the panel never makes its own investigation of the facts and never sees or interviews witnesses, unless they happen to attend the hearing. A difference of opinion on an uncertain question of fact does not constitute a miscarriage of justice.

i. In my view, the most serious deficiency with the present system is the false hope it creates in the complainant. The complainant's expectation have already been dashed when the staff, contrary to the complainant's initial conviction that he or she had been victimized, rules against them. (Not every complainant believes he or she has a "sure winner" when the complaint is first filed, but those who appeal a no cause finding generally feel this way.) The complainant sees the panel hearing as his or her opportunity to have citizens "render common sense justice" and correct the egregious errors of the bureaucrats. The panel's sensitivity at the hearing inspires additional hope.

The complainant may even win a Pyrrhic victory if the panel sends the case back to the staff for further investigation. At last vindication! Then comes the final letter stating that panel has, after all, affirmed the original no cause finding.

Alternatives. Although I believe the panels, as they presently operate, serve no useful function in reviewing "no cause" findings, the process can be amended so as to still allow a complainant to make a personal appeal before their complaint is dismissed. There are undoubtedly many ways to achieve this result, but let me suggest one.

Under the present procedure, once the compliance department completes its investigation, it drafts a determination letter for the executive director. The executive director reviews the letter, discusses any questions he may have with the director of compliance or the investigator and then signs the letter. Over time the executive director has developed sufficient confidence in the staff that he rarely rejects the staff's recommendations. Because the executive director's review is limited to the "cold record," I don't think the system could, as a practical matter, work any other way.

I suggest that the process be revised so that the complainant has the opportunity to meet with the executive director (or another individual not involved in the investigation) after the staff has made a tentative decision to issue a no cause finding, but before the decision is issued. My proposal would work somewhat as follows:

a. Before the staff issues a no cause determination letter, the staff would provide the executive director with a memo outlining the results of their investigation and why they believe there is no cause for a discrimination finding.

b. The executive director would write the complainant indicating that the staff has concluded its investigation and that, on the basis of the facts developed, believes that no discrimination occurred. The letter need not (although it might) give the details of the staff's reasoning, but would invite the complainant to meet with the executive director (or designated individual) to discuss the matter before a final decision is issued.

c. At that meeting the executive director would summarize the reasons for the staff's conclusion and listen to the complainant's response. If the complainant raises issues which the executive director (or designee) believes require further discussion, they can be raised with the staff at this stage, before there is any final decision.

d. I believe that this process will result in more "corrections" than the present process. It is the personal

contact with the complainant, rather than the panel's review of the determination letter, which causes the panel in many cases to become the complainant's advocate. The executive director is likely to be equally sympathetic to the same arguments and emotional appeals. Since the staff's decision is only a tentative conclusion, it should be easier for the investigators to re-examine their assumptions and, if appropriate, modify their findings. There is also a psychological advantage to having the review come from within the agency rather than from an outside panel whose only perceived function is to challenge the staff. Specific concerns raised with the executive director can also be addressed in the final determination.

V. Reasonable cause; public hearing. The panels are also involved in those cases where the staff, and executive director, conclude that there are reasonable grounds to conclude the respondent discriminated against the complainant, but OHRC is unable to reach a settlement which is acceptable to all sides. Under these circumstances the statute requires the executive director to certify the case to the appropriate panel for a hearing to determine whether or not the respondent is guilty of discrimination.

Until about five years ago, cases certified to the panel were actually heard by the panel de novo. At such a hearing, the complainant has the burden of persuading the panel by the preponderance of the evidence introduced that he or she was a victim of discrimination. The staff's investigation and conclusions are not themselves evidence, but since the shroud of confidentiality is lifted at the point of a public hearing, the staff's investigative file, or most of it, becomes available to both sides. Both sides are represented by counsel; frequently, the complainant is represented by the County Attorney. Each side is free to present evidence, call witnesses, examine and cross-examine the witnesses. Panel members are also free to question the witnesses. At the end of the hearing, the panel issues an opinion which contains findings of fact, conclusions of law and an appropriate order either dismissing the case or fashioning a remedy.

The law also gives the panel the option to refer the case to a hearing examiner who will conduct the hearing and make a recommendation to the panel, which the panel is free to accept, reject or modify. When a hearing examiner is used, the panel acts somewhat akin to a court of appeals. After the hearing examiner makes his recommendations, both sides file briefs and then present oral argument before the panel.

We first experimented with using a hearing examiner during my tenure as Chair of the Employment Panel. When that experiment proved successful, we adopted a policy of referring all cases to the hearing examiner. I have mixed emotions about

this policy change, because I enjoyed the role of hearing examiner and found the experience to be a rewarding one. Yet, I consider the substitution of a hearing examiner for lay panels as my most significant contribution to the Commission.

Because the hearing examiner is a county employee, there is no additional out of pocket cost to the OHRC's budget and a substantial savings of staff time. However, the positive impact on the budget is not the reason we elected to use a hearing examiner in the first place nor is it the principal justification for continued use of the hearing examiner in lieu of lay panels. In my view, the principal reason for utilizing a hearing examiner is to ensure that the litigants receive a timely and professional hearing.

All of the panel members are volunteers and are gainfully employed. While a few panel members may have the ability to schedule hearings during the day, most cannot. As a result the hearings were always held at night, occasionally on a Saturday and at least once on a Sunday. Once a case began we tried to meet at least twice a week to maintain some sort of continuity, but this often proved impossible. Sometimes several weeks would pass between hearings.

The complainant, respondent, their lawyers, witnesses, stenographer, OHRC staff member and five panel members were present at each hearing. Under the best of circumstances it is difficult to co-ordinate the schedules of that many people, but the scheduling was complicated by the fact that the hearing would start around 7 or 7:30 in the evening. We would generally continue the hearing until at least 11:00, but by 10 o'clock, the hearing would begin to reflect the inevitable strain on people who were engaged in an intensive adversarial proceeding after a full day's work. No hearing in which I participated took less than two evenings and most took four, five or six. Several took considerably more time. One hearing I recall began in October and ended after Easter, and only then because we devoted a full weekend to concluding it.

In addition to time problems, hearings by lay panels suffer from other deficiencies. Every panel member takes his or her job seriously and wants to ensure both sides have an opportunity to present their side thoroughly. As a result there is very little discipline imposed on the lawyers or upon the panel members each of whom is free to ask their own questions of the witnesses.

In contrast, a hearing before a hearing examiner can be scheduled and completed during normal business hours, and most significantly, within a compact period of time. There is only one judge to ask questions and because the hearing examiner is more experienced in conducting hearings than even members of the panel who are lawyers, there is considerably more discipline.

This results in a substantial cost savings not only to the OHRC, but to the litigants as well.

The one deficiency with the hearing examiner approach concerns the credibility of witnesses. The panel is still responsible for the ultimate findings of fact, and there is no substitute for being able to hear the witnesses testify and see how she or he responds to questions. I would, therefore, eliminate the panels and permit the litigants to file an appeal from the hearing examiner's findings directly with the circuit court.

As I understand the Employment Panel's position, they do not disagree with this analysis, but desire to "occasionally" hear cases themselves. They would selectively chose those cases which could be completed in a timely fashion and in which credibility is the key issue. Credibility, however, is the key issue in virtually every case. If in fact the panels bring "a sensitivity and a wisdom to the process that [is] otherwise lost," why should only the "occasional" litigant benefit from this sensitivity and wisdom? With all due respect, I suggest the desire to hear an occasional case is driven as much by the panel members' desire (which I share and miss) to "play judge" as it is to provide the litigants with a hearing before citizen judges.

VI. A final query. This memorandum has focused exclusively on the enforcement responsibilities of the Commission's panels. I raise only as a query the extent to which the strain between the staff and the panels has had a fall-out on the relationship between the staff and the Commissioners.

