



## MONTGOMERY COUNTY ETHICS COMMISSION

Nina Weisbroth  
*Chair*

Stuart D. Rick  
*Vice Chair*

### Ethics Commission Annual Report for Calendar Year 2011

#### **Dear Fellow Citizens:**

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

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

The Commission has five members when fully complemented. Currently the Commission has four members. They, along with the respective dates of their terms' expiration, are:

Nina Weisbroth, Chair	10/2013
Stuart D. Rick, Vice-Chair	10/2013
Kenita V. Barrow	10/2011*
Antar C. Johnson	10/2011**

\*Currently in holdover status until April 30, 2011, may be reappointed.

\*\*Currently in holdover status until April 30, 2011, may not be reappointed without waiver under Code Section 2-148.

In June of 2011, Mr. Gilles Burger resigned from the Commission because he moved away from the County, making him ineligible for membership.

The Ethics Commission has two permanent staff members. Robert Cobb is the Chief Counsel/Staff Director, and Sheila Laryea is a Program Specialist.

**Montgomery County Ethics Commission**

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At the outset, this year was a watershed year for the Ethics Commission. First, it marked the end of the tenure of Barbara McNally who retired as the Executive Director of the Ethics Commission after twenty-eight years of service to the Ethics Commission. Barbara vigilantly advocated for and promoted ethical conduct within County Government and tirelessly sought to protect and preserve the integrity and strength of the Ethics Commission as a County institution.

In 2010 the Public Ethics Law was amended so that Barbara's position, Executive Director, would be abolished and replaced with a Chief Counsel/Staff Director hired directly by the Commission. Upon Barbara's retirement, the Ethics Commission selected and hired a Chief Counsel/Staff Director. The intent of hiring a lawyer for the Commission was to assure the independence of advice rendered to the Commission.

The Commission met in regular Public Meetings ten times during 2011. It also conducted three Administrative Meetings following its Public Meetings. (Pursuant to new processes established this fall, the Ethics Commission will be holding administrative meetings following its regular monthly meetings to consider matters that are non-public.) The Commission also met administratively to interview candidates for the newly created Chief Counsel/Staff Director position.

#### *Outside Employment Approvals and Lobbying Disclosures*

Prior annual reports have published lists of outside employment approvals and lobbying registrations. Because similar information is already published on the Ethics Commission website, the practice of including these in the annual report is discontinued.

#### **Major Objectives for 2012**

The Commission is pursuing a path forward to substantially improve its effectiveness. This path involves two primary elements: a) transferring the management of the Financial Disclosure System to those with the power and authority to ensure its successful implementation; and b) establishing electronic filing for lobbying registration, lobbying activity reporting, and for other employment requests. Proposals have been made regarding both of these possibilities.

As systems are put in place to manage information requirements, Commission staff will be able to focus more on having the Commission fulfill the function in County government that it should: promoting compliance (through training and education, for example) with Public Ethics Law requirements and proactively taking steps to improve the ethics laws and regulations to best serve the taxpayers of Montgomery County.

#### **Status of Programs and Operations**

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

#### **Montgomery County Ethics Commission**

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

**1. Financial Disclosure:** The Public Ethics Law requires filing of financial disclosure reports by certain County employees. The Ethics Commission prepares and distributes financial disclosure forms and maintains reports filed by employees; it currently administers the electronic filing system for reporting and coordinates with the Office of Human Resources and all County agencies as regards the status of filers, and resolves all anomalous circumstances and questions that routinely arise associated with the filing of financial disclosure reports and the administration of the system designed for that purpose.

The Public Ethics Law promotes the public's confidence in the integrity of County employees by requiring certain employees, including elected officials, to file financial disclosure reports that are required to be made publicly available. The ethics law also requires certain other employees to file confidential disclosure reports. The reports detail financial holding and relationships so that conflicts of interest between an employee's county duties and the employee's personal activities and interests can be identified and prevented. The ethics law requires filings of financial disclosure report when individuals are first appointed to a filing position, annually thereafter, and when terminating from a filing position.

There are about 1800 filers of financial disclosure forms by public employees annually. The program is administered by the Ethics Commission staff through an electronic filing system. Successful program administration is dependent on the accuracy of the database of employees and their status as filers. It is also dependent on employees who file the forms and on County senior management who are the designated reviewers of forms. Lastly, it is dependent on County managers to follow-up with employees who have not filed and to obtain final reports from employees who are terminating from filing positions. Members of certain County boards, commissions, and committees, who are considered "public employees" for purposes of the public ethics law, are also required to file reports. As these persons are not normally tracked in the County's personnel system, a separate tracking system has been established for these persons.

The financial disclosure program spans both the executive and legislative branches, and covers a couple of organizations which are created by statute but are not part of the government. Ultimate responsibility for the database of filers has been the Ethics Commission's, although employee status is generically a human resources function. And responsibility for the notification of

employees and reviewers of their respective obligations has also fallen primarily on the Ethics Commission, although department supervisors and management are positioned to encourage and secure compliance with filing requirements. The Commission has recommended to the Chief Administrative Officer that roles and responsibilities associated with the management of the financial disclosure system be reassigned. The Chief Administrative Officer has agreed to this recommendation, and it is expected that as a result, roles and responsibilities will be more closely aligned with authority to execute functional roles. This transition will take place in 2012 and will relieve the Ethics Commission from operational responsibility of the financial disclosure system.

At the request of Ethics Commission staff, the Montgomery County Office of Inspector General has reviewed the financial disclosure system and is currently completing a report of the review it conducted. The Ethics Commission looks forward to receiving that report.

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

The Commission processed about 1200 new requests for outside employment approval in FY 2011. In addition, the Commission received hundreds of notices of renewals for previously approved submissions whose preset approval durations expired.

Pursuant to Ethics Commission practice, EC staff inputs data from the submitted requests onto a master template that provides a vehicle for Ethics Commission review of submissions. The manual input of data is extremely detailed and time consuming.

About 900 of the new requests were attributable to security related outside employment requests from Montgomery County Police Officers. These requests have been made on a form that is unique to the police department.

During 2011, plans were made to pursue electronic filing of outside employment requests in 2012. This has been an objective of the Ethics Commission for several years. In connection with this effort, the form for Outside Employment requests has been revised. One complicating challenge to this project is the differing forms that have been generated as regards outside

employment requests for employees generally, and the form that has been generated specifically as regards police requests. The police form requires substantially greater and different information, thereby more than doubling the scope of the project to create an online application system.

**3. Lobbying:** The Public Ethics Law requires certain persons who spend or receive over \$500 to communicate with County officials and employees to register as lobbyists and to file semi-annual activity reports with the Ethics Commission. Annual registration fees are required and are paid to the Ethics Commission and processed and deposited in the General Fund. The Ethics Commission publishes and updates information required to be made public by the Public Ethics Law. A list of the 120 registered lobbyists in the County during 2011 can be found at: <http://www.montgomerycountymd.gov/content/ethics/lobby/docs/lobbyinglist2011.doc>.

During the year, lobbying processes were reviewed. First, measures to track all incoming lobbying fees were instituted. A redesigned fillable PDF lobbying registration form was created and posted on the Ethics Commission website along with new instructions. Working with the Department of Technology Services, the Ethics Commission expects that a long term objective of making this form fillable on-line will be achieved in 2012. The lobbying semi-annual report is also intended to be made into a fillable form that can be filed online. If these objectives are met, it is anticipated that the Ethics Commission will be able to meet statutory objectives of data collection and publication in a substantially more efficient manner than currently exists.

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

During 2011, no new complaints of ethics violations were received; one matter that had resulted in an Ethics Commission hearing in October 2010 was resolved through the issuance of an memorandum and order in March 2011 finding no ethics violation; one complaint and related investigation that carried over from the prior year was dismissed as there was no evidence of an ethics violation; and one matter that was pending in the prior year resulted in a public hearing in December 2011. There were no other pending complaints or investigations or hearings scheduled at the end of 2011.

**5. Advisory Opinions, Waivers, Advice:** In accordance with the Public Ethics Law, the Ethics Commission answers inquiries on the application of the Ethics law, publishes opinions, and grants waivers of Ethics Law requirements, as appropriate. The Commission issued two opinions during calendar year 2011 which are published at [http://www.montgomerycountymd.gov/Apps/Ethics/aw/ST\\_list.asp](http://www.montgomerycountymd.gov/Apps/Ethics/aw/ST_list.asp) and granted no waivers.

Opinion 11-04-002 concerned Section 19A-13(a) of the ethics law providing that a former employee “must not work on or otherwise assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly

participated in the matter as a public employee.” In this matter, a former employee who significantly participated in a series of lease agreements with a developer that were signed in 2002, but imposed continuing obligations, asked whether he can work for that developer. The Commission concluded that the former employee must not work on or assist the developer with the implementation of any obligation flowing from the scope of work of the agreements without first obtaining a waiver from the Commission.

Opinion 11-10-005 concerned whether certain charitable activities could be conducted in a manner consistent with the prestige of office and gift solicitation requirements of Sections 19A-14(a) and 19A-16(a), respectively, of the Public Ethics Law. The activity involved County police officers appearing at the activity as “local law enforcement.” The activity would be conducted off-duty, out of uniform, and no reference was to be made to Montgomery County. Under the circumstances described to the Ethics Commission, the Commission found that the activity would not violate either the gift solicitation provisions of Section 19A-16(a) or the prestige of office provision at Section 19A-14(a).

**6. Education:** The Ethics Commission conducts public education and other information programs regarding the Ethics Law. With the exception of Ethics Commission staff providing instruction on filling out and review of financial disclosure forms, ethics education has been handled primarily by the County Attorney’s Office. In 2012, Ethics Commission staff plans to increase its role in education of County employees regarding their obligations under the Public Ethics Law.

**7. Legislative and Regulatory:** The Ethics Commission recommends and prepares new ethics legislation and regulations. Pursuant to new State requirements (Senate Bill 315 (Chapter 277 of the Acts of 2010),) the Ethics Commission is required to certify on October 1 of each year that Montgomery County’s Ethics Law are equivalent to or more restrictive than State Ethics Law as regards elected officials. This requirement was met in 2011 through an alternative procedure permitted by the State Ethics Commission pursuant to which the Ethics Commission explained by letter the steps it was taking to address the requirements of the State law.

In 2011, the Ethics Commission began a collaborative process with the County Attorney’s Office and the County Council’s Legislative Attorney to review the County’s ethics laws. The objective of this collaborative effort is to amend and improve the County’s Ethics Laws and to meet the requirements of the State mandate of equivalency or greater restriction. This process will be very active in 2012 with a view to passing new ethics legislation that meets the State’s requirements.

**8. Coordination and Outreach:** The Staff of the Ethics Commission coordinates with the County Attorney’s Office and the Office of the Inspector General as necessary on legal and investigative matters; the Staff also serves as the principal public resource on the County’s ethics laws, to include managing a website that reflects Ethics Commission programs, activities, and

publications such as annual reports, approvals of outside employment requests, semi-annual lobbying data, and waivers and opinions.

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

For the Commission:



April 10, 2012

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Nina A. Weisbroth, Chair

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Date

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