



MONTGOMERY COUNTY ETHICS COMMISSION

Annual Report for Calendar Year 2013

Introduction

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

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

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

Kenita V. Barrow, Chair	10/2015
Mark L. Greenblatt, Vice-Chair	10/2016
Joseph C. Kale	10/2017
Claudia Herbert	10/2017

In October 2013, the terms of Mr. Stuart Rick and Ms. Nina Weisbroth terms expired, but they were held over until the beginning of 2014, pending the appointments of new Commission members Joseph Kale and Claudia Herbert. Kenita Barrow was elected Chair and Mark Greenblatt Vice-Chair of the Commission at the December 2013 meeting, effective January 1, 2014. Commissioner Rachel Brown resigned in January 2014.

Calendar year 2013 was a year of substantial progress for the Commission. Building on the progress made in 2012 in addressing the April 2012 Montgomery County Inspector General report "Review of Certain Montgomery County Ethics Activities"

http://www.montgomerycountymd.gov/OIG/Resources/Files/PDF/IGActivity/FY2012/mcec_final_report_apr_2012.pdf, the Commission was able to successfully address weaknesses the Inspector General had identified.

In particular, the Ethics Commission staff, working closely with the Department of Technology Services, made several improvements to the Financial Disclosure System. This enabled the institution of the April 15 statutory filing deadline for the first time in several years (in prior years the filing date had been extended due to a late launch of the system and inadequate controls on personnel information), a substantial increase in the integrity and reliability of data in the system, increased compliance with deadlines, and one hundred percent compliance with the annual filing requirement. Because of increased data assurance, the Commission was in a position to enforce compliance with requirements and imposed and collected a late filing fee from a late filer.

Taking advantage of an additional staff position approved by the County Council and the County Executive for the FY13 budget and resources provided to the Commission in the FY13 budget, the Commission implemented a new online lobbying registration and activity reporting system in calendar year 2013. As the prior system was paper based, the new system has resulted in substantial efficiencies in the administration of the program, transparency to lobbying registration and activity reporting, and materially greater compliance by lobbyists. Again, Commission staff worked closely with the Department of Technology Services to implement this system.

The Commission met in regular Public Meetings eleven times during 2012. The Commission also held a special public meeting February 26, 2012, to discuss possible amendments to the financial disclosure law. The Commission also conducted eleven Administrative Meetings following regular Public Meetings. (The Commission holds administrative meetings following its regular monthly meetings to consider matters that are non-public.) During the year, the Chair attended a County Council work session relating to the Commission. The Vice-Chair served on an interview panel for the selection of the Program Specialist II position.

Major Objectives for 2014

The Commission will continue to focus on the management of its core programs, the financial disclosure system, the lobbying program, and the outside employment approval process, with a view to building on the successes of the past year. The Commission has three additional priorities for 2014:

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

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

Creating an online outside employment application system would facilitate the process of submission of outside employment requests and the administration of review processes, including by the Commission itself.

Status of Programs and Operations

Chart: Ethics Program Compliance Overview

Measures	Actual CY12	Actual CY13	Target CY14	Target CY15	Target CY16
Number of Formal Opinions or Waivers processed	12	12	10	10	10
Number of Lobbyists registered	161	172	172	172	172
Number of Lobbyist Activity Reports	140	214	214	214	214
Number of Financial Disclosure Statements for Calendar Year ¹	1741	2034 ²	2034	2034	2034
Number of Outside Employment Requests	926	1148	1148	1148	1148

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

- 1. Financial Disclosure**
- 2. Outside Employment**
- 3. Lobbying**

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

² This figure based on actual filings of initial and final financial disclosures plus anticipated filings of required annual reports for calendar year 2013 (filings required by April 15, 2014).

4. **Complaints, Investigations and Hearings**
5. **Advisory Opinions, Interpretation and Advice, and Waivers**
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 Commission prepares and distributes financial disclosure forms electronically and maintains reports filed by employees; it currently administers the electronic filing system for reporting and coordinates with the Office of Human Resources and all County agencies regarding the status of filers, and resolves all anomalous circumstances and questions 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 holdings and relationships so that conflicts of interest between an employee's County duties and the employee's personal activities and interests can be identified and addressed. The Public Ethics Law requires filings of financial disclosure reports when individuals are first appointed to a filing position, annually thereafter, and when terminating from a filing position.

There are about 2000 financial disclosure forms completed by County employees each year. The program is administered by the Commission's 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 the 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.

A number of changes were made to the financial disclosure system in 2013 that resulted in greater ease in administration of the financial disclosure database, and, consequently, greater compliance. For example, in 2013, 100 percent of those required to file annual disclosure reports covering the year 2012 fulfilled that requirement (1609).

2. Outside Employment: The Public Ethics Law requires that County employees obtain approval from the Commission prior to engaging in any employment other than County

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

The Commission processed over 1148 requests for outside employment approval in calendar year 2013. Pursuant to the Commission's practice, Commission staff inputs data from the submitted requests onto a master template that provides a vehicle for Commission review of submissions. The manual input of data is extremely detailed and time consuming.

During 2011, plans were made to pursue electronic filing of outside employment requests in 2012. This has been an objective of Commission staff for several years. Unfortunately, this project was not funded. Commission staff expects that in 2014 it will be able to make significant progress on the project to develop an online request system for the outside employment approval process. One 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 for police requests. The form that the police use requires substantially greater and different information, thereby more than doubling the scope of the project to create an online application system. FY 2013 funds may be available to finance this project through a reprogramming of personnel funds to operational expenses.

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 Commission. Annual registration fees are required and are paid to the Commission and processed and deposited into the General Fund.

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

Phase II of the project was implemented in June of 2013. This involved building an online reporting system for the semi-annual activity reports registered lobbyists are required to file. Again, this new system simplified the filing process, eliminated several

manual processes of Commission staff, and made transparent to the public matters that had previously been relegated to internal files of the Commission.

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

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

There have been a great number of benefits from the implementation of these systems in 2013. As a result of the increased transparency and ease of administrative use of the information filed, compliance with requirements has substantially increased. For example, 100 percent of required semi-annual reports for the second half of 2013 have been filed. (The deadline for filing these documents was January 31, 2014. By February 5, 2014, all of them had been filed.)

Another change to the lobbying program instituted in 2013 concerned the charging of lobbying fees. In Advisory Opinion 12-11-012, the Commission concluded that all lobbyists meeting the requirements for registration be registered for each client represented and that all lobbyists pay the annual registration fee. This constituted a change in practice as some lobbyists (who were not the registering lobbyists) had previously been identified on registrations without paying the annual registration fee. As a result of this change, charging practices have been aligned with the State Ethics Commission practices, and fee income increased by about one-third.

As a result of having implemented a lobbying filing system with reliable data sets, Commission staff could focus additional time on proactive steps to educate those who might meet registration thresholds in the Public Ethics Law to register as lobbyists. This resulted in reviews of County Council sign-in sheets and notices informing persons and businesses about lobbying registration requirements. In addition, an informational flyer has been attached to the Council sign-in stand about lobbying registration requirements. As a result of these efforts, many persons and organizations conducting lobbying in the County are now registering as lobbyists in the County.

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

During 2013, no new formal complaints of ethics violations that fell within the jurisdiction of the Commission were received. There were no pending complaints or investigations at the close of 2013. Aside from formal complaints, many issues were brought to the attention of the Ethics Commission during 2013. Some of these did not raise issues that were within the jurisdiction of the Commission and were referred to a more appropriate office for disposition. Others issues were brought to the attention of the Commission and considered and addressed by the Commission.

5. Advisory Opinions, Interpretation and Advice, and Waivers: The Ethics Commission is expressly authorized to interpret the Public Ethics Law and advise persons as to its application. It does this proactively or in response to or as a result of informal inquiries. In addition, the Commission is authorized to publish advisory opinions and grant waivers of ethics law requirements, as appropriate. The Commission is required to publish its advisory opinions, or state the why any opinion was not published. The Commission published four advisory opinions during calendar year 2013 which can be found at:

<http://www.montgomerycountymd.gov/Ethics/Decisions/opinions/2013.html>

and granted seven waivers which are published at:

<http://www.montgomerycountymd.gov/Ethics/decisions/waivers/2013.html>

The Commission issued one opinion that has not yet been published for the reasons stated further below.

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

AO 13-03-001 responded to a request for an opinion as to whether the financial disclosure requirements regarding liabilities applies to tax debts owed to either the Internal Revenue Service or the State Comptroller. The Commission concluded that overdue taxes over \$500 are a “liability” for reporting purposes while unpaid. While the Ethics Commission would not view receipt of a routine tax bill or the accruing of annual income tax liability of over \$500 as being a trigger for financial disclosure of a liability, the Commission does view an overdue tax debt as a liability that is required to be reported.

AO 13-03-002 concerned a request for prior approval of outside employment with a local City Council, to which the requestor sought to be elected. The Commission cited the Montgomery County Charter for the proposition that no officer or employee of the County shall be prohibited from participating in politics or political campaigns. When engaging in these activities, County officers and employees must continue to fulfill their obligations to the County. As section 19A-12(b)(2) of the Montgomery County Ethics Law provides that an employee cannot “hold any employment relationship that could reasonably be expected to impair the impartiality and independence of judgment of the public employee,” the Commission advised that for such time as the employee was running or holding office with the local City Council, the employee should avoid working on any matter that comes before the employee as a County employee where the local City Council is a party or has a significant interest in the matter.

AO 13-02-003 The County Attorney requested an advisory opinion on behalf of the County Executive and County Council as well as the Chief Administrative Officer and the Council Staff Director about the parameters of guidance issued previously by the Commission concerning the application of section 19A-16 of the Public Ethics Law to County officials' attendance at holiday parties and other events sponsored by persons with business before the County. That guidance reviewed the general prohibition on a County official's receipt of gifts from persons who do business with, are regulated by, or lobby the official's agency or who otherwise have economic interests (different from those of the general public) that the official may substantially affect in performing his or her duties.

The inquiry from the County Attorney concerned the scope of the exception in the gifts rule for gifts accepted by a County agency, the Commission's views on certain hypotheticals, and whether the Commission was willing to issue a class waiver for certain gifts. The Commission provided views on the gift exception for gifts accepted by the County and the hypotheticals posed in the inquiry. As to the issuance of a waiver, the Commission concluded that in order for the Commission to issue a waiver or an exemption, the Commission must find that accepting the gift or class of gifts is not detrimental to the impartial conduct of the business of a County agency. The gifts described in the inquiry would allow "restricted donors" to discriminate among County employees by targeting those employees they would like to influence. This being the case, the Ethics Commission could not find that the acceptance of all possible gifts within these classes would be devoid of detriment to the impartial conduct of County business, and, therefore, it declined to issue the requested class waiver.

The issue of what gifts could appropriately be accepted by a County agency was subsequently addressed in a County Administrative Procedure which can be found at http://portal.mcgov.org/content/departments_intranet/omb/forms/APs/ap-16.pdf.

AO 13-03-004 concerned whether a corporation or its employee is required to register as a lobbyist by virtue of the corporation's compensating the employee more than \$500 in a year for communicating with a County employee to influence executive or administrative action by a Montgomery County agency. The Commission concluded that the payment of compensation to an employee (or other representative) to influence executive or administrative action does not in and of itself trigger the County's lobbying registration requirements. The Commission indicated that if the lobbying law was intended to include registration triggers for those paying or receiving pay with respect to communications about executive or administrative action, the law would have expressly provided for that, as it did with respect to the more broadly drawn registration requirement for those involved in communications about legislative action.

AO 13-08-006. Unpublished opinion. The Commission issued an opinion answering an inquiry of a member of a Board, Committee or Commission (BCC) concerning the member's employment as the principal of a firm that was a subcontractor on a project

subject to review of the BCC. The Ethics Commission found that under the circumstances presented, the employment by the firm constituted prohibited outside employment under 19A-12(b)(1) as the member was “employed” by a developer that is negotiating or contracting with the BCC. This opinion has not been published as the Ethics Commission continues to review matters related to the subject of the opinion.

The Commission issued seven waivers in 2013.

Waiver 13-07-05 addressed a request for a waiver from the prohibition from outside employment with a business that negotiates or contracts with the employee’s department. The Commission determined that the outside employment activity would not create an actual conflict of interest and issued the waiver subject to the condition that the employee, in her capacity as a County employee, recuse herself from all matters that could involve her outside employer.

Waiver 13-09-007 addressed the prohibition against outside employment with a business that is regulated by the County agency with which the employee is affiliated. The Commission determined that the outside employment activity was not likely to create an actual conflict of interest and issued the waiver subject to the conditions that, as a County employee, the employee would seek recusal on all matters involving his outside employer and abstain from working on any matters related to Montgomery County for his outside employer.

Waiver 13-09-008 involved a request for a waiver from the prohibition against a County employee owning more than one percent of a business that is regulated by the employee’s County agency. The Commission determined that the business ownership was not likely to create an actual conflict of interest.

Waivers 13-09-009, 13-09-010, 13-11-011 and 13-12-012 addressed four substantially similar requests for waivers from the prohibition from outside employment with businesses that negotiate or contract with the department with which the requesting employees were affiliated. The Commission determined that the outside employment activities did not create actual conflicts of interest.

6. Education: The Commission conducts public education and other information programs regarding the Ethics Law. Commission staff routinely provides individual instruction on filling out and review of financial disclosure forms, outside employment requests and lobbying reports, and other matters falling within its jurisdiction. But group instruction of public employees on the scope of the Public Ethics Law has been handled primarily by the County Attorney’s Office. In the fall of 2013, Commission staff prepared a proposal regarding coordination of ethics education in the County. The principal objective of the proposal is the incremental implementation of a systemic and County government-wide approach towards ethics education. The goals of the education plan are to promote knowledge of the requirements of the Public Ethics Law; promote

compliance with ethics program requirements, particularly as regards outside employment and financial disclosure; and to advise employees of pathways to getting advice or addressing ethics concerns. The education plan addressed the differing roles and responsibilities for ethics training of the Ethics Commission, the Chief Administrative Officer, Council Staff, the County Attorney and the Office of Human Resources. It suggested the Ethics Commission as being the primarily responsible party for establishment of systematic ethics training. The plan briefly identified education priorities, and considerations that need to be addressed such as: mediums for training, frequency of training, and the need for tracking who has taken training. Lastly, the education plan made initial recommendations for implementation ethics training.

The education plan was submitted to the Ethics Commission for approval and at its October meeting, the Commission approved the proposal. The proposal was then submitted to the Assistant Chief Administrative Officer for review and approval. The plan was approved. It is expected that the implementation of the program will be incremental, requiring close coordination between the Ethics Commission and the County Attorney with regard to content and between the Ethics Commission and the Office of Human Resources with regard to delivery opportunities.

7. Legislative and Regulatory: The Commission recommends and prepares new ethics legislation and regulations. Pursuant to State requirements (Senate Bill 315 (Chapter 277 of the Acts of 2010),) the Commission is required to certify on October 1 of each year that Montgomery County's Ethics Law is equivalent to or more restrictive than State Ethics Law as regards elected officials. This requirement was substantially met in 2013 through a letter to the State Ethics Commission addressing the status of draft legislative proposals.

The Ethics Commission has shared with the State Ethics Commission the principles it wishes to emphasize in aligning the County's financial disclosure laws with the State's and late in 2013 received feedback from the State Ethics Commission on its expectations for a legislative proposal. The Ethics Commission expects to work closely with the County Attorney and the Senior Legislative Attorney for the County Council. The Ethics Commission considers the draft legislation to be a priority in 2014.

8. Coordination and Outreach: The Staff of the 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 Commission programs, activities, and publications such as annual reports, approvals of outside employment requests, lobbying data, and waivers and opinions. The hiring of new personnel has substantially improved the Commission's ability to fulfill its transparency mission.

9. Administration: The Staff of the Commission is responsible for assuring that Commission meetings are run in accordance with the Open Meetings Act and other

applicable law. The Staff informs and advises the Commission as to all material matters under its jurisdiction; Commission staff are also responsible for budget, procurement, human resources, and resource management for the operation of the office in accordance with Montgomery County policies, and attends required training in these and other office management areas.

For the Commission:

Respectfully Submitted,



February 28, 2014

Kenita Barrow, Chair

Date

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