



Isiah Leggett
County Executive

OFFICE OF THE COUNTY ATTORNEY

Leon Rodriguez
County Attorney

MEMORANDUM

TO: Marc P. Hansen
Deputy County Attorney

FROM:

Karen Federman Henry
Chief

Karen L. Federman Henry

Scott Foncannon
Associate County Attorney

[Signature]

DATE: January 8, 2008

RE: Authority of the County Attorney to collect and compromise debts owed to the County and to sign Proofs of Claim for filing in Bankruptcy Court

This memorandum addresses the authority of the County Attorney to collect and compromise debts owed to the County, including real and personal property tax, other taxes, loans, fines for code citations, and recovery of damages through subrogation claims. Some of the collection efforts involve debtors who have filed for bankruptcy, which presents the question of whether an attorney in the County Attorney's Office or another County official should sign a proof of claim form on behalf of the County for filing in the bankruptcy court.

ANSWER

The authority of the County Attorney to collect and compromise debts owed to the County depends on the nature and amount of the debt. The County Attorney has general authority to collect, compromise, and settle claims against the County or debts owed to the County that do not exceed \$5,000 when it is proper and advisable to do so. For claims or debts owed to the County that exceed \$5,000, the County Attorney may collect, compromise, and effect a settlement of the claim or debt only with the approval of the Chief Administrative Officer, (CAO), the Director of the Department of Finance (Finance Director), or the sub-delegate of the Finance Director, as discussed below. The County Attorney has statutory authority to initiate an action in court to collect real property tax or personal property tax owed to the County, including the interest and penalty owed on delinquent taxes. In addition, the County Attorney may compromise the amount owed for taxes, if the Finance Director (as the Collector)

Marc P. Hansen
January 8, 2008
Page 2

and the County Attorney agree that the full amount of the claim would be uncollectible. The authority to sign a proof of claim in bankruptcy court derives from evidentiary principles under which the proof of claim should be signed by the County employee with personal knowledge of the factual basis of the claim.

BACKGROUND

As the legal officer of the County, the Office of the County Attorney handles a variety of collection efforts, as well as matters affecting the self-insurance fund. The debts collected by the Office include real property tax, personal property tax, other types of County taxes, loan payments, fines from civil citations, and subrogation claims to collect damages paid through the self-insurance fund. The dollar amounts of these matters can range from less than \$100 to more than \$100,000.

You requested research regarding the nature and scope of the authority within the Office of the County Attorney to negotiate and compromise these debts or claims, including a waiver of any penalty or interest that may be owed. The answer to the question requires review of the origination of the authority to settle or compromise claims and whether there is a need for the specific approval of the County Executive, the Chief Administrative Officer, or the Finance Director. Depending on the result, there may be a need for written delegations of authority for certain types of claims or debts.

A similar issue derives from the practice by which attorneys in the office sign and file the proof of claim forms in the bankruptcy court for debts owed to the County by individuals or entities that have filed bankruptcy proceedings. This memorandum will address the factors to consider in identifying the proper signatory for the forms based on applicable law.

ANALYSIS

Real Property Tax and Personal Property Tax

The County Attorney has the authority to initiate an action to collect real property tax or personal property tax owed to the County, including interest and penalty, and may compromise the debt when the Finance Director agrees that the full amount is uncollectible.

The authority to collect real property tax and personal property tax derives from several sources. The Montgomery County Charter designates the Department of Finance as the custodian of all county funds and directs the Department of Finance to "collect taxes, special assessments, license fees and other revenue" along with other management and audit tasks, and to "perform such other functions as shall be prescribed by law." Montg. Co. Charter § 214. The Montgomery County Code establishes the Department of Finance and delineates the specific

duties of the Finance Director. Montg. Co. Code § 1A-201(a) and § 20-38, respectively. The Code further designates the Finance Director as the holder of "all the powers and duties of the treasurer of the county and collector of taxes." Mont. Co. Code § 20-39.

State law establishes the general duty of the collector to collect State and county real property taxes, together with interest and penalties. Md. Code. Ann., Tax-Prop. § 4-201. The collector also has the authority to collect municipal taxes or special district taxes, but is not required to do so. *Id.* The word "tax" includes "any tax, or charge of any kind due to the State or any of its political subdivisions, or to any other taxing agency, that by law is a lien against the real property on which it is imposed or assessed." Tax-Prop. § 12-801(c)(2). The primary method of collecting real property tax is through the annual county tax sale. Tax-Prop. § 12-808; Montg. Co. Code § 53-36. Thereafter, the County has seven (7) years from the date the tax is due to initiate an action in court to collect any tax imposed under the Tax-Property Article. Tax-Prop. § 14-864.

The Charter designates the County Attorney as the chief legal officer of the county, with the authority and responsibility of conducting all of the law business of the County and representing the County in all actions in which the County is a party. Montg. Co. Charter § 213. When collection activity becomes necessary, the Office of the County Attorney pursues the action in court or otherwise on behalf of the County. When the tax has not been paid, the Finance Director, as the collector of the tax, requests the County Attorney "to institute an action against the person responsible for the tax." Tax-Prop. § 14-865(2). The county attorney initiates the collection action upon request of the collector, i.e., the Finance Director. Tax-Prop. § 14-866(a). When the Collector and the County Attorney agree that "the full amount of the claim would be uncollectible," the county attorney may "compromise the claim . . . accept a lesser amount on behalf of the collector . . . and issue a release of the claim or satisfaction of the judgment." Tax-Prop. § 14-866(b).

Although all of the delinquent real property tax on the tax liens that are sold is collected at the annual tax sale, some real property tax accounts and all of the delinquent personal property tax accounts remain subject to collection by filing an action in the District Court or Circuit Court by the collection unit in the Office of the County Attorney. The provisions of State law and the County Code permit the County Attorney to collect the full amount due, but requires the agreement of the Finance Director (as the collector) that the full amount of the claim is uncollectible before compromising the claim and accepting a lesser amount than the full tax, interest, and penalty due.

The Department of Finance refers delinquent tax matters to the collection unit for handling. The referral serves as the basis for initiating a suit in the appropriate court for collection. The practice has included the ability of the County Attorney's Office to reduce or defer the interest and penalties, but not the underlying tax due. It may be useful to authorize this

practice in writing by a delegation from the Finance Director. The delegation could include a provision for the level at which the dollar amount might require additional consultation with the Director prior to any compromise or acceptance of a lesser amount than is due.

Claims by or against the County

For amounts that do not exceed \$5,000, the County Attorney has clear authority "to effect a settlement of all claims by or against the county and all court cases to which the county is a party where the amount of the claim or the amount involved in the suit is not more than five thousand dollars (\$5,000.00) and when [in] the county attorney's judgment it is proper and advisable to do so." Montg. Co. Code § 20-2.¹ This type of claim or court case would include a claim for taxes, other than real or personal property taxes, fines for code infractions, many subrogation claims, and other types of debts owed to the County. The more complicated situation exists when a claim by or against the County exceeds \$5,000. For those matters, the County Attorney generally needs the approval of the County Executive to effect a settlement. Montg. Co. Code § 20-2.

When the members of the County Council are involved, the authority to settle or compromise a claim depends on the capacity in which the council member is a party. If the matter involves the council member in his or her capacity as a council member, the County Attorney may settle the case as otherwise provided above in relation to the amount of the claim. If the council member is a party in an individual capacity with the potential for personal liability, the individual council member must approve the settlement or compromise, regardless of the amount of the claim.

The County Executive may delegate or assign this approval authority to the Chief Administrative Officer, as authorized by the Charter and the Code. The Charter provides that the CAO "shall perform such other duties as may be assigned by the County Executive." Montg. Co. Charter § 211. And the County Code provides authority for the use of an Executive Order to direct a specific action based on a process established by an administrative procedure. Montg. Co. Code § 2A-13(e) and § 2A-17; see AP 1-3 for the procedures. The County Executive has delegated this settlement authority to the CAO for all claims that are not paid through the self-insurance fund, while settlement approval authority for all claims paid through the self-insurance fund is delegated to the Director of Finance. (See attached copy of Executive Order No. 151-95 effective August 24, 1995.)

¹ Although one line of thought interprets this to permit the County Attorney to settle a claim if the difference between the demand and the offer is no greater than \$5,000, the language of the statute does not appear to extend beyond the total figure of \$5,000. This practice may have arisen from the delegations of authority to the self-insurance fund panel and the Director of Finance as a natural progression of the shared decision-making for self-insurance matters.

The Executive Order also authorizes the Director of Finance to subdelegate the settlement authority for self-insurance fund matters. The Director has exercised this authority by sub-delegating settlement authority to Terry Fleming, Director of Risk Management, for claims up to \$10,000. For claims between \$10,000 and \$30,000, Mr. Fleming has settlement authority with the approval of the self-insurance fund settlement committee. In addition, the Finance Director has delegated settlement authority to Mr. Fleming to settle property damage claims of up to \$20,000. (See attached copy of sub-delegation letter dated December 3, 2007.)

These same provisions would apply to the settlement of a subrogation matter, based on the language of Montg. Co. Code § 20-2, which refers to claims by or against the County. The collection unit of the County Attorney's Office handles subrogation claims for property damage, medical expenses, and workers' compensation benefits that it collects from third parties. The delegation of settlement authority to the CAO and the Finance Director, and the sub-delegation to Terry Fleming, apply to those claims.

As a result, when a claim or debt owed to the County exceeds \$5,000, the County Attorney needs approval from the CAO to compromise the amount for certain items, while approval of the Director of Finance or Terry Fleming is required for matters under the self-insurance fund. To authorize the County Attorney to compromise certain types of claims (e.g. collection amounts that exceed \$5,000 other than subrogation claims), the CAO would need to delegate that authority in writing. In theory, the Finance Director could delegate similar authority to the County Attorney to compromise claims under the self-insurance fund in amounts that exceed \$5,000. A practical consideration weighs against doing so, however, because the Finance Director has delegated settlement and compromise authority to Terry Fleming for matters that do not exceed \$30,000, and another delegation of the same authority to the County Attorney would be duplicative and could create confusion in the process of handling these claims.

Loans through County Agencies

Certain agencies in the County provide loans to qualified persons or entities and periodically request that the collection unit seek collection of the loans or compromise the amount due. On at least one occasion, the Department of Economic Development was willing to forgive the full loan amount for an economic development loan of \$100,000 that was likely to be uncollectible. Based upon the County Executive's delegation of settlement authority to the CAO, the issue was raised with the CAO for approval. In light of the County Executive's delegation authority, it would seem that similar settlement or compromise authority could be delegated to the Director of the Department of Economic Development with sub-delegation authority to the County Attorney. This would require a new Executive Order and the consent of the officials involved, but would clarify the lines of authority for compromising the debts

referred by the Department to the collection unit. As with the Finance Director discussed in the previous section, it would work best for the Director to delegate the authority to only one official, so that confusion or conflicts are minimized.

Proof of claim in bankruptcy proceeding

The Bankruptcy Rules authorize a creditor to file a proof of claim in a bankruptcy case. 11 U.S.C. § 501(a). To do so, a proof of claim must be executed by "the creditor or the creditor's authorized agent." Bankruptcy Rule 3001(b). For an attorney to establish authorization to file the proof of claim, the attorney must file a notice of appearance on the creditor's behalf or attach a power of attorney to the official claim form executed by the creditor. (*In re Access Cardiosystems, Inc.*, 361 B.R. 626, 2007 Bankr., Lexis 472 (2007)). Either of these actions establishes the attorney as the agent of the creditor.

While this procedure is technically plausible, it is not practical for the collection unit to use it for several reasons. Once an attorney enters an appearance in the case, he begins to receive all of the pleadings filed in the case, which create needless filing and review of documents that are not necessarily related to the County's claim. For the alternate method of filing the proof of claim, the client agency needs to sign the power of attorney. At that point, it seems equally sensible to have the client agency sign the proof of claim in the first instance for filing with the court without entering an attorney's appearance. Evidentiary principles also suggest that the client agency should sign the proof of claim form, because "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity of and amount of the claim." Rule 30001(f). As such, the person who signs the form becomes a logical witness to the claim and would need to testify if it is challenged.

The collection unit may decide to sign the proof of claim on behalf of the County using the methods noted in the Rule, but the more prudent practice may be to ask the County employee with personal knowledge of the facts that support the claim to sign the proof of claim form for filing in the Bankruptcy Court. As long as the client agency designates an individual to sign the form, obtaining that signature would not be difficult or time consuming. Moreover, it avoids placing the attorney in the position of testifying as a witness or scrambling to identify a proper witness if the claim is challenged.

CONCLUSION

Based on the analysis in this memorandum, the County Attorney has the authority to collect and compromise claims by the County for debts that do not exceed \$5,000. When handling the collection of real or personal property taxes owed to the County, the County Attorney may compromise a debt when the Finance Director agrees that the full amount of the debt would be uncollectible. For claims that exceed \$5,000 the County Attorney may collect,

Marc P. Hansen
January 8, 2008
Page 7

compromise, and effect a settlement of the claim with the approval of the CAO, the Finance Director or the sub-delegate in the circumstances described above.

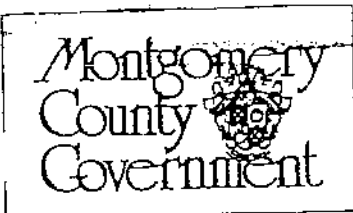
To expand the authority of the County Attorney, the County Executive could issue a revised Executive Order delineating the delegation of authority and the ability of the CAO and the Director of Finance to subdelegate their respective authority. The revised Executive Order could include a delegation to the Department of Economic Development for its economic development fund loans or, in the alternative, authorize the CAO to subdelegate to a department director certain settlement authority. Even if this new authorization does not occur, an updated delegation of authority should be issued to replace the 1995 order.

Finally, the proof of claim form filed on behalf of the County should be signed by the county employee with personal knowledge of the facts that support the claim and not by the attorney handling the collection matter on behalf of the County. The affected departments should designate an appropriate employee to serve as this representative.

If you have additional questions or require further research, please let us know.

Attachments

A07-01572



Executive Order COPY

Office of the County Executive
Montgomery County, Maryland

Subject Subdelegation and Authority to Settle Claims	Executive Order No. 151-95	Subject Suffix
Originating Department Department of Finance	Dept. Number	Effective Date 8/24/95

WHEREAS, Section 20-2 of the Montgomery County Code 1994, as amended, requires that the approval of the County Executive be obtained for all claim settlements in excess of five thousand dollars, and

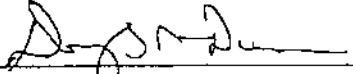
WHEREAS, Section 20-37 of the Montgomery County Code 1994, as amended, has created a Comprehensive Insurance and Self-Insurance Program for the payment of claims against the County, and

WHEREAS, the County Executive has determined that it is in the best interest of the County and the public for the claim settlement approval authority vested in the County Executive to be delegated, and

WHEREAS, the County Executive has determined that it is in the best interest of the County and the public to permit the Director of the Department of Finance to have the power to subdelegate the claim settlement approval authority conferred by the County Executive, and

NOW, THEREFORE, the County Executive hereby delegates his claim settlement approval authority to the Chief Administrative Officer, for all claims except those paid through the Comprehensive Insurance and Self-Insurance Program, and to the Director of the Department of Finance for all claims paid through the Comprehensive Insurance and Self-Insurance Program, with the right of the Director of the Department of Finance to subdelegate this settlement authority.

This Executive Order supersedes Executive Order 8-79, dated March 21, 1979.


Douglas M. Duncan
County Executive

APPROVED AS TO FORM AND LEGALITY.
Montgomery County Attorney's Office
By: Patricia P. Via 8/22/95



DEPARTMENT OF FINANCE

Isiah Leggett
County Executive

Jennifer E. Barrett
Director

December 3, 2007

TO: Terry Fleming, Manager II
Division of Risk Management

FROM: Jennifer E. Barrett, Director
Department of Finance *J. Barrett*

SUBJECT: Claims Settlement Authority

The purpose of this memorandum is to notify you that I am delegating authority to you to settle certain claims filed against the Comprehensive Insurance and Self Insurance Program (Self Insurance Program), in accordance with Executive Order 151-95, Subdelegation and Authority to Settle Claims.

As we have discussed, the authority being delegated is conditioned upon your notifying me in advance of the settlement of any claim involving issues of a sensitive nature.

The following authority is delegated to you:

1. Full authority to settle any claim up to \$10,000
2. Full authority to settle any claim involving vehicle damage or damage to real property and contents up to \$20,000
3. Authority to approve settlements recommended by the Claims Settlement Committee up to \$30,000.

This delegation of authority may be withdrawn or expanded in the future as conditions may warrant

cc: Karen Hawkins, COO,
Department of Finance