

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Mayor's Office of Legal Counsel**



Responses to Fiscal Year 2018 Performance Oversight Questions

Mark Tuohey

Director, Mayor's Office of Legal Counsel

Submission to

Committee on Government Operations

Chairperson Brandon T. Todd

Councilmember, Ward 4

February 12, 2018

Committee on Government Operations

John A. Wilson Building

1350 Pennsylvania Ave., NW, Suite 117

Washington, DC 20004

MOLC FY17-18 Performance Oversight Responses to Committee on Government Operations

**Mayor's Office of Legal Counsel
FY17-18 Performance Oversight Questions
Committee on Government Operations
Councilmember Brandon T. Todd (Ward 4), Chair**

1. Please provide the legislative history for the creation of the Office, which includes the following information:
 - a. The legislative vehicle by which the Office was created (Mayor's Order, Resolution, or Statute). **The Mayor's Office of Legal Counsel ("MOLC") was established by section 101(a) of D.C. Law 20-60, the Elected Attorney General Implementation and Legal Service Establishment Amendment Act of 2013 ("D.C. Law 20-60").**
 - b. What powers the Office has been delegated through Mayor's Order. **None.**
 - c. The legislative vehicle by which the Director was appointed (Mayor's Order, Resolution, Statute). **Director Tuohey was appointed by Mayor's Order 2015-72.**

2. Please explain the mission of your Office. **The mission of the MOLC is to provide legal advice and support to the Mayor, the City Administrator, the Offices of the various Deputy Mayors, the District government agencies, and agency counsel. As set forth in D.C. Law 20-60, the MOLC's organic statute:**

(b)(1) The purposes of the Mayor's Office of Legal Counsel shall include:
 - (A) Coordinating the hiring, compensation, training, and resolution of significant personnel-related issues for subordinate agency counsel in conjunction with agency directors;*
 - (B) Providing legal and policy advice to the Mayor and executive branch;*
 - (C) Resolving interagency legal issues for the Mayor;*
 - (D) Overseeing the representation of agencies in investigative matters before the executive branch of the federal government, Congress, or the Council of the District of Columbia; and*
 - (E) Supervising outside counsel in matters where the Office of the Attorney General is recused from a matter or otherwise not available. (emphasis added)*

3. Please provide a complete, up-to-date organizational chart for each division within the office, including an explanation of the roles and responsibilities for each division and subdivision.
 - a. Please provide a list of all employees (name and title) for each subdivision and the number of vacant positions.

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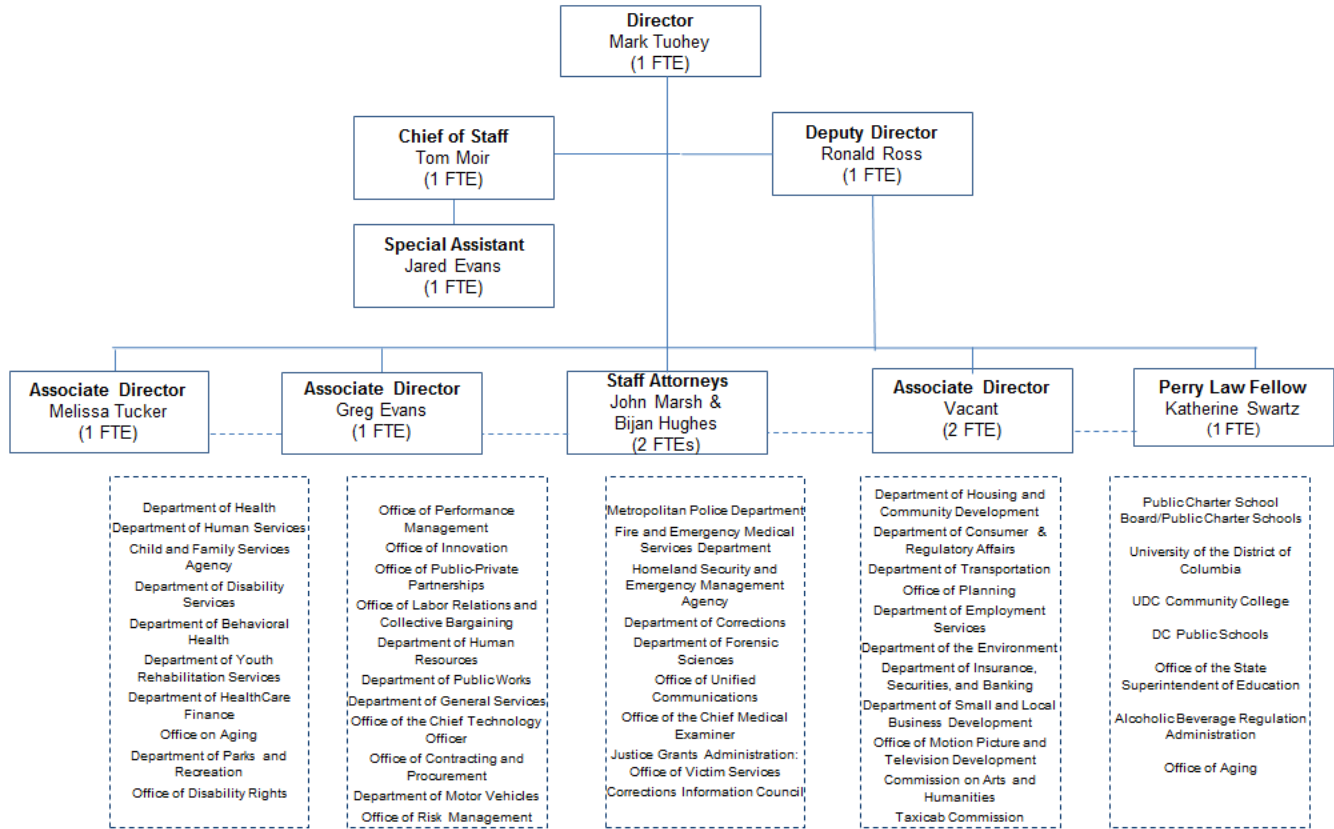


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ORGANIZATIONAL CHART

As of 2.6.2018
Last updated by Tom Moir
FTE Total: 11



- b. Please provide a narrative explanation of any organizational changes made during the previous year. **The MOLC did not make any organizational changes.**
- 4. Please provide a complete position listing for your office for fiscal year 2017 to date, including the following information.
 - a. Name of employee.
 - b. Title of position.
 - c. Grade, series, and step of position.
 - d. Date employee began.
 - e. Salary and fringe benefits.
 - f. Job status (continuing, term, temporary or contract).

The following table sets forth the requested information as of 2/6/18:

Name	Title	Grade	Hire Date	Salary	Fringe	Status
Mark Tuohey	Director	XS-11	2/2/2015	195,000	37,830	Continuing

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Ronald Ross	Deputy Director & General Counsel	LX-03	1/12/2015	187,908	36,454	Continuing
Tom Moir	Chief of Staff	XS-09	10/24/2016	140,000	27,160	Continuing
Greg Evans	Associate Director	XS-08	3/9/2015	138,500	26,202	Continuing
Melissa Tucker	Associate Director	XS-08	2/23/2015	138,500	23,978	Continuing
Bijan Hughes	Staff Attorney	XS-07	3/13/2015	97,850	18,983	Continuing
John Marsh	Staff Attorney	XS-07	3/13/2015	97,850	18,983	Continuing
Jared Evans	Special Assistant	XS-05	2/23/2015	84,975	14,616	Continuing
Katherine Swartz	Beverly Perry Law Fellow	XS-02	9/11/2017	66,588	12,918	Term

5. Does the office conduct annual performance evaluations of all its employees? If so, who conducts such evaluations? What steps are taken to ensure that all office employees are meeting individual job requirements? **As one of the smaller agencies in the District government, the MOLC manages internal performance through close and daily interaction between the Director, Deputy Director, and staff. The Director is responsible for the monitoring of agency employee performance.**

6. Please provide a list of employees detailed to, or from your office. Provide the reason for the detail, the detailed employee’s date of detail, and the detailed employee’s projected date of return. **The MOLC does not have any employees officially detailed to other agencies. Our Beverly Perry Law Fellow, Katherine Swartz, assists Betsy Cavendish in the execution of her duties as General Counsel to the Executive Office of the Mayor.**

7. Please provide the Committee with:
 - a. A list of all employees who receive cellphones, personal digital assistants, or similar communications devices at the Office’s expense. **All MOLC staff receive government-issued cell phones to respond to high-priority client or office needs when away from the office.**
 - b. A list of all vehicles owned, leased, or otherwise used by the Office and to whom the vehicle is assigned. **The MOLC does not own any vehicles. The office does make use of the transport vans maintained by the Executive Office of the Mayor’s Support Services team, for the purposes of travelling to work-related meetings or events outside of the Wilson Building.**
 - c. A list of employee bonuses or special award pay granted in FY17 and FY18, to date. **MOLC has not granted any bonuses or special award pay in FY17 or FY18, to date.**
 - d. A list of travel expenses, itemized by employee.

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Individual	Description	Expense	Justification
Melissa Tucker, Associate Director (December 2017)	Council on Governmental Ethics Laws (COGEL): 39 th Annual Conference	\$1952	Continuing legal education; training on FOIA issues and other public law matters
Melissa Tucker, Associate Director (December 2016)	Council on Governmental Ethics Laws (COGEL): 38 th Annual Conference	\$1680	Continuing legal education; training on FOIA issues and other public law matters

e. A list of the total overtime and workman’s compensation payments paid in FY17 and FY18 to date. **MOLC has not made any such payments.**

8. Please provide a chart showing your office’s approved budget and actual spending, by division, for FY17 and FY18 to date. In addition, please describe any variance between fiscal year appropriations and actual expenditures.

	FY17 Approved Budget	FY17 Revised Budget	FY17 Actual Expenditures	FY17 Variance	FY18 Approved Budget	FY18 Actual Expenditures (as of 1/30/18)	Comments
Personal Services	1,506,438.00	1,270,929.00	1,258,559.23	12,369.77	1,482,936.28	402,288.17	Actual expenditures for personal expenditures were less than anticipated due to salary lapse
Non- Personal Services	135,226.00	63,926.00	63,745.80	180.20	151,204.72	1,957.59	Actual expenditures for goods and services were less than anticipated
GROSS	1,641,664.00	1,334,855.00	1,322,305.03	12,549.97	1,634,168.00	404,245.76	

9. Please list any reprogramming, in or out, which occurred in FY17 or FY18 to date. For each reprogramming, please list the total amount of the reprogramming, the original purposes for which the funds were dedicated, and the reprogrammed use of funds. **The MOLC had two reprogrammings in FY17:**

- \$5,166 in local funds reprogrammed within the MOLC, from Object Class 40 to Object Class 70, to purchase and upgrade staff’s personal computers, which were outdated.

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- \$306,809 in local funds reprogrammed from the MOLC to the Housing Production Trust Fund to provide increased funding for the development and preservation of affordable housing in the District.

The MOLC has had no reprogrammings to date in FY18.

10. Please provide a complete accounting for all intra-District transfers received by or transferred from the office during FY17 or FY18 to date. In FY17, the MOLC transferred out \$31,920 to the Council of the District of Columbia to purchase annual pocket parts, annual pamphlet supplements, and new volumes of the D.C. Official Code. The MOLC also transferred out \$7,000 to the Executive Office of the Mayor's Support Services team for general administrative services, including the use of transport vans for official meetings.

The MOLC has not received or sent any intra-District transfers in FY18 to date. However, we do anticipate another intra-District transfer to EOM's Support Services for our administrative support, similar to the transfer made in FY17.

11. Please identify any special purpose revenue accounts maintained by, used by, or available for use by your office during FY17 or FY18 to date. For each account, please list the following:

- a. The revenue source name and code.
- b. The source of funding.
- c. A description of the program that generates the funds.
- d. The amount of funds generated by each source or program in FY17 and FY18 to date.
- e. Expenditures of funds, including the purpose of each expenditure, for FY17 and FY18 to date.

The MOLC has no special purpose revenue accounts.

12. Did the Office participate in any ethics trainings in FY 2017 and FY 2018 to date? Yes. All staff members received training in the Hatch Act and other ethics issues from the Board of Ethics and Government Accountability, as well as recent sexual harassment training offered by the Department of Human Resources. The MOLC's attorneys also regularly attend legal and ethics trainings that are organized by our office, the Office of the Attorney General, the Office of Human Rights, or other agencies for the benefit of agency counsel.

13. Please provide a list of types and dates of training/information sessions the Office has planned for FY18. To date in FY18, the MOLC has organized the following training sessions for agency counsel:

- 10/24/17: MOUs and Fiscal Law
- 12/6/17: "Leading Change" for Attorneys
- 1/23/18: Managing Lawsuits/Working with OAG to Defend Lawsuits
- 1/31/18: Sexual Harassment Law

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We are currently working to schedule a training session on administrative law, to include presentations by administrative law judges from the Office of Administrative Hearings, in March, as well as our annual training on the Freedom of Information Act later in the spring.

In addition to these agency counsel trainings, the MOLC holds meetings of agency general counsel and deputy general counsel, the agendas of which include training specific to supervisory attorneys. Our last such meeting was on 12/21/18 and included a review of sexual harassment policies and procedures. The next meeting is scheduled for 2/16/19 and will include a review of the new collective bargaining agreement with the line attorneys' union.

What are the top challenges the Office is presently facing? Every day, the MOLC engages in the resolution of complex legal questions and conflicts of a sensitive and confidential nature, such as congressional information requests, FOIA appeals, complaints filed against District agencies, and the development of new policy initiatives. We continue to seek out subjects and subject matter experts for legal training to ensure that agency general counsel have sufficient continuing legal education opportunities.

14. What areas (e.g., financial training, procedural training, etc.) do you think the Office needs assistance with? The MOLC is confident that our partnerships with other offices, such as the Executive Office of the Mayor's Support Services team, the Department of General Services' property management staff, and our agency fiscal officer assigned from the Office of the Chief Financial Officer, are sufficiently strong to allow us to continue to provide high quality legal advice and trainings.
15. Please provide a complete list of the Office's current programs, community events, and initiatives. Include a brief description and general time frame for each item. The MOLC generally provides legal and policy advice to the Mayor and the executive branch on an as-needed basis, including counsel in connection with Council and Congressional inquiries and investigations. We also organize a number of continuing legal education sessions for agency counsel and oversee performance evaluations for agency attorneys, as well as hiring and disciplinary matters concerning agency attorneys. The MOLC resolves appeals from Freedom of Information Act ("FOIA") decisions and compiles the annual FOIA report required by D.C. Official Code § 2-538.
16. What has the Office done in the past year to make the activities of the Office more transparent to the public? In addition, please identify ways in which the activities of the Office and information retained by the Office could be made more transparent. By its nature, much of the MOLC's activity is privileged and confidential. However, where the office has opportunity to increase transparency for non-confidential matters, it has done so. The MOLC has taken steps to improve upon the transparency of its FOIA-related work by consulting with open government advocates on the annual FOIA report and with respect to recommendations concerning best practices. The MOLC also established a new email account (FOIA.Appeals@dc.gov) to centralize communications regarding FOIA appeals.

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17. What collaborations, initiatives, or programs have been successful in FY17 and FY18 to date? Why were they successful?

- In FY17 and FY18, the MOLC continued to provide high-quality legal advice to the Mayor and executive agencies on myriad confidential matters. This work has been successful thanks to the dedication and hard work of our talented attorneys.
- The MOLC hosted numerous legal trainings for agency counsel. Our training sessions have received high marks from the attendees, who fill out anonymous surveys regarding each session. The MOLC works closely with presenters from a variety of agencies to ensure that we have subject matter experts providing useful and accurate education for agency counsel. Our collaborations with other agencies have proven fruitful. In FY17 and FY18 to date, the MOLC has hosted legal trainings on the following topics:
 - Gender Identity and Protected Traits
 - Avoiding or Reducing Employment Discrimination Lawsuits
 - Ethics and the Role of the Office of the Inspector General
 - The Freedom of Information Act
 - Serving as a Hearing Officer
 - Personnel Topics for Supervisory Attorneys
 - Rulemaking
 - Sexual Harassment Law
 - Memoranda of Understanding and Fiscal Law
 - “Leading Change” for Attorneys
 - Managing Lawsuits & Working with the Office of the Attorney General

18. How does the Office solicit feedback from customers? Please describe.

At each legal training session we organize, the MOLC asks attending attorneys to fill out and return anonymous evaluation forms grading various aspects of the training. We also invite attending attorneys to suggest new topics for future legal education sessions.

- a. What has the Office learned from this feedback? Our training evaluation forms have helped us better organize our training sessions; for example, we urge presenters to incorporate handouts or, at a minimum, visual aids in their presentations. Our sessions typically receive very high scores.
- b. How has the Office changed its practices as a result of such feedback? See above answer. We also regularly hold hearings on topics which have been specifically requested by agency counsel on our evaluation forms.

19. Please provide a list of all studies, research papers, and analyses (“studies”) the Office requested, prepared, or contracted for FY17 and FY18 to date. Please state the status and purpose of each study. The MOLC has not requested or contracted for any studies from outside entities. The MOLC regularly prepares legal analyses for the Mayor, cabinet members, and executive officials. Pursuant to our attorney-client relationship, these analyses are confidential and privileged.

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20. How many community based grants were awarded in FY 2017? **MOLC has not awarded any community based grants.**
21. How many community based grants have been or will be awarded in FY 2018? **MOLC has no plans to award community based grants.**
22. Please list each contract, procurement, lease, and grant (contract) awarded or entered into by your office during FY 2017 – FY 2018 to date. For each contract, please provide the following information where applicable.
- The nature of the contracting party.
 - The nature of the contract, including the end product or service.
 - The dollar amount of the contract, including the budgeted amount and the amount actually spent.
 - The term of the contract.
 - Whether the contract was competitively bid or not.
 - Funding source.

The MOLC has not entered into any leases or grants. The office's only procurements in FY17 and FY18 were relatively small P-Card transactions for office supplies and equipment, Lexis services, printer/copier maintenance, Ms. Tucker's travel, and the like.

23. Did the Office conduct oversight of the organization to which it awards grants to ensure funds are used as intended? If so, how many oversights? **The MOLC does not award any grants.**
24. Of the organizations that received a community-based grant in FY 2017, how many also received community based grants in FY 2016? **The MOLC does not award any grants.**
25. Please describe how an organization is selected to receive a community based grant. **The MOLC does not award any grants.**
26. Did the Office receive any grants in FY 2017? If so, what was the source and duration of the grant(s), and what was it used to accomplish? **The MOLC did not receive any grants in FY17. The salary for the Beverly Perry Law Fellow position is defrayed by a private donation from Georgetown University Law Center in the amount of \$20,000.**
27. Has the Office sought any grant opportunities in FY 2018? **No.**
28. Does the Office ever request internal or external audits to be conducted on the operation of your office as a precautionary tool? **No. The MOLC meets on a monthly basis with our agency fiscal officer to ensure there are no fiscal irregularities. We closely supervise and support our junior attorneys on a daily basis.**

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What are the Office's goals going forward in FY2018? The MOLC's priorities align with its statutory purposes: the provision of world-class legal services to the Mayor and executive agencies and the coordination of personnel-related issues for subordinate agency counsel in conjunction with agency directors. The MOLC stands ready to respond to congressional or other investigations on behalf of District agencies in the interest of defending the District's rights and prerogatives. We will continue to focus on the dynamic legal needs of our clients, on providing high quality legal training for agency counsel, and on addressing discrete attorney personnel matters as they arise from time to time. The MOLC will also continue to issue sound, well-researched FOIA appeals decisions in a timely manner.