



**Statement of Karl A. Racine
Attorney General for the District of Columbia**



Before the

**Committee on the Judiciary
Kenyan McDuffie, Chairperson**

**PUBLIC HEARING ON
THE FISCAL YEAR 2017 BUDGET OF THE
OFFICE OF THE ATTORNEY GENERAL**

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**10:00am
Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
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Introduction

Good morning Chairman McDuffie, Councilmembers, and staff. I am Karl A. Racine, and I have the privilege of serving as Attorney General for the District of Columbia. I am honored to have this opportunity to testify regarding the budget for the Office of the Attorney General (OAG).

The Attorney General serves the residents and government of the District of Columbia as their chief legal officer. OAG conducts the city's law business. It serves the public interest and provides independent and objective advice to District agencies, the Mayor, and the Council of the District of Columbia. OAG carries out its mandate in a multitude of crucial ways. For example, OAG defends the city in all lawsuits, protecting public dollars from immense potential losses. OAG reviews all legislation, major contracts, and land dispositions for legal sufficiency to ensure the legal soundness of the government's actions. OAG promotes public safety by, among other activities, prosecuting crimes and deterring public nuisances. And OAG protects the District's most vulnerable children by providing services to those who have been abused or neglected and collecting child support payments to ensure their economic security. All told, the Attorney General supervises the legal work of about 277 attorneys and an additional 312 administrative and professional staff. These employees work every day to make OAG the best public interest law firm in the country.

OAG FY 2017 Proposed Budget

The Mayor transmitted to the Council a proposed total FY 2017 budget for the Office of the Attorney General of \$89,290,267. That budget includes \$59,002,650 in Local funds, \$22,570,451 in Federal Grant funds, \$456,232 in Private Donations, \$4,208,741 in Special Purpose Revenue funds, and \$3,052,193 in Intra-District funds. That budget represents OAG's

Current Services Funding Level (CSFL), which means that OAG's budget is essentially the same as it was last year. Put another way, the budget for OAG does not take into account the expanded responsibilities that the new independent OAG has to promote the public interest. Continuing to fund OAG as if it were still a subordinate District agency that does not have a public interest mandate, is, respectfully, inconsistent with the desires of the residents of the District of Columbia who overwhelmingly voted in favor of establishing an independent OAG. The approximate \$6.75 million increase in local funding, beyond that which the Mayor proposed, is a modest step towards funding the office in a manner that will protect residents, workers, taxpayers, businesses, and our government.

Investments in OAG will also benefit the city's coffers tremendously and in multiple ways. OAG brought in significantly more to the District's treasury than the agency cost in Fiscal Year 2015, directly recovering more than \$100 million in settlements and judgments and generating nearly \$6 million in tax collections and administrative fees. OAG also avoided approximately \$571 million in liability to the District. This figure is much lower than the actual total amount claimed in the lawsuits that were resolved in FY 2015, which was \$3.13 billion. In addition, OAG preserved nearly \$70 million in tax revenue for the District by successfully defending tax appeals. OAG's fiscal contribution to the District in FY 2015 totaled over \$800 million, demonstrating that OAG's critical role in the District's financial stability far exceeds the budgetary costs of its services. In fact, in its December 30, 2015 Revenue Estimates, the District's Chief Financial Officer (CFO) attributed a significant portion of the District's 9.7 percent increase in FY 2015 revenues over the previous fiscal year to settlements that OAG generated. The CFO stated that "...almost half of the strong growth in FY 2015 was driven by large one-time gains or extraordinarily strong growth in certain revenue sources" and that "One-

time gains and extraordinary revenue growth... include: settlements totaling more than \$113 million....” Moreover, OAG has taken on its invigorated role in protecting the public interest with zeal, conducting over 150 community outreach events and pursuing new initiatives, such as evidence-based juvenile rehabilitation and consumer protection, in response to residents’ needs.

In order to carry out its expanded mission, OAG proposes a local budget for FY 2017 of approximately \$65,700,000, an approximate \$6.75 million increase over last year’s local budget. Some details of this proposal are provided in the budget materials attached to my testimony. That figure will not only allow OAG to continue to provide exceptional legal services, but it will also enable OAG to expand its work in crucial areas that are priorities for the District and its residents. OAG recognizes and appreciates that the Council must consider many competing and compelling budget requests each year.

In addition to seeking an increase in our local budget, OAG additionally requests that the cap on our Litigation Support Fund (Fund) be increased from \$1.5 million to \$5 million to ensure that the agency has the resources necessary to effectively litigate its cases. Once again, I want to thank you, Chairman McDuffie, and your fellow Committee Members for the advocacy you provided by approving the *Attorney General Authority and Litigation Fund Establishment Amendment Act of 2015*, which created the Fund. As you know, the funds may be used to pay expenses associated with prosecuting or defending litigation on behalf of the District. In order for OAG to most effectively represent the District, the cap on the Fund should be increased to \$5 million and any funds exceeding \$5 million should revert to the unrestricted fund balance of the General Fund on September 30 each year. In the course of a fiscal year, OAG may have, on average, 20,000 matters pending in its 10 legal divisions. The Fund increase is vital to most effectively address expenses associated with litigation on behalf of the District of Columbia, and

to enable our attorneys to compete on a more level playing field with large corporations and other well-funded adversaries in matters such as:

- Litigation against Bank of America, in which OAG is pursuing a claim that the bank enabled a multi-million-dollar fraud against the District government;
- Preliminary investigation of several potential matters that could result in significant contested civil litigation;
- Conducting in-depth investigations to determine whether to bring lawsuits intended to protect consumers; and
- Working with Department of Energy & Environment to navigate complicated federal and local environmental law and clean up the Anacostia riverfront.

The increasing number of affordable housing cases that OAG is pursuing against irresponsible landlords, such as a lawsuit on behalf of tenants in four buildings in Congress Heights.

I would like to briefly touch on OAG's budget requests related to the office's key priorities. OAG's Office of Community Outreach has engaged the community to hear its concerns about legal issues facing District residents. OAG also examined a report sponsored by the DC Consortium of Legal Service Providers called *The Community Listening Project*.¹ This report focused on identifying the needs of residents with regards to public safety and justice. As a result, the agency has collaborated with federal, state and local government agencies, the Executive Office of the Mayor, the Council, and non-profit organizations to devise comprehensive initiatives and solutions to address recurrent, intractable issues. During the engagement events in which OAG has participated over the past year, residents have regularly expressed the need for OAG to protect taxpayers and workers, enforce honest government, ensure public safety, safeguard vulnerable residents and protect consumers. I will briefly touch

¹ A copy of *The Community Listening Project* is submitted along with this testimony.

on how OAG proposes to use the additional resources it is seeking to make a meaningful difference in the work that OAG does.

Protecting Taxpayers and Enforcing Honest Government

To enhance OAG's ability to ensure integrity in government operations and to protect workers and taxpayers, additional resources are necessary. Many of OAG's legal units recover, collect, or preserve funds on behalf of District agencies and residents. As I said before, all told in FY 2015, OAG contributed over \$800 million to the District's fiscal health; the Office needs additional resources to support the important work these attorneys do and ensure increased returns to the District. For example, this fiscal year our Tax and Finance Section was able to add two line attorneys, but only on a temporary basis. These attorneys are contributing immensely to the Section's litigation strategy to defend the District and conserve the overall integrity of the District's tax collection system. Since July 2015, these two temporary OAG attorneys counseled, represented, and advocated on behalf of the Office of Tax and Revenue in 192 court-ordered mediation sessions (approximately eight per week), successfully retaining \$16 million tax dollars or 95percent percent of the affected challenged assessments.

In addition, these temporary attorneys developed a new strategy to pursue counterclaims in tax refund suits, thereby generating several million dollars in extra taxes recovered by the District. Without the continued support from these two additional FTEs, the District will not be able to pursue this strategy and will forego millions of dollars in additional tax revenue. Making these two attorney positions permanent and adding a paralegal to OAG's Tax and Finance Section will cost the District less than \$350,000 but will save the District many times that on an annual basis. Let me emphasize a \$350,000 investment will yield at least a \$16 million benefit to the District. Indeed, this investment alone would effectively pay for the \$6.75 million increase OAG seeks, while still leaving over \$8 million for the General Fund.

Additionally, with booming economic development throughout the city bringing more jobs, it is prudent that we match this boom with attorneys to protect District workers in wage related cases, wage theft, or nonpayment of wages to which workers are legally entitled, is a major contributor to low income and poverty. According to the Employment Justice Center, on average, each low-wage worker loses \$51 per week to wage theft, or \$2,634 per year. That amounts to 15 percent of their annual income, at average earnings of \$17,616 per year. The vast majority of these workers are over the age of twenty-five, and most are supporting at least one child.² Wage theft does not just impact underpaid individual workers: it also reduces the District's revenues through tax and payroll fraud. OAG requests \$380,000 to fund two additional attorneys and two additional investigator FTEs to enforce our wage-theft laws.

Bringing Pay Parity to OAG

Perhaps most importantly, OAG requests \$2,008,942 to increase the pay of its lawyers. OAG can and should be the nation's premier public law office. Our attorneys and staff do incredible work; in order to retain them and to continue to recruit and train top talent, we must be able to compensate them accordingly. The Legal Services Act (LSA) requires that all lawyers (bargaining unit and non-bargaining unit) have pay parity with federal lawyers on the General Service Schedule and that OAG lawyers receive pay for performance. Specifically, the LSA provides:

§ 1-608.58. Pay parity for attorneys.

(a) Compensation for Legal Service attorneys shall be reviewed annually ... and shall be fixed in accordance with the following policy:

(1) The compensation of Senior Executive Attorneys shall be competitive with that provided by the federal government Senior Executive Service Salary Table for

² <http://www.dcejc.org/wp-content/uploads/2014/02/Stolen-Wages-in-the-Nations-Capital.pdf>

attorneys in the Washington metropolitan area having comparable duties, responsibilities, qualifications and experience; and

(2) The compensation of all other Legal Service Attorneys shall be competitive with that provided by the federal government General Schedule for attorneys in the Washington metropolitan area having comparable duties, responsibilities, qualifications, and experience.

The legislative history of the LSA shows that pay parity with the federal government attorney salaries means that the salaries of OAG attorneys must be at least equal to the salaries of attorneys in the federal government. A comparison of the District and federal pay scale for the Washington, DC area shows that the pay for District lawyers is not equal. The District scale for collective bargaining unit (CBU) line lawyers is generally 1.8 percent behind the federal government while the District scale for non-CBU line lawyers lags 3.4 percent to 7 percent behind the federal government. The District pay band for supervisory lawyers ranges from 3.4 percent to 21 percent behind federal lawyers' pay. Two reasons for this wider disparity are that (1) non-CBU line attorneys and lawyer managers did not receive a cost of living increase from FY 2009 to FY 2012, or in FY 2014; and (2) OAG has lacked the funds to conduct office-wide promotions since 2008. This affects all attorneys in the office, including managers as well as CBU and non-CBU line attorneys. Additionally, in FY 2011, there was a pay freeze on the salaries of all OAG staff, and attorneys were denied what otherwise would have been automatic step increases. Even when step increases were reinstated for line attorneys in FY 2012, lawyer managers did not receive them because they are on a pay band and do not receive step increases. The end result is that, by and large, the pay for all OAG attorneys is disproportionate to their federal counterparts, and the pay for lawyer managers has become disproportionate to the line attorneys they supervise. The money I am requesting will help close part of the gap; ensure that the District is in compliance with the Legal Services Act; and allow the District to retain its experienced, highly valuable attorneys by providing them competitive salaries.

Building Safer Communities

In order to increase OAG's capacity to litigate criminal cases on behalf of the District, rehabilitate juvenile offenders, preserve affordable housing, and protect vulnerable populations, additional funds are necessary. With its existing resources, OAG has made significant progress in making our communities safer over the past year. For example, OAG achieved a six-fold increase in the rate at which prosecutors divert low-risk youth to programs designed to provide them with the wraparound support and services they need to avoid re-offending. Of the youth who completed these programs, an impressive 92 percent have not been rearrested. The most effective program OAG uses, the Alternatives to the Court Experience Diversion Program (ACE), is run through the Department of Human Services (DHS). The budget for ACE is proposed to be flat for FY 2017. It is vital that the ACE program receive additional funds to allow for increased intake for more of our juveniles. Not only is the success of this program in reducing crime a great reason to increase funding, but an investment in ACE is also financially prudent. The estimated cost for a juvenile to go through the traditional criminal justice system is around \$40,000, while the cost for a juvenile in the ACE program is approximately \$3,900. Not only does ACE make practical sense for public safety, it also makes fiscal sense for the District government.

OAG also needs additional resources to build on the good work it is doing to preserve safe and affordable housing. On January 8, 2016, OAG filed a complaint against Sanford Capital, the owner of four rental properties in the Congress Heights neighborhood of Ward 8. The conditions of the properties have been deplorable: Tenants have suffered through rodent infestation, lack of heat, lack of air conditioning, severe mold, inoperable fire alarms, mounds of trash, and an overall state of disrepair. The success with this Congress Heights case shined a

light on issues with irresponsible landlords, and many more properties have come to our attention. Our Neighborhood and Victim Services Section, which brings these cases, is composed of a Section Chief and four line attorneys. Their responsibilities additionally include synthetic drug prosecutions, nuisance property enforcements, and a host of other issues affecting the public safety and quality of life for our residents. It is critical that additional FTEs be added to focus on outreach to tenants and affordable housing enforcement.

With regard to protecting District seniors, I want to thank you, Mr. Chairman, and your staff for working with us on Councilmember Anita Bonds' extremely important legislation, Bill 21-326, the *Financial Exploitation of Vulnerable Adults Amendment Act of 2016*. This bill will aggressively address the need for enforcement against individuals and entities that prey on senior citizens. Moreover, the bill will authorize OAG to act immediately to intercede in cases and temporarily freeze accounts to ensure the finances of exploited seniors remain safe. I was honored to testify in support of this legislation last year, and I look forward to the first vote by the full Council. We are working with our partners at DHS on these issues every day. The exploitation of District seniors remains a priority for OAG, and we request an additional staff for this purpose.

Consumer Protection and Community Outreach

OAG seeks to bolster its capacity to protect residents by initiating legal action against unscrupulous persons and businesses that choose to disregard applicable District and federal law and prey upon the District's most vulnerable residents.

In FY 2015, OAG generated more than \$100 million in settlements and judgments with a very modest staff handling consumer and taxpayer protection matters – money that was crucial to filling a projected FY 2016 budget gap. OAG has a proven record of success and – if given the

necessary tools and resources – can recover even greater sums for the District to support shared priorities of the Council and the Mayor.

This current fiscal year, OAG also stood up a new Office of Consumer Protection dedicated solely to this type of litigation, and in FY 2016, OAG received funding to add four attorneys to its consumer protection staff. The office is nearly fully staffed and OAG is aggressively going after companies that defraud District residents. OAG is also increasing our engagement with large, multi-state actions to protect consumers as well as local actions. The agency, therefore, needs increased capacity to enforce federal and District laws designed to protect consumers and vulnerable residents and visitors from bad actors. Currently, the Office is litigating or investigating cases against multiple unscrupulous debt collectors, rogue house flippers, Volkswagen for its deceptive clean diesel claims, one of the larger health clubs in DC for billing customers after they cancelled their memberships, a “notario fraud” scam, where an immigration consultant was pretending to be a lawyer and harming immigrants. We are also working on a whole host of matters that have not been announced to the public including investigations involving a shared economy company, pricing scams, advertising issues, pharmaceuticals, and a variety of other matters. The legal actions that OAG brings are often complex and take many months or even years to research, develop, litigate, and ultimately bring to favorable resolution.

Budget Support Act Recommendations

On March 18th, OAG provided the Committee on the Judiciary with our requested additions to the Fiscal Year 2017 Budget Support Act of 2016 and its accompanying appropriations legislation. I would like to briefly highlight each of our recommendations, to date.

Fiscal Year 2017 Limitation on Time for Judicial Review of Final Agency Action Act of 2016

The District of Columbia Court of Appeals (DCCA) Rules provide for a 30-day limit for noting an appeal from a final agency order in a contested case, unless a statute provides a different time limit. Additionally, Superior Court Civil Procedure Agency Review Rules 1 and 2 provide a 30-day limit, respectively, for appeals to the Superior Court from decisions under the Comprehensive Merit Personnel Act (CMPA) and the Traffic Adjudication Act. The problem is that there are a number of other situations in which an aggrieved party may appeal an agency decision in a non-contested case to the Superior Court. Examples include bid protests and personnel decisions not covered by the CMPA, such as police and firefighter trial boards. The only time limit for bringing an action in the Superior Court to appeal these administrative orders is the three-year residual statute of limitation in D.C. Code 12-301(8). It is inconsistent to impose a 30-day limit on agency appeals to the DCCA and to the Superior Court in CMPA and Traffic Adjudication Act cases, but to permit final agency actions in other cases to be appealed up to three years later. As a matter of fairness to agencies and for consistency, all judicial challenges to final agency orders should be subject to a common time limit. Additionally, the 30-day time limit is consistent with the time limit found in the 2010 Revised Model State Administrative Procedure Act, and the draft legislation is consistent with current court rules.

Rental Housing Accommodation Nuisance Abatement Amendment Act of 2016

These amendments allow the District to use enforcement tools already present in the *Drug, Firearm, or Prostitution Related Nuisance Abatement Act* to address rental housing that has been operated in a manner that demonstrates a pattern of neglect for the property for a period of 30 consecutive days where such neglect poses a serious threat to the health, safety, or security of the tenants. In these cases, the OAG will have the authority to issue subpoenas, prior to the filing of any complaint, for the production of documents and materials or for the attendance and

testimony of witnesses under oath, or both, related to an investigation of any nuisance described in this chapter.

Moreover, the OAG may seek appropriate civil action to secure a temporary restraining order, a preliminary or permanent injunction, or declaratory or other appropriate relief to restrain, minimize, halt, or eliminate the violation of, or attempted violation of, any provision of this law or its implementing rules. As you know, every moment is critical when dealing with tenants' health and safety, as well as preserving their rights under the Tenant Opportunity to Purchase Act. We find that the quicker housing problems are stopped and abated, the more tenants remain at the property to avail themselves of their rights.

Procurement Practices Improvement Amendment Act of 2016

In order to ensure the government can accurately and efficiently prepare to defend itself against contractor claims, this amendment will require that a contractor certify all cost data, pricing data, and task data of claims as accurate, complete, required, and necessary to the best of the contractor's knowledge and belief. Currently, it is not required that a contractor certify a claim with any specificity. This makes reviewing these claims an immense challenge. This and other reforms will simplify that review. The legislation also makes clear timelines for presenting the contracting officer with a claim for review by the contracting officer.

Procurement Practice Clarification of Review Act of 2016

This amendment is needed to clarify a provision of the Procurement Practices Reform Act of 2010 relating to review of bid protests by the Contract Appeals Board because of a recent decision of the D.C. Court of Appeals. In *MorphoTrust v. D.C. Contract Appeals Board*, 115 A.3d 571 (D.C. 2015), the Court, in a split decision, read language in Section 1008(d) of the Act, D.C. Code § 2-360.08(d), providing that a proceeding before the Board in a protest of an

agency's solicitation shall be "de novo" to require that the Board reevaluate an agency's minimum procurement needs without according any deference to the agency's reasonable determination. The decision is contrary to settled Board precedent stretching back 30 years holding that the Board defers to an agency's reasonable determination of its procurement needs and best method of accommodating them. The decision makes the District an outlier compared to the laws of the federal government and every state government, which uniformly provide that a contract appeals board may not second guess an agency's procurement decision or substitute its own judgment.

Notification of Legal Matters Affecting the District of Columbia Act of 2016

This amendment will require that OAG be notified of lawsuits and proceedings involving independent agencies (e.g., Board of Elections) that concern: (1) the legality of a District or federal statute or regulation; (2) the constitutionality of a final agency decision or any action taken by the independent agency; or (3) the statutory authority of the independent agency to act. To be clear, this is only a notification requirement. Independent agencies will not be required submit their litigation strategies or plans for any approval by OAG.

Attorney General Rulemaking Amendment Act of 2016

This is the permanent version of the enacted emergency legislation that gives the OAG rulemaking authority over personnel and procurement matters.

Ethics and Government Accountability Employee Update Amendment Act of 2016

This amendment adds the Attorney General to the list of the Mayor and Councilmembers in a provision that allows these officials to designate an employee to solicit campaign contributions while on leave from the office.

Interest Rate on Judgments Amendment Act of 2016

This amendment sets a 4 percent cap on interest, when authorized by law, on judgments or decrees against the District of Columbia, or its officers, or its employees acting within the scope of their employment.

Consumer Protection Amendment Act of 2016

This amendment strengthens the enforcement provisions relating to unfair and deceptive trade practices and increases the penalties for violations. Similar provisions are found in our neighboring state of Maryland.

Attorney General Litigation Support Fund Amendment Act of 2016

As discussed previously in the testimony, this amends the Fund created last year by increasing the cap from \$1.5 million to \$5 million.

Consumer Restitution Fund Amendment Act of 2016

This amendment creates a non-lapsing Consumer Restitution Fund for the collection and distribution of restitution awards made to private parties as a result of the OAG's consumer protection enforcement actions. This measure will also require accompanying appropriations language. Often, aggrieved District consumers are left on their own to recover funds from wrongdoers. There are times when it is difficult for residents to recover funds that are rightfully owed to them. A Consumer Restitution Fund, held by the CFO, is a way that the District can ensure that consumers are made whole.

Prohibition of Misleading Charitable Solicitations Amendment Act of 2016

This amendment prohibits material misrepresentations and omissions in charitable solicitations and repeals the prohibition on employing others to make charitable solicitations.

Conclusion

Thank you for the opportunity to highlight some of the important work of the Office of the Attorney General and our budget priorities. We are committed to providing the District with the highest-quality legal services and promoting the public interest. It is an honor and privilege to serve the residents as the first elected Attorney General. My team and I are pleased to answer any questions that the members of the Committee may have. Thank you.