

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF THE ATTORNEY GENERAL

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In First Performance Oversight Testimony, Attorney General Racine Cites OAG Accomplishments, Calls for Increased Resources for the Office

Also Underscores Need for OAG to Serve as Independent, Objective Counsel for District

WASHINGTON, D. C. – Attorney General Karl A. Racine delivered testimony this week before the Council of the District of Columbia’s Committee on the Judiciary citing the Office of the Attorney General’s (OAG) many successes from Fiscal Year 2014 through the present. He further emphasized that OAG could be even better advocates for the District and its residents if provided with additional resources, and he underscored the clear need – supported by an overwhelming majority of District voters when they approved of creating an independent Attorney General – for OAG to continue to serve as the District’s chief legal voice.

Voters demanded an OAG that would be far more engaged with residents and responsive to their most important needs, the Attorney General noted. This means that OAG will:

- Use the law to protect consumers, especially our most vulnerable citizens, from illegal business practices;
- Investigate and prosecute corruption;
- Leverage smart, data-driven investments in the District’s juvenile-justice system to enhance safety in the community and provide greater opportunity for young people to break the cycle of crime and hopelessness;
- Enforce affordable housing laws;
- Protect employees from wage theft and other improper labor and employment practices; and
- Enforce environmental laws.

“I was sworn into office on January 2, 2015, and immediately began establishing and building a culture at OAG, and within the government of the District of Columbia, that makes clear OAG’s primary role as the District’s chief legal office – including our responsibility to provide independent and objective advice to the Mayor, Council, District agencies, and the residents of the District of Columbia,” Attorney General Racine said. **“As we enter our Fiscal Year 2016 budget season, I look forward to meeting with the Mayor and her**

designees, the Chief Financial Officer, and the Council to discuss our needs. If funded, the resources we are requesting will generate additional revenue for the District coffers and provide the District with top-notch, first-class legal services.”

The testimony came before the committee, chaired by Ward 5 Councilmember Kenyan R. McDuffie, in OAG’s Fiscal Year 2014-Fiscal Year 2015 Performance Oversight Hearing. Attorney General Racine cited many highlights of his first few weeks in office, including a recent \$21.5 million settlement with the Wall Street firm Standard & Poor’s and an upcoming settlement with online travel companies that is expected to garner the District up to \$90 million.

“With a Fiscal Year 2015 local budget of only \$55 million, representing less than one percent of the District’s budget, OAG stands to contribute to the District treasury by *more than twice the amount of money allocated to the OAG this year,*” the Attorney General said. **“This, by any measure, is an excellent return on investment. Greater resources will translate to more monetary wins for the District and, as importantly, afford the OAG the ability to have an even greater impact on the lives of District residents.”**

He also noted that OAG’s Real Estate Transaction Section continues to provide crucial independent and objective legal advice on the multi-million-dollar transactions that the District regularly conducts with major developers – and it should remain that way: **“It is essential for the public’s faith in an open, transparent government that the District’s legal matters, including real-estate transactions, are reviewed in a sober, independent, and dispassionate manner. The voters have made clear that want the OAG to be a check and balance on the proper functions of the District government, including the business engagements that the District regularly has with developers and contractors.”**

A summary of the testimony is below. The Attorney General’s full written testimony is [available on the OAG website here](#).

**Summary of Statement of Karl A. Racine, Attorney General for the District of Columbia, Before the
Committee on the Judiciary
Kenyan McDuffie, Chairperson**

**Office of the Attorney General
Performance Oversight Hearing
FY 2014 to FY 2015**

March 4, 2015

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 both honored and humbled that our residents chose me to serve as the first elected Attorney General in the history of our great city.

I am pleased to be here before you to present the accomplishments of the Office of the Attorney General (OAG) for Fiscal Year 2014 and Fiscal Year 2015 to date. I will also take some of my time to share my vision and goals for the Office as we move forward, so you and the public are informed of my priorities.

First, let me thank my predecessor, Irv Nathan, for the exemplary work he did in leading a group of outstanding attorneys and staff in producing many of the remarkable results I will describe at this hearing.

Thanks to Attorney General Nathan, I inherited an exceptionally talented, dedicated, and professional group of attorneys and staff. My plan is to build upon that foundation to create an Office of the Attorney General that is a world-class public law firm and the gold standard for state attorney general offices throughout the nation.

I was sworn into office on January 2, 2015, and immediately began establishing and building a culture at OAG, and within the government of the District of Columbia, that makes clear OAG's primary role as the District's chief legal office – including our responsibility to provide independent and objective advice to the Mayor, Council, District agencies, and the residents of the District of Columbia. I want to thank you, Chairman McDuffie, for your leadership and for working closely with me to ensure that the transition to an independent OAG is a smooth and transparent one.

During the last fiscal year and during the first two quarters of this fiscal year, OAG has responded to numerous requests for opinions and rendered advice on a broad range of legal, legislative, ethical and regulatory issues, including:

- Initiative 71;
- The Budget Autonomy Act;
- The legal and regulatory changes needed to bring the District's firearms laws into compliance with the *Palmer* decision;
- Educational initiatives directed at improving the academic success of young boys of color;
- Legal concerns raised by the Reproductive Health Non-Discrimination Amendment Act;
- Revocations of the charters of public charter schools; and
- A host of other legal, ethical, and regulatory matters.

During my initial weeks in office, OAG lawyers and staff have successfully defended the District and its agencies in significant court cases, brought home to the District's coffers \$21.5 million in our share of a major settlement with Wall Street Firm Standard & Poor's – in fact, the District treasury received the \$21.5 million yesterday. We also provided objective analysis of the legal sufficiency of various pieces of proposed legislation, and counseled the District in disposition of property and other important business transactions.

In addition, and consistent with the establishment of an independent OAG, we have begun to implement four initiatives, programmatically, that I outlined in the *Keys to Justice*, my campaign platform. I expect to discuss these more in our forthcoming budget submission. The initiatives are:

1. Consumer Protection and Community Outreach;
2. Affordable Housing Protection and Enforcement;
3. Public Safety and Criminal Justice, Protecting Children and Families, and Juvenile Rehabilitation; and
4. Protecting Taxpayers, Workers and Enforcing Honest Government.

These initiatives are designed to address many of the concerns raised by District residents on issues in which the OAG plays an important role.

Moreover, I had an opportunity to meet with each member of the Council and exchange ideas regarding our respective concerns – each of which turned out to be concerns we shared mutually. These conversations have further informed me on how best to expand and refine my priorities and proceed with implementing them.

Not only will these initiatives serve the public interest, as envisioned by the Council and voters, but they will also generate substantial revenue for the District of Columbia. As we enter our Fiscal Year 2016 budget season, I look forward to meeting with the Chief Financial Officer, the Mayor, and Council to discuss our needs. If funded, the resources we are requesting will generate additional revenue for the District coffers and provide the District with top-notch, first-class legal services.

When the people of the District elected their Attorney General, they wanted an office that was directly accessible to residents. So, in the time since I have taken office, I have made it a priority to make myself and my office available to communities and groups across the District. To that end, I have already spent time engaging with:

- Students at Hart Middle School in Ward 8 about youth violence;
- Business and community leaders on a host of issues;
- Seniors who have concerns about housing fairness and affordability;
- The community in panel discussions surrounding ethnic disparities in our criminal-justice system;
- The Ward 7 community as the keynote speaker at Capitol View Library on Dr. King's legacy, examining if our country has seen enough progress on racial equality in the past 50 years;
- Civic groups about the role of the Attorney General and my goals for the office; and
- The D.C. Bar's District of Columbia Affairs Section on a host of legal issues related to the District.

I continue to meet with civic leaders, union representatives, business leaders, and with non-profits and other advocacy groups. Additionally, OAG staff has regularly met with community groups and students of all grade levels to discuss the work of OAG, to mediate neighborhood issues, and to work with outside groups to explore how we can collaborate to protect and improve the quality of life for District residents.

In short, we are working hard to make the OAG not only the best public law firm in the nation, but the best public advocate, too. My overall goal is ensuring that OAG's nine legal divisions and one support-services division work together to provide high-quality legal representation to the District, to serve the public interest and to protect the District's treasury

I understand that with a budget gap, it will be incumbent upon OAG to raise our own revenue to offset the costs for our new initiatives, which are critical to our public mission. I intend to do this in part by vigorously pursuing unscrupulous persons or businesses that prey on District consumers and fraudulently obtain taxpayer funds. As you may know, I previously served as a managing partner for a national law firm, with 600 lawyers and a budget of over \$350 million. I intend to bring the private-sector philosophy of setting goals in generating annual revenue to our new OAG business model.

OAG's Consumer Protection Section has done an outstanding job protecting District consumers, and we can enhance these efforts with resources funded solely by money we secure on behalf of the District of Columbia. For example, already in Fiscal Year 2015, with our small staff in OAG's Consumer Protection Section, we have recovered \$21.5 million from a multistate litigation settlement against Standard and Poor's.

OAG is also poised to recover, on the District's behalf, *up to an additional \$90 million* this fiscal year in a case filed against two notable online hotel companies. As you know, the District can use these funds to offset an anticipated shortfall in Fiscal Year 2016. With a Fiscal Year 2015 local budget of only \$55 million, OAG stands to contribute to the District treasury by *more than twice what we cost* this year. This, by any measure, is an excellent return on investment.

OAG's Consumer Protection Section is not the only income-generating unit within OAG. OAG's Commercial Division routinely preserves tens of millions of dollars of projected tax revenue each year by litigating tax appeals. OAG's Civil Enforcement Section recovers \$3-5 million in fines and penalties on behalf of District agencies each year. OAG's Civil Litigation and Public Interest Divisions have recovered multiple millions of dollars in contract appeals cases, as well as avoided nearly \$2 billion in potential liability each year. The Office of the Solicitor General preserves trial court wins and appeals trial court losses, when appropriate. The Personnel, Labor and Employment Division ensures that the valid personnel/employment decisions of city agencies are upheld and comply with applicable laws and regulations. Our Legal Counsel Division advises the Attorney General, Mayor, District agencies and other governmental entities on federal and local laws and rules, helping to minimize costly litigation risks and protect the interests of not only the District government, but also of the District's residents and businesses. OAG's Child Support Services Division annually collects an average of \$56 million for the approximate 46 percent of District children with a child -support order. The Family Services Division protects the District's children. Our Public Safety Division helps keep the District of Columbia safe. Finally, OAG's Support Services Division provides the infrastructure necessary to support the legal divisions' operations.

OAG's FY 2014-2015 Accomplishments Highlights

OAG had a very successful FY 2014-2015 performance year. Let me share just a few of the highlights of our work in the time we have here today. More information is contained in my written testimony.

The Legal Counsel Division played an essential role in assisting both the Mayor and Council on significant issues, such as drafting the legislation and regulations needed to amend the District's firearms laws in the wake of the *Palmer* decision. This included preparing two emergency bills and one permanent bill to create a concealed-pistol-licensing scheme and two sets of rules to create the licensing scheme and the hearing procedures for the newly created Concealed Carry Licensing Review Board.

The Legal Counsel Division also made a significant contribution to the District's efforts to assess the legality of Initiative 71, its implementation, and various issues associated with the legalization of marijuana. In addition, the Legal Counsel Division has been and is continuing to work with Council staff to improve the Wage Theft Act enacted by the Council last fall in order to address questions raised by that Act and to improve the enforcement provisions in order to enhance the rights of wage theft victims.

OAG's **Child Protection Section within the Family Services Division** collaborated with the D.C. Child and Family Services Agency to reduce the number of children placed in foster care by increasing awareness and training on the community-papering process. Community papering prevents placement of children in foster care while allowing court intervention and oversight to resolve abuse and neglect issues.

OAG's **Domestic Violence Section, part of the Family Services Division**, exceeded its contempt performance measure by 61 percent in the first quarter of Fiscal Year 2015 as the result of successfully adopting creative strategies to hold respondents accountable for fulfilling their legal obligations.

In FY 2015, the **Child Support Services Division (CSSD)** established 2,039 new court orders, exceeding its goal by 7 percent. Moreover, in Fiscal Year 2015, this division increased its collections on child-support cases with arrears by 2.6 percentage points. I am also pleased to report that on February 16, 2015, the CSSD completed its database conversion for its automated case-management system.

The **Personnel, Labor and Employment Division** participated in sessions designed to help agency hearing officers comply with existing regulations and reduce the risk of challenges to employment actions – ultimately contributing to reduced payouts from the Public Sector Workers Compensation Program.

OAG continues, through its **Public Safety Division**, to work to ensure the quality of life in the District by fighting and preventing crime and delinquency by young people. During the campaign for Attorney General, I made a promise that one of my top priorities in office would be reforming our juvenile-justice system. So far in Fiscal Year 2015, our Juvenile Section has opened more than 4,600 cases. Many youth are diverted from the system by MPD prior to arrest, and more are diverted by OAG. The truth, however, is that we must provide for more diversion opportunities -- and we are working hard to do so. I am committed to finding creative ways to keep more young people out of the juvenile-justice system by leveraging more of the kinds of services that are desperately needed to prevent juvenile crime.

OAG's Public Safety Division also works to mitigate nuisance properties that are the scene of drug, gun or prostitution activity. Division attorneys have opened 65 matters so far in Fiscal Year 2015. As I promised to do during the campaign, I plan to reach out more to communities to hear from them, keep them informed about what we are doing, and strengthen them in every way possible.

The Public Safety Division is also a potential money-maker for the District. In Fiscal Year 2015, the D.C. Court of Appeals confirmed a judgment for attorneys' fees in the amount of \$76,000 in one of our cases. Its tax and welfare cases recovered tens of thousands of dollars' worth of restitution orders.

Our **Criminal Section** processes approximately 16,000 adult criminal misdemeanor matters a year on average. So far in FY 2015, more than 5,200 cases have been opened. Of those, 2,400 have been papered. Some of these, like driving while impaired by alcohol or drugs and firearms offenses, make a major contribution to public safety.

In an extraordinary effort, OAG's **Neighborhood and Victims Services (NVS) Section** within the Public Safety Division assisted in improving the quality of life for our residents in the District's Sursum Corda neighborhood. NVS worked with the MPD to hold the property owner and management responsible for criminal activity. Using evidence developed by MPD, OAG sued the owner and property manager in September of 2014. NVS attorneys are still involved in litigation, but have reached an interim settlement agreement that required lights, cameras and security that will improve the lives of Sursum Corda residents while maintaining affordable housing in the District.

And our **Support Services Division** completed construction on its state-of-the-art moot courtroom facility, which contains both a trial and appellate courtroom that seats up to 125 individuals, as well as video-conferencing, multiple video monitors and overflow viewing capacity.

I assure you that each attorney and staff member in the Office of Attorney General is keenly aware of our civic and professional duty to assist our most vulnerable residents. It bears pointing out, though, that this can often be accomplished most effectively by winning in court. And, on that count, OAG has an outstanding record. In cases handled by our **Civil Litigation Division** and the **Equity Section of the Public Interest Division** in Fiscal Year 2014, we won 203 out of 224 cases on motion or at trial – a remarkable success rate of 91 percent.

The **Tax and Finance Section** is on track, with the \$5.7 billion in public financings during FY 2014 dwarfing the \$2.0 billion and \$1.7 billion public financing programs of FY 2010 and 2009, respectively. Revenue bond

financings generate administrative fees for the District. Attorneys in our Tax and Finance Section are intimately engaged in drafting the authorizing legislation and approval resolutions as well as negotiating, drafting and completing related documents for all of the District's public financings. During Fiscal Year 2014, the District collected more than \$2 million in administrative fees from this activity.

OAG's **Real Estate Transaction Section** provides independent and thorough legal representation regarding the continuing revitalization of District neighborhoods. The section works with developers to rehabilitate and construct projects for new District facilities – including the new fire station and library in the West End neighborhood, the new fire station on the Southwest Waterfront, historic properties like the Lincoln Theatre, former public-school properties such as the Franklin School, and the creation of housing opportunities in buildings on previously vacant District properties.

When the Mayor and Council considered the structure for the new independent Attorney General, you were wise to keep the attorney reporting structure for these kinds of transactions *within OAG*. It is essential for the public's faith in an open, transparent government that real-estate deals are reviewed in a sober, independent, and dispassionate manner.

The successes of our OAG Divisions are evident not only in win-loss statistics, but also in terms of dollars saved for the District. In the last year, we resolved hundreds of suits where the total demand against the District was approximately \$1.73 billion.¹ As a result of motions, settlements and trials, we resolved all of these actions for approximately \$12.5 million, or 0.72 percent of the claimed damages, resulting in claimed liability avoided of approximately \$1.72 billion. Although justice cannot be measured in terms of dollars and cents, it should be clear from the record that the OAG is a more than sound investment for the District.

Maximizing Capacity through Fellowships & Pro Bono Work

We are also working every day to maximize our capacity at minimal cost to the District through fellowship, internship, and *pro bono* programs. OAG has, as of the end of January, begun the fourth year of the Charles F.C. Ruff Fellowship program, which brings recent promising graduates from five of the law schools located in the District to work for our office for one year. We are actively pursuing an expansion of the OAG's *pro bono* attorney support from the generous local private bar. This has led to a number of courtroom victories and excellent briefs filed by *pro bono* counsel, working with and under the supervision of OAG lawyers. We are deeply indebted to numerous law firms and private practitioners in the city who have devoted substantial man-hours to assisting us without charge in difficult litigations. For example, in the CityCenter case involving important labor-law issues that could if wrongly decided cost the District millions of dollars under the Davis-Bacon Act, we have partnered on a *pro bono* basis with outstanding co-counsel at Morgan Lewis and Bockius. As a result, OAG has made what I believe is a very strong case, currently pending in the U.S. District Court for the District of Columbia, to set aside an adverse decision by the U.S. Labor Department.

OAG Office and Personnel Needs

My senior staff and I are meeting with our attorneys and staff and are making it crystal clear that we have an open-door policy. I am closely studying concerns the union and individual line attorneys have raised, with an emphasis on an open line of communication and respectful dialogue.

¹The \$1.73 billion figure is much lower than the actual total amount claimed in the lawsuits that were resolved in FY 2014, which was \$10.22 billion. However, this \$10.22 billion figure includes three highly inflated demands that claimed a total of \$8.5 billion, but did not, in our view, present a substantial threat of liability.

I have regularly participated in formal labor-management meetings, and have attended informal gatherings of the line attorneys. Through Personnel, Labor Relations and other divisions, we continue to improve morale and labor relations by being responsive to the needs of its unions, AFGE and AFSCME. Both organizations appear to appreciate OAG's responsiveness.

As I move forward, I want to ensure that our legal teams have the necessary powers, authority, capabilities and manpower and must look for ways to accomplish this without adding materially to our costs. We will continue to collaborate with the Mayor and her excellent team of legal professionals, along with the Council and your remarkable attorneys

I want to take a moment to publicly thank Dave Zvenyach, General Counsel to the Council, for his years of dedicated, aggressive, and thoughtful work on behalf of the Council and the residents of the District of Columbia. I understand that he is moving on to a new challenge, and I want to wish him well with his new endeavors.

Major Accomplishments since January 2

I've mentioned a number of successes that OAG has experienced in this last fiscal year. As I close, there are several I would like to emphasize that have taken place just in the short time I've been in office and how these achievements truly benefit the 660,000 residents of the District of Columbia:

- The \$21.5 million our attorneys obtained for the District from the Standard & Poor's settlement not only grows our treasury, but it also exacts a measure of justice from a Wall Street firm for all the homeowners and investors in our city who – as a result of that firm's decisions – lost millions of dollars during the housing crisis and the Great Recession that resulted from it.
- The work we are doing every day to end decades-old consent decrees and federal oversight of District agencies not only helps bring these entities back under our own government's control, but also ultimately will save the taxpayers of the District millions of dollars we would otherwise incur due to the demands of court and federal oversight.
- The two major cases in which we've successfully defended lawsuits against MPD just in the last couple of weeks have also saved our taxpayers millions of dollars, preserving funds that could be used for needs like more affordable housing and higher salaries for teachers and firefighters.
- Our efforts to reform and reduce the practice of shackling juveniles will help improve our residents' overall quality life by bringing us one step closer to a juvenile-justice system that is rehabilitative in its focus more than it is punitive – and I'd like to thank Superior Court Chief Judge Lee Satterfield, the staff in the Public Defender Services, and you, Councilmember McDuffie as well as Councilmember Grosso, for your extraordinary efforts to work with us on this issue.
- And our legal advice to our Mayor, our Council and our public-safety officials on the proper implementation of Initiative 71 has not only kept us within the law, but has also upheld the expressed will of a large majority of our voters in the face of threats and bullying from some members of Congress.

Resources

When we look at the OAG attorneys and staff members who have helped so many individual residents as well as won or saved the District tens of millions of dollars in this fiscal year alone, we can't help but realize just how truly extraordinary OAG's work is.

More than 80 percent of our costs go to personnel – the people who do this amazing work on the District’s behalf day in and day out. But our attorneys make much less than their peers in other organizations and sectors. Even our Collective Bargaining Unit attorneys – who earn more than their non-CBU colleagues – earn less than their federal counterparts.

The starting salaries for our entry-level attorneys generally range between \$61,000 and \$73,000. With law-school loans averaging \$150,000 to \$200,000, OAG salaries do not adequately support their financial obligations, particularly with the high cost of living in the region. I have lost three excellent lawyers who received 20 percent salary increases outside the District government. That must change.

Without a doubt, additional resources will enable OAG to better serve the public interest and the District’s fiscal health. OAG has a proven record of success and can recover greater sums for, and render greater public service to, the District of Columbia if it has the necessary tools and resources.

In the coming weeks, I will preview my budget submission with the Chief Financial Officer, the Mayor and the Council and look forward to discussing ways we can invest in the OAG and increase revenues in future years.

Conclusion

We could not do any of these things if we did not have an absolutely extraordinary team of lawyers and staff in place at OAG. At the core of every lawsuit we file and every action we take is the duty to make our residents’ lives better – because the residents of the District of Columbia are our ultimate clients.

To this point, I want to offer one more story. OAG’s Neighborhood and Victim Services section was notified about a blind, elderly gentleman who owned a home in Northeast. MPD’s First District Vice Unit conducted a drug investigation leading to a search warrant, during which they found this gentleman. He lived upstairs in his own home -- with no plumbing -- while his “caretakers” operated a fully functional crack house downstairs. He had a five-gallon bucket next to his bed as his toilet. The house had such a severe mold problem that several police officers fell ill from inhaling the air in the home.

Following these search warrants, attorneys from OAG assisted in getting the homeowner a guardian appointed by the court. Instead of litigation, where our attorneys would have had to file suit against this poor gentleman for owning a drug and firearm nuisance property, our attorneys worked together with the newly appointed guardian and other District agencies to make sure that he would be safe and taken care of with dignity.

Our attorneys met with the guardian and the elderly victim regularly and made a plan to get him out safely, with the maximum amount of equity possible in his home. He was eventually moved to a group home, began eating properly and gained 18 pounds.

On November 26, 2014, our attorneys got a call from the guardian that the closing on the home was complete. The proceeds of the property’s sale will take care of this elderly gentleman for the rest of his life. We understand that he appears to be now healthy, happy and doing well.

Thank you for the opportunity to discuss the work of the Office of the Attorney General. It is our goal that OAG continue to provide the District government the highest-quality legal services while promoting the public interest. Four years from now, I promise you that D.C.’s Office of the Attorney General will be the tops in the country — a firm foundation for future Attorneys General.

I am pleased to answer any questions that the members of the Committee may have. Thank you.

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