



Lexington-Fayette Urban County Government
OFFICE OF THE CITIZENS' ADVOCATE

Jim Newberry
Mayor

Joan R. Beck
Citizens' Advocate

MEMORANDUM

TO: Mayor Jim Newberry
Vice Mayor Jim Gray
Council Members

From: Joan R. Beck
Citizens' Advocate Ombudsman

Date: October 5, 2009

Re: 3rd Quarter 2009 Activity Report

Counting the Days

An employee of the Urban County Government was disciplined and the discipline was delivered by way of the written form. The form states on its face that discipline may be appealed by the employee so long as the employee gives notice to the Civil Service Commission Secretary within 10 calendar days of the date the discipline notice is delivered. In this instance the tenth calendar day fell on a weekend. The person to whom the notice must be delivered was not available, nor was the government center opened in order to sign the notice in the presence of that person. When the employee reported to the appointed official on the following Monday the employee was not permitted to give notice of his intent to appeal.

We initially inquired directly to the Human Resources Division as to the basis for barring the employee from filing his notice. We were referred to Sections 21-44 and 21-45 of the Urban County Code, as cited on the discipline form. The code section in question states that discipline may be appealed by giving written notice within 10 days. The word "calendar" does not appear in the code sections. Another section of the code tells us that days are counted in accordance with state statute unless other intent is clearly stated. "Time, How Computed. Whenever a notice is required to be given, or an act to be done, the Kentucky Rules of civil procedure shall apply in the computation of time." Ordinance 3958, Section 5(j). The statutes tell us that the count begins on the day after the event. Also we learn that, if the final day falls on a weekend or legal holiday, then the number of days is extended to the next following business day. See KRS Section 446.030 (1)(a). Upon doing this research we determined that the policy of accepting appeal notices within 10 calendar days conflicts with the ordinances and the statutes.

We drafted a memorandum to the Human Resources Division outlining our rationale and requesting reconsideration of the policy. Director Allen referred the memorandum to the Department of Law. The Department of Law concurred with our reasoning and refined the policy to conform to the code of ordinances and the state statutes.

Request for Outside Counsel

There is a lawsuit pending against the Urban County Government, brought by an employee. The Department of Law has requested an interview with Citizens' Advocate Staff concerning this litigation. It is possible, indeed probable that the interest of the Administration, represented by the Department of Law conflicts with the interests of the Citizens' Advocate Office, and, by extension, the Urban County Council. We have serious questions which require legal advice prior to participating in an interview. Standards of legal ethics would prohibit the Department of Law from rendering advice to this office and to the Administration at the same time, since the interests of those two parties are different. In order to ensure that our participation complies with all legal requirements and also does not violate any other interest we therefore request permission to retain outside counsel.

New Procedure

When we presented the second quarter report at the August 11, 2009 Committee of the Whole meeting several council members requested that they be advised of complaints we receive from their districts. After that meeting we instituted a new procedure to send an email to the appropriate council member whenever we receive a complaint from his or her respective district. The message we send includes the date of the complaint and a brief description of the nature of the complaint. We began the notifications immediately on the 11th of August, and went back to August first to let council members know about the complaints from their districts. PLEASE note that the activity for this quarter reflects cases since July 1, so there may be more cases reflected in a district totals than the number of cases for which the council member has received notice. We trust that this information is helpful to Council Members.

EEO Recommendation

The employment process is, quite obviously, handled by the Division of Human Resources. If an applicant or employee believes that the Division mishandled the process, he or she has avenues within Human Resources through which to request reconsideration. If the applicant or employee believes that the mishandling violated his or her rights under the Equal Employment Opportunity Act the complaint is also handled within the Division of Human Resources. That applicant or employee would find him or herself complaining to the division about the division. This structure calls into question the impartiality of any review of an EEO complaint. In prior administrations the EEO Officer was located structurally outside of the Division of Human Resources while still within Administration. **RECOMMENDATION:** We believe that the current structure does not foster confidence in the system and therefore recommend that the Intergovernmental Committee consider whether the EEO Officer ought to be located outside the Division of Human Resources.

Unreasonable Conduct over a Pothole Claim

On occasion this office deals with complainants, who have come to the end of their tether. Some are justifiably upset, angry and generally difficult because they believe to be caught up in some outrageous wrong. Others are difficult for reasons that go well beyond the circumstances of their case and these people are often very difficult to handle. Our best example of this type of unreasonable conduct can be clearly defined in the case of the Sixth Street Pot-Hole Constituent. It is not uncommon for difficult complainants to change the focus of their complaints from the substantive issue to how their complaint is being handled by the agency or particular staff of the agency. When dealing with people whose conduct is unreasonable, being aware of our own emotional response to the complainant is a must. Anger in ourselves leads to a tendency for us to attempt to assert our dominance over the complainants. An 'acknowledgement' and 'do-not-push-back' approach generally is best in dealing with unreasonable complaint conduct. The approach taken in dealing with the Sixth Street Pot-Hole Constituent became apparent immediately during the initial interview held in the government center lobby. A heated discussion transpired between the constituent himself and a particular staff person subsequently handling the constituent's pothole claim. Measures were taken by our staff to redirect the conversation back to the substantive issue at hand which helped to diffuse any further verbal altercations. Once the core issue was brought to light, considerable effort was taken to define our agency boundaries keeping in mind that the complainant 'owns' the issue and the agency 'owns' the complaint. Managing all complaints well from the onset is the key message relayed in this text. Communicating this message to the complainant provides a clear understanding of what is expected. Our office will continue to encourage the need for all agency staff to effectively implement the best practice strategies used for managing unreasonable complaint conduct.

STATISTICAL DATA:**TABLE 1: SUMMARY OF ACTIVITIES THIS QUARTER**

3rd Quarter of 2009				
Complaints Received this Quarter:		44		
Activity This Quarter:				
(07/01/2009 - 09/30/2009)	Cases Closed:	37		
	Cases Pending:	7		
	Pending Cases Rolled over from previous quarters:	(2008) 4th Quarter: 1	1st Quarter: 1	2nd Quarter: 3
Top Complaints per Department:				
		14	Public Safety	
		10	Public Works	
		5	Social Services	
		12	Partner or Outside Agency	

Type 1:

Assistance = 10
Complaints = 33
Informational = 1

Type 2:

Email = 5
Fax = 1
Phone = 24
Visit = 13
Written = 1

Type 3:

Jurisdictional = 31
Non-Jurisdictional = 13

TABLE 2: SPECIFIED NUMBER OF DEPARTMENT / AGENCY CONTACTS RELATED TO COMPLAINTS RECEIVED WITHIN A COUNCIL DISTRICT FOR 3RD QUARTER

Council District Totals:	Finance & Administration	General Services	Law	Public Safety	Environmental Quality	Public Works & Development	Social Services	Other Elected Officials	Partner or Outside Agency	CONTACTS PER
1st District James			1	2		3	3	1	3	13
2nd District Blues				2	1		1	1	1	6
3rd District Lawless					1			1		2
4th District Beard										0
5th District Feigle		1		2	2	1			1	7
6th District Stinnett								1	1	2
7th District Crosbie	1					1			1	3
8th District Myers									1	1
9th District McChord	1			1		1				3
10th District Martin		1		2		3				6
11th District Henson	1			3		1				5
12th District Lane									1	1
Non-Specified District At-Large			1	1			1	1	3	7
TOTAL CONTACTS PER DEPARTMENT / AGENCY	3	2	2	13	4	10	5	5	12	56

** A TOTAL OF 44 INTAKES IMPACTED THE VARIOUS DEPARTMENTS 56 TIMES

*** SOME INTAKES MAY AFFECT SEVERAL DIFFERENT DEPARTMENTS

STATISTICAL DATA:

TABLE 3: SUMMARY OF DATA COLLECTED FROM CONTACTS RECEIVED PER COUNCIL DISTRICT

Councilmember	District	Initial Date	Department	Division	Type 1	Type 2	Type 3	Closing Date	Description	Total
James	1	7/20/2009	Social Services	Adult & Tenant Services	Complaint	Jurisdiction	Visit	7/20/2009	Landlord / Tenant issues	7
	1	7/29/2009	Public Safety	Code Enforcement	Complaint	Jurisdiction	Phone	7/31/2009	Complaint concerning the construction debris behind the residence on Race Street and that the inspection has not returned phone calls.	
	1	7/29/2009	Law Department Public Works & Development	Risk Management Streets, Roads & Forestry	Complaint	Jurisdiction	Visit	8/19/2009	Citizen wanting to file a claim for damages to motorcycle after hitting a pot-hole on E. Sixth Street & Pemberton that residents he spoke with claim they reported a month earlier.	
	1	8/24/2009	Outside Agency Public Works & Development	Environmental Health Engineering - Storm Sewers	Complaint	Jurisdiction	Visit	9/16/2009	Excessive problem with mosquitoes on Bryan Ave. due to storm sewers standing water being difficult to treat with chemicals	
	1 / 2	9/10/2009	Council Social Services	CMS James & Blues Adult & Tenant Services	Assistance	Jurisdiction	Visit	9/15/2009	Homeless woman needing emergency shelter	
	1	9/14/2009	Public Safety	Commissioner's Office	Assistance	NJ	Email	9/15/2009	Dispute of her vehicle being towed from private lot during the Roots & Heritage Festival and Winchester Towing Co. making copies of her license, insurance, and registration.	
	1	9/23/2009	Public Works & Development Social Services Outside Agency Outside Agency	Planning Adult & Tenant Services Fair Housing Council Legal Aid of the Bluegrass	Assistance	NJ	Phone	9/25/2009	Dispute with landlord at Sportsman Motel Home Park for only providing a 7 day notice of intent to increase utility/rent.	
Blues	2	7/14/2009	Outside Agency	JR Coleman Railroad	Complaint	NJ	Phone	7/14/2009	Complaint about railroad crossing located at 3rd and 4th street intersections on Loudon Avenue being in bad shape and need repair.	5
	2	7/29/2009	Public Safety	Community Corrections	Complaint	Jurisdiction	Phone	8/17/2009	Ex-Inmate wanting to follow-up on a complaint he filed while at the jail about him not getting feed breakfast one morning before reporting to his work detail in the kitchen.	
	2	8/5/2009	Environmental Quality Department	Storm Water Maintenance	Complaint	Jurisdiction	Phone	Pending FU with Mike Webb and the city's problem with storm drainage in the area	Citizen experiencing flooding in her home due to drainage being diverted from neighbor's property	
	2	8/21/2009	Public Safety	Code Enforcement	Complaint	Jurisdiction	Phone	9/18/2009	Ref by LexCall complaint about overgrown trees and weeds on Ash St.	
	1 / 2	9/10/2009	Council Social Services	CMS James & Blues Adult & Tenant Services	Assistance	Jurisdiction	Visit	9/15/2009	Homeless woman needing emergency shelter	
	3 / 5	8/6/2009	Environmental Quality Department	Storm Water Maintenance	Complaint	Jurisdiction	Phone	Pending FU with CM Lawless	Complaint about neighbor diverting his drain line onto her property	
Lawless	3	9/10/2009	Mayor's Office	Mayor's Office	Assistance	Jurisdiction	Phone	9/17/2009	Assistance requested to start outreach ministry to serve food to the homeless at Phoenix Park.	2
	4									0
Beard Feigel	5	8/3/2009	Outside Agency	Animal Control	Complaint	NJ	Fax	8/13/2009	Fax cc to our office a complaint against Lex Humane Society for not letting her adopt a dog.	5
	3 / 5	8/6/2009	Environmental Quality Department	Storm Water Maintenance	Complaint	Jurisdiction	Phone	Pending FU with CM Lawless	Complaint about neighbor diverting his drain line onto her property	
	5	9/10/2009	Public Safety General Services	Police Parks & Recreation	Complaint	Jurisdiction	Written	9/17/2009	Request from several St. Ann Drive residents for privacy fence to be put along Idle Hour Park to help deter increase theft and crime. Also request for increased patrol in park and to close park after dark.	
	5	9/21/2009	Environmental Quality Department Public Works	Commissioner's Office Commissioner's Office	Complaint	Jurisdiction	Phone	Pending	Honey Hill Lane NB to NB dispute that questions UGC policy allowing pools to be drained over land.	
	5	9/25/2009	Public Safety	Community Corrections	Assistance	Jurisdiction	Phone	9/25/2009	Mother concerned that adult son, an inmate at the FC jail is not receiving his post-opt medication and needed assistance.	
Stinnett	6	7/21/2009	Outside Agency	Legal Services	Complaint	NJ	Visit	7/21/2009	Dispute with property management/landlord about towing of vehicle from a numbered lot at apartments	2
	6	8/31/2009	Council	Councilmember	Complaint	NJ	Phone	9/1/2009	NB to NB dispute about a tree. Wanting assistance to beautify the NBHD	
Crosbie	7	7/30/2009	Finance & Administration	Human Resources	Complaint	Jurisdiction	Visit	8/11/2009	Applicant dispute about erroneous info reported background check that was corrected but cost him to be disqualified for employment with the Fire Dept.	3
	7	8/14/2009	Public Works & Development	Planning Building Inspection	Complaint	Jurisdiction	Visit	8/25/2009	BOA issue between neighbors	
	7	8/26/2009	Outside Agency	Legal Services	Complaint	NJ	Phone	8/26/2009	Complaint about employment non-compete clause contract with previous employer and needing help with current unemployment issues.	
Myers	8	8/31/2009	Outside Agency	Title Insurance Mediation Center of Kentucky	Complaint	NJ	Visit	9/2/2009	Civil NB to NB dispute about property boundaries	1
McChord	9	7/7/2009	Public Safety Public Works & Development	Police Traffic Engineering	Complaint	Jurisdiction	Email	7/7/2009	Seeking speed enforcement and how to petition for traffic calming request	2
	9	8/17/2009	Finance & Administration	Human Resources	Complaint	Jurisdiction	Phone	9/8/2009	Employee denied appeal for disciplinary action - questions administrative policy which determines the period of time in which an employee may appeal discipline.	

STATISTICAL DATA: Continuation of Table 3**TABLE 3: SUMMARY OF DATA COLLECTED FROM CONTACTS RECEIVED PER COUNCIL DISTRICT**

Councilmember	District	Initial Date	Department	Division	Type 1	Type 2	Type 3	Closing Date	Description	Total
Martin	10	8/5/2009	Public Works & Development	Building Inspection	Complaint	Jurisdiction	Visit	8/20/2009	Complaint about an alleged neighbor operating a car repair business	6
	10	8/5/2009	Public Works & Development	Streets, Roads & Forestry	Complaint	Jurisdiction	Visit	8/20/2009	Complaint about standing water on street after city came and repaved his street.	
	10	8/5/2009	Public Works & Development	Building Inspection	Complaint	Jurisdiction	Visit	8/20/2009	Complaint against another neighbor allegations of working on cars	
	10	8/7/2009	Public Safety	Police	Complaint	Jurisdiction	Phone	Pending FU	Complaint about noise/disturbance from nearby with CM church.	
	10	8/24/2009	Public Safety	Code Enforcement	Complaint	Jurisdiction	Phone	Pending	Complaint against CE tall grass citation on small lot in Big Run Industrial park	
	10	9/18/2009	General Services	Commissioner's Office	Information	NJ	Referral	9/18/2009	Citizen concern about Franchising fees passed over to customers from Dish Network. Referred to our office by Penny Ebel/Mayor's Office.	
Henson	11	7/27/2009	Public Safety	Police - Traffic Patrol	Complaint	Jurisdiction	Email	7/22/2009	Wanting information on how to deal with excessive speeding on her street w/ options on having speed bumps installed	5
	11	8/12/2009	Finance & Administration	Revenue	Complaint	Jurisdiction	Phone	8/28/2009	Caller referred by LexCall regarding a complaint about her increased bill with KAWC and sewer bill.	
	11	8/18/2009	Public Safety	Code Enforcement	Complaint	Jurisdiction	Phone	8/18/2009	Possible CE complaint previously called in, but caller uncertain who took report regarding address on Laurel Hill Road	
	11	9/11/2009	Public Works & Development	Engineering	Complaint	Jurisdiction	Phone	Pending	Stormwater drainage problems	
	11	9/18/2009	Public Safety	Community Corrections	Assistance	Jurisdiction	Phone	9/18/2009	Wanting to file a complaint against CAPS officer for inappropriate and disrespectful treatment	
Lane	12	7/27/2009	Outside Agency	Animal Control	Complaint	Jurisdiction	Phone	8/18/2009	Citizen complaint against occasional at-large dogs from neighbor's home.	1
Non-Specified District	13	7/17/2009	Social Services	Adult & Tenant Services	Complaint	Jurisdiction	Visit	7/20/2009	Dispute with property management of apt about necessary repairs and lease agreement	7
	13	8/17/2009	Outside Agency	KY State Police - IA	Complaint	NJ	Phone	8/17/2009	Complaint about State Trooper speeding on I-75, w/o lights or sirens and traveling about 100 mph. Referred to State Police	
	13	8/21/2009	Outside Agency	Cabinet of Labor	Assistance	NJ	Phone	8/21/2009	Referred by R. Langston/Council Administrator. State dump truck driver not receiving scale pay.	
	13	9/1/2009	Public Safety	Police - IA	Complaint	Jurisdiction	Phone/Visit	9/17/2009	Requesting more training for officers on how to treat foreigners, ie. Respectfully	
	13	9/15/2009	Outside Agency	KY FSA Ombudsman	Assistance	NJ	Email	9/18/2009	Need help grieving a defaulted Student Loan.	
	13	9/15/2009	Law Department	Risk Management - Claims Div	Assistance	NJ	Visit	9/15/2009	RE: previous motorcycle pothole incident reported to Claims with Risk Management - Complainant is the actual owner of the motorcycle involved in accident/ damaged due to a pothole. Wants info on who to contact regarding the claim	
	13	9/16/2009	Outside Agency	County Clerk	Assistance	Jurisdiction	Email	Pending	Divorced woman attempting to get driver's license reissued in her maiden name so she can travel on business trip	
TOTAL DEPARTMENT INTAKE RECEIVED DURING 3RD QUARTER ACTIVITIES										46
** A TOTAL OF 44 INTAKES IMPACTED THE VARIOUS DISTRICTS 45 TIMES										
*** SOME INTAKES MAY AFFECT SEVERAL DIFFERENCE DISTRICT										

Citizen Quote for the Quarter:

"Wow, thanks. I thought about my email just yesterday and wondered if it found it's way to the right people....apparently so. Keep up the good work. The city could use more like you."