



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



Before the

**Committee on the Judiciary and Public Safety
The Honorable Charles Allen, Chairperson**

**PUBLIC HEARING ON
THE FISCAL YEAR 2018 BUDGET OF THE
OFFICE OF THE ATTORNEY GENERAL**

April 24, 2017

**10:30 am
Room 412
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, District of Columbia**

I. Introduction

Good afternoon Chairman Allen, 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).

As you know, the Attorney General serves the residents and government of the District of Columbia as their chief legal officer. OAG conducts the District's law business 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 number 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 some of 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 280 attorneys and an additional 314 administrative and professional staff. These employees work every day to make OAG the best public law firm in the country.

Furthering that goal, in this fiscal year—OAG’s third year as an independent agency—the agency executed a significant realignment to match its structure and resources with its priorities. Informed by its engagement with District residents and its consideration of the District’s legal needs and the public interest, OAG created a new Public Advocacy Division (PAD) to focus on affirmative public interest civil litigation on behalf District residents. Initially, its two primary areas of subject-matter focus are: (1) litigating cases essential to preserving affordable housing and protecting residents from other abuses; and (2) litigating in an array of public integrity arenas, including false claims, Medicaid fraud, antitrust, nonprofit organization abuses, and tuition fraud. In addition, the division will develop policies, regulations, and proposed legislation to strengthen existing protections for District residents. The types of cases PAD will litigate include the suits OAG brought in the last year to preserve affordable housing at Congress Heights and Terrace Manor, which seek to hold landlords to their obligations to provide safe and habitable housing. Other examples include pursuing recoveries such as the \$14.4 million False Claims Act settlement with Chartwells to resolve claims concerning multi-year contracts with D.C. Public Schools (DCPS) as well as cases for fraudulently enrolling children in DCPS while residing outside of the District. In the last year, OAG prosecuted 33 False Claims Act cases, bringing in \$637,720 to the District. With expanded resources, this division will be empowered to increase its focus and expand to new critical areas such as deterring wage theft, safeguarding the civil rights of minority groups, and protecting the environment.

II. OAG Fiscal Year 18 Budget as Proposed by the Mayor

The Mayor transmitted to the Council a proposed total FY 2018 budget for the Office of the Attorney General of \$99,781,049 and 624.4 full-time equivalents (FTEs). While this appears to be an \$8,034,172 and 30.8 FTE increase from OAG's approved FY 2017 budget, that is not the case. OAG's actual increase from its current FY 2017 funding level to the FY 2018 proposed level is just over \$600,000. That money primarily funds OAG's Priority 1 enhancement request for public safety needs, including: one attorney and two paralegals to review MPD body camera video; one mental health paralegal; and one family appeals attorney. The remaining \$7.4 million (1) represents increases in budget authority (not actual dollars) to use existing balances in the Temporary Assistance to Needy Families Fund (TANF) and the Litigation Support Fund (LSF) and (2) reconciles existing federal match dollars, private donations, and MOU funds so that our actual operating expenses are accurately reflected in the FY 18 budget. In FY 2016 and FY 2017, OAG recognized a need for additional staffing to meet its expanded responsibilities as an independent agency. It devised a strategy to use its existing budget to meet resource needs by reclassifying existing positions and husbanding vacancy savings to create temporary, term and permanent positions. For example, OAG created PAD to focus on public interest civil litigation and hired an experienced manager to lead the division. Similarly, OAG realigned its Civil Litigation Division by adding a Section Chief and paralegal to focus on defending the District in employment litigation as well as a Freedom of Information Act Officer to respond to information requests. OAG increased its Office Consumer Protection staffing by adding one attorney and

augmented its Ruff Fellows Program by adding two Ruff Fellows. To better serve the public interest, OAG hired two temporary Community Engagement Specialists for which it seeks permanent funding as an enhancement in FY 2018. And to effectuate its independent procurement and personnel authority, OAG hired additional personnel and procurement staff to perform the functions formerly handled by the Office of Contracting and Procurement and D.C. Human Resources. The seemingly additional 30.8 FY 2018 FTEs primarily represent these net position shifts that occurred within OAG in FY 2016 and FY 2017 after the FY 2017 budget was formulated. Again, the only new FY 2018 FTEs are the five aforementioned positions that the Mayor proposed to fund OAG's Priority 1 public safety enhancement requests.

In summary, despite how it appears in the published budget books, the budget transmitted to the Council represents only a \$600,000 increase over OAG's Current Services Funding Level (CSFL). While OAG greatly appreciates the Mayor's continued commitment to public safety by including this vitally important enhancement, it is a far cry from the overall enhancement proposal OAG forwarded for inclusion and transmittal to the Council. As I said in last year's budget oversight testimony, while OAG currently provides excellent legal services, continuing to fund OAG as if it were still a subordinate District agency is unsustainable. Ultimately, maintaining a CSFL funding approach to OAG will create challenges for the agency because it is inadequate to provide the services and quality of representation District residents want and deserve. Voters in the District of Columbia overwhelmingly approved creating a truly

independent and effective Office of the Attorney General, and it is necessary to fund the office in a manner that will fully protect District residents, workers, businesses, and our government.

The enhancements OAG requests are minimal and would have little effect on how the Executive would formulate a budget. And these modest investments in OAG will 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 2016, directly recovering more than \$17.7 million in settlements and judgments and generating nearly \$1.5 million in tax collections and administrative fees. OAG also avoided approximately \$407 million in liability to the District.¹ In addition, OAG preserved nearly \$114 million in tax revenue for the District by successfully defending tax appeals. OAG's fiscal contribution to the District in FY 2016 totaled over \$597 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 2016 revenues over the previous fiscal year to settlements that OAG generated. In our current fiscal year, our Office of Consumer Protection alone has recovered \$10.1 million in payments to the District and recovered over \$2.65 million in restitution for District residents. Moreover, OAG was pleased to cooperate with the Executive by agreeing to

¹ This figure is much lower than the actual total amount claimed in the lawsuits that were resolved in FY 2016, which was \$5.25 billion. However, this \$5.25 billion figure included 15 highly inflated demands that did not, in our view, present a substantial threat of liability.

an additional one-time transfer from our agency of \$617,000 to assist with the Mayor's one-year budget priorities for FY 2018.

III. OAG's Enhancement Requests

After careful analysis of the agency's needs and taking into consideration feedback from the community, including guidance from advisory committees with community non-profits, local law firms, religious institutions, business and labor leaders, OAG proposes a local budget for FY 2018 of approximately \$65.2 million, including an additional \$3.8 million for 35 full-time equivalent positions (FTEs) and other vital services. This enhancement will help fund needed responsibilities and fulfill new initiatives that will enable OAG to better serve the District and the public. However, OAG fully appreciates that the Council is in an incredibly difficult position to fund most of these priorities. While the data show that OAG provides a strong return on investment, we understand that any locally appropriated dollars we receive, in addition to what the Mayor proposed, will be limited. Therefore, I submitted to the Council a priority list along with the associated funding request. In the interest of time, I will use my testimony to highlight just a few of our more pressing budget priorities for your consideration.

First, to enhance OAG's ability to provide high-quality legal representation, it must not only have adequate legal resources; it must also be able to effectively engage District residents. Whether it be educating consumers on their rights, alerting senior citizens of scams, teaching students the warning signs of human trafficking among their peers, or listening to renters about sub-standard living conditions, engaging with the public better informs OAG's policies and practices and provides the community with information about their rights on important issues. During Attorney General Racine's tenure, OAG staff has attended more than 200 community engagement events where residents have shared their concerns with the Attorney General and

OAG staff. The campaign finance forum jointly hosted by OAG and Georgetown University Law Center, which educated the public on national campaign finance trends, local laws, and pending legislation, and the human trafficking training program that OAG launched to partner with students to identify the signs of human trafficking, are excellent examples of how OAG's community engagement inures to the benefit of the District and its residents. Permanently funding OAG's Office of Community Engagement will institutionalize this function, enabling OAG to define and execute an effective strategy to meaningfully engage with District residents in a way that integrates seamlessly with its legal work.

Second, as I mentioned earlier, OAG has created a new division, the Public Advocacy Division, to focus on affirmative litigation. Although OAG has reallocated staff in order to create this division, OAG requires more resources to effectively carry out the division's goal of protecting the public interest. To that end, adding one experienced environmental litigator would allow PAD to effectively represent the public interest in important environmental matters. Currently, OAG does not possess environmental expertise to protect the District and enforce environmental standards. The attorney would work with the Department of Energy and the Environment in assessing cleanups, determining strategy around consent decrees and litigation, and evaluating whether the District could be more aggressive in its enforcement of existing environmental authorities. Additionally, OAG has requested two attorneys to screen and prosecute wage theft, tuition fraud, and civil rights litigation cases, ensuring that the office can effectuate its new authority to pursue wage cases and delve deeper into these other areas. OAG also anticipates an increase in Medicaid fraud cases, and therefore has requested one attorney, to be assigned to PAD, to investigate and prosecute additional District of Columbia False Claims Act cases. This requested FTE will allow for the recovery of additional dollars in a shorter

period of time. Finally, given PAD's unique mission to bring affirmative litigation to protect the public, OAG requests funds to hire investigators to explore the legal and factual grounds for a suit before filing.

Third, adding one paralegal in OAG's Tax and Finance Section would shorten the average interest accrual period on real property tax refunds by five months, generating up to \$4.2 million in refund interest savings while (a) closing the existing backlog of settled-in-principle tax refund cases; (b) working with OTR to expedite the OTR settlement-in-principle approval review process; (c) readjusting stakeholder expectations as a result of processing efficiencies expected to result from personnel dedicated to the case closing process; and (d) resulting in timely execution of conforming case closing stipulations. The addition of this one FTE would pay for the lion's share of the enhancements requested by OAG.

Fourth, while historically OAG managed to effectively represent the District's interest despite its limited resources, technology has dramatically changed the practice of law in both the federal and District of Columbia courts. OAG cannot effectively compete using an outdated model that does not address the current technological landscape. Adding four Litigation Support and Trial Presentation Specialists (one to each of the four major litigating divisions) would transform the management of large cases throughout the litigation lifecycle. These Specialists would interface with the Office of the Chief Technology Officer to use effective processes for e-discovery collection on behalf of client agencies, serve as trial presentation technicians, and facilitate the adoption of new technologies and forward-thinking litigation practices, which is particularly significant with regard to litigation (both civil and criminal) that may depend on evidence from body-worn cameras. These improvements would ensure that OAG complies with

its ethical obligations in an age of increasingly technology-laden litigation and can use all the tools now available for state of the art trial presentation in its major cases.

I also want to touch on two critical programs that we partner with daily that need continued support and enhancements in FY 2018.

Safe Shores - The DC Children's Advocacy Center is a direct service nonprofit organization dedicated to supporting and working directly with child victims of sexual and physical abuse in the District of Columbia. As I noted before, combating human trafficking and abuse against children is a primary focus of OAG. We partner closely with Safe Shores to ensure that children victims of sexual and physical assault are provided the support they need to achieve justice and safety. OAG juvenile section prosecutors rely on forensic interviewers and other staff at Safe Shores to effectively and accurately interview and record information about abuse from children. Indeed, in the past, OAG has co-located a juvenile prosecutor at the Safe Shores facility to be available to observe child interviews as needed. Finally, Safe Shores has provided training for juvenile section staff on speaking with child victims. I am advised that their services are on pace to exceed the number of children served in FY 2016. I am happy to work with you, your Council colleagues and Safe Shores to identify increased support for next fiscal year.

Alternatives to Court Experience (ACE) - Because juvenile justice reform has been a top priority for OAG, the Juvenile Section has increased its rate of diversion of low-risk youth to the ACE diversion program operated by the Department of Human Services ("DHS"). These diverted youth receive substantial rehabilitative care and services, including mental health treatment, family therapy, mentoring, and substance abuse treatment, all of which are recognized services that keep youth out of trouble. As I reported during our performance oversight hearing,

OAG is actively monitoring the outcomes of the youth who have been diverted, and as of December 2016, youth who completed the ACE diversion program have had an extremely high 80% success rate for non-recidivism. Ensuring the ACE program has adequate funding is a priority for the District's public safety goals.

IV. Budget Support Act Recommendations

I will now focus the remainder of my time on Budget Support Act language OAG recommends and supports. In addition to the aforementioned resources OAG seeks in FY 2018, OAG proposes the legislative changes identified below.

Attorney General Litigation Support Fund Amendment Act of 2017

OAG requests that the cap on its Litigation Support Fund (Fund) be increased from \$3 million to \$5 million to ensure that the agency has the resources necessary to effectively litigate its cases and provide meaningful training opportunities to its managers, attorneys, and professional staff. OAG is grateful that former Judiciary Committee Chairman McDuffie and the Committee Members advocated for and approved the *Attorney General Authority and Litigation Fund Establishment Amendment Act of 2015*, which created the Fund. We also appreciate the Judiciary Committee and Council's approval of the Budget Support Act subtitle increasing the cap on the Fund to \$3 million in FY 2017. The \$1.5 million increase has enabled OAG to expand its use of expert witnesses and take advantage of other litigation support tools commonly used by law firms and the federal government. For example, OAG was able to engage expert witnesses to support the District's opposition to a multi-million dollar fee petition in a high-profile case. The declarations that the experts provided enabled OAG to make a compelling and persuasive argument to substantially reduce the fee request. Similarly, OAG was able to engage a jury consultant to conduct qualitative research and provide expert advice on another matter

where the District faces significant financial exposure. With the benefit of this expert advice, OAG could make strategic case decisions to maximize its attorneys' ability to achieve the best outcome for the District of Columbia.

To maintain this momentum and to further expand OAG's ability 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. OAG's history of recoveries supports increasing the Fund cap. In FY 2015, OAG recovered over \$25 million, in FY 2016, OAG recovered nearly \$13.7 million and in FY 2017 to date, OAG has recovered over \$10.5 million.

As you know, the money in the Fund may be used to pay expenses associated with prosecuting or defending litigation on behalf of the District. In the course of a fiscal year, OAG may have, on average, 20,000 matters pending in its 11 legal divisions. The Fund increase would allow OAG to comply with burgeoning electronic discovery demands and meet its litigation-related training needs, while maintaining basic, yet necessary, litigation support services. For example, OAG projects that costs related to court-imposed electronic discovery will increase to approximately \$1 million in FY 2018. In FY 2017, such costs are projected to increase to \$900,000—a nearly \$350,000 increase from FY 2016 electronic discovery costs. Without an increase in the Fund cap, rising electronic discovery costs may limit OAG's ability to use the Fund for other litigation support purposes.

OAG also seeks an increase in the Fund cap to provide its attorneys and staff with the continuing education they need to successfully fulfill OAG's legal responsibilities and to create the atmosphere of continuous improvement required for a first-rate public law firm. In FY 2017, because of the Fund, OAG was able to create a robust legal training curriculum and offer its

attorneys and staff robust litigation-related training, including training in electronic discovery, ethics and legal technology, trial skills, basic and advanced deposition skills, legal writing, Americans with Disabilities Act and Family and Medical Leave Act compliance, sexual harassment, bias and discrimination, forensic science, and paralegal skills. This comprehensive panoply of legal training cost nearly \$400,000 for over 870 attendees and would not have been possible with the meager \$83,000 in local funds otherwise allocated for training nearly 600 employees. By increasing the Fund cap to \$5 million, OAG will not only be able to meet its basic litigation needs, it can ensure OAG is a first-in-class public law firm that benefits from more strategic case management, expanded use of technology to meet court-imposed discovery requirements, and enhanced attorney and professional staff training. Moreover, increasing the cap on the Fund would guard against the unavailability of litigation support and training funds due to future economic downturns or the unpredictable timing of future recoveries.

Fiscal Year 2018 Limitation on Time for Judicial Review of Final Agency Action Act of 2017

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. However, 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, judicial challenges to final agency orders should generally 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.

Procurement Practices Improvement Amendment Act of 2017

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, which makes reviewing these claims an immense challenge. The legislation also provides clear timelines for presenting the contracting officer with a claim for review by the contracting officer.

Interest Rate on Judgments Amendment Act of 2017

This amendment sets a 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. The cap will be the lower of either four percent or the statutory judgment interest rate. The statutory judgment interest rate is calculated based on the rate of interest set by the Secretary of the Treasury pursuant to the Internal Revenue Code. Currently, although the statutory judgment interest rate is far lower than four percent, and although non-District litigants are only required to pay the statutory judgment interest rate, the District still pays four percent

interest on all judgments. This amendment would ensure that the District does not pay an inflated interest rate when interest rates are low.

Consumer Restitution Fund Amendment Act of 2017

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 consumers 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.

Attorney General Procurement Authority Amendment Act of 2017

The Council previously granted OAG with independent procurement authority. This amendment clarifies OAG's independent authority regarding Information Technology purchases.

Attorney General Classification and Compensation Amendment Act of 2017

The Council previously granted OAG with independent personnel authority. This amendment clarifies OAG's authority to submit employee pay scales for Council approval pursuant to our existing personnel authority.

Unjust Conviction and Imprisonment Compensation Amendment Act of 2017 (submitted by the Mayor)

OAG strongly supports this subtitle and encourages the Council to approve this provision. This subtitle creates a generous, compassionate, and responsible administrative procedure to allow for anyone wrongfully incarcerated to receive a financial recovery. Specifically, it allows for \$200,000 for each year of incarceration, to include a pro-rated amount

for partial years served and \$40,000 for each year served either on parole, probation, or as a registered sex offender, to include a pro-rated amount for partial years served. Just as importantly, the subtitle allows for a grant in the amount of \$10,000 to assist in securing immediate services as follows: Housing; Transportation; Subsistence; Re-integrative services; and mental and physical health care. As you know, the District is unique in that we do not locally prosecute the majority of felony crimes. Therefore, we often have little role in these outcomes as many prosecutorial decisions are made at the federal level. It is vitally important that we both protect or local treasury in these circumstance while showing empathy to the wrongly convicted. To be clear, there would not be a cap on recoveries in instances where our local police department or prosecutors violated anyone's civil rights resulting in a wrongful conviction.

OAG worked closely with the Executive in crafting the outline for this subtitle, and we appreciate it being transmitted to the Council for approval. Our findings indicated that this would be the most generous recovery cap in the country. We would like to work with the Committee to draft safeguards to ensure that any recoveries are not significantly reduced by inordinate attorney fees.

Neighborhood Engagement Achieves Results Amendment Act of 2017 (submitted by the Mayor)

OAG testified in full support of B21-360, "Neighborhood Engagement Achieves Results Act of 2015 (NEAR Act)" at its public hearing on October 21, 2015. Therefore, we support this subtitle that appears to advance the goals of the original bill introduced by Councilmember Kenyan McDuffie. In short, this subtitle will create an Office of Community Engagement and Neighborhood Safety (OCENS). The OCENS shall be responsible for: (1) Coordinating the District's overall violence prevention strategy and programs, with a focus on utilizing public

health approaches to responding to and preventing violence; (2) Identifying, recruiting, and engaging individuals determined to be at high risk of participating in, or being a victim of, violent crime; (3) Collaborating with other District agencies and nonprofit organizations to provide immediate wrap-around services to victims and families affected by homicides and violent crime; (4) Identifying priority neighborhoods and Metropolitan Police Department police service areas with high trends of violent crime and connecting residents to services through a streamlined approach; (5) Developing positive relationships with youth and young adults using recreational and other positive behavior reinforcement activities; and (6) Coordinating with District agencies and community-based organizations to develop programs that focus on employment and job-training opportunities for individuals residing in high priority areas or who are most at risk of being involved with violent crime, including the use of financial incentives for participation.

OAG recommends that a strong data collection and analysis component be added to this office to ensure that these efforts are evidence-based and effective. Secondly, we find that these types of programs work in other jurisdictions when there is close coordination and buy-in from the local police department. We recommend including OAG and the Chief of Police in the development of the overall violence prevention strategy. OAG further recommends that the entire NEAR Act be fully funded and implemented.

V. Conclusion

Consistent with the will of District voters, OAG has transitioned into an independent agency that engages District citizens, constituencies, and other partners to uphold and protect the public interest, while continuing to provide distinguished legal services to the District of Columbia and its agencies. With a FY 2018 local budget of \$65,222,668, the amount the

Attorney General has determined is necessary to operate the agency, OAG will be able to fulfill its responsibility to provide the District with timely, high-quality legal representation, enhance public safety, and serve the public interest as a vanguard public law firm. Moreover, increasing the maximum fund balance in the Litigation Support Fund from \$3 million to \$5 million and transferring funds in excess of \$5 million to the unrestricted General Fund on September 30 each year will enable OAG to effectively litigate matters, including increased automated litigation support, and to provide its legal staff with statutorily required and otherwise meaningful training while reducing reliance on local funds. Reinvesting a small percentage of OAG's recoveries in support for OAG's litigation needs is sound policy and will serve the District's financial, policy, and programmatic interests.

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.