

Response to Questions on the FY 2010 County's Line of Business & Schools Program Review Processes Fall 2008

Request By: Supervisor McKay

Question: Please identify the monetary amount of all uncollected judgments the Office of the County Attorney has obtained as a result of the filing of zoning enforcement cases as shown on page 20 of the Office of the County Attorney's Lines of Business presentation.

Response: The amounts are as follows:

FY 2006: 86 new legal actions filed	0 judgments	\$0 uncollected
FY 2007: 94 new legal actions filed	4 judgments	\$15,400 uncollected
FY 2008: 265 new legal actions filed	20 judgments	\$137,300 uncollected

The actions that County Attorney files in Court on Zoning and Property Maintenance violations sometimes result in an Agreed Final Order that provides for the violator to pay \$100 per day for every day that the subject property is not in compliance. If the property is not in compliance when the Zoning Enforcement Inspector returns to re-inspect the property after the Agreed Final Order is entered by the Court, this office may be asked by Zoning Enforcement to seek a Rule to Show Cause to enforce the Agreed Final Order and its \$100-per-day provision. It is in these cases, with Agreed Final Orders and resulting Rules to Show Cause, where a monetary judgment can result if compliance has not been achieved through the original enforcement action. A judgment based on the \$100-per-day provision can be obtained only if an Agreed Final Order was entered in the original enforcement action. The \$100-per-day provision cannot be contained in default judgments because a default is entered when the violator does not appear to defend the original enforcement action, and therefore no agreement can be made to pay \$100 per day for each day of violation because the violator does not come to Court. Also, if the violator brings the property into compliance after the Rule to Show Cause is issued but before it is heard by the Court, some of the judges have been reluctant to impose the \$100-per-day provision. In the *McLean v. Vereen* case, in which the Virginia Supreme Court has granted an appeal, the amount of the judgment sought based on the \$100-per-day provision was \$20,600, but the Court only awarded \$3,500. Based on County Attorney appeal, the Supreme Court will decide whether the \$100-per-day provision must be imposed by the Court when the Agreed Final Order has been violated or if the Court has discretion to award a judgment in an amount it sees fit.

It should be understood that judgments obtained in zoning enforcement cases filed in one fiscal year are not necessarily collected in the same fiscal year in which the action was filed. For example, in FY 2007, the Office of the County Attorney collected \$117,868, and \$179,482 in FY 2008 in zoning enforcement judgments; however, those amounts collected were due to judgments obtained in cases that were filed in fiscal years prior to FY 2007 and FY 2008. It is also important to note that for many of the 97 cases filed in FY 2007, and the 265 cases filed in FY 2008, the Office of the County Attorney may not receive a request from Zoning Enforcement for a Rule to Show cause in the same fiscal year that the case was filed, or the Court may not have the hearing on the Rule or enter a judgment until several months after the Agreed Final Order was entered in the original enforcement action.