

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS**

In Re:

Anthony A. Williams  
And Vincent Mark J.  
Policy

Administrative Hearing  
No. 04-016

**MEMORANDUM OPINION AND ORDER**

This matter came before the Board of Elections and Ethics (hereinafter “the Board”) on Wednesday, May 12, 2004, pursuant to an appeal by Ms. Dorothy Brizill (“Ms. Brizill”) from the April 8, 2004 order (“the Order”) of the Office of Campaign Finance (“OCF”) in which it was determined that Mayor Anthony Williams (“the Mayor”) and Mr. Vincent Mark Policy, Esq. (“Mr. Policy”) had not violated the D.C. Campaign Finance Reform and Conflict of Interest Act (“the Act”) in connection with legal services performed by Mr. Policy on behalf of the Mayor in a case in the D.C. Superior Court entitled *Lindenfeld v. Williams, et al* (“the Case”). The Board now remands this matter back to OCF so that that agency may issue an order which responds adequately to the issues presented for review as formulated below, and which is consistent with the Board’s findings of fact and conclusions of law as set forth below, which are based on both documents presented to, and oral testimony rendered before, the Board.

**STATEMENT OF THE CASE**

On November 7, 2003, Ms. Brizill filed a complaint with OCF alleging that the Mayor and Mr. Policy were violating the Act because Mr. Policy was “representing the Mayor at no charge” in the Case, and that the “representation of [the Mayor] at no charge constitutes a prohibited and illegal contribution to an elected official[.]” Complaint at 1-2. Ms. Brizill further alleged that Messrs. Williams and Policy were further violating the Act because Mr. Policy “is registered as a lobbyist with the District of Columbia Office of Campaign Finance, and he represents the Apartment and Office Building Association (“AOBA”) and the Washington, DC Association of Realtors, among others, on matters before the DC government.” Complaint at 1-2. Consequently, Ms. Brizill requested an investigation into “whether [Mr. Policy’s] donation of *pro bono* legal representation to [the Mayor] as an individual violates the election laws and regulations of the District of Columbia – including whether it constitutes an illegal donation of something of value by a lobbyist to an elected official, whether services that are explicitly provided to an elected official as an individual can be considered as having been provided to that individual’s political committee, and whether the representation that [Mr. Policy] is providing in this case falls within the boundaries of legal services that can legitimately be provided as volunteer services to a political campaign.”

Upon review of the entire complaint, and the accompanying documents, OCF accepted the complaint for filing on November 24, 2003. Thereafter, OCF dispatched letters to Ms. Brizill, Mr. Policy, and the Mayor to advise that an investigation had commenced in the matter, and, in addition, requested that each provide OCF with information which would help to resolve the issues raised in Ms. Brizill's complaint.

Subsequently, OCF received from Ms. Brizill: 1) proof that Mr. Policy was representing the Mayor in the Case; 2) a September 17, 2003 letter from Mr. Policy to Sherri L. Wyatt, Esq. ("Ms. Wyatt"), counsel for the plaintiff in the Case, admonishing her for stating in a pleading in the Case that "[Mr. Policy's] services were being provided on a *pro bono* basis," and indicating that this statement represented a breach of a confidentiality agreement; 3) copies of pleadings in the Case in which reference was made to Mr. Policy's comments concerning the nature of the legal services provided by him on the Mayor's behalf in the Case, and; 4) documents representing examples of what Ms. Brizill perceived to be lobbying activities on the part of Mr. Policy and/or his law firm, Greenstein DeLorme & Luchs. This final set of documents included: 1) an agenda from a public hearing before the D.C. Council's Committee on Consumer and Regulatory Affairs concerning Bill 15-133, the "Rental Housing Conversion and Sale Act of 1982 Amendment Act of 2003," at which Mr. Policy participated as a panelist; 2) two (2) articles from The Common Denominator concerning Mr. Policy and another attorney from his law firm, Richard Luchs, and; 3) documents obtained from the websites of organizations with which either Mr. Policy and/or his law firm are affiliated.

In addition to a notarized statement denying the charges raised in Ms. Brizill's complaint, the Mayor presented OCF with redacted copies of invoices received by him from Mr. Policy dated October 14, 2003, November 11, 2003, December 3, 2003, and January 13, 2004. The Mayor further presented OCF with a redacted copy of a check payable to Mr. Policy's firm in the amount of \$15,000 which was dated February 5, 2004.

Mr. Policy, too, presented OCF with a notarized statement disputing Ms. Brizill's claims. Moreover, Mr. Policy presented OCF with a copy of a retainer agreement between himself and the Mayor dated February 10, 2003, as well as copies of Lobbyist Activity Reports concerning the work of both himself and his law firm on behalf of the Washington, DC Association of Realtors and the Apartment and Office Building Association of America.

During the course of its investigation, Ms. Kathy Williams ("Ms. Williams"), General Counsel for OCF, spoke with Mr. Thomas Lindenfeld ("Mr. Lindenfeld") of Washington, D.C., the plaintiff in the Case, and his counsel, Ms. Wyatt. Both stated that Mr. Policy advised them that he was performing legal services for the Mayor on a *pro bono* basis.

Upon the completion of its investigation, OCF determined that there was no violation of the Act because "[Mayor Williams] contracted to pay [Mr. Policy] for his legal services in his dispute with Thomas Lindenfeld, pursuant to a retainer agreement,"

and on April 8, 2004 issued an order to that effect. Thereafter, on April 13, 2004, Ms. Brizill filed with the Board a request for a review of the Order.

A prehearing conference was held on April 28, 2004. During this conference, Ms. Kathy Williams, General Counsel for OCF, filed a motion to dismiss Ms. Brizill's request for a review of the Order on the grounds that she lacked standing to file such request. At the conclusion of the conference, it was resolved that Mses. Brizill and Williams would each file with the Board documents in which they addressed the question of Ms. Brizill's standing, as well as questions concerning Mr. Policy's status as a registered lobbyist and whether or not he gave an illegal gift to the Mayor in connection with legal services he rendered in the Case. Mses. Brizill and Williams each filed documents addressing these questions on May 3, 2004. Mr. Policy filed a responsive pleading at this time as well. Subsequently, the hearing on Ms. Brizill's request for review was set for May 5, 2004.

At the May 5, 2004 hearing, the Board determined that Ms. Brizill lacked standing, but nonetheless decided *sua sponte* to conduct a hearing on May 12, 2004 for the purpose of clarifying certain issues in the Order, specifically whether Mr. Policy was a registrant as defined in the Act, and whether there was forbearance on Mr. Policy's part in connection with the payment for his legal services rendered in the Case.

At the May 12, 2004 hearing, which is the basis for today's order, Ms. Williams gave testimony before the Board in support of OCF's Order, and the Board heard oral testimony from witnesses Ms. Brizill, Mr. Gary Imhoff, and Mr. Thomas Lindenfeld. The Board accepted a sworn affidavit from the Mayor which was delivered by his counsel, Robert M. Krasne, Esq., and a letter from Damien Stewart, Esq., counsel for the Committee to Re-elect Tony Williams, which was a co-defendant in the Case.

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

D.C. Code §1-1101.01(a)(6) (B) provides that the term "contribution" "shall not be construed to include [s]ervices provided without compensation, by individuals (including accountants and attorneys) volunteering a portion or all of their time on behalf of a candidate or political committee[.]"

D.C. Official Code §1-1105.01(5) defines the term "gift" to mean, "a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is received, for the purpose of influencing the actions of a public official in making or influencing the making of any administrative decision[.]"

D.C. Official Code §1-1105.01(7) defines the term "lobbying" to mean "communicating directly with any official in the legislative or executive branch of the District of Columbia government with the purpose of influencing any legislative action or an administrative decision," and provides that "the term 'lobbying' shall not include. . .[t]estimony given before a committee of the Council of the District of Columbia or before the Council of

the District of Columbia, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record[.]”

D.C. Official Code §1-1105.01(8) defines the term “lobbyist” to mean “any person who engages in lobbying.”

D.C. Official Code §1-1105.01(12) provides that “[t]he term “registrant” means a person who is required to register as a lobbyist under the provisions of §1-1105.02.

D.C. Official Code §1-1105.02 provides that “a person shall register with the Director pursuant to §1-1105.04 if such person receives compensation or expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying. A person who receives compensation from more than 1 source shall register under this section if such person receives an aggregate amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying.”

D.C. Official Code §1-1105.06(a) provides that “[n]o registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift to an official in the legislative or executive branch or a member of his or her staff, that exceeds \$100 in value in the aggregate in any calendar year.”

D.C. Official Code §1-1106.01(c) provides that, “[n]o person shall offer or give to a public official or a member of a public official’s household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment based on any understanding that such public official’s official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to §1-1102.06 and transactions made in the ordinary course of business of the person offering or giving the thing of value.”

#### **OTHER RELEVANT AUTHORITIES**

Black’s Law Dictionary defines forbearance as, “[r]efraining from doing something that one has a legal right to do, ... [g]iving of further time for repayment of obligation or agreement not to enforce claim at its due date ... or a [d]elay in enforcing a legal right.” BLACK’S LAW DICTIONARY 644 (6<sup>th</sup> ed. 1990).

Black’s Law Dictionary defines *pro bono* as a term, “used to describe work of services (e.g. legal services) done or performed free of charge. BLACK’S LAW DICTIONARY 1203 (6<sup>th</sup> ed. 1990).




## ISSUES PRESENTED FOR REVIEW

1. Whether either Mr. Policy or his law firm, or both, can accurately be deemed registrants as that term is defined in the Act?
2. Whether Mr. Policy, in connection with providing legal services to the Mayor in the Case, gave anything of value to the Mayor which, if it were given for the purpose of influencing the actions of the Mayor in making or influencing the making of any administrative decision, would be considered a gift?
3. If anything of value was given to the Mayor in connection with providing legal services to the Mayor in the Case, was that thing given to the Mayor either: 1) for the purpose of influencing the actions of the Mayor in making or influencing the making of any administrative decision, or; 2) based on an understanding that the Mayor's official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the Mayor in the discharge of his duties?
4. If Mr. Policy provided a gift to the Mayor in the form of *pro bono* legal services on behalf of the Mayor in connection with the Case, can those services accurately be deemed services provided without compensation, by an individual volunteering a portion or all of his time on behalf of a candidate, such that the provision of such services would be valid under the Act?



## FINDINGS OF FACT

Having reviewed the allegations and the entire record in this matter, the Board finds as follows:

1. Both Mr. Policy and his law firm are listed as registered lobbyists on OCF's Summaries of Registered Lobbyists for the period relevant to this matter.
  2. The Lobbying Activity Reports submitted by Mr. Policy's firm, Greenstein DeLorme & Luchs, P.C., indicate that neither Mr. Policy nor his firm either received compensation or expended funds in an amount of \$250 or more for lobbying in the period relevant to this matter.
  3. On February 10, 2003, the Mayor retained Mr. Policy's legal services, pursuant to a retainer agreement, to defend him in the Case.
  4. On October 14, 2003, Mr. Policy presented the Mayor with a bill for legal services rendered in the Case in the amount of \$17,161.
  5. On November 11, 2003, Mr. Policy presented the Mayor with a second bill for legal services rendered in the Case in the amount of \$32,798. This bill included both the prior charges of \$17,161 and new charges.
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6. On February 5, 2004, the Mayor made a partial payment of \$15,000 to Mr. Policy's firm, Greenstein DeLorme & Luchs, P.C., towards his outstanding bill for Mr. Policy's legal services rendered in the Case.
7. On May 12, 2004, the Mayor presented to the Board a sworn affidavit which indicated that he and/or his principal campaign committee would pay in full for Mr. Policy's legal services rendered in the Case.
8. Accordingly, the Board finds that Mr. Policy's legal services rendered in the Case were not provided on a *pro bono* basis.
9. Because the Board finds that Mr. Policy's legal services rendered in the Case were not provided on a *pro bono* basis, there is no need to reach the question of whether or not Mr. Policy's services could be deemed services provided without compensation by an individual volunteering a portion or all of his time on behalf of a candidate, such that the provision of such services would be valid under the Act.
10. There was no evidence presented of an agreement between the Mayor and Mr. Policy whereby Mr. Policy would refrain from issuing a bill to the Mayor, or ensuring that payment would be made by the Mayor in connection with the Case, or that he would give further time for repayment of the debt incurred by the Mayor in connection with the Case. Nor was there any evidence that Mr. Policy was relenting on his right to enforce on a debt then due and payable.
11. Accordingly, the Board finds that there was no evidence of forbearance on the part of Mr. Policy in connection with the fees owed to him by the Mayor in connection with legal services provided in the Case.

### CONCLUSIONS OF LAW

In light of the findings of fact set forth above, the Board concludes as follows:

1. Neither Mr. Policy nor his law firm were registrants under the Act for the relevant period.
2. Mr. Policy gave neither a gift nor anything else of value to the Mayor in connection with providing legal services to the Mayor in the Case. Accordingly, Mr. Policy gave nothing to the Mayor either: 1) for the purpose of influencing the actions of the Mayor in making or influencing the making of any administrative decision, or; 2) based on an understanding that the Mayor's official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the Mayor in the discharge of his duties.<sup>1</sup>

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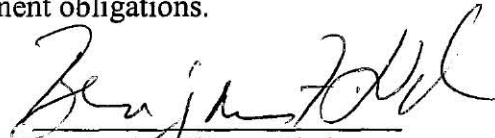
<sup>1</sup> During the May 12, 2004 hearing, Ms. Brizill alleged that Mr. Policy and Mayor Williams were in violation of certain provisions of the D.C. Code of Employee Conduct, as well as the Act. The specific

In light of the Board's findings of fact and conclusions of law, it is hereby

**ORDERED:**

- 1) That this matter be remanded back to OCF so that that agency can issue a revised order which adequately addresses the issues presented for review, and which is consistent with the Board's findings of fact and conclusions of law as set forth herein;
- 2) That the matter be kept open until such time as the Mayor and/or his principal campaign committee pay in full for Mr. Policy's legal services rendered in the Case, and;
- 3) That, in the event that the costs of the legal services rendered by Mr. Policy on behalf of the Mayor in connection with the case are not paid for in full within ninety (90) days of the date of this order, OCF will apprise the Board as to the status of the Mayor's outstanding payment obligations.

May 18, 2004

  
Benjamin Wilson, Chairman,  
D.C. Board of Elections and Ethics

**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2004, copies of the foregoing Order were delivered by hand to the following individuals:

Vincent Mark J. Policy, Esq.  
Greenstein DeLorme & Luchs, P.C.  
1620 L Street, NW, Suite 900

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provision cited was Subsection 1803.2, which provides that "a District employee shall not solicit or accept, either directly or through the intercession of others, any gift, gratuity, favor, loan, entertainment, or other like thing of value from a person who singularly or in concert with others:

- a) Has, or is seeking to obtain, contractual or other business or financial relations with the D.C. government;
- b) Conducts operations or activities that are subject to regulation by the D.C. government; or
- c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

D.C. Mun. Regs. tit. 6, § 1803.2.

As the Board has concluded that Mr. Policy gave neither a gift nor anything else of value to the Mayor in connection with providing legal services to the Mayor in the Case, the Board necessarily concludes that Mr. Policy and Mayor Williams are not in violation of this provision of the D.C. Government Personnel regulations.

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