

**BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS
FRANK D. REEVES MUNICIPAL BUILDING
2000 FOURTEENTH STREET, N.W., SUITE 433
WASHINGTON, D.C. 20009
(202) 671-0550**

IN THE MATTER OF:

Gray for Mayor
Lloyd Jordan, Treasurer
Respondent

Docket No.: OCF FI 2011-104

ORDER

I. Introduction

The closure of the investigation of the Gray for Mayor 2010 campaign in December 2015 by the United States Attorney's Office for the District of Columbia (USAO) was the necessary antecedent to the Office of Campaign Finance's (OCF) unencumbered closure of its own investigation. USAO's inquiry concerned alleged unreported contributions to the Gray for Mayor Committee (Committee) that would have dramatically altered OCF's Final Audit Report. OCF commenced its field audit investigation in March 2011 and issued a Preliminary Audit Report (PAR) to the Committee on December 16, 2011. Subsequently, OCF's Audit Report was held in abeyance until USAO's investigation was concluded.

Clearly, this case has encountered many untimely, tragic and unanticipated circumstances that could be considered extraordinary and unprecedented. First, the US Attorney's Office for the District of Columbia (USAO) was conducting a parallel investigation which assumed priority

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over OCF's investigation and rendered witnesses and essential documents unavailable until the USAO made a final decision on the matter. Second, the confiscation of Committee records by the USAO, whose contents, when returned to the Committee, were in questionable condition. Third, the protracted period of the USAO's investigation, where existing campaign finance law governing the Committee's conduct was repealed in its entirety. Fourth, the tragic diagnosis of the Committee's former treasurer of record, Betty R. Brown, who was determined to be mentally and physically incapacitated due to having suffered several strokes. Fifth, the naming of a replacement treasurer occurring years after the Committee's operations had ceased, and its records were considered virtually irretrievable. Finally, unlike current campaign finance law which attaches personal liability to the candidate and/or treasurer for violations, the law in effect at the time of the alleged violations in this matter attached liability to the Committee.

II. Findings of Fact

On March 30, 2010, Candidate Vincent C. Gray filed a Statement of Candidacy with OCF, by which he declared his candidacy for the Office of Mayor of the District of Columbia in the 2010 General Election. On March 31, 2010, Candidate Gray filed a Request for Candidate Waiver Form (OCF Form #5), whereby he waived his financial reporting responsibilities to his principal campaign committee, the Gray for Mayor Committee. On March 31, 2010, Betty R. Brown, filed a Statement of Acceptance of Position of Treasurer for the Gray for Mayor Principal Campaign Committee. On March 31, 2010, Lorraine Green, filed a Statement of Acceptance of Position of Chairperson for the Gray for Mayor Principal Campaign Committee. On April 14, 2010, the Gray

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Committee registered with OCF as Candidate Gray's Principal Campaign Committee (PCC).

On March 15, 2011, OCF's Office of the General Counsel (OGC) formally opened a full investigation into alleged financial improprieties by the Gray for Mayor campaign as a result of a series of newspaper articles appearing in the *Washington Post* between March 6, 2011 and March 14, 2011. OGC referred the financial inquiry to OCF's Reports Analysis and Audit Division (RAAD).

On March 17, 2011, RAAD issued a notice of a Full Field Audit to the Gray for Mayor Committee. On December 16, 2011, RAAD issued a Preliminary Audit Report (PAR) to the Committee, covering the period March 31, 2010 through January 31, 2011. The PAR cited numerous issues requiring the Committee's response by January 16, 2012. On January 13, 2012, the Committee requested an extension of time to file responses to the PAR. On January 17, 2012, OCF granted the Committee a sixty (60) day extension until March 19, 2012 to file required responses to the PAR. The Committee provided responses on March 19, 2012. However, certain issues were not satisfactorily addressed by the Committee.

During the period between March 19, 2012 and May 15, 2012, RAAD prepared a draft report but could not complete its audit report. This circumstance was due to the investigation initiated by the USAO which encompassed allegations of major campaign finance violations that, if valid, would have influenced the outcome of RAAD's audit.

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On June 6, 2014, OCF received a letter from Mary J. Brown, daughter of Betty R. Brown, former treasurer for the Gray for Mayor Committee. In the letter, Ms. Brown stated that her mother had been hospitalized since January 26, 2014, that she was incapacitated, and that she was currently in a rehabilitation facility, where she was expected to remain for the foreseeable future.

On January 6, 2016, Lloyd Jordan, Esq. filed a Statement of Acceptance of Position of Treasurer for the Gray for Mayor Committee.

On January 29, 2016, the Reports Analysis and Audit Division (RAAD) issued an Audit Report in this matter. This Report alleged four (4) violations of District of Columbia campaign finance law by the Committee, and referred the following matters to OCF's Office of the General Counsel (OGC) for adjudication: (1) acceptance of nine (9) excessive contributions; (2) disbursement of seven (7) payments to former treasurer, Betty R. Brown, which she further disbursed by cash to campaign workers; (3) failure to establish adequate recordkeeping and internal controls regarding payments to consultants; and (4) acceptance of three (3) excessive cash contributions.

On February 1, 2016, Lloyd Jordan, Esq. filed a Statement of Withdrawal of Position of Treasurer for the Gray for Mayor Committee.

On February 25, 2016, a Notice of Hearing, Statement of Violations and Order of Appearance (Notice) was issued to Lloyd Jordan, treasurer for the Gray for Mayor Committee. The Notice

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ordered the treasurer to appear at a hearing scheduled for March 8, 2016 and show cause why the Committee should not be found in violation the District of Columbia Campaign Finance Act.

On March 8, 2016, the Office of the General Counsel (OGC) held a hearing in this matter, during which Lloyd Jordan, Esq. and Brian Lederer, Esq. of the law firm, Motley Waller, entered their appearances as Counsel for the Gray for Mayor Committee. Also present at the hearing were William O. Sanford, OCF General Counsel; Renee Coleman-Rollins, OCF Audit Manager and Dwayne Gilliam, Sr., OCF Supervisory Auditor. Lloyd Jordan, Esq. and Renee Coleman Rollins provided sworn testimony concerning the allegations.

The record in this matter was held open until Tuesday, March 22, 2016 to provide the respondent Committee's representative(s) an opportunity to obtain additional information that may have bearing on the outcome of this case. Accordingly, the following findings of fact and conclusions of law represent OCF's adjudication of the alleged violations of the Campaign Finance Act, D.C. Official Code §1-1163.01 et seq. as cited in the Audit Report.

Allegation #1: Acceptance of nine (9) excessive contributions

At the hearing, Renee Coleman-Rollins, OCF Audit Manager, alleged there were nine (9) excessive contributions received by the Committee, totaling \$12,550.00, that should have been reimbursed to donors. Although the Audit Manager did not have the particulars available relative to the foregoing transactions during her testimony, she offered to provide a spreadsheet for review prior to the close of the hearing. The Audit Manager did so.

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In response to the allegation, Mr. Jordan stated his belief that the statute of limitations had tolled in this matter based on the alleged activity having occurred nearly six (6) years ago. He referenced D.C. Official Code §1-1107 as the operative statute at the time of the alleged violation, which included a 3-year statute of limitations. Further, Mr. Jordan testified that D.C. Official Code §1-1163.33, as cited in the PAR and in the Notice of Hearing, was not in existence at the time of the alleged violation. Mr. Jordan further testified that the records of the Gray for Mayor Committee had been confiscated by the US Attorney's Office pursuant to their investigation; and, when returned, "the records looked like they had been in a hurricane."

According to Mr. Jordan, the foregoing condition rendered it impossible for the Committee to determine whether reimbursements of the excessive contributions had been made to the donors. Moreover, Mr. Jordan stated that he could not state whether the Committee had funds available to refund the excessive contributions. Mr. Jordan testified that the Committee's former treasurer, Betty R. Brown, who was the active officer at the time of the allegations, had been rendered physically and mentally incapacitated as a result of sustaining several strokes. Mr. Jordan further argued that the Gray for Mayor Committee received approximately 6,308 contributions, of which only twelve (12) contributions (including the three (3) excessive cash contributions) were considered excessive. Therefore, in his view, the Committee's error rate was miniscule in a campaign that raised more than 2 million dollars, and thus should be considered inconsequential.

Allegation #2: Disbursement of seven (7) payments to former treasurer for further disbursement by cash

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At the hearing, Renee Coleman-Rollins, OCF Audit Manager, testified that seven (7) payments were disbursed to the Committee's former treasurer, Betty R. Brown, totaling \$103,348.00, which she further disbursed to herself and to other individuals. Ms. Coleman-Rollins stated that the seven (7) payments were made payable to Betty R. Brown on September 11, 2010, September 13, 2010, September 14, 2010, September 21, 2010, October 20, 2010, October 21, 2010 and November 2, 2010.

In response to the allegation, Mr. Jordan reiterated his previous response that the issue is being adjudicated well beyond OCF's statutory authority to do so as, in his view, the statute of limitations had tolled. He further testified that the law cited in the Preliminary Audit Report (PAR) and in OCF's Notice of Hearing (D.C. Official Code §1-1102.03) had been repealed. Additionally, he referenced the incapacity of the former treasurer, who had exclusive access to Committee financial records, and his inability to substantiate the allegation absent the production of Committee records.

Allegation #3: Failure to establish adequate recordkeeping and internal controls relative to payments to consultants

At the hearing, Renee Coleman-Rollins, OCF Audit Manager, testified that payments were made repetitively to six (6) individuals listed as Consultants on the Committee's Reports of Receipts and Expenditures. The individuals named were: Reuben Charles, Leroy Ellis, Howard Brooks, Thomas Gore, Stephanie Reich and Betty Brown. Ms. Coleman-Rollins further testified that the Preliminary Audit Report (PAR) issued by the Reports Analysis and Audit Division (RAAD) requested that the Committee provide a Statement of Work or other documentation which

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established the scope of work performed by the named individuals. According to the Audit Manager, the requested documentation was not forthcoming.

In his testimony, Mr. Jordan stated his belief that the named individuals were not campaign consultants, but rather paid employees of the Gray for Mayor Committee. Further, Mr. Jordan stated that he had no records to substantiate the status of these individuals to support his claim. Finally, Mr. Jordan reiterated his previous defenses including the repeal of the statutes cited by the Office of Campaign Finance in its Final Audit Report and Notice of Hearing; the tolling of the statute of limitations in this matter; and the incapacity of former treasurer, Betty R. Brown, the treasurer of record at the time of the alleged violations.

Allegation #4: Acceptance of three (3) excessive cash contributions

At the hearing, Renee Coleman-Rollins, OCF Audit Manager, testified that three (3) cash contributions, totaling \$190.00, were accepted by the Committee in excess of the statutory cash limitation of \$25.00. Ms. Coleman-Rollins named the three (3) contributors as: (1) Denise Johnson, whose \$100.00 contribution was represented by a copy of a one hundred dollar bill (\$100.00) bearing the date July 30, 2010, which contained a notation that the Committee will have the contributor convert the cash contribution to a check or money order; (2) Adams Morgan Restaurant, whose cash contribution of \$40.00 contained no date, but was accompanied by a notation on a contributor card stating, " need money order"; and (3) Wanda Henderson, whose cash contribution of \$50.00 contained no date, but included a notation on a contributor card stating, "need money order."

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In response to the allegation, Mr. Jordan reiterated his previous defenses including the repeal of the statutes cited by the Office of Campaign Finance in its Audit Report and Notice of Hearing; the tolling of the statute of limitations in this matter; and the incapacity of former treasurer, Betty R. Brown, the treasurer of record when the alleged transactions occurred.

III. Conclusions of Law

Allegation #1: Acceptance of nine (9) excessive contributions

D.C. Official Code §1-1163.33(a)(1) provides that, “[N]o person shall make any contribution which, and no person shall receive any contribution from any person which, when aggregated with all other contributions received from that person relating to a campaign for . . . election to public office, . . . exceeds: In the case of a contribution in support of a candidate for Mayor . . . , \$2,000.

OCF’s field audit investigation of the Gray for Mayor Committee found that nine (9) excessive contributions were accepted by the Committee. OCF Auditors recommended in its Preliminary Audit Report (PAR) that the Committee refund the excessive portions of the contributions to each affected contributor, and transmit documentation of the completed transactions to the Reports Analysis and Audit Division (RAAD) for review. On April 17, 2012, the Committee stated that it would refund the excessive portion of each contribution to contributors. To date, OCF has no documentation to substantiate that the refunds were made. Further, at the hearing, Mr. Jordan testified that he could not confirm that the refunds occurred due to the incapacity of the

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Committee's former treasurer, Betty R. Brown, and the condition in which Committee records were returned by the US Attorney's Office.

Based on the foregoing, we find the Committee in violation of nine (9) counts of D.C. Official Code §1-1163.33(a)(1), and recommend that a fine of \$500.00 be imposed for each violation or \$4,500.00.

Allegation #2: Disbursement of seven (7) payments for further disbursement to individuals

D.C. Official Code §1-1163.08(a) states in relevant part, "[N]o expenditures may be made by a committee or candidate except by check drawn payable to the person to whom the expenditure is being made on that account or accounts . . .".

OCF's field audit investigation of the Gray for Mayor Committee found that seven (7) payments, totaling \$103,348.00 were issued to former treasurer, Betty R. Brown, which she used to make cash payments to other individuals. In its Preliminary Audit Report (PAR), OCF Auditors requested an explanation of the foregoing, as well as documentation to support the transactions. The Committee stated in its response to the PAR that the funds were used to pay for election-day activities, poll workers, polling/mailling lists, reimbursements and other campaign activities.

RAAD was able to verify based on copies of deposit slips provided by the Committee that \$93,849.30 of the \$103,348 payments to the Committee treasurer were made as follows: (1) \$11,848 paid to nine (9) Ward Coordinators for cash disbursements; (2) \$9,343 paid to six (6) individuals for polling/mailling lists on September 11, 2010; (3) \$8,700 paid to one (1) Ward

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Coordinator to pay poll workers; (4) \$26,683.70 paid to six (6) Ward Coordinators for polling on September 14, 2010; and (5) \$37,274.60 re-deposited into the Committee's account as funds that were not expended. RAAD was unable to trace the remaining \$9,498.70 based on the documentation provided.

In his response to the allegation, Mr. Jordan stated that he possessed no information relevant to this matter, and reiterated his previous defenses including the repeal of the statutes cited by the Office of Campaign Finance in its Audit Report and Notice of Hearing; the tolling of the statute of limitations in this matter; and the incapacity of former treasurer, Betty R. Brown, the treasurer of record when the foregoing transactions occurred.

Based on the foregoing, we find the Committee in violation of seven (7) counts of D.C. Official Code §1-1163.08(a), and recommend that a fine of \$500.00 be imposed for each violation or \$3,500.00.

Allegation #3: Failure to establish adequate recordkeeping regarding payments to consultants

D.C. Official Code §1-1163.07(5)(B) provides, "[t]he treasurer or candidate shall obtain and preserve receipted bills and records as may be required by the Elections Board." Further, 3 DCMR §3400.2 states, "[each] person who is required to file records under §3400 shall obtain and preserve, from the date of registration, detailed records of all contributions and expenditures disclosed in reports and statements filed with the Director, including the following: . . . (g) Invoices . . . (i) Contracts; . . . (j) Subcontracts; . . . (k) Payroll Records . . .".

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OCF's field audit investigation of the Gray for Mayor Committee found that the Committee made a number of payments to six (6) consultants for which it failed to provide adequate documentation to support the expenditures.

In his testimony, Mr. Jordan stated that the individuals in question were actually full-time employees of the campaign, and relied on his previous defenses including the repeal of the statutes cited by the Office of Campaign Finance in its Audit Report and Notice of Hearing; the tolling of the statute of limitations in this matter; and the incapacity of former treasurer, Betty R. Brown, the treasurer of record when the alleged transactions occurred.

Based on a review of the Committee's records, we find that given the major roles Ms. Brown and Mr. Gore played in the campaign, and Mr. Jordan's assertions that they were employees, we deem the testimony, in part, credible. However, without supporting documentation, we find the Committee in violation of four (4) counts of D.C. Official Code §1-1163.07(5)(B) regarding the four (4) remaining individuals, and recommend that a fine of \$500.00 be imposed for each violation or \$2,000.00.

Allegation #4: Acceptance of three (3) excessive cash contributions

D.C. Official Code §1-1163.33(c) provides, "[I]n no case shall any person receive or make any contribution in legal tender in an amount of \$25 or more."

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OCF's field audit investigation found that three (3) cash contributions totaling \$190.00 were accepted by the Gray for Mayor Committee. In its Preliminary Audit Report (PAR), OCF Auditors requested a response to these transactions, but none was forthcoming by the Committee.

In his testimony at the hearing, Mr. Jordan relied on his previous defenses when addressing this allegation, including the repeal of the statutes cited by the Office of Campaign Finance in its Audit Report and Notice of Hearing; the tolling of the statute of limitations in this matter; and the incapacity of former treasurer, Betty R. Brown, the treasurer of record when the alleged transactions occurred. Mr. Jordan further stated that, in his view, the margin of error is miniscule, where, as here, the Committee had amassed more than 2 million dollars in campaign contributions.

Notwithstanding the foregoing, we find the Committee in violation of three (3) counts of D.C. Official Code §1-1163.33(c). While recognizing that a violation of law has occurred, we weigh the \$190.00 infraction in view of a campaign which raised funds in excess of \$2 million, and is accountable for accurately managing and reporting same. However, due to the de minimis amount of the funds at issue, we recommend dismissal of this charge, and strongly admonish the Committee of its responsibility to know and to apply the letter of D.C. campaign finance law to every dollar it accepts.

It is indisputable that D.C. Official Code §1-1101.01 et seq., "The DC Campaign Finance Reform and Conflict of Interest Act, as amended" was in effect when OCF's Preliminary Audit (PAR) commenced on March 17, 2011. It is further indisputable that this law was repealed and replaced by

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D.C. Official Code §1-1161.01 et seq., “The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011” on April 27, 2012. This new law was an omnibus legislative package which included many of the campaign finance provisions found in the former law. In fact, every statutory provision cited in OCF’s Audit Report substantially mirrors those found in the repealed law, though codified differently. Moreover, the Report of the Committee on Government Operations of the Council dated December 5, 2011 specifically addressed the impact of the “Ethics Act” on existing law and stated, in significant part, “Title I of Chapter 11 of the D.C. Official Code is repealed in whole and reenacted within this Act.” See Report on page 43.

D.C. Official Code § 1-1103.03(8) was the governing statute in force and effect when OCF’s full investigation and investigative field audit commenced in March of 2011, and the Preliminary Audit Report (PAR) of the Gray for Mayor Committee was issued on December 16, 2011. OCF’s PAR was based on a full field audit conducted by its Reports Analysis and Audit Division (RAAD) of the Statements and Reports of Receipts and Expenditures filed by the Gray for Mayor Committee. The investigation and the audit were commenced and conducted well within the statute of limitations governing such actions.

The respondent’s challenges to the proceedings are essentially motions to dismiss the allegations based on the assertion that the repeal of the statutes cited by OCF nullifies the proceeding and all the charges arising from the prior Campaign Finance Act. We find this assertion is without merit, and therefore unpersuasive. Further, to suggest that the restatement of former law through the re-

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codification process invalidates that law is equally without merit. Accordingly, respondent's motions to dismiss are denied.

Finally, the fair adjudication of this matter required the OCF to consider the extraordinary events surrounding this case when exercising its authority under D.C. Official Code §1-1163.35(3) to impose civil penalties for violations of the Campaign Finance Act.

V. Recommendation

In view of the foregoing and information included in the record, I hereby recommend that fines totaling \$10,000.00 be imposed on the Gray for Mayor Committee.

June 24, 2016
Date

Jean Scott Diggs
Jean Scott Diggs
Senior Hearing Officer

VI. Order

Based upon the foregoing findings of fact and conclusions of law, it is this 24th day of June, 2016:

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ORDERED, that the Gray for Mayor Committee is hereby fined \$10,000.00 for violations of D.C. Official Code §§1-1163.33(a)(1); 1-1163.08(a) and 1-1163.07(5)(B) respectively.



William O. Sanford
General Counsel
Office of Campaign Finance

This Order may be appealed to the Board of Elections within 15 days from the date of issuance.

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order on the Honorable Vincent C. Gray by regular mail at 2619 Branch Avenue, SE, Washington, DC 20020 and by email at vincegray2016@gmail.com; Lloyd Jordan, Esq., by regular mail at 1155 F Street, NW, Suite 1050, Washington, DC 20004 and by email at lloyd.jordan@motleywaller.com; and Brian Lederer, Esq., by regular mail at 1155 F Street, NW, Suite 1050, Washington, DC 20004 and by email at brian.lederer@motleywaller.com on June 24, 2016.



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NOTICE

Any party adversely affected by any Order of the Director may: (1) file a Motion for Reconsideration (Motion) with OCF within five (5) days after receipt of an Order, provided that, relevant evidence was omitted from consideration at hearing (3DCMR §3709.13)(May 2015); or obtain review of the Order by filing a request for a **hearing de novo** with the Board of Elections within fifteen (15) days from the date of issuance of an Order. Any fine imposed by the Director, pursuant to 3DCMR §3711.2, shall become effective on the 16th day following the issuance of a decision and order (3DCMR§3711.6); provided that, the Respondent does not request a **hearing de novo**, pursuant to 3DCMR §3709.11. Fines imposed shall be paid within ten (10) days of the effective date of the issued Order of the Director. Make a payment by check or money order payable to the District of Columbia Treasurer. Send payment to the Office of Campaign Finance, Frank D. Reeves Municipal Building, 2000 – 14th Street, NW, Suite 433, Washington, D.C. 20009.