

BEFORE THE  
DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

In Re:	)	
	)	
<b>Anthony A. Williams</b>	)	DATE: July 15, 2004
<b>and Vincent Mark J.</b>	)	
<b>Policy</b>	)	Per: Administrative Hearing
	)	No. 04-016
	)	
	)	Docket No.: OCF 04R-01

**ORDER ON REMAND**

**Statement of the Case**

This matter arises as a result of the Memorandum Opinion and Order (Opinion) of the Board of Elections and Ethics (Board) in In Re: Anthony A. Williams And Vincent Mark J. Policy (Administrative Hearing No. 04-016, May 18, 2004), pursuant to its sua sponte review of this matter in In the Matter of: Anthony A. Williams, Mayor. . .and Vincent Mark J. Policy. . . (Order) (Docket No. Investigation 03-04, April 8, 2004). The latter resolved a complaint filed by Dorothy A. Brizill, Executive Director, D.C. Watch, 1327 Girard Street, N.W., Washington, D.C., 20009, alleging that Anthony A. Williams, the Mayor of the District of Columbia, and Vincent Mark J. Policy, Esq. of Greenstein Delorme and Luchs, P.C. of Washington, D.C. violated the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), as amended, D.C. Official Code §§1-1101.01 et seq. (2001 Edition). Pursuant to the Opinion, inter alia, the Board requested a revised Order.

**Background**

On November 7, 2003, Ms. Brizill alleged before the Office of Campaign Finance (OCF) that Attorney Mark J. Policy inappropriately donated pro bono legal services to Mayor Anthony Williams, in Attorney Policy’s defense of a matter initiated in District of Columbia Superior Court, by Thomas Lindenfeld (Mr. Lindenfeld), through his counsel, Attorney Sherri Wyatt (Attorney Wyatt); and, that Mayor Williams inappropriately received pro bono legal services from Attorney Policy for same.<sup>1</sup> Ms. Brizill specifically requested OCF to determine whether this donation of pro bono legal services, and receipt thereof, constituted “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 [Attorney 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.”

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<sup>1</sup> In denying the defendant’s motion for summary judgment in the matter of Thomas Lindenfeld v. Anthony Williams, Civil Action No. 02CA5119, Judge Jeanette J. Clark stated that it was “undisputed that plaintiff [Lindenfeld] performed services in connection with Defendant Williams’ re-election efforts.”

OCF conducted its investigation and concluded that the principals did not violate the Act because Attorney Policy, who was subject to OCF jurisdiction by virtue of his registration as a lobbyist by Greenstein DeLorme and Luchs, P.C., and Mayor Williams had entered into a retainer agreement for Attorney Policy's services in Mayor Williams' dispute with Mr. Lindenfeld; and, Mayor Williams was paying Attorney Policy, pursuant to regular monthly bills for those services. OCF considered moot the issues of "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 Attorney Policy [was] providing in this case [fell] within the boundaries of legal services that can legitimately be provided as volunteer services to a political campaign," as explicitly requested by Ms. Brizill, because the legal services provided by Attorney Policy were not pro bono.

Upon review of the OCF Order on May 5, 2004, pursuant to an April 13, 2004 request by Ms. Brizill, the Board "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 [Lindenfeld] Case."

In its May 18, 2004 Opinion, the Board concluded that Attorney Policy and his firm, Greenstein DeLorme and Luchs, P.C., were not "registrants under the Act for the relevant period"; and, that Attorney "Policy gave neither a gift nor anything else of value to the Mayor in connection with providing legal services to the Mayor in the [Lindenfeld] Case."

As a result, the Board ordered, inter alia, "[t]hat this matter be remanded back to OCF so that the 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[.]" See Opinion at 6-7.

Incorporated wholly herein by reference, implicitly and, when noted, expressly, is the OCF Order, except to the extent that it is inconsistent with the Board's Opinion.

**"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 [Lindenfeld] 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 [Lindenfeld] 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 [Lindenfeld] 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?”

#### **Additional Relevant Statutory Provision**

D.C. Official Code §1-1101.01(8) defines the term “person” to mean “an individual, partnership, committee, corporation, labor organization, and any other organization.”

D.C. Official Code §1-1106.02(h)(7) defines the term “gift” to mean “a payment, subscription, advance, forbearance, rendering or deposit of money, services or any thing 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 an administrative decision or legislative action and shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person’s immediate family.”

#### **Summary of Additional Evidence**

There was no additional evidence presented.

#### **Findings of Fact**

1. Lobbyist registration and activity reports for 2003 submitted by Attorney Policy and his firm, Greenstein DeLorme & Luchs, P.C., indicate that they registered with OCF to lobby on behalf of the Washington, D.C. Association of Realtors and the Apartment and Office Building Association; and, that Attorney Policy and the firm did not receive or expend any funds therefor. See Opinion at Findings of Fact (FOF) 1-2; and, Order at FOF 1-2.
2. On February 10, 2003, Attorney Policy and Mayor Williams contracted, in a retainer agreement, for the former to represent the latter in the Lindenfeld case. See Opinion at FOF 3; and, Order at FOF 3.
3. On October 14, 2003, Attorney Policy presented Mayor Williams with a bill for legal services, rendered from February 7, 2003 through September 30, 2003, for \$17,161.73; on November 11, 2003, Attorney Policy presented Mayor Williams with a bill for legal services, after September 30, 2003, for \$15,636.46, incorporating the previous bill therein for a total of \$32,798.19 due; and, on December 3, 2003, Attorney Policy presented Mayor Williams with a bill for legal services, at the next bill period for \$2,336.53, also incorporating the

previous bills therein for a total of \$35,154.72. See Opinion at FOF 4-6; see also Order at FOF 4.

4. On February 5, 2004, Mayor Williams paid \$15,000 of the total amount owed for the services of Attorney Policy in defense of his matter with Lindenfeld. See Opinion at FOF 6; see also Order at FOF 6.
5. Attorney Policy always expected to receive total payment from Mayor Williams for his services in defense of the matter with Lindenfeld because he instituted a retainer agreement and submitted bills therefor. Order at Attachment (Att.) D; see also Opinion at FOF 10.
6. Mayor Williams always expected to pay Attorney Policy for his services in his defense of the matter with Lindenfeld because he signed a retainer agreement therefor and made an admitted partial payment thereon with the intent to repay the remainder. See Order at Att. Order at Att. D and Att. F; see also Opinion at FOF 10.
7. There was not any agreement made between Attorney Policy and Mayor Williams whereby Attorney Policy would refrain from billing or requesting Mayor Williams for payment for services rendered in the Lindenfeld matter. Opinion at FOF 10.

### **Conclusions of Law**

Based upon the record, in its entirety, and the evidence, I therefore conclude:

1. Attorney Policy is not subject to the Act's lobbying statute, notwithstanding that he was registered as a lobbyist by his firm, Greenstein DeLorme & Luchs, P.C., because he did not participate in any lobbying activity wherein he received or expended \$250 in a three consecutive month period, pursuant to D.C. Official Code §1-1105.02. See Opinion at Conclusions of Law (COL) 1.
2. Attorney Policy is subject to the Act because he is a person, pursuant to D.C. Official Code §1-1106.01(c), alleged to have given 'to a public official. . .anything of value, including a gift [of forbearance]. . .service 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 public reported pursuant to section 1-1102.06 and transactions made in the ordinary course of business of the person offering or giving the thing of value,' pursuant to D.C. Official Code Section 1-1106.01(c).
3. Attorney Policy did not extend a gift of forbearance, service or anything else of value to Mayor Williams because Mayor Williams contracted to pay Attorney Policy for his legal services in his defense in the Lindenfeld matter; and, Mayor

Williams partially paid Attorney Policy for the fees required by Attorney Policy for his service with the intent to pay the remainder owed.

4. Because Attorney Policy billed and Mayor Williams partially paid, with the intent to pay the remainder owed, for legal services in connection with the Lindenfeld matter, Attorney Policy did not provide pro bono legal services or volunteer a portion or all of his time, as a contribution, on behalf of Mayor Williams, pursuant to D.C. Official Code Section 1-1-1109(6)(B).

**Order**

In accordance with the Opinion, it is hereby ordered that this 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; [t]hat 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.”<sup>2</sup>

**RESPECTFULLY SUBMITTED:**

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Cecily E. Collier-Montgomery  
Director

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Kathy S. Williams  
General Counsel

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<sup>2</sup> The Opinion issued on May 18, 2004. To date, the Office of Campaign Finance has not been advised that the bill has been paid in full. If the bill has not been paid in full by August 16, 2004, OCF will so apprise the Board.

**SERVICE OF REMAND ORDER**

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Anwar Wilson  
Clerk

cc: Board of Elections and Ethics  
c/o Kenneth J. McGhie  
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