



BOARD OF ETHICS
CITY OF CHICAGO

BEFORE THE CITY OF CHICAGO
BOARD OF ETHICS

In the Matter of:)
)
Alderman Howard Brookins) No. 13039.OLIG [DAH 15 Ethics 0001]
)
Respondent)
)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), dated September 1, 2017, is made and entered into by the City of Chicago Board of Ethics (“Board”) and The Honorable Alderman Howard Brookins (“Respondent”) pursuant to §2-156-385(4) of the City of Chicago Governmental Ethics Ordinance (“Ordinance”). The parties agree to the following terms.

Statement of Relevant Facts and Procedural History

1. This matter involves a complaint and the ensuing investigation conducted by the former Office of the Legislative Inspector General (LIG), a subsequent finding of probable cause made by the Board in 2014, after meeting with the Respondent’s attorney, then a merits hearing in July 2017 before an Administrative Law Judge (“ALJ”), pursuant to §2-156-392 of the Ordinance. Following this hearing, the ALJ delivered his Report and Recommendation to the Board’s Executive Director on August 4, 2017.
2. The complaint to the LIG in July 2013 alleged that, between March and June 2011, two individuals loaned money to the then-Chief of Staff to the Alderman, but that the Chief of Staff did not repay the loans or respond to their requests for repayment. In August 2013, the Board found reasonable cause to enable the LIG to proceed with its investigation, pursuant to §2-156-385(1) then in effect.
3. The evidence adduced in the LIG’s investigation showed that there were no time records for Respondent’s then-Chief of Staff or other 21st Ward staffers for substantial periods of time, and that the Respondent claimed that there had been a substantial number of documents and time records lost in that flood.
4. In November 2014, after careful consideration, the Board found that, for all allegations except one, there was no probable cause to proceed against either the Chief of Staff or Respondent, and dismissed the matter, *except* for one specific issue: the Board found there *was* probable cause to

conclude that Respondent violated §2-156-115 of the Ordinance, *Time records for aldermanic staff*. This section provides that:

"Each alderman shall maintain a daily record of the attendance of his or her personal employees. The record shall be certified as correct by the alderman or by any employee designated by the alderman. Records required under this section shall be available for inspection in the offices of the respective aldermen in accordance with the Illinois Freedom of Information Act, as amended."

5. Pursuant to §2-156-385(3) of the Ordinance then in effect, the Board met with the Respondent's attorney, on April 22, 2015, to afford an opportunity for the Respondent to discuss the allegations and the evidence. After this meeting, the Board, in May 2015, sustained its initial determination of probable cause, and notified the Respondent that it was amenable to settling the matter by public agreement in which, *inter alia*, the Respondent: (i) admitted that proper time records were not kept, certified and made publicly available; (ii) agreed to ensure that proper time records be kept, certified and made publicly available; and (iii) paid an appropriate fine.
6. The Respondent declined to settle the matter. Then, at its July 2015 meeting, per §2-156-385(5), the Board determined to initiate proceedings for a fine and hearing on the merits pursuant to §2-156-392. Subsequently, the City's Law Department hired a law firm to act as prosecutor, and the Director of the Department of Administrative Hearings assigned an ALJ to preside over the hearing. In August 2015, pursuant to §§2-156-392(2) and (3), the City prepared a statement of charges against Respondent, alleging nine (9) separate counts that he violated §2-156-115 of the Ordinance.
7. Pursuant to §2-156-392(1), a confidential hearing in the matter was held before the ALJ on July 11, 12, and 17, 2017. Following the hearing's conclusion, the ALJ issued his Report and Recommendations to the Board's Executive Director on August 4, 2017. Pursuant to §2-156-392(a)(6), the Board has 40 days from the conclusion of the hearing (July 17) -- that is, on or before September 12, 2017 -- to issue a written opinion either finding violations and imposing a fine, or stating that no violation has occurred.
8. On the date of the Board's August 16, 2017 meeting, Respondent's attorney communicated with Board staff to discuss a settlement agreement. At its meeting that day, the Board voted to authorize Board staff to negotiate such a settlement agreement but, if no settlement agreement was reached, to issue and publish the draft advisory opinion on this matter, which Board staff had presented to the Board at that meeting for its consideration.
9. In his Findings of Fact, the ALJ found that, for a period of approximately four (4) to six (6) weeks, in or around April and May 2011, the Respondent failed to maintain a daily record of his then-Chief of Staff, failed to make the time records available for inspection in accordance with the Freedom of Information Act ("FOIA"), during the time the Chief of Staff was absent from work due to illness, failed to certify any such records or delegate the required certification to anyone else, and did not track the Chief of Staff's time nor delegate the duties to keep time (something normally handled by the Chief of Staff) to another employee, and thus that the City sustained its burden of proof to show that the Respondent failed to comply with §2-156-115, and that this went on for four (4) weeks, and "that each week constitutes a separate violation of Section 2-156-115."
10. In his Findings of Fact, the ALJ found that, for the months of November 2010 through January 2011 (inclusive), and July, November and December 2011, and January and July 2012, the Respondent

failed to maintain a daily time record for the Chief of Staff, failed to make the time records available for inspection in accordance with the FOIA during the time that the Chief of Staff was absent from work due to illness, failed to certify any such records or delegate the required certification to anyone else, and did not track the Chief of Staff's time nor delegate the duties to keep time (something normally handled by the Chief of Staff) to another staffer, and thus that the City sustained its burden of proof to show that the Respondent failed to comply with §2-156-115, and that each of these months had four (4) weeks, and "that each week constitutes a separate violation of Section 2-156-115."

11. In his Findings of Fact, and as to the other seven (7) charges, relating to various other 21st Ward employees' time records (being an additional four (4) employees, which records were also missing on various dates spanning as early as November 2010 and as late as July 31, 2012), and to 21st Ward staff employees' time sheets *en masse*, the ALJ found that the Respondent had delegated the responsibility to keep and make available their timesheets to the Chief of Staff.

12. At all times relevant to this matter, Respondent was the 21st Ward Alderman to the City of Chicago.

13. At all times relevant, Respondent was subject to Section 2-156-115 of the Municipal Code of Chicago, recited in full in this Agreement.

Statement of Relevant Law

14. Respondent is subject to Section 2-156-115 of the Ordinance, entitled *Time records for aldermanic staff*. This section provides that:

"Each alderman shall maintain a daily record of the attendance of his or her personal employees. The record shall be certified as correct by the alderman or by any employee designated by the alderman. Records required under this section shall be available for inspection in the offices of the respective aldermen in accordance with the Illinois Freedom of Information Act, as amended."

15. The term "shall" as used in the Chicago Municipal Code is mandatory and not discretionary. See *City of Chicago v. Cotton*, 356 Ill.App.3d 1, 826 N.E.2d 405 (1st Dist. 2005).

16. *Respondeat superior* is "the doctrine holding an employer or principal liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency." BLACK'S LAW DICTIONARY 8th ed. page 1338.

Board Conclusions

17. At its August 16, 2017 meeting, the Board adopted the findings of fact made by the ALJ in his Report and Recommendations, including the following:

(a) Respondent failed to properly maintain aldermanic time records for his then-Chief of Staff during the period during which that employee was on leave during April and May 2011;

(b) Respondent failed to properly maintain aldermanic time records for his then-Chief of Staff during the period during which that employee during certain periods in 2010, 2011 and 2012;

(c) Respondent delegated to his then-Chief of Staff the administrative responsibility of properly maintaining time records for Respondent's staff during those same periods in 2010, 2011 and 2012; and

(d) Neither Respondent nor his then-Chief of Staff properly maintained time records for Respondent's remaining staff of four (4) or for the Chief of Staff during those same periods in 2010, 2011 and 2012.

18. At its August 16, 2017 meeting, the Board made the following conclusions of law:

(a) The Respondent's aldermanic office was his, and the Respondent's staffers were his. Although an alderman, such as Respondent, may delegate this administrative responsibility, the Board determined that the ultimate responsibility for maintaining and preserving time records is an alderman's, pursuant to §2-156-115, which states, unambiguously: "Each *alderman shall maintain a daily record of the attendance of his or her personal employees,*" applying to that sentence the principle of *respondet superior*.

(b) The Ordinance does not require an alderman's employees themselves to keep time records; however, if the employees do not do so, or an alderman chooses to delegate that function to his or her employees, and they do not, the alderman must do so or designate someone to do so. If no such records are kept, the alderman is responsible for that failure.

19. Respondent admits that he failed to properly maintain, certify, preserve and make available all daily records of staff attendance for his then-Chief of Staff and four (4) other employees between November 2010 and July 31, 2012.

Terms of the Settlement Agreement

The above fact recitation, statement of law, Board conclusions and Respondent's admissions are incorporated into and make a part of this Agreement.

20. The parties agree to enter into this Agreement to resolve all factual and legal issues arising out of Respondent's failure to properly maintain and preserve time records and the ALJ's Report and Recommendation issued on this matter on August 4, 2017.

21. Respondent agrees that he will refrain from violating §2-156-115 henceforth and shall ensure that proper time records will be kept, certified and made publicly available as required by that provision.

22. Respondent acknowledges that, from the record before it, the Board was prepared to issue and publish its opinion on this matter pursuant to §§2-156-392(a)(6) and (7) of the Ordinance within the forty (40) day time frame in the aforesaid provision -392(a)(6), which would set forth the Board's determination of the Respondent's violation of §2-156-115 and sanction of a fine.

23. Pursuant to §2-156-385(4) of the Ordinance, the Board has the authority to settle this matter by fine.

24. The Board must apply the penalty provisions in effect at the time of the violations. The relevant omnibus fine provision in the Ordinance in effect between November 2010 and July 31, 2012, prior to the Ordinance's amendment effective November 1, 2012, was §2-156-410(e). It provided, in relevant

part: "Any person found to have violated any other provision of this chapter, where no other penalty is specifically provided ... shall be subject to a fine of not more than \$1,000.00 for each offense." Thus, the Board concludes that Respondent should be fined \$1,000 multiplied by the number of his employees (five (5) such employees) for whom he failed to keep, certify, or designate certification, and make publicly available time records. Based on the evidence adduced at the merits hearing and the findings of fact made by the ALJ, the Board has concluded that a fine of \$5,000 is appropriate.

25. In recognition of the foregoing, Respondent agrees to pay a fine of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000) to the Board within forty-five (45) days of the date on which this Agreement is finally executed, by money order, cashier's, or certified check, made payable to the "Board of Ethics," and that, if the board has not received such amount by that date, Respondent shall pay interest of nine percent (9%) per annum on the unpaid balance until paid-in-full; provided, however, that no interest shall be due and owing that is greater than provided for in 815 ILCS 205/4.

26. Respondent acknowledges that this Agreement is a public and final resolution solely of the actual and potential violations of the Ordinance and recommendations thereon made by the ALJ and issued by the ALJ to the Board in this matter pursuant to §2-156-392(a)(4), and that the Board shall make it public pursuant to §2-156-385(4). Except as may be required by applicable law, all records with respect to the merits hearing and the Agreement and its negotiations in the Board's possession shall remain confidential pursuant to applicable law.

27. Respondent confirms that he has entered into this Agreement freely, knowingly and intentionally, without coercion or duress, and after having had the opportunity to be represented by an attorney of his choice. Respondent accepts all the terms and conditions contained herein without reliance on any other promises or offers previously made or tendered by any past or present representative of the Board, and affirms that he fully understands all the terms of this Agreement. The terms of this Agreement are contractual and not mere recitals. If any of the provisions of this Agreement shall be found invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

28. Respondent understands and voluntarily waives and assigns, on his and his successors' behalf, as to this matter, any and all: (i) procedural rights under the City's Municipal Code; and (ii) rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political subdivision or office of the State of Illinois or the United States.

29. Respondent releases and holds harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's enforcement and settlement of the violation described in the Agreement and to contest the lawfulness, authority, jurisdiction, or power of the Board in imposing the sanction which is embodied in this Agreement; and the right to make any legal or equitable claim or to initiate legal proceedings of any kind against the Board, or any members or employees thereof relating to or arising out of this Agreement or the matters recited herein.

30. Once executed and dated by Respondent and his attorney, the Board staff shall submit this Agreement to the Board Chair for execution, but no later than at its next regularly scheduled meeting. The Board has determined by a majority vote that it has approved the substance of the Agreement and the Board must execute and date the Agreement before the Agreement becomes effective; provided, however, that, prior to such meeting, and based upon the Board's vote at its August 16, 2017 meeting,

the Board Chair is authorized to execute the Agreement prior to the next regularly scheduled Board meeting.

31. The parties agree that this Agreement shall become invalid in the event that the Board refuses to approve it.

32. Respondent agrees that failure to comply with the terms of this Agreement constitutes a breach of the Agreement and that the Board can take any appropriate action to enforce it as permitted by law.

33. In consideration of Respondent's full compliance with all of the terms pursuant to this Agreement, the Board waives any further penalties or fines against Respondent for any further proceedings arising out of the investigation and/or recommendations described in this Agreement.

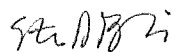
34. The Agreement contains the entire agreement between the Board and the Respondent and it may not be modified unless the modified Agreement is re-executed and re-dated by both parties. This Agreement is entered into in the State of Illinois and shall be construed and interpreted in accordance with its laws.

35. This Agreement shall not be effective until all parties have affixed and dated their signature below.

Chicago Board of Ethics

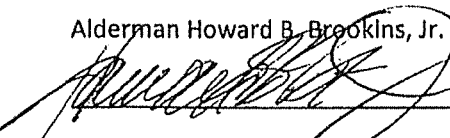
By:  Date: 9/7 2017

Chair: William F. Conlon

By:  Date: 9/7 2017

Executive Director: Steven I Berlin

Alderman Howard B. Brookins, Jr.

 Date: 9/5 2017

Brendan Shiller, As Attorney for Respondent

 Date: 9/6 2017