GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

IN RE: Gerren Price, **Respondent**	**Case No. 1426-001**

FINAL DECISION

I. Introduction

In this case, the Office of Government Ethics (OGE) has charged Gerren Price (Respondent) with three violations of the Code of Conduct.[1] Count 1 of the Amended Notice of Violation (NOV)[2] is based on 6B DCMR § 1806.3 and alleges that Respondent, as a public official, advanced his relative's resume through the hiring process for one of several Case Management Specialist positions in the Department of Employment Services, Office of Youth Programs, an office in which Respondent served as the Deputy Director. Count 2 also is based on 6B DCMR § 1806.3 and alleges that Respondent, as the OYP Deputy Director, requested an extension of the temporary terms of the Case Management Specialists to become Workforce Development Specialists. Count 3 is based on 6B DCMR § 1806.6 and alleges that Respondent failed to file a written recusal when he became aware that his relative had applied for a Case Management Specialist position in OYP.

Respondent has denied all three charges.

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[1] The Board has the power to, among other things, "[a]dminister and enforce the Code of Conduct." Section 202(a)(1) of the Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (Ethics Act), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.02(a)(1)). The Code of Conduct is defined by section 101(7)(E) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(E)) to include "Chapter 18 of Title 6B of the District of Columbia Municipal Regulations," which regulations include those forming the respective bases of the charges against Respondent. Respondent does not challenge the Board's jurisdiction in this case.

[2] The original NOV was amended, with Respondent's consent, to correct several technical errors. The original NOV, to which Respondent filed a Response, and the Amended NOV are otherwise substantively the same.

Pursuant to notice, an evidentiary hearing was held on October 13 and 14, 2016.[3] Through their respective representatives, both OGE and Respondent presented testimony,[4] introduced exhibits, and offered argument, including post-hearing sanctions briefs.

The Board has had the opportunity to review the record in its entirety and, after careful consideration of the parties' arguments, finds substantial evidence that Respondent violated the Code of Conduct as alleged in Count 1 and Count 3 of the NOV. Accordingly, the Board assesses a civil penalty of $1,500 on each count. In addition, as required by 6B DCMR § 1806.5, the Board orders Respondent to pay $26,182.10 in restitution to the District, less any amount that may have been earlier paid or deducted.

As required by 3 DCMR § 5521.2, the Board's findings of fact, conclusions of law, and analysis are set forth below.

II. Findings of Fact

The facts in this case can be summarized as follows:

Respondent began his service as a District government employee in January 2008 and, at all times relevant to this case, was the Deputy Director of Youth Workforce Development, Office of Youth Programs (OYP) in the Department of Employment Services (DOES). (Parties' Joint Pre-Hearing Statement (JPS) Stipulation b; Respondent's Response ¶ 2 to NOV;[5] OGE Exhibit 3[6])

As Deputy Director of Youth Workforce Development, Respondent oversaw OYP operations and programs and had authority to recommend individuals for personnel action, including hiring. (Testimony of Lesley Long)

The OYP ran the Summer Youth Employment Program (SYEP). (JPS Stipulation c; Respondent's Response ¶ 3)

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[3] An earlier hearing date in September had been continued, with OGE's consent, after the entry of appearance by Respondent's counsel. Prior to the October hearing date, Respondent filed an *in limine* motion to exclude the recordings of his interviews with OGE. The motion was denied for being untimely filed. Also, in the Joint Pre-Hearing Statement, Respondent stated that he intended to file a motion to amend his Response to the NOV. However, no such motion was filed.

[4] The Respondent did not testify himself.

[5] While Respondent's Response to the original NOV was admitted as OGE Exhibit 2, the Response is a pleading in this case. *See* 3 DCMR § 5509.2 ("A respondent shall file with the Board, and serve a copy upon the Director and any other respondents identified in the notice of violation, a response that states in short and plain terms his or her defenses to each violation alleged and shall admit or deny the averments upon which the notice of violation relies."). Accordingly, Respondent's factual assertions in the Response will be treated as admissions. *Cf. El Paso Natural Gas Co. v. United States*, 750 F.3d 863, 876 (D.C. Cir. 2014) ("factual allegations in operative pleadings are judicial admissions of fact") (citations omitted).

[6] In the Joint Pre-Hearing Statement, the parties agreed to the authenticity and admissibility of all exhibits, except that Respondent objected to the admissibility of his recorded interviews with OGE (OGE Exhibits 4 and 5). However, we note that we did not consider the recordings of Respondent's interviews in reaching this Final Decision.

In early 2015, the SYEP was expanded to include 22-24 year olds, which required DOES to hire fifteen temporary staff to serve as Case Managers for the 22-24 year old program participants. Ten of the Case Managers were employed by DOES, and five were contract employees. (JPS Stipulation d; Respondent's Response ¶ 4)

On Friday, June 19, 2015, Respondent participated in a meeting, during which he was informed that the Office of the City Administrator (OCA) had conditionally approved the hiring of the temporary staff to ensure that the unique needs of the 22-24 year old SYEP participants could be met. Among other things, the meeting participants decided that preference would be given to those job applicants with college degrees. (Respondent's Response ¶ 4; Respondent's Exhibit 17; testimony of Thennie Freeman)

On Sunday, June 21, 2015, Respondent, along with other senior staff at DOES, was copied on an email from Delano Hunter, DOES Chief of Staff to Deborah Carroll, DOES Director, confirming that the OCA had conditionally approved the request and that DOES Human Resources Manager Lesley Long would proceed with filling the positions the next day. The email also summarized the staffing needs discussed at the meeting held the previous Friday. (JPS Stipulation e; Respondent's Exhibit 17)

On Monday, June 22, 2015, at 12:25 p.m., at the request of Lesley Long, Respondent approved, via email, the use of two position numbers (00022773 and 00037243) to be used to recruit the ten Case Managers. (JPS Stipulation f; Respondent's Response ¶ 5; OGE Exhibit 18)

Later on Monday, June 22, 2015, Respondent participated in a meeting that included Lesley Long, who expressed concern, given the quick turn-around and the lack of available manpower within her Human Resources team, that it would be challenging for them to recruit for the Case Manager positions in a timely manner. Ms. Long recommended that Respondent and his team leverage their networks to assist Human Resources in identifying potential candidates with relevant youth development experience. Ms. Long also advised Respondent to send an email to his team asking them to refer potential candidates for the positions and asked him to provide resumes from any potential candidates to Human Resources no later than 5:00 p.m. on the next business day, Tuesday, June 23, 2015. (Respondent's Response ¶ 6)

On Monday, June 22, 2015, at 7:08 p.m., Respondent sent an email to all OYP staff, with the subject line "URGENT - Job Opportunity." The email described the ten Case Manager positions for which DOES was hiring and the requirements for applicants. Respondent also stated in the email that resumes for the positions should be submitted to him no later than 5:00 p.m. the next day. (JPS Stipulation g; Respondent's Response ¶ 6; OGE Exhibit 19)

On June 22, 2015, at 10:00 p.m., Desiree Ward sent an email to Respondent, with the subject "Desiree Ward - Resume." In its entirety, the text of the email read, "[p]lease see resume attached." Ms. Ward's resume was attached. (JPS Stipulation h; Respondent's Response ¶ 8; OGE Exhibit 20)

Desiree Ward's resume indicated that she had attended the University of Maryland since August 2010 and that she "expected" a Bachelor of Science degree in Community and Behavioral Health in May 2014.[7] (OGE Exhibit 21)

Desiree Ward is Respondent's sister-in-law. (JPS Stipulation i; Respondent's Response ¶ 9)

Respondent replied to Desiree Ward's email, stating, "Thank you, Ms. Ward. I will forward your resume to [Human Resources] for consideration. You will hear from us soon." (OGE Exhibit 22) Respondent attempted to reply to every inquiry that he received related to the Case Manager positions with similar language indicating that resumes would be sent to Human Resources for consideration. (Respondent's Response ¶ 10)

On Tuesday, June 23, 2015, at 10:11 a.m., Lesley Long emailed Respondent and copied the Associate Director of OYP, Thennie Freeman, who reported to Respondent, indicating that she had received final approval to begin recruiting for the Case Manager positions. Ms. Long also said, "Please send me your employees ASAP," indicating that she needed to submit all finalized packets to the Department of Human Resources by 5:00 p.m. the next day. (JPS Stipulation j; Respondent's Response ¶ 11; OGE Exhibit 23)

On Tuesday, June 23, 2015, Respondent spoke with Lesley Long, who said that, given the short turn-around time, her team would not have adequate time to review resumes and that, therefore, she would need Respondent's team to review the submitted resumes and to provide her with those that appeared qualified for the position. Respondent agreed that his team would assist. (Respondent's Response ¶ 11)

Respondent received approximately 50 to 60 resumes by the 5:00 p.m. deadline on Tuesday, June 23, 2015. (Respondent's Response ¶ 7; testimony of Thennie Freeman)

During the morning of Wednesday, June 24, 2015, Respondent printed all of the resumes that he had received and gave them to his team. He told the team that Lesley Long had requested that they review the resumes and that they provide her with 10-15 that appeared to meet the qualifications for the Case Manager positions. Respondent did not tell anyone on his team that Desiree Ward was his relative. Respondent's team then reviewed the resumes and handed approximately 10 to 15 resumes, including that of Desiree Ward, to the DOES Office of Human Resources. (JPS Stipulation l; Respondent's Response ¶¶ 13-15)

On Wednesday, June 24, 2015, at 5:07 p.m., Lesley Long sent an email to Desiree Ward from the DOES Human Resources email account, entitled "Notice of Tentative Selection for Workforce Development Specialist (Case Manager)." This email asked Ms. Ward to complete an application package and noted that a final job offer was contingent upon the completion of the package. The application package included a District Government Employment Application, also known as a DC 2000. Ms. Long forwarded the email to Lachelle Savoy, who also worked in the DOES Office of Human Resources, that same day. (JPS Stipulation m; OGE Exhibit 25)

[7] We assume that the resume was out of date, given that Ms. Ward submitted it on June 22, 2015. *See also* section 6(b) of her DC 2000 (included as part of OGE Exhibit 26) (indicating that degree was "obtained" in May 2014).

On Friday, June 26, 2015, Desiree Ward submitted her application package to Lachelle Savoy at email address, HR DOES.[8] (JPS Stipulation n; OGE Exhibit 26)

On June 29, 2015, Lachelle Savoy, who was assigned to onboard the Case Managers, sent an email to Lesley Long updating her on the process. Ms. Long subsequently forwarded that email to Respondent and Thennie Freeman. The forwarded email contained a chart listing twelve names, including that of Desiree Ward, and the status of each person's application package. Above the chart, Ms. Savoy, stated, "Below is the status of each resume submitted." Ms. Long pointed out in her email that they were "down to nine" applicants for the Case Manager positions, due to two applicants failing to respond. (JPS Stipulation o; Respondent's Response ¶ 19; OGE Exhibit 27)

On July 2, 2015, Lachelle Savoy sent Desiree Ward an email, alerting her that her "offer letter of employment" had been sent to her via email the day before, and asking her to review the offer and to accept or decline the position. (JPS Stipulation q; OGE Exhibit 29)

Desiree Ward's offer letter indicated that she was selected for the Career Service position of Case Management Specialist, CS-301-09/0, a position in OYP. The effective date of her appointment was July 6, 2015. The position was a temporary appointment not to exceed 120 days and was to expire on Friday, November 6, 2015. (JPS Stipulation r; Respondent's Response ¶ 25)

Desiree Ward began working as a Case Management Specialist on July 6, 2015. (JPS Stipulation s; Respondent's Response ¶ 26)

Desiree Ward's starting salary was $41,724. Along with all other District employees, she received a 3% salary increase in October 2015, and, when her position was later converted to a full time position, her salary became $49,551. (Testimony of Lesley Long)

Desiree Ward resigned her position, effective February 26, 2016. (Respondent's Response ¶ 40; OGE Exhibit 35)

At the time DOES was contemplating hiring Desiree Ward, Respondent failed to file a written recusal. (Respondent's Response ¶¶ 37 and 42)

III. Conclusions of Law and Analysis

The foregoing facts are largely beyond dispute. Nonetheless, the question for the Board is whether OGE has met its burden of proving Respondent's violation of the ethics regulations

[8] We note that, in JPS Stipulation n, the parties stipulated that Ms. Ward listed Respondent as her brother-in-law in her DC 2000. *See also* section 10 of her DC 2000 (included as part of OGE Exhibit 26). However, we do not find Ms. Ward's disclosure to be relevant.

underlying the three counts of the NOV by substantial evidence.[9] The Board finds that burden to have been satisfied with respect to Counts 1 and 3, but not as to Count 2.

Count 1 (Directly or Indirectly Making a Hiring Decision with Respect to a Relative)

Count 1 of the NOV alleges that, in violation of 6B DCMR § 1806.3, "Respondent, a public official, advanced his relative's resume through the hiring process for Case Management Specialists, a position within the Office of Youth Programs at DOES, an office in which Respondent was the Deputy Director, by printing off her resume and giving it to his team, who then gave it to DOES Human Resources for onboarding."

Section 1806.3, 6B DCMR, provides, in pertinent part, as follows:

> A public official may not directly or indirectly make a hiring decision regarding a position within his or her own agency with respect to a relative. Specifically, a public official may not appoint, employ, promote, evaluate, interview, or advance (or advocate for such actions) any individual who is a relative in an agency in which the public official serves or exercises jurisdiction or control.

There are a number of defined terms contained in the regulation, and a discussion of them will inform our analysis of the sufficiency of the evidence with respect to Count 1.

A "public official" is "an officer, employee, or any other individual in whom authority by law, rule, or regulation is vested, or to whom the authority has been delegated to select, appoint, employ, promote, reassign, demote, separate, or recommend individuals for any of these actions."[10] Here, as the Deputy Director of Youth Workforce Development, Respondent oversaw OYP programs and had the authority to take personnel action, a form of jurisdiction or control. He admittedly exercised that authority directly, for example, in "approv[ing] the usage of two position numbers to initiate the official recruitment of candidates to fill the [Case Management Specialist] position."[11] He also exercised delegated personnel authority, when asked by Ms. Long, to engage his team in reviewing the resumes of potential candidates for the

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[9] *See* 3 DCMR § 5518.1 ("In all cases involving a notice of violation, the Director [of Government Ethics] has the burden of persuading the Board that a violation has occurred by substantial evidence.").

We note that Respondent apparently misconceives the nature of substantial evidence, describing it on page 1 of his sanctions brief, for example, as a "very high bar." On the contrary, substantial evidence is only "more than a mere scintilla. It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *McEvily v. District of Columbia Dep't of Employment Services*, 500 A.2d 1022, 1023 (D.C. 1885) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)); *see also* 3 DCMR § 5521.4 ("A decision [by the Board] shall be supported by substantial evidence on the record. Pursuant to the substantial evidence rule, courts shall uphold an administrative determination of fact if on the entire record the determination is rationally supportable and could have been arrived at reasonably.").

[10] 6B DCMR § 1806.2(a).

[11] Respondent's Response ¶ 41.

position, a task, we assume, which Human Resources would have performed under normal hiring circumstances.

A "hiring decision" means "selecting, appointing, employing, promoting, reassigning, advancing, or advocating a personnel action."[12] The term "advancing" is not itself defined in Chapter 18 of Title 6B of the District of Columbia Municipal Regulations.[13] However, the word "advance" is elsewhere defined as meaning, among other things, "to move something forward in position, time or place."[14] Applying that definition here, we find that Respondent not only intended to advance his sister-in-law's resume[15] when he told Ms. Ward that he would "forward [her] resume to [Human Resources] for consideration," but that he also followed through when he included her resume among the 50 to 60 that he turned over to his team. By taking that action on Ms. Ward's behalf, Respondent included her in a process that, after leaving his hands, began with an initial review, went through a stage of further evaluation, and ended with an offer of employment. In other words, Respondent directly and indirectly participated in the decision to hire his sister-in-law.

Accordingly, we find substantial evidence that Respondent violated 6B DCMR § 1806.3, as alleged in Count 1 of the NOV.

Count 2 (Directly or Indirectly Making a Hiring Decision with Respect to a Relative)

Count 2 of the NOV alleges that, in violation of 6B DCMR § 1806.3, "Respondent, as the Deputy Director of the Office of Youth Programs, requested an extension to the temporary term for six of the Case Management Specialists, and signed off on recruitment for the six Case Management Specialists to become Workforce Development Specialists."

As a threshold matter, we find that the decision to extend the temporary terms of the Case Management Specialists, including that of Ms. Ward, was not made by Respondent. Lesley Long, who was called by OGE, merely guessed that it was made by the D.C. Council. On the other hand, Thennie Freeman, who was called by Respondent, testified that the decision was made by officials in the Executive Office of the Mayor. As between the two witnesses, we choose to credit Ms. Freeman's testimony because, as Respondent's Associate Director, she was more directly involved in the 22-24 year old program than Ms. Long.

In terms of the paperwork to effect the extensions, OGE Exhibit 9, Ms. Ward's DC Standard Form 52 (Request for Personnel Action), is key. While OGE alleges in Count 2 that Respondent "signed off" on the form, that allegation is completely undercut by paragraph 35 of the NOV,

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[12] 6B DCMR § 1806.2(b).

[13] The term also is not defined in section 1804 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (codified at D.C. Official Code § 1-618.04), the statutory basis for 6B DCMR § 1806, or in 5 U.S.C. § 3110, the federal nepotism statute that applies to District government employees.

[14] *Black's Law Dictionary* 48 (5th ed. 1979).

[15] The term "relative" is defined in 6B DCMR § 1899.1 to include sister-in-law.

which alleges that "the form [was] signed by Ms. Freeman." More to the point, Ms. Freeman testified that she, in fact, signed the form.

While we have no doubt that Respondent knew about the extension of Ms. Ward's temporary term, we find no evidence to show that he took any direct role in bringing it about. Furthermore, we are unwilling to conclude that his knowledge, without more, amounted to an indirect role in the extension. To conclude otherwise would be to accept inaction as providing the basis for indirectly making a hiring decision. We decline to establish such a precedent, at least on the basis of the facts presented to us in this case.

All this said, we find that OGE has failed in its burden to produce substantial evidence that Respondent violated 6B DCMR § 1806.3, as alleged in Count 2 of the NOV.

Count 3 (Failing to File a Written Recusal)

Count 3 of the NOV alleges, in pertinent part, that "Respondent, who became aware of his relative applying for a position within his own office at his own agency when she submitted her resume to him on June 22, 2015, failed to file a written recusal, or otherwise recuse himself."

Curiously, in response to that allegation, Respondent quotes 6B DCMR § 1806.6.[16] The regulation is the basis of Count 3, providing that "[w]hen the agency contemplates making a hiring decision concerning a relative of public official within the same agency, the public official must file a written recusal, which shall be included in the relative's official personnel file along with the subject personnel action." However, in his defense, Respondent claims that, "given the unorthodox nature of this particular hiring process, it [was] unclear to [him] at what stage this [recusal] letter should have been filed."[17]

Borrowing from the Circuit Court's discussion of the effect of judicial admissions in *El Paso Natural Gas Co. v. United States*, we find that "[t]he chief impediments to [Respondent's] arguments are [his] own pleadings."[18] We simply cannot ignore Respondent's admissions that he failed to file a written recusal.[19] We are equally unable to accept his claimed lack of clarity as to "what specific point in time [DOES] was 'contemplating' the [hiring] decision."[20] Again, Respondent admits that "[t]he fact that [Ms. Ward's] resume was amongst the ones in the group

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[16] *See* Respondent's Response ¶ 42.

[17] *Id.*

[18] 750 F.3d at 876.

[19] *See* Respondent's Response ¶ 42 ("I have acknowledged to [OGE] that I did not file a written recusal letter."); *see also id.* at ¶ 37 ("I did not file a written recusal letter. I have admitted this fact on the record during the investigation with [OGE].").

[20] *Id.* at ¶ 38.

ultimately submitted by [his] team to HR was not something [he] was ever privy to *until [he] received the update email from HR [on June 29, 2015].*"[21]

In sum, we find substantial evidence that Respondent violated 6B DCMR § 1806.6, as alleged in Count 3 of the NOV.

IV. Disposition

For the foregoing reasons, the Board finds, as alleged in Count 1 and Count 3 of the NOV, that Respondent violated the Code of Conduct. Accordingly, the Board assesses a civil penalty of $1,500 for each of the two counts, for a total of $3,000. Furthermore, having found that Respondent violated 6B DCMR § 1806.3 as to Count 1, the Board orders Respondent to pay $26,182.10 in restitution to the District, less any amount that may have been earlier paid or deducted.[22]

In assessing the civil penalty for each of the Code of Conduct violations, the Board considered, in particular, the seriousness of the underlying charges and the fact that Responsibility failed to accept any responsibility for the consequences of his actions. Indeed, Respondent shifted blame to others, arguing, for example, that his "failure to file a letter of recusal was actually a failure of OGE and DOES Human Resources to properly train and educate DC government employees on the nepotism laws."[23] While any lack of training may well be a mitigating factor, it cannot serve to excuse Respondent's ignorance of the law and his ethical obligations as a public official, a truth he apparently recognizes himself.[24] In any event, the Board was mindful of other mitigating factors in imposing less than the maximum penalty for each of the violations,[25]

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[21] *Id.* at ¶ 41 (emphasis added); *see also id.* at ¶ 19 ("I did, in fact, receive an email update from Ms. Long on June 29, 2015 that indicated they were 'down to nine' applicants and that they were unable to get in touch with two others."); JPS Stipulation o; OGE Exhibit 27.

[22] *See* 6B DCMR § 1806.5 ("In addition to any other remedies available pursuant to law, including penalties imposed by the Office of Government Ethics, a public official who violates Subsection 1806.3 shall pay restitution to the District of Columbia for any gains received by the relative.").

We understand that the $26,182.10 represents the total gross salary paid to Desiree Ward during the time of her employment with DOES, and Respondent does not appear to contest the amount itself. Furthermore, this Board has no power to collect the indebtedness. Rather, that authority rests with the District's Overpayment Reconciliation Officer. *See* Mayor's Order 2009-27 (dated March 9, 2009).

[23] Respondent's sanctions brief at 5.

[24] *See id.* ("It is often said that 'ignorance of the law is not an excuse for breaking the law.'"). We also note that, with respect to the law, the nepotism prohibitions in federal law have applied to District government employees since 1967. *See* 5 U.S.C. § 3110. The local law that added nepotism prohibitions to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 became effective before this Board was established. *See* section 2(k) of the District of Columbia Government Comprehensive Merit Personnel Amendment Act of 2012, effective March 14, 2012 (D.C. Law 19-115; 59 DCR 461).

[25] *See* section 221(a)(1) of the Ethics Act (D.C. Official Code 1-1162.21(a)(1)) (authorizing the Board to "assess a civil penalty for a violation of the Code of Conduct of not more than $5,000 per violation"). We note that we also considered the amounts of fines imposed in cases from other jurisdictions. *See* OGE's sanctions brief at 5-6.

including Respondent's otherwise impressive record of service to the District, his family circumstances, and the substantial amount of restitution he has to pay.

An appropriate Final Order accompanies this Final Decision. Pursuant to 3 DCMR § 5404, Respondent may appeal the Final Order to the Superior Court of the District of Columbia within twenty (20) days of the date the Final Order is served upon him.

The foregoing is the Final Decision of the Board, as demonstrated by the signature of the Chairman below.

Robert J. Spagnoletti
Chair, Board of Ethics and Government Accountability

11/29/16
Date