



## MINUTES

DeKalb County Board of Ethics

February 19, 2013

MEMBERS PRESENT: Teri Thompson, Acting Chair, Acting Secretary  
Isaac Blythers  
Thelma Grier  
Susan Neugent  
Bobbie Sanford

OTHERS PRESENT: Steve Irving, Counsel to the Board  
Debbie Schneider  
Elaine Boyer, Respondent  
Lisa Chang, Respondent  
Dave Carlson, Complainant  
Linda Dunlavy, Attorney for Elaine Boyer

### CALL TO ORDER

The meeting was called to order at 6:12 p.m. by Teri Thompson, Acting Chair.

### ADOPTION OF AGENDA

The Agenda was reviewed and approved as provided.

### ADOPTION OF MINUTES

The Minutes, dated January 23, 2013, were reviewed and approved as provided.

### OLD BUSINESS

#### Preliminary Hearing of Complaint filed by Dave Carlson against Attorney Lisa Chang and Commissioner Elaine Boyer dated July 30, 2012.

Dave Carlson, Complainant: Mr. Carlson, owner of Computer Mart, alleged that Commissioner Boyer and Attorney Chang violated Section 22A of the Organizational Act when Commissioner Boyer directed Attorney Chang to contact him on July 25, 2012, and to direct him, on behalf of Commissioner Boyer, to remove content from a website that Mr. Carlson owned. Mr. Carlson stated that he was the owner of the domain name.

Mr. Carlson also stated that the agreement regarding his involvement was with Mr. Boyer. At Mr. Boyer's direction, Mr. Carlson was to complete the campaign site. Subsequently, Mr. Carlson was told that Commissioner Boyer found someone else to complete the work. He stated that he was directed to submit invoices to the County. According to Mr. Carlson he was not paid for his work for Commissioner Boyer. Mr. Carlson admits that he later developed a site for Larry Danese, an opponent to Commissioner Boyer in the DeKalb County Commissioner District 1 Elections.

Linda Dunlavy, Attorney for Commissioner Boyer: According to Attorney Dunlavy, Commissioner Boyer retained Mr. Carlson during spring 2010 to design "an official County website." Attorney Dunlavy further stated that the website that Mr. Carlson designed was linked to the main DeKalb County website, and that it was to be authorized by the County, "to do County business." Attorney Dunlavy contended that ultimately Commissioner Boyer did not like the website that Mr. Carlson completed.

Attorney Dunlavy stated that prior to the July 31, 2012 primary elections, a public meeting was held wherein Mr. Danese approached the podium and stated that the website for Commissioner Boyer contained campaign literature in violation of state ethics laws. Attorney Dunlavy alleged that while in the meeting Commissioner Boyer placed a call to a staff member to inquire about Mr. Danese's allegations. Attorney Dunlavy alleged that Commissioner Boyer did not contact Attorney Chang directly.

According to Attorney Dunlavy, the website, [www.commissionerrelaineboyer.com](http://www.commissionerrelaineboyer.com), is linked to the DeKalb County portal, and is paid for by the County. Attorney Dunlavy tendered the following documents into evidence and are made a part of the record:

1. Respondent's Exhibit One: A print-out of the "Larry Danese for DeKalb County Commissioner" website (nine pages);
2. Respondent's Exhibit Two: A print-out of an email from Dan Dunlavy to Linda Dunlavy dated September 18, 2012 regarding Wild West Domains, L.L.C. (two pages);
3. Respondent's Exhibit Three: Invoices from Computer Mart dated November 22, 2010, November 28, 2010, April 21, 2010, June 15, 2012, and list of billings from February 10, 2011 through May 12, 2012; Email from Dave Carlson to Courtney Townsend, dated November 24, 2010; Email from Dave Carlson to Courtney Townsend, dated January 2, 2012 (seven pages).
4. Respondent's Exhibit 4: A print-out of the DeKalb County website (thirteen pages).

Lisa Chang, Respondent: Attorney Chang stated that she was present at the same meeting with the Commissioners when Commissioner Boyer learned about the allegations raised by Mr. Danese. She stated that as soon as she returned to her office, she was given a handwritten note by a member of her staff to review whether Commissioner Boyer's website had been high-

jackeD. Attorney Chang stated that she did not recall who gave the note to her. She also stated that she did not speak with Commissioner Boyer directly.

Attorney Chang admitted that she telephoned Mr. Carlson. She stated that she asked Mr. Carlson, "Who did this? Did Mr. Danese do it?" In response to her questions, Attorney Chang stated that Mr. Carlson said, "I initiated the change; I own it." According to Attorney Chang, Mr. Carlson complained that to her that he had outstanding invoices for unpaid bills for the website, and she advised him to submit them for payment.

Attorney Chang stated that she is no longer employed by DeKalb County as the County Attorney. She left full-time employment with the County after the complaint was filed by Mr. Carlson.

*Discussion:* The Board members reviewed the applicable Organizational Rules. Section 22 (a) (c) (1) prohibits a member of the governing authority to, "by his conduct, give a reasonable basis for the impression that any person can improperly influence him or enjoy his favor in the performance of his official acts or actions or that he is affected unduly by the rank or position of or kinship or association with any person."

The Board members discussed whether Commissioner Boyer, by her position, improperly directed then-County Attorney Chang to contact Mr. Carlson regarding the "high-jacked website."

Based upon the testimony and evidence presented, Commissioner Boyer was concerned about the allegation raised by Mr. Danese at the public hearing about the website, and she made calls to staff members immediately regarding the website. The testimony also indicated that Commissioner Boyer made the calls to staff members because the website complained about by Mr. Danese was a county owned website. The testimony also indicated that Mr. Carlson complained about unpaid bills to Attorney Chang, former County Attorney.

The Board members discussed the issue of the owner of the websites. There are two (2) websites in question: [www.commissionerelaineboyer.com](http://www.commissionerelaineboyer.com) and [www.elaineboyercommissioner.com](http://www.elaineboyercommissioner.com). (See Respondent's Exhibit 3, page 2.) Mr. Carlson argued that he is the owner of both websites. However, according to Attorney Dunlavy, and is unrefuted by Mr. Carlson, the former website is a link from the county web page. It appears that the website, [www.commissionerelaineboyer.com](http://www.commissionerelaineboyer.com) is maintained by the County. This is supported by the fact that Mr. Danese raised the question about the presence of inappropriate campaign material to Commissioner Boyer at the public meeting, and that Mr. Carlson sought payment by the County for his work on the website. It was also apparent that Attorney Chang attempted to resolve the issue of the unpaid invoices for Mr. Carlson because she perceived the website to be owned by the County.

The Board members discussed whether Commissioner Boyer acted within her duties in asking staff to contact Attorney Chang to resolve the issue, and whether Attorney Chang acted within her duties when she contacted Mr. Carlson about the website. If the website is maintained by the County then it may be appropriate for Commissioner Boyer to contact the County

Attorney to seek the website's removal. Likewise, it may be appropriate for Attorney Chang to contact Mr. Carlson to inquire and to seek the website's removal.

The Board members discussed whether the Board has jurisdiction of Attorney Chang as she is no longer the County Attorney. Steve Irving, Counsel to the Board, asserted that the Board no longer has jurisdiction of Attorney Chang, as it is his opinion that the legal term "jurisdiction" implies that one has authority to do something or act with regard to the subject, or in this case, Attorney Chang. According to Mr. Irving, in the event the Board desired to punish or penalize Attorney Chang for her alleged conduct in the instant matter, the Board could not because she is no longer employed.

*Motion:* Motion to dismiss the complaint filed against Commissioner Boyer regarding her alleged violation of Section 22 (a) (c) due to insufficient evidence that an ethics violation occurred. A vote was taken and the result was as follows: Three (3) votes to dismiss the complaint filed by Mr. Carlson against Commissioner Boyer; two (2) votes to proceed with a full hearing. Motion to dismiss the complaint carried.

*Motion:* Motion to dismiss the complaint filed against Attorney Chang regarding her alleged violation of Section 22 (a) (c) due to lack of jurisdiction. A vote was taken and the result was as follows: Five (5) votes to dismiss the complaint filed by Mr. Carlson against Attorney Chang. Motion to dismiss the complaint carried.

**Status of Complaint filed by Brent Neiman and Mary Slaughter against Susan Apolinsky and the DeKalb Historic Preservation Commission.**

According to Attorney Irving the notices were being prepared to notify all parties. The date of the preliminary hearing is March 21, 2013.<sup>1</sup>

**Status of Complaint filed by Yvette Freeman against Erica Brooks, DeKalb County Police Department, DeKalb County Corrections and Morgan County Corrections.**

For purposes of closing old files and making an official record of matters brought before the Board, Ms. Thompson placed this item on the Agenda. The matter was originally filed by Ms. Freeman on May 11, 2011, and placed on the Board's Agenda by Mr. Smith, Chair, at the May 17, 2011 meeting but no formal action was taken.

According to the Organizational Rules, the Board does not have jurisdiction over the respondents named by Ms. Freeman. Ms. Thompson directed Attorney Irving to officially notify Ms. Freeman of the decision by the Board to dismiss the matter.

**Status of Request for Advisory Opinion filed by Francis Kung'u.**

For purposes of closing old files and making an official record of matters brought before the Board, Ms. Thompson placed this item on the Agenda. The matter was originally filed by

<sup>1</sup> Subsequent to the Board meeting the Respondent requested a continuance to the next available date and the request was granted by Ms. Thompson, Acting Chair. To date, it has not been scheduled.

Dr. Kung'u on March 29, 2011, and placed on the Board's Agenda by Mr. Smith, Chair, at the May 17, 2011 meeting, but no formal action was taken.

According to Attorney Irving, an Advisory Opinion was prepared and filed by Mr. Smith. It is unclear whether copies of the Advisory Opinion drafted by Mr. Smith were disseminated to Board members. Ms. Thompson will follow up with Mr. Smith regarding the Advisory Opinion.

## **NEW BUSINESS**

### **Complaint filed by Attorney Brian Daughdrill on behalf of Robert Buckler against Commissioner Jeff Rader.**

This matter is scheduled for a preliminary hearing at the next scheduled quarterly Board meeting on May 21, 2013. Attorney Irving will prepare the notices to all parties.

### **Request for Advisory Opinion filed by Commissioner Larry Johnson.**

On February 4, 2013, Commissioner Johnson submitted a letter to Mr. Smith requesting an Advisory Opinion regarding a potential conflict of interest with Grady Hospital and Morehouse College.

The letter filed by Commissioner Johnson was insufficient according to Section III, Paragraph A of the Procedural Rules. Ms. Thompson volunteered to notify Commissioner Johnson that he needs to re-submit his request to comply with the Rules.<sup>2</sup>

### **Request for Advisory Opinion filed by CEO Burrell Ellis.**

On February 6, 2013, CEO Ellis filed a request for an Advisory Opinion regarding the establishment of a legal defense fund for him by private citizens. The letter by Mr. Ellis listed restrictions to donating to his fund.

The Board discussed the restrictions listed in Mr. Ellis' letter. Notably, the restrictions prohibit DeKalb County employees, but not contractors, vendors, or anyone else who may "do business" with the County and contributes to his fund. Also, the restrictions suggest that the contributors would be anonymous to Mr. Ellis. There is nothing that refers to who or how "the custodian" of the account would be selected, and fails to list any reporting or disclosure procedures assuming such procedures are established or required.

The Board members referred to Section 22A (a) which states, in relevant part, "[i]t is essential to the proper administration and operation of the DeKalb County government that the members of its governing authority be, and give the appearance of being independent and

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<sup>2</sup> The Board was notified subsequent to the meeting that Commissioner Johnson acknowledged that he needed to re-submit the request to comply with the Procedural Rules therefore obviating the need for Ms. Thompson to contact Commissioner Johnson. To date, a new request has not been filed by Commissioner Johnson.

impartial; that public office not be used for private gain; and that there be public confidence in the integrity of the DeKalb County governing authority.”

The Board members also reviewed Section 22A (c) (1) which prohibits members of the governing authority, by their conduct, to give a “reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor...”

The Board further deliberated on how such a fund could be established that would not give an appearance of impropriety, nor give the impression that one could influence the governing authority by making contributions.

*Motion:* Motion to issue an Advisory Opinion stating that CEO Ellis could not establish the legal defense fund in the manner provided based upon the letter from CEO Ellis dated February 6, 2013, in a way that would be consistent with the DeKalb County Code of Ethics. A vote was taken and the result was as follows: Five (5) votes to issue an Advisory Opinion stating that CEO Ellis could not establish the fund in the manner provided. Motion carried.

#### **ADJOURNMENT**

The Board meeting was adjourned at 10:00 p.m.

Respectfully submitted,

  
Teri Thompson, Acting Secretary