CITY OF PHILADELPHIA
BOARD OF ETHICS

Contact: J. Shane Creamer, Jr., Executive Director, 215-686-9450
For Immediate Release: May 25, 2016

PHILADELPHIA – On May 24, 2016, the Board of Ethics issued a Final Determination and Order in the Administrative Adjudication captioned *J. Shane Creamer, Jr. v. Tracey Gordon*. The Board is authorized by the Philadelphia Home Rule Charter and the Philadelphia Ethics Code to conduct hearings to adjudicate alleged violations of the City's Public Integrity Laws. The administrative enforcement hearing process is confidential until there is a final determination issued by the Board, at which point, the final determination is made public. A copy of the Determination and Order is attached. This is the first Administrative Adjudication Final Determination the Board has issued. The filings and transcript of the administrative enforcement proceeding are available on the Board's website at:

http://www.phila.gov/ethicsboard/aboutus/Pages/Agreements.aspx

In its Final Determination, the Board found a total six violations by Ms. Gordon. As set forth in detail in the Final Determination, three violations resulted from the fact that, while employed as a Deputy City Commissioner, Ms. Gordon twice solicited and once accepted payment for assistance she had provided in the course of her work for the City, in violation of the gratuity prohibition in Home Rule Charter Section 10-105 (Counts 1, 2, & 3).

The Board also found that Ms. Gordon violated the Home Rule Charter's political activity restrictions by using her City position for a political purpose by requesting that a subordinate become an officer of a political party (Count 4), and by creating and posting a public calendar entry for a Democratic City Committee fundraiser (Count 7). The Board determined that Ms. Gordon had not committed a third alleged violation of the Charter's political activity restrictions (Count 6).

Lastly, the Board found that Ms. Gordon obstructed a Board investigation by threatening and influencing a potential complainant and witness and by destroying evidence, in violation of Ethics Code Section 20-606(2) (Count 5).

The Board has ordered Ms. Gordon to pay a total civil penalty of $2,201 for her six violations of the City's Public Integrity Laws.

Richard Glazer served as the Board's Hearing Officer by presiding over the administrative hearing process.

The Philadelphia Board of Ethics is charged with interpreting, administering, enforcing and providing advice and training on Philadelphia's Public Integrity Laws. The Board was established as an independent, five-member City board in June 2006 through voter approval of an amendment to the Philadelphia Home Rule Charter. The Board has jurisdiction over City laws pertaining to ethics, prohibited political activities, campaign finance and lobbying. The Board has authority to issue regulations and advisory opinions, provide informal guidance and trainings, engage in administrative and judicial enforcement actions and impose civil penalties.

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BOARD OF ETHICS
OF THE CITY OF PHILADELPHIA

J. Shane Creamer, Jr. Executive Director Philadelphia Board of Ethics 1515 Arch Street, 18th Floor Philadelphia, PA 19102	:	
	:	**Matter No. 1412MU14**
v.	:	
	:	**Date of Issuance and Mailing: May 24, 2016**
Tracey Gordon 6543 Windsor Street Philadelphia, PA 19142	:	
Respondent	:	

FINAL DETERMINATION

I. INTRODUCTION

The Executive Director of the Board of Ethics ("Board"), J. Shane Creamer, Jr., has alleged that Respondent Tracey Gordon ("Respondent") committed seven violations of provisions of the City Public Integrity Laws under the Board's jurisdiction related to gratuities, political activity, and failure to cooperate with the Board. The Notice of Administrative Enforcement Proceeding ("Notice") served on Respondent on December 11, 2014 alleges that Respondent: (1) solicited gratuities and accepted a gratuity in violation of Section 10-105 of the Philadelphia Home Rule Charter ("Charter"); (2) engaged in political activity in violation of Subsections 10-107(3) and 10-107(4) of the Charter; and (3) failed to cooperate with the Board by obstructing a Board investigation in violation of The Philadelphia Code ("Code") Section 20-606(2).

II. JURISDICTION AND BURDEN OF PROOF

The Board has authority to conduct adjudications of alleged violations Charter Sections 10-105 and 10-107 as well as Code Chapter 20-600. *See* Code § 20-606(1)(h); Board Reg. 2 ¶ 2.16; Charter § 4-1100. If the Board determines that there has been a violation of Charter

Sections 10-105 or 10-107, it may impose a penalty of not more than $300 per violation. *See* Code § 20-606(1)(h); Charter § 10-109. If the Board determines that there has been a violation of Code Section 20-606(2), it may impose a base penalty of $1,000 that may be increased to $2,000 or decreased as low as $250 depending on the presence of identified aggravating or mitigating factors. *See* Code §§ 20-606(1)(h), 20-612, 20-1302.

The Board's findings and decisions in adjudications shall be the final agency action, and there shall be no further appeal other than to court as provided by law. Code § 20-606(1)(h); Board Reg. 2 ¶ 2.20(a); *see also* 2 Pa. C.S. § 752 (providing that any person aggrieved by a local agency adjudication shall have the right to appeal to the court vested with jurisdiction of such appeals).

The Executive Director has the burden to prove by a preponderance of the evidence that violations of Charter Sections 10-105 and 10-107 and Code Section 20-606(2) have occurred. *See* Board Reg. 2 ¶ 2.20. In making its final determination, the Board has assessed whether the Executive Director has satisfied that burden.

III. PROCEDURAL HISTORY

A summary of the lengthy procedural history in this matter follows here. On December 11, 2014, the Executive Director served the Notice on Respondent, and Respondent's Response to the Notice was due on January 2, 2015. (*See* Ex.[1] 1, Notice; *see also* Board Reg. 2 ¶ 2.14.) On December 30, 2014, Respondent's attorney at the time, Michael Coard, requested an extension of the January 2, 2015 deadline, which the Board's Hearing Officer Richard Glazer[2] granted. The new deadline for Respondent to file a response was February 2, 2015. (Ex. 3, Dec. 30, 2014 Email from M. Coard; Ex. 4, Jan. 6, 2015 Email and attachment from E. Downey.)

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[1] The exhibit numbers referenced in this Final Determination follow the exhibit numbers utilized in the Executive Director's Brief in Support of the Notice of Administrative Enforcement Proceeding submitted August 26, 2015, unless otherwise indicated. The Executive Director's Brief included all exhibits provided at any point by both parties. The packet of exhibits that Respondent provided to the Executive Director on May 12, 2015 as part of the pre-hearing exchange is included in the exhibits submitted with the Executive Director's Brief. Respondent did not file a brief in response to the Executive Director's Brief or otherwise provide any other exhibits in this matter.

[2] Pursuant to Board Regulation 2, the Board may appoint a Hearing Officer to oversee pre-hearing disclosures, preside over a hearing, and prepare Findings of Fact and Conclusions of Law for the Board's consideration. *See* Board Reg. 2 ¶ 2.16. The Board has appointed Richard Glazer to act as its Hearing Officer. *See* Board Meeting Minutes, Part VI, Jan. 23, 2013.

On February 2, 2015, Mr. Coard submitted Respondent's Response and requested a hearing. (Ex. 5, Respondent's Response ("Resp.")) When filing the Response, Mr. Coard simultaneously withdrew from representing Respondent in this matter. (Ex. 6, Feb. 2, 2015 Email from M. Coard.) Following his withdrawal, on February 5, 2015, Mr. Coard submitted to the Board a supplement to Respondent's Response. (Ex. 7, Feb. 5, 2015 Respondent's Supplemental Response.)

On February 24, 2015, a Notice of Hearing was issued to notify the parties that a hearing would be held on March 30, 2015 and to notify them of the due dates for pre-hearing exchanges and filings. (Ex. 8, Feb. 24, 2015 Notice of Hearing.)

On March 11, 2015, Respondent requested a continuance of the March 30, 2015 hearing to obtain new counsel, which request was opposed by the Executive Director. (*See* Ex. 11, Mar. 11, 2015 Email from Respondent.) The next day, Board Chair Michael Reed granted Respondent's request, and the parties were informed that the hearing was rescheduled for June 2, 2015. (Ex. 12, Mar. 12, 2015 First Revised Notice of Hearing.) In a subsequent letter, Respondent was cautioned that further requests for extensions or continuances would not be granted, as a previous extension had already been granted, and the current 64-day extension would provide Respondent with ample time to retain a new attorney and for such attorney to prepare for the hearing. (Ex. 12, Mar. 12, 2015 Letter from M. Nayak.) The letter instructed that even if Respondent did not engage a new attorney during the extended time-period, she should be prepared to proceed with the hearing scheduled for June 2, 2015. *Id.*

On May 18, 2015, Respondent obtained new counsel, Rania Major, who entered her appearance in this matter and requested a second continuance of the hearing. (Ex. 14, May 18, 2015 Correspondence from R. Major.) Board Chair Reed granted this second continuance request. (Ex. 15, May 19, 2015 Email from M. Nayak.) Moreover, to accommodate Ms. Major's schedule, the hearing was rescheduled to take place August 4 – 7, 2015, from 11:30 a.m. to 5 p.m. each day. (Ex. 16, May 29, 2015 Second Revised Notice of Hearing.) In advance of the hearing, the parties were to exchange witness lists and exhibits on or before July 3, 2015 and were to file pre-hearing memoranda on or before July 10, 2015. *Id.*

On June 25, 2015, the Executive Director provided Ms. Major with a list of witnesses and exhibits that he intended to introduce at the upcoming hearing. Ms. Major did not respond. (Ex. 17, June 25, 2015 Letter from M. Cooke.) The Executive Director reported that he contacted Ms.

Major multiple times regarding the submission of a joint pre-hearing memorandum per the Board's Procedures for Administrative Enforcement Proceedings that Supplement Board Regulation No. 2 ("Supplemental Procedures Memo") but did not receive a response. (Ex. 18, Executive Director's Unilateral Pre-Hearing Memorandum § VII.) On July 10, 2015, the Executive Director filed a unilateral pre-hearing memorandum. *Id.* Respondent did not file a pre-hearing memorandum with the Board. (Ex. 19, July 15, 2015 Letter from M. Nayak.)

After Ms. Major's failure to submit a pre-hearing memorandum on Respondent's behalf, Hearing Officer Glazer *sua sponte* extended the deadline for Respondent to file a pre-hearing memorandum to July 22, 2015. *Id.* The letter cautioned that if Respondent did not file a pre-hearing memorandum with the Board by that date pursuant to Board Regulation 2, Paragraph 2.17 and Supplemental Procedures Memo Paragraph 6, that Respondent would be precluded from offering any contested evidence at the August 4, 2015 hearing or objecting to the Executive Director's witnesses and evidence as outlined in his pre-hearing memorandum, and that all facts set forth in the Executive Director's Statement of Undisputed Facts would be deemed to be admitted. *Id.* On July 16, 2015, Ms. Major provided notice of her withdrawal as Respondent's attorney in this matter. (Ex. 20, July 16, 2015 Email from R. Major's Law Office.)

On July 20, 2015, following Ms. Major's withdrawal as counsel, Respondent requested that the hearing she had requested in this matter be postponed indefinitely. (Ex. 22, July 20, 2015 Email from Respondent.) On July 21, 2015, the Board denied Respondent's request for an indefinite continuance of the hearing but granted another extension of the deadline for Respondent to file a pre-hearing memorandum to July 29, 2015. (Ex. 23, July 21, 2015 Notice of Determination of Request for Continuance.) The Board again informed Respondent that she would be precluded from offering contested evidence at the August 4 hearing if she did not file a pre-hearing memorandum with the Board by July 29, 2015. (Ex. 23, July 21, 2015 Letter from D. Lin; *see* Board Reg. 2 ¶ 2.17.) Respondent failed to file a pre-hearing memorandum by this third-extended deadline.

On August 4, 2015, at 11:30 a.m., Respondent failed to timely appear for the hearing she had requested. (Ex. 24, Aug. 4, 2015 Transcript of Proceeding ("Tr.") at 3-5.) Hearing Officer Glazer directed Board staff to contact Respondent via telephone and email and continued the hearing to 2:00 p.m. *Id.* at 3-5, 12. At 2:00 p.m., Respondent appeared with an individual she introduced as her close friend and confidant. Respondent requested that the Board provide her

with legal representation or with an indefinite continuance of the hearing until she could secure counsel. *Id.* at 13-20. Hearing Officer Glazer denied Respondent's request for an indefinite continuance, and Respondent stated that she was ready to proceed with the hearing after a short recess. *Id.* at 26-27. After Hearing Officer Glazer's preliminary comments and just prior to witnesses being called, Respondent stated that she refused to proceed with the hearing because she did not have an attorney. *Id.* at 43.

Hearing Officer Glazer explained to Respondent that the Board would treat her refusal to proceed as a waiver of her right to a hearing and that the Board would implement the procedures in Board Regulation 2 that apply when a respondent does not request a hearing. (Ex. 24, Tr. at 43-45.) Under these procedures, the Executive Director would have the opportunity to file a Brief in support of the Notice and could attach to the Brief exhibits that include deposition transcripts, documents, and affidavits. *Id.* at 44-45. The Respondent would then have 14 days to file a response brief. *Id.* at 45. Respondent affirmed that she understood that she was waiving her right to a hearing and that the Board would make its final determination in this matter based upon the parties' filings, including exhibits, documents, and affidavits. *Id.* at 44-45. Hearing Officer Glazer explained that the Board would deliberate on the briefs with accompanying exhibits, documents, and affidavits and would determine by a preponderance of the evidence whether any violation of the applicable laws had occurred, and the accompanying penalties for any such violation. *Id.* at 45. Respondent affirmed that she understood the procedures that would be followed. *Id.* at 45-46.

On August 26, 2015, the Executive Director timely submitted a Brief in Support of the Notice with exhibits and served the Brief and exhibits on Respondent that same day. On August 27, 2015, Respondent was informed that her Response brief would be due on or before September 9, 2015. On September 9, 2015, Respondent sought a 21-day extension to obtain an attorney to file a response brief on her behalf. Given the numerous prior extensions that had been granted at Respondent's request, Board Chair Reed denied this extension request. Respondent did not submit a brief in response or provide any exhibits in response to the Executive Director's brief.

Pursuant to the procedures in Board Regulation 2, after Respondent declined to proceed with a hearing she had requested, the Board has decided this matter based on the parties' filings, which include the Executive Director's Notice, Respondent's Response to the Notice, the

Executive Director's Unilateral Pre-Hearing Memorandum, and the briefs and exhibits filed by the parties, including the Executive Director's Brief in Support of the Notice.

IV. FINDINGS OF FACT

The Board makes the following findings of fact[3]:

1. Respondent was a Deputy City Commissioner from February 2012 through December 2014 and worked in the office of City Commissioner Stephanie Singer. (Ex. 18, Exec. Dir.'s Unilateral P'hrg Mem. Stmt. of Undisputed Facts ("Undisputed Facts") ¶ 2; *see also* Ex. 39, Affidavit of Stephanie Singer ("Singer Aff.") ¶ 2; Ex. 1, Notice ¶ 2.)

2. In 2012, Commissioner Singer launched the website patransparency.org to release election-related information to the public. (Ex. 5, Resp. ¶ 39; *see also* Ex. 1, Notice ¶ 39; Ex. 18, Undisputed Facts ¶ 21.) The website includes a link to a Google calendar. (Ex. 5, Resp. ¶ 39; *see also* Ex. 1, Notice ¶ 39; Ex. 18, Undisputed Facts ¶ 21.)

3. Commissioner Singer directed Respondent, as part of Respondent's City job duties, to update the calendar on patransparency.org. (Ex. 5, Resp. ¶ 40; *see also* Ex. 1, Notice ¶ 40; Ex. 39, Singer Aff. ¶ 6; Ex. 18, Undisputed Facts ¶ 22.)

4. In May of 2013, Respondent created a calendar entry for the Democratic City Committee's annual fundraising dinner scheduled for May 13, 2013 using the email address traceygordoncitycommission@gmail.com. (Ex. 1, Notice at Ex. D.) Tickets were required to attend the fundraising event and were $150 per person. *Id.*

5. During an interview conducted by the Board's Director of Enforcement Michael Cooke on September 11, 2013, Respondent admitted that she created the calendar entry for the Democratic City Committee's annual fundraising dinner. (Ex. 42, Affidavit of Bryan McHale ¶ 12.)

6. On March 25, 2014, Karen Bojar contacted Commissioner Singer and Respondent, among other individuals, to plan a National Organization for Women ("NOW") and Coalition of Labor Union Women ("CLUW") workshop on May 28, 2014 regarding the ward

[3] Under Paragraph 6 of the Board's Supplemental Procedures Memo, all facts set forth in the Executive Director's Statement of Undisputed Facts in a Unilateral Pre-Hearing Memorandum will be deemed to be admitted unless specifically denied by Respondent in writing no later than seven days after service of the Executive Director's Unilateral Pre-Hearing Memorandum. *See* Suppl. Proc. Mem. ¶ 6.C. Respondent did not deny any of the facts set forth in the Executive Director's Statement of Undisputed Facts.

reorganization process for new committeepersons of both the Democratic and Republican parties. (Ex. 40, Email from K. Bojar to S. Singer, *et al.*; *see also* Ex. 45, NOW/CLUW Workshop Flyer; Ex. 18, Undisputed Facts ¶ 20.) The workshop was open to members of both major political parties. (Ex. 40, Email from K. Bojar to S. Singer, *et al.*; *see also* Ex. 45, NOW/CLUW Workshop Flyer.)

7. From the end of March through the May 28, 2014 workshop, Respondent supported the efforts of NOW and CLUW with regard to the workshop via multi-media channels. (Ex. 5, Resp. ¶ 34; *see also* Ex. 1, Notice ¶ 34.)

8. Susan McCall served as a volunteer in Commissioner Singer's Office from April to June 2014 answering telephone calls from the public and inquiries regarding voting information. (Ex. 5, Resp. ¶ 23; *see also* Ex. 1, Notice ¶ 23; Ex. 18, Undisputed Facts ¶ 16.) Respondent supervised McCall. (Ex. 5, Resp. ¶ 28.)

9. In mid-April 2014, during the work day and in City Hall, Respondent and McCall discussed elections for committeeperson and ward leader in the 32nd Ward. (Ex. 5, Resp. ¶ 24; Ex. 18, Undisputed Facts ¶ 17.)

10. A committeeperson is the elected party representative of a ward division. (Ex. 5, Resp. ¶ 25; *see also* Ex. 1, Notice ¶ 25; Ex. 18, Undisputed Facts ¶ 18.) The committeepersons elect the ward leader. (Ex. 5, Resp. ¶ 25; *see also* Ex. 1, Notice ¶ 25; Ex. 18, Undisputed Facts ¶ 18.) Committeepersons and ward leaders are officers of the Democratic and Republican parties in Philadelphia. (Ex. 5, Resp. ¶ 25; *see also* Ex. 1, Notice ¶ 25; Ex. 18, Undisputed Facts ¶ 18.) Gary Williams is the ward leader in the 32nd Ward. (Ex. 5, Resp. ¶ 25; *see also* Ex. 1, Notice ¶ 25; Ex. 18, Undisputed Facts ¶ 19.)

11. During the conversation, Respondent asked that McCall run for committeeperson in the 32nd Ward with the understanding that, if elected, McCall would support Michael Youngblood's candidacy against Gary Williams for ward leader. (*See* Ex. 37, Affidavit of Susan McCall ("McCall Aff.") ¶ 3; Exec. Dir.'s P'hrg Mem. Ex. 9, Email from S. Bluestein to M. Cooke, May 28, 2014.)

12. McCall declined Respondent's request that she run for committeeperson. (*See* Ex. 37, McCall Aff. ¶ 4.)

13. At around the same time, on or about April 14, 2014, Leslie Miles, a writer and reporter for the newspaper *One Step Away*, went to Commissioner Singer's office to seek

assistance in typing and formatting a handwritten letter for Miles' candidacy for Resident Commissioner of the Philadelphia Housing Authority. (Ex. 5, Resp. ¶¶ 4-5; *see also* Ex. 1, Notice ¶¶ 4-5; Ex. 18, Undisputed Facts ¶¶ 4-5.) There, Miles met with Respondent and Jasmine Winfield, a temporary worker who performed clerical tasks in Commissioner Singer's office. (Ex. 5, Resp. ¶ 4; *see also* Ex. 1, Notice ¶ 4; Ex. 18, Undisputed Facts ¶ 4.)

14. As part of her duties in Commissioner Singer's office, Respondent would assist members of the public with tasks that included typing and formatting letters for the public. (Ex. 5, Resp. ¶ 5; *see also* Ex. 1, Notice ¶ 5; Ex. 18, Undisputed Facts ¶ 6.)

15. Respondent agreed to type and format Miles' handwritten letter and emailed Miles a copy of the typed letter later that day. (Ex. 5, Resp. ¶¶ 4, 6; *see also* Ex. 1, Notice ¶¶ 4, 6; Ex. 18, Undisputed Facts ¶ 7.)

16. On or about April 15, 2014, Miles returned to Commissioner Singer's office and spoke with Respondent and Winfield in the hallway outside Commissioner Singer's office. (Ex. 5, Resp. ¶ 7; *see also* Ex. 1, Notice ¶ 7; Ex. 18, Undisputed Facts ¶ 8.)

17. During the conversation, Respondent indicated to Miles that Miles should pay for the services she had received and told Miles that she should pay Winfield for the work. (Ex. 27, Declaration of Leslie Miles ("Miles Decl.") ¶ 3; *see also* Ex. 28, Affidavit of Jasmine Winfield ("Winfield Aff.") ¶ 3.) Miles asked Respondent if she also expected payment, to which Respondent responded affirmatively. (Ex. 27, Miles Decl. ¶ 3; *see also* Ex. 28, Winfield Aff. ¶ 3.)

18. Miles subsequently returned to Commissioner Singer's office with thank-you cards for Respondent and Winfield. (Ex. 5, Resp. ¶ 11; *see also* Ex. 1, Notice ¶ 11; Ex. 18, Undisputed Facts ¶ 9.) Miles placed $20 in the card to Winfield and $10 in the card to Respondent. (Ex. 27, Miles Decl. ¶ 4; *see also* Ex. 28, Winfield Aff. ¶ 4.)

19. Miles left Respondent's card on Respondent's desk, as Respondent was not present when Miles returned to Commissioner Singer's office. (Ex. 5, Resp. ¶ 12; *see also* Ex. 1, Notice ¶ 12; Ex. 18, Undisputed Facts ¶ 10.)

20. When she returned to her desk, Respondent opened her card and found $10 inside, which she accepted and did not return. (Ex. 28, Winfield Aff. ¶ 4.)

21. On or about May 27, 2014, McCall, who had declined Respondent's request that she run for committeeperson, approached Seth Bluestein, a Deputy City Commissioner, and told

him she wished to discuss Respondent. (Ex. 37, McCall Aff. ¶ 6; Ex. 38, Affidavit of Seth Bluestein ("Bluestein Aff.") ¶ 3.) Bluestein told McCall that he would speak with her in a few minutes. (Ex. 37, McCall Aff. ¶ 6; Ex. 38, Bluestein Aff. ¶ 4.) McCall had previously informed Respondent, who was McCall's supervisor, that another individual had asked McCall to file a complaint with the Ethics Board against Respondent but that McCall felt uncomfortable doing so. (Ex. 5, Resp. ¶ 28.)

22. While McCall was waiting for Bluestein, Respondent approached McCall and asked her not to send a letter McCall had drafted to the Board describing her conversations with Respondent about Respondent's request that McCall run for committeeperson. Respondent informed McCall that if she submitted her letter to the Board, McCall would never be hired again and McCall was next in line for a job with Commissioner Singer's office. (Exec. Dir.'s P'hrg Mem. Ex. 9, Email from S. Bluestein to M. Cooke, May 28, 2014; Ex. 37, McCall Aff. ¶¶ 7-8; Ex. 38, Bluestein Aff. ¶ 7.)

23. The letter McCall had drafted to the Board was then torn up. (Exec. Dir.'s P'hrg Mem. Ex. 9, Email from S. Bluestein to M. Cooke, May 28, 2014; Ex. 37, McCall Aff. ¶ 9; Ex. 38, Bluestein Aff. ¶ 7.)

24. The NOW/CLUW workshop for new committeepersons was scheduled for the evening of May 28, 2014. (Ex. 45, NOW/CLUW Workshop Flyer.) Respondent was listed as a speaker on the NOW/CLUW flyer. *Id.* Respondent did not participate in the NOW/CLUW workshop. (Ex. 5, Resp. ¶ 37; *see also* Ex. 1, Notice ¶ 37.)

25. On May 28, 2014, Respondent was suspended from her job by the City Commissioners. (Ex. 5, Resp. ¶ 37; *see also* Ex. 1, Notice ¶ 37; Ex. 18, Undisputed Facts ¶¶ 3, 11.)

26. To raise money while she was suspended without pay, Respondent decided to hold a personal fundraiser on June 21, 2014. (Ex. 5, Resp. ¶ 18; *see also* Ex. 1, Notice ¶ 18; Ex. 18, Undisputed Facts ¶ 12.)

27. Respondent posted a flyer promoting the event on Facebook and distributed the flyer via text message. (Ex. 5, Resp. ¶ 18; *see also* Ex. 1, Notice ¶ 18; Ex. 18, Undisputed Facts ¶ 12.) Tickets to the fundraiser cost a minimum of $20. (Ex. 5, Resp. ¶ 18; *see also* Ex. 1, Notice ¶ 18; Ex. 18, Undisputed Facts ¶ 13.)

28. Respondent sent Miles a text message asking her to attend the fundraiser. (Ex. 5, Resp. ¶ 19; *see also* Ex. 1, Notice ¶ 19; Ex. 18, Undisputed Facts ¶ 14.) The text message contained a flyer advertising the fundraiser. (Ex. 32, Miles Aff. ¶ 3 and Ex. A.)

29. Miles called Respondent to ask for an explanation of the text message. Respondent explained that she was hosting a fundraiser for herself on June 21, 2014 and tickets were $20 apiece. Respondent informed Miles that she was contacting all of the people she had helped in her role as Deputy City Commissioner so they could help her now, and Respondent demanded to know how many tickets Miles planned to purchase. (Ex. 27, Miles Aff. ¶ 5.)

30. Miles did not purchase a ticket for Respondent's personal fundraiser. (Ex. 5, Resp. ¶ 22; *see also* Ex. 1, Notice ¶ 22; Ex. 18, Undisputed Facts ¶ 15.)

V. CONCLUSIONS OF LAW

For the reasons that follow with regard to Counts 1-5 and 7, the Board determines that Respondent violated Charter Section 10-105, Charter Section 10-107, and Code Section 20-606(2). With regard to Count 6, the Board determines that Respondent did not violate Charter Subsection 10-107(4).

A. Count 1

The Board determines that the Executive Director has demonstrated by a preponderance of the evidence that Respondent violated Charter Section 10-105 by soliciting a payment from Leslie Miles for assistance Respondent provided Miles in the course of Respondent's public work as a City employee. Charter Section 10-105 prohibits the acceptance of gratuities and provides:

> No officer or employee of the City and no officer or employee whose salary or other compensation is paid out of the City Treasury shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work. Provided, however, that the head of any department, board or commission of the City or other agency receiving appropriations from the City Treasury may permit an employee to receive a reward publicly offered and paid, for the accomplishment of a particular task.

Charter § 10-105.

In the course of her public work as a City employee, Respondent assisted Leslie Miles with typing and formatting a letter. After providing the typed letter to Miles, Respondent then

requested that Miles pay Respondent for the work Respondent performed in the course of her public work. Therefore, the Board determines that Respondent violated Charter Section 10-105.

Under Code Section 20-606(1)(h), the Board has the authority to impose a civil monetary penalty of up to $300 as provided in Charter Section 10-109 for a violation of Charter Section 10-105. *See* Code § 20-606(1)(h); Charter § 10-109. The Board hereby imposes a civil monetary penalty of $300 on Respondent for soliciting a monetary payment for work performed in the course of her public work as a City employee.

B. Count 2

The Board determines that the Executive Director has demonstrated by a preponderance of the evidence that Respondent violated Charter Section 10-105 by accepting $10 cash from Leslie Miles as payment for assistance that Respondent provided to Miles in the course of her public work as a City employee. Charter Section 10-105 provides that no City employee shall accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of her public work. Charter § 10-105.

After Respondent typed and formatted a letter for her, Miles returned to Commissioner Singer's office with thank-you cards for Respondent and Jasmine Winfield. Each thank-you card contained cash, and Respondent's card contained $10. Miles left Respondent's card on Respondent's desk, and when Respondent returned to her desk, she opened the card and found $10 cash inside, which she accepted and did not return. Thus, the Board determines that Respondent violated Charter Section 10-105.

Under Code Section 20-606(1)(h), the Board has the authority to impose a civil monetary penalty of up to $300 as provided in Charter Section 10-109 for a violation of Charter Section 10-105. *See* Code § 20-606(1)(h); Charter § 10-109. The Board hereby imposes a civil monetary penalty of $300 on Respondent for accepting a monetary payment for work performed in the course of her public work as a City employee.

C. Count 3

The Board determines that the Executive Director has demonstrated by a preponderance of the evidence that Respondent violated Charter Section 10-105 by soliciting a payment from Leslie Miles for assistance she provided Miles in the course of Respondent's public work as a

City employee. Charter Section 10-105 provides that no City employee shall solicit any compensation or gratuity in the form of money or otherwise for any act or omission in the course of her public work. Charter § 10-105.

After she was suspended without pay, Respondent decided to hold a fundraiser for herself on June 21, 2014. On June 10, 2014, Respondent sent Miles a text message asking her to attend the fundraiser. Miles called Respondent after receiving the text message for an explanation of the text. Respondent explained that Respondent was hosting a fundraiser for herself and that she was contacting all of the people she had helped in her role as Deputy Commissioner so they could help her now and demanded to know how many tickets Miles planned to purchase. Therefore, the Board determines that Respondent violated Charter Section 10-105.

Under Code Section 20-606(1)(h), the Board has the authority to impose a civil monetary penalty of up to $300 as provided in Charter Section 10-109 for a violation of Charter Section 10-105. *See* Code § 20-606(1)(h); Charter § 10-109. For this reason, the Board hereby imposes a civil monetary penalty of $300 on Respondent for soliciting a monetary payment for work performed in the course of her public work as a City employee.

D. Count 4

The Board determines that the Executive Director has demonstrated by a preponderance of the evidence that Respondent violated Charter Subsection 10-107(4) by requesting and encouraging Susan McCall, whom Respondent supervised, to run for committeeperson and become an officer of a political party, thereby using Respondent's City position for a political purpose.

Employees of the Office of the City Commissioners are subject to the political activity restrictions in Charter Subsection 10-107(4) and as interpreted in Board Regulation 8. Charter Subsection 10-107(4) provides:

> No appointed officer or employee of the City shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

Charter § 10-107(4). Board Regulation 8 interprets the requirements and prohibitions of Charter Subsection 10-107(4) and explains that an appointed officer or employee of the City may not use

her City position, authority, influence, title, or status as a City officer or employee for any political purpose. Board Reg. 8 ¶ 8.4. Board Regulation 8 defines political as "related to a political party, candidate, or partisan political group." *Id.* at ¶ 8.1(m). Prohibited political activity includes a City employee requesting, directing, or suggesting that a subordinate employee participate in political activity. *Id.* at ¶ 8.4(c). Political activity is an activity directed toward the success or failure of a political party, candidate, or partisan political group. *Id.* ¶ 8.1(n).

Respondent was Susan McCall's supervisor in Commissioner Singer's office. Respondent requested that McCall, her subordinate, run for political party office, specifically the position of committeeperson in the 32nd Ward. Respondent used her City position for a political purpose by requesting and encouraging an individual she supervised to become an officer of a political party. Thus, the Board finds that Respondent violated Charter Subsection 10-107(4).

Under Code Section 20-606(1)(h), the Board has the authority to impose civil monetary penalties as provided in Charter Section 10-109 for a violation of Charter Subsection 10-107(4). *See* Code § 20-606(1)(h); Charter § 10-109. For this reason, the Board hereby imposes a civil monetary penalty of $300 on Respondent for using her City position for a political purpose by encouraging a subordinate City employee to engage in political activity.

E. Count 5

The Board determines that the Executive Director has demonstrated by a preponderance of the evidence that Respondent violated Code Section 20-606(2) by failing to cooperate with the Board. Code Section 20-606(2) mandates that City officers and employees cooperate fully with any request of the Board made pursuant to the execution of the Board's powers and duties. Refusal to cooperate with the Board is a violation of Code Section 20-606(2). Board Regulation 2 identifies some examples of failure to cooperate. *See* Board Reg. 2 ¶ 2.8.

Respondent violated Philadelphia Code Section 20-606(2) when she failed to cooperate with the Board by obstructing a Board investigation, threatening and influencing a potential complainant/witness, and destroying evidence. Specifically, Respondent threatened and attempted to influence potential complainant/witness Susan McCall and caused a letter McCall had drafted to send to the Board describing Respondent's request that McCall run for committeeperson not to be sent to the Board and instead be destroyed. For these reasons, the Board determines that Respondent violated Code Section 20-606(2).

Pursuant to Section 20-612, the Board may impose penalties for a violation of Code Section 20-606(2), and a violation shall be subject to a fine of one thousand dollars subject to a higher or lower penalty depending upon certain delineated aggravating and mitigating factors. *See* Code § 20-1302. The aggravating factor the Executive Director raises requires obstruction of the Board's investigation into the same violation for which a penalty is being imposed. *See* Ex. 1, Notice ¶ 46; Code § 20-1302(1)(b)(iii). In this case, according to the Executive Director's allegations in the Notice and Brief, Respondent obstructed an investigation into potential violations of Charter Subsection 10-107(4), not an investigation into a potential 20-606(2) violation. (*See* Ex. 1, Notice ¶ 46; Br. in Support of Notice at p. 27.) Because the Board finds no applicable aggravating or mitigating factors, the Board hereby imposes a civil monetary penalty of $1,000 on Respondent for failure to cooperate with the Board.

F. Count 6

The Board determines that Respondent did not violate Charter Subsection 10-107(4) as alleged by the Executive Director in Count 6. The facts do not in this instance support a determination that Respondent engaged in prohibited political activity by taking part in the management or affairs of a political party. The Board concludes that Respondent's participation in the planning and promotion of a NOW/CLUW informational workshop for new political party committeepersons of both the Democratic and Republican parties did not constitute a violation of Charter Subsection 10-107(4).

G. Count 7

The Board determines that the Executive Director has demonstrated by a preponderance of the evidence that Respondent violated Charter Subsection 10-107(3) by creating and posting a public calendar entry for a Democratic City Committee fundraiser. City employees are subject to the political activity restrictions of Charter Subsection 10-107(3) and Board Regulation 8. Charter Subsection 10-107(3) provides:

> No officer or employee of the City and no officer or employee of any governmental agency whose compensation is paid from the City Treasury shall, from any person, and no officer or member of a committee of any political party or club shall, from any civil service employee, directly or indirectly demand, solicit, collect or receive, or be in any manner concerned in demanding, soliciting,

> collecting or receiving, any assessment, subscription or contribution, whether voluntary or involuntary, intended for any political purpose whatever . . . .

Charter § 10-107(3). Board Regulation 8 provides that a City employee "shall not directly or indirectly be in any manner concerned in the collection, receipt, or solicitation of contributions intended for a political purpose." Board Reg. 8 ¶ 8.5. A contribution intended for a political purpose is defined in relevant part as "[m]oney or things having a monetary value received by a political committee, political party, or partisan political group." *Id.* ¶ 8.1(f)(ii).

Commissioner Singer launched a website to release election-related information to the public, and the website includes a link to a Google calendar to alert the public regarding various events. Respondent updated the calendar on the website as part of her City job duties and in May 2013 created a calendar entry for the Democratic City Committee's annual fundraising dinner using the email address traceygordoncitycommission@gmail.com. The event was a fundraiser event and tickets were $150 per person. Respondent admitted creating the calendar entry for the fundraising dinner in a subsequent interview with the Board's Director of Enforcement Michael Cooke.

The Board determines that Respondent violated Charter Subsection 10-107(3) by creating the calendar entry at issue and thereby being concerned in the solicitation of contributions intended for a political purpose.

Under Code Section 20-606(1)(h), the Board has the authority to impose civil monetary penalties as provided in Charter Section 10-109 for a violation of Charter Subsection 10-107(3). *See* Code § 20-606(1)(h); Charter § 10-109. For this reason, the Board hereby imposes a civil monetary penalty of $1 on Respondent for being concerned in the solicitation of contributions intended for a political purpose.

VI. CONCLUSION

For the reasons stated above, the Board of Ethics makes the following determinations:

Count 1. Respondent violated Philadelphia Home Rule Charter Section 10-105 in April 2014 by soliciting a payment for assistance she had provided in the course of her public work as a City employee. The Board imposes a civil monetary penalty of $300 for this violation;

Count 2. Respondent violated Philadelphia Home Rule Charter Section 10-105 in April 2014 by accepting a payment for assistance she had provided in the course of her public work as a City employee. The Board imposes a civil monetary penalty of $300 for this violation;

Count 3. Respondent violated Philadelphia Home Rule Charter Section 10-105 in June 2014 by soliciting a payment for assistance she had provided in the course of her public work as a City employee. The Board imposes a civil monetary penalty of $300 for this violation;

Count 4. Respondent violated Philadelphia Home Rule Charter Subsection 10-107(4) by using her City position for a political purpose. The Board imposes a civil monetary penalty of $300 for this violation;

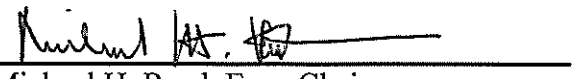
Count 5. Respondent violated Philadelphia Code Section 20-606(2) by failing to cooperate with the Board by obstructing a Board investigation, threatening and influencing a potential complainant/witness, and destroying evidence. The Board imposes a civil monetary penalty of $1,000 for this violation;

Count 6. The Board concludes that the facts do not in this instance support a determination that Respondent engaged in prohibited political activity by taking part in the management or affairs of a political party in contravention of Charter Subsection 10-107(4);

Count 7. Respondent violated Philadelphia Home Rule Charter Subsection 10-107(3) by creating and posting a public calendar entry for a Democratic City Committee fundraiser. The Board imposes a civil monetary penalty of $1 for this violation.

The Board therefore imposes an aggregate civil monetary penalty of $2201 upon Respondent to be paid within 35 days of the date of issuance of this Final Determination and the accompanying Order.

BY THE PHILADELPHIA BOARD OF ETHICS



Michael H. Reed, Esq., Chair
Judge Phyllis W. Beck, (Ret.), Vice-Chair
Sanjuanita González, Esq., Member
Brian J. McCormick, Jr., Esq., Member
JoAnne A. Epps, Esq., Member

BOARD OF ETHICS
OF THE CITY OF PHILADELPHIA

J. Shane Creamer, Jr. Executive Director Philadelphia Board of Ethics 1515 Arch Street, 18th Floor Philadelphia, PA 19102	
v.	**Matter No. 1412MU14** **Date of Issuance and Mailing: May 24, 2016**
Tracey Gordon 6543 Windsor Street Philadelphia, PA 19142 Respondent	

ORDER

For the reasons stated in the accompanying Final Determination, the Philadelphia Board of Ethics hereby imposes an aggregate civil monetary penalty of $2201 upon Respondent Tracey Gordon to be paid within 35 days of the date of issuance of the accompanying Final Determination and this Order.

The Board's Final Determination and this Order shall be the final agency action.

BY THE PHILADELPHIA BOARD OF ETHICS

Michael H. Reed, Esq., Chair
Judge Phyllis W. Beck, (Ret.), Vice-Chair
Sanjuanita González, Esq., Member
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