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Donna M. Davis, Vice-Chair  
Melodie Hengerer  
Arnold Sampson  
Vacant



Director: Jeffrey Hochstetler

**BALTIMORE CITY BOARD OF ETHICS**

CASE NOS.: 22-0002-E AND 22-0003-E

RESPONDENT: NICHOLAS J. MOSBY, CITY COUNCIL PRESIDENT

HEARING DATE: APRIL 19, 2022

FINAL DECISION DATE: MAY 12, 2022

**FINAL DECISION**

The Baltimore City Board of Ethics (“Board”), pursuant to Section 5-7 of Article 8 of the Baltimore City Code,<sup>1</sup> and Board Regulation R 05.26, hereby issues its Final Decision in the above-captioned cases.

Because the Board has found that the Respondent, an elected official, has violated provisions of the Ethics Law, the Board must report its findings to the Mayor and City Council “for appropriate action” as required by Section 9-17.

Furthermore, because the Board has made a final determination that a violation of the Ethics Law has occurred, the confidentiality restrictions imposed by Section 5-9(a) have terminated, pursuant to Section 5-9(c)(2).

The Respondent may seek judicial review of this Final Decision pursuant to Section 5-8.

**I. Procedural Background**

In August 2021, the Board received two complaints against City Council President Nicholas J. Mosby (“Respondent”) pertaining to an alleged fundraising campaign for the purpose of defraying his and his spouse’s private legal expenses (the “Fundraiser”). On August 26, 2021, as required by Section 5-2, the Board provided the Respondent with redacted copies of the complaints, along with a letter outlining the relevant law and the Board’s jurisdiction over the matter. The letter also requested documents and information from the Respondent to aid the Board’s preliminary investigation of the complaints, as required by Section 5-3(a).

On January 21, 2022, the Board sent a letter to the Respondent informing him that the preliminary investigation of the Fundraiser disclosed *prima facie* violations of the Ethics Law’s relevant gift restrictions and providing him with an opportunity to cure the violations, as required by Section 5-4. The letter informed the Respondent that if he did not agree to accept the Board’s opportunity

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<sup>1</sup> Unless otherwise indicated, all citations are to the Baltimore City Public Ethics Law (“Ethics Law”), contained in Article 8 of the Baltimore City Code.

to cure within 15 days, the Board would provide him with notice and an opportunity for a hearing, as required by Section 5-6.

On February 2, 2022, the Board received a letter dated January 24, 2022 from the Respondent, through his counsel, objecting to the Board's preliminary finding of *prima facie* violations, rejecting the Board's opportunity to cure, and requesting a hearing pursuant to Section 5-6.

Thereafter, on March 4, 2022, the Board provided the Respondent with notice and opportunity for a hearing, which was conducted virtually on April 19, 2022. Present at the hearing was the Respondent; the Respondent's counsel, James J. Temple, Jr., Esq.; all Board members, Stephan Fogleman (Chair), Donna Davis, Melodie Hengerer, and Arnold Sampson; the Board's Director, Jeffrey Hochstetler ("Director"); the Board's Administrator, Maura Ford; and the Board's outside counsel, Sarah M. Hall, Esq. and Clay Lee, Esq., both of Epstein Becker and Green, P.C. The hearing was conducted by a hearing officer designated by the Board, the Honorable Irma S. Raker (Ret.).

## **II. Findings of Fact**

The following findings of fact are based on the documents and testimony in the hearing record and the reasonable inferences that may be drawn from that evidence. *See Snowden v. City of Baltimore* 224 Md. 443, 448 (1961) ("The heart of the fact finding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence.")

1. On or around May 19, 2021, two individuals—one as Settlor ("Settlor") and one as Trustee ("Trustee")—established The Mosby 2021 Trust ("Mosby Trust") under the laws of the District of Columbia as a special purpose trust to benefit Nicholas and/or Marilyn Mosby ("Beneficiaries"). [Exhibit 15; Director testimony].
2. The Respondent appears to have a social relationship with Trustee and Trustee's spouse. [Exhibits 25, 26, and 27; Director testimony].
3. The terms of the Mosby Trust Agreement permit the trustees "to pay directly expenditures incurred by or on behalf of [the Beneficiaries]" and "to pay (or not pay) expenses incurred by or on behalf of [the Beneficiaries]." The trustees are authorized to "place the trust funds in a single checking, savings, or money market account and leave them there as long as there are any outstanding legal or other matters involving [the Beneficiaries]." The trustees are authorized to "distribute assets for the beneficiary's benefit" by depositing assets "in one or more accounts in the Trust's name" and by "expend[ing] assets directly for the beneficiary's sole and exclusive benefit in any other manner, including paying the beneficiary's creditors and/or obligations." The trustees are required to "prepare annually an account of the trust income and principal and deliver a copy of such account" to the beneficiaries. [Exhibit 15; Director testimony]
4. On or around May 27, 2021, the Mosby Trust, through Trustee, established a business checking account with United Bank ("Mosby Trust Bank Account"). According to the Account Agreement, signed by Trustee, the account owner is "The Mosby 2021 Trust, [Trustee's name]"

Trustee, C/O [Settlor's name], [Settlor's address]." The address is associated with Settlor's business. The "business purpose" is listed as "Trust," and the Taxpayer Identification Number ("TIN") is listed as 32-6601782. [Exhibit 21; Director testimony].

5. On or around May 28, 2021, a Change of Address Request Form was submitted to United Bank for the Mosby Trust Bank Account. On that form, the address for the Mosby Trust Bank Account was changed from Settlor's business address to a residential address owned by Trustee. [Exhibit 21; Director testimony].
6. On or around July 23, 2021, the Mosby Trust's attorney ("Trust Attorney"), filed Form 8871 with the Internal Revenue Service on behalf of the Mosby Trust. Under penalties of perjury, Trust Attorney declared that the Mosby Trust is to be treated as a tax-exempt "political organization" described in section 527 of the Internal Revenue Code. Trustee is listed as the Mosby Trust's contact person, custodian of records, and trustee. [Exhibit 14; Director testimony].
7. On or around July 26, 2021, a representative of the Mosby Trust established an online fundraising page on the website "Donorbox" entitled "The Mosby 2021 Trust" and "Mosby's Defense 2021" ("Mosby Trust Donorbox Account").<sup>2</sup> The Mosby Trust Donorbox Account is publicly available and accepts one-time or recurring donations from anyone by credit, debit, or prepaid card, or by the Google Pay app. [Exhibits 7, 8, and 20; Director testimony].
8. On or around August 12, 2021, if not before, a representative of the Mosby Trust established a website entitled "Mosby 2021 Legal Defense Fund" and "The Mosby 2021 Defense Fund" ("Mosby Defense Fund Page").<sup>3</sup> The Defense Fund Page is publicly available, informs viewers that the Mosbys are the subjects of a federal criminal tax investigation, and requests viewers to donate to "[a] defense fund" which "has been established to pay for the accumulating legal debt incurred for both Marilyn and Nick's defense." The Mosby Defense Fund Page includes a donation link to the Mosby Trust Donorbox Account and also linked directly to Marilyn and Nick Mosby's respective campaign websites. Among other information, the Mosby Defense Fund Page states that Nick Mosby "is radically changing procurement laws in Baltimore." [Exhibit 13; Director testimony].
9. The Mosby Trust does not verify the identity of donors donating through the Mosby Trust Donorbox Account in any way, either before or after donation. The Board's Director made a \$5 donation through the Mosby Trust Donorbox Account on two separate occasions—once in August 2021 and once in October 2021—each time using a prepaid gift card and supplying an alias name, alias email address, and non-existent physical address. The Board's director received a thank you message and receipt via email after each donation. Those emails did not request any verification of identity. [Exhibit 8; Director testimony].

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<sup>2</sup> Available at: <https://donorbox.org/the-mosby-s-2021-trust>.

<sup>3</sup> Available at: <https://mosbydefensefund.com/>

10. In August 2021, the Board received two complaints against the Respondent pertaining to the Mosby Trust's online fundraising activities, which had been reported by local media outlets. [Exhibits 1 and 6; Director testimony].
11. On August 26, 2021, the Board provided the Respondent with redacted copies of the complaints and a letter explaining, among other information, that "the Ethics Law imposes significant restraints on the Mosby Trust's ability to solicit and accept donations on your behalf" and that "the Mosby Trust is subject to the Ethics Law's restrictions on soliciting and accepting gifts from controlled donors." The letter also requested a variety of information from the Respondent pertaining to the Mosby Trust and its fundraising activities, including "the name(s) and/or identities of all trustees," "[t]he names of any other individuals who have custody, control, and/or knowledge" of any information related to the Mosby Trust, and "[m]echanisms or processes, if any, by which the Mosby Trust identifies and screens out donations from controlled donors." [Exhibit 2; Director Testimony].
12. On September 9, 2021, the Respondent, through a representative, provided a letter in response to the Board's August 26, 2021 letter. The Respondent's letter stated:

Council President Mosby has advised that neither he nor his attorney have any involvement with the Moby Trust and they do not have personal access to the documents and information you have requested. Despite that, he is making efforts to provide substantive responses to your requests. It is his understanding that the trustees for The Mosby Trust have retained [Trust Attorney]. Accordingly, this office has been in contact with [Trust Attorney] and informed [them] of this investigation.

The letter goes on to provide Trust Attorney's business contact information at a law firm. [Exhibit 9; Director testimony].

13. On October 4, 2021, the Respondent, through the same representative, provided another letter to the Board. That letter again stated that:

Council President Mosby does not have any involvement with the Mosby Trust or access to the documents and information you have requested. He is also unaware of any solicitation from any person to contribute to the Mosby Trust. He has not discussed the Mosby Trust in any public forum or used the Baltimore City Council President's Office to support it in any way.

The letter goes on to provide responses on behalf of Trust Attorney. Among other information, Trust Attorney stated that their client is the Mosby Trust, not the Respondent, so the requested documents are subject to the attorney client privilege and could not be shared with the Board. Trust Attorney also stated that the Mosby Trust is not a fundraiser, that Trust Attorney was unaware of any fundraising activities, and that, to Trust Attorney's knowledge, there were no contributions to the Mosby Trust. [Exhibit 10; Director testimony].

14. Contrary to Trust Attorney's assertions communicated in the Respondent's October 4, 2021 letter, as of the date of that letter, the Mosby Trust had in fact received \$7,718.37 in donations into the Mosby Trust Donorbox Account—including \$5 from the Director's alias donor—and had transferred \$2,587.05 of those donations into the Mosby Trust Bank Account. [Exhibits 20 and 21; Director testimony].
15. On October 15, 2021, the Respondent personally sent a letter to the Board's outside counsel. In it, the Respondent stated: "I do not have any information or documents available to me in response to the Ethics Board's requests." He also stated that "the best contact person I know of is [Trust Attorney]," and provided Trust Attorney's business contact information. [Exhibit 12; Director testimony].
16. As part of its investigation, the Board issued a subpoena to Donorbox requesting records and information related to the Mosby Trust Donorbox Account, including information on donations and financial activities. Donorbox refused to comply with the subpoena. [Exhibit 19; Director testimony].
17. As part of its investigation, the Board issued multiple subpoenas to Donorbox's payment processor, Stripe, Inc. ("Stripe"), requesting information on the Mosby Trust's Donorbox Account, including information on donations and financial activity. Stripe processes the financial transactions related to the Mosby Trust's Donorbox Account, including donations received by and transferred out of that Account. Stripe responded by providing documents reflecting "Account" information, "Transactions" information, and "Transfers" information. [Exhibit 20; Director testimony].
18. According to the "Account" information provided by Stripe, the "business name" associated with the Mosby Trust's Donorbox Account is "The Mosby 2021 Trust," and the address is the residential address owned by Trustee—the same address listed on the Mosby Trust's Bank Account. The "company rep" lists a separate individual's name. [Exhibit 20; Director testimony].
19. According to the "Transactions" information provided by Stripe, as of March 15, 2022, the Mosby Trust's Donorbox Account had received a total of \$14,352.55 in donations. There appear to be 135 individual donations ranging from \$3 to \$5,000. The first donation was received on August 3, 2021. [Exhibit 20; Director testimony].
20. According to the "Transfers" information provided by Stripe, three transfers totaling \$2,587.05 were made from the Mosby Trust Donorbox Account to the Mosby Trust Bank Account in August 2021, the last on August 13, 2021. The bank account number provided by Stripe is the same as the Mosby Trust Bank Account number, and the routing number provided by Stripe is United Bank's routing number. [Exhibit 20; Director testimony].
21. As part of its investigation, the Board issued multiple subpoenas to United Bank, requesting records and information pertaining to the Mosby Trust Bank Account. United Bank responded by providing an "Account Agreement" and "Change of Address Request Form," as detailed in Findings 3 and 4, above. United Bank also provided statements from May 2021 through

February 2022. The statement for August 2021 shows three deposits denoted as “Stripe Transfers” totaling \$2,587.05, the last on August 13, 2021. These deposits match the three transfers made in August 2021 from the Mosby Trust Donorbox Account to the Mosby Trust Bank Account, as provided by Stripe. [Exhibits 20 and 21; Director testimony].

22. As of March 15, 2022, the Mosby Trust had \$11,765.50 in its Donorbox Account, and \$2,587.05 in its United Bank Account, for a total of \$14,352.55 [Exhibits 20 and 21].

23. As part of its investigation, the Board issued a subpoena to Trustee, requesting records and information pertaining to the Mosby Trust and its fundraising activities, including “[m]echanisms or processes, if any, by which the Trust identifies and screens out donations from the restricted donors.” Trustee responded in writing on December 9, 2021 by stating: “I am not the Trustee of the Mosby Legal Defense Fund and do not have in my possession any of the requested documents or information.” [Exhibit 16; Director’s testimony].

24. As part of its investigation, the Board issued a subpoena to the Mosby Trust through Trust Attorney, requesting records and information pertaining to the Mosby Trust and its fundraising activities, including “[m]echanisms or processes, if any, by which the Trust identifies and screens out donations from the restricted donors.” Trust Attorney responded via letter on December 9, 2021, and provided a copy of the Mosby Trust Agreement and two statements from the Mosby Trust Bank Account covering the months of May and June. Trust Attorney stated that Trustee was no longer the trustee for the Mosby Trust and that another individual (“Trustee 2”) “presently serves as Trustee.” Trust Attorney also stated that “there have been no incoming or outgoing transactions to or from the Trust since its inception,” that “there have been no donors or donations to the Trust and, accordingly, no donors or donations received by the Trust.” [Exhibit 15; Director testimony].

25. Contrary to Trust Attorney’s assertions in the December 9, 2021 response, as of the date of that response, the Mosby Trust had in fact received \$7,760.64 in donations into the Mosby Trust Donorbox Account—including \$10 from the Director’s alias donor—and had transferred \$2,587 of those donations into the Mosby Trust Bank Account. The Mosby Trust Bank Account’s August 2021 statement would have shown this transfer information, but Trust Attorney only provided the May and June statements. [Exhibits 20 and 21].

26. The Board responded to Trust Attorney and requested the contact information for Trustee 2, whom Trust Attorney had copied on the December 9, 2021 letter. Despite the Board’s request, Trust Attorney did not provide Trustee 2’s contact information to the Board. [Exhibits 15 and 18; Director testimony].

27. In the December 9, 2021 letter to the Board, Trust Attorney also stated that:

the Trust contacted Jared DeMarinis (Director, Division of Candidacy and Campaign Finance for the State of Maryland) and William Colquhoun (General Counsel, Maryland State Ethics Commission) as part of a due diligence effort to determine the [sic] what authorities within the State of Maryland (and guidance from such authorities) would be necessary with respect to possible, future Trust

operations. The Trust was working to obtain such guidance, and to determine what other authorities and bodies to approach for similar guidance, when we became aware of your investigation.

However, as of December 9, 2021, the Mosby Trust had already been soliciting donations through its Donorbox Account for more than four months and had accepted \$7,760.64 in donations. Moreover, the Board had contacted the individuals named by Trust Attorney and discovered that Trust Attorney had in fact been advised that the State Ethics Law imposed significant restrictions on any ability to raise funds for a legal defense fund and had also been provided a State ethics opinion on the topic. [Exhibit 15; Director testimony].

28. Neither the Respondent nor anyone associated with the Mosby Trust ever contacted the Board for advice or guidance related to the Mosby Trust or its fundraising activities. [Director testimony].
29. On January 19, 2022, the Respondent's campaign committee, "Friends of Nick Mosby," filed a Campaign Finance Report disclosing campaign contributions and distributions from January 14, 2021 through January 12, 2022. The Report showed that the Respondent's campaign committee paid Trust Attorney's law firm a total of \$12,500 during that period--\$9,000 on April 26, 2021 and \$3,500 on June 9, 2021. [Exhibit 24; Director testimony].
30. On January 21, 2022, the Board informed the Respondent of the findings of the preliminary investigation, including all relevant terms of the Mosby Trust Agreement and all relevant details about the Mosby Trust's fundraising efforts and financial activities. The Board also informed the Respondent that the investigation had discovered *prima facie* violations of the Ethics Law and provided the Respondent with an opportunity to cure the violations. Respondent rejected such opportunity to cure. [Exhibits 3 and 4; Director testimony].
31. On February 1, 2022, the Respondent filed his annual financial disclosure statement, which covered calendar year 2021. The Respondent did not disclose his interest in the Mosby Trust and did not disclose any donations received by the Mosby Trust. [Exhibit 22; Director testimony].
32. In early March 2022, the City's Board of Estimates awarded a several-hundred-thousand-dollar American Rescue Plan Act grant to a non-profit organization. The Executive Director of that organization appears to have donated \$100 to the Mosby Trust's Donorbox Account a few weeks prior to that award, on January 18, 2022. [Exhibit 20; Director testimony].
33. As of March 15, 2022, the largest donation to the Mosby Trust's Donorbox Account was \$5,000 given on August 24, 2021. This donation appears to have been given by an individual who is the Resident Agent for an entity that was a City-certified minority or woman-owned business through 2021. This business was listed as a subcontractor in a contract bid that was before the City's Board of Estimates in 2020. [Exhibit 20; Director testimony].

### III. Conclusions of Law

In rendering the following conclusions of law, the Board is mindful of and takes seriously the “liberal construction” mandate contained in Section 2-35: “The Mayor and City Council intends that the provisions of this article, except those imposing criminal sanctions, be liberally construed to accomplish their purposes.” § 2-35. The stated purposes of the Ethics Law are “[t]o guard against improper influence or even the appearance of improper influence, and to ensure public trust in government.” § 1-2.

1. The Respondent violated Section 6-26, which prohibits a public servant from soliciting—or facilitating the solicitation of—a gift from a controlled donor.

As the City Council President, the Respondent is considered a “public servant” under the City’s Ethics Law.<sup>4</sup> Accordingly, the Ethics Law restricts the Respondent’s ability to solicit—or facilitate the solicitation of—a gift on his own or someone else’s behalf. Specifically, under Section 6-26, a public servant may not “solicit or facilitate the solicitation of a gift,<sup>5</sup> whether on [his] own behalf or on behalf of another person, from any person that [he] knows or has reason to know” is a controlled donor. § 6-26.

The term “controlled donor,” as applied to the Respondent’s official role as the City Council President, includes:

- Any person/entity that does or seeks to do business of any kind, regardless of amount, with the City Council, the Council President’s Office, the Board of Estimates, or any other City governmental or quasi-governmental entity with which the Respondent is officially affiliated (“Respondent’s Agencies”);
- Any subcontractor or person/entity that does or seeks to do business of any kind with another person in connection with or in furtherance of a contract with the Respondent’s Agencies;
- Any person/entity that engages or seeks to engage in activity regulated or controlled by the Respondent’s Agencies;
- Any person/entity who within the past year has been a lobbyist with respect to matters within the Respondent’s jurisdiction;
- Any person/entity having a financial interest that might be substantially and materially affected by the performance or nonperformance of the Respondent’s official duties; and

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<sup>4</sup> The term “public servant” means any City official or employee. § 2-23.

<sup>5</sup> The term “gift” means “the transfer of any thing or any service of economic value, regardless of the form, without adequate, identifiable, and lawful consideration.” § 2-17(a). The term “gift” does not include “the solicitation, acceptance, receipt, or disposition of a political contribution that is regulated under State” [campaign finance or election laws].” § 2-17(b).



- Any owner, partner, officer, director, trustee, employee, or agent of any person/entity described above.

See §§ 6-26 and 6-27; Board Regulation R 06.26.1(2).

The Mosby Trust is soliciting funds on behalf of the Respondent, who is one of two named beneficiaries of the Mosby Trust. The Mosby Trust's online fundraising activities, through the Mosby Trust Donorbox Account and the Mosby Defense Fund Page that links to it, are publicly accessible to anyone with an internet connection. There are no filters that prevent a controlled donor from viewing the Mosby Defense Fund Page, which touts the Respondent's official accomplishments, including "radically changing procurement laws," requests donations on his behalf, and provides a link to the Mosby Trust Donorbox Account. The Mosby Trust Donorbox Account, in turn, likewise does not employ any mechanisms to screen out donations from controlled donors. Accordingly, by soliciting the public at large, without any restrictions or mechanisms to screen out controlled donors, the Mosby Trust is soliciting controlled donors on the Respondent's behalf.<sup>6</sup>

The Respondent is knowingly facilitating the Mosby Trust's solicitation of controlled donors. Respondent's counsel argues there is no evidence showing the Respondent has directly solicited donations and that the Respondent's passivity cannot be construed as "facilitating solicitation," but we disagree. At the latest, the Respondent knew of the Mosby Trust's broad fundraising efforts on his behalf when he received the Board's August 26, 2021 letter informing him of the complaints against him, providing a link to the Mosby Trust's Donorbox Account, and explaining that the Ethics Law "imposes significant restraints on the Mosby Trust's ability to solicit and accept donations on your behalf." [Exhibit 2]. The Board provided further information about the terms of the Mosby Trust and the Trust's online fundraising activities in its January 21, 2022 letter to the Respondent, which also explained why the circumstances constituted *prima facie* violations of the Ethics Law. [Exhibit 3]. There is no evidence known to the Board, and none in the record, that at any time did the Respondent take any steps to distance himself from the Mosby Trust and its fundraising activities. Nor is there evidence that the Respondent ever requested the Mosby Trust to cease fundraising on his behalf, let alone to remove his name, picture, and credentials from the Mosby Defense Fund Page.

The representatives of the Mosby Trust were not strangers to the Respondent. The Respondent has a social relationship with Trustee. Admitted into evidence is a photo of the Respondent and Trustee together at Preakness on May 16, 2021, a mere three days before Trustee and Settlor established

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<sup>6</sup> Because controlled donors are a foreseeable class of solicited individuals whenever there is an indiscriminate public solicitation effort, the Ethics Board has long required public servants and their agencies to apply for a gift solicitation waiver before soliciting donations for charitable or governmental programs. See § 6-26(b) and Ethics Regulation R 06.26.1. This waiver process is only available for charitable or governmental programs; it is not available for private fundraising.

the Mosby Trust. [Exhibit 25]. Also admitted into evidence is a photo of the Respondent and Trustee sharing a meal at a restaurant on October 21, 2021. [Exhibit 26].

Furthermore, the Respondent indicated in writing to the Board, on two occasions, that the Mosby Trust's trustees and its attorney were known to him. Despite this knowledge, the Respondent failed to provide the names of the trustees notwithstanding the specific request to produce "the name(s) and/or identities of all trustees" or "any other individuals who have custody, control, and/or knowledge of" any information related to the Mosby Trust. [Exhibit 2]. The first occasion was in the September 17, 2021 letter to the Board sent on the Respondent's behalf, which states that it was "his [Respondent's] understanding *that the trustees for The Mosby Trust* have retained [Trust Attorney]." [Exhibit 9]. The second occasion was in the Respondent's October 15, 2021 letter to the Board, in which he again states that "the best contact person I know of is [Trust Attorney]." [Exhibit 12]. Notably, less than a week after providing this information, the Respondent was photographed at a restaurant with Trustee and, among others, an attorney from Trust Attorney's law firm. [Exhibits 15 and 26]. Additionally, it is noteworthy that the Respondent's Campaign Committee paid Trust Attorney's law firm \$9,000 on April 26, 2021, three weeks before the Mosby Trust was established on May 19, 2021. [Exhibit 24].

Again, the Board is not aware of any evidence, and the Respondent has offered none, that the Respondent took any actions to ensure that the Mosby Trust's representatives, who were known to him, understood his obligations under the Ethics Law and the attendant limitations the Ethics Law placed on any fundraising efforts on his behalf. The Board finds the Respondent's lack of candor in responding to its straightforward request for "the name(s) and/or identities of all trustees" or "*any* other individuals who have custody, control, and/or knowledge of any" activities related to the Mosby Trust, in light of his clear ties with Trustee, to be probative evidence of his conscious effort to obfuscate his knowledge of the affairs of the Mosby Trust.

In light of all of these circumstances, the Respondent has consented to the Mosby Trust's broad solicitation on his behalf, and, in this context, his consent is tantamount to facilitation. Our conclusion is supported by the Maryland State Ethics Commission's opinion in a similar matter, wherein it applied the State Ethics Law's substantially similar gift provisions to a proposed legal defense fund established by third parties to benefit an elected sheriff. *See* State Ethics Commission Opinion No. 93-05 (Jun. 28, 1993). In that situation, a committee made up of private citizens wished to solicit and accept donations on behalf of the sheriff in order to defray the sheriff's private litigation expenses. All donations would go directly to a depository bank account set up specifically for the purpose, and the sheriff would not take part in any of the fundraising activities.

Under those circumstances, the State Ethics Commission concluded that "donations to a committee for use to defray [the sheriff's] public relations and legal expenses as proposed here would be viewed as gifts to him that would be subject to the solicitation, acceptance and financial disclosure provisions of the [State Ethics] Law." Op. No. 93-05. In reaching its conclusion, the Commission examined an earlier decision by its predecessor entity, the Financial Disclosure Advisory Board ("Advisory Board"), which had been faced with "a trust fund created to pay the legal and related expenses of an official in connection with his defense of criminal charges. The trust arose as a result of citizens who 'had indicated a desire to assist the official in meeting certain legal expenses.'" Op. No. 93-05 (quoting Advisory Board Opinion No. 10, Nov. 30, 1977). In that

situation, the Advisory Board concluded that a contribution to the trust “would be a gift received by another person *at the direction of the official.*” *Id.* (emphasis added).<sup>7</sup> Although the Advisory Board recognized

that the official may not have actually solicited any contributions, the [Advisory] Board said that the concept of “direction” in the financial disclosure law *did not necessarily mean only an express order*, concluding that it was enough that the official established *or consented to the program under which gifts were to be made, particularly as they were ultimately intended for his benefit.*

*Id.* (emphasis added).

The same reasoning applies to the concept of “facilitate” in the context of Section 6-26’s solicitation prohibition. The Respondent need not have directly asked someone to establish the Mosby Trust or conduct unrestricted fundraising through the Mosby Trust’s Donorbox Account in order to have “facilitated” the Mosby Trust’s solicitation of controlled donors on his behalf. It is enough that he has knowledge of the unrestricted solicitation activity on his behalf and takes no steps to stop that activity or otherwise seeks to ensure that the individuals acting on his behalf comply with the Ethics Law’s obligations, including by ceasing to solicit controlled donors.

Accordingly, we conclude that the Respondent violated Section 6-26 by facilitating the solicitation of gifts from controlled donors.

2. The Respondent violated Section 6-27, which prohibits a public servant from accepting a gift, directly or indirectly, from a controlled donor.

In addition to prohibiting the facilitation of solicitation of controlled donors, the Ethics Law prohibits the Respondent from accepting a gift from a controlled donor. Specifically, under Section 6-27, a public servant may not “knowingly accept any gift, *directly or indirectly*, from any person that the public servant knows or *has reason to know*” is a controlled donor, as that term is described above. § 6-27 (emphasis added).

The Mosby Trust has accepted donations on behalf of the Respondent from at least two individuals who appear to qualify as controlled donors relative to the Respondent in his role as President and voting member of the City’s Board of Estimates. On August 24, 2021, the Mosby Trust accepted a \$5,000 donation in its Donorbox Account from an individual who appears to be the Resident Agent of a business entity listed as a subcontractor in a contract bid considered by the Board of Estimates in 2020. [Exhibit 20; Director testimony]. The Respondent was not the President of the Board of Estimates until late 2020, but this business entity was a City-certified minority or woman-owned business through 2021 and foreseeably has interests as a subcontractor on other contract bids during the Respondent’s tenure. Accordingly, this individual qualifies as a controlled donor

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<sup>7</sup> The Advisory Board was interpreting a financial disclosure provision that was substantially similar to the current State and City Ethics Law’s provision requiring officials to disclose certain gifts that were “accepted by the public servant or by any other person *at the direction of the public servant.*” City Code, Art. 8, § 7-23(b)(1).

relative to the Respondent because, at the time of the donation, they were an officer/agent of a City-certified contractor who had known past interests and foreseeable future interests in a contract before the Board of Estimates, of which the Respondent is President and a voting member. *See* § 6-26(a)(1)(ii), (a)(4), and (a)(5).

Similarly, on January 18, 2022, the Mosby Trust accepted a \$100 donation from an individual who appears to be the Executive Director of an entity that received a several-hundred-thousand-dollar American Rescue Plan Act (“ARPA”) grant approved by the Board of Estimates in March 2022. [Exhibit 20; Director testimony]. This individual qualifies as a controlled donor relative to the Respondent because, at the time of the donation, they were an officer of an entity that sought to do business with the Board of Estimates, of which the Respondent is President and a voting member. *See* § 6-26(a)(1)(i). Additionally, the Respondent, in deciding whether or not to approve the ARPA grant, was in a position to “substantially and materially” affect the financial interests of the donating individual’s entity. *See* § 6-26(a)(4) and (a)(5).

The Respondent’s attorney argues that the Respondent cannot have violated Section 6-27 because there is no evidence that he has directly received any of the donations made to the Mosby Trust and that he does not otherwise have control of those funds. This argument ignores the plain language of Section 6-27, which prohibits the direct *and indirect* acceptance of a gift from a controlled donor.

Under the terms of the Mosby Trust Agreement, donations to the Mosby Trust may be used solely to benefit the Respondent and/or his spouse, by “pay[ing] directly expenditures incurred by or on behalf of [the Beneficiaries]” or by “expend[ing] assets directly for the beneficiary’s sole and exclusive benefit . . . including paying the beneficiary’s creditors and/or obligations.” [Exhibit 15]. Accordingly, although the Respondent may not have directly accepted a gift from a controlled donor, the Mosby Trust directly accepted such gifts on the Respondent’s behalf. Under the circumstances here, that amounts to the Respondent’s indirect acceptance of such gifts. Indeed, it is difficult to imagine a clearer instance of indirect acceptance.

The State Ethics Commission came to the same conclusion when faced with the prospect of the legal defense fund set up by third parties to defray the sheriff’s legal expenses, as discussed above. In that case, even though any funds raised would not go to the sheriff directly but would instead be deposited into an account to pay his legal expenses, the Commission ruled that “the donations must be viewed as being received, *at least indirectly*, by the Sheriff.” Op. No. 93-05 (emphasis added).

We note that ethics oversight bodies in other jurisdictions have reached similar conclusions. The City of Chicago’s Board of Ethics, for example, concluded in a recent opinion

that contributions made to an established legal defense fund, or directly to attorneys representing a City employee or official, for the purpose of defraying legal expenses incurred by that employee or official, are no different from gifts made directly to that employee or official and thus are subject to the gift restrictions . . . of the Ethics Ordinance.

Chicago Board of Ethics, Case No. 21025.A (August 23, 2021).<sup>8</sup>

Similarly, the New York City Conflicts of Interest Board (“COIB”) “concluded that contributions to legal defense funds for public servants are no different from gifts directly to the public servant and thus are subject to the gift restrictions of [the relevant ethics law].” COIB, Advisory Opinion No. 2017-2 (March 29, 2017).<sup>9</sup> Although the COIB recognized “that legal expenses can burden public servants,” it explained that nothing in the relevant ethics laws “distinguishes contributions to legal defense funds from other gifts. In the absence of specific legislation that distinguishes gifts made to public servants through legal defense funds from other gifts to public servants, there is no legal basis for the [COIB] to treat gifts made through legal defense funds differently.” *Id.*

The Respondent’s counsel also argues that because there has been no “transfer” of any donations to the Respondent, those donations cannot qualify as a “gift,” which is defined as “the transfer of any thing or any service of economic value, regardless of the form, without adequate, identifiable, and lawful consideration.” § 2-17. This argument fails for the same reason as the previous argument. Section 6-27 prohibits both direct *and indirect* acceptance, so a donation need not be transferred directly to the Respondent in order to qualify as a gift to him. The “transfer” is complete as soon as a donation is accepted by the Mosby Trust on the Respondent’s behalf, thus constituting a gift; there need not be an additional transfer directly to the Respondent.

According to the Respondent’s counsel, the Board should take a “wait and see” approach here, *i.e.*, it should hold off on determining whether there have been any violations until the Respondent has *directly* received donations from the Mosby Trust. But that approach ignores the plain language of Section 6-27’s “indirect acceptance” prohibition, and also frustrates the purpose of the Ethics Law’s conflict of interest provisions, to “guard against improper influence or even the appearance of improper influence.” *See* § 1-2.

Under the terms of the Mosby Trust, donations need not ever be transferred directly to the Respondent for him to nonetheless benefit from those donations. Donations could be used to pay the Respondent’s “creditors and/or obligations” directly without ever touching the Respondent’s own bank account. Moreover, even if the donations have not yet been transferred out of one of the Mosby Trust’s accounts, the Respondent, as a named beneficiary of the Mosby Trust, nonetheless has a present and future interest in all of the Trust’s assets. Beneficiaries of a trust typically have an equitable interest in the trust’s assets. *See, e.g., Ackerman v. Abbott*, 978 A.2d 1250, 1256 (D.C. 2009) (“A beneficiary of a trust has equitable title to her interest in the trust’s assets.”) (citing *Barker v. Aiello*, 84 Md. App. 629 (1990)). And under the Ethics Law’s financial disclosure provisions, a trust’s interests are attributable to a public servant if the public servant is a beneficiary of that trust. *See* § 7-17(d).

Finally, the Respondent’s counsel argues that the Respondent does not know the identity of donors to the Mosby Trust, so he cannot have “knowingly” accepted a gift from someone he “knows or has reason to know” is a controlled donor. *See* § 6-27. As explained in the previous section, the

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<sup>8</sup> Available at:

[https://www.chicago.gov/content/dam/city/depts/ethics/general/AO\\_GiftsTravel/21025.A.pdf](https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_GiftsTravel/21025.A.pdf)

<sup>9</sup> Available at: [https://www1.nyc.gov/assets/coib/downloads/pdf5/aos/2017/AO2017\\_2.pdf](https://www1.nyc.gov/assets/coib/downloads/pdf5/aos/2017/AO2017_2.pdf)

Respondent has knowledge of the Mosby Trust's broad, unrestricted solicitation efforts on his behalf and is closely associated with the individuals affiliated with the Mosby Trust, but has not taken any steps to stop those efforts or otherwise ensure that the Mosby Trust complies with his obligations under the Ethics Law. Accordingly, any lack of knowledge of donors' identities on the Respondent's part results solely from his own willful blindness,<sup>10</sup> and this does not excuse him from his obligations under the Ethics Law, including using due diligence to prevent the solicitation and acceptance of gifts from controlled donors.<sup>11</sup>

As the State Ethics Commission explained in the legal defense fund opinion discussed above, the knowledge requirements in the relevant gift restrictions does "not excuse [an official] from making a reasonable effort to acquire knowledge that is within his control." Op. No. 93-05. Any "inability to know the identity of donors and other details would result solely from [the official's] own voluntary relinquishment of the right to know, and would not excuse him from" his ethics obligations. *Id.*

Accordingly, we conclude that the Respondent violated Section 6-27 by indirectly accepting gifts from controlled donors.

3. The Respondent violated Section 7-22, which requires a public servant to disclose interests in business entities on their annual financial disclosure statement.

The Ethics Law's financial disclosure provisions require the Respondent to disclose on his annual financial disclosure statement each interest he held in a "business entity" during the previous calendar year. Specifically, "[t]he statement must include a schedule of each interest in any corporation, partnership, limited liability company, or any other business entity, whether or not that entity does business with or is regulated by the City, if, at any time during the reporting period, the interest was held by or, under § 7-17 ["Attributable interests"] of this subtitle, was attributable to the public servant." § 7-22(a) (emphasis added).

The term "interest," in pertinent part, means "any legal or equitable economic interest." § 2-19. The term "business entity," means "any person engaged in business or other organized activity, whether for profit or not-for-profit and regardless of form." § 2-4 (emphasis added). And the term "person," in pertinent part, means "a partnership, firm, association, corporation, or other entity of any kind." § 2-22 (emphasis added).

The Respondent did not disclose any interests in business entities on his most recent financial disclosure statement, which he filed on February 1, 2022. [Exhibit 22]. As a named beneficiary of the Mosby Trust, the Respondent has an equitable economic interest in the Mosby Trust and its assets. *See, e.g., Ackerman v. Abbott*, 978 A.2d 1250, 1256 (D.C. 2009) ("A beneficiary of a trust has equitable title to her interest in the trust's assets.") (citing *Barker v. Aiello*, 84 Md. App. 629

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<sup>10</sup> "Willful blindness occurs when a person has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance." *Hoffman v. Stamper*, 385 Md. 1, 44 (2005) (internal quotation marks and citations omitted).

<sup>11</sup> The Board notes that because the Mosby Trust Donorbox Account allows donors to contribute under false identities, it is a reasonable inference to be drawn that this feature of the Donorbox Account was intentional so as to afford a defense of ignorance of the donors' identities.

(1990)). Moreover, for purposes of the Ethics Law's financial disclosure provisions, a trust's interests are attributable to a public servant if the public servant is a beneficiary of that trust. § 7-17(d). Accordingly, because the Respondent held an interest in the Mosby Trust during 2021, he should have disclosed that interest on his most recent annual financial disclosure statement, but did not.

The Respondent's counsel argues that the Mosby Trust is not a "business entity." However, the plain language of the Ethics Law indicates that a trust is a business entity. First, the Mosby Trust qualifies as a "person" under the Ethics Law because that term includes an "entity of any kind." § 2-22. The Mosby Trust was established under the laws of the District of Columbia as a "special purpose trust." [Exhibit 15]. Second, the Mosby Trust is "engaged in business or other organized activity, whether for profit or not-for-profit and regardless of form." § 2-4. The principal purpose of the Mosby Trust "is to allow the Trustees . . . to pay expenses incurred by or on behalf of" the Respondent and/or his spouse," and the Mosby Trust is actively fundraising in order to fulfill that purpose. Thus, the Mosby Trust meets the definition of a "business entity" because it is a "person engaged in business or other organized activity, whether for profit or not-for-profit and regardless of form." § 2-4.

Furthermore, reading Section 7-22(a) in context indicates that the legislature intended for public servants to disclose their interest in a trust. *See, e.g., Neal v. Baltimore City Bd. of Sch. Commissioners*, 467 Md. 399, 415 (2020) (explaining that statutory construction looks to "the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory") (citing *Brown v. State*, 454 Md. 546, 550-51 (2017)).

Section 7-17(d), which, as discussed above, provides that interests held by a trust are attributable to a public servant if the public servant is a beneficiary of that trust. § 7-17(d). There would be no reason for the Ethics Law to attribute a trust's interests to a public servant if the trust itself was not a disclosable business entity in the first place. Put another way, it would be illogical for the Ethics Law to require a public servant to disclose interests held by a trust of which they are a beneficiary, but not require them to disclose their beneficiary interest in that trust. *See, e.g., Sieglein v. Schmidt*, 447 Md. 647, 660 (2016) ("an interpretation should be given to the statutory provisions that does not lead to absurd consequences.") (citing *Anderson v. Council Unit Owners of Gables on Tuckerman Condominium*, 404 Md. 560, 571-72 (2008)).

Further, the definition of "interest" in Section 2-19, which specifically excludes an interest in certain trusts, *i.e.*, an "interest in a trust that is qualified under § 401 or § 501 of the Internal Revenue Code and forms part of a pension or a profit-sharing plan." § 2-19(b)(5). The definition of "interest" also specifically excludes an interest held "in the capacity of a . . . trustee, unless the holder has an equitable interest in the subject matter." § 2-19(b)(1). These exclusions for specific trusts and trust affiliations would be meaningless if an interest in a trust more generally was not encompassed by Section 7-22(a)'s mandate to disclose "each interest in . . . any other business entity." § 7-22(a).

Accordingly, we conclude that the Respondent violated Section 7-22 by failing to disclose his interest in the Mosby Trust on his annual financial disclosure statement.

4. There is insufficient evidence to conclude that the Respondent violated Section 7-23, which requires a public servant to disclose significant gifts from a lobbyist or from any person doing business with or regulated by the City.

Separate from the prohibitions on soliciting and accepting gifts from controlled donors, the Ethics Law's financial disclosure provisions require public servants to disclose on their annual financial disclosure statement any significant gift<sup>12</sup> accepted during the previous calendar year from any of the following: an individual or entity who does business with the City, as defined in Section 7-1; an individual or entity who is a City lobbyist, as defined in Subtitle 8; or an individual or entity who is regulated by the City. § 7-23.

As discussed in the previous section, evidence introduced at the hearing indicated that the Respondent, through the Mosby Trust, indirectly accepted gifts from two individuals who appear to qualify as controlled donors relative to the Respondent. Gifts from these individuals are prohibited by Section 6-27, and thus would not fall into the category of permissible gifts that need to be disclosed under Section 7-23. In other words, under the Ethics Law, a public servant may not accept a gift from an individual who does business with or lobbies before their agency, or who meets one of the other definitions of controlled donor. *See* §§ 6-26 and 6-27. But, as a general matter, a public servant may accept a gift from a non-controlled person, even if that donor does business with other City agencies. In the latter scenario, however, the gift would need to be disclosed under Section 7-23.

Because the only evidence regarding donors to the Mosby Trust pertained to prohibited donors under Section 6-27, we cannot conclude there were other donors who were required to be disclosed under Section 7-23. Accordingly, we cannot conclude that the Respondent violated Section 7-23.

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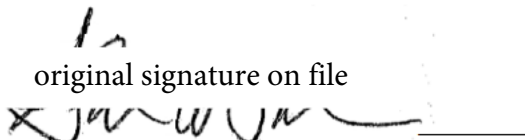
<sup>12</sup> The term "significant gift" means any single gift with a value of more than \$20, or any gift in a series of gifts whose cumulative value is \$100 or more given by or on behalf of the same donor. § 7-23(a)(1).



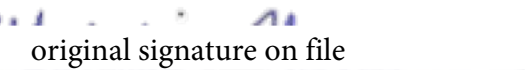
**IV. Administrative Order**

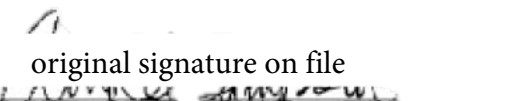
Consistent with the findings of fact and conclusions of law above, and pursuant to Sections 5-7(c) and 9-4, as well as Board Regulation R 05.26, the Board will issue a separate document containing an Administrative Order.

Date: May 12, 2022

  
original signature on file  
Stephan W. Fogleman, Esq., Board Chair

  
original signature on file  
Donna M. Davis, Board Vice-Chair

  
original signature on file  
Melodie Hengerer, Esq., Board Member

  
original signature on file  
Arnold Sampson, Board Member