**BEFORE THE CITY OF ATLANTA**
**BOARD OF ETHICS**

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| In the Matter of: | ) | |
| | ) | |
| Ceasar C. Mitchell | ) | |
| | ) | Case No. CO-08-005 |
| Respondent | ) | CO-08-006 |
| | ) | |

## DECISION AND ORDER

Having considered the settlement agreement in this case at its meeting on January 15, 2009, the City of Atlanta Board of Ethics approves the agreement.

So ordered this 15th day of January, 2009.

For the City of Atlanta Board of Ethics

John Lewis, Jr.
Chair, Board of Ethics

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## SETTLEMENT AGREEMENT

This settlement agreement is made between Ginny Looney, the Ethics Officer of the City of Atlanta, and Ceasar C. Mitchell, a city official charged with violating the Code of Ethics.

The parties agree and consent to the following terms to resolve this matter prior to a probable cause determination by the City of Atlanta Board of Ethics. The Board of Ethics is responsible for administering, implementing, and enforcing the Standards of Conduct contained in the Atlanta Municipal Code.

## FINDINGS OF FACT

1. Ceasar C. Mitchell is a city official elected to the Post 1 At-Large Seat on the Atlanta City Council in 2001 and reelected in 2005.

2. In 2004, Mr. Mitchell hired his brother's company, Pendulum Consulting, Inc., (Pendulum) to assist his office with constituent outreach and education.

3. At that time, the Code of Ethics prohibited city officials or employees from participating in contracts involving immediately family members, defined as a spouse, registered domestic partner, or dependent child. See 02-O-0377 (codified at Atlanta, Ga., Code § 2-801, 2-812). It did not prohibit city officials or employees from participating in contracts or hiring a sibling's firm to provide goods and services for a council member's office.

4. In July 2006, the City Council amended the Code of Ethics and changed the definition of "immediate family." As amended, the term now includes the spouse, registered domestic partner, mother, father, sister, brother, and children of an official of employee. See 06-O-1368 (adopted July 17, 2006).

5. Pendulum provided consulting services for special and ongoing council office projects and outreach efforts through March 2008. Specifically, Pendulum produced postcards, newsletters, and other publications; designed and purchased supplies and items distributed to the public; arranged citywide mailings, automated telephone calls, and emails; and planned and executed citywide initiatives and programs. These events included the Public Safety Town Hall Meetings, SAT Prep Day, Aquarium Senior Outing, and transportation for the Inman Park Festival, Pride Parade, Mayor's Senior Ball, and other senior bus trips.

6. Pendulum submitted invoices for its consulting services and expenses on a monthly basis. These invoices show that Pendulum billed Mr. Mitchell's office $15,000 for consulting fees from August 2006 through March 2008.

7. In 2007 and 2008, Mr. Mitchell answered "No" on his City Financial Disclosure Statement to the following question: "[H]as your spouse, registered domestic partner, father, mother, brother, sister, or child derived any benefit from any transaction with the City directly or through a business in which they have a majority or controlling interest?"

8. On October 6, 2008, Mr. Mitchell amended his 2007 and 2008 statements to disclose that his brother's company had a contract with the City Council.

9. There is no evidence that Mr. Mitchell has had any financial interest in Pendulum.

10. Mr. Mitchell has fully cooperated with this investigation.

## CONCLUSIONS OF LAW

11. Mr. Mitchell is a city official subject to the Code of Ethics, found in sections 2-801 to 2-824 in the City's Code of Ordinances.

12. Section 2-812 states that no official or employee shall participate directly or indirectly in any matter pertaining to any contract or subcontract in which the official or employee "knows or with reasonable investigation should know that there is a financial or personal interest possessed by . . . (2) One of more members of the immediate family of the official or employee; (3) A business . . . in which . . . a member of the official's or employee's immediate family, serves as an officer, director, stockholder, creditor, trustee, partner or employee."

13. An official's hiring of a company owned by an immediate family member is a violation of section 2-812 of the Code of Ethics.

14. Mr. Mitchell participated in contracts in which a member of his immediate family had a financial interest when he engaged Pendulum after July 2006 to provide consulting services for citywide initiatives, programs, and projects.

15. The Code of Ethics requires city officials and employees to disclose any "benefit, whatever its nature, of such official's or employee's immediate family derived from transactions with the city or an agency, by employment, contract, or otherwise, either directly or through a business in which such immediate family member has a majority or controlling interest." See § 2-814 (a)(3).

16. Mr. Mitchell failed to disclose on his annual financial disclosure statements in 2007 and 2008 that his brother's company had a contract with his council office.

17. Mr. Mitchell acknowledges that he violated the city's ethical standards by hiring his brother's company to provide consulting services after the Ethics Code changed in July 2006 and by failing to disclose on his annual financial disclosure statements in 2007 and 2008 that his brother's company had a contract with the City. He states that he never intended to violate the Code of Ethics.

18. He agrees to pay the City of Atlanta a civil penalty of $5,000 from personal funds within 10 days of approval of this agreement by the Board.

19. In addition, the Ethics Officer acknowledges that Mr. Mitchell has stated that he wants to take responsibility for his actions, and, accordingly, will pay the City an additional $10,000 by March 1, 2009, in light of the consulting fees paid to Pendulum since July 2006.

20. The parties agree to request that the Board of Ethics address in a formal advisory opinion the following question: Under what conditions may a city official or employee engage the services of a company in which an immediate family member has a financial interest?

21. The parties agree to enter this settlement agreement to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of an evidentiary hearing before the Board to determine Respondent's liability.

22. The Respondent understands and voluntarily waives all procedural rights under the Code of Ordinances, including the determination of probable cause and the right to personally appear before the Board, subpoena witnesses to testify, confront and cross-examine all witnesses, and have the Board hear the matter at any enforcement hearing.

23. The Respondent acknowledges that this agreement is not binding on any other law enforcement or governmental agency and does not preclude the Board of Ethics from cooperating with or assisting any other law enforcement or government agency on this or any other related matter.

24. The Ethics Officer will submit this settlement agreement for consideration by the Board of Ethics at its next regularly scheduled meeting, and the Board must enter an order approving the agreement before it becomes the final decision and order in the case.

25. The parties agree that this agreement shall become null and void in the event that the Board refuses to accept it. The Respondent further agrees that no member of the Board of Ethics or its staff shall be disqualified from participating in any hearing before the Board because of prior consideration of this settlement agreement.

Ceasar C. Mitchell
Respondent

1/14/2009
Date

Ginny Looney
Ethics Officer

1/14/2009
Date