

**STATE OF LOUISIANA  
DIVISION OF ADMINISTRATIVE LAW  
ETHICS ADJUDICATORY BOARD**

**BOARD OF ETHICS**

**DOCKET NO. 2014-11997-ETHICS-B**

**VERSUS**

**DORIS HICKS, ET AL**

**AGENCY TRACKING NO.'S 2014-  
11985, 988, 989**

**RESPONDENTS' MOTION FOR RECONSIDERATION**

**NOW INTO COURT**, through undersigned counsel, comes Doris Hicks, Monique Hicks Cook, Darrin Cook and Iris Ponson, through undersigned Counsel, who submit this Motion for Reconsideration. Attorney for Respondents, Dr. Doris Hicks, Dr. Monique Hicks, Mr. Darrin Cook and Ms. Iris Ponson, express their respect for this Panel's Decision and Order issued June 27, 2018. Respondents and their attorneys were given every opportunity to present their full case on February 22, 2018. However, "Reconsideration" of certain aspects of the Decision is hereby requested under Sections A(1) and A(4) of La. R.S.49 §959 excerpted below (*underline added*):

**La. Revised Statute 49§959**

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the agency, within ten days from the date of its entry. The grounds for such action shall be either that:

(1) The decision or order is clearly contrary to the law and the evidence;

(2) The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

(3) There is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter; or

(4) There is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration, or review, and the order of the agency granting it, shall set forth the grounds which justify such action. Nothing in this Section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a subordinate deciding officer. The hearing shall be confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

Acts 1966, No. 382, §9, eff. July 1, 1967.

## **DARRIN COOK & IRIS PONSON**

THE CUMULATIVE \$5,000 PENALTY ASSESSED AGAINST RESPONDENTS DARRIN COOK AND IRIS PONSON IS, WITH RESPECT, CONTRARY TO THE EVIDENCE

First and foremost, Respondents Darrin Cook, Iris Ponson, and their attorneys are thankful these public servants who helped reopen MLK Charter School after Hurricane Katrina thank Your Honors for not removing them from their jobs. Their attorneys join them in thanking this Panel for the opportunity to

have been heard at the Public Hearing and the work that went into rendering the Decision and Order.

With respect, both Respondents' file this Motion for Reconsideration seeking to remove the \$2,500 Penalty that was assessed against each them.

**Grounds for Reconsideration under La. R.S. 49§959(A)(1)**

As grounds for reconsideration, it is respectfully suggested that the assessment of a \$2,500 penalty against Darrin Cook and Iris Ponson is contrary to the evidence presented by the Respondents regarding extenuating circumstances surrounding their employment. At the Public Hearing their attorneys argued both were innocent third parties who relied upon the Agency Head and Business Manager's belief that it was "OK" to hire them as long as Dr. Hicks did not supervise them. This argument was made at the Public Hearing and again on page 8 of Respondents' Post-Trial Rebuttal Brief:

Dr. Hicks hereby restates her testimony and offer the testimony of Business Manager Judy Collins that she, Dr. Hicks, received verbal permission to hire both Darrin Cook and Iris Ponson from a BOE staff member. This argument was clearly stated in Respondents Original Brief filed March 20, 2018. The Louisiana First Circuit Court of Appeals in *Citywide Testing and Inspection v. Board of Ethics for Elected Officials*, concluded: "[T]he Code is not a criminal statute aimed at the apprehension and punishment of persons guilty of public wrongdoing." The Court also stated the Code must be used to prevent conflicts and the perception of conflicts. (La. App. 1st Cir. 5/9/1997).

While admitting that Darrin Cook was the son-in-law of the Agency Head and assuming, *arguendo*, his job duties at Dr. MLK Charter School were different from his pre-Katrina work with the Orleans Parish School Board, the Board of

Ethic offered no evidence to counter the fact that the Friends of King School, Inc. had verbal permission to hire Darrin Cook and Iris Ponson. Consequently, based on “Evidence” as defined by *Blacks Law Dictionary*<sup>1</sup> and **La. R.S. 49**

**§956, excerpted below:**

**Rules of evidence; official notice; oaths and affirmations; subpoenas; depositions and discovery; and confidential privileged information**

In adjudication proceedings:

(1) Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. Agencies may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

As to this request for reconsideration under La. R.S. 49§959(A)(4), the “other good ground for further consideration of the issues and the evidence in the public interest”, both Darrin Cook and Iris Ponson have suffered public

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<sup>1</sup> Evidence is 'any species of proof, or probative matter, legally presented at the trial ..., by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.'

humiliation based on prolonged and ongoing media reports stemming from the October 2014 nepotism charges. After eight years of employment, they had to face the negative reports. While they are thankful for their jobs, a \$2,500 penalty says to the public “they broke the law.”

In summary, the \$2,500 penalty assessed against Darrin Cook and Iris Ponson is contrary to the evidence. Additionally, is not in the public interest to punish hardworking public employees if, in good faith, their employer told them the state had approved their hiring. Respondents Darrin Cook and Iris Ponson ask this Honorable Panel to remove the penalty assessed against them.

### **DR. MONIQUE COOK**

#### **Grounds for Reconsideration**

A. THE DECISION IS CONTRARY TO LAW BECAUSE IT CONFLATES PARTIES WHO ARE NOT EXEMPTED UNDER LA. R.S. 42:1113(D)(1)(a)(ii) WITH CONTRACTS WHICH ARE EXEMPTED UNDER LA. R.S. 42:1113(D)(2)(a).

This request for reconsideration on part of Dr. Monique Hicks reflect the complexity of this matter. This writer assumes a good faith was made in identifying the parties who are exempted from contracting with a public agency with those select contracts which are exempted by statute. Before explaining getting into the details, it is important to note that in Respondents Post-Trial Brief and the Decision of “Panel B” in *In the Matter of Mary Irvin*, Docket No. 2008-10489- Ethics-A, Div. of Administrative Law, March 11, 2009:

Likewise, LSA-R.S. 42:1113(B) addresses the state contracting with educators in elementary and secondary schools and exempts such

contracts from the application of LSA-R.S. 42:1113(A)'s general requirements regarding prohibited transactions.

But the Board would have the Panel conclude that it was a violation for Respondent to receive supplemental compensation for those same services because her husband is an elected member of a governmental authority that tangentially provides some additional compensation, but that plays no part in the actual hiring that triggers any payment.

The Decision is attached as "Respondent Exhibit 2". Monique Cook's position is correctly stated on page 16 of the Decision and Order.

Monique Cook argues that the contract falls within an exception contained in La. R.S. 42:1113(D)(2)(a), allowing for contracts for employment in a professional educational capacity in or for professional services for an elementary or secondary school or other educational institution.

However, on page 17 it is stated that "Ms. Cook is not exempted by the provisions of La. R.S. 42:1113(D) because she does not hold any of the positions exempted by statute." In fact, "the parties identified in La. R.S. 42:1113(D)(1)(a)(ii)" are not exempted by statute. The previous section, D.(1)(a)(i), states the following:

D.(1)(a)(i) No person identified in Item (ii) of this Subparagraph or the spouse of such person nor any legal entity of a person shall enter into any contract with state government.

(ii) The provisions of this Subparagraph and other provisions which reference this Item shall apply to the following persons: ...

In other words, the Decision conflates the 33 parties "not exempted by statute" under "D-1" with less than 10 parties in Section D-2 "to which the exception does apply.

**To be clear**, the list below actually names parties identified in La. R.S. 42:1113 (D)(1)(a)(ii) who are not exempted by statute.

**FOOTNOTE 13** (Pages 16-17 of the Decision)

**Please note:** The opening sentence in the footnote clearly identifies the misstate. The positions listed are prohibited under the law and not exempted, rather prohibited from contracting with a public agency.

The parties to which the exception contained in La. R.S. 42:1113(D)(2)(a) applies are the following: (1) a legislator and any person who has been certified by the secretary of state as elected to the legislature; (2) the governor and each person holding statewide elected office; (3) the secretary, deputy secretary, undersecretary, and each assistant secretary, or the equivalent position of the Department of Economic Development, the Department of Culture, Recreation and Tourism, the Department of Environmental Quality, the Louisiana Department of Health, the Louisiana Workforce Commission, the Department of Natural Resources, the Department of Public Safety and Corrections and any warden or assistant warden of a state penal institution, the Department of Revenue, the Department of Children and Family Services, the Department of Transportation and Development, the Department of Wildlife and Fisheries, and the Department of Veterans Affairs; (4) the executive secretary of the Public Service Commission; (5) the director of state civil service; (6) each member of the State Board of Elementary and Secondary Education, (7) the commissioner of higher education and the president of each public postsecondary education system; (8) each member of the Board of Ethics and the ethics administrator; (9) the chief of staff to the governor; (10) the commissioner of the division of administration; (11) the executive counsel to the governor; (12) the legislative director for the governor; (13) the deputy chief of staff to the governor; (14) the director of policy for the governor; (15) the assistant commissioner for management and finance; (16) the deputy commissioner, the confidential assistant, and each assistant commissioner of the Department of Agriculture and Forestry; (17) the superintendent of education, the deputy superintendent of education, the deputy superintendent for management and finance, and each assistant superintendent of the Department of Education; (18) the chief deputy commissioner, each deputy commissioner, the assistant commissioner, and the executive counsel of the Department of Insurance; (19) the first assistant attorney general of the Department of Justice; (20) the deputy secretary of the Department of State, the deputy secretary for the office of the Uniform Commercial Code, and the deputy secretary for the office of GeauxBiz or his

successor; and (21) each deputy state treasurer and each assistant state treasurer of the Department of the Treasury.

To repeat, Page 16 of the Decision correctly states the position of Respondent Monique Cook:

Monique Cook argues that the contract falls within an exception contained in La. R.S. 42:1113(D)(2)(a), allowing for contracts for employment in a professional educational capacity in or for professional services for an elementary or secondary school or other educational institution.

The exceptions under La. R.S. 42:1113(D)(2)(a) are excerpted below.

(2) The provisions of this Subsection shall not prohibit the following:

(a) Contracts for employment in a professional educational capacity in or for professional services for an elementary or secondary school or other educational institution.

(b) A provider agreement entered into with the Department of Health and Hospitals under the state medical assistance program or the early steps program, a contract with an early steps program provider, or a provider contract entered into with any plan providing Medicaid services to Medicaid recipients.

(c) Contracts of employment of a physician or other licensed health care professional with the state or the charity hospitals of the state or the Department of Health and Hospitals.

**B. THE PENALTY OF \$8, 921.25 AND FORFEITURE OF PAYMENTS TOTALING \$17,842.50 IS TOO HARSH GIVEN THE RESPONDENT'S GOOD FAITH RELIANCE ON PANEL B'S DECISION IN THE MATTER OF MARY IRVIN AND A GOOD FAITH READING OF LA. R.S. 42:1113(D)(2)(a).**

For the record, the June 27, 2018 Decision did not address Respondents argument in the Post-Trial Brief and Rebuttal regarding Panel B's Decision and Order in the Mary Irvin matter.



Monique Cook's incorrect inclusion on the list of prohibited parties to contract with a public agency versus educators and professional service contracts further mitigate against a harsh penalty and forfeiture. Hopefully, this Honorable Panel will reconsider allowed exemptions under applicable law as discussed herein and decide that Monique Cook should not be assessed a penalty or forfeit payments.

**DR. DORIS HICKS**

**Grounds for Reconsideration**

A. RESPONDENT DR. DORIS HICKS RECONSIDERATION BASED ON THE PREVIOUS ARGUMENT THAT MONIQUE COOK'S PROFESSIONAL SERVICES CONTRACT WAS EXEMPTED UNDER STATE LAW AND THE SIGNING OF CHECKS FOR HER FELL WITHIN THAT EXCEPTION. HENCE, THERE WAS NO VIOLATION OF LA. R.S. 42:1112(B)(1)

Without wasting the time of this Honorable Panel, Dr. Doris Hicks also relies on the Decision of "Panel B" in *In the Matter of Mary Irvin*, Docket No. 2008-10489- Ethics-A, Div. of Administrative Law, March 11, 2009:

Likewise, LSA-R.S. 42:1113(B) addresses the state contracting with educators in elementary and secondary schools and exempts such contracts from the application of LSA-R.S. 42:1113(A)'s general requirements regarding prohibited transactions.

Should this Panel find that Monique Cook did not violate La. R.S. 42:1113(A), by entering into a professional services contract with Friends of King School, there can be not violation on part of Dr. Doris Hicks for signing eight checks when the School Board's Chairperson was ill.

B. DARRIN COOK AND IRIS PONSON WERE HIRED BY FRIENDS OF KING SCHOOL'S BOARD OF DIRECTORS THE SAME DAY DR. DORIS WAS HIRED, SEPTEMBER 18, 2006, AS STATED IN STIPULATIONS 6, 7 AND 9. THEREFORE SHE SHOULD NOT BE CHARGED WITH VIOLATING LA. R.S. 42:1119.

C. DR. HICKS RESPECTFULLY SUGGESTS THAT GIVEN THE UNIQUE FACTS INVOLVING DARRIN COOK, IRIS PONSON AND MONIQUE COOK, HER REMOVAL AS CHIEF EDUCATION OFFICER AND PRINCIPAL ARE TOO EXTREME. THE BOARD OF ETHICS COULD NOT PRESENT EVIDENCE TO REFUTE THE VERBAL APPROVAL TO HIRE DARRIN COOK AND IRIS PONSON. FURTHER, THE PROFESSIONAL SERVICES CONTRACT SIGNED BY MONIQUE COOK WAS CONSISTENT WITH THE 2011 DECISION IN THE MATTER OF MARY IRVIN.

Should the Panel not amend its Decision regarding Dr. Monique Cook and Dr. Doris Hicks' signing of eight checks, she asks this Honorable Panel to allow her to continue active duty as the school's Principal and CEO until the end of the 2018 calendar year. Finally, Respondents and their attorneys again thank this Honorable Panel for the time and consideration devoted to this very important matter.

Respectfully,

**s/Willie Zanders**

Willie M. Zanders, Sr.

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**CERTIFICATE OF SERVICE**

This will certify that a copy of this motion was filed with the Division of Administrative Law on July 8, 2018 with a copy to Attorneys for the the Board of Ethics.

Willie M. Zanders

## **Respondent Exhibit- 2**

### **The Decision and Order in the Matter of Mary Irvin, Docket No. 2008-10489- Ethics-A, Div. of Administrative Law, March 11, 2009**

Respondent Mary Irvin was charged with violating La. R.S. 42:1113 (A) in connection with the receipt of a \$1,000 stipend from the Town of Vivian where her husband served on the Board of Aldermen. She was a certified teacher providing professional services at North Caddo High School.

In deciding the matter in favor of the Respondent, Honorable Administrative Law Judges on “Panel B” stated the following:

“When applying the Code of Governmental Ethics, to give meaning to the legislation, the Panel must consider that the legislature indicated its intent to give special consideration to transactions involving the hiring and compensation of certified classroom teachers. For example, under LSA-R. S. 42:1119(B)(2), which addressed the hiring and compensation of local teachers, it would not be an ethics violation for Respondent to receive compensation for her services as a certified classroom teacher even if her husband were a member of the school board that directly hired her and compensated her to serve as a certified classroom teacher.

Likewise, LSA-R.S. 42:1113(B) addresses the state contracting with educators in elementary and secondary schools and exempts such contracts from the application of LSA-R.S. 42:1113(A)’s general requirements regarding prohibited transactions.

But the Board would have the Panel conclude that it was a violation for Respondent to receive supplemental compensation for those same services because her husband is an elected member of a governmental authority that tangentially provides some additional compensation, but that plays no part in the actual hiring that triggers any payment.

The Code generally addresses prohibited transactions with governmental entities in LSA-R.S. 42:1113(A). In light of the special consideration the Code gives to transactions involving the hiring and compensation of teachers, however, the Panel cannot conclude that La. R.S. 42:1113 (A) is clearly

intended to apply to transactions involving the hiring and compensation of certified classroom teachers. When interpreting the statute, the Panel interprets the Panel has a duty to adopt a construction that harmonizes and reconciles the statute at issue with other provisions in the Code dealing with the same subject matter. Under the specific circumstances of this case, we conclude that applying that section of the Code of Governmental Ethics to this transaction involving compensation to classroom teachers for employment in that capacity and finding a violation would lead to absurd results and frustrate the intent of the legislation. “

#### ORDER

For the foregoing reasons:

IT IS ORDERED that the charges against Respondent be dismissed. Rendered and signed this 11th day of March 2009, in Baton Rouge, Louisiana