

STATE OF NEW YORK  
LEGISLATIVE ETHICS COMMISSION

---

IN THE MATTER OF  
HIRAM MONSERRATE,  
FORMER STATE OF NEW YORK SENATOR

**NOTICE OF  
REASONABLE CAUSE**

---

**FINDING OF REASONABLE CAUSE FOR VIOLATION OF PUBLIC  
OFFICERS LAW §73(5) PROHIBITING UNLAWFUL GIFTS**

The Legislative Ethics Commission (“Commission”) hereby finds that there is reasonable cause to believe that (1) while Senator Hiram Monserrate was in office he personally solicited contributions to the Hiram Monserrate Legal Defense Fund (“HMLDF”) that was created and used to pay for his legal defense of a criminal matter unrelated to his office;<sup>1</sup> and (2) these contributions were obtained, in part, from individuals and entities that had business interests in Senator Monserrate’s work as a Member of the New York State Senate. Most significant is our finding that Senator Monserrate directly solicited registered lobbyists and clients of lobbyists for contributions to the HMLDF. It is in this area that the Commission bases its finding that there is reasonable cause to believe that a breach of the ethics laws, specifically Public Officers Law §73(5) prohibiting illegal gifts, has occurred.

**JURISDICTION OF THE COMMISSION**

The Legislative Ethics Commission was created by the Public Employees Ethics Reform Act of 2007 (Chap. 14, L. 2007) which was signed into law on March 26, 2007. This legislation eliminated the former Legislative Ethics Committee and established Legislative Ethics Commission comprised of both members of the legislature and non-legislative members and revised the provisions of the Public Officers Law under the Commission's jurisdiction.

The Commission is authorized by Legislative Law §80(7)(1) to conduct investigations and carry out such proceedings as are authorized and necessary to enforce the provisions of Public Officers Law §§73, 73-a or 74. Pursuant to this power and duty, the Commission may administer oaths or affirmations, subpoena witnesses, compel their attendance and require the production of any book or record which it may deem relevant and material to such investigation. Pursuant to §80(10)(c) of the Legislative Law, the jurisdiction of the Commission continues notwithstanding that a member of the legislature separates from state service provided that the individual is notified of his or her alleged violation of the law within one year of his or her separation from state service.

---

<sup>1</sup> Senator Monserrate was removed from office on February 9, 2010.

In cases where the Commission finds there is reasonable cause to believe that a violation of Public Officers Law §§73, 73-a or §74 occurred, the Commission will conduct an adjudicatory hearing where the respondent has the right to be heard. The Commission is empowered to assess a civil penalty or, in lieu thereof, refer the violation to an appropriate prosecutor, depending upon the facts and circumstances. Legislative Law §80(10)(b) provides that if the Commission determines that there is reasonable cause to believe that a violation has occurred, in the case of a senator, it shall send a notice of reasonable cause: (i) to the reporting person; (ii) to the complainant if any; and (3) in the case of a senator, to the Temporary President of the Senate.

### **THE COMPLAINT AND APPLICABLE LAW**

The Commission received a sworn complaint from Citizens Union of the City of New York, Common Cause New York, League of Women Voters/N.Y.S., and New York Public Interest Research Group, dated November 6, 2009, seeking an inquiry into Senator Monserrate's use of a legal defense fund to raise money to pay legal bills associated with the defense of a criminal action in Queens County where he was charged with Assault in the Second Degree in a domestic matter involving his girlfriend.<sup>2</sup> The complaint suggested that depending on the relationship between contributors to the legal defense fund and Senator Monserrate, contributions of this nature could run afoul of the gift prohibition statute set forth at Public Officers Law §73(5), which states in pertinent part, as follows:

No statewide elected official, state officer or employee, individual whose name has been submitted by the governor to the senate for confirmation to become a state officer or employee, member of the legislature or legislative employee shall, directly or indirectly:

(a) solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances (emphasis added).

(b) solicit, accept or receive any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law

---

<sup>2</sup> Senator Monserrate was convicted of Assault in the Third Degree after trial on October 15, 2009.

unless under the circumstances it is not reasonable to infer that the gift was intended to influence him (emphasis added) ;

(c) permit the solicitation, acceptance, or receipt of any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law to a third party including a charitable organization, on such official's designation or recommendation or on his or her behalf, under circumstances where it is reasonable to infer that the gift was intended to influence him.

Legislative Law §1-c, subdivision (j) states that:

The term "gift" shall mean anything of more than nominal value given to a public official in any form including, but not limited to money, service, loan, travel, lodging, means, refreshments, entertainment, discount, forbearance, or promise, having a monetary value (emphasis added).<sup>3</sup>

### **THE COMMISSION INVESTIGATION**

Upon receiving the complaint, the Commission made a preliminary determination of adequate jurisdiction and after an initial factual review provided Mr. Monserrate notice of the Commission's inquiry pursuant to Legislative Law §80(10)(a). Mr. Monserrate was given 15 days to respond to the Commission's notice as provided by statute, however, the Commission received no return communication from Mr. Monserrate or his legal representative.

Subsequently, the Commission proceeded with the investigation, and also appointed a Special Counsel to provide additional assistance. In the course of its investigation, the Commission utilized its subpoena power and issued subpoenas to financial institutions which were in possession of relevant and material records pertaining to the allegations under review by the Commission. The Commission obtained the underlying documents creating the entity which became known as the Hiram Monserrate Legal Defense Fund ("HMLDF"), as well as the initial records used to establish the bank account for the HMLDF, and all incoming and outgoing transactions involving the bank account.

The Hiram Monserrate Legal Defense Fund Account was opened at the Empire State Branch of Key Bank in Albany, New York, while utilizing a street address in Queens County, New York. According to the underlying documents, the Hiram Monserrate Legal Defense Fund is for the sole benefit of the member. Additionally, although the defense fund was established as "a trust," according to the trust document, the grantee is Mr. Monserrate and it is a Revocable Living Trust. Further, the designated beneficiary, in the event of Mr. Monserrate's death, is his son.

---

<sup>3</sup> Several exceptions are enumerated in the statute; however, they do not pertain to legal defense funds.

The Commission also notes that contrary to public statements made by associates of Mr. Monserrate, he never sought guidance or approval from this Commission regarding the Legal Defense Fund.

The Commission's review of the records determined that 84 contributions were made by 70 individuals or entities. The value of the contributions to the LDF ranged from \$5.00 to \$15,000 and the total contributions amounted to \$128,945.

Thereafter, the Commission's Special Counsel sent correspondence to all individuals and entities that had made contributions to the LDF. The letters led to three distinct results, (1) no response from the recipient; (2) letters returned unclaimed; and (3) telephone calls to the Special Counsel.

The Special Counsel conducted interviews with a number of contributors to the HMLDF. As appropriate the Commission obtained sworn statements from contributors to the defense fund, confirming the fact that Senator Monserrate was fully engaged in the solicitation of contributions to his HMLDF.

Contributions of this nature obtained from sources that include individuals and entities that lobbied the Senate or had business interests in Mr. Monserrate's work as a Member of the Senate at the relevant time violate Public Officers Law. Most significant in light of Public Officers Law §73(5) is our finding that on or about September 2009 Senator Monserrate directly solicited registered lobbyists or clients of lobbyists or those otherwise interested in Mr. Monserrate's position as a State Senator for contributions to the HMLDF. The Commission also found that individuals with interests in Senator Monserrate's work as a Member of the Senate acted on Senator Monserrate's behalf and solicited these individuals and entities for contributions. As a result of Mr. Monserrate's conduct, the Commission finds that there is reasonable cause to believe that a breach of the ethics laws, specifically Public Officers Law §73(5) prohibiting illegal gifts, has occurred.

Pursuant to Legislative Law §80(11) for a violation of Public Officers Law §73 (other than for conduct which constitutes a violation of subdivision twelve, fourteen or fifteen of §73) the Commission may either impose a civil penalty or, in lieu of imposing a civil penalty, refer a violation to the appropriate prosecutor. Such violation or violations shall be punishable as a class A misdemeanor.

### **CONCLUSION**

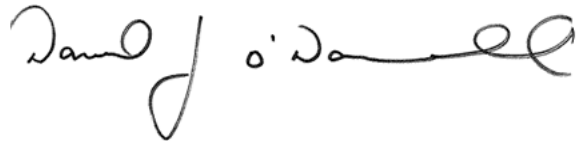
Based upon a review of all materials, proceedings and findings before the Commission to date, the Legislative Ethics Commission has found reasonable cause to believe that former Senator Monserrate violated Public Officers Law §73(5) .

By virtue of the fact that this violation, as alleged, occurred while Mr. Monserrate held the office of State Senator, this Notice of Reasonable Cause is also transmitted to the Temporary President of the Senate as required by Legislative Law §80(10)(b).

The Commission also notes that Mr. Monserrate was duly notified of his opportunity to be heard prior to the Commission's vote to issue a Notice of Reasonable Cause, however he declined to exercise that opportunity.

Notice of an Adjudicatory Hearing, at which former Senator Monserrate has the right to be heard, will be sent to Mr. Monserrate within fourteen (14) days of this notice.

Dated: October 19, 2010



---

Senator Suzi Oppenheimer  
Co-Chair

---

Assemblymember Daniel O'Donnell  
Co-Chair

Legislative Ethics Commission

All Concur:

Senator Andrew J. Lanza  
Assemblymember Thomas O'Mara  
Peter V. Coffey, Esq.  
Ellen B. Holtzman, Esq.  
John J. Nigro