

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 IN THE MATTER OF:)
 Complaint 2010-010)
 Zacharius Grate,)
 Respondent.)
 State Ethics Commission,)
 Complainant.)
 _____)

BEFORE THE STATE ETHICS COMMISSION

CONSENT ORDER

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This matter comes before the State Ethics Commission by virtue of a complaint filed by the Commission on July 29, 2009. The complaint against the Respondent, Zacharius Grate, was considered by the Commission on March 17, 2010 and probable cause found to warrant an evidentiary hearing. Prior to the call of the case, Respondent agreed to entry of the following statement of facts, conclusions of law, discussion, admission, and disposition in this matter with the following charges considered:

COUNT ONE
USE OF PUBLIC OFFICE FOR PERSONAL FINANCIAL GAIN
SECTION 8-13-700(A), S. C. CODE ANNOTATED, 1976, AS AMENDED

The Respondent, Zacharius Grate, a Literary Specialist for Adult Education with the Georgetown County School District, did in Georgetown County during the period September, 2005 through September 2009, unlawfully violate Section 8-13-700(A), in that Respondent used his position as a Literary Specialist for Adult Education with the Georgetown County School District to conduct his off-duty business, Occupational Outlook Center, in a Georgetown County School District building and used Georgetown County School District employees to assist him in operating Occupational Outlook Center.

COUNT TWO
RECEIVING MONEY FOR ADVICE OR ASSISTANCE
SECTION 8-13-720, S. C. CODE ANNOTATED, 1976, AS AMENDED

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The Respondent, Zacharius Grate, a Literacy Specialist for Adult Education with the Georgetown County School District, did in Georgetown County during the period September, 2005 through September 2009, unlawfully violate Section 8-13-720, in that Respondent solicited and received money from the Occupational Outlook Center in addition to that received from the Georgetown County School District in his official capacity for literacy services given in the course of his employment with the Georgetown County School District.

STATEMENT OF FACTS

1. The Respondent, Zacharius Grate, was a public employee of the Georgetown County School District (hereinafter "GCSD").
2. On August 11, 2009 the following interviews were conducted by Commission Investigator Donald Lundgren at GCSD offices:
 - a. Lisa Farmer, former GCSD employee from April 2002 to December 2008, advised she was a workplace instructor teaching literacy while employed at GCSD. She worked directly under the supervision of Respondent who was the Literacy Coordinator. She worked every day either at the Howard Adult Literacy headquarters or the Choppee location. She stated she worked off duty as an instructor for Occupation Outlook Center (hereinafter "OOC") at the Choppee center. OOC leased an old school building at Choppee. She stated that while working for OOC she certified instructors and helped set up vocational training courses. OOC was operated by Respondent as a non-profit enterprise. She understood that Respondent had a collaborative agreement with GCSD so he could use its buildings for OOC vocational training. Ms. Farmer stated she would often work eight hours for GCSD during the normal work day and then work until eight o'clock at night for OOC. She also worked some Saturdays for OOC. For her work at OOC she was paid \$225.00 a week by an OOC check signed by Respondent. She stated,

upon Respondent's instruction, she used GCSD equipment such as supplies, copier and computer in the course of her OOC work. Ms. Farmer stated she did not work for Occupation Outlook Driving School (hereinafter "OODS"). She does know that OODS was a business set up by Respondent. As far as she knew Respondent was the only instructor for OODS. Respondent instructed the employees under his supervision in the Adult Literacy office that they would be required to register students for OOC and OODS who appeared at Howard High School. She stated she had a problem with Respondent when she refused to register OODS students and accept their course fees. She advised that money was collected at the Adult Literacy office for OOC and OODS by various employees. The employees would write out a receipt and put the cash or check in a bank bag which was then locked in a cabinet in the office. The money collected for OOC and OODS registrations would be picked up by Respondent. She stated she did administer tests and play videos at Howard for OODS as did other employees.

b. Lynn Kirtley, former GCSD Director of Adult and Community Education, advised he retired from this position in June 2009. His office used non-paid volunteers from the community and part-time district employees to provide adult literacy training. His staff, working varied schedules, was available from 8:00 AM to 8:30 PM. Respondent worked under Kirtley's supervision as Literacy Coordinator. Respondent was responsible for overseeing adult literacy and community classes. Respondent was a full time district employee. Kirtley advised that OOC was created sometime around 2005. It was set up as a non-profit organization by Respondent. He knew that OOC was using an old school building in the Choppee area that was now owned by GCSD. Kirtley stated OOC had some kind of an agreement with GCSD which allowed OOC to use GSCD property. Kirtley did not know the details in this agreement. Kirtley stated he knew that OOC was collecting money for OOC courses being offered. He does not know where the money collected was deposited. He stated he knew his office employees were using their time

and equipment to register students for OOC courses. Kirtley stated that Respondent approached him with the idea of a need for a driver education course to be conducted during the evening hours. Kirtley stated he knew that Respondent then appeared at Howard with a car having signs on the doors advertising the driving school. Kirtley told Respondent that the driving instruction could not interfere with his full time job. Kirtley stated he knew that some driver education students appeared at Howard as early as 2:30 PM and he knew that Respondent was taking these persons out in the car. Kirtley stated his difficulty in trying to supervise Respondent because he would often disappear during the day.

c. Patty Avant, GCSD Administrative Bookkeeper, advised she has been employed with the School District since 1999. She works at the Adult Education Center. She stated she does not report to Respondent; however, she would provide Respondent with his budget. She stated she knew that OOC operated out of an old school building in Choppee under Respondent's direction. Respondent did use school owned equipment in the management of OOC and a driver's education class he operated. She stated that the monies collected for OOC and drivers education classes were not deposited into any GCSD accounts.

d. Donna Washington, GCSD full time employee for 17 years, advised she worked at the Data Entry Center where she reported statistics to the South Carolina State Department of Education. As part of her duties she would enter data from the Howard Adult Education Center which included student data from OOC classes. She reported that she was aware that employees at the Center were writing out receipts for money being collected for OOC courses.

e. Marcella White, GCSD part time employee, advised that she worked under Respondent's supervision for about two years. She performed administrative functions and also was an instructor for OOC classes. Her normal work hours were 8 AM to 4 PM. During these hours she registered students

for OOC and OODS courses and accepted payments for those courses. She stated she and other employees accepted cash or check payments, wrote out receipts and placed the money in bank bags kept in a locked cabinet in the Howard office. Respondent would pick up the money in the bank bags. OOC and OODS had separate bank bags and receipt books. She knows that OOC classes were presented at Howard, the learning center at Choppee and at school district headquarters. She stated she taught some computer classes for Respondent. For her after hours teaching work she was paid by OOC check signed by Respondent. The payment would vary with the hours she worked. She would receive up to \$250 a week.

f. Modestine Ford, part time GCSD employec, advised she worked split shifts under the supervision of Respondent. Respondent would tell her the hours she was to work. In addition to work in the Howard office she was instructed by Respondent to teach computer classes during evening hours. She performed some of her teaching duties at the Choppee location. She belicved the computer classes at Chopee were all under the Adult Literacy operation. She did not receive any additional compensation from Respondent for her teaching assignments for OOC. When she was working at the Howard office she would register students for OOC and OODS courses and accept payments for the classes. Ms. Ford stated that Respondent picked up the bags containing class registration money.

g. Kaiwanda Armstead, part time GCSD employee since March 2008, advised she worked 35 hours per week under the supervision of Respondent. She performed administrative duties in the Howard office and was an instructor in computers and Work Keys. She stated she never worked at Choppee and never received any extra pay for her instructor duties. She advised she understood that OOC was a non-profit enterprise that had an agreement with GCSD so that district class rooms could be used by OOC. Her office administrative duties included assisting in the preparation of information and tests for OOC.

classes, registering students and accepting payments for OOC and OODS classes. She stated she also helped the driving school by presenting a video to get students started. She stated Respondent was the only driving school instructor. She advised she has observed OODS students coming to Howard to receive instruction around 1:00 PM on teacher work days. She advised that money collected for OOC and OODS courses was placed in bags and put in a locked cabinet. She stated everyone in her office had a key for the locked cabinet.

h. Lashawna Armstrong, former part time employee at the Adult Literacy Center, stated she worked under Respondent's supervision from January 2009 to June 30, 2009. She advised that she was a literacy and computer instructor. She did not receive any extra pay for her work from Respondent. She stated that registration for OOC classes occurred at Adult Learning Center. She received money from class registrants and placed the money or checks in a bank bag that was kept in a cabinet in her work location. She advised that there was a separate bank bag and receipt book for OODS. She stated that both OOC and OODS used the equipment and supplies at Howard Learning Center to facilitate both enterprises.

2. On September 10, 2009 the following interview was conducted by Commission Investigator Donald Lundgren:

Elizabeth Fryar, Executive Director, Waccamaw Economic Opportunity Council, Inc. (EOC), a non-profit organization serving Horry, Georgetown and Williamsburg Counties advised that Respondent has been serving on the Board of Directors of EOC since February 2002. Respondent has been Chairman of the Board since November 2006. As a board member Respondent does not receive any compensation; however, he does receive reimbursement of expenses such as mileage upon submission of a voucher. As chairman of EOC, Respondent signs EOC checks. There are occasions where Respondent appears at

various meetings concerning EOC during normal working hours. She stated she has seen Respondent driving what appeared to be driver education vehicles. Ms. Fryar stated EOC does make payments by check to OOC for EOC clients desiring to register for classes offered by OOC. Ms. Fryar furnished copies of EOC mileage reimbursement paid to Respondent e from September 2002 to present, copies of date, location and attendance at EOC meetings from September 2002 to present along with sign in sheets for various EOC meetings.

3. On October 15, 2009 the following interview was conducted by Commission Investigator Donald Lundgren:

Dr. Randall Dozier, GCSD Superintendent, advised that Respondent was suspended with pay in August 2009 pending the outcome of an investigation into Respondent's involvement in ALC, OOC and OODS. Dr. Dozier was aware that Respondent had set up OOC and that he was using a county owned former school building to conduct OOC classes. He stated that he was not aware that monies were being collected for OOC classes. Dr. Dozier stated that Respondent did teach driver education in the district in 2003-2004. Respondent told Dozier that the driving school he was conducting out of the Adult Learning Center was part of OOC and that he was not receiving any money for managing the driving school. Dr. Dozier advised that he received several complaints from OOC attendees about the quality of the classes being offered. Dr. Dozier stated that ALC received a federal grant in the amount of approximately \$40,000. ALC was disbursing this grant money to OOC for classes and to Respondent as the administrator of the grant.

4. On October 21, 2009 the following interview was conducted by Commission Investigator Donald Lundgren:

Leigh Boan, Chairperson of the Board of Directors, Adult Literacy Council of Georgetown County

(hereinafter "ALC"), was interviewed at the Pawleys Island office of McNair Law Firm where she is employed as an attorney. She stated she has been on the Board of ALC since August or September 2006. She has been Chairperson since January 2007. She advised that the idea of an adult literacy council separate from the GCSD started around 2003. The early concept was to coordinate with the school district to use district classrooms. She understands that Respondent was named by the district to help coordinate district and ALC objectives. Respondent serves on the ALC Board and also serves as the ALC Director. She stated the major sources of funding for operating ALC are through grants and an annual golf tournament. ALC maintains a separate bank account for the golf event and another account for grant money. She advised that Respondent does not receive a salary for his service as director and does not receive reimbursement for any expenses. She stated that Respondent was the person who wrote the grant that was received from South Carolina Department of Commerce. She stated that the ALC Board was aware of the fact that Respondent was paid a fee for administering the Commerce grant. The ALC Board was also aware that grant money was being disbursed to OOC. The ALC Board did not know that Respondent was receiving any monies from OOC.

5. Pursuant to subpoenas issued by the State Ethics Commission, the following documents were obtained from Wachovia Bank: bank statements, signature cards, checks and deposits for the period August 2005 to August 2009 for bank accounts identified as OOC Grant, OOC, ALC and ALC grant account.

6. Pursuant to a subpoena issued by the State Ethics Commission, the following documents were obtained from Georgetown Kraft Credit Union: bank statements, checks and deposits for the period of September 2005 to September 2009 for an account identified as OODS. Also obtained were bank statements for an account identified as Respondent's.

8. A review of the minutes of meetings of Board members of OOC revealed that on June 30, 2009 the meeting minutes state "A motion was made to ratify our resolution to where the director has the authority to write checks and negotiate contracts for the OOC". In a January 13, 2005 meeting of the OOC Board under Executive Director's Desk and Mission Statement the following statement is made: "The OOC began holding its first set of classes April 2004. Occupational Classes are continuing to be held. The classes are self-sufficient. The tuition is used to pay for books, instructor's salary, secretary, Exe. Director and books."

9. A review of the checks issued from the OOC checking account at Wachovia Bank from July 28, 2005 to August 14, 2009 disclosed that Respondent signed checks payable to himself in various amounts from \$150.00 to \$950.00 totaling to \$73,358.52.

10. A review of checks paid out from the ALC Grant Account at Wachovia Bank from April 2008 to January 2009 disclosed Respondent received \$7650.50 and that OOC received \$30,390.00.

CONCLUSIONS OF LAW

Based upon the Statement of Facts, the Commission concludes, as a matter of law:

1. During all times relevant, the Respondent, Zacharius Grate, was a public employee, as defined by S.C. Code Ann. § 8-13-100(27)(Supp. 2008).

2. The State Ethics Commission has personal and subject matter jurisdiction.

3. Section 8-13-700(A) prohibits a public employee from using his official office to obtain an economic interest for a business with which he is associated.

4. Section 8-13-100(4) defines 'Business with which he is associated' as a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated

agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

5. Section 8-13-720 prohibits a public employee from receiving money in addition to that received in his official capacity for assistance given in the course of his public employment.

DISCUSSION: RESPONSE OF RESPONDENT

STATEMENT OF FACTS:

RESPONSE TO: Interview of Lisa Farmer

Lisa Farmer was a paid employee by the OOC as well as the HAC Literacy Program. She also served as the OOC Board Secretary. She was the Literacy Office Manager also. However the equipments that were utilized by staff as mentioned such as supplies, copiers, and computers much of this was purchased by grants obtained by the literacy department as well as monies received from an annual golf tournament put on by the Adult Literacy staff as well as the Board of Directors. It was always the understanding that supplies and equipments used would be reimbursed through funds that the center received for students coming through the OOC and Adult Literacy Council classes. This was known to everyone, the director, and other administrative personnel. Lisa Farmer was also the grant writer for the ALC and the OOC and the ALC paid for training for this purpose. She wrote all of the grants that came through Adult Literacy Program. Lisa Farmer mentioned that I had a problem when she did not register an OODS student when in fact she had a problem with me after she was written up following an altercation with another staff member. She then became very disgruntle and insubordinate.

RESPONSE TO: Interview of Lynn Kirtley

Lynn Kirtley the GCSD Adult Education Director, encouraged and gave permission for all activities because of the reimbursement that was being received for students that came through the program and counted by the Adult Center. Approximately 700 students per year would go through the OOC and the ALC at roughly \$250 per student for state reimbursement funds paid to the District. I was employed with the Adult Center for ten years and received perfect annual evaluations. Students that arrived to the HAC site early would sit in a class until my dismissal time which was at 3:30 pm any other time would be during my comp-time. All activities had to be approved by the director or upper administration. Verification can be done through the LitPro system. Mr. Kirtley also submitted a letter of recommendation to the District prior to his retirement for me to take over as Director of the Adult Center.

RESPONSE TO: Interview of Patty Avant

Patty Avant, the GCSD Howard Adult Center's Bookkeeper, was aware of all activities that took place with the OOC and ALC at the HAC. She collected monies from both programs to be placed in the Celebration of Literacy Account, which was obtained through grants that were written for these programs. These funds purchased all of the equipment along with materials for program operation. She is aware of \$100's of \$1000's of dollars placed in the District Account along with funds generated through state reimbursement. The District did not purchase any equipment in the Literacy area; this was a self supported program. OOC and ALC funding were placed in District Accounts for students and WorkKeys testing. A FOIA request has been submitted for the records on the Celebration of Literacy Account which could show that ALC and OOC monies were intermingled in District Accounts.

RESPONSE TO: Interview of Donna Washington

Donna Washington, the LitPro Specialist that reports and records data into the system for reimbursement, is aware of OOC and ALC students being claimed for reimbursement from the state. These records can be easily retrieved. Mrs. Washington as well as everyone else associated with these programs knows that employees wrote receipts for the OOC and the ALC services and the understanding was that the District was to be reimbursed through the state.

RESPONSE TO: Interview of Marcella White

Ms. White worked as a Literacy Instructor for the District and she registered and receipted students for OOC, ALC, and OODS programs under the direct supervision of the Office Manager, Lisa Farmer. All activities that took place in the Literacy Department were under supervision of the Director whom had knowledge of employee's functions. Employee daily function included registration for OOC and ALC as the District received reimbursement for these students. She received payment from the OOC for time worked after District hours and on some weekends.

RESPONSE TO: Interview of Modestine Ford

Mrs. Ford worked as a Literacy Instructor for the District and she registered and receipted students for OOC, ALC, and OODS programs under the direct supervision of the Office Manager, Lisa Farmer. Registration of students for the OOC and ACL classes was a part of the employee job function, as the District received reimbursement from the state. The director encouraged this activity due to the reimbursement status.

RESPONSE TO: Interview of Kaiwanda Armstead

Ms. Armstead worked as a Literacy Instructor for the District and she registered and receipted students for OOC, ALC, and OODS programs under the direct supervision of the Office Manager, Lisa Farmer. Registration of students for the OOC and ACL classes was a part of the employee job

function, as the District received reimbursement from the state. The director encouraged this activity due to the reimbursement status. It was understood that materials and supplies were purchased through grants and the reimbursement received.

RESPONSE TO: Interview of LaShawnda Armstrong

Ms. Armstrong worked as a Literacy Instructor for the District and she registered and receipted students for OOC, ALC, and OODS programs under the direct supervision of the Office Manager, Lisa Farmer. Registration of students for the OOC and ACL classes was a part of the employee job function, as the District received reimbursement from the state. The director encouraged this activity due to the reimbursement status. It was understood that materials and supplies were purchased through grants and the reimbursement received

RESPONSE TO: Interview of Elizabeth Fryar

Mrs. Fryar, the Director of Waccamaw EOC, Inc., had no understanding of the operation of the HAC, OOC, ALC, or the OODS programs. Any time that meetings were held or activities took place during the work day, it would be under my comp time. Most meetings were held at night and the Board of Directors had nothing to do with the day to day operation at Waccamaw EOC nor have they voted upon any issues concerning the ALC, OOC, or the OODS.

RESPONSE TO: Interview of Randall Dozier

On August 2009, I was called to the School District to meet with auditors. I met with auditors along with my lawyer at which time Dr. Dozier refused to meet with me. I was then told that I was suspended effective immediately. At no time did I have a conversation with Dr. Dozier reference a driving school being conducted at the HAC. However he did sign an agreement with the OOC and its Board of Directors to conduct classes at several sites within the district. The ALC was also allowed to

conduct classes at the Adult Center with the consent and knowledge of the superintendent and the director. The ALC grant writer, Lisa Farmer, researched and wrote a grant for \$40,000, which would allow students to attend continuing education classes through the OOC. This was a program that was conducted during the summer months which I was not working for the District during the summer months. Approximately 200 students went through the program with the District receiving reimbursement from the state for each student in the amount of approximately \$200,000. Dr. Dozier also signed off as a collaborative partner with the ALC to receive the grant as well as the Director, Lynn Kirtley. Proof of monies placed in the District accounts can be identified through reimbursement from the state and the Celebration of Literacy Accounts.

RESPONSE TO: Interview of Leigh Boan

Mrs. Boan and all of the Board of Directors was aware that the ALC was not a part of the GCSD, but the district allowed their employees to register ALC students during work hours and use equipment and supplies based on the fact that they would be reimbursed by counting students through state funds. All grants writer on behalf of the ALC were written by Lisa Farmer the grant writer for the ALC. She received training to be a grant writer paid through the ALC. All checks were written by the secretary and signed by the chairman. The Board approved that I administer and be paid through the \$40,000 grant.

CONCLUSION STATEMENT OF RESPONDENT

Please be advised this statement is a true and accurate depiction of the events and activities surrounding the afore-mentioned investigation. My intent and my hope is to explain clearly and succinctly my actions while working for the Georgetown County School District.

First, the driving school (or OODS) I promulgated was done so with the approval of the

Executive Director, Lynn Kirtley, of the Georgetown County School District. The only reason I developed OODS on or near school property was to aid the students of Georgetown County and as stated by Lynn Kirtley, I saw a need for such a program. At the time I developed the driving school, there was no such program in Georgetown County. It was my intent to fill that void so young people could benefit from the education and experience not afforded them in rural communities. Please note that this program was fully disclosed to Georgetown County and its officials. In that vain, the School Board and the Executive Director were fully aware of the existence and the operation of OODS. Additionally, I believe it is noteworthy to point out that Georgetown County, by its own admission, gained a benefit from OODS and even referred students to program. Nevertheless, most if not all of the activities of the OODS were not conducted on or near county property. Moreover none of the activities were conducted under the auspices or guise of the ALC, OOC or the EOC.

Another important and imperative point, is that the County of Georgetown via Superintendent Dr. H. Randall Dozier, had full knowledge of not only the existence of the driving school, but also its location and operations. At no time did Dr. Randall Dozier, GCSD Superintendent, convey via letter nor verbally that the driving school was unacceptable, in fact the county used students from both the Occupational Outlook Center and the driving school to obtain money from both the state and federal government.

While I was the literacy coordinator of the Occupational Outlook Center and while volunteering closely with the Georgetown County Adult Literacy Counsel (which was approved by Randal Dozier); at no time did I intentionally or unintentionally seek to defraud, steal, misuse or misappropriate any funds, materials or manpower. To the contrary the driving school was completely funded with my personal money. Furthermore, I personally oversaw all aspects of the OODS. I have not made a profit

from OODS. Moreover, I lost quite a bit of my own money. In 2010 this matter, for whatever reason, was turned over to Georgetown County Solicitor's Office for investigation and, if necessary, prosecution. The Georgetown County Solicitor's office completed a thorough investigation resulting in a finding of no wrong doing of any kind and a refusal to pursue this matter any further through either investigation or indictment.

Subsequently, I received a letter informing me the investigation had been turned over to the South Carolina Ethics Commission. The investigation by the South Carolina Ethics Commission was a long and arduous process. I have endured numerous sleepless nights, panic attacks, declining health issues, and a deteriorated well-being as a result of anxiety surrounding not only the investigation but the intensity of the process. I have spent quite a bit of money on two attorneys to counsel me through this difficult time. The process has continued for a total of nearly four years and honestly the longevity of this process is undoubtedly one of the reasons I chose to accept the plea extended by the South Carolina Ethics Commission.

After consulting with my attorney whose services I am very pleased with and subject to the aforementioned statement of facts and conclusion, which is made a part of my plea by integration and adoption of the above offered statement; it is my intent to plead to the inadvertent violations set forth in this Consent Order.

ADMISSION

The Respondent, Zacharius Grate, admits he inadvertently violated Section 8-13-700(A) and Section 8-13-720.

DISPOSITION

The State Ethics Commission hereby finds Zacharius Grate in violation of Section 8-13-700(A)

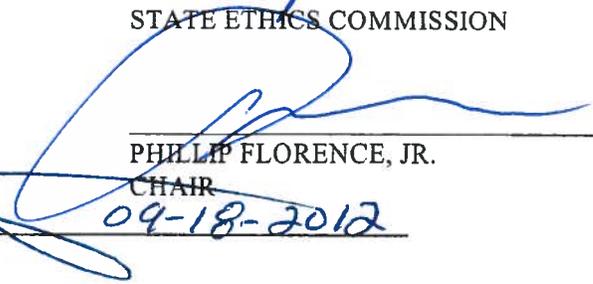
and Section 8-13-720 and hereby adopts the Statement of Facts, Conclusions of Law, Discussion, Admissions, and Disposition as agreed upon by Respondent.

THEREFORE, the State Ethics Commission hereby publicly reprimands Zacharius Grate for his violation of Section 8-13-700(A) and Section 8-13-720 of the Ethics Reform Act,

AND, orders Respondent to pay a fine of \$4000.00 within 180 days of receipt of the signed order,

AND IT IS SO ORDERED THIS 19th DAY OF September 2011.

STATE ETHICS COMMISSION



PHILLIP FLORENCE, JR.
CHAIR

09-18-2012



Zacharius Grate
Respondent