
The Law Offices of Christopher Kozelichki

01/25/2022

Black Lives Matter South Bend
ATTN: Executive Board

To the BLMSB Board:

As per our Amended Retainer Agreement, signed on January 17, 2022, I have begun my preliminary investigation into BLMSB's relationship with BLM Grassroots, Tides Collective Action and the Black Lives Matter Global Network. While I have worked with diligence on this matter in the time allotted, this remains a preliminary inquiry as the only materials that were available were those that were provided to me directly by BLMSB. Additional materials, interviews and data will be needed in order to complete a more thorough inquiry into the matter.

Below, you will find my preliminary summary of events, analysis of the issues raised by those events and initial recommendations for further investigation or action.

Event Narrative

Black Lives Matter Grassroots (*Grassroots*) was entrusted with funding from the Tides Collective Action Fund for the purposes of developing an action network meant to develop and grow new BLM chapters, offer educational initiatives, provide rapid response measures for local chapters as events arise, and distribute funding and support to local chapters. To further this end, *Grassroots* was constituted with member organizations through representative members. These members also served on the leadership team for CAF which dictate the direction of the organization through budgeting, policy management, etc. It is important to note that the leadership team and the general membership representatives were the same people. The leadership team at the time of

formation was Melina Abdullah, Sandra Hudson, Dawn Modkins, Karlene Sekou-Griffith, Audrena Redmond, Angela Austin-Waters, and Jordan Giger.

Once the organization was constituted through these member organizations and leadership team, the leadership team operated through meetings operated by simple majority vote and documented by relatively brief meeting minutes. Meetings of the constituent members were held on a standing weekly basis. If there was business that needed to be handled by the leadership team a CAF meeting was called to order in the midst of the standing member meeting. Normal practice was to hold these meetings if all CAF members were present. There is no evidence of any form of by-laws or other governing rules being adopted by the leadership team since the time of organization.

During the nearly two years of the organization's operation, it appears to have operated on this entirely ad hoc basis. While there does appear to be a budget, it has been difficult to ascertain what, if any, accounting and auditing practices were implemented to ensure proper use of funds.

During 2021-22, the leadership team took three separate retreats to locations including a trip to Jamaica in January of 2022. It is unclear how this trip was funded, what approvals were granted based on the budget or whether or not this was in the scope of the organization's work.

In particular, several concerns were raised by Jordan and Sandy regarding the use of funds. In 2021, he questioned the financial wisdom of stipends for onboarding chapters (totalling \$2,000) and came into conflict with the rest of the leadership team, particularly Melina. After several mediation sessions, an org chart shown during a meeting depicted Sandy and Jordan as not being on the leadership team. No action was taken on that matter for approximately two months.

The situation came to a head in January of 2022. Based on my review of communications between the leadership team, it appears that a regular standing *Grassroots* meeting would be held on January 9, 2022. At this point, there was no agenda proposed for the meeting or any mention of possible topics of discussion. Sandy communicated that she would not be able to attend that meeting. Jordan, for his part, would be late as he was traveling, and was later removed from the call as there was a passenger in his car, which Melina felt was

unacceptable. This did not seem to be an issue as it did not appear that they would be voting on anything.

Shortly after January 9, 2022, Jorden and Sandy discovered through the release of the meeting minutes that a CAF meeting had been held, and that the Leadership Team had passed a sweeping annual budget. The annual budget totaled more than \$7.2 million and included several permanent, full-time six-figure salaries. At the time of the passage of the budget, it appears that *Grassroots* had total holdings of roughly \$24 million. It is unclear how these holdings are distributed between investments, restricted funds, cash on hand, etc.

In response to this Sandy and Jorden complained about the manner in which the meeting was held, the budget that was passed, and the lack of communication between the leadership team.

On January 17, 2022 another meeting was held on short notice. During this meeting, Sandy, was removed from the call as she did not have her camera on. She was then removed from the Leadership Team by a majority vote. Immediately after this vote, Jorden was removed, as well.

Several hours before that vote, Jorden's access to documents, spreadsheets and any governance documents was revoked by the leadership team. Despite this he was able to forward along documents relating to the governance of *Grassroots* which he had previously downloaded during the course of normal business as a member of the leadership team.

Shortly after the FY 2022 budget was passed, Jorden reached out to me to retain my services to investigate the situation, provide an unbiased assessment and furnish recommendations for reform.

Assessment of Practices

First and foremost, there are a myriad of concerns regarding the lack of any formal governance structure in the *Grassroots* organization. A complete set of by-laws or other governing document are absolutely the industry standard with any non-profit organization. These rules serve more than to simply check a box on a list for starting a new organization,

but rather protect the constituent members of an organization, prevent malfeasance, allow for transparency and remove the appearance of impropriety.

More specifically, the lack of governing documents have adversely affected *Grassroots* in a number of ways:

1. Lack of Formal Meeting Rules
2. Confusion Regarding Leadership Structure
3. Failure to Develop Financial Controls

I will discuss each of these failings in turn and explain why these controls are important. In addition I will discuss how these failure points both led to this situation and may potentially lead to further problems in the future.

Lack of Formal Meeting Rules

Organizations require a solid structure based on rules which can be consistently applied and followed by both the originators of the organization as well as successive generations of leaders. Consistency allows for predictability and the ability to both prevent and redress potential misconduct.

In the present case, there appears to be **NO** formal structure to any of the governance of *Grassroots* aside from a tacit agreement to majority rule and weekly meetings of membership. This is simply an untenable practice as the organization continues to grow as a lack of predictable practices and procedures will inevitably lead to further infighting between members when results are unfavorable.

In addition, if an organization is operating through tacit, ad-hoc agreements, as individual founders leave, they will leave behind a large gap in institutional knowledge. If only existing members are privy to the implied operating rules, it prevents new and successive members from having the knowledge necessary to adapt and lead the organization.

Confusion Regarding Leadership Structure

The vast majority of non-profit organizations operate under the principle of division of duties to provide a clear sense to both members and leadership who is responsible for

what area. *Grassroots* has, as with the meeting structure, operated on an ad hoc basis with no clearly defined roles between individual members.

Division of duties allows for individual leaders and members to take on a clearly defined responsibility to allow the organization to function more effectively. For instance, the Treasurer of a leadership board is responsible for enforcing financial controls, reporting on budgeting and cashflow to the larger board, ensuring payment of invoices, etc. If the duties are left to a larger collective it is far easier for things to slip through the cracks, or in more extreme situations for an individual faction to hijack an entire operation.

In addition to dividing responsibilities clearly amongst members, having a clear system of selection, retention and succession of leadership is pivotal in ensuring smooth operation across multiple generations of leaders. Under the ad hoc arrangement currently in place, it is unclear how long leaders will service, how new leaders are selected (leaving aside the lack of clarity whether or not new leaders need to be selected), and how leaders can be removed. This lack of clarity allows for snap decisions and potentially entrenched leadership who are accountable to no one.

Failure to Develop Financial Controls

This is perhaps the most concerning aspect of the entire investigation. Any organization, whether for-profit or not-for-profit needs to have proper financial controls in place to ensure institutional integrity, prevent theft/embezzlement, and prevent self-dealing. In the instant case, there appears to be **NO** financial management policies in place.

Most organizations create a structure which provides checks and balances to financial management by dividing and duplicating duties. By having multiple stages of review for expenditures an organization can remove the ability of one individual to withdraw/spend money that has not been improved. Similarly it is necessary to divide/separate the different aspects of financial management amongst multiple individuals. For example, the person who approves an outlay based on an invoice is a different person from the person who actually cuts the check.

Beyond these simple checks and balances, it is also necessary to clearly delineate funds which are being drawn from and how that money was allocated in the budget. This

prevents individuals from spending money which has not been approved by the larger organization while also preventing unnecessary waste.

Finally, it's necessary to develop rules regarding how budgeting is done and ensure that the budget is balanced between revenue and expenditure. Budgeting optimistically is perfectly acceptable, but there needs to at least be a projection as to what revenue generation is present to justify massive expenditures.

Recommendations

All told the *Grassroots* organization has done an admirable job surviving for as long as it has by operating on an informal basis. That said, it is shocking that an organization operating with such a large scope and financing does not have these controls in place. Conflict and mismanagement are bound to occur in a situation like this. As such I would make the following initial recommendations based on this preliminary review. These recommendations should be put in place by the formal adoption of bylaws and rules.

Formal Meeting and Voting Policies

This is the most basic step that can and must be taken. Operating in as inconsistent manner as the organization has is simply untenable. To provide consistency and fairness *Grassroots* must adopt the following:

1. Consistent rules for how and when CAF meetings may and shall occur.
 - a. Requiring Prior Notice for Meetings of the CAF (at least 48 Hours)
 - b. Publication of Agenda Concurrent to Calling Meeting
2. Rules for Governance of Conduct in Meetings
 - a. Quorum Requirement for Calling CAF Meeting to Order (2/3, 3/4, or 50+1)
 - b. Formal Policies Regarding How Meetings Can Be Attended
 - c. Formal Process for Delivering Reports, etc to the Whole
3. Formalized Voting/Business Rules
 - a. Policies Regarding Abstention, etc.
 - b. Rules for When New Business can be called or recalled
 - c. Additional Non-Majority Voting Rules for Exceptional Motions

These reforms will bring *Grassroots* in line with the larger non-profit world. In addition, it will provide consistency for individual members and leaders which will diminish the possibility of conflict amongst these individuals.

Formalize Leadership Structure

While the overall goal of collective leadership is laudable, the practical realities of managing a large institution with a deep pool of funding make this untenable as the organization continues to grow and bring new individuals and groups into the fold. As such, I recommend that *Grassroots* adopt the following:

1. Clear Leadership Structure
 - a. A Formal Board Structure with Delineated Posts
 - b. Division of Duties Between These Posts Clearly Spelled Out
2. Formal Process for Selection and Retention
 - a. A Clear Rule Regarding the Terms of Board Members
 - b. If Desired, Rules Regarding the Maximum Consecutive Terms Allowed
 - c. Clear Rules on the Election/Selection of New Board Members When Needed
3. Rules Regarding Removal
 - a. Clear Rules Stating Reasons For Which A Member Can Be Removed
 - b. Voting Process for How Removal is Effectuated

By clarifying how the board is organized, *Grassroots* will prevent disagreements from spinning out of control in the future and prevent the perception that a power grab is taking place. Again, these rules are the norm in non-profits and are necessary for the successful growth of an organization.

Develop Financial Controls

This reform is likely the most needed. First, any organization, whether for-profit or non-profit, is susceptible to graft and theft. Rules are required to ensure the continued financial viability of the organization. Second, public perception is paramount with regard to organizations which face significant resistance from segments of the public. For better or worse, people who work against organizations like BLM will seize on any impropriety, whether simply perceived as such or actually improper. This scrutiny, if handled poorly,

dramatically affects the ability of the organization to continue to generate funds through donations and grants.

As such, I recommend that *Grassroots* adopt the following measures to ensure it's longterm financial solvency:

1. Develop Clear Conflict of Interest Rules
 - a. Develop Rules Regarding Vendors Who Have a Relationship With Board Members
 - b. Develop Rules Regarding Self-Dealing In Matters of Budget Approval Regarding Board Members
2. Develop Clear Delineation of Funds
 - a. Budgeting into Specific Funds to Draw Expenditures From
 - b. Develop Controls Which Verify Availability and Appropriateness of Expenditures Based On Funds
3. Develop Checks and Balances For Expenditure of Funds
 - a. Develop Process By Which Funds Are Spent
 - b. Create Multi-Tier Check on Expenditures
 - c. Separate Duties Between Multiple People
 - d. Create a Process for Regular Audits and Reporting
4. Develop Budget Rules
 - a. Create Timeframe and Rules for Budget Creation
 - b. Create Benchmarks Guiding Budgeting Requiring Full Accounting for Revenue and Expenditures in Budget Proposal

While it appears that *Grassroots* has sufficient cash reserves, many organizations have seen a dramatic downturn in their financial outlook after mismanagement and lack of clear rules. These rules will help to ensure that *Grassroots* remains financially viable in the future.

Other Recommendations

While most of these reforms have been centered on good governance and industry norms, there are several matters which are more retrospective in nature which must also be addressed. Namely, that *Grassroots* should honor their existing approved commitments. Namely, that they honor the previous grant awards which were approved by the CAF. The

two grants at issue are the De Bryant Proposal/Grant which was approved on September 5, 2021 with a total budget of \$40k and the Louisville Reimbursement Grant for \$10k which was approved in October of 2020.

While I am satisfied with this preliminary report, I want to stress that it is just that. **preliminary**. I have yet to look at the fine details of the institutional governance, the financial situation of *Grassroots* and the bulk of the communications between board members. These recommendations are sound, but more work will be needed to determine what else, if anything is needed to ensure that *Grassroots* is able to deliver on the long-term promise of its founding in the future. As always I am available to discuss this matter any time that you wish, and I look forward to hearing back from you.

Sincerely,

Christopher A Kozelichki

Christopher Kozelichki
Attorney at Law