

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
January 15, 2014  
Board of Ethics  
One Parkway Building  
1515 Arch Street, 18<sup>th</sup> Floor  
1:00 pm

**Board Members Present:**

Michael H. Reed, Esq., Chair  
Judge Phyllis Beck (Ret.), Vice-Chair  
Sanjuanita González, Esq.  
Brian J. McCormick, Jr., Esq.  
Reverend C. Kevin Gillespie

**Staff Present:**

J. Shane Creamer, Jr., Esq.  
Nedda Massar, Esq.  
Michael Cooke, Esq.  
Elizabeth Downey, Esq.  
Elizabeth Baugh  
Tina Formica  
Hortencia Vasquez

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:08 p.m.

**I. Approval of Minutes**

By a 4-0 vote, the Board approved the meeting minutes for the public meeting that was held on December 18, 2013.

**II. Executive Director's Report**

**A. Litigation Update**

**i. Lodge No. 5 of the Fraternal Order of Police, et al. v. City of Philadelphia, et al.**

Mr. Creamer reported that there had been no change in the status of this case, which began with the suit brought by the FOP in 2011 against the City and the Board of Ethics, seeking to strike down the Home Rule Charter's ban on members of the police department making political contributions. On February 21, 2013, Judge Sanchez of the Federal District Court granted the City's motion for summary judgment and dismissed the FOP's case, thereby upholding the ban. The FOP has appealed Judge Sanchez's ruling to the Third Circuit Court of Appeals. The FOP filed their brief in support of their appeal in late May and attorneys for the Board filed a brief in response on July 11, 2013. Oral argument was held on November 12, 2013, and staff is waiting for the Third Circuit to issue a decision.

On behalf of the Board, Mr. Creamer thanked Eleanor Ewing of the Law Department for representing the Board at oral argument in November.

## ii. Cozen O'Connor v. Philadelphia Board of Ethics

As Mr. Creamer reported at the Board's July 2013 meeting, Judge Tucker ruled in the Board's favor in resolving the case *Cozen O'Connor v. Board of Ethics*, a case challenging the Board's interpretation of the contribution limits found in the City's campaign finance law.

Mr. Creamer reported that in an order dated January 6, 2014, the Pennsylvania Supreme Court granted Cozen O'Connor's petition for allowance of appeal in this matter.

Mr. Creamer explained that this was the second time that the Supreme Court had exercised its discretion to accept an appeal from Cozen in this matter, as the case enters its seventh year of litigation with no end in sight.

Mr. Creamer further explained that Cozen argues that the City's contribution limits should not prevent Cozen from forgiving its \$448,000 legal bill to Bob Brady's 2007 mayoral campaign committee and, alternatively, that the limits should not apply to the Brady campaign committee after the election, because the law did not expressly apply the limits post-election. The Board advised the Brady Campaign in a 2007 Board opinion that the limits continue to apply post election to the extent that the committee is trying to retire campaign debt, even though that was not made explicit in the law.

Cozen's case was initially dismissed for lack of standing. That decision was affirmed by the Commonwealth Court, but the Supreme Court granted Cozen's appeal, but limited to the issue of whether the firm could forgive the debt at one time and *in toto*. On July 18, 2012, Judge Tucker ruled on the merits in the Board's favor that post-election forgiveness by the law firm of the debt owed to it by the Friends of Bob Brady at one time and *in toto* would be subject to the City's contribution limits. The Commonwealth Court affirmed the trial court's decision in an opinion dated June 18, 2013, and Cozen filed a petition for allowance of appeal with the Supreme Court.

The Supreme Court has accepted review on all four issues as stated by Cozen. By comparison, the last time this case was before the Supreme Court, the Court completely rewrote the issues on appeal.

In terms of next steps, Mr. Creamer said that staff is waiting for the Court to issue a briefing schedule.<sup>1</sup>

**Sanjuanita González arrived at 1:17 p.m.**

### B. Lobbying Update

Mr. Creamer stated that he was very pleased to report that the registration portion of the Philadelphia Lobbying Information System ("PLIS") was launched on January 14, 2014, the day before the Board meeting. Staff members took a cautious approach and waited one extra day to "go live" because we wanted to be sure that all aspects worked properly. There were successful registrations in the system by 5 p.m. on the launch date.

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<sup>1</sup> On January 9, the Supreme Court issued a briefing schedule, under which Cozen's brief is due February 18, 2014. The Board's brief is due 30 days after Cozen's brief is filed, which would be March 20 if Cozen files on the deadline.

Mr. Creamer reported that since the last Board meeting staff members worked nonstop on the registration function. They tested and retested the registration software, identified problems which were reported to Acclaim, our vendor, and then fixed and retested again. Lobbying registration includes four distinct processes: 1) preparing the registration, 2) amending the registration, 3) assigning permission for other users to work on a registration, and 4) terminating a registration when appropriate. Each of these four tasks was subjected to our testing. Staff also tested the administrative functions.

Mr. Creamer acknowledged the hard work that Nedda Massar, Elizabeth Baugh, Bryan McHale, and Hortencia Vasquez performed in the testing process.

Mr. Creamer informed the Board that staff prepared four Help Files in the past few weeks, one for each of the four system processes. Each Help File includes directions and screen shots and walks a system user through the registration steps. Each Help File is accessible directly within PLIS and also on the Board's website.

Mr. Creamer reported that Board staff worked with OIT to redesign the Lobbying page of the Board's website. In addition to a link to the filing software, the web page includes general lobbying information, links to the Lobbying Code and Lobbying Regulation (No. 9), and the Help Files.

Mr. Creamer explained that staff sent a series of emails to the lobbying distribution list to announce the launch of PLIS registration and to remind current registrants that 2013 Fourth Quarter Expense Reports, which are due by January 30, 2014, will still be filed using the interim paper expense reports. Each email stressed that Board staff is available for one-on-one filing assistance, either in-person or on the telephone. Staff has also set up a workstation that staff members can use to demonstrate the software or that can be used by a lobbyist, lobbying firm or principal to file a registration.

Mr. Creamer said that the project has already moved into its second phase which is to work with Acclaim on the expense report module. Staff's goal is to have this part of the project completed by April 1 so that PLIS is ready to receive the 2014 First Quarter Expense Reports that are due by April 30, 2014.

### **III. General Counsel Staff Report**

#### **A. Advisory Opinions**

Ms Downey reported that no advisory opinions have been issued since the December 2013 Board Meeting.

Ms. Downey informed the Board that General Counsel staff members worked with Bryan McHale to create a draft of a searchable master index of advisory opinions as discussed at prior meetings. At present, this index covers opinions issued between 2008 and June 2013. Staff anticipates making it available to the public electronically.

**B. Informal Guidance**

Ms. Downey stated that the chart in the Board books reflects that a significant amount of lobbying guidance and information had been provided since the last Board meeting. The guidance on lobbying matters included questions about the electronic registration system and 3<sup>rd</sup> and 4<sup>th</sup> quarter reporting.

**C. Regulations**

Ms. Downey reported that staff had continued to provide support in moving the proposed gift regulation through the process of issuance. Staff members helped draft modifications to the proposed regulation and are supporting work on a draft hearing report.

**SUMMARY OF INFORMAL GUIDANCE PROVIDED DECEMBER 11, 2013 – JANUARY 7, 2014**

<b>General topic</b>	<b>Total #</b>	<b>Phone</b>	<b>Email</b>	<b>Phone &amp; Email</b>	<b>In-person</b>	<b>Subtopics</b>
Lobbying	22	9	11	1	1	Q3 and Q4 Expense Reports; amending a registration; exemptions from expense reporting; outreach and questions about 2014 lobbying registration
Campaign Finance	9	7	1	1		Filing and reporting requirements; content of reports; updating committee info; disclosure of expenditures; corporate contributions; bank account changes
Conflicts	1	1				Nepotism
Political Activity	1		1			Application of political activity restrictions to event with political leaders and City employees
Gifts	1		1			Accepting an award for exceptional service
Post-Employment	2			2		
Other	0					

*This chart is a partial picture of informal guidance provided during the specified time period. Five Board Staff members tracked the assistance they gave and provided data: the General Counsel, Director of Enforcement, Deputy Executive Director, Public Integrity Compliance Supervisor, and Associate General Counsel.*

#### **IV. Discussion on Regulation No. 10, Gifts**

Mr. Cooke informed the Board that the Law Department had advised that it would be able to approve, as within the Board's interpretive authority, a proposed version of Regulation No. 10 setting an annual limit for cash at zero dollars. The Board unanimously agreed to change the proposed limit for cash gifts to zero dollars.

Judge Beck suggested that the Regulation should not address cash gifts at all. After a brief discussion, the Board members agreed that the Regulation should explicitly ban gifts of money.

Judge Beck also asked Board staff to revise various examples to clarify them, specifically pointing out examples under Section 10.4, and to avoid use of the word cash, as was done in an example to Section 10.5 and other places.

Mr. Cooke said he would make the suggested changes to the Regulation.

Mr. Creamer informed the Board that he received a letter from Joan Markman and Amy Kurland regarding proposed Regulation No. 10. He asked for Board approval to respond to the letter in consultation with the Board Chair. A motion was made to authorize Mr. Creamer to respond to the letter with the Chair's input. The motion was approved unanimously by a 5-0 vote.

Judge Beck was joined by the Board in thanking Mr. Cooke for his work on the Regulation.

Chair Reed noted that the process thus far for proposed Regulation No. 10 had been impressive, collaborative and transparent.

#### **V. Proposed Board Resolution**

Mr. Cooke asked the Board to approve a resolution concerning prohibited disclosures and the confidentiality of the Board's investigations, enforcement matters, and administrative hearings (Exhibit A, attached). The purpose of the Resolution is to respond to advice received from the City Solicitor that administrative hearings to adjudicate alleged violations of the Public Integrity Laws should not be public. The Resolution also directs staff to present proposed amendments to Board Regulations Nos. 2 and 5 as soon as is practicable.

A motion was made to accept the Resolution and was unanimously approved by a 4-0 vote. Ms. González stated that, before he left Mr. McCormick indicated that he would have voted in favor of the resolution.

**Brian McCormick left the meeting at 1:58 p.m., prior to the vote on the Resolution.**

#### **VI. New Business**

No new business was discussed.

## **VII. Questions/Comments**

Ellen Kaplan praised the Board's work on Regulation No. 10. She added that she believed it was important to modify the Regulation to ban gifts of money. Ms. Kaplan asked if there had been any communications with City Council about the City Code's gift provision. Chair Reed said that the Board will continue to work with City Council to ensure that the City has a strong gift rule.

Ms. Kaplan asked several questions about the status of Regulation No. 10. Chair Reed said that she expects staff will update the examples and present a hearing report and final version of the Regulation to the Board at the February meeting. If the Board approves the hearing report, it would be submitted to the Law Department for final approval and then filed with the Records Department. The Regulation would become effective 10 days after filing at Records.

Adam Bonin expressed his appreciation for the help and assistance he received from staff while dealing with a client who raised some tricky issues of campaign finance compliance. Chair Reed thanked Mr. Bonin for his comments.

Joan Markman thanked the Board and staff for their work on Regulation No. 10 and stated that she was delighted that the Regulation will set a limit of zero dollars for gifts of money. She repeated a concern about the Regulation that she raised at the November public hearing. She asked that the letter she and Amy Kurland had sent to the Board be made part of the record. Chair Reed said that Mr. Creamer would address her request in a response to the letter.

Mr. Bonin asked whether testimony and comments from members of the public about Regulation No. 10 will be available. Mr. Cooke said that any testimony provided for the approved Regulation will be attached to the hearing report.

Chair Reed announced that the Board would meet in executive session to address confidential enforcement matters.

The public session of the Board's meeting was adjourned at 2:15 p.m.