

Philadelphia Board of Ethics
Meeting Minutes
November 19, 2014 - 1:00 p.m.
One Parkway Building
1515 Arch Street, 18th Floor

FINAL

Board 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.
Maya Nayak, Esq.
Michael Cooke, Esq.
Elizabeth Downey, Esq.
Jordan Segall, Esq.
Ayodeji Perrin, Esq.
Bryan McHale
Tina Simone

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:00 p.m.

I. Approval of Minutes

By a 3-0 vote, the Board approved the meeting minutes for the public meeting held on October 15, 2014 as corrected.

II. Integrity Week

Chair Reed announced that the Board was very pleased that the Board's Public Meeting was included as a highlighted event in the City's first Integrity Week. On behalf of the Board, Chair Reed welcomed any newcomers who had never attended one of the Board's meetings, as well as those who regularly attended the Board's monthly meetings.

Integrity Week was organized by the Mayor's Chief Integrity Officer, Hope Caldwell, and her Deputy, Stephanie Tipton, to reinforce the importance of "building an ethical culture" in City government and to recognize the agencies, including the Board of Ethics, that are responsible for promoting ethics and integrity in City government.

Chair Reed asked attendees to see a Board staff member if they were interested in information about the Board or other Integrity Week events.

Board Member Reverend C. Kevin Gillespie arrived at 1:08 pm.

Approved by Board of Ethics on 12/17/14

III. Executive Director's Report

A. Litigation Update - Cozen O'Connor v. Philadelphia Board of Ethics

Mr. Creamer reported that there has been no change since last month in the status of *Cozen O'Connor v. Philadelphia Board of Ethics*, which is now in its seventh year. Oral argument was held before the Pennsylvania Supreme Court on September 10, 2014 on Cozen O'Connor's challenge to the Board's interpretation of the contribution limits in the City's Campaign Finance Law. Mr. Creamer stated that the Board is waiting for the decision of the Pennsylvania Supreme Court.

Cozen argued on appeal 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 (even though debt forgiveness is included in the definition of "contribution") *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. Cozen also argued that litigation costs related to a ballot challenge defense do not constitute expenditures to influence an election and therefore should not be subject to the campaign finance regulations.

Cozen's suit for declaratory judgment challenges the Board's interpretation of the campaign finance law. Mr. Creamer reported that under Pennsylvania law, an administrative agency's interpretation of a statute for which it has enforcement responsibility is entitled to "substantial deference" by the courts.

B. Training Update

Mr. Creamer reported that in preparation for the 2015 primary and general elections, when all City Council seats, the Mayor's office, the City Commissioners' offices, and the Sheriff's office will be on the ballot, on October 22, 2014 staff conducted the first campaign finance training session. A representative of the Office of the City Commissioners also participated in the training, which was attended by 15 interested individuals. The session covered the requirements for candidates and political committees under the Pennsylvania Election Code and Philadelphia's campaign finance law.

Mr. Creamer stated that prior to the session on October 22nd, staff updated all training materials. Among the topics covered in the training session were the requirements related to treatment of excess pre-candidacy contributions. The next session is on December 16, 2014, and 16 people have already registered. Mr. Creamer reported that Staff also expects to conduct several campaign finance training sessions in early 2015 in advance of the primary election.

Mr. Creamer reported that on November 4th, staff sent an email to its campaign finance distribution list, which includes people who have expressed an interest in the City's campaign finance law, as well as candidates and treasurers. The email included a copy of recently amended Board Regulation No. 1 (on Campaign Finance) and a summary of the most notable changes to Regulation 1 that became effective on October 31, 2014.

C. COGEL Conference

Mr. Creamer reported that the Board of Ethics is serving as a Co-Host for the December 2014 COGEL Annual Meeting which will be held from December 7th through the 10th in Pittsburgh. COGEL is the Council on Governmental Ethics Laws, and COGEL members are primarily local, state, and national government officials who regulate ethics, campaign finance, lobbying, freedom of information, and election administration laws.

Mr. Creamer is serving on the Host Committee with Robin Hittie, who is General Counsel to the State Ethics Commission. Mr. Creamer is also on COGEL's Steering Committee. Michael Cooke is a member of the Conference Program Committee and is organizing and moderating two conference sessions. They are "What Can I say? Disclosure Rules in Investigations and Enforcement Actions" and "Getting to Yes: Successful Settlement Strategies." Maya Nayak is a panelist on the disclosure panel. Nedda Massar is on the Awards Committee, and she and the current COGEL President, Patricia Young of the Federal Election Commission, will present the "First Timers" session to introduce new attendees to COGEL. Mr. Creamer reported that several of the Board's staff members will attend the Conference, and Board staff will report to the Board in December on the various Conference events.

D. Staff Update

Mr. Creamer said that he was very pleased to introduce the Board's new Staff Attorney, Ayodeji Perrin, who started with the Board on Monday. Mr. Perrin will be working primarily with the Board's General Counsel, Maya Nayak, who will introduce Ayodeji to the Board later in the meeting.

Mr. Creamer said that in another piece of staff news the Board said "goodbye" last week to Elizabeth Baugh who was the Board's Public Integrity Compliance Supervisor. Ms. Baugh and her husband moved back to Virginia to be near family. Ms. Baugh provided exceptional research and support to the entire Board staff and was never too busy to help, no matter what the task. Ms. Baugh was especially talented at helping callers with website and software problems. Mr. Creamer said that the Board will miss Ms. Baugh, especially her wonderful sense of humor.

Chair Reed announced that on behalf of the entire Board he wished to acknowledge Ms. Baugh and her contributions to the Board. He also welcomed Mr. Perrin on behalf of the entire Board.

Board Member Sanjuanita González, Esq. arrived at 1:14 pm

IV. General Counsel's Report

A. Advisory Opinions

1. **Non-Public Board Opinion 2014-002:** Ms. Nayak announced that Non-Public Board Opinion 2014-002 was issued on September 17, 2014 to a City elected official who requested advice about whether the official was permitted to personally solicit a political contribution for the official's authorized political committee from an individual who is not a City officer or

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employee. The Board advised that Charter Subsection 10-107(3) did not prohibit the requestor from engaging in the proposed solicitation. The Board considered the broader text of Charter Section 10-107 and the practical context in which the fundraising restriction is to be applied today. The Board advised that Charter Subsection 10-107(3) prohibits City elected officials from personally soliciting political contributions under circumstances where there is a risk of coercion or misuse of office. The facts presented by the elected official for the proposed solicitation did not involve circumstances that present a risk of coercion or misuse of office and, therefore, the solicitation was permissible.

2. Non-Public Board Opinion 2014-003: Ms. Nayak announced that Non-Public Board Opinion 2014-003 was issued on September 17, 2014 to a City employee who sought advice about the application of the City ethics laws to a number of gift-giving scenarios related to the employee's upcoming wedding. The City employee planned to invite City officers and employees to attend the wedding reception as guests and anticipated receiving gifts from these guests. The Board advised that recently amended Code Section 20-604 did not prohibit the requestor or any of the identified wedding guests from engaging in the proposed gift-giving scenarios.

The Board explained that the gift law limits gifts to City employees from restricted sources, who are persons seeking official action from the City employee receiving a gift or who have a financial interest that the City employee receiving a gift can substantially affect through official action. The Board advised that a superior directing and instructing a subordinate City employee to carry out his or her official duties is not engaged in "seeking official action" from that subordinate. The Board noted that there may be circumstances where a superior could be a restricted source for a subordinate by virtue of seeking official action from the subordinate or having a financial interest the subordinate is able to substantially affect through official action.

The gift restriction lists certain non-cash gifts that a City officer or employee may accept, but not solicit, notwithstanding the fact that the person giving the gift is a restricted source. The Board interpreted this list of exemptions to mean not only that City employees may accept such gifts, but likewise that restricted sources may offer or give these gifts to City officers and employees in unlimited values. The Board explained that the requestor could provide reception hospitality to City officers and employees and they could accept the hospitality, explaining that a major life event exemption in the gift law applied to the requestor's wedding reception because marriage was a major life event and the reception was a non-ticketed event.

3. Non-Public Board Opinion 2014-004: Ms. Nayak announced that Non-Public Board Opinion 2014-004 was issued on September 17, 2014 to a City employee who is an attorney and who requested advice about participating in activities of the requestor's local civic association. The Board advised that the Code Section 20-602 representation restriction did not prohibit the requestor from participating in the proposed activities of the civic association, its board of directors, or zoning committee, but that this restriction would prohibit the requestor from being the lead person communicating and negotiating with the City on behalf of the civic association in its application for a grant from a City agency.

The Board explained in the Opinion that a City employee is engaged in representing another person as that person's agent if the employee acts with authority on behalf of and in the best

interests of that person with respect to a third party. The requestor's proposed negotiations on behalf of the civic association would constitute prohibited representation of the civic association as an agent in a transaction involving the City because the requestor would communicate with the City agency as a spokesperson for the civic association and negotiate grant terms with a City agency on behalf of the civic association with the goal of advancing the association's best interests. In contrast, the requestor's other proposed conduct, i.e., participating in internal activities of the civic association and expressing personal views as a board member, would not constitute representing the civic association's views or acting on behalf of its interests with respect to a third party.

Ms. Nayak noted that Board Opinions 2014-002, 2014-003, and 2014-004 are available on the Board's website.

Ms. Nayak asked Board members if they would like her to distribute a copy of the redacted version of Non-public Board Opinion 2014-002 to all City elected officials. She stated that elected officials are a small, known population of 24 individuals who are impacted by the Charter fundraising provision at issue in this Opinion.

Board members indicated that, given the Board's educational mission, Ms. Nayak should distribute the redacted version of Non-public Board Opinion 2014-002.

B. Informal Guidance

Ms. Nayak reviewed the chart summarizing informal guidance provided from October 4, 2014 to November 7, 2014.

Reverend Gillespie asked if additional information could be provided about informal guidance, including year-to-date total contacts per topic on a monthly basis and a three to five year overview of guidance given. Ms. Nayak responded that year-to-date totals could be included in the monthly informal guidance chart, but historical information going back three to five years was not available. This is because detailed information about informal guidance has been tracked by staff and recorded in this manner only since approximately June of 2013 after Ms. Nayak became General Counsel. Prior to that only email guidance provided by the General Counsel and Associate General Counsel was tracked. The current approach captures not only email guidance but also telephone and in-person assistance by a large number of staff members. Ms. Nayak also explained that the number of contacts displayed in the chart did not necessarily reflect the amount of staff time that was being spent providing assistance on a particular topic. One contact could take under five minutes, while another contact could involve hours of staff time, and both contacts would be listed only as "1" on the monthly chart.

C. Regulations

Ms. Nayak stated that the recent amendment to the Board's Regulation 1 on campaign finance became effective October 31, 2014.

D. Staff Attorney Position

Ms. Nayak noted that at the July 16, 2014 Board meeting, the Board had delegated authority to her to fill a second Staff Attorney position. She announced that she was pleased to report that Ayodeji K. Perrin began work as a Staff Attorney for the Board on November 17, 2014.

Most recently, Mr. Perrin served as a judicial law clerk and judicial fellow in the Court of Common Pleas of the First Judicial District, Trial Division-Criminal. As a law student, Mr. Perrin served as Editor-in-Chief of the University of Pennsylvania Journal of International Law; represented asylum petitioners as a law student representative in the Transnational Legal Clinic; served as president of the Penn Law Chapter of the International Law Students Association; was a summer associate at Morgan, Lewis & Bockius, LLP; and was a legal research intern at the Open Society Justice Initiative.

Before law school, Mr. Perrin served for four years as a college advisor and teacher at Deerfield Academy, a secondary school in Massachusetts, designing and teaching courses in the Philosophy & Religion Department. He also served as director of the multicultural affairs program within the Office of the Dean of Students and sat on the school's Disciplinary Committee. Mr. Perrin previously served for more than four years as a graduate program coordinator at Columbia University, running the day-to-day operations of the Political Science Department's master's and doctoral degree programs.

In addition to a law degree from the University of Pennsylvania Law School, Mr. Perrin completed a master's degree in political science while working at Columbia, and he earned his bachelor's degree in political science from Tufts University.

SUMMARY OF INFORMAL GUIDANCE PROVIDED, OCTOBER 4, 2014 – NOVEMBER 7, 2014

General topic	Total #	Phone	Email	Phone & Email	In-person	Subtopics
Campaign Finance	26	19	3	4	--	Reporting requirements; contribution limits; excess pre-candidacy contributions; independent and coordinated expenditures; 24-hour reporting; declaration of candidacy; submitting candidate information; filing late reports; filer account setup; and candidate's non-profit board service not reportable under City campaign finance law.
Lobbying	23	15	6	--	2	Amending registrations; Q3 expense reports; PLIS electronic system; reception exception; and filing requirements.
Political Activity	13	4	4	3	2	City employee attendance at political events as audience member not in City uniform; work on campaign ads restricted; assisting City Commissioners with ballot collection; political contribution by board member; using City email to promote ballot question; restrictions on City Council staff political activity; and voting.
Conflicts	6	2	2	2	--	Volunteer service on non-profit board; distributing job listings; financial interest in repayment of a loan; and campaign website linking to City publication.
Gifts	4	2	1	1	--	Loan forgiveness; reception for which attendee does not have to purchase a ticket; and gifts to the City.
Post-Employment	3	1	1	1	--	
Other	12	10	1	1	--	Ethics training requirements; Board has no jurisdiction; and non-competitively bid contract reform law.

This chart provides a partial picture of informal guidance provided by Board Staff members during the specified time period. The General Counsel, Director of Enforcement, Deputy Executive Director, Public Integrity Compliance Supervisor, Associate General Counsel, and Staff Attorney tracked the assistance they provided, as reflected in the chart.

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IV. Procedures for Administrative Enforcement Proceedings that Supplement Board Regulation No. 2

Ms. Nayak presented a draft update to the Board's Memo on Supplemental Procedures for Administrative Enforcement Proceedings. She stated that the Board originally approved the Memo in May of 2010. Among other adjustments she stated that this updated version of the Memo reflects amendments to Board Regulation No. 2 (Investigations and Enforcement Proceedings), which became effective on August 18, 2014. Ms. Nayak stated that the Board appointed hearing officers in January 2013: the Board's previous Chair, Richard Glazer, and Chair Reed as an alternate. Ms. Nayak reviewed the significant proposed changes to the Memo and responded to Board member questions.

In response to a question from Chair Reed, Ms. Nayak explained the old and proposed new procedures for distribution of a hearing transcript. She noted that Staff had contacted a court reporting agency to learn about transcript protocols and that under the new procedure respondents will not have to pay for transcripts, but there would be no additional cost to the Board.

Judge Beck asked if the Memo could be made available to the public on the Board's website. Ms. Nayak responded that Staff could certainly make that happen.

By a 5-0 vote, the Board rescinded the Board's Memo on Supplemental Procedures for Administrative Enforcement Proceedings approved in May 2010; approved the draft update to the Memo Ms. Nayak had presented; and directed Staff to post the updated Memo on the Board's website in close proximity to Regulation No. 2.

V. New Business

There was no new business presented at the meeting.

VI. Questions/Comments

There were no questions or comments presented at the meeting.

Chair Reed announced that on behalf of his fellow Board members, he would like to express the Board's appreciation to Reverend Kevin C. Gillespie for his valuable and dedicated service as a Board member over the past year and a half. Reverend Gillespie's term ends in November 2014.

Chair Reed stated that during Reverend Gillespie's time on the Board, the Board's work has been challenging and included tasks such as drafting and amending regulations and providing complex advice to City officials and employees. Chair Reed said that the Board will miss Reverend Gillespie's always thoughtful counsel and encouragement as the Board tackled this important work for the City.

Judge Beck congratulated Reverend Gillespie and thanked him for helping her think more broadly about matters.

Reverend Gillespie said that it was an honor to serve on the Board and support public transparency. He said that the Board and its work give him hope for the City and the region.

Chair Reed announced that Mayor Michael A. Nutter has nominated JoAnne Epps, Dean of Temple University's Beasley School of Law, to succeed Reverend Gillespie on the Board. He said the next step in the nomination process for Dean Epps is a confirmation hearing before City Council's Committee of the Whole on November 20, 2014.

Chair Reed announced that the Board would meet in executive session to address legal advice, personnel matters, and confidential enforcement matters.

The public session of the Board meeting was adjourned at 1:45 p.m.