

Philadelphia Board of Ethics
Meeting Minutes
December 18, 2013 - 1:00 p.m.
One Parkway Building
1515 Arch Street, 18th Floor

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.
Elizabeth Baugh
Bryan McHale
Hortencia Vasquez

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:11 p.m.

I. Approval of Minutes

By a 3-0 vote, the Board approved the meeting minutes for the public meeting that was held on November 20, 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 has been no change in the status of this case, which began with the suit brought by the FOP on May 18, 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 the Board's brief in response was filed on July 11. On behalf of the Board, Mr. Creamer thanked Eleanor Ewing of the Law Department who represented the Board at oral argument on Tuesday, November 12.

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

Mr. Creamer reiterated his report from last month, noting that a panel of the Commonwealth Court affirmed the trial court's ruling in the Board's favor in the case *Cozen O'Connor v. Board of Ethics*. Cozen filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on July 17, 2013 and the Board's attorneys at Dechert filed an Answer to Cozen's Petition on July 31, 2013. Whether Cozen's attempted appeal is allowed to go forward or not is up to the Supreme Court's discretion.

Board Member González arrived at 1:15 p.m.

B. Lobbying Update

Mr. Creamer said that staff continues to work daily on the registration portion of the online lobbying system. He explained that according to the Project Plan, a team from Acclaim, the project vendor, will be in the Board's office on Thursday and Friday to begin the user acceptance training phase of the project. They will demonstrate the registration software and conduct tests using their own sample registrations. Then Board staff will continue to test using hypothetical registration scenarios drawn from real situations and questions that have been encountered since the interim paper system began in January 2012. Acclaim will then correct any problems and make any adjustments or "fixes" to the software.

Mr. Creamer reported that at the moment, staff believes that the online registration function will be ready and available on the Board's website on Monday, January 13, 2014. Staff will use several methods to announce the new system and the fact that 2014 lobbying registration will no longer use the interim paper forms. This week, staff will post a prominent notice on the Board's website and send an email notice to a lobbying distribution list, which now includes 570 names. Staff will then send a notice to all currently-registered lobbyists, lobbying firms and principals to notify them that 2014 registration will be electronic.

Mr. Creamer said that while preparation for registration is happening, staff will work with Acclaim on the online expense report function so that it will be ready to receive 2014 first quarter expense reports. The reports cover January 2014 through March 2014 and are due on or before April 30, 2014. As a result, there will be one remnant of the interim paper system: 2013 fourth quarter expense reports, which cover October through December of 2013 and are due by January 30, 2014, will still be filed using the paper expense report. Staff will make sure that this information is included in all reminders and notices.

C. Ethics Training

Mr. Creamer explained that Subsection 20-606(1)(b)(iii) of the City Code requires that all members of City boards and commissions attend annual ethics training. He said that staff has conducted five training sessions since October for members of boards and commissions and will continue with sessions in early 2014.

Mr. Creamer added that the Code also requires all elected City officials, all cabinet members and all City department heads to attend annual training. He said that these sessions have been

postponed until 2014 because staff believes it is important to revise the training materials to include the gift rules that are currently being considered by the Board.

Staff continues to conduct ethics training sessions for new employees on a monthly basis and approximately 250 people have attended since September.

D. COGEL

Mr. Creamer reported that, along with Michael Cooke and Liz Downey, he attended the December 2013 annual conference of the Council on Governmental Ethics Laws (COGEL) in Quebec City from December 8-11. He explained that members of COGEL are primarily local, state, and national government officials who regulate ethics, campaign finance, lobbying, freedom of information, and election administration laws.

Mr. Creamer said that they participated in conference sessions that covered trends in campaign finance and strategies for managing relationships with governmental officials, the regulated community, and the public. One significant session discussed approaches for improving public materials, including plain language documents, and outreach. Other sessions covered ethics and open government issues.

He said that staff is excited to report that the 2014 COGEL Conference will be held from December 7-10 in Pittsburgh. Mr. Creamer reported that he will be serving on the Host Committee and the Program Committee, along with representatives of the State Ethics Commission, and that he hopes to include other Board staff members in planning for the Conference. Mr. Creamer encouraged anyone who is interested in public integrity laws to consider attending the conference.

E. Recent Speaking Engagements

Mr. Creamer said that on November 19, Michael Cooke was a panelist on a Pennsylvania Bar Association seminar called "Pennsylvania Election Law, Campaign Finance & Lobbying Disclosure." Mr. Cooke spoke about independent expenditures and the City's campaign finance law.

Mr. Creamer said that on October 29, he spoke at a conference sponsored by the Pennsylvania Chapter of the American Planning Association. He was on a panel called "Ethics for Planning and Design Professionals," and spoke about the City's public integrity laws.

III. Installation of Board Member

Chair Reed stated that Sanjuanita González was recently confirmed by City Council to serve a full five-year term on the Board. After brief remarks by the Chair, the Honorable Nitza I. Quiñones Alejandro of the United States District Court for the Eastern District of Pennsylvania administered the Oath of Office to Ms. González.

IV. General Counsel's Report

A. Advisory Opinions

Ms. Nayak reported that no advisory opinions had been issued since the November Board Meeting.

Ms. Nayak said that staff has begun work on creating a searchable master index of advisory opinions as had been discussed at the November Board Meeting. She explained that the master index will eventually include the opinions the Board and General Counsel have issued through June 2013 and will contain embedded links to each opinion. The master index will unify the indexes for Board and General Counsel opinions and make it easier to find a particular opinion with fewer web clicks.

B. Informal Guidance

Ms. Nayak briefly reviewed the informal guidance chart (following page) with the Board.

Summary of Informal Guidance Provided November 13 – December 10, 2013

| General topic | total # | phone | email | phone & email | in-person | Subtopics |
|-----------------------|---------|-------|-------|---------------|-----------|---|
| Lobbying | 17 | 6 | 6 | 3 | 2 | Non-filing of Q3 expense reports; content of and amending registrations and expense reports; renewing lobbying registration for 2014; activities reportable as lobbying |
| Campaign Finance | 11 | 7 | 2 | 2 | | Reporting requirements, filing deadlines and reporting candidate information to the Board; laws governing use of money by PAC |
| Conflicts of Interest | 7 | 2 | 4 | 1 | | Disclosure and disqualification; use of public resources for private purposes; service on nonprofit board; outside employment |
| Political Activity | 4 | | 2 | 2 | | Application of political activity restrictions to State authorities; providing information to a candidate as part of City work; resign to run |
| Gifts and Gratuities | 3 | 1 | 2 | | | Item given by government entity; Reg. 10 effective date; gala event tickets; gifts that serve a legitimate government purpose |
| Financial Disclosure | 3 | 3 | | | | Disclosure requirements for board and commission members |
| Post-Employment | 1 | | 1 | | | |
| Other | 3 | 2 | 1 | | | Ethics training requirement for interns and contractors; effect of prior Ethics Board's advisory opinion |

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.

C. Regulations

Ms. Nayak said that staff has continued to carry out work in support of moving the proposed Regulation 10 (Gifts and Gratuities) through the regulation process.

D. General Counsel Designee

Ms. Nayak explained that the Board's regulations on advisory opinions and on enforcement proceedings define "General Counsel" to include the General Counsel of the Board and his or her designee or designees. Ms. Nayak stated that Associate General Counsel Elizabeth Downey is her designee and that Ms. Nayak included a memo memorializing this with the General Counsel report. Ms. Nayak said that Ms. Downey is authorized to receive and review advisory opinion requests as well as to issue General Counsel Opinions. Ms. Nayak added that, for the purpose of administrative enforcement proceedings, Associate General Counsel Downey may advise the Board and help administer and explain the process. Ms. Nayak said that copies of the memo have been placed in Ms. Downey's personnel file as well as her own.

Board Member McCormick arrived at 1:31 p.m.

V. Personnel Matters

Mr. Creamer explained to the Board that the FY14 budget appropriation includes funding for an additional staff attorney position. He noted that the Law Department advised the Board in 2013 that it could delegate authority to staff for hiring staff positions other than the Executive Director. Mr. Creamer said that, as was the case when hiring an Associate General Counsel, Board members would have the opportunity to be as involved in the hiring process as they wished.

Mr. Creamer requested that the Board delegate authority to him to fill the vacant position. By a vote of 5-0 the Board voted to delegate authority to Mr. Creamer to fill the vacant attorney position.

Ms. Massar reported that there is a discrepancy in the calculation of vacation time for some of the attorneys on the Board's staff when compared to other attorneys in City government. Ms. Massar explained that the Board's staff attorneys only receive 10 days of vacation after five years, and are not eligible for 15 vacation days until they have completed nine years of service. She stated that, in contrast, Law Department attorneys receive 15 days vacation after five years.

Ms. Massar explained that the City's Administrative Board must approve a change in vacation policy. She said that staff believes there is a compelling case to be made that the rules should be amended to allow Board staff attorneys to accrue vacation time at a comparable rate with the other attorneys in City government, and requested authority from the Board for the Executive Director and Deputy Executive Director to work with the Law Department to present a request concerning additional vacation time to the Administrative Board.

By a 5-0 vote, the Board voted to authorize staff to submit a request to the Administrative Board through the Law Department to address the additional vacation time issue as noted above.

VI. 2014 Board Meeting Calendar

The Board reviewed the draft schedule of Board Meetings for 2014, which would occur on the third Wednesday of each month. By a vote of 5-0 the Board approved the draft schedule of 2014 Board Meetings for publication.

VII. Discussion of Public Comments on Proposed Regulation No. 10, Gifts

Mr. Cooke detailed the staff's response to the public testimony at the November meeting. He explained that the response was intended to elicit comment from the Board to guide the drafting of the Hearing Report, which is the Board's official response to the testimony.

Mr. Cooke went through the response in detail, including offering suggested modifications to the draft regulation in response to comments from the public hearing. Several Board members asked whether the regulation imposed any limitation or restriction on gifts given by a person who subsequently becomes a restricted source, particularly a lobbyist. Board members also asked if the person could be banned from lobbying an official if he or she had given a previously gift to that official. Mr. Cooke stated he did not believe the Board could create such a rule in the gift regulation, but that staff would look into the issue further.

The Chair called for a break at 2:15 p.m. The Public Session resumed at 2:22 p.m.

When the public session resumed, the Chair opened the discussion to comment from the public.

Chief Integrity Officer Joan Markman and Ellen Kaplan of the Committee of Seventy each made comments about the proposed regulation in response to the staff's response presented by Mr. Cooke.

The Board briefly continued the discussion of the proposed regulation. The Board also discussed authorizing Board staff to communicate with City Council concerning strengthening the existing gift ordinance, including reforms to limit the dollar value of gifts, restrict the solicitation of gifts by City officers and employees, and to ban cash gifts.

Judge Beck asked the Board what value limit they would put on substantial economic value. Chair Reed, the Reverend Gillespie, Judge Beck and Ms. González all said they were comfortable with substantial economic value being set at \$50. Mr. McCormick said that he was comfortable with either \$50 or \$100.

VIII. Amendment to a Settlement Agreement

Mr. Cooke reported that Board staff had a recently met with members of the Law Department's Tax Unit about the collections process for balances due under Board-approved Settlement Agreements.

Mr. Cooke explained that Michael Quintero Moore, a former staffer to former City Councilperson Donna Reed Miller, had contacted Board enforcement staff to discuss how to repay the outstanding balance of the Settlement Agreement he entered into with the Board on December 9, 2011. As part of the Settlement Agreement, Mr. Moore agreed to give up his City employment and was barred from working for the City for a year. Upon return to full employment, Mr. Moore's reduced salary and debts caused him to seek adjustment to the schedule of payments.

Mr. Cooke walked the Board through the details of the Amendment to the Settlement Agreement. By a vote of 5-0 the Board approved the Amendment to the Settlement Agreement with Mr. Moore.

IX. New Business

No new business was discussed.

X. Questions/Comments

Ms. Kaplan urged the Board to communicate with City Council conveying the Board's legislative recommendations.

Ms. Kaplan inquired about recent reports of a concluded Board investigation involving lobbying. Mr. Creamer stated that the Code's confidentiality provisions prevent the Board from commenting about investigations, including commenting on the existence of an investigation, but that staff is always available to answer questions about the City's ethics regulations.

Ms. Markman commented on the Board approaching City Council with legislative recommendations, and stated that the Administration was still concerned about approval of the regulation.

Chair Reed announced the Board would meet in executive session to address confidential enforcement matters. The public session of the Board's meeting was adjourned at 3:50 p.m.