

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
December 19, 2012  
Board of Ethics  
One Parkway Building  
1515 Arch Street, 18<sup>th</sup> Floor  
11:00 am

**Present:**

Board

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

Staff

Shane Creamer, Esq.  
Nedda Massar, Esq.  
Evan Meyer, Esq.  
Michael Cooke, Esq.  
Maya Nayak, Esq.  
Elizabeth Baugh  
Bryan McHale  
Tina Formica

Guest

Judge Alice Beck Dubow

**I. Call to Order**

Vice-Chair Reed recognized a quorum was present and called the meeting to order at 11:09 am.

**II. Installation of New Board Members**

Vice-Chair Reed stated that Judge Phyllis W. Beck was recently confirmed by City Council to serve an additional term on the Board ending on November 16, 2017 and Brian J. McCormick, Jr., was recently confirmed by City Council to serve his initial term on the Board ending on November 16, 2016.

Vice-Chair Reed said that Judge Beck is a retired judge and currently serves as the chair and chief financial officer of the Independence Foundation. Judge Beck served as a vice dean of the University of Pennsylvania Law School from 1976 to 1981, when she was appointed as the first woman to serve on the Superior Court. She has also served as general counsel to the Barnes Foundation. As chair of the Governor's Commission on Judicial Reform, Judge Beck authored a 260-page report recommending major structural reform in Pennsylvania's Judicial System. The American Judicature Society awarded her the Herbert Harley Award for her leadership role in the field, especially her work with Pennsylvanians for Modern Courts. Judge Beck was a founding member and president of Philadelphia Futures, an organization devoted to mentoring children. Judge Beck has served on the Board of Ethics since 2011.

Vice-Chair Reed said that Brian J. McCormick is a managing partner at Sheller, P.C. in Philadelphia. He has represented whistleblowers in several major cases. His practice includes pharmaceutical injury, consumer protection, products liability and mass tort litigation, as well as complex commercial litigation matters. A native of Philadelphia, Brian is active in the community and has performed substantial *pro bono* work on behalf of impoverished clients in Philadelphia. He served until recently as a member of the Committee of Seventy. His civic service also includes being selected by Mayor Michael Nutter in 2009 to serve as a member of the Mayor's Task Force on Ethics and Campaign Finance. The final report of the Task Force was issued in late 2009 and, among many recommendations, included the recommendation to create the City's new lobbying law.

Vice-Chair Reed introduced the Honorable Alice Beck Dubow who is Judge Beck's daughter and serves with distinction on the Philadelphia Court of Common Pleas.

Judge Alice Beck Dubow administered the following Oath of Office to returning Board member, Judge Phyllis Beck, and to new Board member, Brian J. McCormick, Jr., Esq.:

"I, Phyllis Beck, Brian McCormick, do solemnly affirm that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and the Philadelphia Home Rule Charter and that I will discharge the duties as a member of The Philadelphia Board of Ethics with fidelity."

Vice-Chair Reed welcomed back Judge Beck and welcomed Mr. McCormick to the Board.

### **III. Board Officers**

Vice-Chair Reed stated that with the conclusion of the distinguished service of Richard Glazer as Chairperson of the Board, the Board is currently without a Chairperson. Therefore, the next order of business will be election of officers of the Board.

Vice-Chair Reed called for nominations for the office of Chairperson of the Board.

Judge Beck nominated Mr. Reed. Michael H. Reed was elected unanimously by the Board members to serve as the Chairperson of the Board.

Chair Reed called for nominations for the office of Vice-Chairperson of the Board.

Ms. Gonzalez nominated Judge Beck. Judge Phyllis Beck was elected unanimously by the Board members to serve as Vice-Chairperson of the Board.

#### **IV. Approval of Minutes**

By a 3-0 vote, the Board approved the meeting minutes, as corrected, for the public meeting that was held on October 17, 2012.

#### **V. Executive Director's Report**

##### **A. Litigation Update**

##### **i. McCaffery v. Creamer, et al.**

Mr. Creamer explained that the Plaintiff filed a Response to the Board's Motion for Summary Judgment on December 5<sup>th</sup> and the Board filed a Reply to his Response on December 13<sup>th</sup>. On Monday, the Board's summary judgment motion was reassigned to Judge Shelley Robins-New. The case is scheduled to begin trial on March 4, 2013. Staff anticipates that litigation of this case will continue to consume significant amounts of staff time.

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

Mr. Creamer reported that on July 11th, Judge Sanchez heard oral argument on the parties' cross motions for summary judgment. The Board awaits Judge Sanchez's ruling. On behalf of the Board, Mr. Creamer thanked Mark Maguire and Eleanor Ewing, the Board's counsel at the Law Department, for their representation in this matter.

##### **iii. Cozen O'Connor v. Philadelphia Board of Ethics**

Mr. Creamer reported that on July 18th, 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. Judge Tucker ruled that post-election forgiveness by Cozen O'Connor 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. Cozen has appealed Judge Tucker's ruling to Commonwealth Court. Cozen filed its Brief in support of its appeal on December 14<sup>th</sup>. The Board's Reply Brief is due on January 14<sup>th</sup>.

#### iv. **Dougherty v. Philadelphia Newspapers LLC, et al.**

Mr. Creamer reported that on November 7, 2012, Philadelphia Newspapers LLC served a subpoena on the Board seeking documents related to a defamation action filed by John Dougherty. Dimitri Mavroudis of the Law Department is representing the Board and is in contact with Philadelphia Newspapers' counsel at Pepper Hamilton.

#### **B. Lobbying Update**

**Software Project:** Mr. Creamer explained that staff is conducting the evaluation process with the Office of Innovation and Technology (OIT) for the lobbying software proposals that were received. As staff reported last month, the proposals are complex and require longer than they anticipated for review. Staff is relying on OIT to help the Board with the detailed technical aspects of the proposals. The goal is to reach a decision with OIT in January.

Mr. Creamer said that as staff noted last month, on this schedule, the online system will not be in place to accept lobbying registrations on January 2, 2013. However, staff will have a better idea about how quickly a registration module will be available once they complete a review of the proposals. Once staff has that information, they expect to present alternatives to the Board concerning the 2013 registration process and whether or not there is a possibility that the expense report module may be ready in time for filing the 2013 first quarter reports that are due on April 30<sup>th</sup>.

**Filing Update:** Mr. Creamer informed the Board that with assistance from OIT, lists of registrations and images of the third quarter expense reports have been posted on the Board's website. Staff continues to provide filing assistance to lobbyists, firms and principals who call the office every day.

**2013 Lobbying Registration:** Mr. Creamer reported that the City Lobbying Code requires annual registration and all current registrations expire on December 31, 2012. Therefore, a lobbyist, lobbying firm or principal that registered at any time in 2012 is not automatically reregistered for 2013, and, further, is not required to register in 2013 until such time as the applicable registration thresholds in the Lobbying Code (Section 20-1204) have been met in 2013. Accordingly, on Monday, staff sent a reminder email about 2013 registration to their lobbying distribution list, which includes all registered lobbyists, lobbying firms and principals and those who have expressed an interest in the Board's lobbying law. The annual registration fee remains \$100 for each registrant.

#### **C. Training**

**Ethics Training:** Mr. Creamer reported that staff conducted three ethics training sessions since the last Board meeting and have another scheduled tomorrow.

**Campaign Finance Training:** Mr. Creamer informed the Board that on December 12<sup>th</sup> staff conducted the first campaign finance training session for the 2013 elections. Staff sent emails

to announce this session, and 40 people attended the session which was presented jointly by Michael Cooke and Tim Dowling, a member of the City Commissioners' staff. Joint sessions were conducted before the 2011 election and they were especially effective because staff was able to address questions concerning both the City and state campaign finance laws.

Staff plans to conduct five more campaign finance trainings between now and the 2013 primary election.

#### **D. 2013 Board Meeting Calendar**

Mr. Creamer stated that the Board is required by the Pennsylvania Sunshine Act to give public notice of its schedule of regular meetings. Staff provided a list of proposed 2013 meeting dates for the Board's approval (Tab 3). With the exception of the meeting on January 23<sup>rd</sup>, all meetings are on the third Wednesday of the month. Once approved, staff will arrange for the list of dates to be published, as required by law.

#### **E. Visitors**

Mr. Creamer explained that at the request of the U.S. Attorney's office, on December 11<sup>th</sup>, staff were hosts to a delegation of six representatives of Russian non-governmental organizations (NGOs). All were interested in transparency in government and anti-corruption measures. Staff presented an overview of the Board's work, including summaries of the campaign finance, ethics and lobbying laws. They asked many questions and were very interested in the Board's enforcement processes.

#### **F. COGEL**

Mr. Creamer stated that from December 2<sup>nd</sup> through 5<sup>th</sup>, Maya, Evan, Nedda and he attended the annual Conference of the Council on Governmental Ethics Laws (COGEL) in Columbus, Ohio. COGEL is a voluntary international organization composed primarily of local, state, and national government officials who regulate ethics, campaign finance, lobbying, freedom of information, and election administration laws. The conference sessions are especially important because they survey new laws and litigation occurring in other jurisdictions, including the Canadian provinces.

Mr. Creamer explained that the Board staff members were very involved in the Conference and in COGEL activities. He has two more years in his term as a member of the COGEL Steering Committee which functions as the organization's Executive Committee. Evan is a member of the Publications Committee that produces the Guardian, a quarterly electronic newsletter. Maya hosted a Breakfast Table Topic about gifts issues at the Conference. Nedda, who is a COGEL Past President, served on the Awards Committee and moderated a Conference session called the Local Agency Roundtable.

## **VI. Approval of 2013 Board Meeting Calendar**

Vice-Chair Beck proposed to accept the 2013 calendar as presented by staff. By a 4-0 vote, the 2013 Board meeting calendar was approved by the Board.

The following calendar will be published in the paper and placed on the Board's website:

**January 23, 2013**  
**February 20, 2013**  
**March 20, 2013**  
**April 17, 2013**  
**May 15, 2013**  
**June 19, 2013**  
**July 17, 2013**  
**August 21, 2013**  
**September 18, 2013**  
**October 16, 2013**  
**November 20, 2013**  
**December 18, 2013**

## **VII. General Counsel's Report**

**1. Board Opinions.** Mr. Meyer reported that there was one Board Opinion since the November report.

Formal Opinion 2012-005 (November 20, 2012). Community College of Philadelphia requested, through its counsel, an Opinion as to whether the College, and employees working on behalf of the College, are required to comply with the lobbying registration and reporting requirements of the Lobbying Code. The Board found that the College generally meets the definition of a principal, to the extent that it engages in lobbying the City and exceeds the expense thresholds. However, the Board held that, to the extent that lobbying activities for the College are performed by that public entity itself or by its officials or employees in an official capacity, the College is an institution within the intent of City Council to exempt certain public entities from the registration and reporting requirements of Code Chapter 20-1200. Therefore, the College need not register as a principal.

The College had initially requested a nonpublic Opinion, but later advised that the Opinion may be made public.

Formal Opinion No. 2012-005 is currently available on the Board's website.

**2. General Counsel Opinions.** Mr. Meyer reported that there were no General Counsel Opinions since the November report.

**3. Informal e-mail guidance.** Mr. Meyer reported that through Thursday, December 13, 2012, there were six of these since the November report. *Note that in every such email we state the following: "This informal general guidance is not a ruling on your particular situation and does not provide you protection from an enforcement action." We add that if the requestor would like a definitive ruling that applies the Public Integrity Laws to his/her specific situation and that protects against a possible enforcement action, then they should ask us for an advisory opinion, providing, in writing, full and specific facts on which the opinion is to rely, including their name and title, specific question, and whether they are requesting a public or nonpublic advisory.*

a. A City employee requested "the guidelines" on using City-owned devices (computers, Blackberries) for political messaging. We advised that the political activities restrictions on City officers and employees are stated in Section 10-107 of the Home Rule Charter, and are interpreted chiefly by Board of Ethics Regulation 9, and we provided a link to the Regulation on our website, as well as a recent interpretative Opinion. In addition, any Advisory Opinions issued by the Board since Regulation 9 was promulgated on 3/28/11 would be instructive, but these are generally narrowly focused on particular issues and there have so far been few such opinions. Relative to the specific question, we noted that Subpart H of the Regulation (Paragraphs 8.18 and 8.19) concerns "Use of Social Media."

b. We received a query from a lobbying firm asking whether four agencies are considered City agencies the Lobbying Code. We provided the definition of "Agency" from the Code, and noted that the definition specifically includes 3 of the 4 entities mentioned by the requestor.

As to the remaining entity, the question was whether it "meets the definition of 'City-related agency' under Section 17-1401(9)," in the words of Code Section 20-1201(3)(b). The Board of Ethics has not had occasion to issue any advisory opinions construing that phrase, or applying it to any other entities, so we informed the requestor that we could not officially advise him via email, and he may request an Advisory Opinion.

c. A City employee asked about introducing a candidate at a campaign event. We provided the same general summary of the political activity restrictions as in the prior advice, and added the following:

Generally, Regulation 8 is your best guideline, and I encourage you to read it carefully. Relative to your specific question, although Regulation 9 permits some personal political expression if it is not done on City time or using City resources or your City title, such expression may not be "performed in concert or coordination with a political party, candidate, or partisan political group." See Paragraph 9.11 of the Regulation 8 and the Examples for Subpart E. In my view, introducing a candidate at a campaign function and at the request of the candidate's committee would clearly be an action "in concert or coordination with a political party, candidate, or partisan political group." Therefore, I believe you would be prohibited by Charter Section 10-107(4) from making the introduction that you have described. Also, subsection 10-

107(3) of the Charter prohibiting appointed City employees from being “in any manner concerned in demanding, soliciting, collecting or receiving, any assessment, subscription or contribution, whether voluntary or involuntary, intended for any political purpose whatever” applies fully to you and therefore you must be especially careful about avoiding any connection with any function that includes a fund-raising component.

d. A former City employee who had received a post-employment advisory requested clarification of several concepts.

As to the permanent limitation of Section 20-603 of the Philadelphia Code, the requestor wanted to know what is meant by transactions in which the individual participated. We advised: By referring to matter in which you “participated,” the provision means official City actions that you were involved in as part of your duties, in a way that is more than merely ministerial (such as by handing a blank form to someone). In other words, you made a recommendation, did some research, participated in a meeting, analyzed some data, drafted a document, or the like. “Transaction” generally means any “proceeding, application, submission, request for a ruling or other determination, contract, lease, claim, case, award, decision, decree, judgment or legislation” and would include the creation of any policy, regulation, or grant of a permit or license, creation of any right or responsibility, or assessment of any fee. If it can be said that the City (or an official of the City) officially acted, that is likely a ‘transaction.’

However, even if you participated in a transaction while you were a City employee, the rule of Code Section 20-603 only permanently prohibits you (assuming that the one-year rule and two-year rule don’t apply) from assisting someone in that same transaction, which means that the transaction must still be “live” in some way. For example, if -- as a City employee -- you worked on an administrative matter involving a particular individual, that individual challenged the ruling, and the matter is still in the courts, you could not now assist the individual in that matter, if that person, or an agency helping her, asked for your help.

But the fact that you generally worked on such matters for the City would not prohibit you (under Code Sect. 20-603) from ever again working on any such matters, so long as they were different matters from the ones you worked on.

e. A departmental Integrity Officer asked about advice for an employee who proposed to do volunteer work, similar to his work for the City, but for a nonprofit that would be dealing with a different department.

We advised that what the employee proposes to do doesn’t seem to be acting as “agent or attorney” so there should be no “representation” problem under Code 20-602. And he’s an unpaid volunteer, so he would have no financial interest that would give rise to a conflict of interest under Code 20-607 or Charter 10-102. But we pointed out there could be an appearance issue if the nonprofit came before the employee’s same department, using the employee’s work.

f. We received a query from a City official concerning the honorarium provision of the State Ethics Act. We provided a copy of a relevant opinion of the State Ethics Commission and provided contact information for the Commission.

#### **VIII. Proposed Amendments to Regulation No. 1, Campaign Finance**

Mr. Cooke presented the proposed changes to Regulation 1 and the legal process of enacting amendments. He explained that the amendments are based on practical experiences and questions from the last municipal election. After the presentation, Chair Reed suggested that the Table of Contents for the amendment include page numbers for easier reference.

Chair Reed asked if there was an appeal beyond the Board in the matter of debt forgiveness as outlined in Subpart F, 1.28. Mr. Cooke responded that there was not, it is strictly a matter of Board discretion.

Chair Reed also asked whether Subpart J, 1.50 was inclusive enough as written. After discussion with staff, he agreed that 1.50 (a) should be broad enough to cover everything.

Staff recommended scheduling a hearing for Regulation 1 on January 23<sup>rd</sup> before the January Board meeting.

Vice-Chair Beck moved to accept the amendment and the date for the hearing. By a 4-0 vote, the motion was approved by the Board.

#### **IX. New Business**

There was no new business to discuss.

#### **X. Questions and Comments**

There were no questions or comments from the public.

The public session of the Board's meeting was adjourned at 12:07 pm. The Board will reconvene in executive session to consider enforcement matters and nonpublic advice.