

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
December 17, 2014 - 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.  
JoAnne A. Epps, Esq.

**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. Introduction and Installation of New Board Member**

Chair Reed said that the Board was very pleased that the Honorable Ida Chen was present to administer the Oath of Office to the Board's newest member, JoAnne A. Epps. In July of 1988, Judge Chen became the first Asian American female to serve as a judge in the Commonwealth of Pennsylvania, and she currently presides in the Family Court Division of the Court of Common Pleas.

Chair Reed stated that Judge Chen has been a good friend to the Board since its inception. Beginning in 2003, she chaired the Ethics Committee of the 21st Century Review Forum for the City of Philadelphia. The findings and recommendations of that Committee included the need for a new board of ethics with a professional staff, adequate resources and adjudicatory and enforcement powers. The recommendations of the Committee provided the blueprint for Philadelphia's current Board of Ethics. Judge Chen administered the oath of office to many Ethics Board members, including the Board's first appointees.

On behalf of the Board, Chair Reed then welcomed JoAnne A. Epps, Dean of the Temple University Beasley School of Law, to the Board of Ethics. Chair Reed noted that many present probably already knew Dean Epps. A 1976 graduate of the Yale Law School, Dean Epps has taught for almost 30 years at Temple, and before that she served as an Assistant U.S. Attorney in Philadelphia and Deputy City Attorney in Los Angeles. She has been Dean of the Law School since 2008.

Dean Epps has been a champion for women and minorities in the legal profession and, among her many accomplishments, was awarded the 2014 Justice Sonia Sotomayor Diversity Award by the Philadelphia Bar Association. She is nationally respected for her scholarship and her academic and professional leadership. She is also a gifted educator who continues to teach Litigation Basics to first year law students.

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On behalf of the Board, Chair Reed said the Board was delighted to have JoAnne Epps join the Board.

After Chair Reed's welcoming remarks, Judge Chen administered the oath of office to Dean Epps.

## **II. Approval of Minutes**

By a 4-0 vote, the Board approved the minutes for the public meeting held on November 19, 2014, as corrected. Dean Epps abstained from the vote.

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

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

Mr. Creamer reported that on Monday, December 15, 2014, the Pennsylvania Supreme Court issued its decision in Cozen's appeal from the Commonwealth Court ruling, which had affirmed the trial court's decision in the Board's favor. The Supreme Court ruled that the firm's forgiveness of the Brady Committee's debt would not constitute a "contribution" that was subject to the contribution limits under the law as it existed in 2007, and that the firm could forgive the debt at one time and *in toto* without violating the City's campaign finance law.

Mr. Creamer noted that the Supreme Court upheld the Commonwealth Court's ruling that the firm did not have standing to seek a declaration that the Brady Committee could conduct unrestricted post-election fundraising to retire the debt owed to the firm. The Court also affirmed the Board's interpretation of the City's campaign finance law, as it existed in 2007, by concluding that the contribution limits continued to apply post-election, and that the 2010 amendment of the law merely clarified that interpretation and did not change the law, as Cozen had argued.

Mr. Creamer reported that although the ruling permits the forgiveness of legal fees to defend a ballot challenge, it is expressly limited to an interpretation of the law as it stood in 2007. He said that the Court cited with approval the 2010 additions to the law, including new provisions for the forgiveness of debt and for the establishment of separate legal defense funds. Therefore, the decision does not affect the law that has applied since 2010.

Mr. Creamer noted that in reaching its decision, the Court relied on concepts similar to those incorporated in Board Regulation No. 1's debt forgiveness provisions, which the Board adopted in 2010. The Court reasoned that Cozen did not agree to represent the Brady Committee on a *pro bono* basis or for a discounted fee; there was no indication that the Committee thought that the firm would forgive the fees; the firm intended to get paid for its services; and the firm had "suffered from an unanticipated business loss."

To qualify for debt forgiveness under Regulation No. 1, Mr. Creamer said that a creditor must have billed a candidate for its services in the ordinary course of business and the terms of the transaction must have been commercially reasonable. The debt must also be outstanding for at

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least 24 months and the candidate committee must have insufficient cash on hand to pay the creditor.

Mr. Creamer thanked the Board's *pro bono* attorneys at Dechert, including Elisa Wiygul, who argued the case on the Board's behalf before the Supreme Court and earlier, before the Commonwealth Court.

After some discussion, the Board voted 5-0 to authorize Board staff to draft a resolution on behalf of the Board expressing its sincere gratitude to Dechert for its outstanding and diligent representation in the *Cozen* case as well as in other litigation and naming the Dechert attorneys involved in representing the Board.

## **B. COGEL Conference**

Mr. Creamer reported that Board staff's experience at the 2014 COGEL Conference in Pittsburgh was exceptional. He noted that for an agency that came into existence only eight years ago, the Board's contributions to the Conference were immense. The Board co-hosted the Conference with the Pennsylvania State Ethics Commission; Board staff members shaped the Conference agenda, which included more than 40 sessions; and Board staff participated as moderators and panelists in several of those sessions. Mr. Creamer gave a welcoming speech at the opening reception and completed a four-year term serving on COGEL's Steering Committee.

COGEL members are local, state, national and international government officials who regulate ethics, campaign finance, lobbying, freedom of information, and election administration laws. COGEL members also include good government groups, private sector law and lobbying firms, and lobbyists and their clients. This unique combination of regulators and the regulated community ensures that conference sessions and discussions are provocative and stimulating.

Mr. Creamer said that Board staff was very proud that the Conference plenary luncheon speaker was WHYY Senior Reporter Dave Davies. Mr. Davies provided "A Veteran Political Reporter's Fresh Perspectives on Ethics and Scandal." He emphasized the importance of the Board and described the major impact the Board has had in Philadelphia.

Michael Cooke served on the Program Committee, which plans the entire Conference, and he coordinated and moderated two sessions. The first was called "What Can I Say? Disclosure Rules in Investigations and Enforcement Actions." The panelists were Dave Davies, a partner in the California law firm Nielsen Merksamer, the Ethics Enforcement Officer of the Connecticut Office of State Ethics, and our General Counsel Maya Nayak. The session explored the policy reasons for and difficulties with rules prohibiting disclosure of information about investigations and enforcement actions.

Mr. Cooke's other panel was "Getting to Yes: Successful Settlement Strategies." The panelists for that session were the Deputy Executive Director of the Pennsylvania State Ethics Commission, two attorneys in private practice, and the Director of the Alternate Dispute Resolution Office of the Federal Election Commission. In this session, participants discussed the value of settlement agreements and strategies and "nuts and bolts" practical suggestions.

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Nedda Massar, a former COGEL President, coordinated and participated in a session to welcome first-time conference attendees. The “old timers” described conference highlights and answered questions and the first timers were introduced to each other so that they didn’t feel quite so new.

Mr. Creamer noted that COGEL has played an important role in the Philadelphia Board of Ethic’s creation and development, beginning in 2005 when the executive directors of two COGEL member agencies, including the Los Angeles Ethics Commission and the New York City Conflict of Interest Board, travelled to Philadelphia to testify at a City Council hearing in support of the legislation that created the Board. More recently, in September, representatives from two other COGEL members, the Brennan Center for Justice from New York City and the Campaign Legal Center from Washington, DC, traveled to Philadelphia to testify at a Board hearing in support of proposed amendments to the Board’s campaign finance regulation. With the Board serving on the Host Committee at this year’s Conference, and with the Board’s significant participation at the Conference, Mr. Creamer said that he felt that Philadelphia’s engagement with COGEL had come full circle.

#### **IV. 2015 Meeting Calendar**

Ms. Massar explained that the Board is required by the Pennsylvania Sunshine Act to give public notice of its schedule of regular meetings. Ms. Massar provided a list of proposed meeting dates for 2015 to the Board for the Board’s approval following the traditional schedule of holding the meetings on the third Wednesday of each month. Once the Board approved a schedule, Board staff would arrange for the list of dates to be published and posted as required by law.

Chair Reed requested that the proposed June meeting date be moved from June 17, 2015 to June 24, 2015.

By a 5-0 vote, the Board approved the list of Board meeting dates for 2015 with the change of the June 2015 meeting date from June 17, 2015 to June 24, 2015 and authorized staff to publish the Board’s meeting dates in accordance with law.

#### **V. General Counsel’s Report**

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

Ms. Nayak reported that General Counsel Non-Public Opinion 2014-505 was issued on October 20, 2014 to a City employee who sought advice about a number of gift-giving scenarios related to the upcoming wedding of a friend, a City employee in the requestor’s City agency who is marrying an individual who lobbies the requestor’s City agency. The Opinion relied heavily on Non-Public Board Opinion 2014-003 and advised that the proposed gift-giving scenarios would not raise an issue under the City’s recently amended gift restriction. The redacted version of Opinion 2014-505 is available on the Board’s website.

Ms. Nayak reported that General Counsel Non-Public Opinion 2014-506 was issued regarding outside employment. General Counsel staff are working on its redaction.

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**B. Informal Guidance**

Ms. Nayak reviewed the chart summarizing informal guidance provided from November 8, 2014 to December 5, 2014. Ms. Nayak noted that the chart now reflected year-to-date totals of informal guidance provided by staff, as suggested by former Board Member Rev. C. Kevin Gillespie at the November Board meeting.

**C. Distribution of Non-Public Board Opinion 2014-002**

Ms. Nayak reported that, as the Board had directed at the November Board meeting, she distributed copies of the redacted version of Board Opinion 2014-002 to the City's elected officials via letter.

**D. Posting of Board's Memorandum on Supplemental Procedures for Administrative Enforcement Proceedings**

Ms. Nayak reported that as the Board had directed at the November Board meeting, Board staff posted the Board's Memorandum on Supplemental Procedures for Administrative Enforcement Proceedings on the Board's website in very close proximity to Regulation No. 2 (Investigations and Enforcement Proceedings). The Memorandum is now attached to the copy of Regulation No. 2 on the Board's website and a footnote was added in the body of Regulation No. 2 referencing the Memorandum.

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, NOVEMBER 8, 2014 – DECEMBER 5, 2014**

<b>General topic</b>	<b>monthly total # (ytd total)</b>	<b>phone</b>	<b>email</b>	<b>phone &amp; email</b>	<b>Subtopics</b>
Campaign Finance	17  (172)	9	2	6	Contribution limits; aggregate contribution limits for PACs; money order contributions; coordinated expenditures; declaration of candidacy; filing deadlines; reporting requirements; amending reports; candidate's non-profit board service; SmartClient account setup; and accessing campaign finance database.
Lobbying	11  (496)	11	--	--	Registration and reporting requirements; prohibition against lobbyist serving as treasurer or other officer of candidate's political committee; registering in PLIS; and amending a registration.
Conflicts	3  (32)	--	1	2	Outside employment as independent contractor of State agency; and disqualification and disclosure requirements.
Financial Disclosure	3  (318)	3	--	--	
Political Activity	2  (38)	--	1	1	Former employee; and intersection between City work and campaign issue.
Post-Employment	2  (16)	2	--	--	
Gifts	2  (40)	1	1	--	Event ticket; and thank you note containing gift card for City work.
Other	4  (35)	1	2	1	Confidentiality of investigations; representation restriction for board members; ethics training requirements; and no Board jurisdiction.

*This chart summarizes the informal guidance provided by a number of Board Staff members during the specified time period. The figures provided reflect the approximate number of inquiries that Board Staff has responded to and do not indicate the amount of time spent per topic or inquiry.*

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## **VI. Advisory Alert: Coordinated Expenditures**

Mr. Cooke presented a draft advisory alert that would provide additional guidance on the extent to which expenditures for campaign communications and materials are covered by the coordinated expenditure rule found in Regulation No. 1 (Campaign Finance) at Paragraph 1.38.

The impetus for the proposed advisory alert came from conversations Board staff had with City Council staff after the Board approved the recent amendment to Regulation No. 1. The Council staffers expressed a concern that the phrase “advocate or influence the election of a candidate” does not provide enough guidance as to what kinds of expenditures are subject to the coordinated expenditure rule.

Mr. Cooke explained that the proposed advisory alert clarified that, for the purposes of Paragraph 1.38, expenditures for campaign communications (including audio recordings or video footage) or campaign materials (such as photographs, flyers, signs, or brochures) advocate or influence the election of a candidate only if the communications or materials *either* expressly advocate the election or defeat of a candidate in a covered election *or*, within 90 days of a covered election (including the day of the election), name, refer to, include, or depict a candidate in that election. As such, Mr. Cooke said that the alert would provide guidance heading into the 2015 election and set out parameters for enforcement on this issue.

After some discussion, the Board approved the advisory alert by a 5-0 vote and directed staff to issue the alert by posting it on the Board’s website and distributing it via email.

## **VII. New Business**

There was no new business presented at the meeting.

## **VIII. Questions/Comments**

There were no questions or comments presented at the meeting.

Chair Reed announced that the Board conducted an executive session meeting by email on November 24 and November 25, 2014 to address confidential enforcement matters.

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

The public session of the Board meeting was adjourned at 1:35 p.m.