Philadelphia Board of Ethics
Meeting Minutes
February 19, 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.

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

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:10 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 January 15, 2014.

II. Announcement from the Chair

Chair Reed announced that the Board had conducted an Executive Session meeting by email between January 27, 2014 and January 29, 2014 to discuss confidential enforcement matters.

III. 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.*

Shane 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. Mr. Creamer reminded the Board that oral argument was held on November 12, 2013, and that 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 her representation in this matter.

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

Mr. Creamer stated that, as he previously reported to the Board, on July 18, 2012, Judge Tucker of the Court of Common Pleas 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.

He reported that the Pennsylvania Supreme Court granted Cozen O'Connor's petition for allowance of appeal in this matter in an order dated January 6, 2014. On January 9, 2014 the Supreme Court issued a briefing schedule, under which Cozen's brief was due on February 18, 2014. Mr. Creamer reported that the Board's brief is due 30 days after Cozen's brief is filed. Adam Bonin, Esq. of the Law Office of Adam C. Bonin commented that Cozen filed its brief on February 18, and consequently, the Board's brief would be due on March 20, 2014.

Mr. Creamer explained that this is the second time that the Supreme Court has 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 Rep. 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 at that time did not explicitly provide that the limits apply 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 the post-election application of the limits was not explicit in the statute.

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, 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.

B. Cheryl Krause

Mr. Creamer announced that Cheryl Krause, Esq., who, along with her fellow attorneys at Dechert LLP, has represented the Board *pro bono* in several major litigation matters, has been nominated by President Obama to fill a vacancy on U.S. Court of Appeals for the Third Circuit, here in Philadelphia. He reported that the President praised Ms. Krause for her "exceptional dedication to the legal profession through her work."

Mr. Creamer added that President Obama's words have special meaning for Board staff members because Ms. Krause has become such a good friend to the Board and staff and because we have been the beneficiaries of Ms. Krause's intelligence, legal skills, and, most of all, her generosity with her time.

C. Lobbying Update

Mr. Creamer was pleased to report that online lobbying registration continues to operate well and that at last count more than 120 registrations had been filed. He said that staff has handled dozens of calls about the Philadelphia Lobbying Information System (PLIS) and has walked many registrants through the software on the telephone and also in person at the work station in the office reception area.

Staff has had support from the software vendor's help desk for a few issues that involved technical problems and continues to work with the City's Office of Innovation and Technology to resolve issues with the City's E-Pay system, which accepts the electronic registration payments.

Mr. Creamer said that Elizabeth Baugh, Bryan McHale, Hortencia Vasquez and Nedda Massar are now working on creating the process for principals to file quarterly expense reports electronically. It is staff's goal to have this module completely tested and ready to receive the expense reports for the first quarter of 2014, which are due by April 30, 2014.

He added that staff has now received and is processing expense reports for the fourth quarter of 2013. Staff members anticipate that these are the last expense reports that will be filed using the interim paper system.

D. Gifts Regulation

Mr. Creamer reminded the Board that Chief Integrity Officer Joan Markman and Inspector General Amy Kurland sent a joint letter to each individual Board member and the Executive Director the day before the Board's January 15, 2014 meeting. At the January meeting, Ms. Markman asked that their letter be made part of the Board's meeting record. Mr. Creamer reported that, on January 16, he responded to their letter as directed by the Board at the January Board meeting. His response explained the Board's position on the various issues raised by the letter and addressed their request that the letter be made part of the Board's meeting record.

E. COGEL

Mr. Creamer noted that the 2014 COGEL Conference will be held in Pittsburgh and that he is serving on the Host Committee along with Robin Hittie, who is General Counsel of the

Pennsylvania State Ethics Commission, and Brian Jacisin, who is the Commission's Director for Investigations. Mr. Creamer added that he was pleased to report that Michael Cooke agreed to serve on the Conference Program Committee, which is responsible for selecting plenary speakers and for planning and arranging panelists and experts for the dozens of conference sessions.

Mr. Creamer explained that COGEL's member agencies are responsible for administration of campaign finance, ethics, lobbying, financial disclosure, freedom of information and election administration laws. The Program Committee faces a challenge in balancing the programming to reflect COGEL members' diverse interests and in recruiting volunteer panelists. Mr. Cooke will attend the first committee meeting at the end of February in Pittsburgh.

IV. General Counsel's Report

A. Advisory Opinions

Ms. Downey reported that no advisory opinions had been issued since the January 2014 Board Meeting.

B. Informal Guidance

Ms. Downey briefly reviewed the chart summarizing informal guidance information (*next page*) with the Board. She noted the significant numbers of communications involving lobbying as the electronic lobbying information system went live.

SUMMARY OF INFORMAL GUIDANCE PROVIDED JANUARY 8, 2014 – FEBRUARY 11, 2014

General topic	Total #	Phone	Email	Phone & Email	In-person	Subtopics
Lobbying	91	26	60	1	4	PLIS; 2014 paper registration; registration requirement; 4th Quarter Expense Reports; generating data from PLIS; principal discontinuing lobbying.
Campaign Finance	29	19	2	8	-	Reporting requirements; filing and amending reports; reporting a refund; judicial candidates; termination of committee; use of social media; reconciling bank and report amounts.
Conflicts	6	2	2	2	-	Service with nonprofit; investment in City contractor; using City title on campaign materials; job-seeking activity.
Gifts	6	3	-	3	-	Free attendance at various events, including luncheon and recognition ceremony; gala ticket; contributing to a City employee's retirement celebration; dating.
Other	3	-	2	1	-	Employee interest in a City contract; questions about own enforcement records

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

(General Counsel Staff Report cont'd next page)

C. Regulations

Ms. Downey explained that staff has continued to contribute to the process of refining the proposed gift and gratuity regulation.

Ms. Downey added that staff members have begun work on amending Regulations Nos. 2 and 5, consistent with the resolution adopted at the January meeting of the Board. She said that it may be feasible to incorporate the substance of Regulation No. 5, concerning the confidentiality of enforcement and investigative proceedings, into Regulation No. 2, which comprehensively covers these proceedings. Ms. Downey said that any amendments to the regulations will conform to the City Solicitor's advice concerning the confidentiality of Board adjudicatory proceedings, and to the steps laid out in the Board's January resolution.

V. Discussion of Regulation No. 10, Gifts

Mr. Cooke presented the Board with the latest draft of Regulation No. 10, Gifts. He explained that enactment of legislation rewriting the City Code's gift restriction would supersede a gift regulation based on the current statutory language, but that changes in the draft are responsive to the Board's feedback at the January Board meeting. He added that the Board could later decide to adopt the regulation, should Council decline to act on legislation.

Mr. Cooke then went through the draft with the Board, noting that the primary change was the elimination of gifts of money. He also noted changes in various examples requested by the Board at the January meeting.

VI. Gifts Legislation

Mr. Cooke reviewed Bill No. 140054, which amends the City Code's gift restriction. He compared this legislation, which is pending in City Council, to the proposed draft of Regulation No. 10, and discussed the differences between them, including the dollar value limit and certain exceptions.

Mr. Cooke noted that a representative of the Board would have an opportunity to testify on the legislation before the City Council Committee on Law and Government on February 24, 2014 and he reviewed staff's recommendations to the Board as to what that testimony might include, in particular a suggestion that staff express the Board's support of the bill as a significant improvement on the existing ordinance. Mr. Cooke then reviewed specific recommendations for revisions to the currently pending legislation.

A brief discussion ensued. Board members inquired about the $99 annual limit for gifts in the ordinance, and noted that the Board had arrived at a $50 annual limit for gifts after a lengthy deliberative process and public comment. The Board determined that the Executive Director, in his testimony, should convey the staff recommendations, including support for and revisions to the legislation, and inform Council about the Board's process and conclusion that a limit of $50 represents substantial economic value.

By a vote of 3-0, the Board approved a motion that its support for the gift legislation, the staff recommendations, and the information that the Board has previously interpreted the existing provisions of the gift restriction to limit gifts to $50 annually be testified to by the Executive Director at the Council committee hearing.

VII. New Business

No new business was discussed.

VIII. Questions/Comments

Inspector General Amy Kurland commended the Board and staff members for their work on Regulation No. 10 and said that she was extremely pleased by the process. She added that the Administration would likely take an official position on the gift legislation in Council.

Sanjuanita González arrived at 2:09 p.m.

Mr. Bonin commented on the difficulty of determining market value in the gifts context. He praised the electronic lobbying information system, asked about the E-pay system and the service fee for using it. Ms. Massar explained that the service fee was built into a City contract for the electronic payment system.

Patrick Christmas, Senior Policy Analyst for the Committee of Seventy, said that he was present to represent the Committee's Vice Chair Ellen Kaplan. He conveyed the Committee of Seventy's appreciation of the Board staff's efforts on Regulation No. 10, and shared the Committee of Seventy's views on the draft gift legislation.

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 2:17 p.m.