

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
March 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 1:05 p.m.

**I. Approval of Minutes**

By a 4-0 vote, the Board approved the meeting minutes, as corrected, for the public meeting that was held on February 19, 2014.

**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. Mr. Creamer said that oral argument was held on November 12, 2013, and that staff is waiting for the Third Circuit to issue a decision.

## **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 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. The Commonwealth Court affirmed the trial court's ruling on June 18, 2013. However, in an Order dated January 6, 2014, the Pennsylvania Supreme Court granted Cozen O'Connor's Petition for Allowance of Appeal in this matter, accepting all four issues as framed by Cozen. Mr. Creamer reported that on January 9, 2014 the Supreme Court issued a briefing schedule. Cozen filed its brief in support of its appeal on February 18, 2014. The Board's brief is due on March 20, 2014.

### **B. Cheryl Krause**

Mr. Creamer noted that at the February Board meeting, he reported to the Board that Cheryl Krause, the Board's *pro bono* counsel in several major litigation matters since 2007, was nominated by President Obama to fill a vacancy on the U.S. Court of Appeals for the Third Circuit, based in Philadelphia.

Mr. Creamer said that Ms. Krause's confirmation hearing was held on March 12, 2014. He added that he was proud to submit a letter this month to the Senate Committee on the Judiciary supporting Ms. Krause's nomination. He wrote in his letter that the public would be well-served by her confirmation to the Court and explained the degree to which her work on the Board's behalf in federal and state courts had enhanced the Board's reputation "as an effective municipal ethics agency, with both her exceptional legal skills and tireless commitment to public service." Mr. Creamer said he wrote that Ms. Krause willingly entered the fray when the Board's authority to conduct investigations was challenged during its first year of existence and its mission was in jeopardy.

He added that his letter stated that Ms. Krause has the highest personal and professional qualifications, and that he could think of no attorney who is more qualified or better suited to serve on the Third Circuit.

### **C. Lobbying Update**

Mr. Creamer reported that the online lobbying registration system continues to operate well and, at last count, there are more than 150 registrations. He said that Board staff continues to help registrants by phone and in person, and coordinates with the software vendor's help desk to resolve technical problems.

He explained that the next phase of the lobbying project, the expense reporting module, is well underway. During the past month staff has worked with Acclaim, the Board's vendor, on the many details of the expense reports and have now begun the User Acceptance Testing period. He said that Elizabeth, Bryan, Hortencia and Nedda are using test cases and providing feedback to Acclaim on a constant basis on the features and operation of the software for filing quarterly

expense reports. It is staff's goal to have this module completely tested and ready in April to receive expense reports for the first quarter of 2014, which are due by April 30.

Mr. Creamer noted that a major goal of the electronic lobbying system is easy accessibility of lobbying data to the public. Members of the public can now use the search feature on the Board's website to locate lobbying registrations and to generate reports of registration information. Now that staff is collecting data from registrations with the new system, members of staff met with the City's Chief Data Officer Mark Headd and his team to discuss strategies for staging the data and communicating its availability to those who may be interested in using it. Mr. Creamer said that staff will continue to work with Mark and his team as the expense report functionality goes live to release data in accord with the City's Open Data Initiative.

Chair Reed asked what Mr. Creamer meant by "staging the data." Ms. Massar explained that the phrase refers to how the data, and the significance of the data, are presented to the public.

#### **D. Gifts Legislation**

Mr. Creamer said that, at the Board's February meeting, staff reported on the introduction in City Council of Bill 140054 which amends the provision in the City Code concerning gifts to public officials. The Bill includes many of the provisions that were developed by the Board during its discussions that began last summer and resulted in proposed Regulation No. 10 on Gifts and Gratuities. Mr. Creamer noted that because of the introduction of Bill 140054, the Board suspended action on draft Regulation No. 10 and directed him to testify before City Council in support of the Bill.

Mr. Creamer reported that he testified before the Committee on Law and Government on February 24 on Bill No. 140054 and indicated the Board's support of the amendments to the gift rules and suggested technical amendments. Chair Reed also appeared at the hearing with Mr. Creamer. Staff has been advised that amendments to the Bill will be on Council's March 20, 2014 agenda for Final Passage. Mr. Creamer said that staff would keep the Board posted on any further developments on the legislation and will report to the Board next month on a proposed plan of action for Regulation No. 10.

#### **E. Financial Disclosure Preparations**

Mr. Creamer said that it will soon be that time of year when many City officials and employees and the members of City boards and commissions are required to file one or more of three annual financial disclosure forms. He noted that the filing deadline is May 1, 2014. The City Form is required by the Ethics Code, the Mayor's Form is required by an executive order, and the State Form is required by the State Ethics Act. Several Board staff members have begun to focus on the many tasks necessary to implement the financial disclosure process.

Mr. Creamer said that there is an online application for preparing the financial disclosure statements. Staff will conduct small group sessions for departmental HR managers on Thursday and Friday, March 20 and 21, to review the financial disclosure process and to train HR managers to use the online system.

The Office of Human Resources will issue filing reminder emails to City employees in early April, and Board staff will issue email reminders to the hundreds of members of City boards and commissions. Once these reminders go out, telephones start to ring off the hook, and several members of staff answer calls about how and what to file.

#### **F. FY 15 Budget**

Mr. Creamer reported that Board staff has been advised by the Finance Department that the Board's proposed operating budget for FY15 will continue at \$1 million. Staff has submitted budget documents based on that anticipated level of funding.

All City-funded departments were also asked to prepare FY15 Budget Impact Statements to describe the impact if budget cuts of 2%, 4% or 5% were needed. The Statement prepared by Board staff indicated that Class 100 (Salary) would not be cut because the Board cannot accomplish its statutorily mandated tasks with less staff. Instead, any spending cuts would be in Classes 200 (Purchase of Services), 300 (Supplies), and 400 (Equipment).

He added that budget hearings typically occur in early April. Staff will prepare testimony for the Board Chair to report on the Board's many accomplishments during the past year, including the launch of the lobbying software. Further, the Board's testimony will again acknowledge the crucial role played by Dechert LLP in providing *pro bono* representation of the Board in major litigation during the past year.

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

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

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

#### **B. Informal Guidance**

Ms. Downey briefly reviewed the summary of informal guidance chart (*next page*) for the Board. She noted that staff continues to receive a large number of requests for information about the Philadelphia Lobbying Information System.

Ms. Downey described the requests for guidance related to post-employment issues. She explained that both requests implicated former City workers' ability to use City data made available to the public online by their former agencies. Ms. Downey explained that these queries are a practical result of the City's efforts to make more City data available to the public and that she expects to continue to receive requests for guidance about similar issues.

**SUMMARY OF INFORMAL GUIDANCE PROVIDED FEBRUARY 12, 2014 – MARCH 11, 2014**

<b>General topic</b>	<b>Total #</b>	<b>Phone</b>	<b>Email</b>	<b>Phone &amp; Email</b>	<b>In-person</b>	<b>Subtopics</b>
Lobbying	47	27	18		2	PLIS; online lobbying information; Q4 Expense Report.
Campaign Finance	9	6	1	2		Declaration of candidacy; covered candidates; excess pre-candidacy contributions; reporting requirements; incidental use of resources; account setup; <i>Citizens United</i> .
Financial Disclosure	5	3	2			
Political Activity	3	1	2			Ability of employee to host a “meet and greet”; resign to run.
Gifts	3	1	1	1		Accepting invitations from contractor; general discount offered by vendor.
Post-Employment	2		1		1	Post-employment opportunities involving publicly available City data.
Other	3	2			1	No jurisdiction; City email acceptable use policy.

**This chart provides a partial picture of informal guidance provided by four Board staff members (the Director of Enforcement, Deputy Executive Director, Public Integrity Compliance Supervisor and Associate General Counsel) during the specified time period. The staff members made notes concerning the advice provided as reflected in the chart.**

### **C. Regulations**

Ms. Downey explained that staff has continued to contribute to the process of drafting proposed amendments to Regulation No.2.

### **D. Financial Disclosure**

Ms. Downey reported that General Counsel Staff are assisting the Deputy Executive Director in preparing for outreach related to the upcoming Financial Disclosure deadline. Staff reviewed and updated the list of boards and commissions, as well as the instructions and frequently asked questions about Financial Disclosure on the Board's website to make them accurate and easier to use. Ms. Downey added that she appreciated the opportunity this has provided to coordinate outreach with the Chief Integrity Officer and her deputy.

## **IV. Proposed Amendment of Regulations No. 2 and 5**

Mr. Cooke presented draft amendments to Regulation No. 2, Investigations and Enforcement Proceedings, to the Board. He explained that the proposed amendments included modest substantive changes as well as language changes that would improve the readability of the regulation. The amendments, if adopted, would incorporate the substance of Regulation No. 5, Confidentiality of Enforcement and Investigative Matters and Prohibited Disclosures, into the text of Regulation No. 2. The draft amendments also would make the content of the regulation consistent with the resolution adopted by the Board on January 15, 2014 and with the City Solicitor's advice that administrative adjudications should not be made public, except upon the request of the subject of the adjudication.

Mr. Cooke reviewed the draft amendments to the regulation with the Board. Chair Reed asked whether Regulation No. 5 addressed the confidentiality of matters outside the scope of Regulation No. 2. Mr. Cooke and Mr. Creamer explained that the confidentiality provided for in Regulation No. 5 applied to the enforcement matters in Regulation No. 2.

By a 4-0 vote, the Board approved the draft amendments to Regulation No. 2 for posting at the Records Department for public comment, pending Law Department approval, with Regulation No. 5 to be rescinded only on the effective date of the amendments.

## **V. New Business**

No new business was discussed.

## **VI. Questions/Comments**

There were no questions or comments from the public.

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 2:07 p.m.