

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
September 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  
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.  
Jordan Segall, Esq.  
Elizabeth Baugh  
Bryan McHale  
Tina Simone

A public hearing was held prior to the Board meeting regarding the Board's proposed amendments to Regulation No. 1 (Campaign Finance), commencing at 1:07 p.m. A court reporter was present during the hearing, as was Lewis Rosman, a representative of the Philadelphia Law Department.

Chair Reed recognized the presence of a quorum and called the meeting to order at 2:16 p.m.

**I. Approval of Minutes**

By a 4-0 vote, the Board approved the meeting minutes for the public meetings held on July 16, 2014 and August 6, 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 on August 18, 2014, a panel of the United States Court of Appeals for the Third Circuit ruled on the FOP's appeal from the trial court decision, which had upheld the Charter's ban on political contributions by members of the Philadelphia Police Department. In a 57-page opinion written by Judge Hardiman, the Court held that Charter Subsection 10-107(3) violates the First Amendment to the extent that it prohibits members of the Philadelphia Police Department from making contributions to their union's political action committee, COPPAC.

The Court found that protecting police officers from politically motivated forces is a legitimate rationale for the City, but held that the contribution ban was poorly tailored to the City's articulated interests. The Court suggested that repealing the automatic payroll deduction ordinance (Bill 060181), which the Court described as having an "inherently coercive nature," or

enforcement of “existing anti-solicitation measures” that can be drawn from the Charter’s political activity restrictions, would be more closely drawn to the City’s legitimate interests.

The Court stated that they were reviewing and were striking down only the portion of the Charter Subsection 10-107(3) fundraising restriction’s application to members of the Police Department making contributions to political committees that are not affiliated with a candidate. They explained that they were not deciding whether police officers may be prohibited from contributing directly to political candidates under the Charter ban.

Mr. Creamer reported that the Solicitor has decided not to move for reconsideration or to appeal the decision to the United States Supreme Court. He said that Board staff will ask the Board to approve a Resolution that would acknowledge the ruling and its impact on Regulation No. 8 and direct staff to begin the process of amending Regulation No. 8.

## **ii. Cozen O’Connor v. Philadelphia Board of Ethics**

Mr. Creamer reported that oral argument on Cozen O’Conner’s appeal from the Pennsylvania Commonwealth Court decision affirming the trial court ruling in the Board’s favor was held before the Pennsylvania Supreme Court on September 10, 2014. Steve Cozen argued on behalf of his firm and the Board’s *pro bono* counsel from Dechert, Elisa Wiygul, argued on behalf of the Board. Justices McCaffery and Todd did not participate in the oral argument.

Cozen argued in its appeal that the City’s contribution limits should not prevent Cozen from forgiving its \$448,000 legal bill to 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 did not *expressly* apply the limits post-election. Cozen also argued that litigation costs related to a ballot challenge defense do not constitute expenditures to influence an election and therefore should not be subject to the regulations.

Mr. Creamer said that 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, in part because it would defeat the purpose of the City’s campaign finance law if candidates could evade the contribution limits by the stratagem of deferring payment until after the election. Cozen’s suit for declaratory judgment challenges the Board’s interpretation of the City’s campaign finance law. Under Pennsylvania law an administrative agency’s interpretation of a statute for which it has enforcement responsibility is entitled to be afforded “substantial deference” by the courts.

## **B. Training Update**

Mr. Creamer said that Board staff is planning two campaign finance training sessions before the end of this year and several more sessions in 2015 to prepare for the 2015 primary and general elections. All City Council seats, the Mayor’s office, the City Commissioners’ offices, and the Sheriff’s office will be on the ballot. He explained that training will be especially important

because there are likely to be new candidates and PACs that are unfamiliar with the contribution limits and other requirements of the City's campaign finance laws.

### **C. Lobbying Update**

Mr. Creamer noted that the 2014 Third Lobbying Quarter will close on September 30, 2014 and Third Quarter Expense Reports will be due on October 30, 2014.

He said that Board staff believe that the searchable database in the Philadelphia Lobbying Information System (PLIS) is the most important tool for making lobbying information accessible to the public. Staff is therefore planning two lobbying outreach events on October 9, 2014 to introduce to the public the various ways to access that information. Mr. Creamer noted that there are still details to be finalized, at which time email notices of both events will be sent to interested individuals. Mr. Creamer asked Board members to make Board staff aware if Board members would like to receive notices about the outreach events.

The first event will be held in the Board of Ethics' office on the morning of October 9<sup>th</sup>, and will be an overview intended for people who are looking for general lobbying information. The program will explain the purpose and basic requirements of the lobbying law and demonstrate several pre-set reports that are available through PLIS.

Mr. Creamer explained that in the afternoon on October 9<sup>th</sup>, Board staff is planning a joint program with the City's Office of Innovation and Technology (OIT) and Code for Philly. Code for Philly is a cooperative effort that includes representatives from OIT, interested citizens, and people in the Philadelphia technology community. Its mission is to "create opportunities for citizens to modernize Philadelphia through the power of the web," and many of its projects use data released by City departments and agencies, such as the Board's lobbying data.

This event will be held in the City's new Innovation Lab in the Municipal Services Building and will have a more technical emphasis. Board staff will discuss how the Lobbying Law shaped development of the PLIS lobbying application. Staff will provide a more detailed description of the database and the information it collects from reports filed by lobbyists, lobbying firms, and principals. Attendees, including people in the active Philadelphia technical community, will then be able to work on strategies to search and analyze the lobbying data in PLIS. After the staff presentation, the rest of the evening will be time for the attendees to collaborate with each other and to work with the data.

Mr. Creamer expressed the hope of Board staff that many people are able to attend one of the events.

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

### **A. Advisory Opinions**

Ms. Nayak reported that the Board issued Non-public Board Opinion 2014-001 on July 16, 2014 to a City employee who requested advice about leasing an office space the requestor owns to the City in exchange for rental payments from the City. The Board may address past conduct in an

advisory opinion to provide guidance about corrective action or future action that represents part of a continuing course of conduct that began prior to the advice request. This Opinion was based on the fact the requestor's involvement in the office lease is a continuing course of conduct. In Opinion 2014-001, the Board advised that Charter Section 10-102 prohibited the requestor from having a direct or indirect interest in any contract for the purchase of property of any kind that is paid for by funds from the City Treasury. The Opinion explained that the requestor's lease agreement with the City was a prohibited contract of this kind and in contravention of Charter Section 10-102. The Board advised the requestor to act expeditiously to terminate the lease. Board Opinion 2014-001 is available on the Board's website.

Ms. Nayak said that two General Counsel Opinions were recently issued. General Counsel Opinion 2014-503, issued on August 24, 2014, provided post-employment guidance to a City employee planning to leave City service. General Counsel Opinion 2014-504, issued on August 29, 2014, provided guidance on the City lobbying law to a requestor. Ms. Nayak reported that she would provide a more detailed summary of each opinion at the next public meeting after the redactions of the opinions are complete.

## **B. Informal Guidance**

Ms. Nayak reviewed the charts of informal guidance provided in July and August.

## **C. Regulations**

### **i. Regulation 1 (Campaign Finance)**

Ms. Nayak noted that a public hearing to receive testimony on the proposed amendments to Regulation 1 preceded the Board meeting.

### **ii. Regulation 2 (Investigations, Enforcement, & Confidentiality)**

Ms. Nayak explained that the recent amendments to Regulation 2 became effective on August 18, 2014. She said that the Board will need to amend the Board's Memo on Procedures for Administrative Enforcement Proceedings to reflect the amendments to Regulation 2 and that the Memo should be modified in other respects. The Board originally approved the Memo in May of 2010.

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, JULY 5, 2014 – AUGUST 8, 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	36	28	7	--	1	Expense reporting, including delinquent reports, affirmations, and reporting in PLIS; registration; paper filing; and Reg. 9.
Campaign Finance	7	6	1	--	--	Contribution from authorized PAC to City candidate committee; corporate contributions; filing requirements; contribution limits; submitting candidate information; and searching campaign finance database.
Gifts	6	2	2	1	1	Gift to coworkers; gift received from non-profit; promotional items given to City department; new gift ordinance, generally; and travel.
Conflicts	3	1	--	--	2	Participation in neighborhood association; spouse with potential City contract.
Political Activity	2	--	1	--	1	
Financial Disclosure	1	1	--	--	--	New employee filing City form.
Post-Employment	1	1	--	--	--	
Other	3	2	1	--	--	No jurisdiction.

*This chart provides a partial picture of informal guidance provided by Board Staff members during the specified time period. The General Counsel, Director of Enforcement, Deputy Executive Director, Public Integrity Compliance Supervisor, and Associate General Counsel tracked the assistance they provided as reflected in the chart.*

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, AUGUST 9, 2014 – SEPTEMBER 5, 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	20	13	6	--	1	Non-filing of Q2 expense report; delinquent expense report; and filing and registration assistance.
Campaign Finance	15	10	1	4	--	Coordinated expenditures; reporting and itemizing contributions; amending reports; submitting candidate information; contribution limits; permissible expenditures; and filing software assistance.
Conflicts	2	--	1	1	--	Disclosure & disqualification; and meeting related to non-profit with which official is associated.
Gifts	2	1	--	1	--	Travel expenses; and meals at a conference.
Post-Employment	1	1	--	--	--	
Other	3	3	--	--	--	No jurisdiction; and Code Ch. 17-1400.

*This chart provides a partial picture of informal guidance provided by Board Staff members during the specified time period. The General Counsel, Director of Enforcement, Deputy Executive Director, Public Integrity Compliance Supervisor, and Associate General Counsel tracked the assistance they provided as reflected in the chart.*

**IV. Draft Annual Report for Fiscal Year 2014**

Ms. Massar reviewed the Draft Annual and Financial Report for Fiscal Year 2014 with the Board. She noted that the report is due on September 30, 2014 and covers all activity between July 1, 2013 and June 30, 2014. Pictures, charts, formatting, and appendices will be added once the text of the report is finalized.

Ms. Massar explained that the report includes an introductory message, Board member and staff biographies, and a review of the Board's major accomplishments over the prior year. For Fiscal Year 2014, the Board addresses the launch of the new Lobbying Information System; the lengthy process of crafting a new Gift regulation, which ultimately resulted in a new gift ordinance through City Council; the increased reach of the Board's training and outreach efforts; and changes in tracking the informal guidance provided by Board staff resulting in a more complete picture of staff's engagement with those seeking advice. The annual report also provides an accounting of the Board's expenditures over the fiscal year.

Ms. Massar requested that Board members review the report and offer any changes as soon as possible. She noted that the final report would be posted on the Board's website and an electronic version would be distributed to the Mayor's Office and members of City Council. Paper copies of the report will be available to anyone that requests a copy of the report. Chair Reed stated that the current draft of the report presented to Board members included his comments and urged other Board members to review the draft report and provide thoughts to Ms. Massar as soon as possible.

By a 4-0 vote, the Board approved the current draft report and authorized the Chair to make and approve any subsequent edits to the Board's annual and financial reports for Fiscal Year 2014.

#### **V. New Business**

Ms. Nayak presented a draft Resolution seeking to comply with and recognize the result of the United States Court of Appeals for the Third Circuit's ruling in the FOP litigation, allowing Philadelphia police officers to make contributions to political committees not affiliated with candidates. The Resolution also directed staff to begin working on a proposed amendment to Regulation No. 8 that reflects the holding and concerns expressed in the Third Circuit's ruling.

By a 4-0 vote, the Board approved the Resolution with typographical errors corrected.

#### **VI. Questions/Comments**

City of Philadelphia Chief Integrity Officer Hope Caldwell asked whether as a practical matter the ruling by the Third Circuit would allow police officers to begin making contributions to the union's political action committee immediately or not until the Board amends Regulation No. 8.

Chair Reed responded that it was the belief of the Board and staff that the effect of the Third Circuit's ruling was immediate. Ms. Nayak stated that a note would be added to the copy of Regulation No. 8 on the Board website describing the Third Circuit's ruling and that members of the Police Department may make contributions for political purposes to political committees that are not affiliated with a candidate. The Board-approved Resolution would also be posted on the Board's website as soon as possible. She further added that the Board must follow the process required by the Philadelphia Home Rule Charter to amend Regulation No. 8.

Interim President and CEO of the Committee of Seventy Ellen Kaplan asked whether the Board was investigating the 2007 mayoral campaign of Chaka Fattah. She stated that if the Board is not investigating the matter, she would like to make a formal request that the Board do so. Chair Reed responded that Ms. Kaplan's request was noted.

Chair Reed announced that the Board would meet in executive session to address non-public advice and confidential enforcement matters.

The public session of the Board meeting was adjourned at 2:45 p.m.