

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
February 18, 2015 - 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 McCormick, Esq.  
JoAnne A. Epps, Esq.

**Staff Present**

J. Shane Creamer, Jr., Esq.  
Nedda Massar, Esq.  
Maya Nayak, Esq.  
Michael Cooke, Esq.  
Jordan Segall, 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. Approval of Minutes**

By a 3-0 vote, the Board approved the minutes for the public meeting held on January 21, 2015, as presented.

**II. Executive Director's Report**

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

Mr. Creamer reminded the Board that on December 26, 2014, the Board filed an application with the Pennsylvania Supreme Court for limited re-argument in the Cozen case that sought to correct a discrete misstatement of law contained within the December 15, 2014 Supreme Court decision in the case that ruled in Cozen's favor. On January 6, 2015, Cozen filed its response to the Board's Application for Limited Re-Argument and asked the Court to deny the Board's application.

Mr. Creamer explained that the Opinion included a statement, outside its holding, that the litigation fund committees established under the 2010 amendments to the Campaign Finance Law may accept unlimited contributions. In its Application for Limited Re-Argument, the Board explained that the statement that litigation fund committees may accept unlimited contributions is incorrect because the Philadelphia Code, as amended in 2010, the Board's corresponding regulations, and legislative history all explicitly and unambiguously provide for limits on contributions to litigation funds.

Elisa T. Wiygul, the Board's outside counsel at Dechert, advised the Board that the Supreme Court has denied the Board's Application for Limited Re-Argument without any elaboration.

Once again, Mr. Cremer thanked Elisa Wiygul and Stephen Brown from Dechert for their continued *pro bono* representation and support of the Board's work.

**APPROVED BY BOARD OF ETHICS ON 3/18/15**

**Board Member Brian McCormick arrived at 1:05 pm.**

## **B. Campaign Finance**

Mr. Creamer stated that there has been much talk about “Super PACs” being “set up” in Pennsylvania to make expenditures to influence this year’s elections in Philadelphia. As such, he thought it would be helpful to review what a Super PAC is and how they arrived in Pennsylvania.

Mr. Creamer explained that Super PACs emerged following the 2010 U.S. Supreme Court decision in *Citizens United v. FEC* and a D.C. Circuit Court decision in the case *Free Speech v. FEC*. At the federal level, Super PACs are called independent expenditure-only committees, because they may not coordinate with or contribute to candidates. However, Super PACs may raise unlimited sums of money from corporate treasuries, union treasuries, unincorporated association funds and individuals, and then spend unlimited sums to overtly advocate for or against political candidates. Previously corporations and union entities could raise and spend funds only through individual contributions to their political action committees. Thus, Super PACs have a far greater amount of financial resources.

Beginning last year, Super PACs were permitted to register and operate in Pennsylvania as a result of a permanent injunction issued by the U.S. District Court of the Middle District of PA in the case *Majority PAC v. Aichele*. Because of this permanent injunction, the Department of State has created a separate registration statement for an “Independent Expenditure Committee,” which is a Super PAC and thus can accept contributions from corporations, unions and unincorporated associations. Like Super PACs at the federal level, Independent Expenditure Committees must promise not to make any direct contributions to candidates or political parties. Additionally, like Super PACs, Independent Expenditure Committees are also prohibited from making coordinated expenditures with candidates or political parties. Mr. Creamer provided Board members with a copy of the Department of State’s Independent Expenditure Committee registration form.

Mr. Creamer stated that contrary to popular belief, and as explained succinctly in the Independent Expenditure Committee registration form, an IE Committee must “comply fully with the requirements of the Pennsylvania Election Code applicable to a political committee, including filing reports as any political committee is required to do.”

As such, Mr. Creamer reported that a properly registered Independent Expenditure Committee is not invisible and does not escape the registration and reporting requirements that apply to other political committees. He said that it remains to be seen whether and to what extent IE Committees will seek to influence City elections this year through independent expenditures, but Board staff will monitor IE Committees’ activity to ensure compliance with the City’s Campaign Finance Law.

Mr. Creamer stated that later in the meeting, Board staff would update the Board about other activity related to the City’s May Primary Election.

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

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

Ms. Nayak reported that General Counsel Opinion 2015-501 was issued on January 28, 2015 to a requestor who was nominated to serve as an uncompensated City board member and who is affiliated with a business that has contracts with various City departments and engages in consulting work for the City. The requestor has been nominated to serve as a member of the City of Philadelphia Water, Sewer and Storm Water Rate Board. The Opinion relied on Board Regulation No. 6 to advise that the Home Rule Charter's prohibition on interests in certain City contracts would not apply to the requestor because he would not receive a salary and would not be compensated for his service as a City board member. The Opinion also advised on the application of the City Code conflict of interest and representation restrictions. Ms. Nayak noted that in some instances, the Opinion directed the requestor to return for advice with specific facts if certain situations that appeared unlikely did in fact develop. General Counsel Opinion 2015-501 is available on the Board of Ethics' website.

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

Ms. Nayak reviewed the chart summarizing informal guidance provided from January 10, 2015 to February 6, 2015.

#### **C. Board of Ethics Regulations**

Ms. Nayak provided to the Board a list of all Board of Ethics regulations promulgated to date.

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, JANUARY 10, 2015 – FEBRUARY 6, 2015**

*(continued next page)*

<b>General topic</b>	<b>Monthly total # (ytd total)</b>	<b>Phone</b>	<b>Email</b>	<b>Phone &amp; email</b>	<b>In-person</b>	<b>Subtopics</b>
Campaign Finance	74 (104)	38	19	13	4	Reporting requirements; amending reports; 24-hour reporting; in-kind contributions and reimbursements; contribution limits; excess pre-candidacy contributions; requirement to provide Board candidate committee information; single committee rule; covered elections; use of litigation fund; and SmartClient software, including account set-up.
Lobbying	27 (53)	23	3	--	1	Lobbying expense report deadlines; registrations, including thresholds; renewing and amending registrations; registration payments; paper filing; and PLIS, including searching lobbying reports.
Political Activity	11 (14)	4	4	2	1	Resign to run restriction; City employee contributions to candidates; participating in professional organization's political activities; use of City facility rented to the public to announce candidacy; discussing prior campaign experience with potential candidate; campaign providing scheduling information to officer's City office; and restriction on participating in activities of partisan political group.
Conflicts	5 (7)	4	--	1	--	Volunteer service on board of nonprofit with City grant; transitioning from City work to new job; employee taking part in nonprofit fundraiser; and inapplicability of rules to independent contractors hired by City.
Financial Disclosure	2 (3)	1	1	--	--	Early filing; and penalties for failure to file.

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**SUMMARY OF INFORMAL GUIDANCE PROVIDED, JANUARY 10, 2015 – FEBRUARY 6, 2015**

Post-Employment	4 (5)	2	2	--	--	
Gifts	4 (8)	4	--	--	--	Event tickets; discount offered to a class of City employees; and appetizers and tour of event space.
Other	5 (10)	3	1	1	--	Penalties for violations of ethics laws; non-competitively bid contract reform law; 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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**List of Board of Ethics Regulations: Effective February 18, 2015**

<b>Regulation Number</b>	<b>Title</b>	<b>Status</b>
1	Campaign Finance	Current version effective since 10/31/14
2	Investigations and Enforcement Proceedings	Current version effective since 8/18/14
3	Referrals to and Cooperation with other Governmental Enforcement Agencies	Rescinded on 8/18/14 (Material now covered in Regulation 2)
4	Advisory Opinions	Current version effective since 3/27/13
5	Confidentiality of Enforcement and Investigative Matters and Prohibited Disclosures	Rescinded on 8/18/14 (Material covered in Regulation 2)
6	Application to City Boards and Commissions of Section 10-102 (Interest in Contracts) of the Home Rule Charter	Current version effective since 11/2/09
7	Annual and Routine Ethics Training	Current version effective since 11/25/09
8	Political Activity	Current version effective since 3/28/11
9	Lobbying	Current version effective since 2/3/12

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#### **IV. Update on Education and Outreach for 2015 Elections**

Mr. Cooke presented an update on the Board's education and outreach efforts associated with the 2015 elections.

He said that Board staff presented campaign finance training on January 26, 2015 that was well attended with approximately 20-25 people. Board staff is presenting campaign finance training again on February 24, 2015 and has received 13 registrations. The trainings have been held jointly with the City Commissioners' office and provide an overview of the City and State campaign finance laws.

Mr. Cooke also said that Board staff is working to identify candidates for City office as they announce their candidacy. Board staff has confirmed 49 candidates. They are working to obtain information about candidate committees to track compliance and ensure that candidates and campaigns are informed of all Board campaign finance trainings and other developments as the election approaches.

#### **Board Member Sanjuanita González arrived at 1:15 pm.**

Mr. Cooke presented a revised draft version of a campaign finance guide that he presented to the Board at the January Board meeting. Mr. Cooke said this guide incorporated suggestions and revisions from Board members and staff. He hoped that a final version would be distributed next week to help individuals comply with the City's Campaign Finance Law.

Mr. Cooke stated that the prior version of the campaign finance guide pertained to both City and State campaign finance law. Mr. Cooke noted that the revised draft version of the guide only discussed the City's Campaign Finance Law because staff at the City Commissioners Office thought it would be confusing to have both City and State law interwoven into a single guide. As such, the Board and the City Commissioners will issue separate guides, the Board's pertaining to the City's Campaign Finance Law and the City Commissioners' pertaining to the State Election Code. Both agencies will hand out both guides at the same time and the guides will be distributed via email, trainings, and the Internet.

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

There was no new business presented at the meeting.

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

There were no questions or comments presented at the meeting.

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

The public session of the Board meeting was adjourned at 1:20 p.m.

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