Philadelphia Board of Ethics
Meeting Minutes
January 21, 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. (via telephone)
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
Hortencia Vasquez

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 5-0 vote, the Board approved the minutes for the public meeting held on December 17, 2014, as presented.

II. Executive Director's Report

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

Mr. Creamer noted that last month he reported that on 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 Cozen'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 also noted that the Court 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. Mr. Creamer stated 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. 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 as it has applied since 2010.

Mr. Creamer advised that on December 26, 2014, the Board filed an application for limited re-argument in the Cozen case, pursuant to Pa. R. App. P. 2541-2546, to correct a discrete misstatement of law within the decision. Specifically, the Opinion stated, outside its holding, that the litigation fund committees that were established by City Council's 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. The Philadelphia Code as amended in 2010 when litigation funds were created, the Board's corresponding regulations, and legislative history all explicitly and unambiguously provide for limits on contributions to litigation funds. In the section entitled "Limits on Contributions to a Litigation Fund," the Code provides: "No person shall make a contribution to a litigation fund in excess of the limits set forth in § 20-1002 [of the Philadelphia Code]."

Mr. Creamer stated that because this statement in the Court's *dicta* has already led to confusion and threatens even greater confusion during Philadelphia's busy primary election season in the spring of 2015, the Board respectfully requested that the Court amend its Opinion to correct this misstatement.

Mr. Creamer once again thanked the Board's *pro bono* attorneys at Dechert, including Elisa Wiygul and Stephen D. Brown, who represent the Board in the application for re-argument.

B. Campaign Finance

Mr. Creamer stated that on January 6, 2015, the Board issued an Advisory Alert announcing that the campaign contribution limits have been doubled for City Council candidates in the Second District. The Alert was issued because the City's campaign finance law provides that if a candidate makes total contributions of $250,000 or more of his or her personal resources to his or her campaign, then the contribution limits for all candidates for that specific office shall be doubled.

The Alert explained that as of January 5, 2015, Ori Feibush, a candidate in the May 2015 primary election for Philadelphia's 2nd District City Council seat, contributed more than $250,000 of his personal resources to his campaign. Therefore, effective January 5, 2015, the limits on contributions to all candidates in that election have been doubled to $5,800 for individuals and $23,000 for political committees and unincorporated business organizations.

The limits for the 2nd District City Council election will remain doubled even if Mr. Feibush ceases to be a candidate or if after the limits have doubled, Mr. Feibush's candidate political committee returns, repays, or refunds a portion of the money contributed from his personal resources.

Mr. Creamer noted that the Alert clearly stated that the limits are not doubled for any City election other than the Second District City Council race. In addition, the limits are not doubled for contributions to litigation fund committees or post-candidacy contributions.

III. General Counsel's Report

A. Advisory Opinions

Ms. Nayak reported that General Counsel Non-Public Opinion 2014-506 was issued on November 7, 2014 to a City official who sought advice about the application of the City ethics laws to proposed outside employment as an independent contractor sales consultant with a local technology company. The General Counsel Opinion relied heavily on Non-Public Board Opinion 2012-001, and this Opinion advised that based on the facts provided the proposed outside employment would not raise an issue under the City Code's conflict of interest or representation provisions or the Home Rule Charter's prohibition on an interest in certain City contracts. The redacted version of Opinion 2014-506 is available on the Board's website.

B. Informal Guidance

Ms. Nayak reviewed the chart summarizing informal guidance provided from December 6, 2014 to January 9, 2015.

C. Passing of Former City Chief Integrity Officer Joan Markman

Ms. Nayak stated that on a personal note, she wanted to take a moment to acknowledge Joan Markman's passing last week. About seven years ago, Ms. Markman was kind enough to meet with Ms. Nayak who was looking for career advice. During that meeting, Ms. Markman introduced Ms. Nayak to the world of government ethics. She informed Ms. Nayak that a City Board of Ethics existed, that they seemed to be good people, and that they were looking for an Associate General Counsel. Ms. Nayak stated that she is thankful to Ms. Markman for her introduction to the world of government ethics, and is deeply grateful to have known Ms. Markman as a person and as a model of what someone in the ethics line of work can be.

Chair Reed thanked Ms. Nayak for her wonderful remarks. He said that on his own behalf and on behalf of the entire Board that Ms. Markman was a class act and will be missed. He recalled that Ms. Markman was one of the first people that he and Judge Beck met when nominated to serve on the Board of Ethics. Ms. Markman advised them on their duties and what the Board of Ethics was all about.

SUMMARY OF INFORMAL GUIDANCE PROVIDED, DECEMBER 6, 2014 – JANUARY 9, 2015

General topic	Monthly total #	Phone	Email	Phone & email	In-person	Subtopics
Campaign Finance	30	20	4	6	--	Contribution limits; doubling and quadrennial adjustment of contribution limits; aggregate contribution limit for a PAC; attributing contribution from joint checking account; date of acceptance of contribution; reporting requirements; filing deadlines; litigation funds; providing and updating committee information; pre-candidacy contributions and expenditures; and searching campaign finance database.
Lobbying	26	25	1	--	--	Registration thresholds; renewing lobbying registrations for 2015; registration payments; and searching lobbying database.
Political Activity	6	1	1	4	--	Resign to run restriction; and intersection between campaign and City activities.
Gifts	4	2	1	1	--	Food and beverages provided by superior as part of an office event; loan; event ticket; and lunch provided at site of meeting by vendor.
Conflicts	2	--	--	2	--	Potential interest in a City contract through outside employment; and outside employment as attorney.
Financial Disclosure	1	--	--	--	1	
Post-Employment	1	1	--	--	--	
Other	5	3	1	1	--	Use of City business cards; requesting advice; 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 responded to and do not indicate the amount of time spent per topic or inquiry.

APPROVED BY BOARD OF ETHICS ON 2/19/15

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. Board staff have seen an uptick in questions and interest from the community.

Board staff are contacting individuals running for City elective office to obtain required candidate committee information. Staff continually update the contact and mailing lists to ensure that candidates and campaigns are informed of all Board campaign finance trainings and advisory alerts and other matters of interest.

Board staff are presenting campaign finance trainings on January 26, 2015 and February 24, 2015 in cooperation with the City Commissioners' office. The trainings will cover both the City Campaign Finance Law and the State Election Code. The Board previously hosted trainings in November and December where there were fifteen and twenty to twenty five attendees respectively. Board staff anticipate a large turnout for the January and February trainings and plan to host additional trainings in March and April 2015.

Board staff, in conjunction with City Commissioner Schmidt's office, have created a guide on elections in Philadelphia. The guide will cover requirements of both the City Campaign Finance Law and the State Election Code. Mr. Cooke presented a draft version of the guide. Mr. Cooke noted that Board staff will not seek formal approval of the guide by the Board. Mr. Cooke thanked Bryan McHale at the Board of Ethics and Seth Bluestein at the City Commissioners' office for their hard work on the guide.

After some discussion, including questions and proposed edits from Board members, the Board agreed that the guide was excellent work product that was helpful, enjoyable and easy to read.

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 at its executive session meeting on December 17, 2014, the Board consulted with attorneys regarding litigation.

Chair Reed announced that the Board conducted an executive session meeting by email between December 31, 2014 and January 3, 2015 regarding confidential enforcement matters.

Chair Reed announced that the Board would meet in executive session to discuss a personnel matter and address confidential enforcement matters.

The public session of the Board meeting was adjourned at 1:34 p.m.