

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
March 16, 2016 - 1:00 p.m.  
One Parkway Building  
1515 Arch Street, 18th Floor

**Board Present**

Michael H. Reed, Esq., Chair  
Sanjuanita González, Esq.  
Brian McCormick, Esq.  
JoAnne Epps, Esq.

**Staff Present**

J. Shane Creamer, Jr., Esq.  
Nedda Massar, Esq.  
Maya Nayak, Esq.(by telephone)  
Michael Cooke, Esq.  
Diana Lin, Esq.  
Jordan Segall, Esq.  
Thomas Klemm, 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. Executive Director's Report**

**A. Settlement Agreements**

Mr. Creamer noted that since his report at the February Board meeting, the Board had approved and Board staff had announced one Settlement Agreement. The Agreement was with Taubenberger for Philadelphia to resolve a violation of the City's Campaign Finance Law for making material omissions in campaign finance reports filed by the committee with the Board. The omissions concerned the committee's failure to properly disclose details of a debt owed by Taubenberger for Philadelphia.

**B. FY17 Budget**

Recently, Board staff were advised by the Finance Department that the Board's proposed operating budget for FY17 will be \$1,071,403. Board staff subsequently submitted budget documents based on that anticipated level of funding. The amount includes \$961,403 for salaries, \$96,000 for purchase of services, and \$14,000 for supplies and equipment. The FY17 budget submitted by Mayor Kenney includes these amounts.

Some City-funded departments were asked to prepare FY17 Budget Impact Statements to describe the impact if the budget were cut by 3%. The Board was not asked to prepare such an Impact Statement and was held harmless from such a cut.

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As part of the Board's budget documents, Board staff submitted a request and justification for additional funding in the amount of \$250,000. Board staff explained that the increased funding would expand and enhance the Board's work toward achieving the "ethical, transparent and accessible . . . city government" that then-candidate Kenney described in a policy paper, published during his 2015 Mayoral campaign. Mr. Creamer noted that the mission and work of the Board of Ethics is essential to achieving the City government that Mayor Kenney described and would contribute directly to his stated goal of efficient and effective City government.

The Board's core functions are the administration, implementation and enforcement of the City's Public Integrity Laws, which ensure that City officials and employees make decisions in the best interest of the public. When City government operates without improper influence and with transparency, the public interest is paramount and government operates efficiently and effectively. Board staff's justification therefore explained that the funding requested by the Board will be used to add staff members to increase the Board's capacity to conduct training, provide advice and support enforcement activity.

Mayor Kenney also noted that transparency is a critical element in an efficient and effective government. The Board's administration of the City's Campaign Finance and Lobbying Laws ensures this transparency in Philadelphia government through public access to online disclosure of campaign finance and lobbying information. As such, Board staff explained that the additional funds would also be dedicated to modernization and improvement of the online lobbying and campaign finance systems and to move forward with the Board's online ethics training initiative.

Unfortunately, Mayor Kenney's proposed FY17 proposed budget did not include the \$250,000 request. Mr. Creamer said that Board staff will continue to pursue additional funding for the Board for FY17 throughout the remaining budget process.

Typically, budget hearings occur in early April. As in the past few years, the Board has not yet been scheduled to testify before City Council concerning the FY17 budget. However, Board staff will work with Chair Reed to prepare testimony to report on the Board's many accomplishments during the past year and to reiterate the importance of the request for additional funding for FY17.

### **C. Honor for Chair Michael H. Reed, Esq.**

Mr. Creamer was pleased to announce that Chair Reed was selected to receive the Pennsylvania Bar Association's A. Leon Higginbotham Jr. Lifetime Achievement Award. The award was to be presented to Chair Reed during the 28th Annual Pennsylvania Bar Association (PBA) Minority Attorney Conference, which was to take place in Philadelphia on March 17<sup>th</sup> and 18<sup>th</sup>.

The award recognizes the accomplishments of a lawyer or judge who has demonstrated dedication to the legal profession and the minority community through civil, community or legal service. Higginbotham, who died in 1998, was a civic leader, author, academic and federal appeals court judge who fought tirelessly against racial discrimination.

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Mr. Creamer said that Board staff can think of no attorney who is more deserving of the award. In addition to his service on the Board of Ethics since 2011, Chair Reed is a past president of and the first person of color to lead the Pennsylvania Bar Association. He previously served as chairman of the PBA House of Delegates and as a member of the association's Board of Governors. He co-founded and served as the first chair of the PBA Minority Bar Committee and helped organize the first PBA Minority Attorney Conference held in 1989. Chair Reed has also been active in the PBA and the American Bar Association in various leadership capacities throughout his career.

On behalf of Board staff, Mr. Creamer congratulated Chair Reed for receiving the award and thanked him for his tireless civic efforts and his dedicated service to the Board.

#### **D. Office Renovation Project**

Mr. Creamer noted that there has been significant progress on the Board's renovation project to create new office space from what was a small and infrequently used conference room. Most of the renovation work has been completed and Board staff are just waiting for installation of a new door and carpeting and some touch-up painting. The need for an additional office space arose in 2014 when the Board approved a realignment of staff and converted an entry level position into a Staff Attorney position. As soon as Board staff fills their remaining two vacancies, which will occur within the next two months, they will need the additional office. The project began on February 10<sup>th</sup> and is on schedule and on budget.

**\*Board member Sanjuanita González, Esq. arrived at the Board meeting at 1:10 pm\***

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

### **A. Informal Guidance**

Ms. Nayak reviewed a chart summarizing informal guidance provided by Board staff from January 9, 2016 through February 6, 2016, including recent inquiries involving the application of exceptions provided in the City Code gift restriction.

### **B. Land Bank Board Advisory Opinion**

Two days prior to the Board meeting, Ms. Nayak had received a request from the recently created Land Bank Board for a public advisory opinion involving the application of the City Ethics Code and City Lobbying Law to Land Bank Board members and staff. Ms. Nayak provided a copy of the advisory opinion request to Board members. She anticipated that the request would require a Board Opinion. Ms. Nayak planned to further discuss the Opinion with Board members at the April Board meeting.

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, JANUARY 9, 2016 – FEBRUARY 6, 2016**

<b>General Topic</b>	<b>monthly total #</b>	<b>email</b>	<b>phone</b>	<b>phone &amp; email</b>	<b>in-person</b>	<b>Subtopics</b>
Gifts	17	1	12	2	2	<ul style="list-style-type: none"> <li>▪ City entity using conference call line of an interested party</li> <li>▪ Contributions to a nonprofit designated by an elected official</li> <li>▪ Explanation and application of “restricted source” definition</li> <li>▪ Explanation and application of gift rule exceptions, including government entity exception and benefit to City/reasonably related to duties exception</li> <li>▪ Overview of gift restrictions</li> <li>▪ Accepting meal from former non-City co-worker</li> <li>▪ Prohibition on accepting gratuities</li> </ul>
Conflicts	16	6	6	1	3	<ul style="list-style-type: none"> <li>▪ Disclosure and disqualification process; assistance with drafting required letters</li> <li>▪ City employee assisting coalition in drafting communication to City official</li> <li>▪ Potential conflict issues involving family members and City contracts</li> <li>▪ Potential conflict implications of honorary affiliation with non-profit</li> <li>▪ Overview of conflict restrictions</li> <li>▪ Representation restriction, including as applied to part-time employees</li> <li>▪ Prohibition on interest in certain City contracts</li> <li>▪ Restrictions regarding outside employment</li> <li>▪ Dual office holding prohibition</li> </ul>

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**SUMMARY OF INFORMAL GUIDANCE PROVIDED, JANUARY 9, 2016 – FEBRUARY 6, 2016**

(CONTINUED)

<b>General Topic</b>	<b>monthly total #</b>	<b>email</b>	<b>phone</b>	<b>phone &amp; email</b>	<b>in-person</b>	<b>Subtopics</b>
Political Activity	11	3	6		2	<ul style="list-style-type: none"> <li>▪ City employee participating in neighborhood association</li> <li>▪ Activities related to Democratic National Convention and to the Philadelphia 2016 Host Committee</li> <li>▪ City employee prohibited from being Convention delegate</li> <li>▪ City employees acting in official capacity serving on Host Committee working groups or to assist its fundraising</li> <li>▪ City employee serving as an officer of a non-profit that has political committee</li> <li>▪ Social media restrictions</li> <li>▪ Connecting constituent with political campaign</li> <li>▪ State official renting City-owned space for constituent services/district office</li> </ul>
Post-Employment	1			1		<ul style="list-style-type: none"> <li>▪ Overview of post-employment restrictions</li> </ul>
Campaign Finance	48	14	31	2	1	<ul style="list-style-type: none"> <li>▪ Filing assistance</li> <li>▪ Electronic filing requirements for candidates and for political committees</li> <li>▪ Disclosure of outstanding debts and forgiveness of debts</li> </ul>
Lobbying	37	2	30	2	3	<ul style="list-style-type: none"> <li>▪ Expense reports, including affirmations and statements of limited knowledge</li> <li>▪ Registration: renewal, modification, and termination guidance</li> <li>▪ Reporting affirmations after person to affirm is no longer available</li> <li>▪ Non-profit entities proposed lobbying of federal officials at local event</li> <li>▪ Technical assistance</li> </ul>
Other	5	3	2			<ul style="list-style-type: none"> <li>▪ Questions regarding the Board, its advisory opinions, and its regulations</li> <li>▪ No Board jurisdiction</li> </ul>

*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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### **III. Advisory Alerts Regarding Volunteering Related to the Democratic National Convention**

Ms. Nayak reviewed and discussed with the Board guidance to City employees regarding whether they may participate, in their individual capacities and while off-duty, in volunteer opportunities that the Philadelphia 2016 Host Committee will offer during the Democratic National Convention in July 2016. She said that General Counsel staff had finished gathering relevant facts from the Host Committee and had drafted two separate Advisory Alerts to address (1) City Council staff and (2) all other City employees. She noted that the Host Committee has been very helpful during the fact-gathering process and has worked closely with General Counsel staff. Ms. Nayak provided Board members with copies of the draft Advisory Alerts.

Ms. Nayak also provided to Board members a written summary entitled “Facts Provided to the Philadelphia Board of Ethics by the Philadelphia 2016 Host Committee Regarding Its Volunteer Opportunities,” which was a summary of the facts obtained through multiple conversations and emails with Host Committee representatives. Host Committee representatives had the opportunity to review and correct the summary document. Ms. Nayak did not believe that the summary document should be sent to City employees with the Advisory Alerts because it did not provide guidance and was not as helpful as the Alerts. Chair Reed asked that the document be posted to the Board’s website along with the finalized Advisory Alerts. Ms. Nayak said she would do so.

Ms. Nayak noted that a significant development that resulted from General Counsel staff’s conversations with the Host Committee was that the Host Committee had modified their Volunteer Portal to create a different registration path for City employees who are subject to strict political activity restrictions. A screenshot of the Host Committee’s Volunteer Portal was provided to Board members. A prominent note appears above the volunteer options, stating: “If you are an employee of the City of Philadelphia (other than City Council staff), you should register as a ‘City Volunteer’ to avoid potential issues under the City political activity restrictions. To register as a ‘City Volunteer,’ you must use an access code that you can obtain by emailing [volunteer@phldnc.com](mailto:volunteer@phldnc.com).” The City Volunteer button also instructs City employee volunteers to “Email [volunteer@phldnc.com](mailto:volunteer@phldnc.com) to obtain Access Code to avoid political activity issues.” The draft Advisory Alert for City employees other than City Council staff directs those employees to the City Volunteer option. The Alert also provides the City Volunteer access code. City Council employees may register using the general volunteer portal.

Board members discussed the Advisory Alerts at length. They asked that the Alerts more clearly differentiate between the Host Committee and the Democratic National Convention Committee with a sentence at the bottom of each alert. General Counsel staff said they would add the sentence.

Ms. Nayak said that once the Alerts were finalized, Board staff planned to distribute the Advisory Alerts on the Board’s website and the Board’s Twitter account. General Counsel staff would also provide the Alerts to requestors that had previously asked about volunteering with the Host Committee. Ms. Nayak also planned to ask the City’s Chief Integrity Officer and City Council’s Chief Ethics Officer to help distribute the Alerts.

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By a 4-0 vote, Board members approved the concept of the Advisory Alerts, with the understanding that the language of the Alerts would be modified and authorized General Counsel staff to finalize and distribute the Alerts. Board members thanked Board staff for their outstanding proactive work.

#### **IV. Approval of Minutes**

By a 3-0 vote, the Board approved the minutes for the public meeting held on February 17, 2016, as presented. Dean Epps abstained from voting on the minutes because she did not attend the February 17, 2016 public Board meeting.

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

There was no new business presented at the meeting.

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

Ellen Kaplan, the City's Chief Integrity Officer, provided comments and concerns about the apparent overbreadth of the restrictions described in the Advisory Alert for City employees outside of City Council. She also questioned how the Alert would apply to City board and commission members. After extended discussion, Chair Reed said that General Counsel staff should work with him and consider the concerns Ms. Kaplan raised when further editing the Alerts before distribution. He said the Board appreciated Ms. Kaplan's comments.

Mary McDaniel, City Council's Chief Ethics Officer, confirmed that the Advisory Alert for City Council employees did not apply to City Council members. She also asked which Alert City Council staff should follow if they also serve on City boards and commissions. Chair Reed responded that those individuals should contact the Board to receive advice on a case-by-case basis.

Ms. Kaplan said she was disappointed that the Board did not receive more funds in the Mayor's FY17 budget. She asked that the Board consider as "a show of good faith to bring in more money" an increase in lobbying registration fees. Executive Director Creamer suggested that an increase in registration fees could be difficult to justify to the regulated community, particularly given the Board's prior experience with Board Regulation No. 9 (Lobbying), and that an increase would yield minimal income for the City. Chair Reed thanked Ms. Kaplan for her advocacy on behalf of the Board to receive more funding and resources.

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Chair Reed announced that after the public meeting the Board would meet pursuant to Sections 708 and 716 of the Pennsylvania Sunshine Act to address confidential enforcement matters.

The public session of the Board meeting was adjourned at approximately 2:55 p.m.

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