

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
January 19, 2011  
Board of Ethics  
Packard Building  
1441 Sansom Street, 2<sup>nd</sup> Floor  
1:00 pm

**Present:**

Board

William H. Brown, III, Esq.  
Richard Glazer, Esq., Chair  
Sanjuanita Gonzalez, Esq.  
Pastor Damone Jones

Staff

J. Shane Creamer, Jr., Esq.  
Nedda Massar, Esq.  
Evan Meyer, Esq.  
Michael Cooke, Esq.  
Maya Nayak, Esq.  
Elizabeth Baugh  
Tina Formica

**I. Call to Order**

Mr. Glazer recognized that a quorum was present and called the meeting to order.

**II. Swearing In**

Chair Glazer said that over the last four plus years at times like this it has been his continuing great pleasure and honor to introduce the Honorable Ida K. Chen who will install our newest board members William H. Brown, III and Sanjuanita Gonzalez.

He said that with Judge Chen's background and experience it is most fitting that she is and has been our designated installer. Graciously taking time from her schedule to swear in the original 5 member board at the Constitution Center on November 27, 2006 and since then, in an unbroken streak, installing 6 other replacement Ethics Board members before today. Judge Chen, it should be noted, served as Chair of the Ethics Committee of the 21<sup>st</sup> Century Review Forum at the request of Mayor Street. Among many recommendations made to strengthen the faith and confidence of the citizens of Philadelphia in their government was the recommendation to create an independent Board of Ethics.

Chair Glazer noted that today, the Board carries on the cherished tradition of asking Judge Chen to bestow upon us the honor of swearing in our newest board members.

Chair Glazer called upon Judge Ida Chen to give the oath of office to William H. Brown, III and Sanjuanita Gonzalez.

Judge Chen swore in William H. Brown, III and Sanjuanita Gonzalez with the following oath:

I, William H. Brown, III and Sanjuanita Gonzalez, do solemnly swear to obey and defend the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania and the Philadelphia Home Rule Charter and that I will discharge the duties of a member of The City of Philadelphia Board of Ethics with fidelity.

Mr. Glazer congratulated both newly sworn in board members and asked if they would like to say a few words.

Ms. Gonzalez said that she is happy and honored to be appointed to the Board of Ethics.

### **III. Comments from the Chair**

Chair Glazer announced the resignation of Sister Mary Scullion. Sister Mary submitted a letter of resignation to Mayor Nutter on January 14, 2011. (See Attachment 1)

Chair Glazer read his response to Sister Mary's resignation letter. (See Attachment 2)

Chair Glazer said that Sister Mary will be missed. He hopes that Mayor Nutter will start the process of appointing a new board member.

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

The Board approved the meeting minutes, as amended, printed and distributed, for the public meeting that was held on December 15, 2010.

### **V. Executive Director's Report**

#### **A. Litigation Update**

##### **1) Cozen O'Connor v. Philadelphia Board of Ethics**

Mr. Creamer explained that the Board continues to wait for the Court to rule on the Motion to Dismiss in this case. As he's previously reported to the Board in the past, staff filed a Motion to Dismiss Cozen's appeal to the Pennsylvania Supreme Court on September 29<sup>th</sup> – two days after Amended Regulation No. 1 on campaign finance took effect. Cozen filed a Response to the Board's Motion to Dismiss on October 14<sup>th</sup>.

Mr. Creamer also explained that before the Board filed the Motion to Dismiss when instructed by the Court, Cozen filed an Application for Post-Submission Communication By Appellant on September 20<sup>th</sup>, in which Cozen argues that neither the change in the law, nor the new debt forgiveness provision in Reg 1 have any affect on Cozen's Appeal or on its ability to forgive its debt. Cozen's unusual Application essentially enabled the firm to present their argument first.

## **2) McCaffery v. Creamer, et. al.**

For the benefit of the new members, Mr. Creamer explained to the Board that on December 1, 2009, Daniel McCaffery, a former 2009 primary election District Attorney candidate, filed a defamation suit against the Board and Mr. Creamer personally. The suit came after an October settlement agreement with the Board in which the Campaign admitted violations of the City's campaign finance law.

Mr. Creamer also explained that Common Pleas Court Judge Gary Glazer dismissed Mr. McCaffery's defamation Complaint and said that the Board and he are covered by "quasi-judicial" immunity when we are acting in their official capacity. Judge Glazer explained that "[t]he public has a right to Board members who can honestly and independently examine and enforce campaign finance rules . . . without fear of harassment or retaliation." Judge Glazer also noted that "[t]he distraction and expense associated with obviously retaliatory lawsuits undermines public confidence in the electoral process and compels the result in this case," and that "precious governmental resources should not be expended on defending frivolous lawsuits."

Mr. Creamer further explained that Mr. McCaffery appealed Judge Glazer's dismissal, and the appeal was transferred from the Superior Court to Commonwealth Court on our motion, over Mr. McCaffery's objection. The Board has been advised that oral argument on Mr. McCaffery's appeal to the Commonwealth Court has been scheduled for February 7<sup>th</sup> at 1:00.

### **B. Political Activity Update**

Mr. Creamer reported that staff has spent considerable time in the past month preparing its draft of new Regulation No. 8, Political Activity, which will be discussed in detail later in today's meeting. The Board is planning to conduct a public hearing on the proposed regulation at the February 23<sup>rd</sup> Board meeting.

### **C. Campaign Finance Training**

Mr. Creamer reported that in the past two months, staff has focused on campaign finance training so that candidates, committees, and treasurers have complete information on the requirements of the City's campaign finance law, well in advance of the 2011 primary election.

He also reported that staff has already conducted three training sessions that were attended by more than 50 people. Six more sessions are scheduled between now and March 23<sup>rd</sup>. He invited all interested parties to register for training. These sessions are especially important because training is provided on the recent significant changes to the law.

#### **D. Lobbying Update**

Mr. Creamer stated that under the City's new lobbying law, July 1, 2011 is the first date for lobbyists, firms and principals who lobby in Philadelphia to register with the Board. The Board is responsible for administration, implementation and enforcement of the new law, and one of the most significant tasks associated with lobbying is the design of the law's mandatory electronic filing system. The system is intended not only to permit lobbying entities to file their reports electronically, but also to permit the public to have access to lobbying information.

Mr. Creamer said that since staff reported to the Board in December, they were advised that funding has been obtained so that the City's Division of Technology can design and support the electronic filing system. For several months staff has been working with DOT on this project, and they expect that it will consume even more of their time in the next few months.

Mr. Creamer explained that staff has also begun to develop a plan for outreach to businesses and individuals who may be required to file under the new lobbying law and are planning to begin lobbying training sessions in May. Staff is also working on a lobbying regulation for review by the Board in the spring.

#### **E. Questions/Comments**

Chair Glazer asked for an update on the on-line training program.

Ms. Massar responded that staff is working with the Division of Technology to resolve a technical problem with our online ethics training project. A key component of the training software is a confirmation message that will be sent to the Board and to the user so that we can keep track of those who have completed the online training module. Right now, there are problems with that confirmation process. DOT is actively working with us to resolve this issue.

Chair Glazer asked if this delay will have an impact on live training.

Ms. Massar said that at the September meeting the Board approved a schedule. She said hopefully by spring the online training program can be launched and still be on target.

Chair Glazer asked for an update on the proposed legislation that was discussed at the December board meeting.

Mr. Cooke said that staff, on behalf of the Board, submitted proposed legislation to the Administration. He said he believes the Administration will ask City Council to introduce the proposed legislation.

Mr. Cooke explained that the proposed amendment to Chapter 20-1000 will clarify that no person may make excess contributions to candidates through another political committee. The amendment will also eliminate the costly requirement that the Board publish a Plain English explanation of the campaign finance law in three newspapers twice a year. Publication via the newspapers is not effective and costs the Board \$8,000 a year. The amendment would require the board to make the Plain English guide available on the Board's website.

The proposed amendment to Chapter 20-600 would authorize the Board to administratively adjudicate alleged violations of sections 10-102, 10-105, and 10-107 of the Charter. Currently, the Board may only bring such enforcement actions in the Municipal Court.

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

1. Formal Opinions. Mr. Meyer reported that there was one Formal Opinion since the December report. Nonpublic Formal Opinion No. 2010-002 was issued December 15, 2010. An employee of City Council requested a nonpublic advisory as to whether the Public Integrity Laws would restrict her actions in writing a letter, as constituent service, to a board or commission of the City, in support of the position of a community group, where a professional from a firm of which the requestor is also a salaried employee is representing another party in that same matter.

Based on the facts that were provided to us, the requestor was advised as follows:

1. As constituent service, the letter would be incident to the requestor's official duties. Accordingly, providing such a letter would not be prohibited representation under Code Section 20-602.

2. The State Ethics Commission has ruled several times that public officials have a conflict of interest in matters that would financially impact the official, his firm, or his firm's client, and that prohibited official participation would include "discussing, conferring with others, and lobbying for a particular result." Accordingly, the requestor was advised that rulings of the Commission support the conclusion that the Commission would likely advise that Section 1103(a) of the State Ethics Act would prohibit writing the support letter proposed by the requestor.

3. Our advice as to the State Ethics Act is predictive only, and is not binding on the State Ethics Commission. The requestor may wish to seek a direct ruling from the Commission.

4. As a salaried employee of the firm, the requestor would not have a personal financial interest in a matter in which another professional from the firm represented a client, if there was no additional compensation involved. Accordingly, the requestor would not have a prohibited personal financial interest under Code Section 20-607(a).

5. As a salaried employee, the requestor is a "member" of the firm, for purposes of Code Section 20-607. Writing a letter supporting a party before the City body would be "official action" as a City official/employee, regarding that matter before the City body. Where another member of the firm would have a financial interest in a matter before that same City body in which the firm represents a client, the requestor may not take official action in that matter. Accordingly, Code Section 20-607(b) prohibits such action on her part, where there is a financial interest.

The public version of Nonpublic Formal Opinion No. 2010-002 is available on the website of the Board of Ethics.

2. Advices of Counsel. Mr. Meyer reported that there were two Advices of Counsel since the December report.

a. Nonpublic Advice of Counsel GC-2010-521 (December 17, 2010) An employee of City Council requested nonpublic advice as to whether, if his friends were to establish a non-authorized PAC named “Friends of [name],” regarding a City elective office, would such action prohibit him from remaining a City Council employee?

Based on the facts that were provided to us, and applying the currently applicable prior rulings of the Board of Ethics, the requestor was advised as follows:

1. The Advice was provided for the limited purpose of advising the requestor on the immediate request, based on the currently prevailing interpretations. The Board’s anticipated political activity regulation, when it becomes effective, may well supersede parts of this Advice that are inconsistent with the new interpretations of the regulation.

2. Under the Home Rule Charter and the City’s Campaign Finance Law, the requestor will not become a candidate until he either files nominating papers or publicly declares his candidacy.

3. The formation of a political committee named “Friends of [name],” would not in and of itself constitute a “declaration of candidacy” by the requestor and would not require the requestor to resign his City position under Charter Section 10-107(5).

4. Under Charter Section 10-107(3), fundraising and contributions received by a political committee for the sole purpose of defraying expenses related to exploring a possible run for office would not cause the requestor to violate this provision. However, the requestor was cautioned that this does not mean that any and all activities of such a PAC or that he might take related to such a PAC are permissible. The requestor was advised to seek further advice if he has questions about specific actions.

5. Charter Section 10-107(4) does not apply to restrict the requestor’s activities related to this political committee because he is an employee of City Council.

6. The City’s definition of candidate is different from the definition of candidate under the State Election Code and the State Ethics Act, and even if the requestor is not a candidate under the City’s campaign finance law, this would not relieve him of his obligations to comply with the State Election Code and the State Ethics Act.

b. Nonpublic Advice of Counsel GC-2010-522 (December 17, 2010). An employee of City Council, possibly interested in running for City elective office, requested nonpublic advice on whether she may have a few one-on-one private conversations with friends, advisors, and knowledgeable people about her chances for success and the details of running, and whether having those conversations would, by itself, require her to resign under the “resign to run” provision of the Charter. We advised that, under the Home Rule Charter and the City’s Campaign Finance Law, the requestor will not become a candidate until she either files nominating papers or publicly declares her candidacy. Thus, if the requestor were to have several described one-on-one private conversations, the action of having those conversations, in and of itself, would not constitute a “declaration of candidacy” by the requestor and would not require her to resign her City position under Charter Section 10-107(5).

The public version of both Advices are available on the Board’s website.

3. Informal e-mail guidance. Mr. Meyer reported that through Friday, January 14, 2011, there were eight of these since the December report.

a. Received an inquiry from a City employee asking about receiving lunches from lobbyists. Advised that the recipient has no responsibilities under the City's new Lobbying Law, but that the lobbyist may be required to report the expense, once the law takes effect July 1, 2011. As to whether a lunch is a prohibited gift, the only issue might be under the Mayor's Executive Order, which is not in our jurisdiction. The employee was advised to consult with the Chief Integrity Officer.

The employee also asked about "recent elections/charter changes" with regard to engaging in political activity. We advised that the ballot questions on the ballot at the November 2, 2010 election did not include any revision to the Charter's political activity rules. The Board of Ethics is in the process of developing a regulation interpreting the restrictions, but this is at least a month away.

b. Received an inquiry from a City vendor regarding giving a gift to a City employee as part of their "annual holiday gifts for our customers." Provided standard breakdown of the various gift rules.

c. Received an inquiry from a City employee noting that the employee had been invited to the holiday party of an association that the employee identified as "a strategic partner" with his office in certain official matters. The employee asked if he may attend the event.

Advised: Provision of free food at a holiday party by a City vendor raises issues under various ethics laws restricting receipt of gifts by City employees. Advised that generally there would be no issue under the State Ethics Act, Charter, or City Code. Noted that we have no jurisdiction over the Mayor's Executive Order on Gifts, so the requestor would need to check with Chief Integrity Officer Joan Markman on the effect of the Executive Order.

d. Received an inquiry from staff of a City board/commission, regarding a former member of the body who wanted to participate as a "resource person" and attend certain nonpublic committee meetings of the body. Advised that this appears to be a question under the Sunshine Act, and the requestor should consult the Law Department.

e. Received an inquiry from a City employee about participating, for compensation in a workshop. The only question was whether payment would be an honorarium, prohibited under the State Ethics Act. Honoraria are generally payments made in recognition of speaking appearances made in a public official's public capacity. Advised that the proposed appearance did not appear to fit the definition, but that the State Ethics Commission has the final say.

f. Received an inquiry from a City department as to whether the department could permissibly pay the license fee for a department employee to be a notary public, if the employee would use the notary license both for the City and her private business. Advised that the Department itself would not be violating any ethics law by paying the notary appointment fee for the employee, even though she may use the notary appointment, not only for the City, but also in her private business. Several issues apply to the employee.

First, under Section 10-102 of the Home Rule Charter, she may not have a financial interest in any City contract. Accordingly, if she does any notary work for a City contractor, her fee may not be paid out of the contract funds paid to the contractor by the City.

Second, under Section 20-607 of the City Code, she may not have a conflict of interest. That is, she may not have a financial interest in any official action she takes for the City. Accordingly, she may not use the fact that she is a notary for the City to enhance her private business. For example, she may not advertise her business by stating that she is a notary for the City Department. She may not do private notary business while on City property or while on duty for the City, or using City materials, personnel, or property.

The State Ethics Act has a similar conflicts provision. As a clerical employee, the employee is likely not subject to the State Act, but the final authority on that question would be the State Ethics Commission.

g. Provided extensive information on the City's gift rules to a staffer for the Chicago Ethics Board.

h. Received an inquiry about a City employee attending a free seminar at the offices of a City vendor, where the seminar is free to all. Advised that since no one pays for attendance, there is no gift issue.

4. Regulations Both the General Counsel and the Associate General Counsel spent substantial time over the past month working on proposed regulations related to political activity and lobbying, and on related questions.

## **VII. Discussion of Proposed Regulation 8, Political Activity**

Chair Glazer explained that this Regulation has a relatively long history. In September 2008 the Mayor's Task Force was formed by Mayor Nutter and Council President Verna. In December 2009, the Task Force issued a report that, among various other recommendations, called on the Ethics Board to reconsider the historically strict interpretation of the Charter's political activity restrictions.

In March 2010 City Council introduced legislation that would have significantly changed the political activity restrictions placed on City employees.

In June 2010 City Council agreed to hold the legislation to give the Ethics Board time to promulgate a Regulation interpreting the Charter's political activity restrictions. In September 2010, staff presented a draft political activity to the Board. That proposed draft only addressed Charter subsection 10-107(4). After discussing the proposed draft, the Board instructed staff to seek input on the proposed regulation from a wide variety of stakeholders. Board staff met with City Council staff, DC 47, Committee of Seventy and others. In December 2010 staff redvised the draft regulation to incorporate feedback and to address Charter subsection 10-107(3) in addition to subsection 10-107(4).

Chair Glazer asked staff to walk the Board through the Regulation.

Ms. Nayak explained that Regulation 8 is the Board's interpretation of the Charter restrictions on political fundraising and political campaign activity. Staff's goal was to provide comprehensive guidance for City employees and appointed officers. The regulation as drafted does not cover elected officials because our focus was on employees, but that is an issue that the Board could address through amending the regulation in the future.

Ms. Nayak also explained that this regulation will supersede Civil Service Regulation 29, which generally prohibited public, partisan expression. In contrast, Regulation 8 allows public expression on political topics when it is done in an employee's private capacity and not in coordination with a candidate, campaign or partisan political group.

Ms. Nayak and Mr. Cooke walked through the highlights of each subpart of the regulation and fielded questions from Board members.

A motion was made to approve the draft Regulation for public comment posting at the Records Department with some additional changes requested by the Board. The motion included a provision that staff could make non substantive changes to the Regulation if the Law Department requested such changes. Before making such changes staff would obtain the agreement of the Board Chair that the proposed changes were in fact not substantive. The motion passed unanimously with a 4-0 vote.

## **VIII. New Business**

Chair Glazer said that he arranged for Ellen Toplin, who recently retired from Star Toplin, to meet with staff during a lunch meeting on January 13th. The purpose of the meeting was to assist the Board with further outreach issues concerning campaign finance, training and broadening the visibility of the Board.

## **IX. Questions/Comments**

Ellen Kaplan asked if the Board has a figure on what it will take to enforce the lobbying law with the database and number of staff.

Chair Glazer responded that DOT will fund the technical portion.

Ms. Massar said she estimated that the Board would need three additional staff members, but that the Board is constrained by a reduced and frozen budget.

Ellen Kaplan said she understands that there is not a dedicated source of funding, and asked whether the Board will recommend an amendment to the lobbying law to establish funding.

Mr. Creamer noted that the Board has made numerous requests for additional funding.

The public session of the Board's meeting was adjourned after public questions and comments, so that the Board could meet in executive session to discuss enforcement matters and non-public opinions.