

Philadelphia Board of Ethics
Meeting Minutes
January 18, 2012
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Michael Reed, Esq., Vice Chair
Judge Phyllis Beck (Ret.)
William H. Brown, III, Esq.

Staff

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

I. Call to Order

Chair Glazer recognized that a quorum was present and called the meeting to order at 1:05 pm.

II. Approval of Minutes

By a 4-0 vote, the Board approved the meeting minutes, as corrected, for the public meeting that was held on December 21, 2011.

III. Executive Director's Report

A. Litigation Update

i. McCaffrey v. Creamer, et al.

Mr. Creamer said that as he reported at the last Board meeting, the Board filed a Motion for Summary Judgment on December 13th. The Motion was filed 20 days after McCaffrey admitted in discovery responses that the alleged defamatory statements were made at an official Board meeting and not at a "press conference." In the Motion, the Board argues that they are entitled to judgment as a matter of law for four reasons.

First, the Motion argues that Mr. McCaffrey's concessions that the allegedly defamatory statements were made at an official Board meeting and not at an extra-judicial press conference resolves the only outstanding factual issue that precluded the Commonwealth Court from affirming dismissal of the Complaint on the basis of quasi-judicial immunity.

Second, we argue in the Motion that the Board has a qualified privilege from suit under the Pennsylvania Political Subdivision Tort Claims Act.

Third, the Motion argues that Mr. Creamer is entitled to summary judgment because he is absolutely immune from suit under the doctrine of high public official immunity.

Finally, and alternatively, the Motion argues that we are entitled to summary judgment because the undisputed factual record shows that the statements at issue, as reflected in the meeting minutes of the Board, were entirely truthful and thus are not actionable as a matter of law.

Mr. Creamer reported that Mr. McCaffery filed an Answer to the Board's Motion on January 13th.

Mr. Creamer said that as he has reported in recent meetings, staff members and he have spent a significant amount of time since August working with the Board's attorneys to defend Mr. McCaffery's lawsuit.

ii. Lodge No. 5 of the Fraternal Order of Police, et al. v. City of Philadelphia, et al.

Mr. Creamer reported that discovery closed on December 12th; however, the parties are still exchanging discovery requests by agreement and with the Court's approval. After Plaintiffs filed a Motion to Compel his deposition, an agreement was reached whereby Plaintiffs would depose Michael to establish how the police contribution ban in Section 10-107 of the Charter would be enforced. Michael will be deposed tomorrow. Dispositive motions are due by January 30th and the trial date is scheduled for April 16th.

iii. Cozen O'Connor v. Philadelphia Board of Ethics

Mr. Creamer said that as was reported at the November and December meetings, the Board filed an Answer to Cozen's Complaint on November 9th. Since then, there has been no significant activity to report.

B. Lobbying Update

Mr. Creamer announced that staff launched the Interim Lobbying Registration process which provides separate "fill-in" registration forms and instructions for lobbyists, lobbying firms, and principals. There is a new lobbying page on the Board's website, which not only includes the forms and instructions, but also has links to the Lobbying Code (Chapter 20-1200), Frequently Asked Questions, Regulation No. 9, and the proposed amendments to Regulation No. 9. Staff sent an email announcing the temporary registration process on January 3rd.

Mr. Creamer said that staff developed internal procedures to process the forms and to collect and deposit the registration fees.

Mr. Creamer also said that it appears that the Division of Technology is on track to deliver the online registration system by February 15th, as promised. Until the searchable online system is ready, staff will work to release lobbying registration information in a spreadsheet format on our website. It is the Board's goal to have this information publicly available by the end of January and to update the information on regular intervals.

Mr. Creamer explained that staff continues to receive phone calls every day about lobbying, many of which concern the mechanics of completing the forms and the applicability of the law to their particular circumstances.

Training: Mr. Creamer reported that in addition to testing the online system, staff's next task is to design lobbying training materials and to prepare a training schedule. Staff plans to include use of the electronic filing system as part of training and therefore expect to begin classes soon after the online system is ready.

Budget: Mr. Creamer said that in December, the Board approved a request to the Fund for Philadelphia for \$44,000 to be used in the balance of FY12 for two additional staff positions needed to support the lobbying program and other tasks. Staff received the \$44,000 check and deposited it in the City's General Fund. The next step in the process requires approval of a transfer ordinance by City Council to move the \$44,000 into the Board's FY12 appropriation. Staff contacted Budget Director Rebecca Rhynhart to determine when the transfer ordinance will be introduced.

Mr. Creamer also said that in anticipation that the funds will be available; staff began interviews to fill the two positions approved by the Board last month.

C. Legislative Update

Mr. Creamer reported that Bill No. 110716 was introduced in October by Councilman Bill Green to include life partners in the provisions of Chapter 20-600, the Ethics Code. The Board submitted written testimony in support of the bill for the December 6th hearing of the Committee on Law and Government and also recommended that a similar change be proposed in the near future to include life partners in the definition of “immediate family” in the Lobbying code at Section 20-1201(14). City Council passed the bill by a vote of 17-0 on December 15th and it was signed by the Mayor on December 21st.

D. Training

Mr. Creamer informed the Board that on January 10, 2012, staff conducted joint **campaign finance training** with staff from the City Commissioners Office. The training session was held at Local 98 IBEW headquarters on Spring Garden Street at their request. More than 40 people attended the training session, including several new Councilmembers. The session was lively and interactive.

Mr. Creamer reported that staff is currently planning **ethics training** sessions for City Council and their staff and for employees of the City Commissioners Office.

E. Quadrennial Adjustment of Contribution Limits

Mr. Creamer explained that Section 20-1002(11) of the City Code requires quadrennial adjustment of the annual limits in the Campaign Finance Law on contributions to candidates for City elective office and to political committees. On December 1st, he sent a letter to Rob Dubow, the City Finance Director, requesting that he calculate the amount of the adjustment, as described in Section 20-1002(11), and certify the new contribution limits in writing to the Mayor, the City Council President and Chief Clerk of Council.

Mr. Creamer said that staff received notice (Tab3) from the Finance Director that the limits have been adjusted for inflation, as follows:

The limit on contributions from an **individual** per calendar year to a candidate for City elective office, to that candidate’s litigation fund, or a post-candidacy contribution to that candidate has been adjusted from **\$2,600 to \$2,900**.

The limit on contributions from a **political committee** or business per calendar year to a candidate for City elective office, to that candidate’s litigation fund, or a post-candidacy contribution to that candidate has been adjusted from **\$10,600 to \$11, 500**.

Questions and Comments

Judge Beck asked staff about the meeting with the Legal Services division of the Bar Association.

Ms. Massar said that staff is working on a meeting for nonprofits in late January or early February in cooperation with the Committee of 70.

Chair Glazer applauded staff Nedda Massar and Elizabeth Baugh for their work in getting the lobbying registration forms on the Board's website.

Chair Glazer expressed his concern that there may be issues with the February 15th deadline.

Ms. Massar said that staff has only seen a small portion of the electronic forms and process and has not been able to officially test the software. Once testing has begun, she said that staff will be in a better position to raise an issue with the deadline.

There was a brief discussion on how staff is currently processing the lobbying registration forms.

Chair Glazer said that he spoke with Rebecca Rhynhart regarding the transfer ordinance. She said it will take place by the end of the month.

IV. General Counsel's Report

1. Formal Opinions. Mr. Meyer reported that there were no Formal Opinions since the December report.

2. Advices of Counsel. Mr. Meyer reported that there were no Advices of Counsel since the December report.

3. Informal e-mail guidance. Mr. Meyer reported that through Wednesday, January 11, 2012, there were three of these since the December report. *Note that in every such email we state the following: "This informal general guidance is not a ruling on your particular situation and does not provide you protection from an enforcement action." We add that if the requestor would like a definitive ruling that applies the Public Integrity Laws to his/her specific situation and that protects against a possible enforcement action, then they should ask us for an advisory opinion, providing, in writing, full and specific facts on which the opinion is to rely, including their name and title, specific question, and whether they are requesting a public or nonpublic advisory.*

a. Received an inquiry from a City employee requesting advice about serving in an unpaid position on the board of directors of a nonprofit charitable organization. Provided links to two prior Advices of Counsel that discussed this issue Nos. GC-2011-510 and 2010-505. Also summarized the rules of Charter Section 10-102; Code Sections 20-601(1), 20-601(5), 20-607(a), 20-607(b), and 17-1402(1)(b)(i)(.4); and the State Ethics Act conflict provision and financial disclosure requirement. Also addressed appearance issues in using one's City title to solicit contributions for charity from those who do business with the City.

b. Received an inquiry from a Council employee regarding being a signatory on bank accounts of a PAC. Advised as follows:

The relevant provision here is Section 10-107(3) of the Home Rule Charter, as interpreted in Board of Ethics Regulation No. 8. Section 10-107(3) provides that no City employee shall "be in any manner concerned in demanding, soliciting, collecting or receiving, any assessment, subscription or contribution, whether voluntary or involuntary, intended for any political purpose whatever."

This is supported in Regulation 8 by Paragraphs 8.5 through 8.7 and Example 3, which says that an employee may not be a treasurer of a political committee. It is important to note that Paragraph 8.0 points out that the Examples are not intended to be exhaustive, so the fact that there may be no example for a particular fact situation does not mean that it is permissible.

Paragraphs 8.5 through 8.7 apply specifically to employees of City Council as noted in Paragraph 8.24, and especially Examples 1, 4, and 5 to Para. 8.24.

It is true that none of these Paragraphs or Examples specifically address being a signatory of bank accounts for a political committee (or PAC).

Although it is not specifically prohibited for you to be a signatory on such an account, certain activities of a signatory might violate Section 10-107(3). Therefore, if you choose to remain a signatory on political committee accounts, you are strongly advised to seek formal, written advice from us regarding what activities you may and may not engage in while serving as a Council employee.

Explained the process to obtain a written Advice of Counsel on any question.

c. Received an inquiry from a City employee regarding offensive language from a co-worker. Advised that this was not in our jurisdiction and suggested the requestor contact Human Resources.

4. Political Activity. We were advised that the recent amendments to Civil Service Regulation 29, which relates to political activity, and now refers employees to Board of Ethics Regulation 8, are now officially effective. Associate General Counsel Maya Nayak devoted significant time to assisting the Commission with this effort, as was reported in past reports.

V. Amendment to Internal Guidelines for Public Communications

Ms. Nayak said that at the last Board meeting the Board asked staff to draft language regarding Board members speaking publicly on Board matters. The draft amendment, attached here as Exhibit A, incorporates what the Board discussed.

There was a brief discussion on whether to use no comment when talking to the media.

By a 4-0 vote, the Board approved the amendment to the Internal Guidelines for Public Communications.

VI. Proposed Amendments to Regulation No. 1, Campaign Finance

Chair Glazer said it seems unwieldy to have to go through the process of amending a Regulation, just to provide notice of changed amounts. However, if it is the Board's intent to have one stop shopping then it makes sense to amend the Regulation.

Ms. Nayak informed the Board that the proposed amendments are on pages 4 and 18 of the draft redline, and they reflect the quadrennial adjustment of the contribution limits. The amount an individual can contribute per calendar year was increased from \$2,600 to \$2,900, and the amount that can be contributed by a political committee, partnership, sole proprietorship or other form of business organization was increased from \$10,600 to \$11,500.

By a 4-0 vote, the Board approved the proposed amendments to Regulation No 1., Campaign Finance.

Chair Glazer noted that the proposed amendments to the Regulation will be sent to the Law Department for approval and then will be on file with Records for 30 days. If a hearing is not requested in the 30 days then the Regulation will become effective 30 days from the date it was posted at Records.

VII. New Business

Chair Glazer made a request of the Board to reschedule the February meeting to accommodate his and Mr. Reed's schedules.

By a 4-0 vote, the Board agreed to change the meeting from February 15th until February 22nd.

Mr. Meyer asked Ms. Formica to send a notice to Procurement so the new Board meeting date can be published.

VIII. Questions and Comments

Bob Warner asked what the effective date is for the adjustment to the contribution limits.

Mr. Creamer said the effective date is January 1, 2012.

Bob Warner asked if the lobbying registration information is subject to the right to know law.

Ms. Massar responded that the forms are subject to the law and also that, as mentioned earlier, staff plans to periodically make information available on the Board's website.

Bob Warner asked if the internal guidelines for public communications document would be available to the public.

Mr. Creamer said it would be available later today after the corrections are made.

The public session of the Board's meeting was adjourned at 1:55 pm so that the Board could meet in executive session to discuss enforcement matters and non-public opinions.