

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
June 16, 2010  
Board of Ethics  
Packard Building  
1441 Sansom Street, 2<sup>nd</sup> Floor  
1:00 pm

**Present:**

Board

Nolan N. Atkinson, Jr., Esq., Vice Chair  
Richard Glazer, Esq., Chair  
Pastor Damone Jones  
Kenya Mann, Esq.  
Sister Mary Scullion

Staff

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

**I. Call to Order**

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

**II. Message from the Chair**

Chair Glazer announced the resignation of Kenya Mann Faulkner, effective June 30, 2010. He read her resignation letter, which is attached to the minutes. (See Attachment #1)

Chair Glazer said that on behalf of the Board, staff and the City he would like to acknowledge Ms. Mann Faulkner's service over the past few years. She was involved in some of the most important things that Board has done since its existence. On a personal note, the Chair sought and received her counsel and good judgment. He wished her continued success in her career.

**III. Approval of Minutes**

The Board approved the meeting minutes, as printed and distributed, for the public meeting that was held on May 19, 2010.

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

##### **A. Enforcement**

###### **1) Ethics Board v. Hon. Vivian Miller**

Mr. Creamer reported that on May 20<sup>th</sup>, the Board withdrew the enforcement petition filed against the former Clerk of Quarter Sessions, Vivian Miller, pursuant to the Settlement Agreement that was fully executed on May 18<sup>th</sup>.

Mr. Creamer explained that in the Settlement Agreement, Ms. Miller admitted that her use of the 51<sup>st</sup> Ward Committee in addition to her candidate committee did not comply with Section 20-1003 of the City's campaign finance law. In exchange for this admission, the Board agreed to waive any monetary fine.

##### **B. Litigation Update**

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

Mr. Creamer said that there is nothing to report in the appeal filed by Mr. McCaffery from Judge Glazer's dismissal of his defamation suit against the Board and Mr. Creamer. The appeal was transferred from the Superior Court to Commonwealth Court on our motion, over Mr. McCaffery's objection. The Board is waiting for the Commonwealth Court to issue a scheduling order.

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

Mr. Creamer said that there is nothing to report in Cozen O'Connor's appeal from the order dismissing its suit against the Board challenging the Board's Advisory Opinion issued to Cozen's former client, the Friends of Bob Brady. The appeal is pending before the Pennsylvania Supreme Court and has been fully briefed. We are waiting for the Court to schedule oral argument.

Mr. Creamer noted that City Council Bill 100122 would codify the Board's interpretation of the law that holds that the contribution limits continue to apply after an election for the purpose of retiring campaign debt.

##### **C. Legislative Update**

Mr. Creamer reported that on June 3<sup>rd</sup>, City Council approved five bills, which are now awaiting action by the Mayor. All of these bills will make significant changes to the laws administered by the Board. The bills are:

**Bill No. 100122** regulates transition and inauguration fundraising by requiring elected candidates to raise money for these activities through their single candidate committees and by applying contribution limits. The bill requires public disclosure for these fundraising activities, while preserving the integrity of the campaign finance law's single committee rule. The Bill also provides explicit language supporting the Board's interpretation that the contribution limits apply

to post-election contributions for the purpose of retiring campaign debt and fixes the millionaire's amendment issue caused by *Davis*.

**Bill No. 100124** allows a candidate to have a litigation fund committee to solicit and receive contributions within the contribution limits to pay legal defense costs related to the candidate's participation in an election. Litigation funds cannot be used to pay fines, and any surplus funds must be returned at a fixed date.

**Bill No. 100125** establishes a "sliding scale" of penalties for campaign finance-related and ethics-related violations and provides for consideration of mitigating and aggravating circumstances. For example, a repeat violation is an aggravating factor. The bill also establishes a *per diem* penalty for campaign finance filings and eliminates the forfeiture clause.

**Bill No. 100126** exempts sample ballot printing and distribution expenditures by a political committee from being counted as a contribution to a candidate for the purpose of calculating the contribution limits when that candidate, or a supporter of that candidate, makes a payment in order to be included on the political committee's sample ballot. The amended bill establishes an exception to the single committee rule so that a candidate who is a ward leader can use his or her ward committee to make expenditures for sample ballot printing and distribution without violating the single committee rule.

**Bill No. 100127** amends Title 20 of the City Code to create a completely new requirement that lobbyists and principals register with the Board and file quarterly lobbying expense reports. Lobbying would include both administrative and legislative activity. The bill also mandates electronic registration and reporting and requires a searchable database of lobbying information. The bill authorizes an annual registration fee of \$500 that the Board can change.

Mr. Creamer said that staff will discuss the impact of these bills on the Board and its work later in this meeting.

#### **D. Hiring**

Mr. Creamer said that as staff reported to the Board in April, Information Specialist Danielle Cheatam resigned. He said that staff would therefore like to request Board authority to fill this vacancy, which has a salary of \$34,000. While Charter Section 3-806 requires that the Board appoint the Executive Director and General Counsel, the Law Department advised the Board in 2008 that the Board is permitted by the Charter to delegate its authority to the Executive Director to fill other staff positions, such as the Information Specialist. Mr. Creamer therefore requested a Board motion to delegate this authority so that staff can fill one Information Specialist position.

The motion to delegate the authority to staff to hire into the Information Specialist position was unanimously approved with a 5-0 vote.

Chair Glazer asked for the Information Specialist job description to be included in the minutes. (See Attachment #2)

## V. General Counsel's Report

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

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

a. Nonpublic Advice of Counsel GC-2010-507 (June 1, 2010) A City employee asked for nonpublic advice concerning his application for a grant from a program funded with City funds through a quasi-public nonprofit corporation. Advised that, since he has a personal financial interest in the grant application, both the City Code and the State Ethics Act would require that he publicly disclose the financial interest and disqualify himself from taking action for the City in the matter, even though he advised that his City work does not involve the grant program in question.

The public version of Nonpublic Advice of Counsel No. GC-2010-507 is available on the Board's website.

b. Nonpublic Advice of Counsel GC-2010-508 (June 7, 2010). A City employee requested nonpublic advice on whether she may permissibly take official action authorizing the purchase of tickets to a fund-raiser for a nonprofit organization of which the requestor is a member of the board of directors. This was another rather standard "conflict of interest" advisory. The requestor is unpaid by the outside nonprofit, so has no personal conflict. There is no conflict through the nonprofit under the Code, because nonprofits are not covered. However, nonprofits are covered under the State Act, which appeared to apply to this person's position, so disclosure and disqualification would be required. Also, advised that Code Section 20-602 would prohibit the employee from representing the nonprofit in any transaction involving the City.

The public version of Nonpublic Advice of Counsel No. GC-2010-508 is available on the Board's website.

3. Informal e-mail guidance. Mr. Meyer reported that through Friday, June 11, 2010, there eight of these since the May report.

a. Received an inquiry from a City board/commission member about whether the requestor could accept a certain outside position. Advised that generally outside positions are seldom outright prohibited, but there may be restrictions, such as disclosure and disqualification in the case of conflicts. Referred the requestor to a prior ruling that is available on our website. Noted that the requestor may request an Advice of Counsel if a ruling on which the requestor may rely is desired.

b. Received two separate inquiries from City employees regarding the City-wide email sent to City employees urging a "Yes" vote on the ballot question to amend the Charter to abolish the BRT. Advised that our advising function is limited to advising City employees and officials as to their own future actions, not the past actions of third persons. Referred the employees to the "Report a Concern" function on the website, if they wish to file a complaint alleging a violation of the ethics laws. Noted that violations of the City's email policy would not be under our

jurisdiction. Also noted that, in general, publicly expressing support for a nonpublic ballot question would not be restricted by Charter Section 10-107(4).

c. Received two different long and complicated inquiries from citizens concerning payment of a mortgage, a bankruptcy filing, payments to their lawyers, and their personal financial situations, and in one case, a child support matter, and asking “What can I do?” Responded that such inquiries are not our function, but referred the citizens to the Bar Association or Community Legal Services for legal assistance, and to the Disciplinary Board for any complaint about their current lawyers’ conduct.

d. Received a very brief inquiry from a City employee about a financial interest in a daycare center that accepts CCIS subsidies. Responded with a request for much more information, including confirmation that the employee was asking about himself. Received no reply. We did provide a link to a general conflict advisory on our website, so perhaps that answered the employee’s question.

e. Received two requests, one from a member of a City board/commission and a similar request from a City employee, regarding invitations to attend an out-of-state conference, including provision of travel expenses. Advised both requestors that facts appear to be not materially different from those in Advice GC-2010-501, so same principles would apply. Since donor is not subject to City action, travel expenses may be accepted, under the laws within our jurisdiction. It is noted that Advice GC-2010-501 advised that issues under the Mayor’s Gift Executive Order should be addressed to the Chief Integrity Officer.

4. Pending Legislation. Mr. Meyer reported that over the past two months, extensive time and effort has been spent by both the General Counsel and Associate General Counsel Maya Nayak related to the 12 different ethics bills that were considered at a May 12 hearing, including meetings with Council staff, review of multiple drafts, research, and preparation of analysis for the Board. In addition, research and analysis preparatory to drafting a regulation on political activity has begun and involved significant time.

5. On-line training. Mr. Meyer reported that both the General Counsel and Associate General Counsel worked on procedural matters and content drafting, in preparation for launching on-line training later this year.

## **VI. Discussion of Possible Regulation Concerning Political Activity Restrictions**

Mr. Creamer said that staff has considered a possible approach to a regulation that interprets Charter § 10-107(4). We have said that we will revisit Civil Service Regulation 29 which very strictly interprets what personal political expression is allowed.

Mr. Creamer reviewed the purposes of political activity restrictions on government employees:

- To protect the integrity, efficiency and impartiality of the administration of government services
- To separate politics from the operation of City government

- To prevent the perception or reality that official decisions and actions have been inappropriately influenced by political interest
- To promote merit as the basis for government employment and advancement
- To prevent the use of government office or employment as an instrument of partisan politics
- To ensure the government work force is not used to build a political machine.

He said that the first Annotation of Charter §10-107 states: “Merit principles of governmental employment require the divorcement of politics from such employment. They presuppose employment upon merit and not because of political connections, powers and pressures. They also presuppose that governmental employment will not serve as a means for political tribute to maintain political parties and regimes.”

Mr. Creamer reported that on March 4<sup>th</sup> City Council introduced 12 measures, which included 10 Bills and 2 Resolutions. The Board did not testify concerning one Bill and one Resolution that relate to the Inspector Generals Office. Five of the remaining bills were passed on June 3<sup>rd</sup>. Two bills and one Resolution relate to an effort to amend the Charter by giving City Council authority to change the political activity restrictions of the Charter by Ordinance.

He stated that the Board testified at a hearing on March 15<sup>th</sup> and asked for more time to review the legislation. On March 26<sup>th</sup> the Board send a letter to City Council expressing concerns with confusion regarding a ballot question. Ethics Board staff and City Council staff engaged in discussions on how to improve the bills. Initially the discussions focused on campaign finance and lobbying issues. City Council and staff came to the consensus that there needed to be additional discussion on political activity measures. Therefore City Council did not pass the political activity measures.

Ms. Nayak explained that 10-107(4) breaks down into four parts: (1) can not be a member of any national, state or local committee of a political party; (2) can not be an officer or member of a committee of a partisan political club; (3) can not take any part in the management or affairs of any political party or in any political campaign; and (4) except to exercise his right as a citizen privately to express his opinion and to cast his vote.

Ms. Nayak described the Task Force's recommendation that the Board reinterpret 10-107(4) to allow greater personal political expression, such as allowing City employees to wear campaign buttons off the job and to display political lawn signs. The Task Force also called for a ban on the use of City resources for political purposes.

Mr. Cooke reviewed an outline of a possible Ethics Board regulation interpreting Charter §10-107(4). (See Attachment #3)

Mr. Cooke stated that staff will begin the process of drafting a regulation to present to the Board, which will include additional information and more examples.

There was a brief discussion among the Board regarding the distinction between political expression and partisan activity.

Ms. Nayak stated that staff does not need a formal vote at this point in time. Staff plans to start the research on the Political Activity regulation. Staff's recommended prioritization for regulations is creating the Campaign Finance regulation and then the Political Activity regulation second.

Mr. Atkinson agreed with staff's prioritization and asked them to work as promptly as they could to get the regulation in place.

Chair Glazer commended Mr. Cooke and Ms. Nayak on their diligence and thoughtfulness on their work in collaboration with City Council.

## **VII. Summary of Ethics Board's New Responsibilities and Other Changes Related to Pending Legislation**

Ms. Massar stated that as Shane mentioned in his report, on June 3<sup>rd</sup>, City Council approved five bills, which are now awaiting action by the Mayor. If signed, these bills will have a tremendous impact on our Board activity. The bills concern campaign finance, penalties, and lobbying. If approved, the bills will become effective immediately, and the first filing deadline under the new lobbying law is July 1, 2011.

Ms. Massar said that with this in mind, staff recognized the need to begin planning for the possibility that the Board and our small, but mighty, staff of seven might soon have responsibility for implementing these new provisions, especially since the lobbying bill will create a completely new program from scratch.

She explained that staff therefore examined our on-going responsibilities, including advice, training, and enforcement, as well as the requirements of the pending legislation. The result is the draft month-by-month calendar in the Board materials that projects a timeline for our current and new responsibilities.

Ms. Massar said that for example staff is aiming to have two new Regulations in place before 2011 elections. Staff expects to present a new Campaign Finance regulation to the Board in July. Staff presented an overview of a Campaign Finance regulation to the Board in April, and staff will now go back to the drawing board to incorporate the recent changes to the campaign finance law into a complete regulation. Our goal is to have a hearing on the regulation in September so that the new regulation can be in place well in advance of the 2011 elections.

Ms. Massar also said that as another example, while staff is working on the new laws, they are also planning to launch our online ethics training module for advisory boards and commissions in the fall. Staff is still working on the online training content and is working with the Department of Technology. In the fall, staff will also begin our regular in-person ethics training for new City employees, and must revise our materials before the first session.

Ms. Massar explained that staff's routine work must continue as we work on implementing the new laws. In anticipation of a new lobbying law, a project application has already been submitted to and approved by the Division of Technology to evaluate the computer-related needs for the new lobbying law. It is Ms. Massar's understanding that this application process will

result in an estimate of the time and personnel necessary to create the new lobbying software and database and ultimately a project cost for the project. To implement lobbying registration and quarterly expense reporting, in addition to software development and testing, we've included several major tasks in the timeline. Staff will need to develop manuals and website materials for filers, propose a detailed lobbying regulation, conduct outreach and training for potential lobbyists and principals, and hopefully hire and train staff. Because lobbying registration starts on July 1, 2011, staff believes they must be ready for training by April 2011.

Ms. Massar said that this brings us back to a topic that was discussed at the last two Board meetings. This first hurdle with the Lobbying Law will be to have funding to support two critical tasks: development of the mandatory electronic filing system and a database, which has already started, and hiring staff to implement the program. Staff therefore suggests that once the lobbying legislation is signed, the Board send a letter to the Mayor requesting his assistance in securing funding for the Board. Staff provided a draft letter for the Board review to request funding for lobbying, and to stress the need for funding to increase our staff. It will be impossible to undertake all of the critical tasks in our projected calendar with our existing small staff.

She said she was happy to explain any of the other tasks that were identified in the timeline.

Chair Glazer commended staff for thinking ahead.

Mr. Atkinson requested staff to add an additional paragraph to the letter that will provide the factual basis for the cost of the software and the cost of additional staff.

The Board agreed to send the letter to the Mayor including the additional paragraph.

### **VIII. Possible Amendments to Regulation No. 5, Confidentiality**

Mr. Cooke stated that the Board approved Regulation No. 5 on September 16, 2009. The Regulation interprets Section 20-606(1)(i) of the Philadelphia Code, which is the confidentiality section. There is some interplay with Regulation No. 2, which the Board amended in February. The purpose of the amendments to Regulation No. 5 is to square up the two regulations.

Mr. Cooke requested the Board approved the proposed changes to Regulation No. 5 and hold a hearing in 30 days.

Chair Glazer noted that Section 8-407 of the Charter does not require a hearing. The Board is taking a further step by holding a hearing at the next board meeting.

Mr. Cooke walked the Board through the changes to the Regulation.

Chair Glazer called for a motion to approve the changes to Regulation No. 5. The motion was approved with a 5-0 vote.

Chair Glazer called for a motion to hold a hearing without waiting for a written request. The motion was approved with a 5-0 vote.

The hearing is scheduled for Wednesday, July 21, 2010.

## **IX. Preliminary Draft of the Board's 2009 Annual Report**

Ms. Massar noted that the draft 2009 Annual Report, which was circulated to the Board, is the work of many staff members, including Evan Meyer, Michael Cooke, and Maya Nayak. We also again relied heavily on Paul Jablow's work shaping our content, drafting several sections of the report, and editing. Staff will add messages from Richard and Shane and a closing summary before publication.

She asked the Board to review this draft in the next week and provide us with edits or comments by June 23<sup>rd</sup>. In the next phase, Tina Formica will use her special skills to convert our text into a polished final report. In the past, staff delivered the Annual Report to the Mayor and Council at the beginning of April, but it was delayed this year by the involvement of most staff members in the new campaign finance and lobbying legislation. Staff is planning to deliver the 2009 Annual Report to the Mayor and members of City Council by the beginning of July.

Ms. Massar stated that the report recognized the exceptional *pro bono* support the Board received from the Dechert and Drinker, Biddle firms, and described the fascinating Art in the Office exhibits.

Ms. Massar said that the report described the Board's three new regulations, expanded training efforts, and the significant increase in visits to its website.

- Regulation No. 5 clarified the confidentiality prohibition in City Code Section 20-606(1)(i). It spelled out confidentiality requirements for all enforcement proceedings, defining what information could be released, by whom and when.
- Regulation No. 6 interpreted how Charter Section 10-102, which prohibits an interest in City contracts, applies to members of the City's boards and commissions.
- Regulation No. 7 defined which City employees and officials must receive annual ethics training, specified training requirements applicable to other employees, and defined the permissible types of ethics training.

Ms. Massar explained that because the Board encourages City officials, employees, and board and commission members to always seek advice from the Board, staff felt that it was important to highlight the significant opinions and advices issued in 2009. As an appendix to the Annual Report, an Index was provided of the Board's Opinions and Advices.

Ms. Massar reported that the Board also described their enhanced effort to increase financial disclosure compliance. As required by the Code, information was provided on our enforcement activity.

Ms. Massar said that because the recent campaign finance and lobbying legislation is directly related to the 2009 Task Force Report, staff also discussed the new laws and made other legislative recommendations.

Ms. Massar explained that the Board reiterated support for legislation to create a single, consistent gifts policy, to prohibit City officers from taking any personnel action concerning a close relative, and to prohibit conflicted outside employment. She noted that the Mayor's Task Force endorsed these concepts.

Ms. Massar said that several recommendations that were made in the 2008 Annual Report were repeated and welcome suggestions from the Board.

- Incumbent officeholders and committees who contribute to them should be required to continue to file electronic reports with the Ethics Board in non-election years.
- The twice-yearly requirements that the Board publish a "plain English" version of the campaign finance law in three newspapers should be eliminated. This is a costly mandate with limited effect. Currently, the Board's website contains extensive information about the campaign finance law, and any citizen can obtain this information simply by calling the Board.
- The existing City policy that prohibits personal retaliation against whistleblowers should be codified. Currently, City Code Section 20-606(1)(j) prohibits official retaliation against any City officer or employee who has in good faith filed a complaint alleging improper activity by another City officer or employee. Personal retaliation by coworkers should also be prohibited.

Chair Glazer thanked Mr. Jablow for his good work.

## **X. New Business**

### **A. Vice Chair**

Chair Glazer called for nominations on the issue of electing a new Vice Chair. Mr. Atkinson was nominated. Chair Glazer called for a motion to approve him as the new Vice Chair. The motion was approved with a 4-0 vote.

### **B. DA Corruption Task Force Preliminary Meeting**

Mr. Creamer reported that Mr. Cooke and he met with Deputy District Attorney Curtis Douglas at his request to discuss the District Attorney's plan to form a "Task Force" or "Coalition" on corruption. The group would include the Inspector General, the Controller, the Chief Integrity Officer, the Ethics Board and the Committee of Seventy, but not the US Attorney's Office or the Attorney General.

He explained that staff has been asked to attend an initial meeting, which hasn't been scheduled yet. At the first meeting, they would discuss our jurisdiction and referrals. Beyond that, the DA plans to hold a press conference and quarterly meetings. However, Mr. Creamer does not yet understand the purpose of the quarterly meetings or the need for a Task Force or Coalition to discuss referrals.

Mr. Creamer said that he thinks that a meeting to discuss referrals is a good idea and he will report back to the Board after that meeting on the purpose of a Task Force or coalition. He told Mr. Douglas that he could attend the initial meeting, but would need Board approval before joining any task force or coalition on behalf of the Board.

Mr. Creamer explained that in December 2009, the Board approved Regulation No. 3, which sets forth a process for referrals and cooperation with other governmental enforcement agencies. Referrals by the Board are subject to the confidentiality rule in Section 20-606(1)(i) of the Ethics Code and Regulation No. 5.

Chair Glazer asked Mr. Creamer to proceed with caution, care and concern on behalf of the Board. He said we are an independent agency and the District Attorney is subject to our jurisdiction. He made it clear that attending the meeting is not an agreement to join the Task Force or Collaboration.

### **VIII. Questions/Comments**

The public did not have any questions or comments.

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.