

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
February 18, 2009  
Board of Ethics  
Packard Building  
1441 Sansom Street, 2<sup>nd</sup> Floor  
1:00 pm

**Present:**

Board

Richard Glazer, Esq., Chair  
Kenya Mann, Esq.  
Rich Negrin, Esq.

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. Approval of Minutes**

Ms. Mann requested to have a correction made on page 2 of the minutes, and Mr. Meyer requested to have a correction made on page 3.

The Board approved the meeting minutes, as corrected, for the public meeting that was held on January 21, 2009.

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

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

##### **1) Friends of Curtis Jones, Jr. Settlement Update**

Mr. Creamer announced that the Board obtained a fully-executed Settlement Agreement with Councilman Jones' Committee on February 13<sup>th</sup>. Their first payment in the amount of \$2,812.50 is due on February 27<sup>th</sup>. The Board's Petition filed in the Court of Common Pleas that addressed their failure to file a 2007 cycle 3 report pursuant to the Settlement Agreement has been withdrawn. The Jones Committee must also file amended reports electronically for cycles 2 and 3 in 2007 by February 27<sup>th</sup> under the Agreement.

##### **2) Citizens for Vincent Hughes Settlement Update**

Mr. Creamer reported that Senator Hughes' Committee submitted their first payment to the Board in the amount of \$2,500 on February 13<sup>th</sup>. The Hughes Committee must also file an amended cycle 3 report for 2007 under the Agreement.

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

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

Mr. Creamer reported that Commonwealth Court has scheduled oral argument on Cozen O'Connor's Appeal from Judge DiVito's Order dismissing its complaint against the Board has been scheduled for February 24<sup>th</sup> at 1:00 pm in the Widener Building in Philadelphia. Cozen O'Connor filed its Brief in support of its Appeal to the Commonwealth Court on December 29, 2008. The Board's Brief was filed on January 28, 2009.

Mr. Creamer said that on January 26<sup>th</sup>, the Law Department sent a letter to the Clerk, advising him that the City would not be filing a brief in the Appeal. On February 9<sup>th</sup>, the Court issued an Order precluding Robert A. Brady and the Friends of Bob Brady from oral argument for failing to file a brief.

Mr. Creamer explained that Cozen filed a Notice of Appeal on July 21, 2008 from Judge DiVito's June 10, 2008 Order, granting the Board's Preliminary Objections and dismissing Cozen's Complaint. The Court found that the law firm lacked standing to challenge the Board's Advisory Opinion issued to the firm's former client, Congressman Brady. The Advisory Opinion concluded that the contribution limits continue to apply to former City candidates to the extent that they are attempting to raise money to retire debt incurred while they were a candidate. Cozen is owed approximately \$450,000 by the Brady Mayoral Campaign.

Mr. Creamer also reported that the Board is being represented on a pro bono basis by Greg Miller and Gregg Mackuse at Drinker, Biddle.

### **C. Budget**

Mr. Creamer reported that staff filed FY10 budget documents with the Finance Department on January 30<sup>th</sup> which included a letter from Chair Glazer explaining the practical and policy impacts of potential budget cuts of 10%, 20%, and 30%. The cuts would reduce our total budget from \$900,000 to \$810,000, \$720,000, and \$630,000, respectively.

Mr. Creamer said the letter to Budget Director Agostini explained that the proposed cuts will have a disproportionate impact on an agency as small as the Board which relies almost exclusively upon person-to-person staff contacts with the public and the regulated community and less upon equipment and automated solutions. It was noted that the staff-intensive nature of the Board's budget is consistent with the organization of other municipal ethics agencies which typically dedicate 80% or more of their budgets to personnel costs. It stated that in anticipation of a difficult FY09 budget situation, the Board has already delayed hiring staff for two budgeted key investigative positions and are therefore already operating with two fewer staff members than anticipated (18% below projected 11).

Mr. Creamer also said that in each reduction scenario we stressed that the primary effect of the cuts would be to our core investigative and litigation activity and to cripple the Board's investigative and enforcement mandate. The letter noted that the cuts would leave no funds available should the Board be faced with an outside legal challenge. It was also noted that any cut beyond 10% may require that the Board take action at some point during FY10, as authorized in Charter Section 2-300(4)(e), to ensure that its appropriation is adequate to perform its statutory responsibilities.

Finally, Mr. Creamer said that staff will report to the Board as soon as we hear anything further about the budget for next fiscal year.

### **D. Transfer Ordinance**

Mr. Creamer reported that City Council's Appropriations Committee held a hearing on February 26, 2009 on the Administration's Transfer Ordinance (Bill 090065). Included in the Transfer Ordinance is the Ethics Board's request to internally transfer \$93,250 from class 100 to classes 200 and 300/400. Although staff was prepared to present testimony at the hearing if necessary, no questions were asked about the Board's proposed transfer. Mr. Creamer noted that the Board's transfer was internal and were not requesting any additional funds.

### **E. Ethics and Campaign Finance Task Force**

Mr. Creamer said that because of the magnitude and significance of these topics and because the Task Force was operating without dedicated staff, the members requested an additional 90 days, until May 1, 2009, to deliver its final report.

Mr. Creamer added that he sent an additional recommendation to Mike Schwartz to add a Statement of Purpose to the Ethics Code. This issue came up during the Wright trial. The state has a purpose statement.

## **F. Training**

Mr. Creamer announced that the third campaign finance training session is scheduled for tomorrow. Staff tracks press reports about individuals who are considering running for District Attorney and Controller in 2009, and send each person an invitation to attend a campaign finance training session. In each session, information is presented concerning electronic filing of campaign finance reports, the single committee and single account rule, excess pre-candidacy contributions, in-kind contributions, and filing requirements.

Mr. Creamer said that staff expects to continue to offer more training sessions prior to the Friday, May 8<sup>th</sup> filing deadline for the Second Friday Pre-Primary Cycle 2 Report. The 2009 municipal primary election is on May 19<sup>th</sup>. The Cycle 2 report will include contribution and expenditure information through Monday, May 4<sup>th</sup>.

## **G. Preparation for May 1<sup>st</sup> Financial Disclosure Filing**

Mr. Creamer stated that there are three different financial disclosure forms that must be filed on May 1<sup>st</sup> by different groups of City employees and officials: the City Form, the Mayor's Form, and the State Form. Staff is working closely with the Human Resources Department and the Records Department to prepare for the May 1<sup>st</sup> financial disclosure filing deadline.

Mr. Creamer explained that the Board's primary task right now is to develop accurate lists of the individuals who must file one or more of the three forms. Staff is therefore working with HR to review the lists of all City employees to determine which employees must file the State Form because they come within the definition of the term "public employee" under the State Ethics Act. Those who must file the City and Mayor's Forms are specifically identified on the forms, and staff expects to have complete lists of those individuals soon. Staff is working with the Mayor's Office to obtain lists of all Board and Commission members because they are required to file one or more of the disclosure forms. Staff is also preparing reminder notices that will be sent, with the assistance of the Records Department, to all financial disclosure filers.

## **H. Right to Know**

Mr. Creamer reported that staff has taken steps necessary to implement the new Pennsylvania Right to Know law that became effective on January 1, 2009. There is now a link on our website to the City's Right to Know policy and to forms and instructions for making a request for records.

## **I. COGEL**

Mr. Creamer informed the Board that the 2009 COGEL Planning Committee will have a planning meeting in Scottsdale, Arizona on February 27<sup>th</sup> & 28<sup>th</sup>. Mr. Creamer will attend the meeting, but as with the 2008 COGEL Conference in Chicago, he will not seek reimbursement for his travel and hotel expenses.

Mr. Creamer reported that he was interviewed by Dave Davies on WHYY Radio Times on January 28, 2009.

Mr. Glazer said that already sacrificing city employees should not be reaching into their own pockets for the benefit of interacting with other agencies. He applauded the gesture, but thinks that goes beyond what needs to be done.

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

1. Christopher Wright Trial. Mr. Meyer explained that he testified at the Christopher Wright trial on February 5, 2009 at the request of the U.S. Attorney's Office. Although Mr. Meyer was qualified as an expert witness, the Judge apparently limited the prosecution as to questions that could be asked, so Mr. Meyer was not asked to give any opinions as to particular behavior. Mr. Meyer stated that his testimony mostly consisted of reading the ethics statutes to the jury.

2. Advices of Counsel. Mr. Meyer reported that there was one new Advice of Counsel issued since the last report, No. GC-2009-501 (January 28, 2009). A City employee requested nonpublic advice as to whether a prohibited conflict of interest would exist in certain circumstances, arising out of the employee's City position in light of the employee also holding a private, unpaid position on the board of directors of a nonprofit corporation with dealings with the employee's City office. We were advised that the nonprofit received certain funding through the employee's City office. We advised as to the restrictions of the ethics laws on conflicts. Because the employee is not compensated for service on the board of the nonprofit, there are likely few issues. Advice of Counsel No. GC-2009-501 is available on the Board's website.

2. Informal e-mail guidance. Mr. Meyer reported that through Friday, February 13, 2009, there were nine of these since my January report. (These include advice provided by Associate General Counsel Maya Nayak.) Note that in every such e-mail, we provide a link to Regulation No. 4 and explain that the requestor may obtain a written advisory opinion, if they wish to have a formal ruling on which they may rely.

a. Received a complicated group of inquiries from a staffer of an elected official regarding communications, political activity, and obtaining donated or contracted-for outside services. Due to the incomplete nature of the facts presented, and that some of the questions were unique, we emphasized that the official would be better advised to request a formal written advisory. As we never heard anything further, it is presumed that this was a case of a staffer exploring ideas before presenting a proposal to the elected official.

b. Received an inquiry about a lobbyist serving on a City board/commission. Advised that there was no *per se* prohibition, but that certain City ethics rules might restrict lobbying activity for a member of a City board/commission, such as Code Section 20-602 (which restricts members of City boards from representing others before their own board).

c. Received two inquiries about the post-employment rules. In the first, a City department inquired about getting a “waiver” of the post-employment rules to contract with a recently-retired former employee, as a consultant to provide training to the department. Advised that there is no such thing as a waiver of the ethics laws, but that we can provide an opinion as to whether and how such laws apply to a particular situation. The other request was from a former City official who may work for a nonprofit on City matters involving a different office than the one the official worked in. Advice to both requestors was similar. The most strict rule, and the one most are concerned with, is the "one year rule" of the State Ethics Act (prohibiting a former public employee from representing any person before his/her “former governmental body” for one year). I have advised many commissioners over the years who had a valued employee recently retire and wanted to know if they could hire that person back under contract as a consultant. The answer, generally, is no. There are generally only a few circumstances under which the "one year rule" would not apply in such a matter:

1. The former employee is an attorney, and would be acting as an attorney.
2. The former employee is not a "public employee" as defined in the State Ethics Act, and thus the Act does not apply. (This generally is not helpful, as any employee who operated at a high enough level that a commissioner would want to hire them back as a consultant was probably a "public employee.")
3. The one year since separation from the City has passed.
4. The former employee will be working for a firm that provides services to the City, but his/her work at that firm will be entirely internal at the firm, and his/her involvement will in no way be made known to the City. (It would not be "entirely internal" if a consultant is providing training to departmental staff.)
5. The former employee will not be "representing" the new employer before his/her "former governmental body" because contacts will only be with different units of the City. Rulings of the State Ethics Commission have been inconsistent on what is “the former governmental body” for former City employees. In some cases, the "former governmental body" is the entire City, which would preclude the former employee from working with any department of the City. However, based on other rulings, the "former governmental body" might be considered to be only the employee’s particular Department, in which case he/she could permissibly work with other City departments.

d. Received an inquiry as to any issues for a member of a City board/commission who is also a judge, running for re-election. Advised that a judicial office is not “City elective office” and thus not subject to the campaign finance chapter of the City Code, Ch. 20-1000. Also, elected officials running for re-election would not raise issues under Section 10-107 of the Charter. Request did not raise any conflict of interest issues. Accordingly, judge is not disabled from remaining on the board/commission.

e. Received an inquiry from a member of a City board/commission regarding the possibility of contracting with the City. Charter Section 10-102 prohibits officials on salary from contracting with the City. Advised the requestor that his/her board has been determined previously to be subject to this Section, based on compensation for service. Accordingly, the member is prohibited from contracting with the City to provide services.

f. Received an inquiry from office of a Councilmember concerning fund-raising for a campaign for judicial office and concerning limitations on receipt of money orders by a PAC. Advised that a campaign for judicial office is considered to be a "political purpose" or a "political campaign" or "election to a public office" as those phrases are used in Section 10-107 of the Charter. Generally, we have interpreted "political" to mean "partisan political"--that is, involving the political parties, such as Democrats, Republicans, Consumer Party, etc. Although it is often the case that candidates for the Phila. Court of Common Pleas succeed in both the Democratic and Republican Parties and are on the ballot in the general election for both parties, we still consider that to be a partisan political election (as opposed to, say, an election to be Chancellor of the Phila. Bar Association). Also, the limitations under Charter subsection 10-107(3) that prohibit a City employee from soliciting or receiving donations for "any political purpose" would include campaign contributions for a judicial campaign.

As to money orders, we noted that subsection 20-1001(6) defines "Contribution" to include "money, gifts, forgiveness of debts, loans, or things having a monetary value." Clearly, a money order would be a "contribution," and thus would be subject to the same rules as a contribution of cash, check, stock, in-kind services, etc.

g. Received an inquiry from a City employee who is also a board member of a local nonprofit. Employee received an offer to attend a sporting event in the corporate box of a local company, and advised that the invitation "was extended to me in my capacity as a board member and not as a City employee." Advised that it would be irrelevant as to the capacity in which invitation was extended, but referred employee to Chief Integrity Officer for application of Mayor's Executive Order on gifts.

h. Received an inquiry from a citizen unhappy with process by which parking ticket was adjudicated. Advised that this inquiry was outside the jurisdiction of the Board of Ethics, but directed citizen to FAQs on website of Parking Authority, and provided link.

## **V. Proposed Regulation No. 5: Annual and Routine Ethics Training**

Mr. Meyer explained that the Philadelphia Code specifically requires annual ethics training for all elected City officials, all cabinet members, all City department heads, and all board and commission members. The Code leaves to the Board the decision as to which other City employees are subject to the annual training requirement and which employees have mandatory and routine, but not annual, ethics training.

Mr. Meyer said staff believed it would be better to have a regulation than a Board resolution to specify which employees are subject to the annual training requirements. Staff has therefore had discussions with Human Resources Department to establish criteria for making this distinction. The criteria would be based on the duties of each employee and would attempt to determine who would most likely be faced with ethics questions. Human Resources suggested use of FLSA (Fair Labor Standards Act) codes, but that was not as easy or as logical as everyone thought it would be. Mr. Meyer noted that this distinction might also be useful in determining which

employees would have to file Financial Disclosure forms. We are still waiting to hear back from Human Resources. He explained that staff is not quite ready to provide a draft regulation.

Finally, Mr. Meyer said that the scope of the regulation would also include discussion of initial, annual and routine training. The challenge is to define these different types of training and to determine a mechanism that will allow for adjustments.

## **VII. New Business**

Mr. Glazer asked Mr. Creamer to explain the glitch in the Campaign Finance website.

Mr. Creamer responded that he was contacted by a reporter who received a call from Controller Butkovitz regarding a problem with the Campaign Finance website. The summary information on the website contained a different amount than what appeared on the paper reports. Mr. Creamer contacted Commissioner Decker and the mapping problem, which skewed the data, was fixed by the end of the day.

## **VIII. Old Business**

Mr. Glazer stated that the Board is into the fourth month without the replacement of the fifth board member. He stressed that this is a significant disability to the Board and asked Joan Markman, Chief Integrity Officer, to bring this issue to the attention of the Mayor.

## **VIII. Questions/Comments**

The public did not have any questions or comments.