

Philadelphia Board of Ethics
Meeting Minutes
April 16, 2008
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Phoebe Haddon, Esq.
Kenya Mann, Esq.
Rich Negrin, Esq.
Stella Tsai, Esq.

Staff

J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Evan Meyer, Esq.
Tina Formica

Guest

Cheryl Krause, Esq.

I. Call to Order

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

II. Approval of Minutes

The Board approved the meeting minutes, as corrected, for the public meeting on March 19, 2008.

III. Executive Director's Report

A. Compliance Update

1. Police Officer Trask's Appearance in Dougherty for Senate Campaign Advertisements and Literature

Mr. Creamer reported that the Board received a Complaint about an unnamed Philadelphia Police Officer's appearance in a political advertisement for the Dougherty for Senate campaign on March 7, 2008. The Police Department identified the individual as Officer Michael Trask, who is on a leave of absence from the City to serve as Vice President of the FOP.

Mr. Creamer said that Officer Trask cooperated fully with the Board's investigation, including providing a statement under oath. In his statement, Officer Trask testified that he signed a consent form to allow his image and recordings to be used by the Dougherty for Senate campaign.

Mr. Creamer also said that after advising Officer Trask that the prohibitions on political activities in Section 10-107 of the City Charter apply to City employees on a leave of absence to be a union officer according to a 1971 Solicitor's Opinion, the Board was able to negotiate a Settlement Agreement whereby Officer Trask agreed to send a letter to the Dougherty for Senate Campaign in which he formally withdrew his consent to have his images and recordings used by the campaign. Officer Trask also agreed to attend ethics training offered by the Board in the next six months. In exchange for the letter and the training, the Board agreed to waive any potential fines or penalties.

Mr. Creamer added that Mr. Dougherty has not honored Officer Trask's request.

Mr. Negrin asked Mr. Creamer how he plans to react and Mr. Creamer responded that he does not have jurisdiction over Mr. Dougherty. The Board recommended that Mr. Creamer send a letter to Local 98 requesting to remove Officer Trask from their website.

B. Personnel

1. Director of Enforcement and Associate General Counsel: Mr. Creamer announced that Michael Cooke and Maya Nayak accepted positions with the Board as Director of Enforcement and Associate General Counsel,

respectively. Michael, who is here today, will begin on April 22, 2008, and Maya will start on May 12, 2008.

2. **Research and Information Specialists:** Mr. Creamer reported that staff conducted six interviews for the two Research and Information Specialist positions and expect to conduct several more. These are entry level positions for staff who will present outreach programs, conduct research, and support investigative tasks. Staff anticipates that they will make recommendations to the Board in May for these positions and that new staff will start on or about July 1st.

3. **Summer Intern:** Mr. Creamer stated that the Board hopes to participate in the City's summer internship program and submitted an application with the Mayor's Office of Leadership Investment for a high school summer intern to assist with our administrative and clerical functions this summer. If we are selected to have an intern, he or she will work for 16 hours per week with the Board and another four hours per week in activities and programs planned by the Office of Leadership Investment and the Philadelphia Youth Network. The City pays the intern's wages. We will know more about the status of our application in May.

C. Budget

1. **Budget Hearing:** Mr. Creamer reported that Mr. Glazer testified at the April 7th budget hearing about our accomplishments in the Board's first 14 months, which included opening and renovating this new office; hiring staff; administering an election with the first-ever contribution limits for candidates for City elective office; implementing electronic filing of campaign finance report; approving regulations; and providing advice in advisory opinions, advices of counsel, and informal advice. The testimony highlighted the fact that the Board provided live and in-person ethics training to more than 25,000 City officers and employees.

The Board received questions from several councilpersons concerning the work of the Board and its jurisdiction, and one councilman offered his support of the Board's request for an additional \$100,000 to fund litigation costs.

Mr. Glazer noted that the budget transcript was forwarded to the each Board members and the Board's testimony can be found on page 322-411.

2. Mr. Creamer stated that we were advised in a meeting with the Solicitor that her office will not represent the Board or pay for its representation in litigation, such as the pending Cozen suit. Therefore, the Board received approval

of a request to the Solicitor for an emergency waiver to obtain and pay for legal representation in the Cozen lawsuit.

3. Mr. Creamer said that in anticipation of future legal challenges, using the City's contracting process, the Board will solicit bids for legal services should we require representation in FY09. Any firm selected must comply with all contracting disclosure requirements. By selecting a firm through this process, we will in essence have a firm "on retainer" should the Board be faced with future litigation.

D. "Stop & Frisk" Flyer Investigation Update

Mr. Creamer informed the Board that Cheryl Krause filed an Emergency Petition for Special Injunction and Preliminary Injunction against Tommie St. Hill and RCS Diversified Consultants, Inc. on behalf of the Ethics Board on April 14th. Mr. Creamer asked Ms. Krause to report to the Board.

She stated that the Emergency Petition requested an order compelling the respondents to immediately produce any laptop computer or other media storage devices in their possession, so that they could be imaged and searched for documents, emails and communications relating to the illegal "stop & frisk" flyer that was distributed on May 15, 2007. The purpose was to preserve any communications from possible destruction.

Ms. Krause reported that the Petition was assigned to Judge Jane Cutler Greenspan, who scheduled a hearing for Tuesday, April 15th at 10:00 am. Neither Mr. St. Hill nor anyone on his behalf appeared at the hearing, despite proper service and notice of the hearing.

Ms. Krause also reported that Judge Greenspan granted the Petition, but modified the proposed Order by striking paragraph #3 in the Schedule of Documents attached to the Board's Subpoena, that was attached as an Exhibit to the Order. The Judge did so at the request of George Bochetto, Esq., an attorney representing Local 98 IBEW and its PAC, who appeared at the hearing and demanded to be heard. The stricken paragraph requested all emails and communications between Mr. St. Hill and John J. Dougherty, treasurer of COPE in 2007, Bob Henon, Local 98's political director and/or Frank Keel, a media consultant to the Union. However, under paragraphs 2 & 3 of the Schedule, the Board may search for emails or communications to or from anyone relating to the flyer and the image. The Judge also added to the Order that Respondent "is not to engage in any

deletions of any information whatsoever that exists on any computer in his possession.”

Mr. Creamer said that Mr. St. Hill has admitted that he was responsible for creating, printing and distributing 125,000 copies of the illegal flyer and for hiring 20-30 individuals and a driver to distribute them on election day. In his statement under oath to the Board last August, Mr. St. Hill testified that he could not recall that he had any PAC clients during the 2007 primary election. Instead, he claimed that he only had judicial candidates as clients. Months after his sworn statement, we discovered that COPE had paid Mr. St. Hill and his company \$22,500 from May 2, 2007 to July 3, 2007. Separately, Mr. St. Hill and his company were paid a \$4,000 monthly retainer by the Union in 2007.

Ms. Krause reported that Mr. St. Hill’s attorney, Mr. Small, informed her that the laptop was stolen, but he did not have any other details. He offered access to other hard drives but it is not relevant to the subpoena.

Ms. Mann asked if a police report was filed. Ms. Krause said that apparently no police report was filed, but she didn’t have any other information on the circumstances. She will stay in continued discussions with Mr. Small and will seek further discovery regarding the disappearance of the laptop.

Mr. Negrin stated that it has been eight or nine months since Mr. St. Hill’s deposition, and this is the first time we learned of a theft.

Ms. Haddon arrived at the meeting at this time.

E. Cozen O’Connor Suit Against the Board in the Court of Common Pleas

Mr. Creamer announced that the Board retained Gregory Miller at Drinker Biddle to represent the Board in the lawsuit filed by Cozen O’Connor against the Board. On Monday, April 14th, Preliminary Objections were filed requesting that the Complaint be dismissed with prejudice. The Objections raise three arguments in support of dismissal:

- First, there is no actual case or controversy between Cozen and the Board necessary to invoke the Pennsylvania Declaratory Judgment Act because advisory opinions by local agencies are not “final adjudications” that are reviewable in court.

- Alternatively, if the Advisory Opinion is deemed to be a “final adjudication,” the Court lacks subject matter jurisdiction because neither the Friends of Bob Brady nor Cozen filed a timely appeal of the Board’s opinion.
- Third, regardless of whether or not the Advisory Opinion is reviewable by the Court, Cozen lacks standing to sue the Board because it is merely an unpaid campaign vendor and does not have a direct, substantial, or immediate interest necessary to confer standing.

E. Local 98 IBEW COPE’s Federal Lawsuit Against the Board

Mr. Creamer reported that on March 31st, Cheryl Krause filed a Motion to Dismiss Local 98 IBEW COPE’s Complaint on behalf of the Board and Mr. Creamer. The Attorney General filed a separate motion to dismiss on behalf of the Commonwealth Defendants, and the District Attorney filed a third motion to dismiss. The PAC will have until April 30th to reply to the motions, and the Defendants will have until May 12th to respond to COPE’s reply. Oral argument is scheduled for May 29th. The case has been assigned to Chief Judge Harvey Bartle.

F. Ethics Training

1. Integrity Officer Training: Mr. Creamer stated that in coordination with Inspector General Amy Kurland, staff provided ethics training on April 2nd and 8th for almost 30 departmental Integrity Officers and members of the Inspector General’s staff. A third session scheduled for April 22nd.

2. Future Training: Mr. Creamer stated that staff will offer additional ethics training sessions in late spring for any members of the administration, City Council staff, or Integrity Officers who did not already participate, and we will schedule sessions for the members of boards and commissions. Staff will also coordinate with the Personnel Department to “train the trainers” who will offer annual ethics training to all other City officers and employees.

G. Records Management Update

Mr. Creamer reported that Diane Eulo and Tricia Dougherty, of LRW Solutions Group, continue to implement a new filing system and searchable database for the Board’s files after their many interviews with staff and Richard.

H. Web Site Update

1. Mr. Creamer said as soon as possible, Tina, Nedda and he will start to work on the new Collage program which is being used for City website management. Once we are proficient on the program and gain control of the Board's web site, we will be able to add content and make changes to the web site directly. Currently, we still must ask MOIS to make any changes, which has caused delays in getting documents posted.

2. Mr. Creamer stated that MOIS responded to our request to post the agenda for today's meeting on the Board's website on Friday. We hope to continue this practice in the coming months until we are managing our own website when we will ensure that such items are timely posted.

I. Planning for Annual Financial Disclosure Reporting

Mr. Creamer said that Mr. Meyer continued to work with the Records Department for the May 1st annual financial disclosure reporting deadline for City officials and employees. Mr. Meyer will provide more details in his General Counsel's report.

IV. General Counsel's Report

1. Formal Advices of Counsel. Mr. Meyer reported that he issued one formal Advice of Counsel since last month's meeting.

a. Advice of Counsel of March 20, 2008 (copy available). Advised an employee of City Council who also serves on the board of a nonprofit that has received a grant of funds directed from the Commerce Department through PIDC on conflict of interest principles. The employee may generally avoid a conflict by complying with the "disclosure and disqualification" requirements of Code Section 20-608.

2. Public versions of previously-issued Confidential Advices of Counsel. Mr. Meyer stated that as required by Section 20-606(1)(d)(iii), after the Board issues a confidential advisory, the Board makes public an edited version of the advisory "with such deletions as may be necessary to prevent disclosure of the identity of any City officer or employee or other involved party." This month Mr. Meyer was able to catch up with a backlog of these, and they are now up to date. He created the following public versions, two of which are already posted on our web site (see

“Advisory Opinions, Publications and Reports”), with the others soon to follow (copies available of all):

a. March 28, 2008. Advised employee who also serves on City board/commission and who proposed to take a paid position as a part-time employee of a local service firm located in the Philadelphia suburbs. The employee advised that the employee would be using personal time for this proposed outside employment, and that the outside employer would not do any business whatsoever with the City of Philadelphia. The employee may generally avoid a conflict by complying with the “disclosure and disqualification” requirements of Code Section 20-608.

b. March 31, 2008. Advised a City official that a deputy in that office would not be permitted, under the State Ethics Act, to testify as an expert witness for a municipal agency in another Pennsylvania city, in a law suit, and to accept the witness fee for so testifying, as such a fee would be a prohibited honorarium. However, if the City decided that such testimony would vindicate a City purpose, the City might allow the official to be reimbursed for travel expenses.

c. April 1, 2008. Advised a City official on recommending to the Mayor to appoint to a City board/commission an attorney for a legal organization. Advised that the appointee could be appointed and generally avoid a conflict by complying with the “disclosure and disqualification” requirements of Code Section 20-608. We were later advised that the official decided against recommending this appointment.

d. April 2, 2008. A member of a certain City board or commission requested advice on the restrictions the ethics laws would place on that person’s activities as an officer for a certain local nonprofit entity, in light of the requestor’s position on the City board/commission. Advised that the appointee could be appointed and generally avoid a conflict by complying with the “disclosure and disqualification” requirements of Code Section 20-608.

2. Informal e-mail advice. Mr. Meyer stated that he responded to the following requests for informal advice since the last board meeting:

a. Advised an HR manager that an employee who took a leave of absence without pay to work for a campaign would still be subject to Charter Section 10-107.

b. Advised several employees regarding “the list” of tentative filers of State Form that is generated by Central Personnel. It was never the idea that Personnel (with help from Law Department or the Ethics Board) would review job titles and make definitive determinations that would then stand. Each department (presumably the HR manager) should have a better idea of what the job duties are, and can then apply the criteria. General Counsel Meyer stated that it was his understanding that when the HR managers are sent the tentative lists of apparent filers, they would then review those lists, delete employees who have left or don't meet the criteria, add new employees and those who were left off the list, and make other corrections, and then return the corrected list to Personnel. And, he emphasized that the criteria (the guidelines are in the document “Who Must File the State Form” on our web site) are much more complicated and broad than simply "do you handle money" or "can you be bribed," although those phrases are apparently what has gotten spread around City government, because he keeps hearing those descriptions.

c. Advised the Mayor’s Office and others that we are often asked general questions about City employees “working at the polls,” which is an imprecise description. If it means serving as an election officer, such service is prohibited to City employees by the Election Code. If it means working for a candidate, Charter Section 10-107 is implicated.

d. Advised a Council staffer that exemption from political activity restriction of Charter §10-107(4) applied to that position.

e. Advised a City official that where a department had in the past awarded a contract to the husband of a department employee, but where the employee had no responsibility for the official decision, and where employee is now not even in the same unit, there is no conflict of interest, and no reason not to continue to contract with the husband.

f. Received an e-mail asking whether “a City employee” (not clear whether this meant the person sending the e-mail) could have a small photo of a candidate in their City office. Replied that more information was needed, but no further response was received.

g. Advised a City employee that no violation of Charter §10-107 would occur if the employee were to allow a campaign worker for a political campaign to live in the employee's house temporarily. Even if considered a campaign contribution, there is no prohibition against City employees making contributions.

h. Advised an HR manager that employees who receive political e-mail at their City computer do not violate the political activity restrictions by simply receiving an unsolicited e-mail.

i. Received several questions from a member of a board/commission that is subject to Charter Section 10-107. Advised the member not to be involved in management of a PAC and not to be involved in soliciting campaign funds, but that making contributions and attending political meetings is permitted. Forwarded a copy of the Political Activity Guide.

j. Advised the Mayor's Office that Section 10-107 would not prohibit City employees from volunteering to assist Committee of Seventy in nonpartisan assistance to voters at the polls.

k. Advised a representative for a quasi-public nonprofit corporation that employees of such entities are not part of the government of the City of Philadelphia as organized under the Charter, and thus not subject to Section 10-107.

l. Advised a City employee that the term "spouse," as it appears in instructions to complete financial disclosure forms, does not include "domestic partners" or persons other than someone married to the filer under the Marriage Law, 23 Pa.C.S. Section 1101 et seq.

3. Phone calls. Mr. Meyer stated that he has not been keeping records of telephone contacts. However, he noted that the past month has been unusually active in this area, with probably an average of at least one call per day, usually on financial disclosure, political activity, or on general advice to a new appointee.

4. Financial Disclosure. Mr. Meyer stated that we are full into the filing season. As a reminder, members of the Board of Ethics file both the City Form and the State Form. Ms. Massar will report on the status of the process in general.

V. Financial Disclosure Update

Ms. Massar stated that the May 1st financial disclosure deadline is almost here. Forms should now have been distributed by HR managers, and full-time employees should have received an e-mail with filing information, including the link to access the new on line system. The new system permits a filer to enter disclosure information once through a series of screens, and the information is then populated into any one or more of the three disclosure reports: the City form, the Mayor's form, or the State form. Another major advantage of the online system is that the information will be available for next year's filing.

Ms. Massar informed that Board that the Records Department is providing an in-person Training and Support Center all this week from 8 AM to 8PM. Also, online training is available and filers may contact the Records Department by phone or email for assistance.

Ms. Massar said that it is important to remember that while the disclosure data can be submitted electronically, filing is not complete until a signed paper copy of each report is filed with the Records Department. It is also still completely acceptable to fill out the paper reports by hand.

Ms. Massar announced that the filing deadline is 5 pm on Thursday, May 1. Forms and information are also available on our web site (click on "Financial Disclosure").

Mr. Meyer reiterated that copies of disclosure statements must also be filed with a person's supervisor.

V. Proposed Regulation No. 4

General Counsel Meyer reviewed changes that have been made to the draft text of Regulation 4. After a discussion among the Board, Regulation No. 4 was approved, as amended, by unanimous vote. Mr. Meyer stated that the Charter requires Law Department approval. Mr. Meyer was asked to obtain the approval and deliver the final draft to the Records Department for publication.

The Board decided to hold a hearing on Regulation No. 4 to occur more than 30 days after public notice has been provided by the Records Department. Mr. Meyer will coordinate with the Law Department on scheduling a date for the hearing.

Mr. Glazer stated that the Board is maximizing public disclosure by scheduling a public hearing even if there is no request for such a hearing. He also suggested that Regulation 4 be posted on the Board's website after the redrafted language is included.

VII. New Business

Mr. Creamer asked the Board to formally approve the hiring of Michael Cooke and Maya Nayak as Director of Enforcement and Associate General Counsel, respectively. A motion was made and approved by the Board.

Mr. Creamer asked the Board to delegate authority to him to hire into the two Information Specialist positions. He asked General Counsel Meyer if the Charter provided a basis for such a delegation of authority.

Mr. Meyer stated that he believes the text of Section 3-806(g) supports such an interpretation. He said that Section 3-806(g) specifically states that the Board must appoint two positions, Executive Director and General Counsel, but he does not think the Charter requires that the Board must directly vote to approve every other staff position.

Mr. Glazer asked for clarification on this point from the Law Department. Mr. Creamer said that he would ask for such clarification

VIII. Questions/Comments

Lauren Vidas from Councilman Greene's office thanked the Board for posting the Agenda on the website. She asked if settlements are public. Mr. Creamer stated that they are public under Regulation No. 2, although they are not required to be filed with Records.

Marcia Gelbart from the Philadelphia Inquirer asked about the stolen St. Hill laptop and what does that mean for the Board.

Mr. Creamer responded that the Board is skeptical regarding the whereabouts of the laptop, and therefore we will investigate and enforce the judge's order, permitting the Board to examine other media devices.

Ms. Gelbart then asked about the time frame.

Mr. Creamer responded that it will be done immediately which underscores the need for emergency relief.