

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
July 22, 2009  
Board of Ethics  
Packard Building  
1441 Sansom Street, 2<sup>nd</sup> Floor  
1:00 pm

**Present:**

Board

Richard Glazer, Esq., Chair  
Rich Negrin, Esq., Vice Chair  
Phoebe Haddon, Esq. (via Conference Call)  
Pastor Damone Jones  
Kenya Mann, Esq.

Staff

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

**I. Call to Order**

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

**II. Installation of New Board Member**

Chair Glazer introduced Pastor Damone Jones as the new member of the Board of Ethics. He explained that Pastor Jones replaces Stella Tsai who resigned from the Board in October 2008. Pastor Jones' term will expire November 16, 2012.

Chair Glazer then introduced the Honorable Ida Chen who will install Pastor Jones. Mr. Glazer explained that Judge Chen has a significant connection to the Board of Ethics because she was a member of the 21<sup>st</sup> Century Review Forum which recommended the creation of an independent Board of Ethics for the City. Chair Glazer also explained that Judge Chen's presence was a tradition for the Board because she had administered the oath of installation to all the members of the new independent Board of Ethics.

Judge Chen administered the following oath to Pastor Jones:

I, Damone Jones, do solemnly swear that I will support, obey and defend the Constitution of the

United States and the Constitution of this Commonwealth and the Philadelphia Home Rule Charter and that I will discharge the duties of member of The Philadelphia Board of Ethics with fidelity.”

Pastor Jones thanked Judge Chen and expressed his love for the City of Philadelphia and his commitment to service.

Chair Glazer welcomed Pastor Jones to the Board and said that he welcomed Pastor Jones’ wisdom and common sense. Mr. Glazer acknowledged that Pastor Jones’ wife, Alissa, and his assistant, Christine, were at the meeting.

### **III. Approval of Minutes**

The Board approved the meeting minutes for the public meeting that was held on June 17, 2009.

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

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

##### **1) Litigation**

###### **(a) Friends of Maria**

Executive Director Creamer said that, as he had reported last month, on June 11<sup>th</sup>, the Board filed a Petition in the Philadelphia Court of Common Pleas against the Friends of Maria Candidate Committee, Councilwoman Maria Quiñones-Sanchez, and the treasurer of Friends of Maria to enforce alleged violations of the City’s campaign finance law committed in the 2007 primary election.

The Board’s Petition contains allegations that the Quiñones-Sanchez Campaign violated the “single committee rule” of the City’s campaign finance law (§20-1003) in two ways. First, it used a second political committee, a PAC called New Direction Philly.org, to make expenditures for ten full-page newspaper ads that cost \$12,500, and second by soliciting contributions to that second committee to help pay for those expenditures.

In addition, the \$12,500 advance payment for the ads by the PAC constituted a contribution to the Quiñones-Sanchez Campaign, according to the Petition. This \$12,500 contribution was not disclosed by the Quiñones-Sanchez Campaign in any of its campaign finance reports filed electronically with the Board, in violation of §20-1006(4) of the City’s campaign finance law, and exceeded the \$10,000 contribution limit in violation of §20-1002(2) of that law. The Petition seeks a monetary penalty of \$7,500 for these violations and an order from the Court compelling the Friends of Maria Campaign Committee to file an amended campaign finance report.

The Petition has been assigned to Judge Gary DiVito. The Respondents are represented by David Laigaie, Esq. The Respondents’ Answer was originally due on July 1<sup>st</sup>, but they requested an extension until July 31<sup>st</sup>, which has not yet been ruled on by the Judge.

## **(b) McCaffery for DA**

The Board's Petition against the McCaffery for DA Committee has been assigned to Judge Idee Fox. The Respondents in this matter are also represented by David Laigaie, Esq. Their Answer to the Board's Petition was filed by the extended deadline of June 26<sup>th</sup>. We are waiting for Judge DiVito to issue a Rule to Show Cause, which will establish a discovery and briefing schedule.

### **B. "Plain English" Campaign Finance Law**

The Executive Director reported that, as required by Section 20-1007 of the Code, every six months, the Board must publish notice of the contribution limits and a "Plain English" explanation of the Campaign Finance Law in the three newspapers with the largest circulation in Philadelphia. The "Plain English" statement therefore appeared on June 29<sup>th</sup> in the Inquirer, Daily News, and Metro. The statement contained the contribution limits applicable in the 2009 election, including the doubling of the contribution limits for candidates for District Attorney. It also described the two other key features of the City campaign finance law, the Single Committee/Single Account Rule and the Electronic Filing Requirement.

### **C. 2009 Training Plans**

Mr. Creamer reported that staff has completed the 2009 Training Calendar, and a full schedule of ethics training sessions will begin in August for those who are required to attend annual ethics training. He explained that this schedule includes sessions for officeholders, City officials, Integrity Officers, members of City boards and commissions, and new City employees. The calendar also includes Campaign Finance training sessions that will begin in September. There are a total of 29 training sessions that run through December.

Mr. Creamer explained that we have already begun to notify City officials and Integrity Officers about training. Within the next two weeks, he said that we expect to notify boards and commissions of the ethics training dates and will accept registration for these sessions on our website. He noted that significant changes have been made to the ethics training materials so that the sessions will be different from sessions held last year.

The Executive Director said that we expect to send notices of campaign finance training to committee treasurers and other interested individuals during August.

Mr. Creamer explained that we have purchased software that will permit us to offer online ethics training. We are currently learning to use the software and will design the content between now and the end of the year. Just as we have different PowerPoint presentations for different types of ethics training, Mr. Creamer noted that we will have to design several training modules to fit the different types of users.

Further, Mr. Creamer said that the Department of Technology will host the software application for the Board and will create an email verification process so that the Board and the user will receive confirmation that the user has completed the training.

Chair Glazer asked about the status of a regulation on the routine and mandatory training requirements of the Code. General Counsel Meyer responded that the regulation was on hold

because more consideration was needed. Staff needed more time to resolve questions about various job titles and positions that became apparent during the financial disclosure process this spring.

Mr. Glazer also asked how staff would identify individuals who might be interested in attending campaign finance training. Nedda Massar explained that staff was keeping a list of those who had contacted the Board concerning campaign finance questions and might be interested in attending an information session.

#### **D. New Regulations Working Group**

Michael Cooke, Maya Nayak, and Nedda Massar have begun to identify those topics where we believe that new Board regulations would be helpful. They will review regulations in other jurisdictions as models and will work over the next several months to draft possible regulations for review by the Board. They expect to address campaign finance issues such as excess pre-candidacy contributions, the single committee rule, and penalties. The purpose of these regulations will be to provide further guidance and education to those affected by the campaign finance law.

#### **E. August Board Meeting**

Mr. Creamer explained that the Board did not meet in August last year because of the members' conflicting schedules, and the Board may similarly wish to cancel the August 19<sup>th</sup> meeting this year. He said that staff can always contact the Board members and call a meeting if a need arises for the Board to meet in August. Executive Director Creamer also stated that the Charter only requires that the Board meet quarterly. The Board agreed to cancel the August 19<sup>th</sup> Board meeting.

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

1. Advices of Counsel. General Counsel Meyer reported that there were two Advices of Counsel issued since the last report:

a. Nonpublic Advice of Counsel No. GC-2009-507 (July 9, 2009). A City employee requested nonpublic advice on whether the ethics laws allow him to accept a greater percentage of settlement proceeds than he had otherwise agreed upon from an attorney representing him in a private lawsuit in exchange for referring that attorney some clients where the City employee would obtain the names for such referrals from his City position. Based on the facts presented, we advised that the ethics laws prohibit the proposed arrangement because it would create an unavoidable conflict of interest.

Nonpublic Advice of Counsel No. GC-2009-507 is available on the Board's website.

b. Advice of Counsel No. GC-2009-508 (June 29, 2009). This Advice, captioned "Nonpublic" because it was initially requested and issued that way, is now public by permission of the requestor, the Mayor. On the eve of making appointments to the newly-created Commission on Parks & Recreation, the Mayor requested an advisory opinion on whether the

political activity restrictions of Charter Section 10-107 would apply to members of this new commission. Applying the standard of Opinion No. 2007-006 of this Board, the Mayor was advised that the new Commission does not exercise significant powers of government, but is essentially advisory. Accordingly, its members are not subject to the political activity restrictions imposed on appointed City officials by Charter subsections 10-107(3), (4), and (5).

Advice of Counsel No. GC-2009-508 should be available on the Board's website soon.

2. Informal e-mail guidance. Through Friday, July 17, 2009, there were three of these since the June report. 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. We received a request from a board/commission concerning "recusal" by members of matters before the body in which they have a conflict. Reference was made to our trainings. Because this is a fairly common question, I will quote verbatim from my response:

I try to avoid the term "recusal" because, even though it is a common term, it is not used in the Ethics Code, and doesn't capture the full procedure required by the Code, which is more than a simple oral communication that the person is not voting on a matter. We do try to carefully explain in our trainings, and in our written advisories, that a City employee/official with a financial interest that gives rise to a conflict of interest with his/her official action must follow the "disclosure and disqualification" requirements of Section 20-608 of the Philadelphia Code. In fact, in our "ice-breaker" exercise at the beginning of the trainings that we do for boards and commissions, we almost always include a scenario where a hypothetical board member with a conflict abstains, or orally tells his chair that he's not voting, or some other process that does not involve the required letter, so that we can discuss how the board member failed to comply with the requirement to write a letter and file as mandated.

Moreover, nearly every Advice of Counsel that we issue that contains the word "Conflict" in the title discusses this requirement in detail. Advices can be found on our website, [www.phila.gov/ethicsboard](http://www.phila.gov/ethicsboard), by clicking on "Advisory Opinions & Publications" and scrolling down to "Advice of Counsel." Of the more recent Advices, the following discuss the requirement of Code Section 20-608 in detail:

GC-2009-505 at page 4, note 1

GC-2009-504 at pages 10-11

GC-2009-503 at page 4, note 1

GC-2009-501 at page 4, note 1

GC-2008-522 at page 5, note 2

In addition, Advice of Counsel No. GC-2008-524 was devoted exclusively to an extensive discussion of the disclosure and disqualification requirement. I attach a copy of that Advice for your reference. (attachment omitted)

I am often asked whether there is a “form letter” or “sample letter.” There is not. We have purposely avoided producing a sample letter, for the reason that it is important that the official/employee with the conflict think carefully about what the facts are and what they are disclosing and what action they are disqualifying themselves from. My concern is that if we gave someone a “form letter,” they would just fill it in thoughtlessly, go ahead and vote (or take other official action), and if questioned later, say “Oh, I just filled in the letter that the Board of Ethics gave me.” It must be a more conscious process than that. I believe the summaries in the multiple Advices that we issue provide adequate guidance. For your convenience, I quote one such summary here:

Section 20-608(1)(c) of the Philadelphia Code spells out the precise procedure for the disclosure required: The member should write a letter, which should contain the following elements:

1. That the purpose of the letter is to publicly disclose a potential conflict of interest;
2. The official’s public position (member of the City board) and description of duties relevant to the conflict, if not obvious;
3. The official’s private position or financial interest (position with the firm) that presents the conflict;
4. A statement of how the official’s public duties may intersect with his/her private interest (if not obvious from 2 & 3 above); and
5. The official’s intention to disqualify self from any official action in matters affecting the private interest (should indicate that such disqualification precedes any official action being taken in any such matter).

The letter should be sent by certified mail to the following: (1) the Chair, Executive Director, or Secretary of the board in which the official would be acting; (2) the Ethics Board, c/o Evan Meyer, General Counsel, Packard Building, 1441 Sansom Street, 2<sup>nd</sup> Floor, Philadelphia, PA 19102; and (3) the Department of Records, Room 156, City Hall, Philadelphia, PA 19107. The letter should indicate on its face that copies are being sent to all three of the above addressees.

In 2008 I began all my trainings with the question, “What are the first three words of the U.S. Constitution?” Of course, it is “We the People.” The interests of the people in assuring public confidence in government through the ethics laws is the theme of our training. For the “disclosure and disqualification” requirement, I always explain that it is important that an official with a conflict not merely quietly “recuse” or “abstain” but file the letter (required by law) with the Department of Records, where it is available for review by any member of the public, so that “we the people” may learn of what conflicts our public officials have and be assured that they are properly avoiding those conflicts.

The important thing to take away from this question is not that the requestor did not retain all this information from the training that he/she attended, but that the requestor learned, and acted upon, the central point that we try to make in all our trainings: that if a City official has any questions about the ethics laws, he or she should ask us.

- b. We received an inquiry from a City HR manager regarding any City guidelines on “nepotism.” We provided this response:

I am not aware of any City policy specifically addressed to "nepotism" as such.

My understanding of "nepotism" is that it involves government officials/employees taking official action that has a financial impact on other employees who happen to be relatives of a certain closeness to the acting official. For example, a supervisor who hires his/her child. Such an official action by a City employee would implicate Section 20-607(b) of The Philadelphia Code, which requires a City officer or employee to disqualify himself or herself from any "award, contract, ... claim, decision, decree or judgment" in which a financial interest is held by that officer or employee's parent, spouse, child, sibling, mother/father-in-law, son/daughter-in-law, or brother/sister-in-law.

c. We received an inquiry from a City employee about taking a consulting job in another city. Advised that, in general, City employees are not prohibited from "moonlighting" or having other jobs in their free time, so long as the outside work does not interact with the City duties in a way that creates a conflict of interest, or involves an outside entity that has a City contract, or requires the employee to represent the entity before the City, or the employee is going to use City time, equipment, personnel, materials, facilities, or property to do such work. We suggested that the requestor may wish to check with his/her department for a policy on outside employment. Attached a typical Advice of Counsel on outside employment.

## **VI. Public Communications Guidelines**

Chair Glazer explained that as a result of a recent issue involving interaction with the press, the expectation of new Board members, and the growth of Board staff, there is a need for internal guidance concerning public communications by the Board and its staff. He expressed his gratitude to Cheryl Krause and her colleagues at Dechert for their assistance in providing training to the Board and staff on communications with the press.

Ms. Krause explained that she was asked as outside counsel to the Board to draft guidelines for public communications and started by gathering information from the Board's sister agencies, the US Attorney's Office, and the District Attorney's Office in order to create a draft internal policy. She explained that any such policy must balance the competing interests that are listed in the draft presented to the Board: the need for transparency in government, the Board's ability to effectively enforce the law, and its ability to inform the public.

Ms. Krause gave an overview of the major points in the draft Public Communications Guidelines:

- **Content of Communications:** For non-public, investigative matters, the Board will neither confirm nor deny the existence of such matters. For public matters, the policy states the kinds of information that may be discussed.
- **Guidance for the Communications:** The policy describes the use of press releases and requires that any press release concerning allegations made by the Board should conclude with a statement that charges are merely allegations until there is a final judicial or administrative finding of a violation.
- **How and When to Communicate:** The draft policy discusses the timing of press releases and the persons who should communicate with the press. It also includes the use of a press officer.

Chair Glazer asked Ms. Krause about whether the policy deals differently with the identity and

testimony of witnesses in a filed action as opposed to a settled or adjudicated matter. Ms. Krause explained that the draft policy makes no distinction, but that the Board should consider not disclosing such information about witnesses to encourage people to come forward.

Mr. Glazer asked about page 5, Item B2, which mentions that a Board member should confer with the Executive Director or Board Chair before agreeing to an interview. Ms. Krause said that this portion of the Communications Guidelines was intended to ensure that the Board speaks with “one voice.” Executive Director Creamer added that this is important to be sure that Board members have the most current information before making any statement.

Chair Glazer said that he hopes the Board can employ these comprehensive guidelines. Mr. Creamer said that the proposed Guidelines are well thought out and important to maintain consistency in delivering the Board’s message. The Chair asked for the Board’s approval, which was unanimous.

Mr. Creamer noted that Chair Glazer’s OpEd piece describing the importance of the City’s campaign finance law appeared in *The Inquirer* on June 29<sup>th</sup>. The article described the purpose of the law and the value of full and complete access to campaign finance information.

Ms. Haddon ended her participation in the conference call at this point.

**VII. New Business – None.**

**VIII. Questions/Comments**

Lauren Vidas asked when the report of the Task Force on Ethics and Campaign Finance Reform was due. Kenya Mann responded that the Task Force members are working on merging all comments into one document, possibly for August.