

Philadelphia Board of Ethics
Meeting Minutes
August 21, 2013 - 1:00 pm
One Parkway Building
1515 Arch Street, 18th Floor

Board Present

Michael H. Reed, Esq., Chair
Judge Phyllis Beck (Ret.), Vice-Chair
Sanjuanita González, Esq.
Brian J. McCormick Jr., Esq.
Reverend C. Kevin Gillespie

Staff Present

Shane Creamer, Esq.
Maya Nayak, Esq.
Michael Cooke, Esq.
Elizabeth Downey, Esq.
Elizabeth Baugh
Bryan McHale
Tina Formica
Hortencia Vasquez

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:03 pm.

I. Approval of Minutes

By a 4-0 vote, the Board approved the meeting minutes for the public meeting that was held on July 17, 2013.

II. Executive Director's Report

A. Litigation Update

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

Mr. Creamer explained that the FOP had brought suit against the City and the Board of Ethics seeking to strike down the Home Rule Charter's ban on members of the Police Department making political contributions. He reported that on February 21, 2013 Judge Sanchez of the Federal District Court granted the City's motion for summary judgment and dismissed the FOP's case, thereby upholding the ban. The FOP has appealed Judge Sanchez's ruling. The FOP's brief in support of their appeal was filed in late May and the Board's brief in response was filed on July 11, 2013. The Court may schedule oral argument after the briefing period closes. On behalf of the Board, Mr. Creamer thanked Eleanor Ewing and Mark Maguire of the Law Department for their representation in this matter.

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

As Mr. Creamer reported last month, a panel of the Commonwealth Court has affirmed the trial court's ruling in the Board's favor in the case *Cozen O'Connor v. Board of Ethics*. On behalf of the Board, Mr. Creamer thanked the Board's counsel at Dechert for their excellent representation in this matter. Mr. Creamer added that Cozen filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on July 17, 2013 and the Board's attorneys at Dechert filed an Answer to Cozen's Petition on July 31, 2013. Whether Cozen's attempted appeal is allowed to go forward or not is up to the Supreme Court's discretion.

B. Lobbying Update

Mr. Creamer reported that staff has continued to work on the Scope of Work for the lobbying software contract. He explained that the purpose of the Scope is to describe the details of the filing software design, the searchable database and the public search features, and the administrative functions for the Board's staff. This phase of the project involves the Office of Innovation and Technology (OIT), our project manager, and the Law Department, which is responsible for ensuring that our contract is complete. The Scope of Work document will be incorporated into the actual contract between the City and the vendor and controls the design and implementation of the lobbying system and the vendor's technical support obligations once the system is operational.

Mr. Creamer said that staff is concentrating on the Support provisions in the Scope which must define the expected vendor response times based on the severity of various possible system problems. This is often called a Service Level Agreement (SLA). He explained that for example, the Board expects an immediate response from the vendor if multiple filers are unable to access the lobbying software, but a longer response time is reasonable if a data entry screen is not displaying properly but can still be used.

Mr. Creamer said that staff is doing everything it can to have the Scope and SLA issues resolved this month and to receive approval of the contract from the Law Department. The current Scope of Work anticipates that implementation of the online lobbying system project will take four months to complete.

Chair Reed asked if there was any expectation that the Scope of Work would be completed soon. Mr. Creamer responded that he believes that it can be done this month, but the timing depends on action by OIT and the Law Department and there could be delays. Chair Reed expressed concern about possible prejudice to the public because the lobbying software is not available and added that Mr. Creamer may convey the Board's concern to other involved parties if that would expedite the process.

C. Redesign of the Board's Website

Mr. Creamer said that the Board's new website was launched by OIT on July 22, 2013. He explained that because staff had only two weeks' advance notice from OIT that the transition from the old to new technology was underway, the first priority for staff was to ensure that all of

the information from the old website would be transferred and included in the new website structure and design.

Mr. Creamer reported that Elizabeth Baugh and Bryan McHale attended the Phila.gov Content Editor Training on July 24, 2013. He said that the training was important because it means that Board staff members now manage the Board's website content. He explained that until now, staff has had to send all content items to an OIT staff person who then posted information to the Board's website. As a result, there were delays in posting time-sensitive material. While OIT will continue to pick "the look" of the website, Board staff will now be responsible for the availability and timeliness of content on the website.

Mr. Creamer said that Ms. Baugh has begun to post materials including Board meeting announcements and agendas on the new Meetings page and the most recent lists of registered lobbyists, lobbying firms, and principals. Staff hopes to have the most recent lobbying expense reports for the second quarter of 2013 posted soon. Staff expects to review and make improvements to the Board's website and to add new and updated content on an ongoing basis.

D. Annual Report

Mr. Creamer reported that staff has begun to work on the Board's Annual Report and will present the draft in September. He explained that the Board is subject to two annual reporting requirements. Home Rule Charter Section 3-806(k) requires the Board to file an Annual Fiscal Report after the close of each fiscal year and no later than September 30th. City Code Section 20-606(1)(l) requires an annual report of Board and staff activity which the Board has historically filed each spring. Because Code Section 20-606(1)(l) does not mandate any filing deadline for the activity report, and because Charter 8-404 requires the Board of Ethics, as an independent City Board, to file an annual activity report by September 30th, the Board approved a new approach to the Annual Report in October 2012.

Mr. Creamer reminded the Board that in October 2012 the Board concluded that it was reasonable to consolidate both fiscal and activity reports into a single report filed by the September 30th deadline. He said that the report staff will present in September will therefore cover an 18-month period and include fiscal information for July 1, 2012 through June 30, 2013, and Board activity and accomplishments for January 2012 through June 2013. Future reports will cover a 12-month period of time.

Board Member Sanjuanita González arrived at 1:15 pm.

III. General Counsel's Report

A. Advisory Opinions

Ms. Nayak reported that the Board issued Non-Public Board Opinion 2013-006 in July, and a redacted version is in process.

B. Informal Guidance

Ms. Nayak briefly reviewed the summary of informal guidance chart for Board members. She described the two gift-related informal guidance items in the chart in order to illustrate concrete application of the rules being discussed in the abstract with respect to the gift regulation. She explained that the two examples showed the interaction between the gift rules the Board oversees and other gift rules that apply to City employees in the Mayor's Executive Order on Gifts and in the State Ethics Act.

C. Regulations

Ms. Nayak said that staff continued to put a substantial amount of time and effort into working through issues in the draft gift regulation and has also begun obtaining feedback from interested parties.

D. Financial Disclosure

Ms. Nayak noted that Chief Integrity Office Joan Markman had reached out to explore ways her office and the Board can work together on financial disclosure. Ms. Massar and Ms. Nayak recently met with Chief Integrity Officer Markman and Deputy Chief Integrity Officer Caldwell to discuss financial disclosure issues.

E. Associate General Counsel Position

Ms. Nayak explained that the Board has had a significant staff vacancy for six months with either the General Counsel or Associate General Counsel position unfilled during that time period and was pleased to report that on August 19, 2013 Elizabeth Downey joined the staff as Associate General Counsel. Ms. Nayak said that there had been a large response to the Board's posting for the position from a very talented applicant pool.

Most recently, Ms. Downey served as an Associate Legislative Counsel with the Office of Legislative Counsel within the New Jersey Office of Legislative Services ("OLS"), where her responsibilities included providing research and advice on various legal matters affecting the New Jersey Legislature. She worked there approximately five years and staffed the Joint Legislative Committee on Ethical Standards, the State Capitol Joint Management Commission, and the Assembly Housing and Local Government Committee. Prior to joining the Office of Legislative Counsel, Ms. Downey was a member of OLS's Local Government section, where she researched and drafted legislation regulating diverse aspects of New Jersey political subdivisions. Before working as an advisor to the New Jersey legislature, Ms. Downey was an associate at a law firm in Philadelphia.

Ms. Downey earned her J.D. from the Boston University School of Law and a B.A. in Classical Studies from the University of Pennsylvania. She has lived in Philadelphia for the past eight years.

Summary of Informal Guidance Provided July 10 – August 13, 2013

General topic	Total #	phone	email	phone & email	in-person	Subtopics
Lobbying	19	8	7	--	4	Filing Q2 of Expense Reports that were due July 30 th ; members of the public reviewed certain reports.
Campaign Finance	10	5	--	5	--	Reporting requirements; independent expenditures; and use of political committees and updating their information.
Political Activity	7	--	3	2	2	Resign to run restriction; get-out-the-vote efforts; restriction on political activity on-duty; limitation on coordination with partisan political groups.
Gifts	2	--	1	1	--	Gift for a legitimate government purpose/ gift to the City; sporting event ticket.
Conflicts	2	2	--	--	--	
Representation	2	1	--	1	--	Representing a neighborhood group through writing a letter to a City agency recommending certain action.
Financial Disclosure	1	1	--	--	--	
Other	10	7	2	--	1	Charter §10-102; non-competitively bid contract reform law; Board enforcement options; and no jurisdiction.

This chart is a partial picture of informal guidance provided during the specified time period. Four Board Staff members tracked the assistance they gave and provided data: the General Counsel, Director of Enforcement, Deputy Executive Director, and Public Integrity Compliance Supervisor.

IV. Draft of Regulation No. 10, Gratuities and Gifts

Mr. Cooke presented a new draft of Regulation No. 10 (Gifts and Gratuities) to the Board that incorporated changes made after input from Board members at the July Board meeting. The draft also reflected staff research, review, and outreach to interested parties including the Mayor's Office, City Council, Personnel Department, and the Office of Labor Relations.

Board members raised concerns about the readability of the draft and noted the competing need to express the laws accurately. Board members discussed the construction of the draft and options to make the language more accessible and readable, including the creation of plain English documents such as FAQs to explain the major aspects of the regulation. After detailing changes from the previous draft, Mr. Cooke said that he would revise the draft taking into account the Board's comments. He said that Board staff would continue seeking comment from people who might be interested in the regulation.

V. Proposed Legislation Concerning Charter Section 10-107(5), "Resign to Run"

Mr. Creamer reminded the Board that Councilman David Oh made a presentation regarding his proposed amendment to the Home Rule Charter "resign to run" provision at the July Board meeting. Mr. Creamer explained the background and analyzed the proposed legislation to the Board. He pointed out revisions Councilman Oh had made to the legislation in response to feedback from Board staff to allow only one City elective office to be pursued at a time and to make the effective date of the legislation 2016 so the change would not apply to the 2015 mayoral campaign. Mr. Creamer sought feedback from the Board in the event a hearing on the bill is scheduled and Board staff needs to prepare testimony.

The Board briefly discussed the legislation. Board members had different views on the proposed legislation, but they agreed that they would be concerned about and would not support any amendment to the bill that removed the two revisions that Councilman Oh had incorporated based on feedback from Board Staff. They also supported staff explaining to City Council how the legislation will affect matters under the Board's jurisdiction.

VI. Salaries of Exempt Staff

Chair Reed noted that the Board had received an extra \$87,411 in additional funds in its FY14 budget for personal services in Class 100. The funds were requested to create a new position for a staff attorney in order to increase Board staff's training, outreach and support capabilities, and to provide merit raises to staff members. Chair Reed asked the Board to consider the issue of merit salary increases for Executive Director Shane Creamer and Director of Enforcement Michael Cooke to be effective retroactively as of July 1, 2013.

Chair Reed explained that Mr. Creamer served as the Board's Interim Executive Director beginning in 2006, and with the exception of the FY13 salary adjustment for all exempt employees, Mr. Creamer has received no salary increase since becoming Executive Director in

July 2007. With the exception of the FY13 salary adjustment, Mr. Cooke has received no salary increase since he joined the Board's staff in 2008. Chair Reed acknowledged the quality of their work and their contributions to the Board's mission.

By a 5-0 vote, the Board approved an increase in salary from \$127,140 to \$137,140 for Executive Director Shane Creamer, retroactive to July 1, 2013.

By a 5-0 vote, the Board approved an increase in salary from \$97,375 to \$110,000 for Director of Enforcement Michael Cooke, retroactive to July 1, 2013.

VII. Questions/Comments

Ellen Kaplan, Vice President and Policy Director of the Committee of Seventy, commented on the proposed amendments to the Charter's "resign to run provision." She stated that the Committee of Seventy had asked Councilman Oh to contact the Board and the Committee was pleased that this had happened. She suggested that the Board provide guidance as to the campaign finance implications of the legislation. Ms. Kaplan also commented on draft Regulation No. 10 and the distinction it makes between gratuities and gifts.

Hope Caldwell, Deputy Chief Integrity Officer for the City, commented on draft Regulation No. 10. She stated that it was the view of her office that the \$250 threshold for "substantial economic value" was high and that it would be important to make clear how the Board's gift regulation and the Mayor's Executive Order on gifts differ. She said she would like to keep working with the Board and its staff on these gift issues.

Judge Beck asked if Ms. Caldwell had an alternative suggestion for the \$250 threshold. Ms. Caldwell indicated that figures such as \$100 and \$50 had been discussed in her office.

Ms. Kaplan commented that the \$250 threshold was high and that financial disclosure forms should be available online.

VIII. New Business

No new business was discussed.

Chair Reed announced the Board would meet in executive session to address non-public advice, confidential enforcement matters, and legal advice. The public session of the Board's meeting was adjourned at 3:15 pm.