

Philadelphia Board of Ethics
Meeting Minutes
September 21, 2016 - 1:00 p.m.
One Parkway Building
1515 Arch Street, 18th Floor

Board Present

Michael H. Reed, Esq., Chair
Judge Phyllis Beck (Ret.), Vice-Chair
Brian McCormick, Esq.
JoAnne Epps, Esq.

Staff Present

J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Maya Nayak, Esq.
Michael Cooke, Esq.
Diana Lin, Esq.
Jordan Segall, Esq.
Thomas Klemm, Esq.
Bryan McHale
Tina Simone
Hortencia Vasquez

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:00 p.m.

I. Minutes

By a 4-0 vote, the Board approved the minutes of the public meeting held on July 20, 2016, as modified.

II. Executive Director's Report

A. Visitors

Mr. Creamer said that on August 4, 2016, he, Mr. Cooke, and Ms. Massar had the pleasure to meet with visitors from Bethlehem, Pennsylvania, who are trying to create a Board of Ethics for their city. Among the visitors were a Bethlehem City Council Member and a representative of the Northampton County League of Women Voters.

Board staff described the creation of the Philadelphia Board of Ethics, the problems the Board faced in its first few years, and the Board's programs and responsibilities. Board staff tried to help with the visitors' many questions and Board staff hope that they are successful in starting a new agency. Board staff will be following up and participating in a town hall in Bethlehem, Pennsylvania. Mr. Creamer said this type of meeting was especially important for him because he visited the Chicago, Los Angeles, San Francisco, and New York City municipal ethics agencies in 2006 and received their help and guidance as Philadelphia was starting its new Board of Ethics.

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B. Language Access Planning

Mr. Creamer said that Home Rule Charter Section 8-600 requires that every City agency, department, board and commission must plan for and provide services to citizens with Limited English Proficiency so that they have complete access to City government. As a result of this mandate, Board staff have been working with the City's Office of Immigrant Affairs to create an Agency Language Access Plan. Mr. Creamer noted that Board staff have determined that since the Board's inception, it has had fewer than five occasions when interpretation services were needed. Those contacts were managed successfully by a bilingual Board staff member. Board staff are nevertheless surveying the Board's potential need for and the availability of language services and preparing a plan as required by the Charter. Board staff will update the Board as the plan progresses.

C. Learning Management System

Mr. Creamer said that many City departments currently conduct a wide variety of training programs for City employees. Some classes are mandatory, like the Board's ethics training, and others are voluntary. Some classes are for employees in all departments, like the Board's ethics training, and some are limited to employees in a specific department or unit. There is also training for individuals who are not City employees, like the Board's training for board and commission members.

Managing all of these training activities throughout City agencies and departments is currently done through a maze of systems, some of which still use paper records. Using the Board's ethics training as an example, Mr. Creamer noted that ethics trainings for City employees are provided to specific departments, often offsite, to a mix of employees from multiple departments in monthly sessions at the Municipal Services Building, or as sessions presented at the offices of the Board. Records of ethics trainings can therefore be maintained in multiple places: the Board keeps records; some departments keep records for their own requirements; and Central Human Resources keeps records. The format of the records differs from department to department.

Mr. Creamer said the City has therefore undertaken a major initiative to implement a Learning Management System (LMS) to organize and track City training activity. For the past several months, three members of Board staff have been participating in the Pilot Project for this initiative along with the Human Resources, Health, Streets, Fire and Risk Management Departments. The goal of the Pilot Project is to create an online system that will ultimately be used by every City department to manage registration for and attendance at trainings as well as eventually provide online trainings and courses.

During the first phase of the Project, Board staff expect to use the LMS to manage registration at the Board's in-person ethics training classes for employees and board and commission members. In the LMS jargon, these classes are called ILTs – instructor-led-trainings. In the next phase, Board staff hope to launch online training classes. In the coming months, Board staff will update the Board on the LMS Pilot Project.

III. General Counsel's Report

A. Advisory Opinions

Ms. Nayak announced that Non-public General Counsel Opinion 2015-503 was issued on June 16, 2015. The Opinion addresses the application of the City post-employment restrictions to a former City official's potential service as an uncompensated member of a non-profit board that has various interactions and relationships with the City. The Opinion advised that the post-employment restrictions did not prohibit the requestor's service as a non-profit board member. The former City official, however, would be prohibited at any time from assisting any person, including the non-profit board, in a transaction involving the City in which the former City official participated during the City official's City service. For example, the requestor was prohibited from assisting the non-profit board with actions the board may take with respect to a contract between the board and the City that the requestor was involved in drafting while a City official. A redaction of Non-public General Counsel Opinion 2015-503 is available on the Board's website.

B. Informal Guidance

Ms. Nayak reviewed a chart summarizing informal guidance provided by Board staff from June 4, 2016 through July 8, 2016.

C. Observations on the Past Year

Ms. Nayak reported that the Annual Report had provided an opportunity to reflect on the tremendous work of the past year. She noted in particular: (1) the issuance of proactive Advisory Alerts related to volunteering for the Democratic National Convention; (2) the issuance of the Board's first final determination in an administrative adjudication; and (3) significant increases in guidance requests in several categories including financial disclosure, post-employment, gifts and conflicts of interest.

SUMMARY OF INFORMAL GUIDANCE PROVIDED, JUNE 4, 2016 – JULY 8, 2016

General Topic	Monthly Tot. (#) (ytd tot.)	Email	Phone	Email & Phone	In-Person	Subtopics
Post-Employment	8 (24)	1	6	1		<ul style="list-style-type: none"> ▪ Overview of post-employment restrictions ▪ Application of post-employment restrictions to attorneys ▪ Meaning of “former governmental body” in relation to restrictions ▪ “Behind the scenes” work for new employer involving former governmental body ▪ Working for vendor that has City contract ▪ City official interfacing with former department more than one year after leaving City service ▪ Receiving honorarium to teach employees of former government body for one day
Conflicts	8 (52)		6	1	1	<ul style="list-style-type: none"> ▪ City board member who owns business that has City contracts ▪ City employee applying for job with entity that City employee may affect through official action ▪ City official writing support letter for work-visa applicant with distant familial relationship ▪ City official’s requests for people to contribute to non-profit ▪ Overview of general restrictions that apply to City employee serving as non-profit board member ▪ Overview of restrictions applicable to outside employment by City employees ▪ Purchasing items or services from City work colleague’s outside business ▪ City employee prohibited from representing civic association in application for City grant

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**SUMMARY OF INFORMAL GUIDANCE PROVIDED, JUNE 4, 2016 – JULY 8, 2016
(CONTINUED)**

General Topic	Monthly Tot. (#) (ytd tot.)	Email	Phone	Email & Phone	In-Person	Subtopics
Gifts	6 (42)		5	1		<ul style="list-style-type: none"> ▪ City department inviting vendor to attend department ceremony ▪ City employee accepting free conference admission that is offered because employee is serving as moderator for panel at conference ▪ City employee making t-shirts for City department if department pays for only materials but not labor associated with making shirts ▪ Impact of recent court opinion on interpretation of City gift law ▪ Private corporation party for City employees ▪ Receipt of free ticket to charitable event
Political Activity	6 (67)		6			<ul style="list-style-type: none"> ▪ City employee making clothes stating “Democratic National Convention” and selling these clothes to colleagues or others ▪ City employee’s child volunteering for Democratic National Convention ▪ City official using City letterhead to invite bi-partisan group members attending Democratic National Convention to City agency welcome reception ▪ Advisory City board member serving as political party committeeperson ▪ Use of City sports box for political fundraiser ▪ Elected City official serving as emcee for free event hosted by political action committee

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**SUMMARY OF INFORMAL GUIDANCE PROVIDED, JUNE 4, 2016 – JULY 8, 2016
(CONTINUED)**

General Topic	Monthly Tot. (#) (ytd tot.)	Email	Phone	Email & Phone	In-Person	Subtopics
Financial Disclosure	11 (1207)	5	6			<ul style="list-style-type: none"> ▪ Disclosing returned gift and ascertaining fair market value of returned gift ▪ Assisting filers with accessing and utilizing online filing system and addressing technical issues related to filing system ▪ Explaining filing and disclosure requirements for boards and commissions ▪ Explaining filing and disclosure requirements related to City Form
Campaign Finance	11 (107)		10	1		<ul style="list-style-type: none"> ▪ Setting up and using segregated pre-candidacy excess contribution account ▪ Technical assistance regarding campaign finance filing accounts ▪ How to disclose various forms of contributions/expenditures, including inauguration expenses, lodging expenses, and fundraisers ▪ Filing issues related to campaign finance reports, including filing sworn statement forms ▪ Filing requirements for various individuals and entities, including incumbent elected officials, political action committees, and ward political committees ▪ Searching campaign finance database

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SUMMARY OF INFORMAL GUIDANCE PROVIDED, JUNE 4, 2016 – JULY 8, 2016
(CONTINUED)

General Topic	Monthly Tot. (#) (ytd tot.)	Email	Phone	Email & Phone	In-Person	Subtopics
Lobbying	7 (95)		5	2		<ul style="list-style-type: none"> ▪ Overview of City lobbying requirements ▪ Registration inquiries related to topics such as transferring registration, amending registration, adding affiliated entities, and post-termination requirements
Other	1 (13)		1			<ul style="list-style-type: none"> ▪ Assisting another municipality in identifying legal provisions related to Board's creation

This chart summarizes the informal guidance provided by a number of Board staff members during the specified time period. The figures provided reflect the approximate number of inquiries that Board staff has responded to and do not indicate the amount of time spent per topic or inquiry.

IV. Draft FY 2016 Annual Report

Mr. Segall presented and reviewed a draft of the Board's FY 2016 Annual Report incorporating recent comments and feedback from Chair Reed, Board member McCormick, and Board staff. Mr. Segall noted that, as required by Home Rule Charter Section 3-806(k), the draft Report included an annual accounting of Board expenditures between July 1, 2015 and June 30, 2016.

Board staff continues to work to refine the draft. Mr. Segall said that Board staff would appreciate if Board members send any further input and edits to Ms. Massar or him by the end of the day on Friday, September 23, 2016. Board staff will make the Annual Report available on the Board's website on or before the September 30th due date and notify all required recipients under the Philadelphia Code (Mayor, City Council, the Chief Clerk of City Council, and the Department of Records) that the Report has been published on the Board's website. Board staff will also provide a printed copy of the Report to anyone who requests it.

By a 4-0 vote, the Board approved the draft of the FY 2016 Annual Report, as presented; granted authority to Chair Reed to approve any necessary non-substantive subsequent edits to the Annual Report before it is published; and directed Board staff to notify the required recipients under the Philadelphia Code that the Annual Report has been published on the Board's website.

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V. Regulation No. 1

Mr. Cooke presented and reviewed proposed amendments to Board Regulation No. 1 (Campaign Finance). The proposed amendments reflected changes to the disclosure and reporting requirements in the City's Campaign Finance Law (Philadelphia Code Chapter 20-1000), which became effective on July 1, 2015 and Board staff experiences during the 2015 Philadelphia Municipal Elections.

Mr. Cooke asked that the Board approve for public comment posting the proposed amendment at the Department of Records, subject to the approval of the Law Department. He asked the Board to grant authority to the Board Chair to approve any technical modifications requested by the Law Department and to direct Board staff to work with the Board Chair if the Law Department requests non-technical changes to the proposed amendment to Regulation No. 1. He also asked, if the Board approved the proposed amendment for public comment posting, that the Board schedule a public hearing for the proposed amendment for the Board's October 2016 public meeting to begin at 1 pm.

By a 4-0 vote, the Board approved the proposed amendments to Board Regulation No. 1, as presented, for posting at the Department of Records for public comment, subject to the approval of the Law Department; the Board granted authority to the Board Chair to approve any technical modifications requested by the Law Department; and the Board directed Board staff to work with the Board Chair if the Law Department requests non-technical changes to the proposed amendment. By a 4-0 vote, the Board scheduled a public hearing on the proposed amendments for the date of the Board's October 2016 public meeting at 1 pm.

VI. New Business

Mr. Cooke informed the Board that three individuals are in arrears on civil monetary penalty payments to the Board: Tracey Gordon, Will Mega, and Isaiah Thomas.

Ms. Gordon has alleged a financial hardship as the reason she cannot pay the \$2,201 civil monetary penalty the Board assessed against her as part of its May 24, 2016 Final Determination and Order.

Mr. Mega agreed to pay a \$3,000 civil monetary penalty over 10 payments to resolve violations of the City's Campaign Finance Law for the late filing of campaign finance reports. Mr. Mega made one payment of \$500 and alleged a financial hardship as the reason he cannot pay the \$2,500 balance. When Board enforcement staff attempted to follow up with Mr. Mega to discuss potential modifications of the payment plan he did not respond.

Mr. Thomas agreed to pay a \$2,500 civil monetary penalty over 10 payments to resolve violations of the City's Campaign Finance Law for the late filing of campaign finance reports and material omissions from a report filed with the Board. Mr. Thomas has paid \$1,250. He missed his last two scheduled payments in July and September 2016 and is

\$500 in arrears. He made a \$100 payment the morning of the Board's September 2016 public session meeting that reduced the amount of his arrearage to \$400.

Mr. Cooke asked the Board approve him sending each person a letter informing them that if they do not make payment of outstanding moneys owed to the Board within 30 days, Board staff will refer their cases to the Law Department's Collections Unit. By a 4-0 vote, the Board approved Mr. Cooke's proposed course of action for Ms. Gordon and Mr. Mega. They directed Mr. Cooke to engage in further efforts to obtain payment from Mr. Thomas and return to the Board if problems persist.

VII. Questions/Comments

There were no questions or comments presented at the public meeting.

Chair Reed made the following announcement regarding Board sessions that had been held and would be held pursuant to Sections 708 and 716 of the Pennsylvania Sunshine Act:

1. The Board held a session regarding confidential enforcement matters by email from September 9, 2016 – September 12, 2016.
2. After the public meeting, the Board would meet to address personnel matters and confidential enforcement matters.

The public session of the Board meeting was adjourned at approximately 2:10 p.m.