

*City of Philadelphia
Board of Ethics
2009 Annual Report*



July 2010

City of Philadelphia

Board of Ethics

Honesty, Integrity, Transparency

Richard Glazer

Chair

Nolan N. Atkinson, Jr.

Vice Chair

Pastor Damone Jones

Sister Mary Scullion

Members

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Message from the Chair

“I have to shine a light on the most remarkable thing I’ve seen in 25 years of covering city politics: at last, appearance of a watchdog that isn’t afraid to bite.

I’m talking about the new city Ethics Board...” wrote respected Daily News editorial board member, Dave Davies, in his final column on January 6, 2010.

While it is gratifying that members of the press acknowledge the Board’s accomplishments since our inception in November, 2006, there is reason to be concerned about our ability to continue that progress. Significant financial challenges during 2009, including a draconian 20% reduction to our initial Charter-mandated \$1M budget, require that to maintain our existing responsibilities yet alone take on additional mandates, particularly the newly passed Lobbying Law, we must do more with less.

There are many people responsible for this past year’s successful efforts in providing high quality advice, education and training and in enforcing the City’s public integrity laws.

First, it has been an enormous honor and privilege to serve as Chair of an exceptional and dedicated Board. This past year Board members Professor Phoebe Haddon, Rich Negrin and Kenya Mann Faulkner resigned. Each served with distinction and deserves our gratitude for their abiding dedication and hard work. I will miss their good judgment and common sense. Welcome to new Board Members, Sister Mary Scullion, Pastor Damone Jones and Nolan Atkinson. At this

writing each has already demonstrated a keen interest and eager participation in the Board’s work.

Dave Davies signed off his column by saying, “God bless the new ethics posse in town”.

I say, God bless our extraordinary staff, whose abilities and dedication have made all accomplishments described within this Report possible. Their abilities are validated externally by their ongoing invitation to play key roles nationally at the 2009 annual conference of the Council on Government Ethics Laws (COGEL) in Arizona, attending at some personal financial sacrifice. In addition, in recent months implicitly acknowledging the staff’s expertise, City Council staff have requested meetings and sought out and received input from Board staff that has found its way into recently passed Ethics Code amendments.

It is difficult to conceive how the Board would have been able to defend itself from the continuing litigation challenging its authority without the *pro bono* assistance provided by Cheryl Krause and her colleagues at Dechert and Gregg Mackuse and his legal team at Drinker, Biddle. We owe both firms an enormous debt of gratitude.

On behalf of the entire Board and its staff I want to confirm our commitment to administer and promote the City’s public integrity laws. We believe that these efforts have enhanced public confidence in the integrity of City government.

RICHARD GLAZER, CHAIR, Philadelphia Board of Ethics

Members of the Board of Ethics



Richard Glazer, Esq., a founder of Cozen O'Connor, one of the 100 largest law firms in the United States. Mr. Glazer serves as Chair of the Board of Ethics. He has served on the boards of a number of local non-profit organizations, including the Committee of Seventy and also the Public Interest Law Center. He has

recently accepted the position of Executive Director of the Pennsylvania Innocence Project. Mr. Glazer's term on the Board will run until November 16, 2011.



Kenya Mann Faulker, Esq., a partner in the Litigation Department and a member of the White Collar Litigation Group at Ballard Spahr Andrews & Ingersoll, LLP. Prior to joining the law firm, Ms. Mann Faulker served as Assistant U.S. Attorney, Criminal Division, in the Eastern District of Pennsylvania. Ms. Mann

Faulker resigned effective June 30, 2010. Her term runs until November 16, 2013.



Damone B. Jones Sr., pastor of Bible Way Baptist Church in West Philadelphia. In 2001, Pastor Jones was appointed to the Advisory Ethics Board, the predecessor to the current Board of Ethics, and served for two years. Pastor Jones has served his Church for almost 16 years and has served on many local boards

and committees, including the Board of Managers of the West Philadelphia YMCA and the Philadel-

phia Department of Human Services Committee on Disproportionate Minority Contact in the Pennsylvania Juvenile Justice System. He is also a volunteer chaplain at the Philadelphia Youth Study Center. Pastor Jones' term ends in November 2012. Pastor Jones' term on the board will run until November 16, 2012.



Nolan N. Atkinson, Jr., a member of the Trial practice group in the Philadelphia office of Duane Morris LLP and the firm's first Chief Diversity Officer. Mr. Atkinson is also the chairman of the firm's Diversity Committee. He has taught trial advocacy at the University of Pennsylvania Law School and Temple University

School of Law. Mr. Atkinson previously served the City as the NAACP's appointee to the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform. Mr. Atkinson's term on the board will run until November 16, 2014.



Sister Mary Scullion, co-founder, Executive Director and President of Project H.O.M.E., a nationally recognized organization that since 1985 has provided supportive housing, employment, education and health care to enable chronically homeless and low-income persons to break the cycle of homelessness and poverty.

She has been involved in service work and advocacy for homeless and mentally ill persons since 1978. In 1985 she co-founded Woman of Hope, which provides permanent residences and support services for homeless mentally ill women. Sister Mary's term on the board will run until November 16, 2010.

Message from the Executive Director



Mark Davies, the Executive Director of the New York City Conflicts of Interest Board since 1994, has said that a strong ethics program is like a three-legged stool, where clear rules, training and enforcement each represent a leg of the stool. Without all three components firmly established, the program would fail, he warned,

just as the stool would fall without all three legs in place. In 2009, the Board continued to mature as an agency as it endeavored to strengthen these three main components of Philadelphia's relatively new ethics program by clarifying some of the rules, training City officials and employees about the rules and enforcing violations of the rules.

The Ethics Board can't change the rules (only Council can do that), but it can clarify them to make it easier to understand how they apply in different situations. As described in this report, the Board promulgated three sets of regulations and began working on a fourth, which became effective in early 2010. These new regulations supplement the public integrity laws the Board oversees by providing more detailed information on how to comply with the rules.

The Board continued to provide live ethics and campaign finance training to City officials and employees in 2009. This report describes how the Board provided ethics training to 571 City officers and employees in 31 sessions. This training repre-

sents the third round of mandatory annual ethics training for most of these individuals. We continued to improve the live training program in 2009 while we also began to prepare an online ethics training program that we hope to begin to offer later this year.

Finally, the pace of the Board's enforcement work picked-up a bit, as half of the Board's sixteen settlement agreements were reached in 2009. Our 100% settlement rate so far is due in part to the fact that the Board has tempered its Charter mandate to enforce the law with fairness and professionalism. Twelve of the sixteen settlements were reached without any enforcement petition and the Board attempted to resolve the remaining four cases before going to court. Beyond that, the Board has shown leniency in all sixteen settlements by waiving all monetary fines in five agreements and by reducing the monetary fines for 66 of the 84 violations in the remaining eleven agreements.

In 2010, the Board will continue its efforts to strengthen the three main components of Philadelphia's ethics program, while it also prepares to implement a new lobbying registration and reporting law. As we have said in each of our two previous Annual Reports, we will continue to fulfill our mandates with diligence and integrity for the benefit of the City and all its citizens.

J. Shane Creamer, Jr.
Executive Director

Board of Ethics Staff

J. Shane Creamer, Jr., has been Executive Director to the Philadelphia Board of Ethics since it was reconstituted in 2007. Previously, he served as the Executive Director of the advisory Board of Ethics, and was Assistant Secretary of Education and Assistant Managing Director for the City of Philadelphia. Before joining City government, he was a partner with Duane, Morris & Heckscher. A Philadelphia native, Mr. Creamer is a graduate of Gettysburg College and Villanova University School of Law.

Evan Meyer became General Counsel to the Board of Ethics in August 2007. He holds a B.A. from Kent State University and an M.A. in English from Temple University. Mr. Meyer received his J.D. in 1985 from Temple, where he was an editor of the law review. He was the administrative law clerk for the Hon. Phyllis W. Beck of the Superior Court before joining the Law Department in September 1987, where he worked closely with the Solicitor and wrote legal opinions interpreting federal, state, and local law on a wide variety of topics. From 1987 to 2005 Evan served as counsel to the \$5 billion Municipal Retirement System. Prior to his appointment as the Board's General Counsel, Mr. Meyer served as counsel to the City's Mayoral advisory Board of Ethics from 1989 to 2006.

Nedda Gold Massar is Deputy Executive Director of the Board of Ethics. Prior to her appointment to that position in November 2007, for more than 21 years she was a staff member of the New Jersey Election Law Enforcement Commission (ELEC) where she served ELEC as a staff attorney, the Director of the Gubernatorial Public Financing Program, Deputy Legal Director, and Legal Director. Ms. Massar is a graduate of the University of Pennsylvania and Rutgers-Camden School of Law.

Tina Formica has been the Board's Administrative Assistant since March of 2007. A Philadelphia native, she graduated from St. Hubert's High School and has worked in City government since 1997 with the Law Department, Mayor's Office, and City Council.

Michael J. Cooke, Director of Enforcement, joined the Board in April 2008. Mr. Cooke was formerly an associate with the firm of Burke O'Neil in Philadelphia. After receiving his undergraduate degree from the University of the South in Sewanee, Tenn. and his law degree from Northeastern University in his native Boston, he came to Philadelphia to work with the Pennsylvania Prison Society.

Maya Nayak joined the Board as Associate General Counsel in May 2008. She has played a key role in the Board's training efforts and regulation drafting. Ms. Nayak holds undergraduate and law degrees from Yale University. She was a litigation associate with Hangley, Aronchick, Segal and Pudlin and was a law clerk to the Honorable Berle M. Schiller in the U.S. District Court for the Eastern District of Pennsylvania.

Danielle N. Cheatam, information specialist, is a native of Kansas City, Mo. and previously worked as a truancy case manager for United Communities of Southeast Philadelphia, a non-profit agency. She is a graduate of Central Missouri State University with a bachelor's degree in criminal justice.

Hortencia Vasquez, clerical assistant, is the voice most people hear when they telephone the Board of Ethics. A native of the Virgin Islands, she joined the board in August to work with administrative assistant Tina Formica to support other staff members. Ms. Vasquez came to Philadelphia five years ago and attended Cite Business School, taking computer-related courses. Before joining the Board she was an intern with the Police Advisory Commission. She is bilingual in English and Spanish.

2009 - Adding the Walls and Roof

Since its establishment with increased powers in late 2006, the Board of Ethics has been building a new structure for monitoring ethical standards in City government and political campaigns. In 2007 it dug the foundation. In 2008, it constructed the framing. And in 2009 it put up the walls and roof. This Annual Report will describe the Board's 2009 activity to meet its mandates in providing advice, education, and training, and in enforcing the City's public integrity laws.

In addition, the Board concentrated its efforts in 2009 on defining how ethics laws function in the day-to-day operations of City government. By adopting three new regulations, the Board provided detailed guidance about the ethics laws.

- Regulation No. 5 clarified the confidentiality prohibition in City Code Section 20-606(1)(i). It spelled out confidentiality requirements for all enforcement proceedings, defining what information could be released, by whom and when.
- Regulation No. 6 interpreted how Charter Section 10-102, which prohibits an interest in City contracts, applies to members of the City's boards and commissions.
- Regulation No. 7 defined which City employees and officials must receive annual ethics training, specified training requirements applicable to other employees, and defined the permissible types of ethics training.

Board staff began to work on amendments to Regulation No. 2, concerning investigations and enforcement proceedings. The amendments became effective in February 2010 and establish procedures for administrative adjudications conducted by the Board itself, as permitted by the Charter and

the City Code. A working groups of staff members began drafting campaign finance regulations, with a goal of having them in place well before the 2011 City elections.

"The City Charter change gave the Board the job of adopting regulations to eliminate many of the gray areas in the ethics laws and enforcement. We're continuing to do this in a totally open process that includes public hearings," said Executive Director J. Shane Creamer, Jr. "This was really a whole new area that was opened up when the Board was given wider authority in 2006."

Board staff continued ethics training efforts in 2009 for new and existing employees, holding training sessions for city employees, department heads, Council members and staff, and members of City boards and commissions. There were also three campaign finance training sessions for candidates and their staff. And the Board took steps in a brand new direction toward beginning online ethics training in 2010.

Enforcement of the Campaign Finance Law remained a top priority, as cases from the 2007 mayoral and Council primary elections continued to work their way through the courts. Campaigns in 2009, with just the District Attorney's Office and Controller's Office at stake, still brought additional actions and a key challenge to the Board's authority.

Over the year the Board:

- Reached a settlement with a campaign committee that attempted to "allocate" portions of a single contribution to different calendar years.

2009 - Adding the Walls and Roof

Reached a settlement with a campaign that made repeated errors in reporting expenses and another campaign that failed to list receipt of several contribution checks.

Filed a petition against two campaign officials who allegedly drained a PAC of assets rather than pay fines levied by the Board against it. The Board later reached a settlement in which the officials agreed to pay a portion of the fines from personal funds.

Successfully defended itself against a defamation suit in the Court of Common Pleas brought by a candidate whose campaign committee had earlier admitted to campaign finance law violations. This matter is currently on appeal in the Commonwealth Court.

The Board continued its work to enhance financial disclosure by City employees. While the Board has jurisdiction over only those employees who must file the "City Form" that is required by the Ethics Code, it also provided guidance to those who are required to file the "Mayor's Form" and the "State Form." The total number of disclosure forms filed increased from 3,900 in 2008 to 4,600 in 2009.

The Board also continues to play a key role among ethics agencies on the national scene.

In December, four staff members attended the 2009 annual conference of the Council on Governmental Ethics Laws (COGEL) in Arizona. Paying almost all expenses out of their personal funds, the staff members learned what is and isn't working in other jurisdictions and participated in several panels:

Executive Director Creamer served on the Program Planning Committee and as a panelist for the workshop "Campaign Finance Regulation: Can the Playing Field Really be Levelled?"

General Counsel Evan Meyer was a panelist on "The Gift Minefield," a workshop on policies on acceptance of gifts by public officials and employees.

Deputy Director Massar was facilitator at a "Local Agency Roundtable" in which local agencies compared notes on issues they face. She also assembled a workshop on "Effectively Navigating Overlapping Jurisdictions" and moderated a panel on "Achieving Legislative Change."

Pro Bono Assistance: An Appreciation

When the Board of Ethics began enforcing the City's new campaign finance law in 2006, Executive Director J. Shane Creamer Jr. had no idea of the amount of litigation that would result. "I expected some challenges to the law itself and assumed the City Law Department would defend us against those," Creamer said. "But I didn't expect challenges to almost every aspect of the law."

"We've had people ignoring court orders and subpoenas, attempting to block an investigation in federal court, shifting funds to avoid paying fines, challenging the Board's authority to interpret the law and filing a defamation suit against the Board and me. There's no way with our limited staff and budget that we could have litigated these cases ourselves."

But the cases have all been litigated successfully on a *pro bono* basis by representatives of two local law firms, the Dechert and Drinker, Biddle Firms. Together the two firms have provided legal services totaling almost \$1.5 million in representing the Board.

Several teams from Dechert, led by Cheryl Krause, have defended the Board in suits involving the Ap-

preciation Fund and other PACs; Electricians Local 98; and, with the City Law Department, a recent defamation suit filed by an unsuccessful candidate for District Attorney. Dechert continues to represent the Board and the Executive Director in the appeal of the defamation suit.

A legal team from Drinker, Biddle, led by Gregg Mackuse, is defending the Board in a suit stemming from the 2007 mayoral campaign of Bob Brady, in which the law firm of Cozen, O'Connor challenged the Board's authority to apply contribution limits to funds raised after an election. Cozen, O'Connor, counsel to the Brady campaign, sued to allow funds collected by Brady after the election to be used to repay legal bills regardless of whether they exceeded the contribution limits. This matter is also on appeal, and Drinker, Biddle continues to represent the Board.

"The work the lawyers from these two firms have done hasn't just made our job easier," Creamer said. "It has made it possible to do our job. The Board and the citizens of Philadelphia owe them a debt of gratitude."

Art in the Office

During 2009, the Board of Ethics benefited from the generosity of local artists as it established a new initiative, “Art in the Office.” Beginning in April 2009, the work of Ed Bronstein, a Philadelphia artist and architect, was on display in the Board’s office. Mr. Bronstein’s collection was entitled “Home and Away” because it depicted many sites at home in Philadelphia, as well as sites away in Vermont, the New Jersey shore, Spain, and Ireland. Mr. Bronstein started painting in 1989 and closed his architectural practice in 2001 to devote his time to painting. The Board and the many visitors to our office were the beneficiaries of his exceptional talent. As an architect, Mr. Bronstein is well-known for his restaurant designs, and his paintings have been shown in Philadelphia, New Jersey, Delaware, Vermont, and in Dublin, Ireland.

Beginning in November of 2009, the Board was proud to display the wonderful work of Nancy Bea

Miller in a collection entitled “Faces, Flowers, Food.” Ms. Miller’s desire is “to paint the humor, beauty and feeling of this world as simply as I can.” Her oil paintings, drawings and prints have been exhibited in solo and group exhibitions in galleries and museums throughout the Northeast and Mid-Atlantic, including the Michener Art Museum in Doylestown, PA, the Woodmere Art Museum in Philadelphia, PA, The State Museum of Pennsylvania in Harrisburg, PA, The Cape May County Arts League in Cape May, NJ, and the Washington Gallery of Photography in Bethesda, MD.

Not only did the Board and its staff enjoy and appreciate Mr. Bronstein’s and Ms. Miller’s work, but also City employees, board and commission members, and members of the public who visited our office were delighted by their work. We hope to continue to display the work of other local artists as part of “Art in the Office” in the future.

Training & Education

In addition to its in-person ethics training classes, the Board's education and training activity includes new regulations, constant improvement of the Board's website, and the assistance provided by staff to the public on a daily basis.

In-Person Training

The Board of Ethics is responsible for providing ethics training to thousands of City officials, employees and board and commission members. In keeping with the Board's goal to prevent ethics violations, considerable time was spent in 2009 improving the content of ethics training sessions and providing 31 live ethics training sessions attended by hundreds of people. Ethics training continued into early 2010 with several sessions for

employees, officials, and board and commission members who had not attended sessions during calendar year 2009.

Core ethics concepts were discussed during each live ethics training session, including conflicts of interest, prohibited participation in contracts with the City, representation of others in City transactions, and post-employment restrictions. Newspaper articles on ethics matters and enforcement actions from other cities and states were examined. During each live session, attendees asked many questions. The sessions were designed to raise awareness of the ethics laws and to stress that attendees should always seek advice from the Board on ethics questions to avoid violations.

<i>Type of 2009 In-Person Ethics Training</i>	<i># of Sessions</i>	<i># of Attendees</i>
City Employees	12	269
City Council & Staff	7	177
Board & Commission Members	12	125
Total	41	731

But the biggest improvement in ethics training is yet to come with development of an online ethics training module. Board staff worked during 2009 to select inexpensive software to prepare online ethics training modules and plans to launch a pilot test project in 2010. The Board is working with the City's Division of Technology to make online training available to City officials, employees and board and commission members, and to establish a record of the individuals who have completed the online training. The Board believes that its online training project can be a model for other City departments that must offer training to large groups of individuals.

There were also three campaign finance training sessions for candidates and their staffs with eight more planned for 2010, in advance of the 2011 elections. For easier access to campaign finance information, staff expects to prepare an electronic campaign finance information packet on the Board's website containing the campaign finance law and new regulations.

New Regulations

The Board's regulations are another method to provide guidance to City officials, employees, members of boards and commissions, and the public. When it is not clear how a provision of the law might apply, a regulation can provide clarity and certainty. Three new regulations adopted by the Board in 2009 serve that purpose. (Appendix I)

Confidentiality of Complaints

City Code Section 20-606(1)(i) contains a broad prohibition on disclosure by any person of information relating to a complaint made to the Board of Ethics. This provision is designed to prevent a confidential process from becoming a political issue. **Regulation No. 5**, the confidentiality regulation, which became effective on November 2, 2009, clarifies the prohibition in Section 20-606(1)(i) and describes what a person, including a member of the Board's staff, may disclose and when. To meet constitutional concerns, the regulation strictly limits to two weeks before an election the period of

Training & Education

time during which a complainant is prohibited from disclosing that he or she has filed or intends to file a complaint against a candidate or his or her campaign. Prior to adoption of Regulation No. 5, there was no time limit on the prohibition.

Regulation No. 5 clarifies the limited circumstances under which investigation-related information may be revealed, and provides that public disclosure of investigative matters by Board Members and Board staff is generally prohibited except for specified circumstances in which Board duties require disclosure.

Boards and Commissions

Section 10-102 of the Home Rule Charter prohibits City officials and employees whose salary is paid out of the City Treasury from having an interest in a contract with the City. Under newly-adopted **Regulation No. 6**, which also became effective on November 2nd, the Board interpreted how Section 10-102 applies to members of the City's boards and commissions. The new regulation clarifies that the term "salary," as used in Section 10-102, means compensation paid on a regular basis, such as bi-weekly, monthly or yearly. Therefore, only members of the Board of Revision of Taxes, the Board of Viewers, and the chairperson of the Commission on Human Relations are subject to the prohibition on having an interest in a City contract because all are paid annual salaries. Members of other City boards and commissions who receive payment on a per-meeting basis, or no payment at all, do not come within the term "salary," and are therefore not prohibited from having an interest in a City contract. The prohibition in Section 10-102 continues to apply to all salaried City employees and officials.

Annual Training

Regulation No. 7, which became effective on November 25, 2009, interprets the annual and routine training requirements in the City Code and establishes procedures for implementing those requirements. All new City officers and employees must have initial ethics training within 120 days of being hired, and all elected City officers, all cabinet members, all City department heads, and all board and commission members must have annual ethics training. The regulation encourages voluntary attendance by any City employee at ethics training and permits department heads and other supervisory officials to require certain key personnel to attend annual ethics training, in their discretion. Regulation No. 7 provides that officers and employees who are not required to receive annual training are required to complete "routine" ethics training on a recurring interval to be determined by the Board.

The Board's Website

The Board's website is a comprehensive source for information about the City's public integrity laws. There are links to the ethics and campaign finance provisions of the City Code and to complete information on financial disclosure requirements. All of the Board's Formal Opinions and the Advices of Counsel are available on the website. The content of the website increased from 55 pages in 2008 to 62 pages in 2009.

Use of the Board's website increased dramatically in 2009. Total pageviews, that is the number of times all pages on the website were viewed, increased from 13,556 to 33,999. The financial disclosure and opinions pages were most frequently accessed, representing 18% and 9%, respectively, of the 2009 total pageviews.

<i>Pageviews</i>	<i>2008</i>	<i>2009</i>
Financial Disclosure	246	6,165
Opinions & Advice	1,773	6,165
Total All Pageviews	13,556	33,999

2009 Board Advice: Ask First, Act Later

Providing advice on the City's public integrity laws, including the ethics and campaign finance laws, continues to be a major responsibility of the Board of Ethics. It is the Board's goal to prevent ethics violations by making advice easily available to employees, officials, and board and commission members.

City employees and officials are therefore encouraged to ask for the Board's advice before they take action that might raise a question under the ethics laws. In this area, the Board's motto is "Ask first, act later."

The Board is authorized by the City Code to keep confidential the identity of a person who requests its advice, when specifically asked to do so by the requester. However, when the Board issues confidential advice, it must publish a redacted version of the advice, so that others may read the advice without revealing the identity of the person who made the confidential request. The option to request confidential advice is often a significant factor in the decision by an employee or official to seek the Board's advice.

The range of people who made use of the Board's advisory function in 2009 is striking. They included heads of city government, board and commission members, city employees, members of the executive and legislative branches, and a candidate for city office. All recognized situations that raised potential ethics issues. Many involved conflicts of interests - often involving outside employment or volunteer work - or restrictions on political activity.

The six Formal Opinions issued by the Board are summarized in the Index to 2009 Formal Opinions (Appendix II). The following were among the Board's Formal Opinions:

Formal Opinion No. 2009-002, issued to City Solicitor Shelley Smith, discussed whether participation in a judicial candidate evaluation process would be prohibited partisan political activity, under Charter Section 10-107. There is an extensive discussion of the policy behind Section 10-107 and what is the meaning of the term "partisan."

Nonpublic Formal Opinion No. 2009-003 considered the type of personal financial interest that would cause a conflict of interest under the City Code. Noting that the term "financial interest" is not defined in the Code, the Board made an extensive analysis of when a less-than-immediate financial interest, such as an expectation of future business, would be direct enough to cause a conflict of interest and require public disclosure of the interest and disqualification from City action by the official.

Nonpublic Formal Opinion No. 2009-004 analyzed the question of when one becomes a "candidate" for purposes of the Public Integrity Laws, including the "resign to run" provision of the Charter and the Campaign Finance Chapter of the City Code. Since many of these provisions apply only to "candidates" or take effect only upon becoming a candidate, guidance on the definition of "candidate" is crucial.

2009 Board Advice: Ask First, Act Later

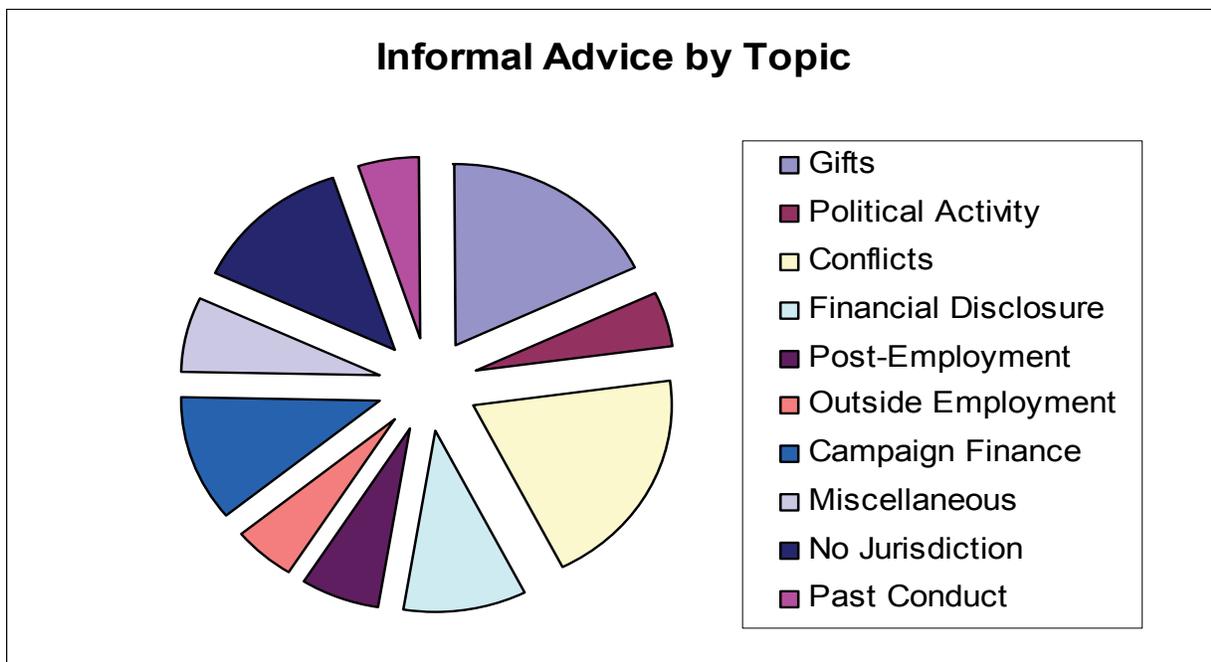
The General Counsel issued 13 Advices of Counsel, which are summarized in the Index to 2009 Advices of Counsel (Appendix III). An Advice of Counsel may be issued when the General Counsel determines that sufficient authority exists to issue a response without Board approval. Such authority may be found in prior advisory opinions of the Board or City Solicitor, specific provisions of the Home Rule Charter or The Philadelphia Code, or court opinions interpreting the Charter or Code.

Nonpublic Advice of Counsel GC-2009-501 (as amended on March 2, 2010) announced a change in the law concerning the State Ethics Act's conflict of interest provision. Both the City Code and State Act conflict provisions prohibit taking official action in either of two ways: (1) where the City employee/official has a personal financial interest; or (2) where the City employee/official works for a business that has a financial interest. The City Code excludes nonprofit entities from "business," so a City employee who is also an uncompensated member of the board of directors of a nonprofit would not have a conflict in a City matter affecting that nonprofit. Until recently, the rule

was the same for the State Act. However, on November 30, 2009 the Pennsylvania Supreme Court held that a nonprofit does fit the Act's definition of a "business." Accordingly, the two conflict of interest rules are no longer identical in how they apply to a member of a nonprofit organization.

Other significant concepts that were discussed in 2009 rulings include: post-employment (Nonpublic Advice of Counsel GC-2009-502); representation (Advice of Counsel GC-2009-504); and the appearance of impropriety (Formal Opinion 2009-006).

The Board also provides assistance through the "Ask for Advice" feature on its website which provides informal email guidance. The General Counsel and Associate Counsel responded to 61 email inquiries in 2009, with questions about accepting gifts and conflicts of interest making up almost a third of the inquiries deemed to be within the Board's jurisdiction. Other topics included campaign finance, political activity and financial disclosure.



Disclosure by City Officials and Employees

Financial Disclosure

One of the Board's key responsibilities is helping the public determine whether City officials and employees might have financial interests that would affect their official duties.

Thousands of City officials and employees and the members of City boards and commissions are therefore required to file one or more of three annual financial disclosure forms. The three forms are the City Form (required by the City Ethics Code), the Mayor's Form (required by an executive order), and the State Form (required by the State Ethics Act). These forms permit the public to determine whether City officials and employees might have financial interests that would affect their official duties.

The Board has jurisdiction over City Code Section 20-610 that requires certain elected officials, department heads, and key employees to file the City Form by May 1st to disclose financial information for the prior calendar year, including sources of income, real estate interests involved with the City, creditors, and business interests. Following the May 1st filing deadline, Board staff confirmed that all officeholders and City officials had filed the City Form.

The State Ethics Commission administers financial disclosure under the State Ethics Act. However, in an effort to provide better guidance to City employees about filing the State Form, Board staff worked with staff of the Human Resources Depart-

ment in 2009 to develop a revised list of City job titles that were most likely subject to the State Form filing requirement.

Approximately 1100 civil service job titles were reviewed with the assistance of the Human Resources Department, and departmental human resource managers reviewed more than 750 civil service exempt titles to determine which of these employees should file the State Form. The result of the detailed analysis of positions in 2009 was better guidance to City employees about who must file the State Form.

Beginning in early April, the Board issued thousands of email reminders to City officials, employees, and board and commission members to alert them about their filing obligation and to provide information on how to file. The reminder emails resulted in a steady stream of phone calls to Ethics Board staff from employees and board and commission members who needed help with filing.

These efforts to improve financial disclosure compliance produced noticeable results. The total number of disclosure reports filed increased from 3,915 in 2008 to 4,615 in 2009, and the number of State Form filers represented the bulk of the increase, from almost 2,700 in 2008 to 3,479 in 2009. Based upon the success of this project, we expect to continue our outreach to State Form filers next year.

The Records Department, which accepts and processes the thousands of financial disclosure forms,

Disclosure by City Officials and Employees

is also a crucial part of the financial disclosure process. Records Commissioner Joan Decker and her staff provided constant support and assistance and also responded to phone calls and emails from filers.

Disclosure and Disqualification

The Ethics Code requires another type of disclosure to prevent conflicts of interest in City government. The Code recognizes that a situation can arise in which a City official or employee might have a personal financial interest that conflicts with the official's or employees City duties. For example, the child of an employee might own a business that will bid on a contract with the employee's department. In that case, the employee's financial interest through his or her child is in conflict with impartially performing his or her City duties.

The City Code therefore provides a mechanism so that the employee can prevent such a conflict. Section 20-608 of the Code requires that before

any City action is taken on the matter, the employee must publicly file a "disclosure and disqualification" letter that alerts the public to the potential conflict and announces the employee's actions to avoid the conflict. The letter must summarize the employee's duties that may result in official City action, identify the employee's private financial interest and how it could be affected by City action, and state the employee's intent to disqualify himself or herself from taking any future City action in the matter. This letter must be filed with the Department of Records, the Board of Ethics, and the employee's department head.

The disclosure and disqualification letter serves two essential purposes. As a public document, a citizen can verify that the employee has taken the necessary steps to avoid the conflict and the department head can ensure that the employee is completely removed from participation in the matter. During 2009, 14 disclosure and disqualification letters were received by the Board of Ethics to confirm compliance with Section 20-608 of the Ethics Code and to foster avoidance of conflicts.

Enforcement and Litigation

2007 – 2009 Enforcement Overview

The Board of Ethics is responsible for enforcing the City's public integrity laws and is required to include information concerning its enforcement activities in its Annual Report.

Since its inception in late 2006, the Board of Ethics has dismissed, rejected or determined not to pursue enforcement action in more cases than it has enforced.

- 11 dismissals were approved by the Board at staff's recommendation
- 20 complaints were dismissed by staff
- 18 non-filing PACs were given extra time to file reports
- 16 settlement agreements were reached, but only 11 had monetary fines

The Board did not impose *any* monetary fines in its first year. The Board entered into three settlement agreements in its first six months of operation and waived all monetary fines in all three settlements.

The Board endeavors to settle alleged violations *before* going to court.

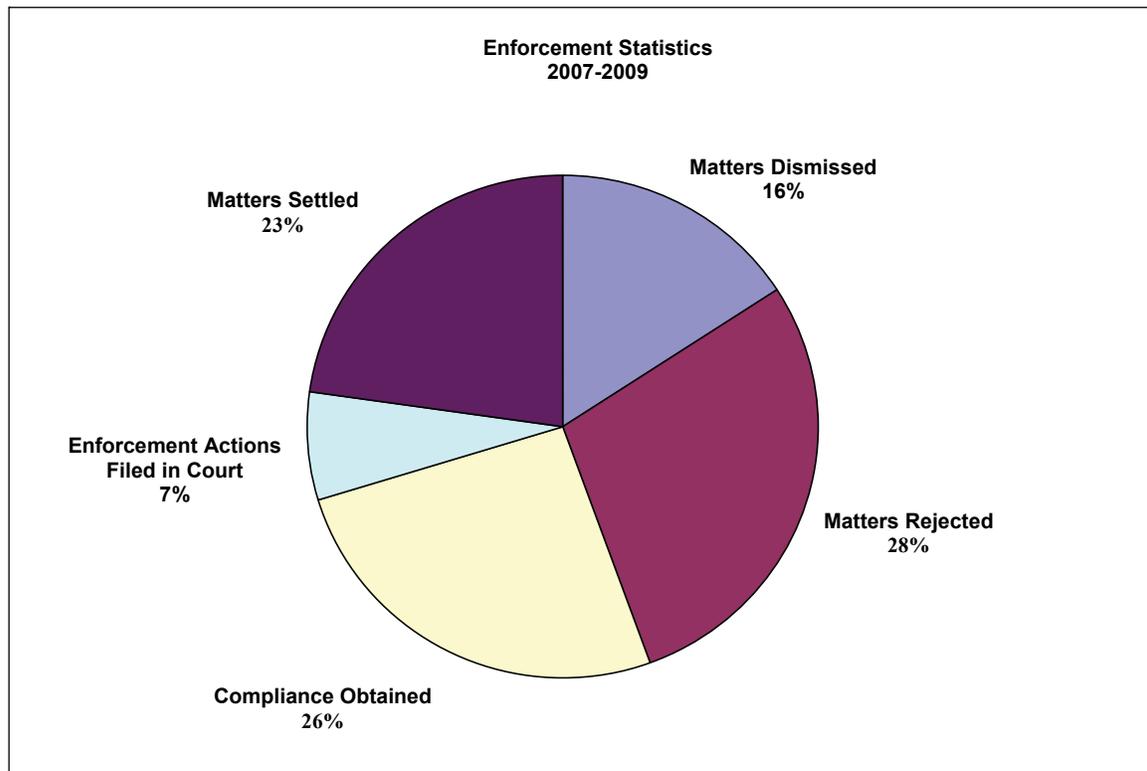
75% of the Board's 16 settlement agreements were settled without any enforcement petition.

The Board gave the respondents an opportunity to resolve the alleged violations in the remaining 25% of the Board's 16 settlement agreements before going to court.

The Board has shown leniency in *all* 16 settlement agreements it has approved over the past three years.

The Board waived *all* monetary fines in about one-third of the 16 settlements: The Board reduced the monetary fines for 66 of the 84 violations in the remaining 11 settlements (just over 78% of the admitted violations).

Two-thirds of the 14 settlement agreements that addressed campaign finance violations include excess contributions violations.



Enforcement and Litigation

2009 Activity

Complaints are received by the Board through the “Report a Concern” feature on the Board’s website and by mail. Each complaint requires detailed review by Board staff, but not all complaints result in investigative and enforcement activity. During 2009, we reviewed and rejected 11 complaints submitted by members of the public either because they did not comply with Board Regulation No. 2, which establishes criteria for Board investigations, or because they did not state a potential violation of a law within the jurisdiction of the Board of Ethics.

During 2009 Board enforcement staff opened 25 new investigations. In the course of these investigations, staff reviewed publicly available documents such as campaign finance reports, expenditure vouchers, and press coverage, and took 12 depositions of witnesses and investigation targets. Staff also conducted witness interviews and, in some cases, obtained affidavits from witnesses as an alternative to a full deposition. Subpoenas were issued to obtain bank records and other documents from witnesses and PACs. The Board often works during investigations with other agencies such as the City Commissioners, the Pennsylvania Secretary of State, and the F.B.I.

If a complaint received by the Board falls within the jurisdiction of another enforcement agency, the Board is required by the City Code to refer the matter to the appropriate enforcement authority. Therefore, in 2009, one matter was referred to the Office of Inspector General and one matter to the Pennsylvania Attorney General.

2009 Matters Resolved

Twenty-five matters were closed in 2009 by one of three methods, voluntary compliance, settlement, or dismissal because no action was warranted.

Voluntary Compliance

The Board believes that it should act to prevent violations of the City’s campaign finance laws

whenever possible. Therefore, as in prior years, the Board took steps to obtain voluntary compliance from several committees that should have filed campaign finance reports with the Board, but had not done so. Staff identified committees that made contributions to candidates for City office, but had never filed electronic reports with the Board, as required by law. The Board contacted each committee to explain the filing obligations under the City’s campaign finance law and set a deadline for them to file outstanding reports.

The following committees filed the missing electronic reports and therefore increased the information available to the public: PA Good Government Fund, 50th Democratic Ward Committee, Concerned Irish Americans of Philadelphia Committee, Blarney PAC, Better Mayfair PAC, Philadelphia Phuture, and Friends of Brendan Boyle. Because each committee voluntarily complied and met the Board’s extended deadline, the Board did not seek to impose a late filing penalty.

Settlements

The Board entered into seven settlement agreements during 2009 that involved violations of the campaign finance law including receipt of excessive contributions, omissions and misstatements on campaign finance reports, and use of more than one committee in a covered election.

- Green for Philadelphia admitted to one violation. No monetary penalty was imposed.
- Friends of Bob Brady admitted to 18 violations and agreed to pay a \$19,250 penalty.
- Pennsylvanians for Better Leadership admitted to 20 violations and agreed to pay a \$15,750 penalty.
- Committee to Elect Seth Williams admitted to 12 violations and agreed to pay a \$3,750 penalty.
- Knox for Philly admitted to five violations and agreed to pay a penalty of \$3,500 and costs of \$10,000.
- Friends of Maria admitted to three violations and agreed to pay a penalty of \$2,250.
- McCaffery for DA admitted to two violations and agreed to pay a penalty of \$1,500.

Enforcement and Litigation

In McCaffery for DA, Friends of Maria, and Pennsylvanians for Better Leadership, the Board had filed petitions in the Court of Common Pleas to enforce the City's campaign finance law. Each of these petitions matters was discontinued without a finding by the court because settlements were reached.

Dismissal

Where the Board determines that a complaint has no merit, it will dismiss the matter. During 2009, the Board dismissed six matters after investigation did not reveal a probable violation of the Public Integrity Laws.

Litigation Involving the Board

During 2009, the Board was represented by *pro bono* counsel in three important cases. The Board was represented by the Dechert firm in McCaffery v. Creamer, et al. and Philadelphia Board of Ethics v. Appreciation Fund, et al. and by Drinker Biddle in Cozen O'Connor v. Philadelphia Board of Ethics, et al. Without the invaluable work of the two law firms, the Board would have had to suspend other core activity in order to pursue these critical cases.

Cozen O'Connor v. Philadelphia Board of Ethics, et al.

During the 2007 primary election, Cozen O'Connor provided legal services, valued at more than \$400,000, to then-candidate Bob Brady. In September 2007, the Board issued an advisory opinion stating that contributions received by a candidate after an election are subject to the contribution limits imposed by Section 20-1002 if those contributions are used to retire debt incurred before the election. Cozen O'Connor sued the Board in the Court of Common Pleas in March 2008, challenging the Board Opinion and seeking a declaratory judgment that the legal expenses incurred by the Brady committee were not "expenditures" as defined under Philadelphia Code § 20-1001 (10) and that post-election contributions are not

"contributions" as defined under Philadelphia Code § 20-1001(6).

On November 13, 2008 Judge Gary DiVito dismissed the complaint. Cozen subsequently appealed Judge DeVito's order to the Commonwealth Court. On March 12, 2009, a three-judge panel of the Commonwealth Court of Pennsylvania affirmed the trial court's ruling dismissing the Cozen Complaint against the Ethics Board and concluding that Cozen lacked standing to challenge the Board's Advisory Opinion issued to Cozen's former client, the Friends of Bob Brady. Cozen O'Connor applied to the Pennsylvania Supreme Court for leave to appeal.

On December 29, 2009, the Supreme Court granted the Petition for Allowance of Appeal, in part, limiting the appeal to whether the law firm had standing to obtain a declaratory judgment "in its complaint that it intended to forgive the outstanding debt of the Friends of Bob Brady Campaign Committee at one time and in toto, thereby exposing itself to potential civil penalties and other sanctions . . ." under the Campaign Finance Law.

On March 29, 2010 Cozen O'Connor filed a Reply Brief to the Brief filed by our pro bono attorneys at Drinker Biddle on March 9th. The case has been fully briefed, and the Board is waiting for the Supreme Court to schedule argument. The Board wishes to express its great appreciation to Gregg Mackuse at Drinker, Biddle who continues to provide pro bono representation to the Board throughout this matter.

City Council Bill 100122, which will be discussed later in this Report, would codify the Board's interpretation of the law that holds that the contribution limits continue to apply after an election for the purpose of retiring campaign debt.

McCaffery v. Creamer, et al.

On December 1, 2009, Dan McCaffery sued the Board and its Executive Director, J. Shane Creamer, Jr., alleging that they had defamed him in statements made by Mr. Creamer related to the

Enforcement and Litigation

Board's enforcement action against Mr. McCaffery. On December 23rd, Mr. Creamer and the Board filed Preliminary Objections to Plaintiff McCaffery's complaint.

On January 27, 2010, Common Pleas Court Judge Gary Glazer dismissed the complaint, holding that the Board and Mr. Creamer are covered by "quasi-judicial" immunity because they were acting in their official capacity. Judge Glazer explained that "[t]he public has a right to Board members who can honestly and independently examine and enforce campaign finance rules . . . without fear of harassment or retaliation." Judge Glazer also noted that "[t]he distraction and expense associated with obviously retaliatory lawsuits undermines public confidence in the electoral process and compels the result in this case," and that "precious governmental resources should not be expended on defending frivolous lawsuits."

On February 24, 2010, Mr. McCaffery filed a Notice of Appeal from Judge Glazer's Order dismissing his defamation lawsuit with the Superior Court. However, because the case involves a local government agency and official, the Commonwealth Court has jurisdiction over the appeal. On March 26th, over Mr. McCaffery's objection, the Superior Court granted the Board's request to transfer the Appeal to the Commonwealth Court. The Board and Mr. Creamer continue to be represented by the City Solicitor's Office, and by Cheryl Krause, at Dechert, on a pro bono basis.

Appreciation Fund

Ms. Krause continued to represent the Board in a matter that began in 2007 with the Board's enforcement action against the Appreciation Fund, a political action committee, that failed to file a required campaign finance report even after it was given additional time to do so by the Board. On June 1, 2007, in Philadelphia Board of Ethics v. Appreciation Fund, et al., the Honorable Gary Di-

Vito issued an Order directing the Appreciation Fund PAC to pay a statutory penalty of \$39,000 to the Ethics Board for its failure to file. On September 21, 2007, Judge DiVito issued a second Order holding the PAC in contempt of Court for failing to pay the fine levied under the Court's June 1st Order.

In March of 2009, the Board of Ethics filed a Petition for Contempt and to Enter Judgment Against Judge Thomas Nocella, who had been the PAC's attorney, and Ernesto DeNofa after discovering that they had engaged in what the Petition alleged was a deliberate and fraudulent scheme to drain the assets of the Appreciation Fund, rather than satisfy the Board's judgment against it. The PAC had \$16,440 in its bank account before the funds were depleted. On September 9, 2009, Judge DiVito granted the Board's Petition for Contempt against DeNofa and Nocella.

In November 2009, the Ethics Board entered into a Settlement Agreement with Defendants Nocella and DeNofa in which they agreed to pay a total of \$16,440 toward satisfaction of Judge DiVito's September 2009 Contempt Order. The Agreement describes in detail how Nocella and DeNofa used most of the PAC's remaining funds (\$13,940) between December 2007 and March 2008 to pay two vendors to whom the Appreciation Fund did not owe money. It is important to note that the Settlement Agreement does not satisfy the separate judgment for \$39,000 against the Appreciation Fund PAC, of which \$22,560 remains due and owing by the PAC. Pursuant to the Settlement, payment of \$16,440 was received from Mr. Nocella and Mr. DeNofa.

This was the first time that a Board penalty was not promptly paid. The effort to pursue Nocella and DeNofa for their actions and failure to pay the Board's penalty is extremely important because it demonstrated that the Board would not tolerate contempt for its enforcement process.

Legislative Recommendations

Publication of this 2009 Annual Report was delayed primarily because significant legislative activity occurred in early 2010 that will have a direct impact on the Board of Ethics. This new legislation was prompted in large part by the December 2009 final report of the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform. Many of the Task Force recommendations addressed needs that had been identified in the Ethics Board's 2007 and 2008 Annual Reports.

On March 4, 2010, City Council introduced a package of bills and resolutions that would amend sections of the Ethics Code, campaign finance law and the City Charter section on political activities. They would also create a completely new lobbying registration and reporting law to be administered by the Board. A hearing on two bills and two resolutions was held on March 15th. The remaining eight bills and four others that were introduced in prior years were the subject of a hearing on May 12th before Council's Committee of the Whole.

Because the Ethics Board would have jurisdiction over the laws that the bills would amend and over the new lobbying law, the Board had a significant interest in all of the bills. Therefore, prior to the May 12th hearing, there were discussions and meetings between Council staff and Ethics Board staff during which the Board's staff provided comment and suggested amendments to Council staff. The Board appreciated having had the opportunity to provide input on the legislation and notes that Council welcomed the Board's comments. These discussions were consistent with the Board's authority under Section 20-606(1)(l) of the Philadelphia Code to make recommendations "whenever it deems necessary . . . to clarify the standards of conduct and ethics" in City government.

As a result of this process, Council approved the following bills on June 3rd:

- Amended Bill No. 100122 regulates transition and inauguration fundraising by requiring elected candidates to raise money for these activities through their single candidate committees and by applying contribution limits. The bill would provide public disclosure for these fundraising activities, while preserving the integrity of the campaign finance law's single committee rule. The amendment also allows City candidates to accept "post-candidacy" contributions in the same calendar year as the election, which effectively increases the amount of money candidates can receive in an election year. The Bill also provides explicit language supporting the Board's interpretation that the contribution limits apply to post-election contributions for the purpose of retiring campaign debt. Bill No. 100122 is consistent with the Board's past legislative recommendations concerning inauguration and transition activities and its Advisory Opinions 2007-003 and 2007-005.
- Bill No. 100124, as amended, allows a candidate to have a litigation fund committee to solicit and receive contributions within the contribution limits to pay legal defense costs related to the candidate's participation in an election. Litigation funds cannot be used to pay fines. Any surplus funds remaining in a litigation fund must be returned at a fixed date. The Task Force recommended consideration of litigation funds.
- In amended Bill No. 100125 a "sliding scale" of penalties is created for campaign finance-related and ethics-related violations. Bill 100125 provides for consideration of mitigating and aggravating circumstances and makes a repeat violation an aggravating factor. The Bill also establishes a *per diem* penalty for campaign finance filings, as recommended by the Board and the Task Force, and eliminates the forfeiture provision requiring that any violation of the Ethics Code forever disqualifies a person from holding elected or appointed office or City employment. Both the Board and

Legislative Recommendations

the Task Force supported modification of this severe sanction.

- Bill 100126, as amended, exempts expenditures by a political committee for the printing and distribution of sample ballots from being counted as a contribution to a candidate for the purpose of calculating the contribution limits when that candidate, or a supporter of that candidate, makes a payment to be included on the political committee's sample ballot. The amended bill also establishes an exception to the single committee rule so that a candidate who is a ward leader can use his or her ward committee to make expenditures for sample ballot printing and distribution without violating the single committee rule.

These bills were signed by Mayor Nutter on June 16, 2010 (except Bill 100126, which was not signed but became law). The Board and its staff will spend considerable time in 2010 to implement this legislation by drafting and proposing regulations and conducting training, in advance of the 2011 elections for Mayor and City Council.

The Board of Ethics is pleased that the new campaign finance legislation incorporates several of its prior recommendations. Bill No. 100122, which regulates transition and inauguration fundraising, reflects ideas first discussed in the Board's 2007 Annual Report and repeated again in 2008. The Bill also requires that as soon as a candidate forms a candidate political committee, he or she must immediately file with the Board a statement identifying the committee, its checking account, and its treasurer. The Board made this recommendation in its 2008 Annual Report and explained that the information is necessary for the Board to communicate effectively with campaigns. Bill No. 100125 establishes a separate \$250 civil penalty for each day a required electronic report is not filed with the Board. The Board called for such a *per diem* approach in its 2008 Annual Report.

The New Lobbying Law

The Final Report of the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform identified the absence of lobbying regulation in Philadelphia as a "significant gap" and called for Board of Ethics oversight of registration and reporting. Bill No. 100127 responded to the Task Force by creating a completely new law, to be administered by the Ethics Board, that requires electronic registration and reporting by lobbyists and their principals in Philadelphia. Lobbyists, lobbying firms, and principals are required to file annual registration statements, and principals are required to file quarterly expense reports, which the Board must publish on the City's website in a searchable database.

Among other tasks, the Board and its staff will have to: provide advice and opinions about the lobbying law; design and maintain an electronic registration and reporting system; provide a searchable database of lobbying information on its website; prepare reports on lobbying activity; conduct investigations and enforcement proceedings; and provide training on compliance with the new law. The Board stressed in its testimony before the Committee of the Whole on May 12, 2010 that these tasks will require funding and that additional staff is necessary to carry out this completely new mandate.

To date, no appropriation has been identified to cover the costs of implementing the new lobbying law. As the Board stated on May 12th, "It makes no sense to create a lobbying requirement and then make it impossible for the Board of Ethics to implement and enforce the new law."

Additional Legislative Recommendations

The Board of Ethics is directed by Section 20-606 (1)(l) of the Philadelphia Code to include in its an-

Legislative Recommendations

nual report to the Mayor and City Council recommendations for legislative change. Based upon its experience administering the City's campaign finance and ethics laws, the Board offers further recommendations for future legislative change. Many of these recommendations have been offered by the Board in prior Annual Reports and were recommended by the Mayor's Task Force.

In its 2007 Annual Report, the Board discussed favorably three Council bills concerning gifts (Bill No. 070828), nepotism (Bill No. 070705), and conflicted outside employment (Bill No. 070795), that would further advance ethics reform in Philadelphia. The bills were reintroduced in 2008, but, to date, have not been acted upon by Council. The Board believes that public confidence in government is enhanced when legislation reduces or eliminates the potential of gifts, family relationships, and personal financial interests to influence government decision-making. The Mayor's Task Force endorsed these concepts, and the Board again encourages Council to consider greater controls on nepotism, gifts and outside employment.

The Board reiterates the following recommendations that were made in its 2008 Annual Report:

- Incumbent officeholders and committees who contribute to them should be required to continue to file electronic reports with the Ethics Board in non-election years. Currently, when there are no "candidates" for City office, no reports are required to be electronically filed. The public should have continuing access to information about contributions made to elected officials.
- The twice-yearly requirement that the Board publish a "plain English" version of the campaign finance law in three newspapers should be eliminated. This is a costly mandate with limited effect. Currently, the Board's website contains extensive information about the campaign finance law, and any citizen can obtain this information simply by calling the Board.
- The existing City policy that prohibits personal retaliation against whistleblowers should be codified. Currently, City Code Section 20-606(1)(j) prohibits official retaliation against any City officer or employee who has in good faith filed a complaint alleging improper activity by another City officer or employee. Personal retaliation by co-workers should also be prohibited.

Looking Ahead

As the Board of Ethics moves into 2010, it faces significant challenges. Due to budget cuts, the Board has been understaffed in light of its many responsibilities. New legislation enacted in the first part of 2010 will stretch the Board's staff to the breaking point. Expanded responsibilities in training and enforcement of the Campaign Finance Law and the mandate to implement the completely new Lobbying Law without any additional funding will challenge the Board's ability to fulfill its mandates, which are designed to ensure that honesty, integrity, and transparency define the political and ethical climate of the City.

The Board will meet these challenges and take all necessary steps in 2010 to obtain adequate funding

for these new responsibilities. As we continue to provide guidance, training, and enforcement of the City's public integrity laws, we will begin the long-awaited move into online ethics training. And, as the 2011 elections approach, the Board will offer training for political candidates and committees about the recently expanded Campaign Finance Law. The Board will continue its mission to strengthen and clarify the City's ethics laws.

We are proud of our many accomplishments in 2009 and look forward to again being in the vanguard of continuing ethics reform in Philadelphia in 2010.

APPENDICIES

APPENDIX I: Regulations 5, 6, and 7

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 5

CONFIDENTIALITY OF ENFORCEMENT AND INVESTIGATIVE MATTERS AND PROHIBITED DISCLOSURES

SUBPART A. DEFINITIONS; SCOPE.

5.0 Definitions. As used in this regulation, the following words and phrases shall have the meanings indicated.

- a. **Board.** The Board of Ethics and its individual members.
- b. **Board Staff.** Employees of the Board of Ethics.
- c. **Candidate.** As that term is defined at Philadelphia Code § 20-1001(2).
- d. **Candidate political committee.** As that term is defined at Philadelphia Code § 20-1001(3)
- e. **Complainant.** A person who has submitted a complaint to the Board.
- f. **Complaint.** The written document submitted to the Board pursuant to Regulation 2 Paragraph 2.4 for the purpose of initiating a Board investigation or enforcement action.
- g. **Covered election.** As that term is defined at Philadelphia Code § 20-1001(7).
- h. **Executive Director.** The Executive Director of the Board and his or her designee or designees.
- i. **Investigation or ongoing investigation.** The Board's inquiry, as described in Regulation 2 Subpart B, into an alleged violation of the Public Integrity Laws, as the term Public Integrity Laws is defined at Regulation 2 Paragraph 2.0(a). An investigation is ongoing until the Executive Director terminates the investigation pursuant to Regulation 2, Subpart B, or makes a finding of probable cause.
- j. **Person.** As that term is defined at Philadelphia Code § 20-601(12).
- k. **Referral.** As that term is described at Regulation 3 Paragraph 3.3.
- l. **Subject of a complaint or an investigation.** Those individuals or entities alleged to have violated the Public Integrity Laws.

5.1 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapters 20-600 and 20-1000 of the Philadelphia Code, clarifies the limitations imposed by Section 20-606(1)(i) of the Philadelphia Code on the disclosure of information related to Board enforcement and investigation activities.

SUBPART B. DISCLOSURE BY PERSONS OTHER THAN THE BOARD OR BOARD STAFF.

5.2 Disclosure of a Complaint.

a. Disclosure of the intention to file a complaint, the fact of filing of a complaint, or the complaint itself shall not constitute a violation of Section 20-606(1)(i) of The Philadelphia Code, except as provided in Subparagraph "b." below.

b. During the period of time beginning 14 days before and through the date of a covered election, neither a complainant, nor any person who is authorized to act at the direction of the complainant shall disclose the intention to file a complaint, the fact of filing of a complaint, or the complaint itself where a subject of the complaint is a candidate in that covered election, the candidate's political committee, or the treasurer of the candidate's political committee.

c. The limitation in Subparagraph “b.” above does not prohibit a complainant or other person from disclosing facts and allegations included in a complaint, so long as he or she does not disclose the intent to file a complaint, the fact of filing a complaint, or the complaint itself.

d. The limitation in Subparagraph “b.” above does not prohibit a member of the media from publishing or broadcasting legally obtained information regarding a complaint filed with the Board.

5.3 Disclosure Related to an Ongoing Investigation Prohibited. While an investigation is ongoing, disclosure of any information related to that investigation shall constitute a violation of Section 20-606(1)(i) except as follows:

a. A person may disclose or acknowledge information related to an ongoing Board investigation when he or she has obtained such information independently of his or her contact with the Board or Board Staff.

b. A person may disclose or acknowledge the substance of his or her own statements to the Board or Board Staff.

c. A person may disclose or acknowledge information related to an ongoing Board investigation for the purpose of seeking advice of legal counsel.

d. A person may disclose or acknowledge information related to an ongoing Board investigation to the Board or Board Staff.

e. A person may disclose or acknowledge information related to an ongoing Board investigation to a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency.

f. A person may disclose or acknowledge information related to an ongoing Board investigation if compelled to provide testimony under oath before a governmental body or court.

g. A member of the media may publish or broadcast legally obtained information regarding a confidential Board proceeding.

5.4 Notice. The Executive Director shall notify the complainant and the subject of an investigation when an investigation has been terminated pursuant to Regulation 2, Subpart B, or a finding of probable cause has been made. The notice shall inform them that they are no longer bound by the disclosure prohibitions of Section 20-606(1)(i), as defined in this regulation. The Executive Director shall, where practicable, notify persons who have provided testimony or other information to the Board during the course of an investigation that the investigation has been terminated and that they are no longer bound by such disclosure prohibitions.

SUBPART C. DISCLOSURE BY THE BOARD OR BOARD STAFF.

5.5 Disclosure Related to a Complaint, Investigation, Referral, or Pending Adjudication Prohibited. Neither the Board nor Board Staff shall disclose at any time any information related to a complaint, investigation, referral, or pending adjudication except as follows:

a. For the purpose of seeking advice of outside legal counsel.

b. In the course of an investigation, to subjects of that investigation, witnesses, and legal counsel of such subjects and witnesses.

c. In the course of settlement discussions with the subject of a complaint, investigation, or judicial or administrative enforcement proceeding, and with legal counsel of such subjects.

d. In an executed settlement agreement resolving violations of the Public Integrity Laws, or in a public announcement concerning such settlement agreement.

e. In filings or pleadings related to a judicial enforcement action, administrative adjudication, appeal or other legal proceeding, or in a public announcement concerning such filings or pleadings.

f. To the Board's contracted vendors and to other Board members and Board Staff.

g. To consult with a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency.

h. If compelled to provide testimony under oath before a governmental body or court.

SUBPART D. DISCLOSURE OF BOARD RECORDS.

5.6 Except as otherwise provided under Philadelphia, Pennsylvania, or Federal law, the records, reports, memoranda, and files of the Board shall be confidential and shall not be subject to public inspection.

SUBPART E. PENALTIES.

5.7 A person who makes a disclosure prohibited by § 20-606(1)(i) of the Philadelphia Code as described in this regulation shall be subject to the penalties prescribed by §20-612 of the Philadelphia Code.

Initially adopted by Board September 16, 2009

Public Hearing held October 21, 2009

Reaffirmed by Board October 21, 2009

Effective November 2, 2009

Proposed amendments to ¶5.2 adopted by Board November 18, 2009

Effective December 18, 2009

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 6

APPLICATION TO CITY BOARDS AND COMMISSIONS OF SECTION 10-102 (INTEREST IN CONTRACTS) OF THE HOME RULE CHARTER

6.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapters 20-600 and 20-1000 of the Philadelphia Code, determines how the phrase “any other governmental officer or employee whose salary is paid out of the City Treasury,” as set forth in Section 10-102 of the Home Rule Charter, is applied to members of City boards and commissions.

6.1 Members of Boards and Commissions Receiving a Salary. A salary is compensation for services paid on a regular basis, such as bi-weekly, monthly or yearly. It does not include payment on an hourly wage or per-meeting basis. Any member of any City Board or Commission who is paid compensation on such a regular basis, without regard to the body’s title (including, without limitation, a body denoted as a board, commission, council, committee, task force, working group, panel, or other similar designation) is governed by the restrictions of Charter Section 10-102. Based on the manner of compensation established in The Philadelphia Code for such individuals at the time of adoption of this regulation, this includes all members of the Board of Revision of Taxes (§20-304(7)), all members of any Board of Viewers (§20-304(9)), and the Chairman of the Commission on Human Relations (§20-304(11)).

6.2 Receipt of Salary. Declining or otherwise not receiving the statutory salary for a short period of time shall not avoid application of this provision. A City official shall be deemed to be one “whose salary is paid out of the City Treasury” if the official receives any portion of the statutory salary either during the term of any applicable contract or within one year before the contract’s execution or one year after the end of the contract’s term.

Initially adopted by Board September 16, 2009
Public Hearing held October 21, 2009
Finally adopted by Board, with modifications October 21, 2009
Effective November 2, 2009

PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 7
ANNUAL AND ROUTINE ETHICS TRAINING

WHEREAS, The Philadelphia Code requires routine and mandatory ethics training as follows:

-- Subsection 20-606(1)(b)(i) sets forth a routine training requirement, providing the Board “shall develop and conduct routine and mandatory educational and training programs for all City officers and employees.”

-- Subsection 20-606(1)(b)(iii) sets forth an annual training requirement, providing “annually [] all elected City officers, all cabinet members, all City department heads, and all board and commission members, and their respective staff members as determined by the Board based on staff position, shall participate in an educational and training program conducted by the Board”; and

NOW THEREFORE, the Board of Ethics hereby adopts this Regulation No. 7 to provide additional interpretation of the annual and routine training requirements and establish procedures for implementing those requirements.

7.1 Initial training.

Pursuant to the Board’s duty to “develop and conduct routine and mandatory educational and training programs for all City officers and employees” and the Board’s “responsibility of training and educating all City officers and employees regarding the standards of conduct and ethics,” initial training shall be required of all City officers and employees, regardless of position, duties, or responsibilities. Accordingly, all City officers and employees who are employed by the City upon the effective date of this Regulation and who did not receive ethics training conducted or approved by the Board or the prior advisory Board of Ethics in 2006, 2007, 2008, or 2009 are required to receive initial ethics training within 120 days of the effective date of this Regulation. All City officers and employees who are hired after the effective date of this Regulation must receive initial ethics training within 120 days of the effective date of their employment.

7.2 Annual training based on staff position.

Code subsection 20-606(1)(b)(iii) requires annual ethics training for “all elected City officers, all cabinet members, all City department heads, and all board and commission members, and their respective staff members as determined by the Board based on staff position.”

The Board determines that the annual training requirement shall be limited to “all elected City officers, all cabinet members, all City department heads, and all board and commission members.” The term “cabinet members” shall include those officials denoted in Charter Section 3-102, as well as any others whose names and titles are provided by the Mayor to the Board of Ethics, as members of the Mayor’s cabinet. Nevertheless, voluntary attendance by any City employee at ethics training is permitted and encouraged, and department heads and other supervisory officials may require certain key personnel to attend annual ethics training, in their discretion.

7.3 Format of training

Training programs developed and conducted by the Board shall include (1) programs developed and approved by staff of the Board for presentation by staff or others, such as departmental trainers; and (2) on-line training programs developed by staff.

7.4 Routine training

In addition to the initial training as provided for in Paragraph 7.1, officers and employees not required to receive annual training as provided in Paragraph 7.2 above shall be required to complete “routine” ethics training on a recurring basis as will be determined by the Board. The Board shall determine, by Resolution adopted at a public meeting, the interval to occur between such trainings, which may be variable. Some factors the Board shall consider in determining whether another round of training will be required of such officers and employees may include:

7.4.1 The number of any recent amendments to the Public Integrity Laws, and the degree of substantive change represented by such amendments;

7.4.2 The number of years since the last round of routine trainings;

7.4.3 Other significant events that may indicate that re-training is called for;

7.4.4 The availability and cost of available methods of providing training, such as on-line computer training;

7.4.5 The department of the employee; and

7.4.6 The job responsibilities of the employee.

Initially approved for public comment by Board October 21, 2009
Effective November 25, 2009

APPENDIX II: Index to 2009 Formal Opinions

2009 Formal Opinions

Formal Opinion No.	Date Issued	Brief Description	Key Words
			Citations
2009-001 Non-public Advice	5/13/09	Advised the head of a City office regarding a proposed arrangement by which the office would keep an employee's services after that employee's separation from the City by arranging for a private business to employ the individual and "lend" that individual to the City for free. The "loan" would not be a gift to the requestor personally and thus would not violate the Code's gift restriction. This unique proposal raised an appearance issue since a City official would be soliciting donation of professional services of significant value from a firm that may be the subject of official action by that City office, particularly where the purpose may be to avoid application of the State Ethics Act's post-employment restriction. Recommended the requestor seek a State Ethics Commission advisory regarding the State Act's contingent payment and post-employment restrictions.	SOLICITING PRIVATE ENTITY FOR LOAN OF PROFESSIONAL SERVICES; CONTINGENT PAYMENTS; POST-EMPLOYMENT; GIFT TO THE CITY; APPEARANCE OF IMPROPRIETY; STATE ETHICS ACT Code §§ 20-604, 20-608; 65 Pa. C.S. §§ 1103(e)(1), 1103(g)
2009-002	5/13/09	Advised the City Solicitor that her participation on the Philadelphia Bar Association's Commission on Judicial Selection and Retention would not violate the Charter's political campaign activity restriction, which has long been interpreted as prohibiting public, partisan expressions of support for political candidates and political parties while permitting private and non-partisan political expression.	POLITICAL ACTIVITY; NON-PARTISAN; PHILADELPHIA BAR ASSOCIATION COMMISSION ON JUDICIAL SELECTION; CITY SOLICITOR Charter § 10-107(4)
2009-003 Non-public Advice	9/16/09	Advised a City employee who serves as an alternate on a City board that may at times consider matters in which applicants are represented by a law firm in which the employee's relative-in-law is a partner, although the relative would not be involved in the representation. The issue was whether the law firm partner would have a "financial interest" in the board alternate's official action and thereby create a conflict of interest for the alternate. Advised the requestor to seek the Board's advice in specific situations that arise as the existence of a conflict depends on the particular facts. Example hypothetical scenarios illustrated the parameters of "financial interest."	CONFLICT OF INTEREST; DEFINING "FINANCIAL INTEREST"; RELATIVE-IN-LAW; LAW FIRM PARTNER; KNOWLEDGE REQUIREMENT; BOARDS & COMMISSIONS Code § 20-607; <i>see related</i> Advice of Counsel No. GC-2009-506.

2009 Formal Opinions

Formal Opinion No.	Date Issued	Brief Description	Key Words
			Citations
2009-004 Non-public Advice	9/21/09	Advised a City employee who wished to form an exploratory committee for local elective office. The proposed activity would not constitute a declaration of candidacy and would not trigger the Charter's resign-to-run provision or violate its fundraising or campaign activity restrictions as long as any exploratory committee and associated PAC make clear in their activities and communications that the requestor is not yet a candidate for any office, but is merely exploring a candidacy and exploring the electorate's interest.	<p>POLITICAL ACTIVITY; EXPLORATORY COMMITTEE FORMATION; DEFINING "CANDIDATE"; DECLARATION OF CANDIDACY; RESIGN TO RUN; FUNDRAISING</p> <p>Charter § 10-107(3), (4), (5)</p>
2009-005 Non-public Advice Amended	1/22/10	Advised candidate's campaign on application of the Charter's political activity restrictions to campaign volunteers engaged in pre-transition planning contacting City employees to discuss current work of office being sought and ideas for improvement. There would likely not be an issue that City employees contacted by campaign volunteers were engaging in prohibited campaign activity so long as the contact was solely for pre-transition planning purposes and not for the formation of campaign policies, speeches or positions and was not made public pre-election. The candidate and campaign volunteers are not subject to the Charter's political activity restrictions.	<p>POLITICAL ACTIVITY; PRE-TRANSITION PLANNING</p> <p>Charter § 10-107(4)</p>
2009-006	10/21/09	Advised a Councilmember about sending constituents a letter regarding the state Children's Health Insurance Program (CHIP) where costs would be paid by one of the program providers, AmeriChoice. There is no conflict of interest as there is no issue that the proposed letter enhances any re-election effort. Under the gift to the City analysis, there would not be a prohibited gift. Recommended some revisions to the letter (such as incorporating reference to other CHIP providers) to address appearance of impropriety issues and lessen a possible public perception that the Councilmember is endorsing a particular provider in exchange for a monetary benefit that allows a constituent communication otherwise not possible under the budget.	<p>GIFT TO THE CITY; PRIVATELY-FUNDED CONSTITUENT COMMUNICATION; COUNCILMEMBER; APPEARANCE OF IMPROPRIETY; AMERICHOICE; CHIP</p> <p>Code § 20-604; 65 Pa. C.S. § 1103(a)</p>

APPENDIX II: Index to 2009 Advices of Counsel

2009 Advices of Counsel

Advice No.	Date Issued	Brief Description	Key Words
			Citations
GC-2009-501 Non-public Advice Amended	3/2/10	Advised City employee who held an unpaid position on the board of directors of a nonprofit corporation that deals with and receives some funding through the employee's City office. Noted November 2009 Pennsylvania Supreme Court ruling on a nonprofit qualifying as a "business" under the State Ethics Act, making it likely the Act requires the requestor to follow disclosure and disqualification regarding any official action that would have a financial impact on the nonprofit corporation.	CONFLICT OF INTEREST; NONPROFIT BOARD MEMBER; NON-PROFIT AS BUSINESS
			Code §§ 20-602, 607, 608; 65 Pa.C.S. §1103(a); <i>Rendell v. Pa. State Ethics Comm'n</i> , 983 A.2d 708 (Pa. 2009).
GC-2009-502 Non-public Advice	4/16/09	Provided post-employment advice to former City employee, an attorney, whom the City had employed in multiple capacities and departments over many years. Companies, including some with a City contract, had asked requestor to be a consultant advisor. Concluded one Code post-employment restriction, §20-603(1), did not apply to attorney representations while another, §20-607(c), applied but did not raise issues on these facts. As to the State Ethics Act, addressed when post-employment "cooling off" periods start in case of multiple separation dates; what the former employee's "former governmental body" is in case of multiple former departments; and how the post-employment rules may differ for attorneys.	POST-EMPLOYMENT; ATTORNEY; MULTIPLE CITY JOBS; CONSULTANT TO VENDORS THAT CONTRACT WITH FORMER GOVERNMENTAL BODY
			65 Pa.C.S. §1103(g); Code §§ 20-603(1), 20-607(c); <i>Shaulis v. State Ethics Comm'n</i> , 833 A.2d 123 (Pa. 2003); Prof. R. Resp. 1.11.
GC-2009-503 Non-public Advice	4/9/09	Advised City board member who is employed by a university that receives financial support from companies that can be affected by the City board's actions. As the requestor had no personal financial interest and the university is a nonprofit, the Code's conflict provision was not implicated. There likely was not a State Ethics Act issue even though the issue of non-profits qualifying as a "business" was the subject of pending litigation. Also addressed how to avoid an appearance of impropriety.	CONFLICT OF INTEREST; APPEARANCE OF IMPROPRIETY; DONOR TO BOARD MEMBER'S NONPROFIT EMPLOYER IMPACTED BY BOARD ACTION; BOARDS & COMMISSIONS
			Code §20-607; 65 Pa.C.S. §1103(a); <i>Rendell v. Pa. State Ethics Comm'n</i> , 938 A.2d 554 (Pa. Commw. 2008), <i>reversed by</i> 983 A.2d 708 (Pa. 2009).

2009 Advices of Counsel

Advice No.	Date Issued	Brief Description	Key Words
			Citations
GC-2009-504	4/17/09	Advised member of the Historical Commission's Architectural Committee that he may not present to the Commission or any of its advisory committees a project in which his architectural firm is involved. Although the Code's representation restriction generally applies to preclude board members only from making representations before their own boards, the Historical Commission's committees are so closely connected to the Commission that the proposed representations present a significant risk of perceived or actual advantage due to the requestor's City position. The requestor had filed a disclosure letter and disqualified himself from official action on the matter, so there was no conflict of interest.	PROHIBITED REPRESENTATION; COMMITTEES OF THE HISTORICAL COMMISSION; DISCLOSURE OF CONFLICT OF INTEREST; BOARDS & COMMISSIONS Code §§ 20-602, 20-607
GC-2009-506 Non-public Advice	6/11/09	Advised alternate on a City board that was going to consider a matter involving an applicant represented by a law firm in which the alternate's relative-in-law is a partner, although the relative would not take part in the representation. The issue was whether the law firm partner would have a "financial interest" in the board alternate's official action and thereby create a conflict of interest for the alternate. Reach of the term "financial interest" is question of first impression appropriate for a Board Formal Opinion, but time constraints did not allow for that. Given the lack of prior rulings on similar facts, the requestor need not file a public disclosure and disqualification, but due to an appearance of impropriety it was better not to participate in this matter.	CONFLICT OF INTEREST; DEFINING "FINANCIAL INTEREST"; RELATIVE-IN-LAW; LAW FIRM PARTNER; BOARDS & COMMISSIONS Code §§ 20-607, 20-608; <i>see related</i> Formal Opinion No. 2009-003
GC-2009-507 Non-public Advice	7/9/09	Advised City employee that he cannot 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 requestor's City job involves such referrals and would be the source of the referral names. The proposed arrangement would create an unavoidable conflict of interest. Noted the Code's prohibition on the disclosure of confidential information obtained in a City job to advance one's financial interest.	UNAVOIDABLE CONFLICT OF INTEREST; CONFIDENTIAL INFORMATION; ATTORNEY REFERRALS Code §§ 20-607, 20-609; 65 Pa.C.S. §1103(a)

2009 Advices of Counsel

Advice No.	Date Issued	Brief Description	Key Words
			Citations
GC-2009-508 Non-public Advice, subsequently made public by agreement of requestor	6/29/09	Advised the Mayor that the Charter's political activity restrictions would not apply to members of the newly-created Commission on Parks & Recreation. Applying the standard set forth in the Board's Formal Opinion No. 2007-006, concluded the new Commission does not exercise significant powers of government and is essentially advisory.	POLITICAL ACTIVITY; COMMISSION ON PARKS & RECREATION; BOARDS & COMMISSIONS Charter §10-107(3), (4), and (5); Formal Opinion No. 2007-006
GC-2009-509 Non-public Advice	9/14/09	Advised City board member who volunteers as the president of a nongovernmental group that is considering applying for a City grant where staff of a City department affiliated with the requestor's City board will have a role in reviewing applications and awarding grants. Concluded there was no conflict of interest based on the particular facts and described how to minimize an appearance of impropriety.	CONFLICT OF INTEREST; NON-PROFIT VOLUNTEER; APPEARANCE OF IMPROPRIETY; BOARDS & COMMISSIONS Code §20-607
GC-2009-510 Non-public Advice	9/17/09	Advised City employee that the City's ethics restrictions permit her to serve as a paid workshop trainer in her area of technical expertise while not on City work time. Recommended the requestor seek a State Ethics Commission opinion regarding the State Act's honorarium restriction.	OUTSIDE EMPLOYMENT; WORKSHOP TRAINER; HONORARIUM Charter §10-102; Code §§ 20-602, 20-607; 65 Pa.C.S. §1103(d)
GC-2009-511 Non-public Advice	9/18/09	Advised City employee who was invited to be an unpaid board member of a non-profit agency that has City contracts with which the employee would not be involved. Concluded the proposed non-profit board membership would not be problematic under the relevant City ethics provisions.	NON-PROFIT VOLUNTEER; CITY CONTRACTS Code §§ 20-602, 20-607
GC-2009-512 Non-public Advice	11/13/09	Advised City employee who is an attorney and was faced with possibly reviewing responses to a City RFP for outside counsel to which her former law firm may respond. There was no "financial interest" as defined in Formal Opinion No. 2009-003 and no actual conflict of interest, but to avoid an appearance of impropriety the requestor might consider removing herself from the contract award process.	CONFLICT OF INTEREST; ATTORNEY; RFP; FINANCIAL INTEREST; APPEARANCE OF IMPROPRIETY Code §20-607; 65 Pa.C.S. §1103(a)

2009 Advices of Counsel

Advice No.	Date Issued	Brief Description	Key Words
			Citations
GC-2009-513 Non-public Advice	11/18/09	Advised City employee who was considering accepting employment with a private company that contracts with the City agency that currently employs him. While still a City employee, the requestor may be required to disclose a conflict of interest and disqualify himself from taking certain official action with respect to the potential employer if his pursuit of employment creates a “financial interest” in that company as defined in Formal Opinion No. 2007-001, including if he receives an employment offer. Explained the post-employment restrictions.	CONFLICT OF INTEREST RELATED TO OFFER OF EMPLOYMENT; POST-EMPLOYMENT
			Charter §10-102; 65 Pa.C.S. §1103(g); Code §§ 20-603 (1), 20-607(c); Formal Opin- ion No. 2007-001

