City of Philadelphia Board of Ethics

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Annual Report September 2014

Honesty | Integrity | Transparency

City of Philadelphia
Board of Ethics

Honesty, Integrity, Transparency

Michael H. Reed, Esq.
Chair

Judge Phyllis W. Beck (Ret.)
Vice-Chair

Sanjuanita González, Esq.
Brian J. McCormick, Jr.
Father C. Kevin Gillespie
Board Members

Philadelphia's Board of Ethics was created by an amendment to the Philadelphia Home Rule Charter that voters approved via a ballot question at the May 2006 primary election. The Board is charged with administering and enforcing all provisions of the Charter and City Code that pertain to ethical matters, and such additional duties as City Council may assign. The Board has jurisdiction over City laws pertaining to conflicts of interest, representation and post-employment restrictions, gifts and gratuities, financial disclosure, interests in certain City contracts, campaign finance, prohibited political activities, and lobbying. The Board renders advisory opinions, promulgates regulations, and offers trainings on how to comply with the laws within its jurisdiction. The Board also has the power to conduct investigations and enforce the laws over which it has jurisdiction.

Contact the Board:

One Parkway Building, 18th Floor
1515 Arch Street
Philadelphia, PA 19102-1595
215-686-9450 (phone)
215-686-9453 (fax)
www.phila.gov/ethicsboard/

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Message from the Chair

I am pleased to provide this Annual Report to the Mayor, the City Council and the citizens of Philadelphia on behalf of the members of the Board of Ethics.

During the past year, from its ongoing education and outreach efforts to its launch of the City's first online lobbying information and reporting system, the work of the Board and its staff has promoted honesty, integrity, and transparency in City government. This Annual Report is an opportunity to describe the breadth and variety of the Board's activities to administer the City's Public Integrity Laws which include standards of conduct for City officials and employees, financial disclosure requirements, campaign finance matters, restrictions on political activities, lobbying registration and reporting, and non-competitively bid contracts.

Many of the ethics rules administered by the Board, especially those concerning the conduct of City officials and employees, have been in existence since the 1950s and 1960s. Yet new questions concerning these long-standing rules are frequently presented to and considered by the Board. Further, new technology, amendments to the Public Integrity Laws, and recent decisions by federal and state courts can result in requests for advice and create the need to promulgate new regulations. As a result, the Board meets these challenges by providing timely advice and guidance and by quickly adapting existing procedures and materials to respond to the changes.

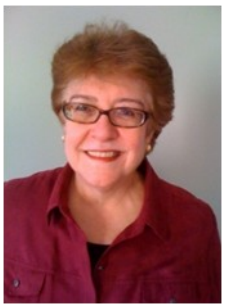
The Board's work is therefore both demanding and rewarding. Our ultimate goals are to ensure that City government is honest, efficient and transparent and that City officials and employees act with the best interests of the public in mind. My fellow Board members and I look forward to continuing to serve the citizens of Philadelphia in this important role.

Michael H. Reed, Esq., Chair
Philadelphia Board of Ethics

Current Board Members

Michael H. Reed, Esq., of counsel with Pepper Hamilton LLP. Mr. Reed is a 1969 graduate of Temple University (B.A. Pol. Sci) and received his J.D. from Yale Law School in 1972. He has been associated with the firm of Pepper Hamilton LLP since 1972, became a partner in 1980 and became of counsel in 2014. He concentrates his practice in corporate restructuring and bankruptcy law. Mr. Reed is a past President of the Pennsylvania Bar Association and is the State Delegate for Pennsylvania in the ABA House of Delegates, having previously served on the ABA's Board of Governors. Mr. Reed was previously a member of the Pennsylvania Judicial Inquiry and Review Board and chaired the Professional Guidance (Ethics) Committee of the Philadelphia Bar Association. Prior to being selected as Chair, Mr. Reed served as Vice-Chair of the Board of Ethics. His term runs until November 2015.

Judge Phyllis W. Beck (Ret.), retired judge and chairperson and Chief Financial Officer of the Independence Foundation. Judge Beck served as vice dean of the University of Pennsylvania Law School from 1976 to 1981, when she was appointed as the first woman to serve on the Superior Court. She has also served as general counsel to the Barnes Foundation. As chair of the Governor's Commission on Judicial Reform, Judge Beck authored a 260-page report recommending major structural reform in Pennsylvania's Judicial System. The American Judicature Society awarded her the Herbert Harley Award for her leadership role in the field, especially her work with Pennsylvanians for Modern Courts. Judge Beck was a founding member and president of Philadelphia Futures, an organization devoted to mentoring children. Judge Beck serves as the Board's Vice-Chair. Her term on the Board runs until November 2017.



Sanjuanita González, Esq., Managing Partner at Cohen, Fluhr & González, P.C., a Center City Philadelphia law firm with practices in the areas of Immigration and Social Security Disability law. Ms. González is a former President of the Council of Spanish Speaking Organizations (Concilio), the oldest Latino community based organization in Pennsylvania. She previously served on the Board of Governors of the Philadelphia Bar Association. Ms. González is a member of the American Immigration Lawyers Association; the Philadelphia Bar Association; the Hispanic Bar Association; and the National Organization of Social Security Claimants' Representatives. She is the Co-Chair of the Social Security Disability Committee of the Philadelphia Bar Association. Ms. González's term runs until November 2018.

Brian J. McCormick, Jr., is a trial lawyer at Ross Feller Casey, LLP in Philadelphia. He has a national practice that includes pharmaceutical injury and products liability mass tort litigation, as well as representing whistleblowers in qui tam and fraud actions involving the waste of government funds and resources. Mr. McCormick received his J.D. from Rutgers University School of Law and is a 1991 graduate of the University of Richmond. Before being appointed to the Board of Ethics, Mr. McCormick was selected by Philadelphia Mayor Michael Nutter to serve on the Mayor's Task Force for Campaign Finance and Ethics Reform, which produced a final report in late 2009. A number of the recommendations in that report have been enacted in Philadelphia. Mr. McCormick formerly served as a member of the Board of Directors of the Philadelphia nonpartisan watchdog group, The Committee of Seventy. Before attending law school, Mr. McCormick served as an analyst with the FBI in its Philadelphia office, and also worked as a newspaper reporter in the Philadelphia area. Mr. McCormick's term on the Board runs until November 2016.

Father C. Kevin Gillespie, President of Saint Joseph's University. He earned his bachelor's degree in psychology from what was then Saint Joseph's College in 1972, and went on to earn master's degrees in psychology from Duquesne University and in divinity from the Jesuit School of Theology Berkeley. He holds a Ph.D. in pastoral psychology from Boston University. Most recently, Fr. Gillespie was associate provost for University Centers of Excellence at Loyola University Chicago, overseeing five academic centers. He has served on the Saint Joseph's University Board of Trustees since 2006. Fr. Gillespie's term on the Board runs until November 2014.

Message from the Executive Director

The Board of Ethics is responsible for administration of the City's Public Integrity Laws which include both old and new requirements and mandates. Among its activities during the past year, the Board completed implementation of a new law that was enacted just a few years ago in 2010 and attempted to modernize and improve an ethics rule that has been in existence since the early 1960's.

To implement the City's new Lobbying Law, Board staff developed and deployed a new electronic disclosure filing system and publicly- searchable database, called the Philadelphia Lobbying Information System (PLIS). This project was accomplished on an accelerated schedule. The first lobbying registrations were submitted on January 14, 2014. Between January and April of 2014, the expense reporting function of PLIS was developed and the first online expense reports were filed on April 28, 2014, to report detailed information on lobbying activity in Philadelphia.

At the same time, Board staff drafted and proposed a new regulation to interpret the City Code's gift provision, enacted in 1963, which had never been clarified before. After many months of review of the proposed regulation, including extensive public comment, City Council introduced legislation to amend the City's gift law on January 30, 2014. This legislation was based largely on the proposed regulation, and the Board supported the legislation which was signed by Mayor Nutter on March 31, 2014.

These two recent projects demonstrate the range of actions taken by the Board to fulfill its mandate to implement, administer and provide guidance on the City's new and old public integrity laws in just one year.

J. Shane Creamer, Jr.
Executive Director

Current Board of Ethics Staff Members

J. Shane Creamer, Jr., has been Executive Director to the Philadelphia Board of Ethics since it was reconstituted in November 2006. 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. Mr. Creamer currently serves as a member of the Steering Committee of the Council on Governmental Ethics Laws (COGEL). A Philadelphia native, Mr. Creamer is a graduate of Gettysburg College and Villanova University School of Law.

Tina Formica has been a member of the Board's staff since March 2007. She serves as the Legal Support Services Coordinator. 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.

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 past president of the Council on Governmental Ethics Laws (COGEL). She is a graduate of the University of Pennsylvania and Rutgers Camden School of Law.

Maya Nayak was appointed as the Board's General Counsel in May 2013. She had served as the Board's Associate General Counsel since May 2008. Previously, Ms. Nayak was a litigation associate with Hangley Aronchick Segal & Pudlin and was a law clerk to the Honorable Berle M. Schiller in the U.S. District Court for the Eastern District of Pennsylvania. She holds undergraduate and law degrees from Yale University.

Michael J. Cooke, Director of Enforcement, joined the Board in April of 2008. Mr. Cooke was formerly an associate at the Philadelphia firm Burke O'Neil LLC and a staff attorney at the Pennsylvania Institutional Law Project. Mr. Cooke graduated from Northeastern University School of Law in 2002.

Elizabeth Baugh, the Public Integrity Compliance Services Supervisor, became a member of the Board's staff in December 2010. A career librarian, Ms. Baugh was previously director of the Northampton Township Free Library in Bucks County and manager of the Learning Resource Center of the Center City Campus of Strayer University. She is a native of Suffolk,

Va., and holds a bachelor's degree in english from Christopher Newport University in Newport News, Va.; a master's degree in education from Old Dominion University in Norfolk, Va.; and a master's degree in library and information science from the University of South Carolina.

Hortencia Vasquez joined the Board in 2008 and is the Board's Legal Services Clerk. A native of the Virgin Islands, she came to Philadelphia seven 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 Spanish and English.

Bryan McHale joined the Board in September 2012 as a Public Integrity Compliance Specialist. A Philadelphia native, he holds a bachelor's degree in political science from Temple University. He has worked for the U.S. Census Bureau and the Internal Revenue Service and prior to joining the Board was a facilitator at public meetings for the Penn Project for Civic Engagement.

Elizabeth Downey joined the Board in August 2013 as the Associate General Counsel. Ms. Downey formerly served as Associate Legislative Counsel in the New Jersey Legislature's Office of Legislative Services in Trenton, New Jersey. She is a graduate of the University of Pennsylvania and Boston University School of Law.

Jordan E. Segall joined the Board in July 2014 as a Staff Attorney. Before joining the Board, Mr. Segall served as a Senior Investigator for the Office of the Inspector General for the City of Philadelphia. He is a native of Baltimore, MD and a graduate of the American University in Washington, D.C. and the University of Pittsburgh School of Law.

New in 2014

Reexamining the Board's Informal Guidance

As noted by Board Chair Michael Reed in his Message, many of the ethics rules applicable to City officials and employees have been in existence since the 1950s and 1960s, but the Board is still asked to interpret and provide advice and guidance for those rules. In comparison, the Campaign Finance and Lobbying Laws are much newer having been enacted in 2006 and 2010, respectively. They, too, are the source of many requests for Board advice.

The Board delivers advice on the old and new Public Integrity Laws in three ways. First, there are written Board Opinions issued directly by the Board that usually respond to questions that

have not previously been answered by the Board or by a court. Second, written General Counsel Opinions are advisory opinions issued by the Board's General Counsel staff responding to questions that have been the subject of a prior Board Opinion, a court opinion, or are answered in the relevant law.

The third and most frequent method for providing assistance is informal general guidance which may be given by Board staff via telephone, email, or through trainings or other in-person contacts. In its prior Annual Reports, the Board counted and reported only the number of informal email guidance responses issued by the General Counsel during each year. It has become clear to the Board that this approach vastly underreported the amount of assistance provided by Board staff during each year.

This Report therefore reflects a broader and more comprehensive method for counting informal guidance by including in-person and telephone assistance contacts with Board staff members, as well as email guidance. These contacts occur on a daily basis. As a result, whereas data in the Annual Report issued in September 2013 indicated that there were 149 informal email guidance responses, the statistics for this Fiscal Year 2014 report indicate that there were at least 770 informal guidance contacts between staff and requesters. The Board believes this is a more realistic measure of the impact of the Board's guidance and assistance. A categorial breakdown of the 770 contacts is provided later in this Report.

The Regulation Process

One of the cornerstones of an effective government ethics program is to have clear rules. The Ethics Board has the authority to interpret and clarify the City's Public Integrity Laws through regulations pursuant to Philadelphia Home Rule Charter sections 4-1100 and 8-407, and so far, it has promulgated nine sets of regulations that interpret and clarify the City's campaign finance and lobbying laws and political activity rules. The Board has also issued regulations on its administrative procedures and training requirements.

During Fiscal Year 2014, the Board began the process of interpreting and clarifying the City's 50-year old gift rule through a proposed regulation. Over the following seven months, the Board publicly discussed the proposed regulation and received extensive public comments and testimony. The Board modified and refined the proposed regulation based on the public comments and testimony, advice from the Law Department, and further analysis and research by Board staff.

It is fair to note that these efforts to clarify the gift rule caused something to happen in Philadelphia that had not happened in at least 50 years, and maybe for the first time ever: people were speaking publicly and with conviction about the City's gift and gratuity restrictions that apply to City officials and employees. The Board believes that this public debate occurred because people have become more knowledgeable about the Public Integrity Laws and care deeply about what the rules are. We think that is a healthy sign of how far the City has come

since the City set out to establish a new and robust ethics program, beginning in 2006.

At the end of that seven month process, on January 30, 2014, City Council introduced legislation that would amend the City's gift rule. That legislation was co-sponsored by all 17 members of City Council and drew extensively from the Board's proposed gift regulation. The Board supported the legislation, which was later passed by Council on March 20, 2014 and signed by Mayor Nutter on March 31, 2014.

The City now has the clearest and strongest gift rule that it has ever had in its history. The Board appreciates the opportunity that Board staff had to work with Council staff on the legislation and on some technical amendments after it was introduced. As state legislators consider reform of the Commonwealth's gift rules, it might be desirable for them to consider the reforms just enacted in Philadelphia as a result of the efforts of the Board, City Council and the Administration. The Board will consider further clarification of the gift law by regulation in the future.

Board Staffing

The Board notes that it has continued to provide all of its services to the City and has maintained the quality of those services while responding to significant staffing changes during the past year.

In a process that was completed in Fiscal Year 2014, four exempt Board staff positions were converted to Civil Service status. This transition was the result of a determination in 2012 by the City Solicitor, at the request of the Civil Service Commission, that Board positions other than Board attorneys and an executive assistant must be filled as Civil Service positions. The conversion process took more than a year, and four incumbent Board employees had to qualify in order to remain on the Board's staff. This process delayed filling an existing staff vacancy. In addition, the Board has filled a staff attorney position and expects to fill another position in Fiscal Year 2015.

The Board expects that the addition of these new staff members will expand its capacity to issue advice, provide training, conduct necessary research, draft needed regulations, and make progress on the online ethics training project.

Training and Outreach Efforts

The Board continued to promote education and training efforts as a major tool to achieve an ethical climate in Philadelphia government. If City officials, employees, candidates, and those engaged in lobbying know how and why the Public Integrity Laws apply to them, they will be better able to avoid violations of the law. Successful training should enable a City official, employee, candidate or lobbyist to recognize a situation in which he or she should seek Board

advice before taking action.

To that end, in the past 12 months, our staff conducted training sessions on ethics, campaign finance, political activity, and financial disclosure. In each session, attendees were encouraged to ask questions, and complex questions were referred for detailed treatment to the Board's General Counsel staff for advice. Lobbying training is slated to begin in late 2014.

Ethics training is mandatory for new City officials and employees, and certain officials and employees and board and commission members are required to attend annual ethics training. Board staff members are continually involved in scheduling, designing, revising and presenting in-person ethics training sessions. Between July 2013 and June 2014, Board staff members conducted 27 ethics training classes that were attended by more than 600 City officials and employees.

Because there was a special election on May 20, 2014 to fill a vacant At-Large City Council seat, the Board offered **Campaign Finance training** for candidates, treasurers and other interested individuals. The session was presented jointly with the City Commissioners and covered the requirements for candidates and political committees under the Pennsylvania Election Code and Philadelphia's Campaign Finance Law.

In a further effort to promote compliance with the Campaign Finance Law and to avoid non-filing violations, our staff issued reminders about due dates for campaign finance reports in advance of each reporting cycle deadline and alerted campaign entities of the 24-hour and independent expenditure reporting requirements.

Plans have already begun for Campaign Finance training sessions beginning in the fall of 2014 in advance of the 2015 Primary and General Elections. All City Council seats, the Mayor's office, the City Commissioners' offices, and the Sheriff's office will be on the ballot. Training will be especially important because there are likely to be new candidates and PACs that are unfamiliar with the contribution limits and other requirements of the City's campaign finance laws.

In preparation for the May 1st annual financial disclosure process for City employees, Board staff presented three **Financial Disclosure training** sessions in March of 2014 for more than 30 City departmental Human Resources (HR) managers. HR managers assist City employees in their departments to file the correct financial disclosure forms. Management of the online financial disclosure system is complicated, and the Board's "refresher" courses are important for HR managers because they review the financial disclosure forms (State, City and Mayor's), the general filing process, and the electronic filing software.

Board staff continues to plan for development of an **Online Ethics training** project which is expected to expand the reach of ethics training. Several years ago staff began to work on online training, but its implementation was delayed by technical issues and continues to be delayed by

a lack of staff resources to complete project tasks. The Board continues to view this project as critical to its ethics training mandate because it will maximize staff resources while allowing the Board to reach a larger number of individuals with ethics training. The online ethics training project is especially important for the members of all City boards and commissions who are subject to an annual ethics training requirement. Most of these individuals are not City employees and many find it difficult to attend training during the work day. Therefore, an online training program is especially appropriate for these individuals. Progress toward "live" online training remains an important goal for staff.

Regulations

The adoption of regulations is one of the ways that the Board interprets the laws over which it has jurisdiction. The Board regularly reviews its existing regulations and proposes new regulations in order to clarify the City's often complex Public Integrity Laws and to make those laws accessible to the regulated community.

Regulation No. 2 (Investigations & Enforcement Proceedings)

Regulation No. 5 (Confidentiality of Enforcement and Investigative Matters and Prohibited Disclosures)

Regulation No. 3 (Referrals to and Cooperation with Other Governmental Enforcement Agencies)

On May 21, 2014, the Board approved posting of a proposed amendment to Regulation No. 2 at the Department of Records. The proposed amendment incorporated into Regulation No. 2 the provisions of Regulation No. 3 and Regulation No. 5. The primary purpose of the amendment was to conform the Board's Regulations to advice the Board received from the City Solicitor regarding the confidentiality of administrative enforcement proceedings. The amendment also proposed substantive, though modest, changes to the confidentiality rule found in Regulation No. 5 and improved the readability and concision of existing Regulation No. 2.

The Board held a public hearing on the proposed amendment on July 16, 2014. On August 6, 2014, the Board approved the proposed amendment after making several modifications as a result of hearing testimony. The amended Regulation became effective on August 18, 2014. The Board also rescinded Regulation No. 3 and Regulation No. 5, effective August 18, 2014.

Regulation No. 1 (Campaign Finance)

On July 16, 2014, the Board approved for public comment posting a proposed amendment to

Regulation No. 1. The Board scheduled a hearing on the proposed amendment for September 17, 2014. The purpose of the amendment is to clarify important campaign finance concepts and to educate candidates, committees, and contributors about the rules applicable to City elections. Among other changes, the proposed amendments would provide additional guidance on how candidates should account for excess pre-candidacy contributions. The proposed amendment would also provide further guidance on when an expenditure by a third party is considered an in -kind contribution to a candidate.

Process for a New Gift Regulation

As noted earlier in this Report, in Fiscal Year 2014 the Board began the process of interpreting and clarifying the City Code's 50-year old gift rule through a proposed regulation. The Board undertook this task because of the frequency of requests for advice and guidance concerning the existing gift rule, Section 20-604 of the City Code, entitled Gifts, Loans and Favors to City Personnel. The goal was to have a clear gift regulation with real-world examples of gift situations encountered by City employees and officials.

The Board received extensive public comments and testimony on its proposal over a period of seven months. The end result of this regulatory activity was the introduction on January 30, 2014 of legislation, co-sponsored by all 17 members of City Council, to improve and clarify Section 20-604 containing the City Code restrictions on gifts to City officials and employees. The legislation reflected many portions of the Board's proposed gift regulation. The Board supported the legislation, which was passed by Council on March 20, 2014 and signed by Mayor Nutter on March 31, 2014.

The Board will consider further clarifying the new gift law with a future regulation containing specific examples of gift situations faced by City officials and employees.

Advice

The Board provides advice through advisory opinions and informal general guidance. In the past year, Board staff began to log the informal guidance that we provide on a daily basis. In addition, Board staff has been providing more informal guidance than before. This stems in part from increasing demands for guidance on the laws over which the Board has jurisdiction. It also reflects Board staffs' efforts, when possible and appropriate, to satisfy requests to have an answer quickly and to talk to someone, rather than only engage in written exchanges.

The Board's two methods for delivering advice, advisory opinions and informal general guidance, are described in more detail here:

1. Advisory Opinions are written opinions that provide a detailed analysis. Requestors are entitled to act in reasonable reliance on advisory opinions issued to them and not be subject to

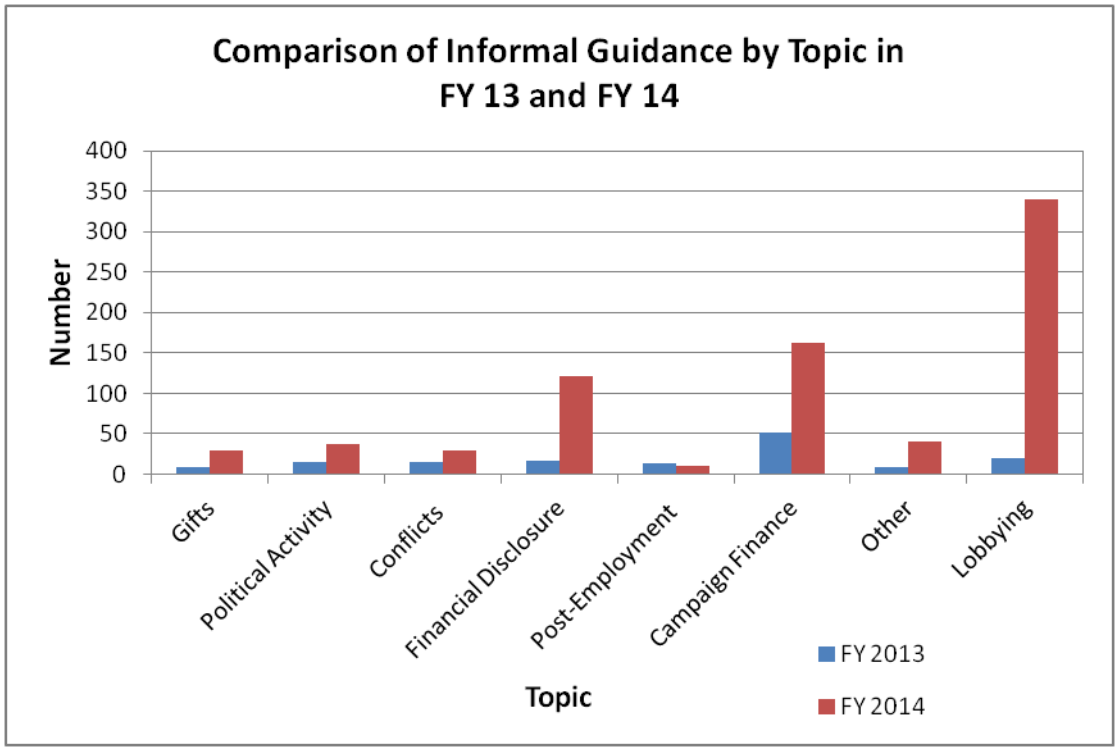
penalties under the laws within the Board's jurisdiction, unless they have omitted or misstated material facts. Upon request, advisory opinions may be non-public. This means that before the opinion is made public it is redacted to conceal facts that are reasonably likely to identify the requestor or other City employees who are involved. A summary of the advisory opinions issued in the last year is provided in this report at Appendix II and III.

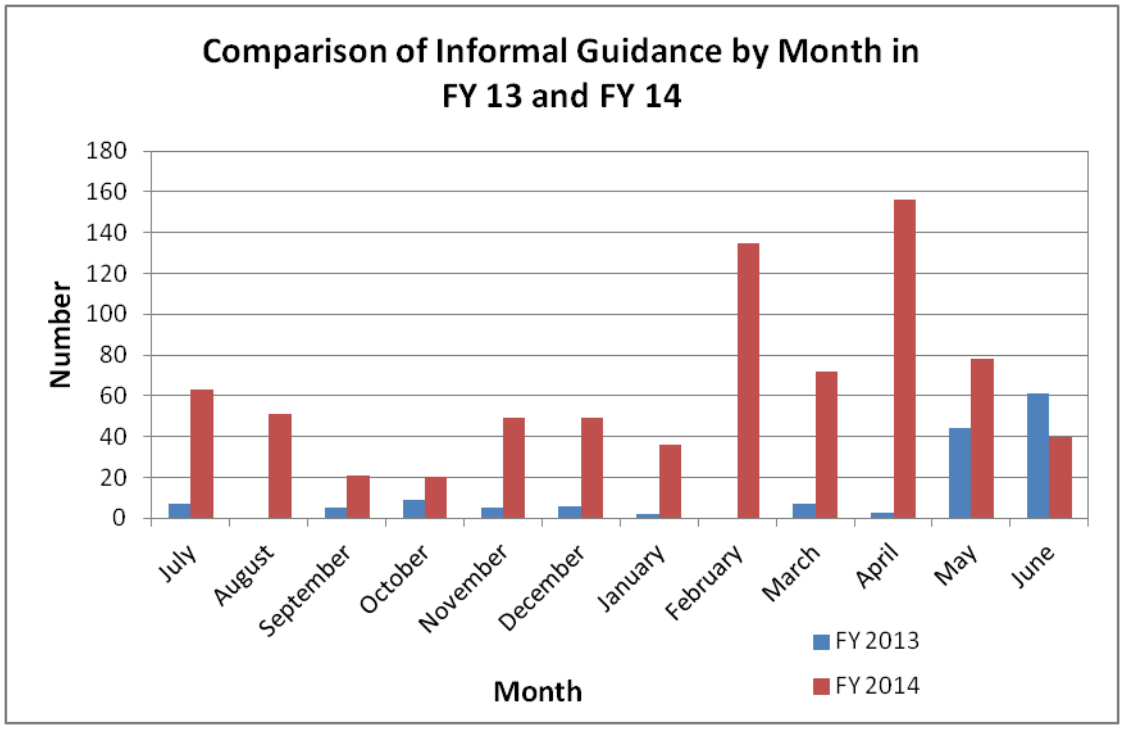
A. Board Opinions are advisory opinions that are approved and issued directly by the Board. Board Opinions generally address novel questions that have not been previously interpreted by the Board or by a court.

B. General Counsel Opinions are advisory opinions issued by the Board's General Counsel staff. These opinions address issues that have been determined by a Board Opinion, a court opinion, or the relevant law.

2. Informal general guidance is information provided by Board staff to educate and inform people about the laws under the Board's jurisdiction. Such guidance can be given by telephone, email, or through trainings. Unlike advisory opinions, informal guidance may not be relied upon to provide protection against penalties for a violation and typically does not contain a detailed analysis.

The more than 750 informal guidance contacts over the last year are summarized by topic and month in the charts that follow.





FY2014 Lobbying

The Board's efforts to implement the City's new Lobbying Law, Chapter 20-1200 of the City Code, were again a major focus of our work in the past 12 months, and we can now report that the online Philadelphia Lobbying Information System is open for business. The Lobbying Law requires that lobbyists, lobbying firms and principals electronically file registrations and expense reports and that lobbying information be made available to the public in a searchable online database and directory of lobbyists. To meet these mandates, the Philadelphia Lobbying Information System (PLIS) began accepting lobbying registrations in January 2014, and expense reports for the first quarter of 2014 were filed electronically in April 2014.

Four members of the Board's staff worked on this project almost every day during the past year in order to accomplish the following:

- Finalize the contract with the software vendor and develop detailed project requirements for lobbying registration and expense reports.

- Test the registration and expense report functions and work daily with the vendor to fix problems.

- Work with the vendor to prepare user "help" guides for the registration and expense report processes.

- Develop the searchable online lobbying database and tools for public users to search the database.

Now that the PLIS is up and running, several Board staff members are involved on a daily basis in the lobbying process. They assist filers with use of the online system, answer questions about the lobbying law, and help members of the public who are searching for lobbying information.

Searchable Lobbying Database

The searchable online lobbying database is the most important tool to make lobbying information accessible to the public. The database enables a citizen to find out which individuals and entities are seeking to affect specific legislative and administrative decisions in City government. Because the PLIS database captures extensive and detailed information about those who lobby and the nature of their lobbying activity, Board staff determined that there should be two kinds of searches to give the public maximum access to information in the lobbying database.

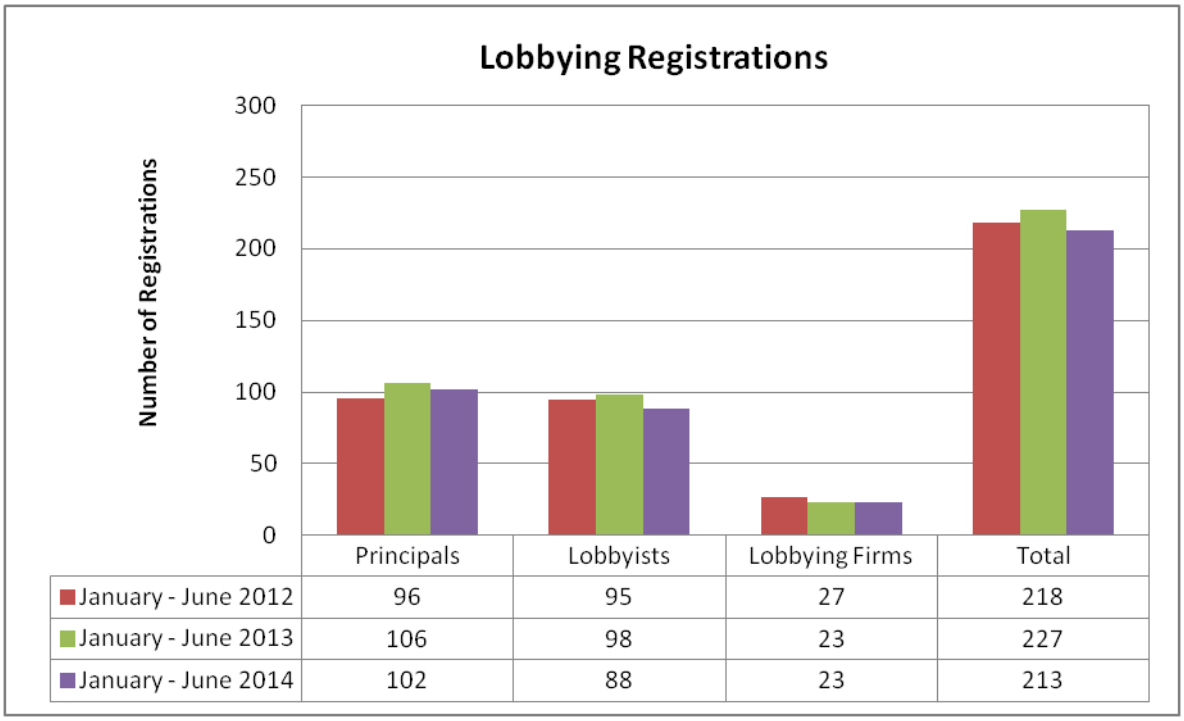
In the first, a member of the public can use the **Quick Search** function to locate and view Registrations and Expense Reports filed by specific lobbyists, principals or lobbying firms or to generate a report and download the data in a spreadsheet or other formats. Because the results of a **Quick Search** often includes a large amount of information, the Board created a second set of reports, the **Public Reports**, which includes six pre-set reports. Each of the six reports simplifies the searching process and provides frequently-requested summary lobbying information. It may be generated and viewed on-screen or downloaded in several formats. The six **Public Reports** are:

- **Expense Report Summary** lists all expense reports filed in a calendar year quarter with the amounts spent during that quarter on direct and indirect communications and on gifts.
- **Gift Expenses by Recipient** lists City officials and employees who have been reported as receiving gifts during a quarter and the source, value and description of the gift(s).
- **Gift Expenditures by Source** lists the lobbyists, principals and lobbying firms that have reported making gift expenditures in a quarter and the recipients, value and description of the gifts.
- **Registrations by Lobbying Subject** lists general lobbying subjects and the lobbyists, principals and lobbying firms that have identified their interest in the subject on a registration.
- **Direct Communications Contacts** lists the City officials and employees who were contacted by lobbyists and principals.
- **All Gifts** generates a single total amount spent on all gifts reported on expense reports for a particular quarter.

Support from the City's Office of Innovation and Technology (OIT) was crucial to the Board's lobbying project. There was no funding in the Board's FY14 budget to implement PLIS, and OIT provided the funds to develop the software and has also indicated that it will support the cost to maintain the system in future years. An OIT Project Manager also worked with Board staff throughout the year on all aspects of the project.

From January 2012 through December 2013, lobbying registrations and expense reports were filed using the Board's interim paper filing system. Lists of registrations and images of expense reports were made available to the public on the Board's website, but there is no lobbying database for those years and comparisons of the contents of registrations and expense reports is not possible.

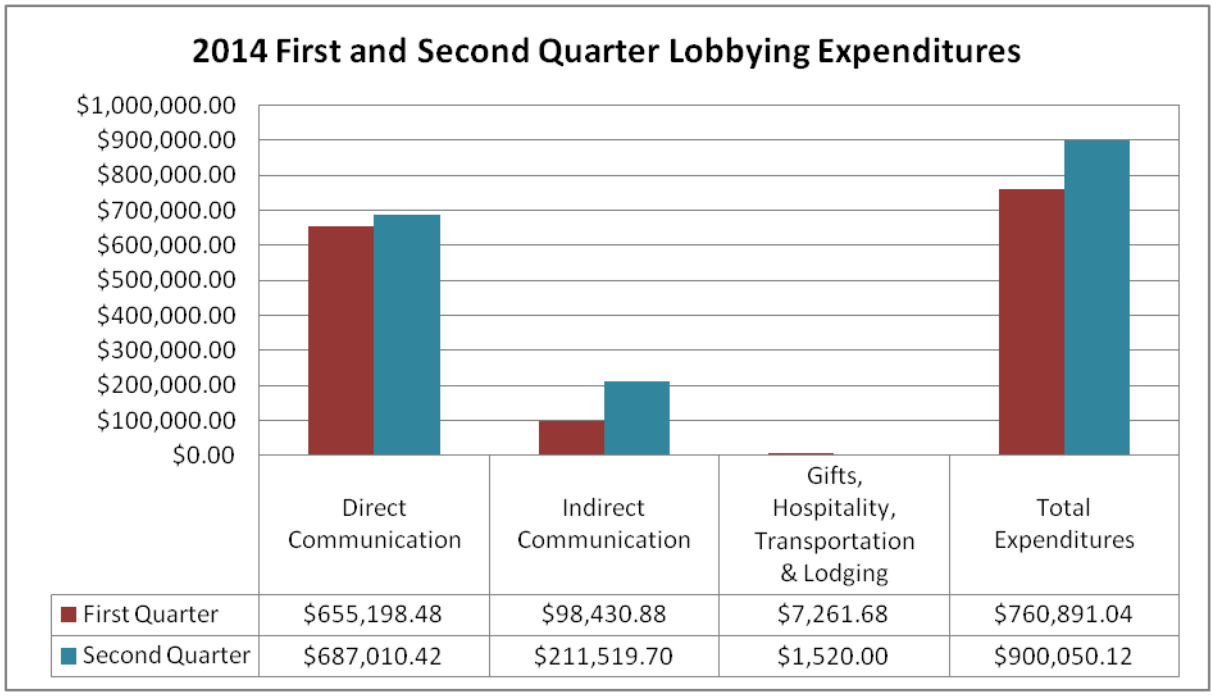
It is possible to compare the number of registrations in the first six months of calendar years 2012, 2013 and 2014. **Figure 1**, below, compares the number of lobbyists, lobbying firms and principals registered during the first six months of each year. The number of registrations has remained relatively stable.



	Principals	Lobbyists	Lobbying Firms	Total
January - June 2012	96	95	27	218
January - June 2013	106	98	23	227
January - June 2014	102	88	23	213

Figure 1

For the first time, data on expenditures reported on quarterly lobbying expense reports is available from the PLIS database. **Figure 2** below uses that data to provide a summary of lobbying costs in Philadelphia in the first half of 2014. In future annual reports, it will be possible to compare lobbying expenditures and activity across full years of data.



	Direct Communication	Indirect Communication	Gifts, Hospitality, Transportation & Lodging	Total Expenditures
First Quarter	$655,198.48	$98,430.88	$7,261.68	$760,891.04
Second Quarter	$687,010.42	$211,519.70	$1,520.00	$900,050.12

Figure 2

Financial Disclosure

Annual financial disclosure requirements provide another way to ensure that there is no conflict between the official responsibilities and the personal financial interests of a City official, employee, or board or commission member. Many individuals in City government therefore file one or more of three annual financial disclosure forms. The filing deadline is May 1st and the three forms are the City Form (required by the City Ethics Code), the Mayor's Form (required by Mayoral Executive Order), and the State Form (required by the State Ethics Act).

While the forms are filed only once each year, the Board's responsibility for the financial disclosure process occupies a significant amount of staff time throughout the year, especially from February through May. To promote compliance with these requirements, Board staff makes every effort to reach as many of the filers as possible with email reminders which describe the various forms and the availability of an online electronic filing system. As a result of reminder emails sent to City employees and board and commission members, the Board

receives an especially high volume of calls during April for assistance with the online financial disclosure system, administered through the Records Department, and the contents of the financial disclosure forms.

All three disclosure reports can be filed electronically which saves paper and reduces the time necessary to process the information. Of the more than 4,800 financial disclosure forms filed in May 2014, 86 percent were filed electronically. Similarly, 84 percent of the forms filed in 2013 were electronically filed.

The Office of Human Resources again assisted the Board with the task of issuing email reminders to the thousands of City employees who file financial disclosures. Board staff issued email reminders to hundreds of members of City boards and commissions, and also mailed letters to more than 600 City employees who left City government during the past year, but still are required to file a financial disclosure statement.

In each reminder, letter or phone contact with a filer, we explain that an in-person Filing Support Center, provided by the Records Department , is available for several days before the May 1st filing deadline. Computer workstations are available for those filers who wish to complete their Financial Disclosure forms onsite, and Support Center staff assist filers one-on-one with the online process.

The financial disclosure process is another key component of transparency in Philadelphia government and is the result of the combined efforts of the Records and Human Resources Departments and the Board of Ethics.

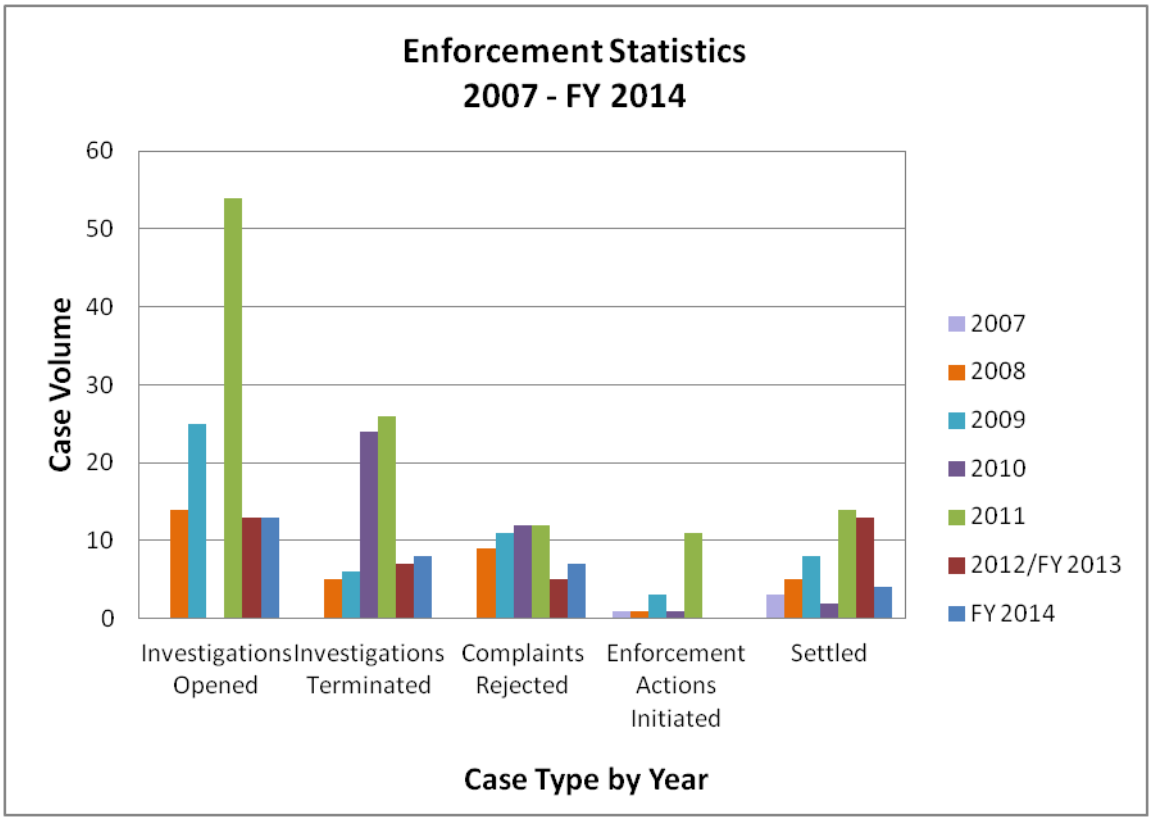
Enforcement

2007-FY 2014 Enforcement Overview

The Board's Executive Director may initiate an investigation either upon receipt of a complaint or if he determines that a potential violation of a law within the Board's jurisdiction has occurred. Upon completion of the investigation, if the Executive Director finds probable cause to believe a violation has occurred, he can initiate an enforcement action. If, after conducting an investigation, the Executive Director does not find probable cause, he will terminate the investigation. Similarly, the Executive Director will reject a complaint that does not state a potential violation of a law within the Board's jurisdiction.

At any point, the Executive Director can seek to resolve a matter through a settlement agreement. In a settlement agreement, subjects of enforcement admit to violations and, in most cases, agree to pay a civil monetary penalty.

The chart below summarizes the Board's investigation and enforcement activity since 2007.



	Investigations opened	Investigations terminated	Complaints rejected	Enforcement actions initiated	Settled
FY 2014	13	8	7	0	4
2012/ FY2013	13	7	5	0	13
2011	54	26	12	11	14
2010	0	24	12	1	2
2009	25	6	11	3	8
2008	14	5	9	1	5
2007	N/A	N/A	N/A	1	3
Total	119	76	56	17	49

Of the 49 settlement agreements concluded since 2007, 39 involved violations of the City's campaign finance law; four involved political activity prohibited by the City's Home Rule Charter; one involved a violation of the Ethics Code's confidentiality provision; one involved violations of the campaign finance law and the Ethics Code; one involved violations of the campaign finance law, the Ethics Code, and the political activity restrictions; one involved violations of the Ethics Code and the political activity restrictions; one involved violations of the lobbying law; and one involved violations of the Ethics Code's conflict of interest provisions and the Charter's restriction on political fundraising.

FY 2014 Enforcement Activity

In FY 2014, Board staff initiated 13 investigations of potential violations of the public integrity laws. In FY 2014, the Executive Director dismissed eight investigations because he did not find probable cause to believe a violation had occurred, as described below. Four matters resulted in settlement agreements, as described below. In addition, the Executive Director rejected seven complaints because they failed to describe a potential violation of a law over which the Board has jurisdiction.

Settlement Agreements

In FY 2014, the Board concluded four settlement agreements. In those settlement agreements, individuals and political committees admitted to violations and agreed to pay a civil monetary penalty. Two of the settlement agreements involved violations of the campaign finance law; one involved violations of the lobbying law, and the other involved violations of the Ethics Code's conflict of interest provisions and the Charter's restriction on political fundraising. In FY 2014 subjects of enforcement agreed to pay a total of $5,000 in civil monetary penalties. All of the Board's settlement agreements are available on the Board's website.

Terminated Investigations

In FY 2014, Board enforcement staff terminated eight investigations after determining that probable cause did not exist to believe a violation had occurred. Three of those investigations involved potential violations of the campaign finance law, two involved potential violations of the lobbying law, one involved potential violations of the Ethics Code's representation prohibition, one involved potential violations of the Ethics Code's gift rule, and one involved potential violations of the Charter's restrictions on political activity.

Litigation Involving the Board

Two major cases involving the Board continued during the past year. Very recent events in the two cases, occurring in August and September 2014, have been included in this Report to provide a current discussion of the cases.

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

In the 2007 primary election, the Cozen O'Connor law firm provided almost $450,000 in legal services to Mayoral candidate Bob Brady. In Advisory Opinion 2007-003, the Board advised the Brady Campaign that contributions received by a candidate after an election are subject to the contribution limits imposed by Section 20-1002 of the City Campaign Finance Law if those contributions are used to retire campaign debt incurred before the election. Cozen challenged the Board's Opinion and sought a declaratory judgment in the Court of Common Pleas in March 2008 that the legal expenses incurred by the Brady Campaign were not "expenditures" as defined under Philadelphia Code § 20-1001(10) and that post-election contributions or debt forgiveness are not "contributions" as defined under Philadelphia Code § 20-1001(6). (In June 2010, City Council amended the campaign finance law to codify the Board's interpretation 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 that was incurred for use in influencing the election of the candidate.)

After the Board prevailed on its preliminary objections in the Court of Common Pleas on the ground that Cozen lacked standing, affirmed by the Commonwealth Court, the case was litigated up to the Pennsylvania Supreme Court, which reversed on narrow grounds and remanded for further proceedings in February 2011. On remand, the parties filed cross-motions for judgment on the pleadings, and on July 18, 2012, the Honorable Leon Tucker of the Philadelphia Court of Common Pleas ruled in the Board's favor and held that post-election forgiveness by Cozen O'Connor of the debt owed to it by the Brady Campaign at one time and *in toto* would be subject to the City's contribution limits.

Cozen appealed Judge Tucker's ruling to the Pennsylvania Commonwealth Court, which affirmed the trial court's ruling on June 18, 2013, crediting nearly all of the Board's arguments. Cozen then filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on July 17, 2013. In an Order dated January 6, 2014, the Pennsylvania Supreme Court granted Cozen O'Connor's Petition for Allowance of Appeal in this matter.

Oral argument on Cozen O'Connor's appeal was held before the Pennsylvania Supreme Court on September 10, 2014. Steve Cozen argued on behalf of his firm, and our *pro bono* counsel from Dechert, Elisa Wiygul, argued on behalf of the Board. Justices McCaffery and Todd did not participate in the oral argument. We await the decision of the Pennsylvania Supreme Court.

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

On May 18, 2011, Lodge No. 5 of the Fraternal Order of Police filed a lawsuit in federal court challenging the City's ban on political contributions by members of the police department. Named defendants included the City, Mayor Nutter (official and individual capacity), the Ethics Board, each individual Board Member (official capacity only) and the Board's Executive Director, J. Shane Creamer, Jr., (official and individual capacity). Plaintiffs included Lodge No. 5 of the FOP, John McNesby (President of the FOP), COPPAC (the FOP's PAC), and four individual police officers.

The case was assigned to the Honorable Juan R. Sanchez of the Eastern District of Pennsylvania and the parties filed cross motions for summary judgment on May 16, 2012. Judge Sanchez heard oral argument on July 11, 2012 and subsequently, on February 21, 2013, he granted the Board's motion for summary judgment and dismissed the FOP's case, thereby upholding the ban. The FOP appealed Judge Sanchez's ruling to the Third Circuit Court of Appeals. The case was argued before the Third Circuit on November 12, 2013.

On August 18, 2014, a panel of the U.S. Court of Appeals for the Third Circuit ruled on the FOP's appeal from the trial court decision which upheld the Charter's ban on political contributions by members of the Police Department. In a 57 page Opinion written by Judge Hardiman, the Court held that Charter Subsection 10-107(3) violates the First Amendment to the extent it prohibits members of the Philadelphia Police Department from making contributions to their union's political action committee, COPPAC.

The Court did find that protecting police officers from politically motivated forces was a legitimate rationale for the City, but that the contribution ban was poorly tailored to the City's articulated interests. The Court suggested that repealing the automatic payroll deduction ordinance (Bill 060181), which the Court described as having an "inherently coercive nature," or enforcement of "existing anti-solicitation measures" that can be drawn from the Charter's political activity restrictions, would be more closely drawn to the City's legitimate interests.

The Court stated that it was reviewing and striking down only the portion of the Charter Subsection 10-107(3) fundraising restriction's application to members of the Police Department making contributions to political committees that are not affiliated with a candidate. The opinion explained that the Court was not deciding whether police officers may be prohibited from contributing directly to political candidates under the Charter ban.

The City Solicitor has decided not to move for reconsideration or to appeal the decision to the U.S. Supreme Court. The Board will therefore consider a Resolution at its September 2014 meeting that would recognize the result of the ruling and direct staff to begin the process of amending Regulation No. 8.

Board of Ethics FY 14 Fiscal Report

In addition to filing an annual report of its activities, the Board is required by Home Rule Charter Section 3-806(k) to provide an annual accounting of its expenditures. As reported below, the Board spent a total of $768,072 between July 1, 2013 and June 30, 2014, which was less than its FY14 $1,000,000 appropriation:

Class	FY14 Appropriation	FY14 Total Spent
100 – Salaries	$890,000	$741,840
200 – Purchase of Services	$96,000	$19,279
300/400 – Materials, Supplies & Equipment	$14,000	$6,953
Total:	$1,000,000	$768,072

Two major factors contributed to spending below the Board's FY14 appropriation. First, the Board delayed filling vacant positions in FY14 until the transition of exempt staff members to Civil Service status was complete. The Board resumed the hiring process for a new staff attorney in the second half of FY14, and the position was filled at the beginning of FY15. The Board expects to fill another much-needed position in the near future.

Second, as in prior years, a significant portion of the Board's Class 200 appropriation also remained unspent in FY14. This situation occurs because the Board must anticipate that it will need funds to pay for legal representation in the event of an outside legal challenge to its authority. The City Law Department has not provided representation for the Board or paid outside counsel in certain major cases, and the Board therefore allocates Class 200 funds for legal services in anticipation of such challenges. It is important to note that the total funds available in Class 200 would most likely not cover the cost of outside attorneys to represent the Board in such legal actions. The likelihood of such litigation is not speculative; the Board is currently represented on a *pro bono* basis by outside counsel in a case that began in 2008.

Because the Board has had the benefit of *pro bono* representation in several major cases, it has not yet had to rely on its Class 200 funds to pay for outside counsel. In the past four years, the *pro bono* legal services provided to the Board by the Dechert law firm are valued well in excess of $1 million. The Board operates with the knowledge that these generous volunteer legal services may not be available for future litigation and Class 200 funds would therefore be insufficient to cover its legal costs.

As noted earlier in this Report, there was no funding in the Board's FY14 budget for the design and implementation costs of the Philadelphia Online Lobbying System (PLIS). Financial support from the City's Office of Innovation and Technology (OIT) was therefore crucial for

the completion of the Board's lobbying project. OIT has indicated that it will provide funds in the future to pay for annual maintenance and support of the lobbying system. However, the Board is aware that this funding may not always be available and that operation of the lobbying system could be put at risk.

Between July 1, 2013 and June 30, 2014, the Board spent $768,072, as follows:

Class 100 – Personal Services

Class	Name	Title	Amount Paid
101	Baugh, Elizabeth	Compliance Services Director	53,206
101	Cooke, Michael	Director of Enforcement	110,010
101	Creamer, Jr., J. Shane	Executive Director	137,913
101	Downey, Elizabeth	Associate General Counsel	77,925
101	Formica, Tina	Administrative Assistant	55,800
101	McHale, Bryan	Compliance Specialist	36,719
101	Massar, Nedda	Deputy Executive Director	120,947
101	Nayak, Maya	General Counsel	117,267
101	Vasquez, Hortencia	Clerical Assistant	32,053
101	**Total Class 100**		**$741,840**

Class 200 – Purchase of Services

Class	Class Description	Description of Services	Amount Paid
209	Telephone	Equipment & Service	146
210	Postal Services	Delivery Service & Postage	1,526
211	Transportation	Travel & Transportation	4,444
240	Advertising	Job Postings	500
255	Dues	Professional Membership Dues	
256	Seminar & Training Sessions	Seminars, Training & Continuing Legal Education	2,886
258	Court Reporting	Court Reporting Services	2,225
260	Repairs & Maintenance	Copier	6,014
266	Maintenance & Support – Computer Hardware & Software	Software Maintenance	1,173
299	Other Expenses	Subpoena Copy Charges	365
	Total Class 200		**$19,279**

Class 300 & 400 – Materials, Supplies & Equipment

Class	Class Description	Description of Purchase	Amount Paid
304	Books & Other Publications	Books	1,579
320	Office Materials & Supplies	Office Materials, Supplies & Paper	3,550
325	Printing	Stationery, Cards & Nameplates	20
427	Computer Equipment & Peripherals	Computers, Printers, & Projectors	1,804
	Total Class 300/400		**$6,953**

Total FY14 Expenses = $768,072

Looking Forward

This Annual Report is an opportunity to highlight the variety of the Board's activities to promote the City's Public Integrity Laws. Among other things, those laws set standards of conduct for all City officials and employees and require financial disclosure by certain of those City officials and employees. The laws also set important rules, including contribution limits, in campaigns for City elective offices, and restrict political activity by City employees and officials. The Board's work also makes information easily accessible to the public about campaign contributions and expenditures and lobbying of City government.

By completing and implementing the lobbying information and reporting system, reporting on the expanded scope of its informal guidance, and engaging in numerous forms of regulatory activity during the past year, the Board of Ethics continued to play an essential role in Philadelphia. All of the Board's programs and activities promote honesty, integrity and transparency in City government. The Board of Ethics is committed to serving as a valuable resource for City officials and employees and for the citizens of Philadelphia.

Appendices

Appendix I: Amended Regulation 2

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 2

INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS

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SUBPART A. SCOPE; DEFINITIONS.

2.0 Scope. This Regulation is promulgated by the Board pursuant to its authority under §§ 4-1100 and 8-407 of the Home Rule Charter and § 20-606(1) of the Philadelphia Code and interprets Code §§ 20-606(1)(f)-(k) and 20-606(2) regarding complaints, investigations enforcement proceedings, confidentiality, and related matters.

2.1 Definitions. As used herein, 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. Complainant. A person who has submitted a complaint to the Board.

d. Complaint. A written document submitted to the Board for the purpose of initiating a Board investigation or enforcement action.

e. Executive Director. The Executive Director of the Board and his or her designees.

f. General Counsel. The General Counsel of the Board and his or her designees.

g. Investigation. The Board's inquiry into an alleged violation of the Public Integrity Laws.

h. Person. A business, individual, corporation, non-profit, union, association, firm, partnership,

committee, political committee, club, or other organization or group of persons.

i. **Public Integrity Laws.** Chapters 20-600, 20-1000, and 20-1200 of the Philadelphia Code and Sections 10-100, 10-102, 10-105, and 10-107 of the Philadelphia Home Rule Charter, and any other matters assigned to the Board by ordinance.

j. **Referral.** Information that a City department or a federal, state, or local governmental entity with civil or criminal enforcement powers, or an employee or representative of any of the foregoing, provides to the Board or Board Staff so they may determine whether a potential violation of the Public Integrity Laws has occurred.

k. **Respondent.** A person against whom the Executive Director has instituted an administrative enforcement proceeding or against whom the Board has instituted a judicial enforcement proceeding.

l. **Subject.** A person who is identified in a complaint, referral, investigation, or preliminary inquiry as having potentially violated the Public Integrity Laws.

SUBPART B. SEPARATION OF FUNCTIONS.

2.2 As required by law, in the context of administrative enforcement proceedings and related investigations the Board shall maintain a separation between the adjudicative functions and the investigatory or prosecutorial functions. In this regard, the individual members of the Board, any Hearing Officer in a particular case, and the General Counsel shall be considered to be part of the "adjudicative function," and the Executive Director and professional staff or consultants directed by the Executive Director shall be considered to be part of the "investigatory" or "prosecutorial" function.

SUBPART C. INVESTIGATIONS.

2.3 Preliminary Inquiry. The Executive Director may, at his or her discretion, conduct a preliminary inquiry to determine if there is reason to believe a violation of the Public Integrity Laws has occurred. Board and Board staff shall keep preliminary inquiries confidential as required by this Regulation. A preliminary inquiry is not an investigation and is not subject to the disclosure limitations of Paragraph 2.11(a) or the notice provisions of Paragraph 2.6(e).

2.4 Initiation of Investigations. The Executive Director shall have the authority to initiate an investigation upon:

a. Receipt of a complaint that meets the requirements of Paragraph 2.5;

b. Receipt of a referral from another government and/or law enforcement agency, if the referral describes a potential violation of the Public Integrity Laws; or

c. Determining, through a preliminary inquiry, that there is reason to believe a violation of the Public Integrity Laws may have occurred.

An investigation that is not initiated in response to a complaint shall not be subject to the requirements of Paragraph 2.5.

2.5 Complaints.

a. Any person who believes a violation of the Public Integrity Laws has occurred may submit a written complaint to the Executive Director. A complaint shall:

i. Provide the full name and address of the complainant, and identify as the subject of the complaint the person or persons who is alleged to have committed violations of the Public Integrity Laws, including their names and addresses if known; and

ii. Contain facts that describe a violation of the Public Integrity Laws and shall include relevant times, places, and names of witnesses, if known.

b. **Initial Review.** Upon receipt of a complaint, the Executive Director shall review the complaint for substantial compliance with the requirements of Paragraph 2.5(a). If the complaint is in compliance, the Executive Director shall notify the complainant that the complaint has been accepted. If a complaint does not comply with Paragraph 2.5(a), the Executive Director shall dismiss the complaint and shall notify the complainant of dismissal and the reasons therefore.

c. **De Minimis Complaints.** The Executive Director may dismiss or suspend further processing of a complaint or other investigation if, in his or her judgment, the alleged violation is trivial, typographical or clerical, or in other respects a *de minimis* violation; provided, however, that the Executive Director shall report regularly to the Board on the number and nature of complaints dismissed or suspended under this Paragraph.

d. **Frivolous Complaints prohibited.** No person shall submit a false or frivolous complaint to the Board. If the Executive Director receives information that a complaint is false or frivolous, he or she may initiate an investigation into the circumstances surrounding the drafting and filing of the complaint.

2.6 Conduct of an Investigation.

a. **Purpose.** The purpose of an investigation is to determine whether there is probable cause to believe that a violation of the Public Integrity Laws has occurred. An investigation ends when the Executive Director either makes a finding of probable cause or terminates the investigation pursuant to Paragraph 2.6(e) or when the matter is resolved by a settlement agreement approved pursuant to Subpart G.

b. **General.** An investigation may include, but is not limited to, field investigations and inspections, the issuance of subpoenas, the taking of sworn testimony, requests for the production of documents, interrogatories, requests for admissions, the review of public filings, and other methods of information gathering.

c. **Subpoenas and Subpoenas Duces Tecum.** The Executive Director or the Board Chair shall have the authority to issue subpoenas and subpoenas duces tecum on behalf of the Board in connection to any investigation conducted pursuant to this Regulation. If any person refuses to comply with a subpoena issued under this Paragraph, or while appearing pursuant to it, refuses to answer any question or produce any records or materials, the Board, by majority vote, may direct the Executive Director to apply for the enforcement of the subpoena in the appropriate Court of Common Pleas.

d. **Testimony.** The Executive Director shall have the authority to administer oaths and affirmations on behalf of the Board and to take testimony from any person in connection to any investigation conducted pursuant to this Regulation.

e. **Termination.** The Executive Director shall have discretion to terminate an investigation upon reasonable notice to the Board. If the investigation is based on a complaint meeting the requirements of Paragraph 2.5(a), the Executive Director shall notify the complainant of the termination and the reasons therefore.

If the Executive Director knows that the subject of an investigation was aware of the investigation, he or she shall notify the subject of the termination and the reasons therefore. When notifying a complainant or subject of an investigation of the termination of an investigation, the Executive Director shall inform them that they are no longer bound by the disclosure prohibition of Paragraph 2.11(a).

The Executive Director may 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.

f. **Referring matters to other government agencies.** The Board or Executive Director may refer any matter related to, or discovered in, an investigation to any other governmental or law enforcement agency as the Board or Executive Director deems appropriate. If the Board deems a potential violation by an officer or employee to be too minor to warrant enforcement by the Board, it may refer the matter

to the head of the officer's or employee's agency to take appropriate disciplinary action.

2.7 Retaliation Prohibited. No officer or employee shall discharge, change the official rank, grade or compensation, or deny a promotion of an officer or employee, or threaten to do so, for filing a complaint with or providing information to the Board or Board staff, or for testifying in any Board proceeding.

2.8 Mandatory Cooperation with the Board. All City officers and employees shall cooperate fully with any request of the Board or Board staff made pursuant to the execution of the Board's powers and duties. Failure to cooperate with the Board or Board staff includes:

a. Refusal to meet with Board staff to provide information related to an investigation or preliminary inquiry;

b. Responding untruthfully to questions Board staff ask regarding an investigation or preliminary inquiry;

c. Telling another person not to meet with Board staff or answer questions relating to an investigation or preliminary inquiry;

d. Directing or suggesting that another person provide false information to the Board or Board staff; or

e. Destroying evidence related to an investigation or preliminary inquiry.

SUBPART D. CONFIDENTIALITY OF COMPLAINTS AND INVESTIGATIONS

2.9 Board records, reports, memoranda, or files related to a complaint, preliminary inquiry, or investigation shall be confidential and shall not be disclosed, except as provided by this Subpart.

2.10 Confidentiality of complaints and referrals.

a. **Disclosures by persons other than the Board or Board staff**. A person may disclose his or her intention to file a complaint or make a referral, the fact that he or she has filed a complaint or made a referral, or the substance of the complaint or referral itself.

b. **Disclosures by the Board or Board staff.** The Board and Board staff shall not disclose the identity of a complainant or the complaint itself unless compelled to do so by court order. The Board and Board Staff may disclose the source of a referral in an approved settlement agreement or in the course of a judicial or administrative enforcement proceeding, appeal, or other legal proceeding, or in a public announcement concerning any of the foregoing.

2.11 Confidentiality of Investigations.

Disclosures by persons other than the Board or Board staff. While an investigation is ongoing, a person may not disclose any information or documents related to that investigation that he or she has learned or obtained solely from the Board or Board staff, including the fact that an investigation is ongoing, except as follows:

i. A disclosure made for the purpose of seeking the advice of legal counsel;

ii. A disclosure made in the course of a judicial proceeding;

iii. A disclosure made 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;

iv. A disclosure made in testimony under oath before a governmental body or court; and

v. A disclosure required by law.

A person may disclose information or documents related to an investigation that he or she has obtained from a source other than the Board or Board staff, including the content of any statements he or she has made to the Board or Board staff. Once an investigation has ended, a person may disclose any information about that investigation.

b. **Disclosures by the Board or Board staff.** The Board and Board Staff shall not disclose or acknowledge at any time any information or documents related to a preliminary inquiry or investigation except as necessary to fulfill their duties or if otherwise required by law. The following are examples of permissible disclosures:

i. A disclosure made for the purpose of seeking the advice of legal counsel;

ii. A disclosure made 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;

iii. A disclosure made in a referral by the Board to a government agency, as provided in Paragraph 2.6(f);

iv. A disclosure made in testimony under oath before a governmental body or court;

v. A disclosure made to a complainant, source of a referral, or subject of a complaint, investigation, or preliminary inquiry or his or her legal counsel or agent;

vi. A disclosure made to a witness in a preliminary inquiry or investigation or his or her legal counsel or agent;

vii. A disclosure made in order to initiate or pursue a judicial enforcement proceeding or in a public announcement concerning a judicial enforcement proceeding; and

viii. A disclosure made in an approved settlement agreement or in a public announcement concerning such settlement agreement.

SUBPART E. ADMINISTRATIVE ENFORCEMENT.

2.12 Initiation of an Administrative Enforcement Proceeding. If the Executive Director finds there is probable cause to believe that a violation of the Public Integrity Laws has occurred, and that the matter is appropriate for an administrative adjudication by the Board, the Executive Director shall initiate an administrative enforcement proceeding. The Executive Director shall not engage in any *ex parte* communications with the Board, its General Counsel, or any Hearing Officer appointed by the Board, with respect to a pending administrative enforcement proceeding.

2.13 Notice of Administrative Enforcement Proceeding. To commence the enforcement proceeding, the Executive Director shall serve a Notice of Administrative Enforcement Proceeding ("Notice") on each respondent whom he or she alleges has violated the Public Integrity Laws.

a. **Contents.** The Notice shall contain the following: (i) a description of the acts and/or omissions of the respondent that form the basis for each alleged violation; (ii) the applicable provisions of law that are alleged to be violated; and (iii) the deadline for the respondent's response required under Paragraph 2.14. The Notice shall inform the respondent of his or her right to request a hearing. The Notice shall also inform respondent that a request for a hearing shall be made in his or her written response to the Notice and that a respondent's failure to request a hearing is a waiver of the right to a hearing as set forth in Paragraph 2.14(c).

b. **Service.** The Executive Director shall serve the Notice on each respondent by personal service, certified mail, or any other method that provides proof of delivery. The Executive Director may serve a respondent whose address is unknown either by personally delivering the Notice to such respondent, or his or her attorney or agent, or by any means of substituted or constructive service authorized by Pennsylvania statute or civil rule. The Executive Director shall serve a copy of the Notice on the General Counsel.

2.14 Opportunity to Respond. The respondent has the right to respond in writing to the Notice of Administrative Enforcement Proceeding. The response is due within twenty (20) days of the date of service of the Notice, unless, for exigent circumstances, the Board or its Hearing Officer shall fix a shorter time. Upon the request of the respondent, the Board its designee may grant an extension of time to respond to the Notice. A request for an extension shall be in

writing and shall set forth the basis for the request.

a. **Appearance before Board.** If the respondent wishes to appear before the Board to contest the allegations in the Notice, the respondent shall timely request a hearing in his or her response to the Notice. The respondent may be represented by counsel, and may call witnesses and present evidence in his or her defense at such hearing.

b. **Representation.** If the respondent is represented by counsel, he or she shall so notify the Board and shall provide the General Counsel with counsel's name, address, e-mail address, telephone number, and attorney number.

c. **Waiver.** A respondent's failure to request a hearing in his or her written response to the Notice is a waiver of the right to a hearing. A respondent's failure to respond in writing to the Notice by the deadline set forth in this Paragraph is a waiver of the right to a hearing. The Board may grant an untimely request for a hearing if such request is made before the Board votes to approve its final determination in the matter as provided in Paragraph 2.20.

2.15 Confidentiality of Administrative Enforcement Proceedings.

a. The Board's administrative enforcement proceedings shall be confidential with closed hearings, unless the respondent has provided written consent to a public proceeding.

b. Unless a respondent requests a public proceeding:

i. The Board and Board staff shall not make the proceeding public or disclose any information about it except as necessary to carry out their duties. Only persons who are necessary for the proceeding may be present during a hearing.

ii. Respondent and respondent's counsel may make such disclosures as are necessary to participate in the proceeding and to seek or provide legal advice or representation. In addition, respondent and counsel may disclose information related to a proceeding that they have obtained from a source other than the Board, Board staff, or the proceeding.

iii. A witness may make such disclosures as are necessary to participate in the proceeding or seek legal advice. In addition, a witness may disclose information related to a proceeding that he or she has obtained from a source other than the Board, Board staff, or the proceeding.

c. If a respondent provides written consent to a public proceeding, it may not be withdrawn. If a respondent consents to a public proceeding, the Board will make all filings in the proceeding public while it is pending and will hold a public hearing.

d. Once the Board has served notice of its final determination on the respondent, the adjudication is no longer pending and the Board and Board staff, respondents, respondents' counsel, and witnesses may disclose any information about the proceeding. However, the Board and Board staff shall not disclose the identity of a complainant or the complaint itself unless compelled to do so by court order.

2.16 Administrative Enforcement Hearings. The Board may conduct hearings to adjudicate alleged violations of the Public Integrity Laws. A quorum of Board members need not be present for a hearing to proceed. One or more Board members shall preside over all such hearings, and determine the conduct and order of the proceeding. The Board may, however, appoint a Hearing Officer to oversee pre-hearing disclosures, preside over a hearing, and prepare Findings of Fact and Conclusions of Law for the Board's consideration. Respondents to an enforcement proceeding will be afforded a full and fair opportunity to be heard, as set forth below.

a. **Notice of Hearing.** The Board shall notify the parties of the date and time of the hearing in advance of the hearing. All hearings shall be held at the offices of the Board of Ethics, unless otherwise specified by the Board.

b. **Oaths and Affirmations.** The Board and its designees shall have the power to administer oaths and take testimony on any matter relevant to the alleged violations that are the subject of the hearing.

c. **Subpoenas.** The Board and its designees shall have the power pursuant to Charter § 8-409 to issue subpoenas to compel the attendance of witnesses and the production of documents and materials relevant to the alleged violations that are the subject of the hearing. After the Board issues subpoenas for administrative adjudication hearings, the Executive Director and respondents shall have the authority to apply for enforcement of the subpoenas in the appropriate Court of Common Pleas if any person refuses to comply with any such subpoena, or while appearing pursuant to it, refuses to answer any question or produce any records or materials.

d. ***Ex parte* communications.** No party shall engage in a substantive *ex parte* communication with any member of the Board (including, for purposes of this subparagraph, the General Counsel and any Hearing Officer) concerning the administrative enforcement proceeding. Communicating with the General Counsel regarding issues such as scheduling is not a substantive *ex parte* communication.

e. **Resolution of Pre-hearing Matters.** The Board may designate a single Board member or a Hearing Officer to resolve matters related to pre-hearing disclosures and submissions.

f. **Maintenance of Order.** The Board, or its Hearing Officer, may exclude an individual from a hearing or limit the number of persons attending a hearing as necessary to limit disruption and maintain an orderly and efficient hearing.

g. **Additional Procedures.** The Board may approve additional procedures for the conduct and management of administrative enforcement proceedings. Any additional procedures approved by the Board will be provided to the parties in advance of a hearing.

2.17 Discovery.

a. **Pre-hearing exchange and submission of information.**

i. At least 21 days prior to the hearing, the Executive Director and the respondent shall exchange the names and addresses of witnesses they plan to call to testify and copies of any documents they intend to offer as evidence.

ii. At least 14 days prior to the hearing, the Executive Director and respondent shall submit to the Board the names of any witnesses they plan to call to testify and copies of any documents they intend to offer as evidence.

iii. The Board may approve additional requirements for the pre-hearing submission of information to the Board. Any additional requirements approved by the Board will be provided to the parties in advance of a hearing.

iv. The Board or its Hearing Officer may, for exigent circumstances, fix a shorter time for the exchange and submission of information described in this Paragraph.

v. The Executive Director and the respondent shall not offer any contested evidence at the hearing other than from witnesses and documents identified as required by this Paragraph, provided that the Board or its Hearing Officer may grant exceptions for good cause shown.

b. **No other discovery.** Except for the exchanges of information described in this Paragraph, there shall be no other discovery, unless voluntarily agreed to by the Executive Director and the respondent.

2.18 Examination and Cross-Examination. Witnesses shall testify under oath or affirmation, and shall be subject to reasonable examination and cross-examination. Witnesses shall appear on behalf of or at the invitation or subpoena of the Board or on behalf of the parties to the proceeding.

a. **Written Testimony.** The Board, or its Hearing Officer, may allow any party or witness to offer testimony in written form. Such written testimony shall be received in evidence with the same force and effect as though it were stated orally at the hearing by the party or witness who has given the evidence, provided that such testimony is sworn under penalty of perjury, and the party or witness is available to appear at the hearing for cross examination as requested by any party to the proceeding.

b. **Examination of Witnesses by the Board.** Board members, or the Board's Hearing Officer, may ask questions of witnesses at any time.

c. **Limitation of Witnesses and Examination.** The Board, or its Hearing Officer, may limit the testimony of witnesses whose testimony is cumulative or similar. The Board, or its Hearing Officer, may limit the time to be spent on the direct or cross-examination of a witness or of a party's overall examination and cross examination of witnesses.

2.19 Evidence. The Board, or its Hearing Officer, shall not be bound by technical rules of evidence in administrative enforcement proceedings, and all relevant evidence of reasonably probative value may be received.

a. Official Notice. The Board, or its Hearing Officer, may take official notice of relevant laws, official regulations and transcripts of prior administrative enforcement proceedings; and of judicially cognizable facts, facts of common public knowledge, and physical, technical or scientific facts within the Board's specialized knowledge.

b. Documentary Evidence. The Board, or its Hearing Officer, may accept, at its discretion, copies and excerpts of documents and other records if the original is not in the possession of a party or readily available.

2.20 Final Board Determinations.

a. After providing the respondent with an opportunity to respond to the Notice of Administrative Enforcement Proceeding and to contest any alleged violations at a hearing conducted pursuant to this Regulation, the Board shall deliberate on the evidence and determine, by a preponderance of the evidence, whether a violation of applicable law has occurred, and whether to assess penalties for any such violations. A determination to find a violation and assess a penalty requires a majority vote of Board members present and voting. A quorum of Board members must participate in the vote on a final determination. The decision of the Board shall be the final agency action.

b. If the respondent does not request a hearing, the Board may make its final determination based on:

   i. Undisputed allegations in the Executive Director's Notice of Administrative Enforcement Proceeding; or

   ii. Evidence submitted by the Executive Director in support of the Notice of Administrative Enforcement Proceeding, including but not limited to deposition transcripts, documents, and affidavits or declarations.

c. The Board shall serve notice of the final determination on the respondent by any method identified in Paragraph 2.13(b).

2.21 Publication of Final Determinations. The Board shall make its final determination public, including all adjudication filings and the hearing transcript. The Board shall not make public internal documents concerning the adjudication, such as internal legal memoranda drafted by General Counsel staff for the Board or by Enforcement staff for the Executive Director. The Board and Board staff shall not disclose the identity of a complainant or the complaint itself unless compelled to do so by court order.

SUBPART F. JUDICIAL ENFORCEMENT

2.22 Scope. This Subpart shall apply to enforcement actions initiated by the Board in the Court of Common Pleas.

2.23 Request for Authorization of Judicial Enforcement. If the Executive Director finds there is probable cause to believe that a violation of the Public Integrity Laws has occurred, and that the matter is appropriate for judicial enforcement, then the Executive Director shall present the Board with the allegations and an explanation of his or her finding of probable cause and request authorization from the Board to initiate judicial enforcement.

2.24 Opportunity to Address the Board. The Executive Director shall notify the subject of the finding of probable cause by the Executive Director and shall provide him or her with the allegations submitted to the Board pursuant to Paragraph 2.23. The Executive Director shall inform the subject that he or she may appear at the next public meeting of the Board to address the Board and respond to the allegations.

The provisions of Paragraph 2.24 shall not apply to actions to enforce a subpoena issued by the Board or to actions seeking emergency relief.

2.25 Board Action on Request for Authorization of Judicial Enforcement. After reviewing the allegations submitted by the Executive Director and considering the information, if any, provided by the subject, the Board shall:

a. Reject the Executive Director's finding of probable cause and direct that the matter be dismissed;

b. Direct the Executive Director to initiate judicial enforcement; or

c. Determine that the matter is appropriate for administrative enforcement and direct the Executive Director to proceed under Subpart E of this Regulation, but only if the subject consents, in writing, to the matter being so resolved and agrees to waive any due process challenge based on the commingling of adjudicatory and prosecutorial functions arising from prior consideration of or exposure by any member of the Board or its staff to the relevant facts, allegations, or legal theories.

The Board shall notify the subject of its decision regarding the Executive Director's request for authorization of judicial enforcement.

SUBPART G. SETTLEMENT AND CONCILIATION

2.26 Settlement negotiations. At any time, the Executive Director may seek to settle a matter that is the subject of an investigation or enforcement proceeding.

2.27 Settlement Agreement. The Board and a subject of an investigation or a respondent to administrative or judicial enforcement may agree to enter into a written settlement agreement resolving violations of the Public Integrity Laws. The Executive Director shall submit a proposed settlement agreement to the Board in writing with a copy provided to the subject of the investigation or the respondent to the administrative or judicial enforcement. A proposed settlement agreement must be signed by both the Executive Director and the subject or respondent before being submitted to the Board for approval. The adoption of a settlement agreement is entirely within the discretion of the Board. A settlement agreement is not binding until it is signed by the subject or respondent and the Executive Director and approved by a majority vote of the Board. All approved settlement agreements shall be made available to the public.

SUBPART H. PENALTIES

2.28 Any person who does not comply with Subpart D or Paragraphs 2.5(d), 2.7, 2.8, or 2.15 of this Regulation shall be subject to a civil penalty of $1,000, which may be increased $2,000 if aggravating factors are present or decreased to $250 mitigating factors are present, as set forth in Code Chapter 20-1300.

Initially approved for public comment by Board on April 17, 2007
Public Hearing held on June 19, 2007
Adopted by Board, with modifications on June 26, 2007
Effective July 12, 2007

Proposed amendments approved for public comment by the Board on December 16, 2009
Public Hearings held on January 20, 2010 and February 17, 2010
Adopted by Board, with modifications on February 17, 2010
Effective February 28, 2010

Proposed amendments approved for public comment by the Board on May 21, 2014
Posted at Department of Records on May 27, 2014
Public Hearing held on July 16, 2014
Adopted by Board, with modifications on August 6, 2014
Effective August 18, 2014

Appendix II: 2014 Index of Board Opinions

2014 Index of Board Opinions

Board Formal Opinion No.	Date Issued	Brief Description	Key Words / Citations
Board Opinion 2013-006 Non-public Advice	7/17/13	Advised a City official about a proposed fundraising event to help pay personal expenses. Due to the risk of the City Code gift restriction being violated and a public perception of impropriety, the proposed event was inadvisable. At the time, the City Code gift restriction prohibited gifts of substantial economic value that might reasonably be expected to influence one in an official's position in the discharge of official duties. The City Code gift restriction was substantially amended on March 31, 2014 after this Opinion was issued. The advice in this Opinion reflects a preliminary draft of a Board regulation interpreting the old gift restriction, and it does not reflect the current City gift law. The Opinion also provided advice on the application of the City gratuity restriction, financial disclosure requirement, and non-competitively bid contract reform law disclosure requirements.	GIFT; FUNDRAISING EVENT FOR PERSONAL EXPENSES; SUBSTANTIAL ECONOMIC VALUE; REASONABLE EXPECTATION OF INFLUENCE; GRATUITY; FINANCIAL DISCLOSURE; DISCLOSURE OF SOLICITATIONS BY CITY OFFICER Charter §10-105; Code §§ 20-604 (since amended), 20-610, 17-1402, 17-1404

Appendix III: 2014 Index of General Counsel Opinions

2014 Index of General Counsel Opinions

Advice No.	Date Issued	Brief Description	Key Words / Citations
GC-2014-501 Non-public Advice	5/7/14	Advised a City official that the recently-amended City gift restriction would not prohibit the official's acceptance of an out-of-state non-profit's offer to pay for airfare, accommodations, and a dinner reception at the non-profit's annual conference. The official would serve as a panel presenter at the conference, discussing topics both related and unrelated to the official's City work. The non-profit does not seek official action from the official or the official's City agency, and it has no interest in any official action taken by the official or the agency. The non-profit's offer is also not a prohibited gratuity. If the value of the airfare and other conference-related items are worth $200 or more, the items would need to be disclosed as gifts on the City financial disclosure form.	GIFT; NON-PROFIT CONFERENCE; CONFERENCE PRESENTER; ACCOMMODATIONS; AIRFARE; DINNER RECEPTION; FINANCIAL DISCLOSURE; GRATUITY Charter §10-105; Code §§20-604, 20-610
GC-2014-502 Non-public Advice	6/4/14	Advised a City board member about conducting work for the member's private employer to re-grant funds to a non-profit organization that may use the funds to establish a staff position that would support the requestor's City board. The City conflict of interest provision does not prohibit taking private action that benefits the requestor's City board. The requestor would not be taking action as a City board member on a matter in which the requestor or the requestor's employer has a financial interest. The representation restriction would not apply because neither the requestor nor a member of the private employer would be representing anyone before the board member's City board or any other City agency.	CONFLICT OF INTEREST; BOARDS & COMMISSIONS; WORK FOR EMPLOYER; NON-PROFIT; GRANT; REPRESENTATION Code §§20-602, 20-607, 20-609