# CITY OF PHILADELPHIA
# BOARD OF ETHICS

## 2010 ANNUAL REPORT
## MARCH 2011

**City of Philadelphia**
**Board of Ethics**

**Honesty, Integrity, Transparency**

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*Chair*

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# *Table of Contents*


| | Page |
|---|---|
| Message from the Chair | 1 |
| Members of the Board of Ethics | 2 |
| Message from the Executive Director | 3 |
| Board of Ethics Staff | 4 |
| 2010 - Changing the Ethical Landscape | 5 |
| An Appreciation | 7 |
| Art in the Office | 7 |
| Training and Education | 8 |
| New Regulations | 10 |
| 2010 Board Advice | 13 |
| 2010 Financial Disclosure | 16 |
| Enforcement | 17 |
| Litigation Involving the Board | 20 |
| Legislative Recommendations | 22 |
| Looking Ahead | 24 |
| Appendices: | |
| I. Amended Regulations 1, 2, 3, & 5 | 26 |
| II. Index to 2010 Formal Opinions | 47 |
| III. Index to 2010 Advices of Counsel | 49 |

# *Message from the Chair*

With the preparation of this, our Fourth Annual Report, the Philadelphia Board of Ethics is no longer the fledgling agency it once was, and therefore, the passage of time alone, I suggest, allows us the perspective to draw some meaningful insights about service on this Board.

Since former Mayor Street appointed the original five-member Board on October 19, 2006, it would be an understatement to state that there has been significant turnover. Of the original five appointees only I remain. In the meantime, with the confirmation of Mayor Nutter's two recent nominees, there will have been 14 Ethics Board Members who have served on the five-member Board over the last 4 ½ years- surely an unenviable City record of board member longevity. Over the last year alone, there will be four new Board Members.

So, why has there been such turnover? There is no uniform explanation why eight Board Members did not complete their full terms. Some have resigned for opportunities in City employment or service on other boards which would have conflicted with continued membership on the Ethics Board. Others have left because of conflicts with their professions or their interest in actively participating in political activities. One has left the area.

Clearly, with the instability of intermittent service, the Board is unable to develop long-range plans and policies. Additionally, the complexities of the laws and regulations over which we have stewardship, make full term service efficient and desirable, if not necessary. It is my recommendation that the Administration, in considering future appointments, make an extra effort to explain the responsibilities and restrictions of Ethics Board membership. The existing Board, its Chair, and staff are willing to play an active part in that process.

Once again, this year, on behalf of the Board I express our deep gratitude to Cheryl Krause and her colleagues at Dechert and Greg Mackuse and his Drinker, Biddle legal team for the *pro bono* legal defense in litigation challenging the Board's authority.

These donated services highlight our tenuous solvency and have become so critical to our functioning in light of the crippling reductions to our original Charter-mandated $1M budget. Without additional funds being allocated this year, I have grave concerns about our ability to successfully implement the new Lobbying law which has been mandated to take effect on July 1, 2011.

So much of the sense of accomplishment that I feel in being Chair of this extraordinary institution can be attributed to the unusually talented and dedicated staff. Not a year goes by without numerous expressions of their competence and professionalism.

The most significant accomplishment this year has been perhaps more in atmospherics than in the tangible results recited within this Report. As a maturing agency, we have recognized the responsibility for outreach both to the public and to our regulated community. We have actively sought collaboration and input particularly in the promulgation of new far-reaching Regulations. I believe this sensitivity in recognizing that we do not have all the answers portends a continued acceptance and respect for what we are trying to accomplish.

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.

**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 17 years and has served on many local boards and committees, including the Board of Managers of the West Philadelphia YMCA and the Philadelphia 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 on the board will run until November 16, 2012.

**William H. Brown, III,** senior counsel at the law firm of Schnader, Harrison, Segal and Lewis. A specialist in labor and employment law, he is a former chairman of the U.S. Equal Employment Opportunity Commission. He chaired the Philadelphia Special Investigation Commission investigating the MOVE tragedy of 1985 and served as a deputy district attorney in Philadelphia and chief of the office's Fraud Unit. Mr. Brown's term runs until November 2014.

**Sanjuanita Gonzalez**, managing partner at Cohen, Fluhr and Gonzalez, a bilingual Social Security and immigration law firm. Previously she was a partner in Fluhr and Gonzalez, specializing in Social Security Disability law. She is a prominent member of the Latino community in the City and a former vice president of the Hispanic Bar Association of Philadelphia. Ms. Gonzalez's term runs until November 2013.

# *Message from the Executive Director*

2010 was a landmark year for the Board. Its responsibilities were expanded by new legislation while staff continued to implement and enforce the City's public integrity laws. Our accomplishments in 2010 are described in this Report.

It is instructive to compare the Board's experience in the 2007 election with our 2010 activity to prepare for the 2011 election. In 2007, at the start of the election season, I was the Board's only staff member. It was extremely challenging to conduct training for candidates, organize a new office, and enforce the law. By comparison, in 2010, with a staff of eight, we were able to offer campaign finance training well in advance of the 2011 election, to adopt a completely revised regulation providing guidance for the amended campaign finance law, to propose and adopt regulations on investigations and enforcement proceedings and confidentiality, to conduct enforcement activity, and to administer the financial disclosure process for City officials and employees. In addition to all of those achievements, the Board and staff played an important role in the adoption of significant legislation by City Council.

We are extremely concerned, however, about the ability to continue all of these tasks and to implement the new laws added to the Board's jurisdiction in 2010. The Board underwent an audit by the City Controller during 2010, and the top finding in the Auditor's Report recognized that insufficient funding and understaffing "imperil" our mission. The Board remains a young agency with shallow roots. Cuts to the Board's budget, described in the Auditor's Report, have halted the Board's growth and made it difficult to fulfill its existing mandates. The Controller's finding did not consider the Board's added responsibility to implement, administer and enforce the City's new lobbying law without any additional funding, yet these new mandates and responsibilities will further imperil the Board's mission by stretching the Board's very limited resources.

In his last Daily News column on January 6, 2010, Dave Davies described how he wanted "to shine a light on the most remarkable thing I've seen in 25 years of covering city politics: at last, the appearance of a watchdog that isn't afraid to bite. . . ." He was referring to the Board of Ethics. We want to continue this success and to be a force for positive change in Philadelphia. We will therefore do our best to promote honesty, integrity and transparency in Philadelphia government by continuing our efforts to administer and enforce the City's public integrity laws as efficiently and effectively as possible.

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.

**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 works with General Counsel Evan Meyer and has played a key role in the Board's expanded training efforts. Ms. Nayak holds undergraduate and law degrees from Yale. 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.

**Elizabeth Baugh,** Information Specialist, joined the Board 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.

**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.

**Hortencia Vasquez**, clerical assistant, joined the Board in 2008. A native of the Virgin Islands, she came to Philadelphia six 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.

# *Changing the Ethical Landscape*

With no elections being held, 2010 was a quiet year politically for Philadelphia.

But it was also a year in which the rules governing political campaigns were changed in ways that will be felt for decades.

Working independently, but with input from City Council and others, the Board drafted far-reaching regulations affecting campaign finance, lobbying and political activity by City employees.

“Having no election allowed us to concentrate on some really basic issues,” said Executive Director J. Shane Creamer Jr. “With fewer fires to put out, we were really able to do the things that changed the entire ethical landscape. And the cooperation between the Board and Council in helping to bring this about was gratifying."

The eight-member staff didn’t ignore its other responsibilities. It settled the most complicated enforcement action since the Campaign Finance Law was passed in 2006; provided ethics training to hundreds of officials and City workers; fielded dozens of inquiries about ethics laws from City workers and officials and defended challenges to its authority in the courts.

But in essence, 2010 was a “year of regulations.” The Board:

- Approved provisions for holding administrative hearings on proposed Campaign Finance Law and Public Integrity Law violations rather than taking the cases to court.
- Clarified regulations on confidentiality regarding ongoing Board investigations.
- Approved regulations for enforcing changes in the Campaign Finance Law passed by City Council.
- And began the process of revising restrictions on political activity by City employees

Work on the political activity restrictions - known as Regulation No. 8 - took up dozens of hours by Director of Enforcement Michael Cooke and Associate General Counsel Maya Nayak.

"It was clearly the most complicated regulatory legislative effort the staff had ever undertaken," Creamer said. "The diligence, common sense approach and attention to detail demonstrated by both Michael and Maya were remarkable, and the input from others was invaluable."

A public hearing on the proposed regulation was held in February 2011, and the Board anticipates that Regulation No. 8 will become effective at the end of March, in advance of the primary election.
Legislation creating a new lobbying registration and reporting law was enacted in 2010. Staff began early to prepare for the July 1, 2011 start date of the new lobbying program which requires the Board to create a searchable electronic database for the mandatory electronic filings.

In its main enforcement action, the Board found that Chief Deputy City Commissioner Renee Tartaglione had committed nine violations of the City Charter by participating in political activity. Under a settlement agreement with the Board, Tartaglione agreed to pay a $2,700 civil fine. She also resigned from her office and agreed not to seek or accept a City position for one year.

"This was clearly the most complex enforcement action the Board has ever taken," Creamer said. "It spanned 16 months, covered illegal political activity spanning six election cycles over three years, and involved numerous subpoenas and depositions."

The Board also reached a settlement agreement with Vivian T. Miller, the former Clerk of Quarter Sessions, in which she admitted to single committee violations during her re-election campaign in the 2007 Democratic primary.

But the Board's core mission remained preventing ethics violations before they occur, through training and advice.

Staff provided in-person ethics training to almost 350 City employees, officials and members of key boards and commissions and began training in the Campaign Finance Law for candidates and their staffs in anticipation of the 2011 elections.

General Counsel Evan Meyer responded to two dozen requests for advice in Formal Opinions and Advices of Counsel and provided informal general guidance to 60 individuals. He worked with other staff members on all regulations.

Staff also helped City employees determine their responsibility for financial disclosure, which can require them to file up to three forms as required by a mayoral executive order, the State Ethics Act and the City Ethics Code. More than 4,700 disclosure statements were filed.

Finally, staff also remained active on the national level, with Executive Director Creamer being elected to the Steering Committee of the Council on Governmental Ethics Laws (COGEL). Deputy Director Massar, a former COGEL president, served on the program committee for the group's annual convention in Washington in December.

## *An Appreciation*

The assistance of the Records Department and Commissioner Joan Decker are key to two of the Board's major responsibilities, administration of the City's campaign finance law and financial disclosure requirements for City officials and employees. Mandatory electronic filing software for City candidates and committees was designed by and is now maintained by the Records Department. Similarly, software for preparation of annual financial disclosure reports is operated through the Records Department.

The result of Records Department participation in these two programs is enhanced public access to information about City elections and City employees. This continued cooperation between the Board of Ethics and the Records Department significantly enhances transparency and integrity in City government.

## *Art in the Office*

During 2010, the Board of Ethics continued its successful initiative, "Art in the Office." There were two new exhibits in 2010 with the work of 13 local artists on display. The Board's Art in the Office program began in 2009 with works by Ed Bronstein and Nancy Bea Miller.

A new exhibit began in April and included 45 separate pieces by three award-winning local artists, Sarah Barr, Stephanie Kirk, and Pam McLean-Parker. Their work has been exhibited throughout the Philadelphia area, and many of the works on display employed photographic techniques with subjects ranging from cathedrals to breakfast and every-day life with children.

The second exhibit in 2010 was installed in November and consisted of 35 works by 10 Philadelphia area artists in oil, pastel, watercolor, and charcoal. Jeanne Guerin-Daley, Rachel Isaac, Dae Rebeck Sanchez, Joye Schwartz, Deb K. Simon, Nancy Freeman Tabas, Blanche Levitt Torphy, Ruth Wolf, Ellen Abraham and Edna Santiago contributed pieces to this successful exhibit.

These artists are part of a group of 23 professional women visual artists called ARTsisters. The ARTsisters believe that the collective energy of their members serves to motivate and inspire each other. They have a schedule of shows that includes exhibits in Manayunk, Wayne, Wynnewood, the Wilmington Arts Commission, and the Widener University Art Gallery. They also collaborate with several non-profit community organizations.

Visitors who come to the Board's office for monthly Board meetings and ethics and campaign finance training sessions, as well as Board of Ethics members and staff, are the beneficiaries of the talent of these Philadelphia area artists. Through their generosity we are able to add a completely new dimension to a City agency.

# *Training & Education*

Providing training and education about the City's ethics and campaign finance laws is a major on-going part of the Board's work. Education is not limited to in-person classes, but also includes new regulations, constant improvement of the Board's website, and the assistance provided by staff to the public on a daily basis.

## Campaign Finance Training

With a primary election for City Council and Mayor approaching in May 2011, the Board determined that early campaign finance training was essential for candidates, treasurers, and all those interested in City elections. The Board therefore began to offer campaign finance sessions in 2010. Preparation for the 2011 election cycle was very different from its first election in 2007. The Board had only one staff member to provide campaign finance training in early 2007, but in 2010, five of the Board's eight staff members were part of the campaign finance training process.

Almost 70 people attended campaign finance training sessions that were held in 2010 and January 2011, and several more sessions were scheduled through April 2011. Additional sessions will be added if needed. In addition to the existing requirements of the City's campaign finance law, training now highlights major changes to the law that were passed by City Council in June of 2010. These include limits on "post-candidacy" contributions for debt retirement, inauguration and transition expenses, and new provisions regarding "litigation fund committees." The sessions also cover contribution limits and excess pre-candidacy contributions. Board staff encourages questions during training.

One of the Board's major tasks during 2010 was to clarify the existing and new requirements of the City's campaign finance law for candidates, treasurers and the public in a completely revised version of its Campaign Finance regulation, Regulation No. 1. Staff had worked for months on the proposed text of the regulation and held many meetings with stakeholders before presenting the proposed regulation to the Board in July. A public hearing was conducted on September 8th and the Board voted to adopt new Regulation No. 1 on September 15th. The regulation became effective on September 27th, well in advance of the 2011 election cycle.

## Ethics Training

The Board of Ethics is responsible for providing ethics training to City officials, employees and board and commission members. The goal of ethics training is to prevent ethics violations. In-person sessions are conducted by Board staff and by Human Resources Department trainers. The focus of ethics training in 2010 was on new City employees, and there were 18 live ethics training sessions attended by almost 350 people.
Each ethics training session is 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. Trainers use recent newspaper articles on ethics matters and enforcement actions from other cities and states to illustrate ethics issues, and questions from attendees are welcome. Core ethics issues are discussed in each session, including conflicts of interest, prohibited participation in contracts with the City, representation of others in City transactions, and post-employment restrictions.

## Online Training Project

During 2010, Board staff continued its work to develop an online ethics training module. Reduced staff and technological issues delayed the project, but the Board expects to launch a pilot test project in 2011. The City's Division of Technology is providing support for this project to make online training available to City officials, employees and board and commission members. The Board believes that its online training project can serve as a model for other City departments that must offer training to large groups of individuals.

## The Board's Newsletter

The Board's Newsletter is another method for providing information and education. There were two issues during 2010, and articles covered topics including new Board members, requirements for City employees who are thinking of leaving the City and are looking now for another job, and the information available on the Board's website. Anyone interested in the Board's work can receive the electronic Newsletter.

## The Board's Website

The Board also considers its website as an important component of its education efforts. The website at www.phila.gov/ethicsboard is a comprehensive source for information about the City's public integrity laws, including the Campaign Finance law. 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 public can also follow the work of the Board through minutes of its public meetings posted on the website.

# *New Regulations*

The Board's regulations are another important educational tool because, like all laws, the ethics laws often require interpretation. Adopting and amending regulations is a formal method of providing comprehensive guidance on the laws administered by the Board. Staff spent considerable time during 2010 on important amendments to four of its existing regulations and preparing two new regulations that will be introduced in 2011.

All boards and commissions of the City are authorized by the Charter to adopt reasonable regulations, and the Board of Ethics is specifically authorized by statute to adopt regulations interpreting the Ethics Code, the Campaign Finance Code, and the Lobbying Code. The Board follows the process mandated for creating regulations set out in Section 8-407 of the Home Rule Charter, with additional steps generally added by the Board to ensure careful consideration.

Generally, regulations have the force of law. The Regulations of the Board of Ethics, authorized by Charter and Code, subject to public inspection and public hearing, and reviewed and approved by the City Solicitor, are binding authority in interpreting and applying the Public Integrity Laws. In many cases, they answer the "nuts and bolts" questions that can arise from reading the often more formal legislative language of the City Code and Charter.

The Regulations of the Board of Ethics may be found on the Board's website, at www.phila.gov/ethicsboard, by selecting "Regulations" in the left-hand column of the home page.

The process to adopt a new regulation or to amend an existing regulation involves several steps. A subcommittee of Board staff members drafts the proposed regulation or amendment. The Board may then take the additional step of circulating a proposed draft regulation to various interested parties for comment.

The Law Department provides a preliminary review of the draft and suggestions for re-drafting sections. The draft is then submitted to the Board for initial approval for public comment, and at a public meeting, the Board votes to approve the proposed new regulation or amendment for public comment.

The proposed regulation is then sent again to the Law Department for approval as to form and then filed with the Department of Records, which arranges for public notice in local newspapers that the regulation will be available for public inspection for 30 days, during which any person affected may request a public hearing on the regulation.

If no hearing is requested, the proposed regulation becomes effective on the 30th day after the initial filing with the Department of Records. The Board of Ethics frequently schedules public hearings on regulations, even without a hearing request, because the Board recognizes the importance of public input in the process. The public hearing is held before the Board and the City Solicitor (which means a representative of the Law Department will be present). Hearings are generally held at the offices of the Board, often at the beginning of the regular monthly meeting of the Board. Anyone may testify.

If testimony is received at a hearing, the Board may, based on the testimony, decide that revisions to the proposed regulation are appropriate. If the revisions are substantial, the Board may schedule a second hearing. Otherwise (or after the final hearing), the Board will approve a report of the hearing at its next meeting. This may occur after reviewing a transcript of the hearing, if there was substantial testimony. The report will include any revisions to the regulation that the Board has made.

Ten days after the report is approved by the Law Department and filed with the Department of Records, the proposed regulation becomes effective.

**2010 Regulations**

Since its inception, the Board has adopted seven regulations, and during 2010 there was significant activity concerning four of those regulations, as follows:

**Regulation No. 1, Campaign Finance** interprets Chapter 20-1000 of The Philadelphia Code, which regulates the receipt of campaign contributions, management of campaign accounts, reporting of expenditures, and related matters, all related to candidates for City elective office. It was the subject of months of work by staff and the Board to include legislative changes made by Council to the Campaign Finance Law in June 2010. Based on the Board's experience in the 2007 and 2009 elections, the amendments also clarified application of the contribution limits and provided guidance on compliance with the law. The amendments became effective September 27, 2010.

**Regulation No. 2, Investigations and Enforcement Proceedings,** provides the procedures by which the Board will receive complaints alleging violations of the Public Integrity Laws, conduct investigations, and prosecute enforcement actions. The regulation was originally adopted by the Board in the summer of 2007, when the Board was only a few months old and after examining regulations of other ethics agencies. As a result of its subsequent experience with enforcement actions, the Board and staff concluded that amendments to Regulation No. 2 were needed.

All Board enforcement proceedings had been judicial enforcement proceedings, and there had been no administrative enforcement proceedings as described in the existing Regulation. Because the Board was contemplating administrative adjudications, staff recommended that Regulation 2 should be amended to clarify the Board's procedures for its administrative enforcement proceedings. Staff observed three guiding principles in drafting the proposed amendments to Regulation 2: making sure the Board's procedures are well within the requirements for due process; maintaining the Board's flexibility so that it can respond to unpredictable circumstances; and clarifying provisions in the existing Regulation.

Two hearings on the amendments to Regulation No. 2 were held, and the Board voted at the February 2010 meeting to approve the amendments which became effective on February 28, 2010.

**Regulation No. 3, Referrals to and Cooperation with Other Governmental Enforcement Agencies,** applies when the Board receives a complaint or learns of certain facts that raise issues under laws that are not within the jurisdiction of the Board. Also, other agencies may investigate matters within their jurisdiction that they may wish to refer to the Board of Ethics to enforce a violation under the Public Integrity Laws. This regulation provides procedures for cooperation between the Ethics Board and such other enforcement agencies. Examples include the District Attorney, the City's Inspector General, the F.B.I. and others. Recent amendments to this regulation were effective January 21, 2010.

**Regulation No. 5, Confidentiality of Enforcement and Investigative Matters and Prohibited Disclosures,** interprets 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. The regulation specifically defines the difference between what may be disclosed by a complainant and the restrictions on what may be disclosed by the Board and staff. Recent amendments to this regulation, required by a Third Circuit Court of Appeals decision, were effective October 18, 2010.

**Regulations 1, 2, 3, and 5, as amended, are included in Appendix I of this report.**

## Pending Regulations

The Board expects to adopt two important regulations in 2011. The first is a **Regulation on Political Activity, (Regulation No. 8).** The purpose of this regulation is to interpret Charter Section 10-107, which imposes restrictions on political activity by City officials and employees. The anticipated regulation will provide a fuller explanation of permitted and prohibited political activity. The Board began work on Regulation No. 8 in 2010 and discussed a tentative draft of the regulation at the September 2010 meeting. Shortly after that meeting, letters were sent to more than 40 "stakeholders" to solicit input and explain the regulatory process. A hearing was conducted on February 2011, and the Board anticipates that Regulation No. 8 will be effective at the end of March 2011.

**Regulation on Lobbying [tentatively no. 9].** This regulation would interpret and implement Chapter 20-1200 ("Lobbying") which was just added to the Philadelphia Code on June 16, 2010, and the first registrations by lobbyists, lobbying firms and principals are not required until July 1, 2011. Nevertheless, the registration and expense reporting requirements are complex enough that a substantial regulation is required. Staff expects to propose a draft regulation, including procedures for electronic filing, in the spring.

Under Regulation No. 4, the Board of Ethics issues three kinds of advice:

- Formal Opinions, issued by the Board itself and voted on at a meeting of the Board (in executive session if the request was for a nonpublic advisory);
- Advices of Counsel, issued by the General Counsel of the Board; and
- Informal General Guidance, generally email guidance provided by the staff, that explains the ethics laws but does not apply them to the requestor's individual situation in a way that can be legally relied upon. These also include information provided in trainings, meetings, telephone calls, newsletters, general correspondence, and this Annual Report.

**Formal Opinions and Advices of Counsel**

There were 24 written advisories issued in calendar year 2010, two Formal Opinions and 22 Advices of Counsel. Requests for advice from the Board frequently deal with multiple topics and require analysis of Charter and Code sections, as well as provisions of the State Ethics Act. For example, a City employee may ask whether attendance at a certain event is prohibited as a gift, but the answer will require discussion of gifts and conflicts sections of the ethics laws.

Except for a few advisories addressed to narrow and uncommon factual grounds, most of the opinions and advice issued in 2010 fit into one of the following five categories:

**Running for office and campaign finance and/or Charter Sect. 10-107.** With the elections for most City elective offices coming up in 2011, questions by candidates and potential candidates became more numerous. Generally, current City employees considering running for office wished to clarify when they must resign their City positions and what rules governed any campaign fund-raising activities.

For example, in Formal Opinion 2010-001, issued in February, the Board advised a Councilmember that if other people circulate nominating petitions on his behalf (for an office other than the one he currently holds), the act of circulating the petitions would not by itself constitute a declaration of candidacy, would not cause him to become a "candidate," and would not require him to resign his City office.

Advice of Counsel No. GC-2010-511 and Nonpublic Advices of Counsel Nos. GC-2010-519, 521, and 522 fit in this category.

**Gifts.** A variety of City and State laws restrict the receipt of gifts by City employees. City employees who are offered a gift or benefit often seek advice on what they may accept.

In Advice of Counsel 2010-510, issued in August, a City employee was advised that she is prohibited from accepting a scholarship worth over $3,000 to a leadership seminar series, where the scholarship is offered by a professional firm that works with the employee on a pro bono project for the City. The Advice explained that the Code prohibits the gift because it is of substantial economic value and might reasonably be expected to influence the employee in the discharge of her duties. The Advice also explained that the exception for a "gift to

the City" does not apply because the offer was made to the requestor directly rather than to the employee's appointing authority.

Two other advisories concerning gifts were issued in 2010: Nonpublic Advice of Counsel No. GC-2010-510 and Advice of Counsel No. GC-2010-518.

**Conflict of Interest.** Likely the most basic ethics rule prohibits a City employee from having a conflict of interest between his or her public duty and a personal financial interest. Employees/officials faced with the possibility of taking official action that may affect a financial interest held by themselves, or by an employer, relative, or client, often seek advice.

Advice of Counsel 2010-507 is a good example of a potential conflict between an employee's public duties and a personal financial interest. A City employee asked if she could apply for a grant from a program that is funded with City funds through a quasi-public nonprofit corporation. She was advised that it is not a conflict of interest to apply for the grant if she publicly discloses and disqualifies herself from any official action as a City employee in any matter that affects the grant program.

Advice on conflicts of interest was also provided in Advice of Counsel No. GC-2010-502 and Nonpublic Advices of Counsel Nos. GC-2010-505, 506, 508, 509 and 517.

**Representation.** Section 20-602 of The Philadelphia Code generally prohibits a City official/employee from representing another person in a City transaction, unless certain exceptions apply.

A City employee asked for advice regarding his outside interests as a real estate investor, as part owner of a company that recovers funds for clients through Sheriff's Sales, and as preparer of deeds for friends and family. The complex response to this inquiry in Advice of Counsel 2010-517 involved a potential conflict of interest, as well as the issue of representation of others in City transactions. He was advised that if he or his company will be paid in any transaction in which his City department's action is required, he must disclose his financial interest and disqualify himself from working on that matter. He may not represent any person as agent or attorney in any transaction involving the City, except that he may represent himself or certain relatives in matters that are not the subject of his official responsibility and in which he has not participated personally.

Nonpublic Advices of Counsel Nos. GC-2010-506, 507 and 508 were also related to the rule on representation.

**Seeking future employment while still a City employee.** The Board has in the past issued a number of advisories concerning restrictions on former City employees after they leave the service of the City. There have, however, been few inquiries about any restrictions on current employees seeking future employment. The conflict of interest restrictions do apply to contacts with potential future employers, and four Advices in 2010 concerned application of those rules.

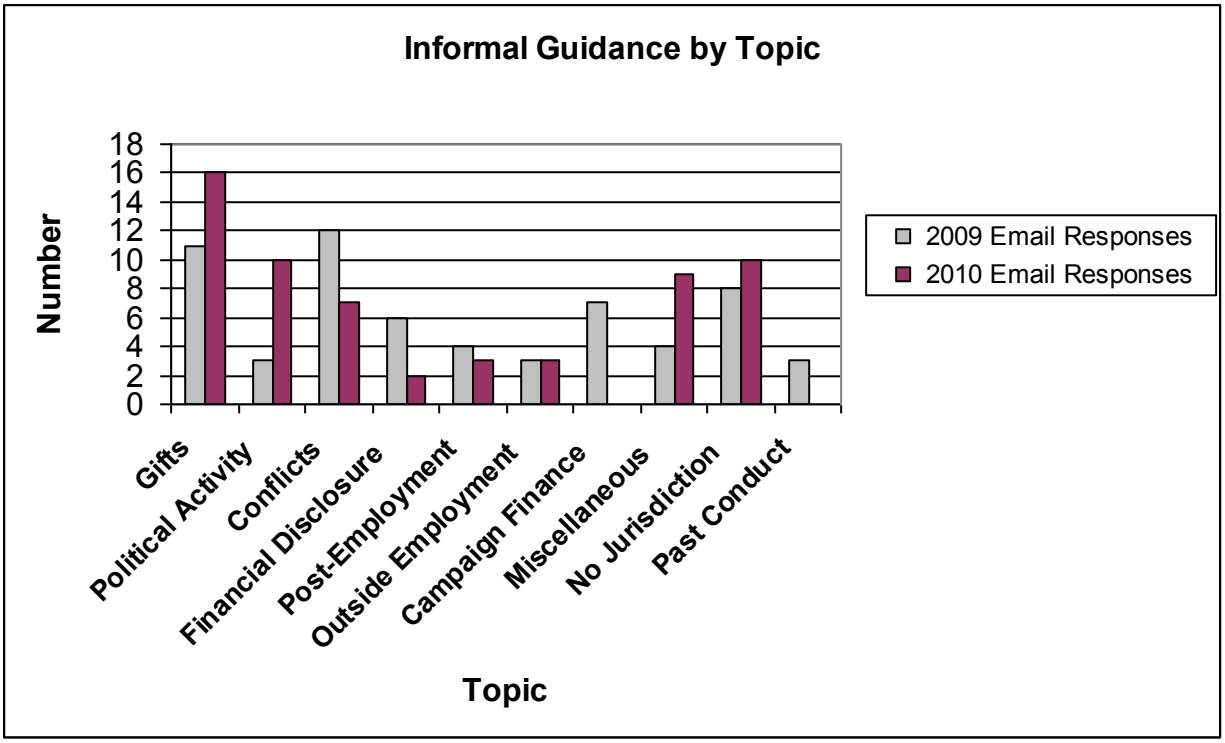
A City employee who was considering leaving City employment to work for a particular company requested guidance. In Advice of Counsel 2010-513, the employee was advised that he may be required to disclose a

conflict of interest and disqualify himself from taking action for the City affecting the company if his pursuit of employment reaches the level that he has a "financial interest" in the company, such as if he takes actions to apply for a job with the company or it offers him a job while he is still a City employee. The employee was also advised on post-employment rules that would apply after separation from the City.

Nonpublic Advices of Counsel Nos. GC-2010-514, 515 and 516 also discussed the same issues.

**Informal Guidance**

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 60 email inquiries in 2010. Questions about accepting gifts and political activity represented over 40% of email advice in 2010.




**For further reference**

All 2010 Formal Opinions and Advices of Counsel are summarized in Appendices II and III of this Report. The full text of all 2010 Opinions and Advices may be found on the Board's website at www.phila.gov/ethicsboard, by selecting "Advisory Opinions & Publications" from the left-hand column and navigating to the 2010 advisories.

# *2010 Financial Disclosure*

Citizens have a right to know whether City officials and employees might have financial interests that would have an effect upon their official duties. Therefore, thousands of City officials and employees and members of City boards and commissions are 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). 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 to disclose financial information for the prior calendar year, including sources of income, real estate interests involved with the City, creditors, and business interests.

Financial disclosure statements, normally due on May 1st, were due in 2010 on May 3rd because the statutory May 1st deadline was on a Saturday. After the May 3rd deadline, Board staff confirmed that all department heads and elected officials had filed the City Form.

The State Ethics Commission administers financial disclosure under the State Ethics Act. In its continuing effort to provide better guidance to City employees about filing the State Form, Board staff again worked with staff of the Human Resources Department in 2010 to develop an updated list of City job titles that were most likely subject to the State Form filing requirement. Departmental human resource managers again assisted with review of civil service exempt titles to determine which of these employees should file the State Form.

To encourage compliance, the Board issued thousands of email reminders to City officials, employees, and board and commission members in April to alert them about their filing obligation and to provide information on how to file. As a result of the emails, Board staff fielded more than 350 calls and emails in the few weeks prior to the May 3rd due date. We explained the filing obligation, the contents of the three reports, and how to use the online financial disclosure system.

Our outreach efforts in 2010 produced results. The total number of disclosure reports filed increased from 4,615 in 2009 to 4,729 in 2010, and the number of State Form filers represented the bulk of the increase, up from almost 3,500 in 2009 to 3,600 in 2010. The Board expects to continue its outreach efforts to potential financial disclosure filers as a means to improve transparency in City government.

The financial disclosure process would not be possible without the Records Department, which accepts and processes the thousands of financial disclosure forms. Records Commissioner Joan Decker and her staff provided constant support and assistance and also responded to phone calls and emails from filers.

## 2007 – 2010 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.

- 35 investigations dismissed after investigation
- 32 complaints were rejected
- 22 non-filing PACs were given extra time to file reports
- 18 settlement agreements were reached, but only 12 had monetary fines

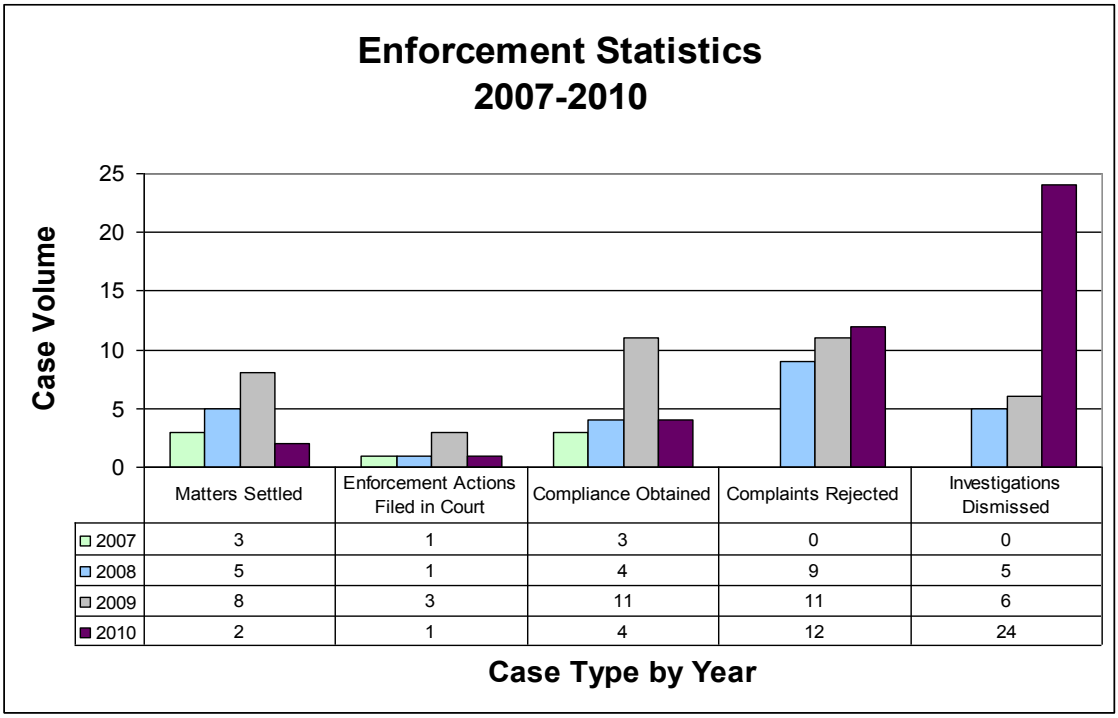
The Board endeavors to settle alleged violations *before* going to court.

- 75% of the Board's 18 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 18 settlement agreements before going to court.

The Board has shown leniency in *all* 18 settlement agreements it has approved over the past four years.

- The Board waived *all* monetary fines in about one-third of the 18 settlements.
- The Board reduced the monetary fines for 66 of the 93 violations in the remaining 12 settlements (just over 70% of the admitted violations).

Two-thirds of the 15 settlement agreements that addressed campaign finance violations include excess contribution violations.




| | Matters Settled | Enforcement Actions Filed in Court | Compliance Obtained | Complaints Rejected | Investigations Dismissed |
|---|---|---|---|---|---|
| 2007 | 3 | 1 | 3 | 0 | 0 |
| 2008 | 5 | 1 | 4 | 9 | 5 |
| 2009 | 8 | 3 | 11 | 11 | 6 |
| 2010 | 2 | 1 | 4 | 12 | 24 |

## 2010 Enforcement Activity

The Board receives complaints through the "Report a Concern" feature on its website and by mail. Each complaint requires detailed review by Board staff, but not all complaints result in investigative and enforcement activity. During 2010, we reviewed and rejected 12 complaints submitted by members of the public either because they did not comply with criteria for Board investigations, set forth in Board Regulation No. 2, or because they did not include a potential violation of a law within Board of Ethics' jurisdiction.

The Board closed 30 matters in 2010 by one of three methods: voluntary compliance, settlement, or dismissal because no action was warranted. 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 2010, five matters were referred to the Chief Integrity Officer.

## Voluntary Compliance

Whenever possible, the Board acts to prevent violations of the City's campaign finance laws and takes steps to obtain voluntary compliance from entities that should have filed campaign finance reports with the Board, but did not do so. Staff identified four committees that had not filed electronic reports with the Board, as required by law. The Board issued letters to the four committees on March 3rd identifying the missing reports and giving the committees a deadline of April 2nd to file.

All four committees cooperated, filing a total of 13 electronic reports, and therefore increased the campaign finance information available to the public:

- Steamfitters Local Union 420
- Local 19 Sheet Metal Workers Union
- Cozen O'Connor State and Local PAC
- CWA Local 13000

Because each committee voluntarily complied and met the Board's extended deadline, the Board did not seek to impose a late filing penalty.

## Settlements

There were two significant settlements reached by the Board in 2010. Following what Executive Director J. Shane Creamer Jr. called "the most complicated investigation we have ever undertaken," Deputy City Commissioner Renee Tartaglione admitted to nine violations of the City Charter and agreed to pay a civil fine of $2,700, resigned from her office, and agreed not to seek or hold a City position for one year.

Rather than a single campaign, the case covered a series of incidents over six election cycles from 2007 through 2009. Tartaglione - whose office oversees City elections - admitted to participating in a variety of activities in the 19th Democratic Ward, including ordering sample ballots, collecting campaign contributions,

handing out street money and arranging and running ward meetings as a substitute for her husband, the official ward leader. The case started with a complaint the Board received in August 2009 and ended with the settlement in December 2010. Because only two of the Board's eight staff members engage in enforcement work, investigations as large as the Tartaglione matter test the Board's capacity to fulfill its enforcement mandate.

Indeed, the first Audit of the Board by the Controller (issued in 2010 for fiscal years 2008 and 2009) concluded that "a lack of resources could imperil the Board's mission, particularly in the area of *enforcement*." (emphasis added)

In a second major enforcement action, Clerk of Quarter Sessions Vivian Miller admitted to violating the Campaign Finance Law requirement that all campaign contributions be received and expenses paid through a single committee. In this case, the Board waived all fines.

**Dismissal**

Where the Board determines after an investigation that a complaint has no merit, it will dismiss the matter. During 2010, the Board dismissed 24 matters because they did not reveal a probable violation of the Public Integrity Laws.

# *Litigation Involving the Board*

Litigation concerning the Board's authority continued in 2010 in two important matters.

**Cozen O'Connor v. 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 campaign 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 argued that it should be allowed to forgive the campaign's debt and that the forgiveness should not count as a contribution. Cozen challenged the Board opinion and sought a declaratory judgment in the Court of Common Pleas in March 2008 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 2008, Common Pleas Court Judge Gary DiVito dismissed Cozen's complaint. On March 12, 2009, the Commonwealth Court of Pennsylvania concluded that the Cozen law firm lacked standing to challenge the Ethics Board's Advisory Opinion which had been issued to Cozen's former client, the Friends of Bob Brady and dismissed the Cozen Complaint against the Ethics Board. 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 February 23, 2011, the Supreme Court reversed the two lower courts and held that Cozen has standing to seek a declaratory judgment against the Board of Ethics because the firm has a "substantial, direct, and immediate interest in knowing" whether it may forgive the debt owed to it by the Brady campaign without violating the City's campaign finance law. The case was remanded to the Commonwealth Court for further proceedings. Now passing its third year in the courts, Cozen's suit is the longest running challenge to the City's contribution limits.

The Board will continue to argue in support of Advisory Opinion 2007-003 before the Commonwealth Court. To do otherwise would permit wealthy contributors to circumvent the contribution limits and to make large contributions in the guise of debt forgiveness.

It is important to note that recent legislation, approved by City Council and signed into law by Mayor Nutter, codifies the Board's interpretation of the law that contribution limits continue to apply after an election for the purpose of retiring campaign debt.

The Board again expresses its great appreciation to Gregg Mackuse at Drinker, Biddle who has provided pro bono representation to the Board.

**McCaffery v. Creamer, et al.**

In another matter dating back to a prior election, Dan McCaffery, a candidate for District Attorney in the 2009 primary election, 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 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 correctly 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, which heard oral argument on February 7, 2011. As of the preparation of this Annual Report, the parties were waiting for the Commonwealth Court to issue its decision.

We would like to thank Dechert and specifically Cheryl Krause, Karen Daly, and Albert Suh for their continued excellent work and time spent representing us pro bono in this significant matter. Thanks also to Kelly Diffily of the City Solicitor's office who has served as co-counsel.

# *Legislative Recommendations*

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. One proposed bill would create a completely new lobbying electronic registration and reporting law to be implemented and administered by the Board.

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, Council staff and Ethics Board staff began a series of meetings and discussions during which the Board's staff provided comment and suggested amendments to Council staff. These discussions contributed to important amendments to the bills before their final passage on June 3rd. Perhaps more significantly, the staff-to-staff relationship between the Board and Council continued throughout 2010 and into 2011, as the Board promulgated interpretive regulations on the City's campaign finance law and political activity rules.

Never before in Philadelphia's history has there been a comparable, ongoing collaborative relationship between City Council and an independent agency tasked with the responsibility to administer, interpret and enforce the City's public integrity laws. This continuing relationship enables the Board and Council to discuss the City's public integrity laws and policies in an efficient and productive manner. These discussions have already contributed to improved laws and better interpretive regulations, which serve to strengthen the overall integrity of City government.

**Recommendations**

The Board of Ethics is directed by Section 20-606(1)(l) of the Philadelphia Code to include in its annual report to the Mayor and City Council recommendations for legislative change. While the City recently considered and approved changes recommended by the Board, we believe that the City's public integrity laws can be further clarified and improved. Accordingly, the Board reiterates the following recommendations that were made in its 2008 and 2009 Annual Reports:

- Reword three sections of the Code to clarify key provisions of the ethics laws:
    - Section 20-607 deals with conflicts of interest and would benefit from revisions to make conflict situations more easily identifiable, to define key terms, such as "financial interest," and to address new family structures that give rise to conflict situations, including domestic partnerships.
    - Clarify and simplify Section 20-608, the Public Disclosure and Disqualification section of the Code. Eliminate an outdated reference to notice by registered mail and consider permitting disclosure and disqualification notification by electronic means and provide a mechanism for board and commission members to address conflict situations when they arise at the last minute.
    - Similarly, clarify and simplify Code Section 20-602 which regulates when City officers, employees, and members of Council may represent other individuals in transactions involving the City.

# *Legislative Recommendations*

- Consider legislation to clarify the prohibition in the City conflict of interest rule on City officials and employees taking any personnel action concerning a close relative. Even though relatives of City officials may be well-qualified for City positions, this prohibition enhances public confidence in government by eliminating the appearance that a person received a City job merely because he or she is related to a City official.

- Amend the City Code to create a stricter, clearer gift rule to apply to all City officials and employees.

- Amend the Ethics Code to prohibit City officials and employees from holding other paid positions, in addition to their City jobs, with firms or businesses that either have a City contract or are seeking one. Outside teaching positions should be exempt.

- 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 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 coworkers should also be prohibited.

- Finally, require that the City's Ethics Code and the Charter restrictions on political activity apply to all contract workers.

# *Looking Ahead*

Two of the major challenges the Board faces in 2011 involve implementing the City's first-ever lobbyist registration law and monitoring the election for Mayor and City Council.

With five Council incumbents not seeking re-election, there are likely to be far more candidates than there were in 2007, making Campaign Finance Law training more important than ever. Many of the candidates will be unfamiliar with the law, and the Board has reached out to inform them of the training sessions.

The lobbyist registration law goes into effect July 1 and requires that lobbyists, lobbying firms, and principals register electronically and that principals file detailed reports when expenses in a quarter total more than $2,500 for direct lobbying, indirect or "grassroots" lobbying, and gifts and hospitality.

Board staff will work with the City's Division of Technology to set up the electronic filing system.

While the law prohibits certain types of conduct by lobbyists - making a fee contingent on the passage of legislation, for example - its greatest benefit will be allowing the public to know who is seeking to influence legislation or administrative action, whom they are seeking to influence and who is paying for it. This information will be a valuable public disclosure tool. The law also requires mandatory training for lobbyists. While the lobbying ordinance carries penalties for violations, the Board expects that its outreach and training efforts in 2011 will make it possible for lobbyists to comply with the new law.

The work of the Board of Ethics has improved public confidence in City government in just a few years. With its mandates, including an expanded Campaign Finance Law and the City's new lobbying program, the Board will play an increasingly important role in maintaining ethical government in Philadelphia. There is much more to be done, and we are proud to be the catalyst for change.

# *APPENDICES*

# *APPENDIX I: Regulations 1, 2, 3, & 5*

**PHILADELPHIA BOARD OF ETHICS**
**REGULATION NO. 1**
**CAMPAIGN FINANCE**

## SUBPART A. SCOPE; DEFINITIONS.

**1.0 Scope.** The requirements and prohibitions of Philadelphia's campaign finance law supplement the requirements and prohibitions imposed by the Pennsylvania Election Code (25 P.S. §3241, *et seq*.). This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of the Philadelphia Code, interprets Philadelphia's campaign finance law found at Code Chapter 20-1000.

**1.1 Definitions.** As used herein, the following words and phrases shall have the meanings indicated.

**a. Agent.** An individual who acts at the direction of or is authorized to act on behalf of a candidate, former candidate, a chair or treasurer of a political committee, or a political committee.

**b. Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.

**c. Candidate.** An individual who i) files nomination papers or petitions for City elective office, or ii) publicly announces his or her candidacy for City elective office.

**d. City elective office.** The offices of Mayor, District Attorney, City Controller, Sheriff, Clerk of Quarter Sessions, City Commissioner, or City Council.

**e. Candidate political committee.** The one political committee used by a candidate to receive all contributions and make all expenditures as required by Section 20-1003 of the Philadelphia Code.

**f. Contribution.**

i. Any money, gifts, forgiveness of debts, or loans incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate;

ii. Any thing having a monetary value incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate, which includes 1) any payment by a person or a political committee provided for the benefit of the candidate, including any payment for the services of a person serving as an agent of the candidate, candidate political committee, or litigation fund committee, and 2) any in-kind contributions, as defined at Subparagraph 1.1(m); or

iii. Any post-candidacy contribution, as defined at Subparagraph 1.1(q).

**g. Contributor.** A person or political committee who makes a contribution to a candidate, former candidate, litigation fund committee, or political committee.

**h. Covered election.** Every primary, general or special election for City elective office.

**i. Excess post-candidacy contribution.** The portion of a post-candidacy contribution that, had it been contributed for the purpose of retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office, would have been in excess of the contribution limitations set forth in Sections 20-1002(4) or 20-1002(5) of the Philadelphia Code.

**j. Excess pre-candidacy contribution.** The portion of a pre-candidacy contribution to a political committee that, had it been made to a candidate for City elective office, would have been in excess of the contribution limitations set forth in Sections 20-1002(1) or 20-1002(2) of the Philadelphia Code.

**k. Expenditure.** The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, or other person for the purpose of influencing the outcome of a covered election.

**l. Independent expenditure.** An expenditure made to influence the outcome of a covered election without the cooperation or consultation of any candidate or candidate political committee and which is not made in concert with or at the request or suggestion of any candidate, candidate political committee, or agent thereof.

**m. In-kind contribution.** The provision of or payment for goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services where such provision or payment is made for the benefit of the candidate.

**n. Litigation fund committee.** The committee established by a candidate to receive contributions and make expenditures solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out the conduct of a candidate's election campaign or participation in an election, as described in Subpart H.

**o. Person.** An individual, or a partnership, sole proprietorship, or other form of business organization.

**p. Political committee.** Any committee, club, association, political party, or other group of persons, including the candidate political committee of a candidate for office in a covered election, which receives contributions or makes expenditures for the purpose of influencing the outcome of a covered election.

**q. Post-candidacy contribution.** Money, gifts, forgiveness of debts, loans, or things having a monetary value, received by a former candidate or his/her agent for use in retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office.

**r. Post-candidacy expenditure.** An expenditure made by a candidate, former candidate, or candidate political committee to defray the candidate's cost of transition or inauguration to City elective office or to retire debt that the candidate incurred to (i) influence the outcome of a covered election; or (ii) cover transition or inauguration expenses.

**s. Pre-candidacy contribution.** A contribution made to a political committee that: (a) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City elective office; and (b) was made before such candidate became a candidate.

**t. SPEC account.** A segregated pre/post-candidacy excess contribution account, as described in Subpart C of this Regulation.

**u. Sample ballot.** A ballot distributed by a political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.

**SUBPART B. CONTRIBUTION LIMITS**

**1.2 Limits on contributions from individuals**

a. An individual shall not make total contributions per calendar year of more than $2,600 to a candidate for City elective office, including contributions made through one or more political committees.

b. An individual shall not make total contributions per calendar year of more than $2,600, including contributions made through one or more political committees, to a litigation fund committee established as described in Subpart H by a candidate for City elective office.

c. An individual shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than $2,600 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.

**1.3** A contribution by an individual is made through a political committee for the purposes of Paragraph 1.2 if the individual makes a contribution to a political committee and then directs, suggests, or requests that the political committee use the contributed money to make a contribution to a specific candidate. For the purpose of the contribution limits, the contribution is from both the individual and the political committee. The entire amount of the contribution shall count toward the individual's contribution limits, and the entire amount shall also count toward the political committee's contribution limits.

**1.4 Limits on contributions from political committees, partnerships, sole proprietorships, or other forms of business organization.**

a. During an election year, a political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than $10,600 to a candidate for City elective office.

b. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than $10,600 to a litigation fund committee established as described in Subpart H by a candi-

date for City elective office.

c. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than $10,600 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.

d. In order to qualify for the $10,600 contribution limit described in this Paragraph, the finances of a sole proprietorship or partnership must be distinct and segregated from the personal finances of its proprietor or partners.

**1.5** A political committee makes a contribution through another political committee for the purposes of Subparagraph 1.4(c) if the contributing political committee makes a contribution to another receiving political committee and then directs, suggests, or requests that the receiving political committee use the contributed money to make a contribution to a specific candidate. For the purpose of the post-candidacy contribution limits, the contribution is from both political committees. The entire amount of the contribution shall count fully toward the contribution limits of each of the political committees.

**1.6** During non-election years:

a. Candidates for Mayor shall receive no more than $250,000 in total contributions from political committees;

b. Candidates for District Attorney and Controller shall receive no more than $100,000 in total contributions from political committees; and

c. Candidates for City Council, Sheriff, Clerk of Quarter Sessions, and City Commissioner shall receive no more than $75,000 in total contributions from political committees.

**1.7 Doubling of Contribution Limits**.

a. If a candidate for City elective office contributes more than $250,000 of his or her own personal resources to his or her candidate political committee, the contribution limits for all candidates for that office shall be doubled for that year and each subsequent year up to and including the year in which the covered election occurs, except as provided in Subparagraph 1.7(b).

b. The limits for post-candidacy contributions (Subparagraphs 1.2(c) and 1.4(c)) and the limits for contributions to litigation fund committees (Subparagraphs 1.2(b) and 1.4(b)) do not double if a candidate contributes more than $250,000 to his or her candidate political committee.

c. A contribution that exceeds the contribution limits at the time it is accepted by a candidate exceeds the contribution limits described in this Subpart even if the contribution limits subsequently double and the contribution is less than the doubled limits.

d. If a candidate political committee returns, repays, or refunds to a candidate any money the candidate had contributed from his or her personal resources, the returned amount shall not count toward the $250,000 contribution amount required to trigger doubling of the limits.

e. Once the contribution limits double, they remain doubled even if:

i. The candidate whose contributions from his or her personal resources triggered the doubling ceases to be a candidate; or

ii. After the limits have doubled, a candidate political committee returns, repays, or refunds to the candidate a portion of the money contributed from the candidate's personal resources.

**1.8** Candidates, former candidates, candidate political committees, and litigation fund committees shall not accept any contribution that exceeds the limits set forth in this Subpart.

**1.9** A pre-candidacy contribution made in the same calendar year that an individual becomes a candidate shall count toward the contribution limits set forth in this Subpart.

**1.10** Candidates and contributors shall include the value of in-kind contributions when determining the total amount of contributions made or accepted in a calendar year.

**1.11 Transactions that do not count toward the contribution limits.** The following are not subject to the contribution limits set forth in this Subpart:

a. Contributions from a candidate's personal resources to the candidate's candidate political committee or to the candidate's litigation fund committee;

b. Contributions from a candidate's candidate political committee to the candidate's litigation fund committee;
c. Volunteer labor provided to a candidate or political committee; and
d. A political committee's costs to print or distribute a sample ballot where a candidate, person, or another political committee has paid the usual and normal charge to that political committee to have the candidate placed on a sample ballot distributed by that political committee.
e. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.36.

**SUBPART C. EXCESS PRE-CANDIDACY CONTRIBUTIONS; EXCESS POST-CANDIDACY CONTRIBUTIONS**

**1.12** A candidate or candidate political committee shall not spend any excess pre-candidacy contributions for the purpose of influencing the outcome of a covered election in which he or she is a candidate.

**1.13** A candidate shall not transfer excess pre-candidacy contributions to the candidate's litigation fund committee established as described in Subpart H.

**1.14** A candidate or former candidate shall not spend any excess pre-candidacy contributions or excess post-candidacy contributions for the purposes of:

a. Transition or inauguration expenses; or
b. Retiring debt that was incurred to (i) influence the outcome of an already completed covered election; or (ii) cover transition or inauguration expenses related to an already completed covered election.

**1.15** A candidate shall exclude all excess pre-candidacy contributions from his or her candidate political committee checking account by one of the following methods:

a. Transferring excess pre-candidacy contributions to a segregated pre/post-candidacy excess contribution account ("SPEC" account) within ten days after the individual becomes a candidate; or
b. Returning excess pre-candidacy contributions to the contributors who made those contributions within ten days after the individual becomes a candidate.

**1.16.** A candidate shall exclude all excess post-candidacy contributions from his or her candidate political committee checking account by one of the following methods:

a. Transferring excess post-candidacy contributions to a SPEC account within ten days of receiving the contributions; or
b. Returning excess post-candidacy contributions to the contributors who made those contributions within ten days of receiving the contributions.

**1.17** A candidate, former candidate, or a candidate political committee shall not use money held in a SPEC account to influence the outcome of a covered election in which the candidate participates, or to make post-candidacy expenditures.

**1.18** Within seven days of establishing a SPEC account, a candidate shall notify the Board of the name of the bank at which the account was established by postal mail or email sent to the attention of the Board's Executive Director.

**SUBPART D. DATE OF ACCEPTANCE OF CONTRIBUTIONS WITH RESPECT TO THE CONTRIBUTION LIMITS**

**1.19** Except as provided in Paragraphs 1.20, 1.21, and 1.22 the date of acceptance of a contribution is the date that the contribution comes into the possession of the recipient candidate, former candidate, treasurer, litigation fund committee, political committee, or agent thereof.

**1.20.** If a contribution is delivered to a mailbox, the date that the contribution is accepted is the date on which the recipient candidate, former candidate, treasurer, litigation fund committee, political committee, or agent thereof finds the contribution in the mailbox.

**1.21** If a contribution is made by credit card through a website, the date that the contribution is accepted is the date on which the contributor submits his or her credit card information on the website.

**1.22** The date of acceptance of an in-kind contribution is the date that the contributor provides the goods or services, or makes payment to a third party for the provision of goods or services, to the recipient candidate, former candidate, litigation fund committee, or political committee, or agent thereof.

**1.23** A candidate, former candidate, litigation fund committee, or political committee shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart.

**SUBPART E. ATTRIBUTING CONTRIBUTIONS MADE BY CHECK FOR THE PURPOSE OF THE CONTRIBUTION LIMITS**

**1.24** A contribution made by a check that reflects a joint checking account of two or more individuals shall be attributed to the joint account holder who signs the check. If more than one account holder signs a contribution check, the contribution shall be apportioned evenly between the signers. If an individual other than an account holder signs a contribution check, the contribution shall be attributed evenly among the joint account holders.

**1.25** A contribution made by a check drawn on the account of a political committee is a contribution from that political committee.

**1.26** A contribution made by check drawn on the account of a partnership, sole proprietorship, or other form of business organization is a contribution from the partnership, sole proprietorship, or other form of business organization, unless other facts demonstrate that the contribution is from the signer of the check.

**SUBPART F. RETIRING DEBT**

**1.27** Except as provided in Paragraph 1.28, forgiveness of debt incurred to influence the outcome of a covered election or to cover transition or inauguration expenses is a contribution from the creditor to the former candidate and is subject to the contribution limits set forth in Subpart B.

**1.28** If a debt owed by a former candidate is not collectable as defined below, a creditor may forgive the debt without such forgiveness being subject to the contribution limits set forth in Subpart B. A debt is not collectable if all of the following are true:

a. The creditor billed the candidate for its services in the ordinary course of its business and the terms of the transaction were commercially reasonable;
b. The debt has been outstanding for at least 24 months;
c. The candidate political committee does not have sufficient cash on hand to pay the creditor;
d. The candidate political committee receives less than $1,000 in contributions during the previous 24 months;
e. The candidate political committee spends less than $1,000 during the previous 24 months;
f. Forgiveness of the debt is not prohibited by any other relevant law;
g. The creditor and candidate disclose the forgiveness to the extent required by the Pennsylvania Election Code, if applicable; and
h. The creditor notifies the Board by postal mail or email sent to the attention of the Board's Executive Director of its intent to forgive the debt and demonstrates that all the conditions set forth in this Paragraph have been satisfied.

**SUBPART G. USE OF POLITICAL COMMITTEES AND CHECKING ACCOUNTS BY CANDIDATES**

**1.29** A candidate or former candidate for City elective office shall have no more than one political committee and one checking account for the City office being sought, into which all contributions and post-candidacy contributions for such office shall be made, and out of which all expenditures for that office shall be made, including post-candidacy expenditures.

**1.30** If a candidate or former candidate maintains other political or non-political accounts for which contributions are solicited, such funds collected in those accounts shall not be used for the purpose of influencing the outcome of a covered election or to make post-candidacy expenditures.

**1.31** A candidate or former candidate for City elective office may transfer funds between his or her candidate political committee checking account and a single savings account so long as:

a. The candidate or former candidate establishes the savings account at the same bank that has his or her checking account;

b. The candidate or former candidate deposits all contributions into his or her checking account before transferring such funds to the savings account;

c. The candidate or former candidate does not make any expenditures or withdrawals directly from the savings account, but first transfers funds to the checking account in order to make expenditures or withdrawals; and

d. Within three business days of the establishment of the savings account, the candidate or former candidate shall notify the Board by postal mail or email sent to the attention of the Board's Executive Director that he or she has established a savings account.

**1.32 Notice of formation of candidate political committee**. Within three business days of the formation of a candidate political committee or within three business days of becoming a candidate, the candidate shall notify the Board of the following information by postal mail or email sent to the attention of the Board's Executive Director:

a. The committee's name and street address (other than a P.O. box);

b. The name of the bank where the committee's checking account is established; and

c. The name and telephone number of the treasurer of the committee. If the treasurer has an email address, he or she shall also provide that email address.

A candidate may satisfy the requirements of this Paragraph by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners or Secretary of State as long as the candidate includes the information described in (a)-(c) above.

**1.33 Exercising control over another political committee.** A candidate has a political committee, for the purposes of this Subpart, if he or she exercises control over the political committee. The following are factors relevant to determining whether a candidate exercises control over a political committee other than his or her candidate political committee:

a. The candidate is the treasurer or chair of the other political committee;

b. The candidate established or registered the other political committee;

c. The candidate is an authorized user or signer on the other political committee's bank account;

d. The treasurer or chair of the other political committee is an employee of the candidate;

e. The other political committee has the same treasurer or chair as the candidate political committee; or

f. The political committee's registered address is the same as the registered address of the candidate political committee or the residence or business of the candidate or the candidate political committee's treasurer or chair.

The presence of one or more of the factors enumerated above does not mandate a finding that a candidate exercises control over a given committee if the candidate does not in fact exercise control over that committee. Likewise, the absence of most or all of the factors enumerated above does not mandate a finding that a candidate does not exercise control over a given committee if the candidate does in fact exercise control over that committee.

**1.34 Exercising control over another political committee's expenditures.** A candidate also has a political committee, for the purposes of this Subpart, if the candidate or the candidate's agent exercises control over a specific expenditure made by that political committee. The following are factors relevant to determining whether a candidate or the candidate's agent exercises control over a specific expenditure made by a political committee:

a. The candidate, candidate political committee, or the candidate's agent, provides the money to cover the specific expenditure;

b. The candidate, candidate political committee, or the candidate's agent, selects the recipient of the expenditure; or

c. The candidate, candidate political committee, or the candidate's agent decides or directs that the expenditure be made.

**1.35** This Subpart does not prohibit a candidate from maintaining a litigation fund committee as described in Subpart H.

**1.36** This Subpart does not prohibit a candidate from making expenditures through up to one political committee in addition to his or her candidate political committee for the printing and distribution of sample ballots that are distributed in the candidate's ward. However, all contributions to the candidate for the City elective office being sought shall be made into the candidate's candidate political committee.

**1.37** This Subpart shall not be construed to prevent a candidate from paying a political committee to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:

a. The recipient political committee offers similar services to other candidates; and
b. The candidate does not exercise control over the political committee as defined in Paragraph 1.33.

**1.38** This Subpart shall not be construed to prevent a candidate from making a contribution within the contribution limits to his or her candidate political committee from any other political committee controlled by the candidate, as defined in Paragraph 1.33, other than the candidate's litigation fund committee.

**SUBPART H. LITIGATION FUND COMMITTEE**

**1.39 Litigation fund committee requirements.**

a. In addition to a candidate political committee, a candidate for City elective office may establish a litigation fund committee with a single separate checking account to solicit and receive contributions and make expenditures for the purposes described in Subparagraph 1.39(d).
b. The name of a litigation fund committee shall include the term "Litigation Fund."
c. A litigation fund committee shall have a treasurer who shall be responsible for keeping records of contributions and expenditures as described in Paragraph 1.44.
d. A candidate shall make expenditures from a litigation fund committee solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of the candidate's election campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.
e. A candidate shall not make expenditures from a litigation fund committee to pay any judgment, settlement, fine, sanction, or other type of penalty arising out of any civil, criminal, or administrative proceeding.
f. A candidate may make expenditures from his or her candidate political committee for the purposes described in Subparagraph 1.39(d).

**1.40 Notice of formation of a litigation fund committee.** Within three business days of the formation of a litigation fund committee, the candidate shall notify the Board of the following information by postal mail or email sent to the attention of the Board's Executive Director:

a. The litigation fund committee's name and street address (other than a P.O. box);
b. The name of the bank where the litigation fund committee's checking account is established; and
c. The name and telephone number of the treasurer of the litigation fund committee. If the treasurer has an email address, he or she shall also provide that email address.

If the litigation fund committee has been registered as a political committee, a candidate may satisfy the requirements of this Paragraph by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners or Secretary of State as long as the candidate includes the information described in (a)-(c) above.

**1.41 Termination of a litigation fund committee.**

a. A litigation fund committee shall be terminated no later than six months after the date of the general election for the office which the candidate sought, except as provided in Subparagraph 1.41(b).
b. If six months after the date of the general election any matters are pending for which litigation fund committee funds may be expended, then a litigation fund committee shall be terminated within six months after the conclusion of all such matters, including any appeals.
c. Before a litigation fund committee is terminated, any remaining funds shall be returned to contributors according to one of the methods below, and the litigation fund committee's checking account shall be closed:

i. On a "last in, first out" accounting basis;
ii. On a "first in, first out" accounting basis;
iii. On a pro-rata accounting basis; or
iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a candidate or treasurer of a litigation fund committee by postal mail or email directed to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.

d. The Board may grant an extension for terminating a litigation fund committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

**SUBPART I. CAMPAIGN FINANCE DISCLOSURES**

**1.42 Disclosures required of candidates and former candidates.**

a. Whenever a candidate for City elective office (or such a candidate's treasurer or agent) files a campaign finance report with the City Commissioners or the Secretary of State pursuant to the Pennsylvania Election Code, he or she shall file electronically a copy of that report with the Board, through the Department of Records.

b. Former candidates shall file electronically with the Board, through the Department of Records, reports of post-candidacy contributions and expenditures.

i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance disclosure reports required to be filed by municipal candidate political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.

ii. A former candidate may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the former candidate files with the Secretary of State or the City Commissioners, so long as such reports disclose all post-candidacy contributions received and expenditures made by the former candidate.

**1.43 Disclosures required of political committees.**

a. Whenever a political committee (or a political committee's treasurer or agent), files a campaign finance report with the City Commissioners or the Secretary of State, the political committee shall file electronically a copy of that report with the Board, through the Department of Records, if the report filed with the City Commissioners or Secretary of State discloses, or should disclose, any contributions or expenditures made to influence the outcome of a covered election, including contributions from or expenditures to a candidate for City elective office.

b. Political committees shall file electronically with the Board, through the Department of Records, reports of all post-candidacy contributions made by the political committee to any former candidate.

i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance disclosure reports required to be filed by political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.

ii. A political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the political committee files with the Secretary of State or the City Commissioners, so long as such reports disclose all post-candidacy contributions made by the political committee.

**1.44 Disclosures required of litigation fund committees.**

a. A litigation fund committee established as described in Subpart H shall file electronically with the Board, through the Department of Records, reports of contributions and expenditures.

b. Such disclosure reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidate political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.

c. If a litigation fund committee is established as a political committee pursuant to the Pennsylvania Election Code, the litigation fund committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports it files with the Secretary of State or the City Commissioners, so long as such reports disclose all contributions received and expenditures made by the litigation fund committee.

**1.45** Any report required under this Subpart shall be accompanied by a written statement, on a form available from the Department of Records, signed by the individual filing the report, that subscribes and swears to the information set forth in the report.

**SUBPART J. PENALTIES**

**1.46 Acceptance of an excess contribution.** A candidate, former candidate, candidate political committee, or litigation fund committee that accepts a contribution in excess of the limits described in Subpart B shall be subject to a civil penalty of three times the amount by which the accepted contribution exceeded the limit, or $2,000, whichever is less.

**1.47 Making an excess contribution.** A contributor who makes a contribution in excess of the limits described in Subpart B shall be

subject to a civil penalty of three times the amount by which the contribution exceeded the limit, or $2,000, whichever is less.

**1.48 Safe harbor if an excess contribution is returned within 15 days.** No civil penalty shall be imposed on a contributor or recipient of an excess contribution if the candidate or former candidate who accepted the excess contribution within fifteen days after receiving the contribution:

a. Returns the excess amount to the contributor; and
b. Notifies the Board of the following information by postal mail or email sent to the attention of the Board's Executive Director: the amount of the excess, the identities of the contributor and the candidate, the date of receipt, and the date of return.

**1.49 Failure to file campaign finance disclosures.**

a. A civil penalty of $250 shall be imposed for failure to file a campaign finance or litigation fund committee report as described in Subpart I.
b. Each day the report is not filed shall be considered a separate offense for which an additional separate civil penalty of $250 may be imposed. The total civil penalties that may be imposed for failure to file a particular report shall not exceed $2,000 for the first thirty days the report is not filed, plus $1,000 for each additional thirty-day period or part thereof the report is not filed.

**1.50 Other violations of the campaign finance law.** All other violations of the campaign finance law, including the making of material misstatements or omissions in a campaign finance report filed with the Board, are subject to a civil penalty of $1,000, which may be increased or decreased depending on the presence of mitigating and aggravating factors as described in this Paragraph:

a. Mitigating factors. The civil penalty of $1,000 shall be reduced by $500 if one of the following mitigating factors is present and shall be reduced by $750 if more than one of the following mitigating factors is present:

i. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.
ii. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.
iii. Prompt self-reporting. The violator is found to have reported promptly the violation to the Board of Ethics.

b. Aggravating factors. The civil penalty of $1,000 shall be increased by $1,000 for each of the following aggravating factors that is present, provided that the total civil penalty that may be imposed for one violation shall not exceed $2,000:

i. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.
ii. Repeat violation. The violator previously has been found by the Board of Ethics in an administrative adjudication or by a court of competent jurisdiction to have violated the same provision.
iii. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethics into the same violation.

Approved for public comment by the Board December 18, 2006
Effective January 17, 2007
Amended by adding ¶ 1.4 approved by Board August 21, 2007
Effective September 21, 2007

Proposed amendments approved for public comment by Board on July 21, 2010 to expand the Regulation to address the requirements, other than electronic filing, of the City's campaign finance law, Philadelphia Code Chapter 20-1000, as that law was amended in June 2010. The amendments to Regulation No. 1 completely strike and replace the original text of the regulation and delete the original exhibit.

Public hearing held September 8, 2010
Adopted by Board with modifications September 15, 2010
Effective September 27, 2010

**PHILADELPHIA BOARD OF ETHICS**
**REGULATION NO. 2**
**INVESTIGATIONS AND**
**ENFORCEMENT PROCEEDINGS.**

**SUBPART A. DEFINITIONS; SCOPE.**

**2.0 Definitions.** As used herein, the following words and phrases shall have the meanings indicated.

**a. Public Integrity Laws.** Chapters 20-600 and 20-1000 of the Philadelphia Code, relevant provisions of the Philadelphia Home Rule Charter and such other laws and regulations over which the Board has jurisdiction under Charter Section 4-1100, as well as other matters assigned to the Board by City Council.

**b. Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.

**c. Executive Director.** The Executive Director of the Board (including the interim Executive Director until a permanent Executive Director is appointed), and his or her designee or designees.

**d. General Counsel.** The General Counsel of the Board, and his or her designee or designees.

**e. Paragraph.** A numbered paragraph contained in this Regulation.

**f. Subject of a complaint or an investigation.** Those individuals or entities alleged in a complaint to have violated the Public Integrity Laws or those individuals or entities being investigated to determine whether there is probable cause to believe they have violated the Public Integrity Laws.

**g. Respondent.** Those individuals or entities against whom the Executive Director has instituted an administrative enforcement proceeding or against whom the Board has instituted a judicial enforcement proceeding.

**2.1 Scope.** This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Home Rule Charter ("Charter") and Section 20-606(1) of the City of Philadelphia Ethics Code ("Ethics Code"), sets forth the procedures for the Board's investigations, the conduct of enforcement proceedings, and related matters.

**2.2 Powers of the Board.** The Board shall have the power to investigate all matters related to its responsibilities under the Public Integrity Laws. Pursuant to Ethics Code § 20-606(1)(g) and Charter §§ 8-409 and 8-412, the Board and its designated agents shall have the power to inspect books and records; receive and investigate complaints; issue subpoenas to require the attendance of witnesses and the production of books, accounts, papers and other evidence; and administer oaths and take the testimony of witnesses. The Board may refer any matter related to, or discovered in, an investigation to any other governmental or law enforcement agency as the Board deems appropriate.

**2.3 Separation of Functions.** 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 B. INVESTIGATIONS.**

**2.4 Preliminary Inquiry.** The Executive Director may, at his or her discretion, conduct a preliminary inquiry to determine if there is reason to believe a potential violation of the Public Integrity Laws has occurred. Board and Board staff shall keep preliminary inquiries confidential as required by Regulation No. 5 Paragraph 5.5. However, a preliminary inquiry is not an investigation and is not subject to the disclosure provisions of Board of Ethics Regulation No. 5, Paragraph 5.3 and the notice provisions of Regulation No. 5, Paragraph 5.4.

**2.5 Initiation of Investigations.** The Executive Director shall have the authority to initiate an investigation on the basis of any of the following three circumstances:

a. receipt of a complaint that meets the requirements of Paragraph 2.6(b), submitted pursuant to Ethics Code § 20-606 (1)(f) and Paragraph 2.6(a);

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

c. upon the Executive Director determining, through a preliminary inquiry, that a potential violation of the Public Integrity Laws has occurred.

An investigation initiated by the Executive Director that is not in response to a complaint from any other person shall not be subject to the requirements of Paragraphs 2.6(a), (b), and (c).

**2.6 Complaints.**

**a. General.** Any person who believes a violation of the Public Integrity Laws has occurred may submit a written complaint to the Board in such form as prescribed by the Board. A complaint shall be mailed to, or personally served on, the Board at: City of Philadelphia Board of Ethics, Packard Building, 2nd Floor, 1441 Sansom Street, Philadelphia, PA 19102. For purposes of the foregoing sentence, a complaint shall be considered mailed if sent via electronic mail to the Board via the Board's Web site or by other electronic means.

**b. Requirements.** A complaint shall conform to the following requirements:

i. It shall provide the full name and address of the complainant, and identify as the subject of the complaint those individuals or entities who are alleged to have committed violations of the Public Integrity Laws, including their names and addresses to the extent known.

ii. It shall contain clear allegations of fact, including times, places, and names of witnesses to the extent known, which describe a violation of the Public Integrity Laws.

**c. Initial Review.** Upon receipt of a complaint, the Executive Director shall review the complaint for substantial compliance with the requirements of subparagraph (b). If the complaint is in compliance, the staff shall mail the complainant notice that the complaint has been accepted. If a complaint is not in compliance, the Executive Director shall dismiss the complaint and shall mail notice thereof to the complainant.

**d. De Minimis Complaints; Frivolous Complaints.**

i. 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 subsection.

ii. If the Executive Director receives information that a complaint is false or frivolous, or reasonably finds after review that a complaint is false or frivolous, the Executive Director, pursuant to Ethics Code § 20-606(1)(k), may initiate an investigation on behalf of the Board into the circumstances surrounding the drafting and filing of the complaint, including requesting or compelling testimony from the complainant.

**2.7 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.

**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 shall have the authority to issue subpoenas and subpoenas duces tecum on behalf of the Board in connection to any investigation conducted pursuant to Ethics Code § 20-606(1)(g) and Subpart B of this Regulation. If any person refuses to comply with any 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 Ethics Code § 20-606(1)(g) and Paragraph Subpart B of this Regulation.

**e. Termination.** The Executive Director shall have discretion to terminate an investigation upon reasonable notice to the Board. If the investigation is upon a complaint meeting the requirements of Paragraph 2.6(b), the staff shall mail both the complainant and the subject of the complaint notice of this termination.

**f. Confidentiality.** All investigations shall be subject to the confidentiality provisions of Code § 20-606(1)(i) as described in Board of Ethics Regulation No. 5.

**SUBPART C. ADMINISTRATIVE ENFORCEMENT.**

**2.8 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 direct the initiation of an enforcement proceeding pursuant to Code § 20-606(1)(h). In accordance with Code § 20-605, 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 any such matter. See Paragraphs 2.3 and 2.11(d).

**2.9 Notice of Administrative Enforcement Proceeding.** To commence the enforcement proceeding, the Executive Director shall issue written notice to each respondent regarding the violations of the Public Integrity Laws for which probable cause has been found. The Notice of Administrative Enforcement Proceeding may also be referred to as the Notice.

**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 2.10. 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 must be made in his or her written response to the Notice and that a respondent's failure to request a hearing shall be deemed a waiver of the right to a hearing as set forth in Paragraph 2.10 (c).

**b. Service.** The Executive Director shall serve the Notice of Administrative Enforcement Proceeding on each respondent either by personal service or by first class, certified or overnight mail. The Executive Director shall serve a candidate or treasurer of a campaign for City elective office at the addresses provided in the campaign's disclosure reports filed with the Board pursuant to Code § 20-1006. The candidate and treasurer are responsible for maintaining a correct address on file with the Board, and for notifying the Board in writing of any change in their addresses. 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.

**2.10 Opportunity to Respond.** The respondent has the right to respond in writing to the allegations of violation in the Notice of Administrative Enforcement Proceeding. The response shall be deemed timely if it is received by the Board within twenty (20) days from the date of the Notice, unless, for exigent circumstances, the Board shall fix a shorter time. Upon the request of the respondent, the Board, in its discretion, may grant the respondent an extension of time to respond to the Notice. No request for an extension shall be granted unless such request is in writing, and alleges good cause for such extension.

**a. Appearance.** If the respondent wishes to appear before the Board to contest the allegations of violation 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 wishes to be represented by counsel in any matter before the Board, the respondent shall so advise the Board in his or her response to the Notice, or shall provide the Board with a letter of representation, stating the name, address, telephone number, and attorney number of the counsel.

**c. Waiver.** A respondent's failure to request a hearing in his or her written response to the Notice shall be deemed a waiver of the right to a hearing by the respondent. A respondent's failure to respond in writing to the Notice by the deadline set forth in Paragraph 2.10 ("Opportunity to Respond") shall be deemed a waiver of the right to a hearing by the respondent. The Board, in its

discretion, 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 2.15.

**2.11 Public Hearings.** The Board is authorized by Ethics Code § 20-606(1)(h) to conduct public hearings to adjudicate alleged violations of the Public Integrity Laws and/or Board regulations. 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, subject to the Pennsylvania Local Agency Law, 2 Pa.C.S. §§ 551-555, the Charter, the Philadelphia Code, this Regulation, and other applicable law. 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 before the Board 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 designated agents 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. Upon issuing subpoenas for administrative adjudication hearings, the Board will grant the Executive Director and respondents 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.** In accordance with Code § 20-605, no person shall engage in an inappropriate *ex parte* communication with any member of the Board (including, for purposes of this subparagraph, the General Counsel and any designated Hearing Officer). Communicating with the General Counsel regarding non-substantive issues, such as scheduling, is not an inappropriate *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 designated 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.

**2.12 Discovery.**

**a. Pre-hearing disclosures.** All parties to an enforcement proceeding shall give notice of the names of the witnesses they plan to call to testify, or whose testimony they plan to submit, at least fourteen (14) days prior to the hearing at which the witnesses are to testify, unless the Board or its designated Hearing Officer shall, for exigent circumstances, fix a shorter time. The Board, or its designated Hearing Officer, may require the Executive Director and respondent to exchange copies of documents they intend to offer as evidence at the hearing.

**b. Evidence.** Other than witnesses and documents as identified under (a) above, there shall be no evidence admitted at the hearing, provided that the Board or its designated Hearing Officer may grant exceptions for good cause shown.

**c. No other discovery.** Except as provided in subparagraphs (a) and (b) of this paragraph, there shall be no other discovery, although the parties in an enforcement proceeding may voluntarily agree between themselves to other forms of discovery.

**2.13 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 designated Hearing Officer, at its discretion, 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 designated Hearing Officer, may ask questions of witnesses at any time.

**c. Limitation of Witnesses and Examination.** The Board, or its designated Hearing Officer, may limit the testimony of witnesses whose testimony is cumulative or similar. The Board, or its designated 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.

**2.14 Evidence.** As provided in the Pennsylvania Local Agency Law, the Board, or its designated Hearing Officer, shall not be bound by technical rules of evidence at Board hearings, and all relevant evidence of reasonably probative value may be received.

**a. Official Notice.** The Board, or its designated 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 designated 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.

**2.15 Final Board Determinations.** 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 Ethics Code § 20-606(1)(h) and 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.

**a. Basis of Final Determination When Hearing Not Requested.** 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.

**b. Notice of Final Determinations.** The Board shall serve notice of the final determination on the respondent in the manner described in Paragraph 2.9(b).

**SUBPART D. JUDICIAL ENFORCEMENT**

**2.16 Scope.** Subpart C shall not apply, and this Subpart D shall apply, to those enforcement actions to be instituted by the Board filing an action in the Court of Common Pleas.

**2.17 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.

**2.18 Opportunity to Address the Board**. The Executive Director shall notify the potential respondent to the judicial enforcement 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 2.17. The Executive Director shall inform the potential respondent that he or she may appear at the next public meeting of the Board to address the Board and respond to the allegations submitted to the Board pursuant to Paragraph 2.17.

The provisions of Paragraph 2.18 shall not apply to actions to enforce a subpoena issued by the Board or to actions seeking emergency relief.

**2.19 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 potential respondent to the judicial enforcement proceeding, the Board may do one of the following:

**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 C of this Regulation, but only if the respondent 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 to the relevant facts, allegations, or legal theories by any member of the Board or its staff.

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

**SUBPART E. SETTLEMENT AND CONCILIATION**

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

**2.21 Stipulation of settlement.** 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 stipulation of settlement is entirely within the discretion of the Board. A stipulation of settlement 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 final stipulations of settlement shall be made available to the public.

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

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

**PHILADELPHIA BOARD OF ETHICS**
**REGULATION NO. 3**
**REFERRALS TO AND COOPERATION WITH OTHER GOVERNMENTAL ENFORCEMENT AGENCIES**

**3.0 Definitions.** The definitions in paragraph 2.0 of Board Regulation No. 2 shall apply herein. Additionally, as used herein, the following words and phrases shall have the meanings indicated.

**a. Other appropriate enforcement authorities.** The Board interprets this phrase in Code Section 20-606(1)(f)(ii)(.5) to include, without limitation, the Philadelphia Police Department, the Philadelphia City Controller, the Philadelphia Inspector General, the Philadelphia District Attorney's Office, the Federal Bureau of Investigation, the U.S. Attorney's Office for the Eastern District of Pennsylvania or other appropriate Districts, the Pennsylvania Attorney General's Office or that of other appropriate States, the Disciplinary Board of the Pennsylvania Supreme Court or of any other State, and any other federal, state, or local governmental entity with civil or criminal enforcement powers.

**3.1 Scope.** This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Home Rule Charter ("Charter") and Section 20-606(1)(a) of the City of Philadelphia Ethics Code ("Ethics Code"), sets forth the Board's interpretation of Code Sections 20-606(l)(f)(ii) and 20-606(1)(g)(ii), relating to referrals from the Board to other appropriate enforcement authorities.

**3.2 Authorization for Referrals by the Board.** The Board notes that Paragraph 2.5 of Board Regulation No.2 provides as follows:

The Executive Director shall have the authority to initiate an investigation on the basis of any of the following three circumstances:

a. receipt of a complaint that meets the requirements of Paragraph 2.6(b), submitted pursuant to Ethics Code § 20-606 (1)(f) and Paragraph 2.6(a);
b. upon a referral from another government and/or law enforcement agency; or
c. upon the Executive Director determining, through a preliminary inquiry, that a potential violation of the Public Integrity Laws has occurred.

This Regulation No. 3 will refer to these three types of initiations of an investigation, respectively, as "complaint," "referral," and "Executive Director initiation." The Board further notes that Code section 20-606(1)(g)(ii), as amended by Bill No. 051024 (effective June 5, 2006), currently provides as follows:

> Whenever a City agency receives a complaint alleging a violation of the provisions of this Chapter or deter mines that a violation of this Chapter may have occurred, it shall refer such matter to the Board. Such referral shall be reviewed and acted upon by the Board in the same manner as a complaint received by the Board under paragraph (e) of this Section.

The Board interprets the cross-reference to "paragraph (e)" to be a typographical error. Paragraph (e) relates to financial disclosure, which does not make sense in this context. The Board concludes that the intended cross-reference was to paragraph (f), which relates to complaints. Accordingly, the Board interprets Code section 20-606(l)(g)(ii) to authorize the Board to act upon an investigation, whether initiated by "complaint," "referral," or "Executive Director initiation," in the same manner as a complaint, including any of the actions enumerated in Code Section 20-606(1)(f)(ii). This includes, in 20-606(1)(f)(ii)(.5), the Board referring the matter to the Inspector General or other appropriate enforcement authorities.

**3.3 Procedure for Referrals by the Board.** A referral to other appropriate enforcement authorities may include any of the following:

a. Partial referral. The Board retains jurisdiction in the matter, but shares file information with the other enforcement authority, subject to appropriate controls to maintain confidentiality and limit access to information on a "need to know" basis with appropriate personnel in both agencies.
b. Complete referral. The Board concludes that the matter is not appropriate for Board action, and transfers the entire file to the other enforcement authority for possible action.

Initially approved for public comment by Board on October 16, 2007
Effective November 16, 2007

Proposed amendments approved for public comment by the Board on December 16, 2009
Amendments effective January 21, 2010

**PHILADELPHIA BOARD OF ETHICS**
**REGULATION NO. 5**
**CONFIDENTIALITY OF ENFORCEMENT AND INVESTIGATIVE MATTERS AND PROHIBITED DISCLOSURES**

**SUBPART A. DEFINITIONS; SCOPE.**

**5.0 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, interprets 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.

**5.1 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.** 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.

**l. Subject.** Those individuals or entities alleged in a complaint, referral, investigation, or preliminary inquiry to have violated the Public Integrity Laws.

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

**5.2 Disclosure of a Complaint.** 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 Philadelphia Code Section 20-606(1)(i).

**5.3 Disclosure of a Referral.** Disclosure of the intention to make a referral, the fact of having made a referral, or the substance of the referral itself shall not constitute a violation of Philadelphia Code Section 20-606(1)(i).

**5.4 Disclosure Related to an Ongoing Investigation Prohibited.** While an investigation is ongoing, disclosure of any information related to that investigation, including disclosing the existence of an investigation, shall constitute a violation of Code 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 or content 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 an ongoing Board investigation.

**5.5 Notice.** The Executive Director shall notify the subject of an investigation and the complainant or the source of a referral 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 Code Section 20-606(1)(i) related to an ongoing investigation, 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.**

**5.6 Disclosure Related to a Complaint, Investigation, Referral, or Pending Adjudication Prohibited.** Neither the Board nor Board Staff shall disclose or acknowledge at any time any information related to a complaint, preliminary inquiry, 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 or preliminary inquiry, to subjects of that investigation or preliminary inquiry, witnesses, and legal counsel of such subjects and witnesses.

c. To a complainant, the source of a referral, or the subject of a complaint, referral, investigation or preliminary inquiry, for the purpose of explaining the status or outcome of a referral, complaint, investigation or preliminary inquiry.

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

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

f. In the course of a judicial or administrative enforcement proceeding to the respondent, witnesses, and legal counsel of respondents and witnesses.

g. In filings, pleadings, hearings, oral arguments or any other element of a judicial or administrative enforcement proceeding, appeal, or other legal proceeding. In a public announcement concerning any of the foregoing.

h. In order to provide the scheduling, result, or explanation of any step in the process of a judicial enforcement action, administrative adjudication, appeal or other legal proceeding, including whether the Board has served an enforcement petition or Notice of Administrative Enforcement Proceeding or whether a respondent to an administrative enforcement proceeding has requested a hearing.

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

j. 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.

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

l. If such information has been previously disclosed by the Board or Board Staff in accordance with Paragraph 5.6 (e) or (g).

m. The Board or Board Staff may disclose the source of a referral, but not a complaint, in an executed settlement agreement or in filings, pleadings, hearings, oral arguments or any other element of a judicial or administrative enforcement proceeding, appeal, or other legal proceeding, or in a public announcement concerning any of the foregoing.

**SUBPART D. DISCLOSURE OF BOARD RECORDS.**

**5.7** 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, except that filings and pleadings related to a judicial or administrative enforcement proceeding, appeal, or other legal proceeding shall be subject to public inspection.

**SUBPART E. PENALTIES.**

**5.8** 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 Chapter 20-1300 of the Philadelphia Code.

Initially approved for public comment 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 approved for public comment by Board November 18, 2009
Effective December 18, 2009

Proposed amendments that had been approved for public comment on June 16, 2010 and that were the subject of a July 21, 2010 Public Hearing were rescinded by Board September 15, 2010

Proposed amendments throughout approved for public comment by Board September 15, 2010
Effective October 18, 2010

# *APPENDIX II: Index to 2010 Formal Opinions*

# *2010 Formal Opinions*

| Formal Opinion No. | Date Issued | Brief Description | Key Words / Citations |
|---|---|---|---|
| 2010-001 | 2/17/10 | Advised a Councilmember that other people circulating nominating petitions on his behalf (for an office other than the one he currently holds) would not by itself constitute a declaration of candidacy, would not cause him to become a "candidate," and would not require him to resign his City office. | RESIGN TO RUN; DECLARATION OF CANDIDACY; CANDIDATE; CIRCULATING NOMINATING PETITIONS; COUNCILMEMBER<br>Charter §10-107(5) |
| 2010-002<br><br>Non-public Advice | 12/15/10 | Advised a City Council employee that conflict of interest rules prohibit her from writing a letter, as constituent service, to a City board in support of the position of a party before that board, where a member of the firm that also employs the Council employee is representing another party in that same matter. A conflict of interest would exist regardless of whether the letter supported or opposed the firm's position in the matter. An employee of a firm is a "member" of that firm for the purpose of the Code's conflict of interest rules. | CONFLICT OF INTEREST; OUTSIDE EMPLOYMENT; MEMBER OF FIRM; COUNCIL EMPLOYEE; CONSTITUENT SERVICE; STATE ETHICS ACT; DISQUALIFICATION LETTER<br>Code §§ 20-602, 20-607; 65 Pa.C.S. §§1102, 1103(a) |

# *APPENDIX II: Index to 2010 Advices of Counsel*

# *2010 Advices of Counsel*

| Advice No. | Date Issued | Brief Description | Key Words / Citations |
|---|---|---|---|
| GC-2010-501 | 1/22/10 | Advised the Director of the Department of Behavioral Health and Mental Retardation Services that the gift provisions of the Public Integrity Laws did not prohibit his participation in a foreign professional exchange program funded by a local foundation. The requestor proposed accepting travel expenses to visit another country on his own time to learn about that country's services and programs. Even if this exchange could be considered a gift, it would not be prohibited due to the lack of connection between the requestor's City work and the funding foundation. | GIFTS; PROFESSIONAL EXCHANGE PROGRAM; TRAVEL FUNDED BY PRIVATE FOUNDATION<br>City Code §20-604; Charter §10-105; 65 Pa. C.S.A. §§ 1103(b), (c), (d) |
| GC-2010-502 | 1/26/10 | Advised the Executive Director of the Sinking Fund Commission that there would be no issue under the Public Integrity Laws if the Controller as a Commission member participated in selecting a certain private company as an investment manager and contract recipient in light of the fact that an employee and officer of that company is a consultant for the Controller's Office. An independent contractor who is a paid consultant to a City agency is not subject to the Public Integrity Laws. | CONFLICT OF INTEREST; BOARDS & COMMISSIONS; CONTRACT RECIPIENT; CONSULTANT; CONTROLLER; SINKING FUND COMMISSION<br>City Code §20-607; Charter §10-102; 65 Pa. C.S.A. §§ 1103(a) |
| GC-2010-503 | 3/11/10 | Summarized for the Health Commissioner the major requirements that the Public Integrity Laws would impose on members of a proposed Animal Advisory Committee. Because the Committee would be advisory and not exercise the power of City government, the Charter's political activity restrictions and State Ethics Act would not apply. | SUMMARY OF PUBLIC INTEGRITY LAWS; BOARDS & COMMISSIONS; ANIMAL ADVISORY COMMITTEE; ADVISORY BOARD; POLITICAL ACTIVITY<br>Code Chapter 20-600; Charter §10-107 |
| GC-2010-504<br><br>Non-public Advice | 4/5/10 | Provided post-employment advice to a City attorney leaving City employment to work for a law firm. Attorney representations are regulated solely by the Pa. Supreme Court and the Rules of Professional Conduct. The post-employment rules of the State Ethics Act and Code §20-603(1) do not apply to the City attorney's subsequent practice of law. Code §20-607 (c)'s conflict of interest rule prohibits the City attorney for two years after he leaves the City from having a financial interest in actions he took in his capacity as a City employee. | POST-EMPLOYMENT; ATTORNEY<br>65 Pa. C.S. §1103(g); Code §§ 20-603(1), 20-607(c) |

# *2010 Advices of Counsel*

| Advice No. | Date Issued | Brief Description | Key Words / Citations |
|---|---|---|---|
| GC-2010-505<br><br>Non-public Advice | 5/6/10 | Advised an employee, whose City position involves work with the news media, regarding his outside interests. A newspaper that employs him part-time has City Sheriff Sale ads as its primary source of revenue. Charter §10-102 prohibits the employee's financial interest in the City's ad contracts with the newspaper. The employee may not be compensated by the newspaper from the City ad contract revenues. If the employee's work were to involve City action regarding a local communications nonprofit on whose board of directors the employee serves, it is likely that the State Ethics Act would require him to disqualify himself from participating and to disclose the conflict publicly. In contrast, a nonprofit is not a "business" for this purpose under the City Code. | INTEREST IN CITY CONTRACT; CONFLICT OF INTEREST; NON-PROFIT<br><br>Charter §10-102; Code §20-607; 65 Pa. C.S. §1103(a) |
| GC-2010-506<br><br>Non-public Advice | 5/6/10 | Advised a City board member who volunteers as an unpaid committee member of a nonprofit, which is engaged in a contractual matter with the City. Staff of a City department affiliated with the requestor's board will have a role in negotiating the contract and in related City actions. No conflict of interest exists under the Code because the requestor has no personal financial interest and because nonprofits are not covered. The State Ethics Act does not apply because the board is advisory. The requestor asked how to minimize any appearance of impropriety. Recommended that she not take action that would make it appear she is attempting to influence the outcome of the contract negotiations or process, for example, by voluntarily disqualifying herself from any related actions by her board. | CONFLICT OF INTEREST; BOARDS & COMMISSIONS; ADVISORY BOARD; DEPARTMENT AFFILIATED WITH BOARD; VOLUNTEER; NON-PROFIT; APPEARANCE OF IMPROPRIETY<br><br>Code §20-607; 65 Pa.C.S. §1102 |
| GC-2010-507<br><br>Non-public Advice | 6/1/10 | Advised a City employee concerning his application for a grant from a program funded with City funds through a quasi-public nonprofit corporation. The employee's grant application is not prohibited. Due to his personal financial interest, the employee is prohibited from taking action in his City job that affects the grant program, and he must publicly disqualify himself from such official action. | CONFLICT OF INTEREST; GRANT APPLICATION; DISCLOSURE & DISQUALIFICATION<br><br>Code §§ 20-607, 20-608 |

# *2010 Advices of Counsel*

| Advice No. | Date Issued | Brief Description | Key Words / Citations |
|---|---|---|---|
| GC-2010-508<br><br>Non-public Advice | 6/7/10 | Advised a City employee on whether she may take official action authorizing her agency's purchase of tickets to a fund-raiser for a nonprofit where she is an unpaid member of that non-profit's board of directors. No conflict of interest exists under the Code because the requestor has no personal financial interest and because nonprofits are not covered. Under the State Ethics Act, nonprofits are covered, and disclosure of a conflict of interest and disqualification from action would be required. | CONFLICT OF INTEREST; NON-PROFIT; VOLUNTEER; DISCLOSURE & DISQUALIFICATION<br><br>Code §§ 20-607, 20-608; 65 Pa.C.S. §§ 1102, 1103(a) |
| GC-2010-509<br><br>Non-public Advice | 6/21/10 | Advised a City employee considering becoming owner of a for-profit daycare center that would receive State-subsidized payments on behalf of eligible parents. If the employee's City work were to involve action that could impact the requestor's personal financial interest in the daycare center or the financial interests of the center itself, the City Code and State Ethics Act would require the employee's disclosure of a conflict of interest and disqualification from taking action. The employee also may not represent another person as agent or attorney in a transaction involving the City. | OUTSIDE BUSINESS INTEREST; PROHIBITED REPRESENTATION; CONFLICT OF INTEREST<br><br>Code §§ 20-602, 20-607, 20-608; 65 Pa.C.S. §§ 1102, 1103(a) |
| GC-2010-510<br><br>Non-public Advice | 8/17/10 | Advised a City employee that she is prohibited from accepting a scholarship worth over $3,000 to a leadership seminar series, where the scholarship is offered by a professional firm that works with the employee on a pro bono project for the City. The Code prohibits the gift because it is of substantial economic value and might reasonably be expected to influence the employee in the discharge of her duties. The "gift to the City" exception does not apply because the offer was made to the requestor directly rather than to the employee's appointing authority. | GIFTS; CRITERIA FOR GIFT TO THE CITY; SCHOLARSHIP; PRO BONO<br><br>Code § 20-604; 65 Pa.C.S. § 1103 |
| GC-2010-511 | 7/22/10 | Advised the Youth Commission's Executive Director that the political activity restrictions of Charter §10-107(4) do not apply to members of the Commission because it is an advisory body that does not exercise City power. Therefore, members of the Youth Commission are not prohibited from serving as a ward committeeperson. | POLITICAL ACTIVITY; YOUTH COMMISSION; ADVISORY BOARD; WARD COMMITTEEPERSON<br><br>Charter §10-107(4) |

# *2010 Advices of Counsel*

| Advice No. | Date Issued | Brief Description | Key Words / Citations |
|---|---|---|---|
| GC-2010-512<br><br>Non-public Advice | 9/2/10 | Advised a City employee who is a publisher and children's author that Charter §10-102 and the other Public Integrity Laws would not prohibit her from contracting with and selling her books to the Philadelphia School District. | INTEREST IN A CITY CONTRACT; BOOK CONTRACT; SCHOOL DISTRICT<br><br>Charter §10-102 |
| GC-2010-513<br><br>Non-public Advice | 9/3/10 | Advised a City employee who was considering leaving City employment to work for a particular company. He may be required to disclose a conflict of interest and disqualify himself from taking action for the City affecting the company if his pursuit of employment reaches the level that he has a "financial interest" in the company, such as if he takes actions to apply for a job with the company or it offers him a job while he is still a City employee. Also advised on post-employment rules that would apply after separation. | CONFLICT OF INTEREST IN SEEKING FUTURE EMPLOYMENT; POST-EMPLOYMENT<br><br>Code §§ 20-607, 20-608; 65 Pa.C.S. §§ 1102, 1103(a), (g); Charter §10-102 |
| GC-2010-514<br><br>Non-public Advice | 9/17/10 | Advised a City employee who was considering leaving City employment to pursue a job with a local nonprofit that has City contracts. She may be required to disclose a conflict of interest and disqualify herself from taking action for the City affecting the nonprofit if her pursuit of employment reaches the level that she has a "financial interest" in the nonprofit. Advised on post-employment rules that would apply after separation. Under the City Code, the employee may not for two years after leaving the City acquire a financial interest in any decision she made while in City employ. This would include a prohibition on her salary at the nonprofit being paid out from proceeds of a City contract she had been involved in awarding. | CONFLICT OF INTEREST IN SEEKING FUTURE EMPLOYMENT; POST-EMPLOYMENT<br><br>Code §§ 20-607, 20-608; 65 Pa.C.S. §§ 1102, 1103(a), (g); Charter §10-102 |

# *2010 Advices of Counsel*

| Advice No. | Date Issued | Brief Description | Key Words / Citations |
|---|---|---|---|
| GC-2010-515<br><br>Non-public Advice | 9/20/10 | Advised a City employee who holds a technical position with duties including overseeing operations of a "pilot" technical system to which the City owns the copyright. He proposed becoming an employee of an independent legal entity formed in order to improve upon and commercialize the system. The Code prohibits the employee from assisting anyone, such as a future employer, in a transaction involving the City in which the employee participated during City employ. This includes matters in which the City has a direct proprietary interest. The Code also prohibits the employee for two years after he leaves City employment from acquiring a financial interest in actions he took while in City employ.<br>Also advised on conflict of interest rules that apply while the employee is still on the City payroll. | CONFLICT OF INTEREST; POST-EMPLOYMENT; CITY COPYRIGHT; TRANSACTION INVOLVING THE CITY<br><br>Code §§ 20-603, 20-607, 20-608; 65 Pa.C.S. §§ 1102, 1103(a), (g); Charter §10-102 |
| GC-2010-516<br><br>Non-public Advice | 10/4/10 | In this addendum to GC-2010-515, clarified advice for the requesting City employee who had provided additional facts. The City Code prohibits the employee from assisting anyone with a transaction involving the City in which the employee participated only if the City continues to have an interest in the matter. | CONFLICT OF INTEREST; POST-EMPLOYMENT; CITY COPYRIGHT; TRANSACTION INVOLVING THE CITY<br><br>Code §§ 20-603, 20-607; Advice of Counsel GC-2010-515 |
| GC-2010-517<br><br>Non-public Advice | 11/1/10 | Advised a City employee regarding his outside interests as a real estate investor, as part owner of a company that recovers funds for clients through Sheriff's Sales, and as preparer of deeds for friends and family. If he or his company will be paid in any transaction in which his City department's action is required, the employee must disclose his financial interest and disqualify himself from working on that matter. He may not represent any person as agent or attorney in any transaction involving the City, except that he may represent himself or certain relatives in matters that are not the subject of his official responsibility and in which he has not participated personally. The State Ethics Act does not apply to the Clerk II position. | REPRESENTATION IN A TRANSACTION INVOLVING THE CITY; CONFLICT OF INTEREST; REAL ESTATE; "PUBLIC EMPLOYEE"; CLERK II<br><br>Charter §10-102; Code §§ 20-602, 20-607, 20-608; 65 Pa.C.S. §1102 |

# *2010 Advices of Counsel*

| Advice No. | Date Issued | Brief Description | Key Words / Citations |
|---|---|---|---|
| GC-2010-518<br><br>Non-public Advice | 12/16/10 | Advised the HR Manager for the Office of Housing and Community Development about a proposed employee incentive program to reward high-performing employees with gift certificates of modest value to restaurants and stores. The Law Department had advised that such gift certificates would be considered part of employees' regular compensation and thus would not be "extra compensation" prohibited by Charter §8-107. There would be no issues under Charter §10-105 or other Public Integrity Laws provided that the proposed incentive program is implemented as suggested by the Law Department with clearly established guidelines announced in advance. | GIFTS; EMPLOYEE INCENTIVE PROGRAM; GIFT CERTIFICATE; EXTRA COMPENSATION<br><br>Charter §10-105; Code §20-604; 65 Pa.C.S. §1103 |
| GC-2010-519<br><br>Non-public Advice | 12/16/10 | Advised the treasurer of a political committee regarding the City campaign finance law's requirements relating to excess pre-candidacy contributions and the political committee's disposition of funds it accumulates prior to an individual becoming a candidate. The Board of Ethics does not have jurisdiction over the State Election Code and cannot provide guidance on that law. | CAMPAIGN FINANCE; EXCESS PRE-CANDIDACY CONTRIBUTIONS; CANDIDATE; SPEC ACCOUNT<br><br>Code Chapter 20-1000; Regulation 1 |
| GC-2010-520 | 11/24/10 | Reviewed a draft memo for the City's Chief Integrity Officer that she proposed sending to the Mayor's staff, Cabinet, and Executive Team. The memo, captioned "2011 Philadelphia Elections Guide," provided general guidance on what activities are likely permissible under the Charter's political activity restrictions and those that should be avoided. The memo advised that information can be communicated about the administration's agenda and performance so long as such communications did not promote the Mayor's potential candidacy for re-election. Specific suggestions were included for schedulers, press staff, security staff, and aides who assist the Mayor with City business while he is attending campaign events. | POLITICAL ACTIVITY; MEMO TO MAYOR'S STAFF; CHIEF INTEGRITY OFFICER; RE-ELECTION<br><br>Charter §10-107 |

# *2010 Advices of Counsel*

| Advice No. | Date Issued | Brief Description | Key Words / Citations |
|---|---|---|---|
| GC-2010-521<br><br>Non-public Advice | 12/17/10 | Advised a City Council employee on issues under the Charter's political activity restrictions and the City's campaign finance law related to others establishing a "Friends Of" political committee in his name. This Advice was provided for the limited purpose of the immediate request. The Board's anticipated political activity regulation, when it becomes effective, may well supersede parts of this Advice that are inconsistent. | POLITICAL ACTIVITY; POLITICAL COMMITTEE;<br>CITY COUNCIL EMPLOYEE<br><br>Charter §10-107; Code Chapter 20-1000 |
| GC-2010-522<br><br>Non-public Advice | 12/17/10 | Advised a City Council employee considering running for City elective office that she would not be required to resign her City position if she had one-on-one, private conversations with friends, advisors, and others about her chances for success and the details of running. Those conversations alone would not constitute a declaration of candidacy. She would not become a candidate until filing nominating papers or publicly declaring her candidacy. | POLITICAL ACTIVITY; RESIGN TO RUN; CITY COUNCIL EMPLOYEE; DECLARATION OF CANDIDACY<br><br>Charter §10-107(5) |