CITY OF PHILADELPHIA
BOARD OF ETHICS

MEMORANDUM

TO: Department of Records
Attn: Lillie Lawrence

FROM: Maya Nayak, General Counsel MN

DATE: May 27, 2014

SUBJECT: **Board of Ethics**
Proposed Amendments to Regulation 2

At a public meeting on May 21, 2014, the Board of Ethics voted to adopt the amendments to Board of Ethics Regulation 2 ("Investigations and Enforcement Proceedings") reflected in the enclosed draft. In accordance with Section 8-407 of the Home Rule Charter, the Law Department has approved these amendments, and I have enclosed the approval memo here. I am forwarding these proposed amendments to Regulation 2 to you for advertising and public inspection.

The proposed amendments to Regulation 2 incorporate and update provisions of Board Regulation 5 ("Confidentiality of Enforcement and Investigative Matters and Prohibited Disclosures") and Regulation 3 ("Referrals to and Cooperation with Other Governmental Enforcement Agencies"). The Board anticipates taking action to rescind Regulations 5 and 3 at the time these proposed amendments to Regulation 2 become effective.

Please let me know if you have any questions. Thank you for your assistance with this matter.

Enclosures

cc: Martha Johnston, Senior Attorney (via email)

DEPARTMENT OF RECORDS
2014 MAY 27 PM 2:42
2014-5-27

CITY OF PHILADELPHIA
LAW DEPARTMENT

MEMORANDUM DATE: May 23, 2014

TO: Michael H. Reed, Chair, Board of Ethics

FROM: Martha Johnston, Senior Attorney/MJ

SUBJECT: Amendment to Ethics Board Regulation No. 2, Investigations and Enforcement Proceedings

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I have reviewed the Philadelphia Board of Ethics' proposed Amended Regulation No. 2, entitled "Investigations and Enforcement Proceedings," as approved by the Board on May 21, 2014, and find it to be legal and in proper form. In accordance with Section 8-407(a) of the Philadelphia Home Rule Charter, you may now forward the proposed Regulation to the Department of Records where it will be made available for public inspection.

Attachment

Cc: Shane Creamer, Executive Director
Maya Nayak, Associate General Counsel

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PROPOSED AMENDMENTS APPROVED BY BOARD
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 2

INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

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SUBPART A. SCOPE; DEFINITIONS.~~DEFINITIONS; SCOPE.~~

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

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

~~**a. 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.~~

a. Board. The Board of Ethics and its individual members.

b. Board Staff. Employees of the Board of Ethics.

c. Complainant. A person who has submitted a complaint to the Board.

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

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

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

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

h. **Person.** A business, individual, corporation, non-profit, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons.

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

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

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

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

SUBPART B. Separation of Functions.

~~**2.2 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.~~

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

SUBPART C.~~B.~~ INVESTIGATIONS.

2.3 ~~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 this Regulation. ~~No. 5 Paragraph 5.5. However,~~ a preliminary inquiry is not an investigation and is not subject to the disclosure limitations~~provisions~~ of ~~Board of Ethics Regulation No. 5,~~ Paragraph 2.10(a) or~~5.3 and~~ the notice provisions of ~~Regulation No. 5,~~ Paragraph 2.6(e).~~5.4.~~

2.4 ~~2.5~~ **Initiation of Investigations.** The Executive Director shall have the authority to initiate an investigation upon:~~on the basis of any of the following three circumstances:~~

a. Receipt of a complaint that meets the requirements of Paragraph 2.5; ~~2.6(b), submitted pursuant to Ethics Code § 20-606(1)(f) and Paragraph 2.6(a);~~

b. Receipt of ~~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.~~–~~ Determining, through a preliminary inquiry, that there is reason to believe a~~a potential~~ violation of the Public Integrity Laws may have~~has~~ occurred.

An investigation ~~initiated by the Executive Director~~ that is not initiated in response to a complaint ~~from any other person~~ shall not be subject to the requirements of Paragraph~~s~~ 2.5. ~~2.6(a), (b), and (c).~~

2.5 ~~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 Executive Director. A complaint shall: ~~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 the person~~those individuals~~ or persons~~entities~~ who is~~are~~ alleged to have committed violations of the Public Integrity Laws, including their names and addresses if known; and~~to the extent known.~~

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

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

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

d. **Frivolous Complaints prohibited.** No person shall submit a false or frivolous complaint to the Board. If the Executive Director receives information that a complaint is false or frivolous, he or she~~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. ~~complaint, including requesting or compelling testimony from the complainant.~~

2.6 ~~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. An investigation ends when the Executive Director either makes a finding of probable cause or terminates the investigation pursuant to Paragraph 2.6(e) or when the matter is resolved by a settlement agreement approved pursuant to Subpart G.

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

c. Subpoenas and Subpoenas Duces Tecum. The Executive Director or the Board Chair shall have the authority to issue subpoenas and subpoenas duces tecum on behalf of the Board in connection to any investigation conducted pursuant to ~~Ethics Code § 20-606(1)(g) and Subpart B of~~ this Regulation. If any person refuses to comply with a~~ny~~ 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 based ~~up~~on a complaint meeting the requirements of Paragraph 2.5(a),~~2.6(b),~~ the Executive Director~~staff~~ shall notify~~mail both~~ the complainant ~~and the subject~~ of the ~~complaint notice of this~~ termination and the reasons therefore.~~.~~

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

The Executive Director may notify persons who have provided testimony or other information to the Board during the course of an investigation that the investigation has been terminated and that they are no longer bound by such disclosure prohibitions.

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

~~**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.~~

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

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

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

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

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

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

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

SUBPART D. CONFIDENTIALITY OF COMPLAINTS AND INVESTIGATIONS

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

2.10 Confidentiality of complaints and referrals.

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

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

2.11 Confidentiality of Investigations.

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

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

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

iii. A disclosure made to a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency;

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

v. A disclosure required by law.

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

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

ii. A disclosure made to a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency;

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

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

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

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

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

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

SUBPART E.~~C.~~ ADMINISTRATIVE ENFORCEMENT.

2.12~~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 initiate~~direct the initiation of~~ an administrative 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 a pending administrative enforcement proceeding. ~~ny such matter. See Paragraphs 2.3 and 2.11(d).~~

2.13~~2.9~~ Notice of Administrative Enforcement Proceeding. To commence the enforcement proceeding, the Executive Director shall serve a~~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 ("Notice") on each respondent whom he or she alleges has violated the Public Integrity Laws.~~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 2.14.~~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 shall~~must~~ be made in his or her written response to the Notice and that a respondent's failure to request a hearing is~~shall be deemed~~ a waiver of the right to a hearing as set forth in Paragraph 2.14(c). ~~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 mail, or ~~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 other method that provides proof of delivery.~~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,~~agent;~~ or by any means of substituted or constructive service authorized by Pennsylvania statute or civil rule. The Executive Director shall serve a copy of the Notice on the General Counsel.

2.14~~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 is due ~~shall be deemed timely if it is received by the Board~~ within twenty (20) days of~~from~~ the date of service of the Notice, unless, for exigent circumstances, the Board or its Hearing Officer shall fix a shorter time. Upon the request of the respondent, the Board~~, in~~ its designee~~discretion,~~ may grant ~~the respondent~~ an extension of time to respond to the Notice. A~~No~~ request for an extension shall be ~~granted unless such request is~~ in writing~~,~~ and shall set forth the basis~~alleges good cause~~ for the request.~~such extension.~~

a. Appearance before Board.~~.~~ 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 is~~wishes to be~~ represented by counsel, he or she~~ in any matter before the Board, the respondent~~ shall so notify~~advise~~ the Board and ~~in his or her response to the Notice, or~~ shall provide the General Counsel~~Board~~ with counsel's ~~a letter of representation, stating the~~ name, address, e-mail 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 is~~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 this Paragraph is~~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 2.20.~~2.15.~~

2.15 Confidentiality of Administrative Enforcement Proceedings.

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

b. Unless a respondent requests a public proceeding:

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

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

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

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

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

2.16 **Hearings.** The Board may ~~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.~~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 designees~~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. After the Board issues~~Upon issuing~~ subpoenas for administrative adjudication hearings, the ~~Board will grant the~~ Executive Director and respondents shall have the authority to apply for enforcement of the subpoenas in the appropriate Court of Common Pleas if any person refuses to comply with any such subpoena, or while appearing pursuant to it, refuses to answer any question or produce any records or materials.

d. *Ex parte* communications. ~~In accordance with Code § 20-605,~~ no person shall engage in a substantive~~n 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 a substantive~~n 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.

2.17~~2.12~~ Discovery.

a. Pre-hearing exchange and submission of information.

i. At least 21 days prior to the hearing, the Executive Director and respondent shall exchange ~~**disclosures.** All parties to an enforcement proceeding shall give notice of~~ the names and addresses of ~~the~~ witnesses they plan to call to testify and copies of any documents~~, or whose testimony~~ they intend~~plan~~ to offer as evidence.

ii. ~~submit,~~ at least ~~fourteen (~~14~~)~~ days prior to the hearing, the Executive Director and respondent shall submit to the Board the names of any ~~at which the~~ witnesses they plan to call~~are~~ to testify and copies of any documents they intend to offer as evidence.

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

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

v. The Executive Director and respondent shall not offer any contested evidence at the hearing~~**b. Evidence.**~~ Other than from witnesses and documents ~~as~~ identified as required by this Paragraph,~~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.

b.~~**c.**~~ **No other discovery.** Except for the exchanges of information described in~~as provided in subparagraphs (a) and (b) of~~ this paragraph, there shall be no other discovery, unless ~~although the parties in an enforcement proceeding may~~ voluntarily agreed to by the Executive Director and respondent.~~ between themselves to other forms of discovery.~~

2.18~~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.

2.19~~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.

2.20~~2.15~~ Final Board Determinations. a. After providing the respondent with an opportunity to respond to the Notice of Administrative Enforcement Proceeding and to contest any alleged violations at a hearing conducted pursuant to ~~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.

b.~~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.

c.~~b.~~ ~~**Notice of Final Determinations.**~~ The Board shall serve notice of the final determination on the respondent by any method identified~~in the manner described~~ in Paragraph 2.13(b). ~~2.9(b).~~

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

SUBPART F.~~D.~~ JUDICIAL ENFORCEMENT

2.22~~2.16~~ Scope. This Subpart ~~C~~ shall ~~not~~ apply to ~~, and this Subpart D shall apply, to those~~ enforcement actions initiated~~to be instituted~~ by the Board~~ filing an action~~ in the Court of Common Pleas.

2.23~~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.

2.24~~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 2.23.~~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 2.24~~2.18~~ shall not apply to actions to enforce a subpoena issued by the Board or to actions seeking emergency relief.

2.25~~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 shall:~~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 E~~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 by any member of the Board or its staff 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 G.~~E.~~ SETTLEMENT AND CONCILIATION

2.26~~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.

2.27 Settlement Agreement.~~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 agreement is entirely within the discretion of the Board. A ~~stipulation of~~ settlement agreement is not binding until it is signed by the subject or respondent and the Executive Director and approved by a majority vote of the Board. All approved~~final stipulations of~~ settlement agreements shall be made available to the public.

PROPOSED AMENDMENTS APPROVED BY BOARD
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING

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
Effective

Proposed amendments approved for public comment by the Board on March 19, 2014
March 19, 2014 proposed amendments rescinded on May 21, 2014
Proposed amendments approved for public comment by the Board on May 21, 2014
Posted at Department of Records on
Effective