

Spring 2008

# Ethics Rising

The Newsletter of the Philadelphia Board of Ethics



## Ethics in Government: A Coordinated Approach

In testimony before City Council, Mayor Nutter has called for “a three-pronged approach that combines prevention, education and investigation to instill honesty, transparency and integrity throughout government.”

Six months into the new administration, two of the agencies – The Board of Ethics and the Inspector General’s Office – are functioning far differently from the way they have in the past and are working closely with the newly appointed Chief Integrity Officer.

The Inspector General’s Office, for example, has started concentrating on more serious cases of corruption instead of more routine violations such as violations of the city’s residency requirement for employees. The Chief Integrity Officer is taking a closer look at the contracting process than has been the case in City Hall in previous years. And with added staff, the Board of Ethics is preparing to give closer scrutiny to officials’ disclosure filings.

“We’re all working closely in ways that we haven’t been

before,” says J. Shane Creamer Jr., executive director of the Board of Ethics. “It’s been really exciting.”

Three of Nutter’s appointees in this area are former federal prosecutors, a fact widely noticed in the media when he announced them simultaneously last November, more than a month before his inauguration. Inspector General Amy Kurland, Chief Integrity Joan Markman and of Board of Ethics appointee Kenya Mann have each worked in the U.S. attorney’s office and prosecuted high-profile

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## The Challenges Continue

By: J. Shane Creamer, Jr., Executive Director



The decision by the Pennsylvania Supreme Court last December upholding Philadelphia’s right to have its own campaign finance law was a significant victory for open government.

But it was also just one skirmish in what promises to be a long battle to defend the City’s recent reforms.

No one should have been naïve enough to think that the battle would be easy. When you have a new law

that changes the political landscape and a new agency to enforce that new law, pushback can be expected.

An attempt died in the State legislature last year to abolish electronic filing of campaign finance data with the Ethics Board. This vital step forward has made information on contributions and expenses far more available to the public than it had ever been. Abolishing electronic filing would have made enforcement of the new rules virtually impossible.

More recently, two lawsuits have challenged the concepts of both transparency and contribution limits.

In a suit filed in Federal Court, Local 98 of the International Brotherhood of Electrical Workers seeks to keep secret details about the expenses of its political action committee, called the Committee on Political Education (COPE).

Meanwhile, in State Court, the law firm that represented Bob Brady in the 2007 Mayor’s race says that his campaign committee should no longer be

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### Board Meeting Schedule:

- May 21, 2008
- June 18, 2008
- July 16, 2008
- August 20, 2008
- September 17, 2008
- October 15, 2008
- November 19, 2008
- December 17, 2008

The board meetings are held in our offices at the Packard Building, 1441 Sansom Street, 2nd Floor, Philadelphia, PA 19102 at 1 pm.

## Two Staffers Join Board

Two lawyers with a strong demonstrated interest in the public arena are joining the staff of the Board of Ethics.

At its April meeting, the Board formally approved the hiring of Michael J. Cooke as Director of Enforcement and Maya Nayak as Associate General Counsel.



Cooke, an associate with the firm of Burke O'Neil LLC, will assist Executive Director J. Shane Creamer, Jr. in all enforcement matters. Nayak will work with General Counsel Evan Meyer, specializing in responding to ethics inquiries from city officials

and employees and the public. She holds undergraduate and law degrees from Yale and most recently was an associate with the firm of Hangley Aronchick Segal and Pudlin.

Creamer described Cooke as having "a unique enthusiasm for working with the Board. He's drawn by our mission and by a commitment to public service. And he has significant litigation experience that will enhance our mission."

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, Cooke came to Philadelphia to work with the Pennsylvania Prison Society. There he developed a new program to increase the access of Pennsylvania inmates and ex-offenders to the judicial system.

He also served as a staff attorney for the Pennsylvania Institutional Law Project, providing legal services to institutionalized people.

After he joined Burke O'Neil in 2006, his responsibilities included cases involving election and campaign finance law.

"This is a time in the City when there's a lot of public and institutional support for reform," says Cooke. "And the Board is a new agency that's doing exciting things."

Nayak, a New Jersey native who grew up in rural Kentucky, was director of the Community Legal Services Clinic at Yale Law School and clerked for U.S. District Court Judge Berle M. Schiller after her graduation in 2005.

She joined Hangley Aronchick in November 2006 and will start with the Board on May 12.

In addition to her strong legal background, Creamer said that Nayak's personal skills made her ideal for dealing with government and the public on ethics issues.

Nayak said she is "drawn to the idea of working in a small place and the mission is really attractive. I like the fact that it's kind of a startup."



## New Board Member's Hopeful Outlook



As she and her fellow prosecutor started questioning prospective jurors in the bribery trial of Councilman Rick Mariano in

federal court, Kenya Mann became increasingly surprised.

The jury pool for the March 2006 trial was from both Philadelphia and the surrounding counties and Mann had expected to find considerable cynicism about the City's political culture.

What she found instead, she recalls, was hope. "They didn't dismiss the City and its employees and its government outright," said Mann, Mayor Nutter's first appointee to the Board of Ethics. "They knew the City wasn't going to tolerate this any more."

Mann, who was sworn in in February as the Board's newest member, is now a partner in the law firm of Ballard Spahr Andrews & Ingersoll, LLP. And she expects to bring this same approach to the Board.

"I think people out there have hope," said Mann, who grew up in Harlem and the Bronx and

remembers devouring newspaper stories about criminal trials. "They want things to get better. You can't have a jaded view."

Mann's selection was announced last November by Nutter along with that of two other former federal prosecutors – Amy L. Kurland as Inspector General and Joan Markman to the new position as the Mayor's Chief Integrity Officer.

But she originally began on the other side of the courtroom, with the Defender Association of Philadelphia, which she joined after graduating from

the law school at the State University of New York in Buffalo.

She later became an assistant attorney general and then an assistant U.S. Attorney in 2002.

At Ballard, Spahr, which she joined last September, she defends white collar corruption cases but finds herself spending an increasing amount of time in the area of compliance. In other words, helping clients stay on the right side of the law in the first place.

"I just have a really positive view," she says, "with the city having gone through what it's gone through."

## Financial Disclosure—The Fine Points

This year, as always, Financial Disclosure Forms are due on May 1 for certain City employees. But there are some changes in the process, and as the Board of Ethics adds staff, it has the capability to provide greater oversight of filings.

This article by **General Counsel Evan Meyer** is designed to answer as many of your questions about financial disclosure as possible, in Section A below. Sections B, C, D, and E answer other ethics questions you may have.

**A. Financial Disclosure.** You should have by now received from your HR manager the forms and/or instructions for filing the financial disclosure filing required by law. The following Q & A addresses some common questions.

### 1. What form do I file?

There are three forms (different employees file different forms):

- The City of Philadelphia Statement of Financial Interests ("City Form"), a one-page form;
- The Mayor's Executive Order Financial Disclosure Statement ("Mayor's Form"), a three-page form; and
- The Commonwealth of Pennsylvania Statement of Financial Interests ("State Form"), a one-page form with a yellow and white copies with carbon paper [unless you download it from the website] that has the State seal on the instructions cover page.

The City and Mayor's Forms have on the cover page a list of which City officials/employees file those forms. The State Form requires a consideration of job duties, and departments have been provided with a summary of the criteria for determining who files that form.

### 2. Can I file on line?

Yes – to a point. You may access the forms on line, and enter the information, but you cannot click "Send" and file electronically. You must print the form and deliver it to the Records Department in Room 156 City Hall.

### 3. Where do I get a form?

Your HR manager should have forms. Forms may also be downloaded from the CityNet home page. See "Financial Disclosure Forms" under Highlights. Make sure you have the correct form and that you download both the form and the instructions.

To file on line, use the Web site. The web site to file your forms is <http://fds.phila-records.com/FDS>. You will be provided with a user ID and password. You can also retrieve these by entering your e-mail address into the web site us-

ing the "I Forgot" option. Use the "Register" option if you have no account and need to file.

### 4. What are the advantages to completing the forms on line?

There are several key advantages to using the Financial Disclosure Web Site, including:

- You only have to enter your information once and it will appear on all the forms (if you are required to file more than one form)
- As you enter your data it will be placed in the correct form section
- Your form's overflow pages are automatically created
- You can import your information from Excel spreadsheets
- You will get a confirmation number that your forms were submitted
- Your information is saved and can be copied into amended forms or next year's forms
- You can always go back to view or print your financial disclosure forms.

### 5. What if I have questions about how to complete a particular line on the form?

First, make sure you have a copy of the instructions that accompany the forms. You should receive the instructions with your form from your HR manager, or if you download the form from the Records Dept. website, please also download the instructions. Then carefully read the instructions for each line on the form. If you still have questions, you may call or e-mail the Ethics Board's General Counsel, Evan Meyer, at (215) 686-9450; e-mail: [evan.meyer@phila.gov](mailto:evan.meyer@phila.gov).

### 6. Where do I file my form?

All forms, even the State Form, are filed in the same place: The Records Department in Room 156 City Hall.

### 7. Do I have to give a copy of my form to my supervisor?

Yes, Mayor's Executive Order No. 1-90 requires all City employees to provide their supervisor with a copy of their form. Supervisors are required to review forms for completeness, timely filing, and to identify any apparent conflicts of interest.

### 8. Why do I have to file the State Form, if I wasn't given it last year?

It is important to keep in mind that the requirement to file the form is a requirement of state law and it is a violation

## Financial Disclosure—The Fine Points

for any employee identified in that statute to fail to file, even if the individual's government failed to provide him or her with a form or failed to include them on a list of required filers.

### 9. Is it really legal for the government to require me to disclose my finances?

Yes. These requirements have existed for at least 20 years, and every year hundreds of City officials comply. Numerous court opinions have held that governmental employers may permissibly impose ethical requirements on their employees. If you wish formal legal advice or to challenge the application of the law to you, you may contact the Law Department or the State Ethics Commission.

### 10. I own a lot of stocks. Do I have to list the name and address of each company that paid me a dividend?

Yes, if the amount from that company exceeds the threshold amount. Please read the instructions carefully. Note that the instructions may differ for different Forms. Income means gross income.

**B. Political Activity.** The following Q & As, illustrate a few do's and don'ts under Charter Section 10-107 (this list is only for illustration and is not intended to be complete).

Bear in mind that these rules cover all elections: Federal, state and local. They even cover activity involving a candidate in another state.

- You may vote in the election. But you may not campaign for a candidate.
- You may make a campaign contribution to any candidate. But you may not be involved in soliciting or receiving such contributions.
- You may engage in nonpartisan election activity (such as a "get out the vote" drive if not connected to a party

or candidate). But you may not engage in partisan activity.

- "Partisan" means "geared to the success at the polls of a particular political party (Republicans, Democrats, Greens, Socialist Workers, Libertarians, etc.) or candidate for such a party." An election for board of directors of your local nonprofit is not a "partisan" election.
- "You" in the above examples refers to the typical City employee. There are exceptions and special categories. See the Law Department Political Activity Guide for more comprehensive guidance.

### C. What are the rules on accepting gifts?

For employees in the Executive and Administrative Branch of City government (essentially, everyone with an appointment letter signed by the Mayor), the main rule is Mayor's Executive Order No. 2004-002, which is fairly self-explanatory.

### D. What if a vendor wants to pay my travel to a conference or provide another benefit that will enhance my ability to do my job?

These can sometimes be accepted as a "gift to the City" (and thus not a gift to you at all, so no problem under the gift provisions of the ethics laws), but there are specific requirements for the circumstances under which this exception will apply. See Opinion Nos. 2004-01, 2004-02, and 2005-01 of the former, advisory Board of Ethics.

### E. Where Can I Find It?

Documents referred to above, the Political Activity Guide, the Opinions of the Ethics Board, and the Mayor's Gift Executive Order, may all be found on the Board of Ethics' web site at [www.phila.gov/ethicsboard](http://www.phila.gov/ethicsboard). The Guide and Opinions under "Advisory Opinions, Publications & Reports," and the Executive Order by link under "Gift FAQs."



## Ethics In Government: A Coordinated Approach

political corruption cases involving Philadelphia City government.

Kurland, for one, would like to see some of these handled closer to home. "It's important that the City police itself instead of having the feds come in," she says.

As a first step toward concentrating on more serious cases of fraud, corruption and misconduct among city employees, she created a new deputy position and filled it with Kathleen McAfee, an FBI special agent for 28 years.

Although the office has always had broad jurisdiction in criminal, civil and administrative areas, Kurland said that it had tended to concentrate on cases involving residency and "time theft": Employees living outside the city in violation of the charter or simply punching in for the day and disappearing.

Although her office will continue to do preliminary work in these cases, she said, the actual enforcement will be delegated to Integrity Officers in each city department. These positions have existed for many years, she said, but in name only.

The Integrity Officers have received ethics training as part of the stepped-up training mission of the Board of Ethics. Now they will also be trained to perform simple surveillance tasks that do not require a trained investigator, Kurland says, leaving her own staff to develop cases that can be referred to the District Attorney's Office and other law enforcement authorities.

"We see ourselves as being in a partnership with the U.S. Attorney's Office and the D.A.'s Office," she says.

If Kurland's job is rooting out corruption, Integrity Officer Joan

Markman sees hers as keeping it from occurring in the first place.

"It's been kind of nice to see how many really good, hard-working people work for the City," she said in her office adjacent to the Mayor's. "I've been really welcomed."

This didn't really surprise her, she said. But what did surprise her was how much City work was being done by contractors and their subcontractors and how little the city knew about the efficiency of their methods.

A major part of her job is looking at how these contracts are awarded and carried out. Until now, she said, there has been little scrutiny of subcontractors, but the sums involved make it necessary to work with them as well.

Markman has worked closely with the Board of Ethics on a variety of issues, including seeing that new members of the administration receive the Board's mandatory ethics training.

The Board of Ethics itself has drawn attention in recent months over its enforcement of new campaign contribution limits in last year's elections.

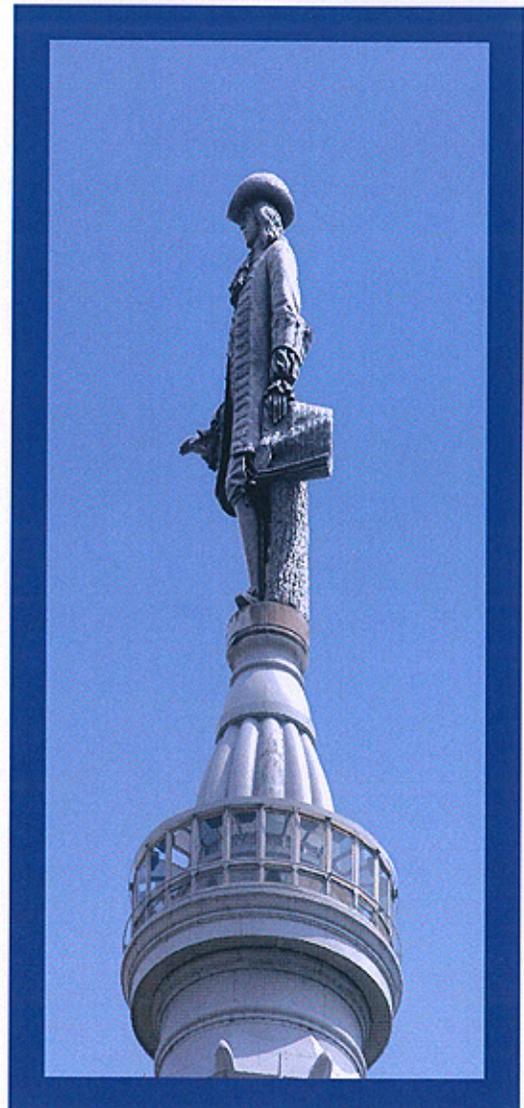
"But that's only part of our job," Creamer says. "Once the election is over, we face equally significant responsibilities in seeing that City government runs cleanly and efficiently."

"There are well-established requirements that City officials and key employees file detailed financial disclosure statements. But until now there has been no one to monitor the accuracy of those statements."

"There are also strict rules govern-

ing how much anyone can give if they're seeking no-bid contracts from the City. But those rules are enforceable only with campaign finance reports that accurately reveal who the donors are.

"None of the agencies can work in a vacuum if they system is to function properly."



## The Challenges Continue

By: J. Shane Creamer, Jr., Executive Director

bound by the contribution limits since the election is over. The firm, Cozen O'Connor, apparently waited until long after the primary election to bill Congressman Brady almost a half million dollars for work performed while he was a candidate for Mayor. The firm wants the Court to eliminate the contribution limits for Congressman Brady so it can have their bill paid faster.

We feel the Board is on solid legal ground in both of these cases and the Board has asked the Courts to dismiss both Complaints against it.

What isn't in dispute is that the cases are a challenge not just to the Board but

also to the public's right to know details about money flowing into and around political campaigns. That's called transparency. If the public can't see what's happening on a timely basis, then there can be no accountability.

Nothing is more dangerous to transparency than for any group – whether it's a union, a law firm or a trade association – to keep its political action committee expenditures secret. In this case, COPE wants to pick-and-choose which of its expenditures it will provide details about to the public and which ones it will keep secret.

The Cozen O'Connor suit

involves a direct assault on the City's new campaign contribution limits. Allowing campaigns to evade the limits by waiting until the election is over defeats the ordinance's entire purpose, which is to limit the influence of large political donors. Candidates could run-up large bills during the campaign, and wait to pay those bills until after the election, when they could accept unlimited contributions from wealthy donors.

The Cozen O'Connor suit also raises another challenge to transparency – timely disclosure of campaign finance information. Because Cozen's bill wasn't reported until more than seven months after the pri-

mary, voters had no way of knowing about the huge legal bill when they went into the polling booths on Election Day. Timely reporting of all contributions, expenditures and debts lets the voter make a decision based at least in part on who a candidate's backers are, who they owe and how this might affect the candidate's performance if he or she is elected.

Philadelphia has worked long and hard to promote transparency and limit the influence of large donors in political campaigns. With continuing challenges to the new law and the Board's authority, we must remain vigilant to preserve the City's hard-fought progress.



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*The five-member, independent Philadelphia Board of Ethics was established by ordinance, approved by voters in May 2006, and installed on November 27, 2006. It is charged with providing ethics training for all city employees and enforcing city campaign finance, financial disclosure, and conflict of interest laws, and has authority to render advice, investigate complaints and issue fines.*

*Current members of the Board include: Richard Glazer, Esq., Chair; Rich Negrin, Esq., Vice-Chair; Phoebe Haddon, Esq., Kenya Mann, Esq., and Stella Tsai.*

**Honesty, Integrity, Transparency**