

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into between the Board of Ethics of the City of Philadelphia and Kacy Nickens, jointly referred to as "the Parties."

RECITALS

- A. The Board of Ethics of the City of Philadelphia is a five-member, independent board established by ordinance, approved by Philadelphia voters in May 2006, and installed on November 27, 2006. Pursuant to section 4-1100 of the Home Rule Charter, the Board is charged with, among other things, enforcing the sections of the Philadelphia Home Rule Charter that imposes restrictions on the political activity of City employees.
- B. Kacy Nickens is a City employee who works in the office of City Councilmember Donna Reed Miller. Nickens has worked for the City since January of 2011.
- C. Section 10-107(4) of the Philadelphia Home Rule Charter provides that a City employee may not engage in certain types of political activity. The political activity restrictions in the Home Rule Charter ensure that government operates effectively and fairly, that elections play their proper part in representative government, and that employees are free from improper influences and execute the programs of the Government without bias or favoritism for or against any political party.
- D. Ethics Board Regulation No. 8, which became effective on March 28, 2011, provides a detailed interpretation of the Charter's prohibitions on political activity. Pursuant to Regulation No. 8, a City employee may not engage in political activity while on duty, in City Hall, or while using City resources such as printers or computers.
- E. If the Board finds a violation of § 10-107 of the Home Rule Charter through administrative adjudication, it may impose a civil penalty of \$300. If a City employee is found to have violated § 10-107, he or she is subject to immediate dismissal and is ineligible for City employment for one year.
- F. City Council employees are subject to the Charter's Political activity restrictions and to Regulation No. 8. On April 7, 2011, Ethics Board presented a training at City Hall on Regulation No. 8 and the Charter's political activity restrictions. All City Council employees were invited to the training.

- G. Councilwoman Donna Reed Miller is the City Council representative for Philadelphia's 8th Council District. Councilwoman Miller is also the ward leader of the 59th Democratic ward.
- H. In January of 2011, Councilwoman Miller announced that she would not seek reelection. In the May 2011 primary election, seven candidates sought nomination to be the Democratic candidate for the 8th Council District, including Verna Tyner.
- I. On May 10, 2011, Councilwoman Miller announced she was endorsing Verna Tyner's candidacy.
- J. On May 12, 2011, in Councilwoman Miller's offices in City Hall, Michael Moore, a senior member of Councilwoman Miller's staff, gave Nickens more than 1,000 copies of a flyer entitled "An Important Message from your 59th Ward Democratic leader." The flyer urged residents of the 59th ward to vote for Verna Tyner. Moore directed Nickens to fold up the flyers so that they would be ready for distribution. A copy of the flyer is attached to the Agreement as Exhibit A.
- K. On May 13, 2011, at approximately 10:30am, Ethics Board enforcement staff served a subpoena on members of Councilwoman Miller's staff at the Councilwoman's offices in rooms 312 and 317A in City Hall.
- L. When enforcement staff arrived, Nickens was seated at Councilwoman Miller's desk surrounded by hundreds of copies of the 59th Ward flyer promoting Verna Tyner. Nickens was folding up the flyers so that they could be distributed in the 59th ward in the days leading up to the May 17th primary election. At the same time, the office photocopier was printing out additional copies of the flyer. Enforcement staff stopped the photocopier and seized all copies of the flyer on the copier, on Councilwoman Miller's desk, and in bags and baskets on the floor around Councilwoman Miller's desk.
- M. The 59th Ward flyer Moore created included a disclosure at the bottom reading "Labor Donated." In reality, the labor was paid for by the tax payers of Philadelphia.
- N. After serving the subpoena on May 13th, Ethics Board enforcement staff directed Nickens to appear at the offices of the Board to provide a statement under oath. Nickens complied and truthfully answered all questions Board staff asked her.
- O. The Parties desire to enter into this Agreement in order to resolve the matters described herein.

AGREEMENT

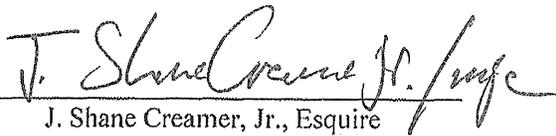
The Parties agree that:

1. By preparing campaign literature for distribution while in City Hall and while on-duty, Nickens violated § 10-107(4) of the Philadelphia Home Rule Charter and shall be subject to a civil penalty of \$300.
2. Nickens shall pay the civil penalty of \$300 within 14 days of the effective date of the Agreement. Payment shall be made by check or money order made out to the City of Philadelphia and delivered to the offices of the Board.
3. Within 14 days of the effective date of the Agreement, Nickens shall resign her position as a City employee. Nickens shall neither seek nor hold City office or employment for one year following the effective date of the Agreement.
4. Nickens releases and holds harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's investigation, enforcement, and settlement of the matters described in the Agreement.
5. In consideration of the above and in exchange for Nickens' compliance with all of the terms of the Agreement, the Board waives any further penalties or fines against her for the violation described in the Agreement.
6. The Parties will not make any public statements that are inconsistent with the terms of the Agreement.
7. If the Ethics Board is forced to seek judicial enforcement of the Agreement, and prevails, Nickens shall be liable for attorneys' fees and costs reasonably expended in enforcing compliance with the Agreement. Fees for time spent by Board staff attorneys shall be calculated based upon standard and customary billing rates in Philadelphia for attorneys with similar experience.
8. The Agreement contains the entire agreement between the Parties.
9. The Parties will submit a signed copy of the Agreement to the Board for approval.
10. The Agreement shall become effective upon approval by the Board.

11. If the Board rejects the proposed Agreement, presentation to and consideration of the Agreement by the Board shall not preclude the Board or its staff from participation in, or consideration or resolution of, any administrative adjudication of the matters described in the Agreement.

By the Executive Director of the
Board of Ethics:

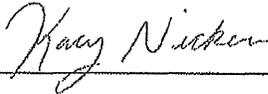
Dated: 11-17-11



J. Shane Creamer, Jr., Esquire

By Kacy Nickens

Dated: _____



Kacy Nickens

Approved by the Board of Ethics:

Dated: 11/28/2011



Richard Glazer, Esquire
Chair

EXHIBIT A



An Important Message from your 59th Ward Democratic leader

Donna Reed Miller

Dear Neighbor:

As the 59th Democratic Ward Leader, I am please to recommend **VERNA TYNER** for 8th District City Council.

Verna has over fifteen years of work in the community which she has dedicated; and the commitment to those she represented while working for three other Council members.

Verna Tyner has a wealth of knowledge in regards to the operation of City Council and city government; and I know she has the necessary experience to represent the Eighth Council District.

While so much has been accomplished, there is still a lot to be done. **Verna Tyner** brings with her the kind of pragmatic leadership that is required to continue this task.

Verna Tyner knows what it takes to make things happen in city government. Furthermore, she has the requisite relationships to effectively serve the constituents of the Eighth Council District. I ask you to join me in support of **Verna Tyner's** candidacy.

On Tuesday, May 17th

Vote VERNA TYNER

Push Button # 195

