

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
April 17, 2007  
Philadelphia Bar Association  
ARAMARK Building, 11th Floor  
1101 Market Street, Philadelphia PA  
1:00 pm

**Present:**

Board

Pauline Abernathy  
Richard Glazer, Chair  
Richard Negrin, Esq., Vice Chair  
Stella Tsai, Esq.

Staff

J. Shane Creamer, Jr., Esq.  
Tina Formica

Guests

Evan Meyer, Esq.  
Tara Malloy, Esq.

After recognizing that a quorum was present, Board Chair Richard Glazer convened the meeting.

**I. Approval of Minutes**

The Board deferred approval of the minutes until the next board meeting.

**II. Motion**

Mr. Glazer proposed the following motion to the Board:

- “1. Until adjudication regulations, as authorized by Code Section 20-

606(1)(h), are promulgated by the Board and become effective, the Board may exercise its enforcement powers through the mechanism of filing actions in Common Pleas Court under Charter Section 4-1100, except to the extent that the Board reaches a resolution that does not require the imposition of sanctions, such as dismissal, settlement, or issuance of a consent order.

2. The Interim Executive Director is authorized to conduct preliminary inquiries, with the assistance of such consultants or employees as he may designate, and present finding to the Board. If the Board determines, after weighing all pertinent factors, that the evidence supports the conclusion that probable cause exists that a violation has occurred, then the Board may at its discretion authorize the Interim Executive Director through counsel to commence civil proceedings as authorized by Section 4-1100.”

The Motion passed unanimously.

### **III. Financial Disclosure Forms**

Evan Meyer addressed the Board regarding Financial Disclosure Forms. Mr. Meyer stated that the City is moving towards electronic filing, and the Financial Disclosure Forms were sent out this morning via email with a bar code attached for each form.

**The Board recessed the Public Session for approximately 15 minutes break in order to convene a brief Executive Session. After the brief Executive Session, the Board reconvened the Public Session.**

### **IV. Fattah Settlement**

Mr. Creamer announced that the Board entered into a Settlement Agreement with Mayoral candidate Chaka Fattah.<sup>1</sup> An investigation began on February 12, 2007 as a result of exception reports that were generated from the Campaign Finance Reports. Mr. Creamer has been working with Fattah’s counsel, Gregory Harvey, Esquire, to resolve certain issues. Mr. Creamer noted that Congressman Fattah provided extraordinary detailed responses to requests for information and cooperated fully with the Board’s investigation.

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<sup>1</sup> Mr. Glazer announced that Stella Tsai recused herself from any issues related to the Fattah campaign, because she was briefly involved with the Fattah Exploratory Committee in 2006.

## **VI. Campaign Finance Law Compliance Report**

Mr. Creamer presented the following Campaign Finance Law Compliance Report to the Board:

### **“A. Executive Summary**

Since being installed less than five months ago, the Philadelphia Board of Ethics has worked with vigilance to fulfill its advisory, educational and enforcement mandates under the City’s campaign finance law.

The Board is currently engaged in multiple investigations of potential violations of the City’s campaign finance laws. Where violations have occurred and are not corrected, the Board will act swiftly to enforce the law, either in court or administratively.

The Board also has acted proactively to help prevent campaign finance violations and ensure compliance by making inquiries and requesting corrective actions, thereby avoiding the need for an investigation. This report describes Board inquiries that have not required investigations. In each case, the Board asked the candidate or campaign to answer questions or explain apparent discrepancies in their campaign finance reports to ensure they are in compliance with the law and prevent future violations.

For example, the law permits candidates to accept “excess pre-candidacy contributions,” but they are prohibited from using the excess portion of such contributions to influence the outcome of their election. Because the excess portion of a contribution cannot be distinguished from other funds once it has been deposited into a candidate’s account, the Board has directed campaigns to segregate such funds by placing them in a “segregated pre-candidacy excess contribution account (“SPEC Account”).

This report lists and describes committees that have: (1) either taken corrective action on their own initiative or took corrective action at the request of the Board to avoid potential violations of the law; (2) provided explanations of potential violations suggested by data in their Cycle 7 annual campaign finance reports that demonstrated that they were actually in compliance; or (3) that have been asked by the Board to provide data that was omitted from the committee’s 2006 Cycle 7 annual report.

The compliance reports below are listed in the following categories:

- Excess pre-candidacy contributions that have been segregated or returned (Section C);
- Potential excess pre-candidacy contributions (Section D);
- Failure to initially file electronic reports (Section E); and
- Reports filed with omitted data (Section F).

## B. Analytical Approach

The Ethics Board, the Records Department and representatives from the vendor who created the Campaign Finance Database began to analyze the data contained in the electronic Cycle 7 campaign finance reports for the four Democratic candidates who filed their with the Records Department on January 31<sup>st</sup> as soon as the reports were loaded into the database. The first reports aggregated all contributions from the same donors to a candidate, and then listed all contributions that were over \$5,000 or \$20,000 for 2006.

Nearly all of the remaining 169 Cycle 7 reports were eventually filed by the extended electronic filing deadline of February 15<sup>th</sup>. One Democratic candidate for Mayor filed his Cycle 7 annual report on February 16<sup>th</sup>. Once all the reports were filed in an electronic format, more exception reports were run, with filters set at \$2,500, \$5,000, \$10,000 and \$20,000. The reports aggregated all contributions from the same donors to a candidate, and then listed all contributions that were over the dollar amount set for each report.

A letter was sent to each candidate with a potential excess pre-candidacy contribution, explaining the spending limitations on excess pre-candidacy contributions, and that the data in their Cycle 7 report suggested that they had received an excess pre-candidacy contribution. Candidates were asked to confirm the data in the reports.

If the candidate confirmed an excess pre-candidacy contribution, a follow-up letter was sent recommending that they segregate the excess portion from their single account, to ensure that they did not violate the spending restriction under Section 20-1002(4) of the campaign finance law.

Each of the candidates listed in section “C” below confirmed the receipt of an excess pre-candidacy contribution and complied with the Board’s request to segregate the money (with the exception of Councilman Kenney, where the Board is waiting for documentation).

Each of the candidates listed in section “D” provided additional information that, once corroborated with other sources of information, demonstrated that they did not have a potential excess pre-candidacy contribution as initially suggested by the data in their Cycle 7 report.

Later, candidate committee reports were cross-referenced with filings by the PACs, to ensure that all PACs that made contributions to candidates for City elective offices in 2006 filed a Cycle 7 report in an electronic format with the Ethics Board, via the Records Department. If a PAC was listed as a contributor in a candidate committee’s report, but that PAC did not file a required electronic

report, a letter was sent to the treasurer of the PAC explaining the requirements and demanding that a report be filed by a date certain.

C. Candidate Committees with Excess Pre-Candidacy Contributions that Have Been Segregated or Returned

1. Friends for Dwight Evans for Mayor Committee

On his own initiative, after the Board issued Advisory Opinion 2006-003, which, among other advice, recommended that candidates with excess pre-candidacy contributions segregate the excess portion of the contribution by placing it into a “segregated pre-candidacy excess contribution account” (“SPEC Account”), Representative Dwight Evan’s established a SPEC Account sometime prior to January 31, 2007.

Representative Evans placed \$55,031.25 in excess pre-candidacy contributions by seven individuals in 2005 into the SPEC Account.

2. John D. Green Committee

The 2006 Cycle 7 campaign finance report filed on behalf of the John D. Green committee revealed a \$23,500 contribution from a Political Action Committee (PAC) on June 29, 2006. A letter was sent to Sheriff Green on February 22, 2007, explaining the restrictions on excess pre-candidacy contributions and asking him to check the committee’s records to confirm the information about the reported excess pre-candidacy contribution.

Follow-up letters were sent on March 8, 2007 and April 4, 2007. The April 4<sup>th</sup> letter enclosed a copy of Advisory Opinion 2006-003 and recommended that the committee segregate \$13,500 of the excess contribution as soon as possible.

On April 9, 2007, the committee’s campaign manager sent a letter to the Board, stating that the committee had decided to return the \$13,500 excess portion of the contribution to the PAC and promised to provide documentation once that had occurred. On April 17, 2007, the committee provided documentation to the Board confirming that \$13,500 was returned to the PAC by check dated April 10, 2007.

3. Friends of Michael Untermeyer Committee

The 2006 Cycle 7 report for the friends of Michael Untermeyer committee listed a \$10,000 contribution from an individual on August 15, 2006. The report also listed a \$25,000 contribution from a husband and wife on August 25, 2006, which was the date on which Mr. Untermeyer declared his candidacy for Sheriff. On February 22, 2007, a letter was sent to Mr. Untermeyer, explaining the restrictions on excess pre-candidacy contributions and asking him to check the committee’s records to confirm the information about the reported excess

contributions. Mr. Untermeyer responded with a letter dated March 15, 2007, in which he stated that \$5,000 of the August 15, 2006 contribution and \$15,000 of the August 25, 2006 contribution were placed into an escrow account on March 4, 2006.

On March 23, 2007, another letter was sent to Mr. Untermeyer, explaining that \$7,500 of the August 15, 2006 contribution needed to be segregated and that \$20,000 of the August 25, 2006 contribution must be returned to the donors, because it was an excess contribution to a declared candidate.

On March 29, 2007, the committee returned the \$20,000 excess contribution to the husband and wife who donated it. On March 28, 2007, the committee placed \$7,500 into an escrow account. The committee has submitted documentation to the Board that confirms both the returned contribution and the escrow account.

#### 4. Kenney for Council Committee

The 2006 Cycle 7 report for the Kenney for Council committee reported both a \$15,000 contribution and a \$15,000 loan from a candidate political committee, both occurring on September 14, 2006. However, that other candidate political committee's Cycle 7 report only listed a \$15,000 loan to the Kenney for Council committee.

A letter was sent to Councilman Kenney on February 22, 2007, requesting him to check his committee's records to confirm what appeared to be a misreported \$15,000 contribution and to confirm the \$15,000 loan. On February 26, 2007, a representative from Councilman Kenney's committee called to confirm the fact that there was only a \$15,000 loan from that committee, and no contribution. The representative was then advised that the loan qualifies as a "contribution" under the law, and that \$5,000 of the loan would constitute an excess pre-candidacy contribution. A follow-up letter was sent to Councilman Kenney on March 8, 2007 confirming the discussion, and enclosing a copy of Advisory Opinion 2006-003. Councilman Kenney's representative indicated that they would most likely return the \$5,000 excess portion, since it was a loan.

#### 5. Friends of Donna Reed Miller Committee

The 2006 Cycle 7 report for the Friends of Donna Reed Miller committee listed \$7,000 in excess pre-candidacy contributions from four individuals.

A letter was sent to Councilwoman Reed Miller on March 8, 2007, requesting her to check her committee's records to confirm the reported information. Following telephone conversations with both Councilwoman Reed Miller and her treasurer, the committee opened a SPEC Account on April 11, 2007 and deposited \$7,000 into that account.

D. Candidate Committee Reports Listing Potential Excess Pre-Candidacy Contributions

1. Friends of Bob Brady Committee

The Cycle 7 report for Congressman Bob Brady listed two separate \$20,000 contributions from the same PAC in 2006 – one in November and a second in December. A letter was sent to Congressman Brady’s counsel on February 23, 2007, asking him to direct campaign staff to check the committee’s records to confirm the information.

Congressman Brady’s counsel responded by letter dated March 8, 2007, advising the Board that the \$20,000 contribution that the committee reported it received in November 2006 was in error. Although the committee did receive two separate \$20,000 contributions from the same PAC, they were made in December 2006 (as reported in the 2006 Cycle 7 report) and in January 2007. Copies of the cancelled checks were supplied. The PAC’s 2006 Cycle 7 report corroborated these representations, as did an attorney representing the PAC in a subsequent telephone conversation.

2. Nutter for Mayor Committee

The Cycle 7 report for the Michael Nutter for Mayor committee listed multiple contributions from two individuals with the same name. Five contributions from one name totaled \$5,350, while three contributions from another name totaled \$6,000. A letter was sent to Mr. Nutter on February 14, 2007, asking him to check his committee’s records to confirm the information.

Mr. Nutter’s counsel responded by letter dated February 20, 2007. The letter explained that there were actually four contributors, two who shared one name and two who shared the other name. Middle initials, telephone numbers, employer names and addresses were also provided. Calls to each of the four individuals confirmed their separate identities as well as their actual contributions to Mr. Nutter, which were within the contribution limits.

E. Committees that did not Initially File Electronic Reports

1. Plumbers Local 690 PAC

The 2006 Cycle 7 report for a candidate for City elective office listed a \$20,000 contribution from the Plumbers Local 690 PAC. The Pennsylvania Department of State Campaign Finance Database indicated that the Plumbers Local 690 PAC did file a required 2006 Cycle 7 report with the Department of State, but it did not file the same report in an electronic format with the Ethics Board, via the Records Department.

A letter was sent to the treasurer of the Plumbers Local 690 PAC on March 21, 2007 that explained the electronic filing requirement and enclosed copies of the City's campaign finance law and Regulation No. 1, which, the letter explained, took effect on January 17, 2007. The letter requested that the PAC submit its Cycle 7 report in an electronic format no later than by April 4, 2007, which it did.

## 2. Carpenters PAC of Philadelphia & Vicinity

The 2006 Cycle 7 report for two candidates for City elective office listed contributions from the Carpenters PAC of Philadelphia & Vicinity. The Pennsylvania Department of State Campaign Finance Database indicated that the Carpenters PAC of Philadelphia & Vicinity did file a required 2006 Cycle 7 report with the Department of State, but it did not file the same report in an electronic format with the Ethics Board, via the Records Department.

A letter was sent to the treasurer of the Carpenters PAC of Philadelphia & Vicinity on March 21, 2007 that explained the electronic filing requirement and enclosed copies of the City's campaign finance law and Regulation No. 1, which, the letter explained, took effect on January 17, 2007. The letter requested that the PAC submit its Cycle 7 report in an electronic format no later than by April 4, 2007, which it did.

## F. Committees that Filed Reports with Omitted Data

### 1. Overview

More recently, exception reports were run listing omitted data, such as the name or address of a contributor, the date of a transaction, or the name or address of a contributor's employer, for all 173 Cycle 7 annual campaign finance reports. After reviewing the data, it was decided to set a minimum threshold of 20 missing data entries. There are six committees with more than 20 omitted data entries.

The lowest number of missing entries was 23, but that represented 16% of that committee's total required data entries. The highest number of missing entries was 153, representing 8% of that committee's total required data entries. The highest percentage of missing data was 19%, representing 33 missing data entries out of a total of 173.

Letters were hand-delivered to the six committees with omitted data on April 13<sup>th</sup>, requesting that they file amended Cycle 7 reports by April 20<sup>th</sup>, thus providing them with a limited time to take corrective action. Each letter enclosed a copy of the exception report for that committee that identifies and lists the data that was omitted from their report. Because amended reports are required, they must also file amended reports with the City Commissioners. Copies of the letters and exception reports were hand-delivered to City Commissioners' staff."

Mr. Glazer informed those in attendance that the Compliance Report will be posted on the Board's website.

Mr. Glazer also stated that the Board is actively involved in ongoing investigations. He added that no inference should be taken from the failure to mention any particular candidate or committee in the Compliance Report.

## **VII. Executive Director's Report**

### **1. Legislative Update**

#### **a. Commonwealth Court Upholds City Campaign Finance Law**

Mr. Creamer reported that on April 2, 2007, the Commonwealth Court granted the appeals filed by the City and Michael Nutter from Judge Tereshko's December 13, 2006 ruling that the City's campaign finance law was invalid. The 6-1 majority opinion, written by Judge Doris A. Smith-Ribner, found that the City was not preempted from enacting political contribution limits for City elective offices.

Mr. Creamer also reported that Both Congressman Fattah and Mr. Dougherty filed appeals to the Pennsylvania Supreme Court. Although Congressman Fattah requested an expedited briefing and argument schedule, the Court did not respond to that request.

#### **b. Bill 070172**

Mr. Creamer reported that Bill 070172 was introduced by Councilman Rizzo on March 8, 2007. It would require lobbyists to register with the Ethics Board and to submit certain disclosure reports. The Board would have jurisdiction to enforce and to issue advisory opinions. The Bill has been scheduled for a hearing before Council's Law & Government Committee on Thursday, April 19, 2007 at 1:00 PM.

#### **c. Bill 070271**

Mr. Creamer reported that Bill 070271 was introduced by Councilwoman Campbell on April 12, 2007. This Bill would require the Ethics Board to

offer training to candidates and potential candidates on how to complete the State financial disclosure form four times per year. Candidates are required to file the *State* financial disclosure form when they file their nominating petitions. Candidates are required the *City* financial disclosure form only if they are elected into office. Once they are sworn-in to office, they have 30 days to submit the City form. The Bill has not yet been scheduled for a hearing.

## **2. City FY2008 Budget**

Mr. Creamer stated that the FY2008 budget hearing for the Ethics Board is scheduled before City Council's Committee of the Whole on Tuesday, April 24<sup>th</sup> at 3:45 PM. We have submitted proposed testimony for Richard Glazer to present at the hearing to the Budget Office.

Mr. Creamer reminded the Board that, under the City Charter, the Board is guaranteed a \$1 million budget in each of the first two fiscal years following the June 5, 2006 effective date of the charter Amendment that established the Board.

## **3. Financial Disclosure**

Mr. Creamer stated that the City, State and Mayoral financial disclosure form must be filed with the Records Department by Tuesday, May 1<sup>st</sup>. However, to avoid a last-minute rush, the Records Department is suggesting that forms be filed by Friday, April 27<sup>th</sup>.

Mr. Creamer said that the financial disclosure statement requirements and deadline were discussed at a meeting of HR Managers on April 5<sup>th</sup>. The HR Managers ensure that the forms are distributed to and collected from all officials and employees in their department who are required to file financial disclosure statements. Records Commissioner Decker and Evan Meyer spoke at the meeting about the filing process and legal requirements, respectively.

Mr. Creamer explained that the Records Department is also sending emails to all City employees who file disclosures and who have an email address. The emails include a bar code for each individual filer, to facilitate the processing of the forms once they are filed with the Records Department, and disclosure forms with basic information (name, etc.) pre-populated in

the correct fields on the form. All board and commission members who have submitted an email address to the Records Department will also be sent an email with a bar code and form(s) to print out.

Mr. Creamer stated that he requested approval to send a blast email to City employees and officials that explains the requirements and contained a list of frequently asked questions. In previous years, a similar email was sent by the Solicitor, however, because the new Ethics Board has the authority to render advice and to enforce the City's Ethics Code, which includes the City's financial disclosure obligations, it was decided that it would be more appropriate for the email to come from the Ethics Board.

Mr. Creamer said that, in addition to the City officials and employees who must file disclosure statements, the members of 81 boards and commissions (including four that were created in 2006 by executive orders) must also file disclosure forms. Mr. Creamer then listed the numbers of Boards and Commissions that must file the various forms:

- City form only: 47 boards and commissions
- City and State forms: 20 boards and commissions
- City, State and Mayoral forms: 9 boards and commissions
- City & Mayoral forms: 1 board

In past years, Mr. Creamer said that Records Commissioner Decker would mail the forms to the chair of each board or commission with instructions to distribute the forms to all members. This year, Mr. Creamer will send letters to every board and commission chair, explaining which form their board or commission had to file and enclosing copies for all members of their board or commission.

#### **4. Campaign Finance Law Seminar**

Mr. Creamer reported that on March 21<sup>st</sup>, we announced that we would re-offer the Campaign Finance Law Seminar on Wednesday, April 18<sup>th</sup> from 12:00 – 2:00 PM. Invitations were mailed to all 79 candidate committees and we also posted the notice on the Ethics Board's and Records Department's websites. The Seminar will be held at the Community College of Philadelphia, in the College's Business & Industry Center, as it was originally on February 8th. Sixty-four treasurers, campaign staffers and candidates attended the first Seminar.

Separately, the Records Department offered online training for filing electronic Cycle 2 campaign finance reports (due on May 4<sup>th</sup>) twice on March 29<sup>th</sup> and again on March 30<sup>th</sup>.

## **5. Thailand Representatives**

Mr. Creamer said that he spoke to a delegation from Thailand on March 26<sup>th</sup> about Philadelphia's experience with ethics, contract and campaign finance reform. He was asked to speak to the ten delegates by the International Visitor's Council. The Thai delegates were on fact-finding tour of the United States sponsored by the US State Department. They include representatives from the governing council, the Supreme Court, the media and several NGOs, and are part of a larger group that is responsible for drafting a new constitution for the country, following last year's coup.

## **IX. New Business**

Mr. Glazer announced that the original bid that was received to fit out the office space has to be re-negotiated. Public Property will have to sign off and construction will begin on or about April 24<sup>th</sup>. It will take 30-45 days to complete the construction.

Mr. Glazer also announced that his Budget testimony was prepared and he will testify before City Council on April 24<sup>th</sup>.

## **X. Regulation No. 2**

After extensive discussion and revision during the Board's Public Session, Regulation No. 2 was approved by unanimous vote. Mr. Meyer was asked to deliver the final draft to the Records Department for publication.

## **XI. New Business**

There was no new business.

## **XII. Executive Session**

The Board then convened its Executive Session.