

Philadelphia Board of Ethics
Meeting Minutes
May 21, 2008
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Phoebe Haddon, Esq.
Kenya Mann, Esq.
Stella Tsai, Esq.

Staff

J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Evan Meyer, Esq.
Michael Cooke, Esq.
Maya Nayak, Esq.
Tina Formica

I. Call to Order

Mr. Glazer recognized that a quorum was present and called the meeting to order.

II. Approval of Minutes

The Board approved the meeting minutes for the public meeting that was held on April 16, 2008.

III. Executive Director's Report

A. Compliance Update

1. Philadelphia Board of Ethics v. The Friends of Curtis Jones, Jr.

Mr. Creamer reported that the Board filed a Petition in the Court of Common Pleas against the Friends of Curtis Jones, Karen Lewis (as treasurer) and the Honorable Curtis Jones Jr., on May 8, 2008, for failing to electronically file a required 2007 cycle 3 report with the Ethics Board, via the Records Department. The Petition seeks both an order compelling the Defendants to electronically file their 2007 cycle 3 report and penalties for their failure to file. The original deadline was June 14, 2007. Michael Cooke and Mr. Creamer filed the Petition on behalf of the Board.

Mr. Creamer said that after discovering that the Committee had failed to electronically file its 2007 cycle 3 report, he sent a letter to Councilman Jones on January 25, 2008. His letter advised the Councilman that his committee failed to file the report and gave his Committee until February 8, 2008 to file. A second letter was sent to Councilman Jones on April 24, 2008, alerting him to the fact that his committee still had not electronically filed its 2007 cycle 3 report and provided a second extended deadline of April 30, 2008.

Mr. Creamer also reported that the Petition was served on the Defendants on May 8, 2008. Their 2007 cycle 3 report was subsequently filed on May 9, 2008, which was 91 days after the first extended deadline of February 8, 2008. The Board will continue to pursue a monetary fine for the committee's failure to electronically file their 2007 cycle 3 report, despite being give ample opportunity to do so.

2. Nonfiler: Citizens for Vincent Hughes

Mr. Creamer informed the Board that he wrote a letter to the treasurer of the Citizens for Vincent Hughes committee on May 1, 2008, advising her that the committee should have electronically filed reports for cycles 1, 2, 3 and 4 in 2007, because the committee's reports filed with the Department of State disclosed contributions to candidates for City office. Mr. Creamer said that the letter set an extended deadline of May 16, 2008. All four reports were electronically filed on May 14, 2008. Because the extended deadline was not exceeded, Mr. Creamer said that the Board will not seek to impose a penalty.

B. Personnel

1. **Director of Enforcement and Associate General Counsel:** Mr. Creamer announced that Michael Cooke and Maya Nayak have started in the positions of Director of Enforcement and Associate General Counsel, respectively, and we are delighted to have them on our staff. They are already hard at work and have already begun to take on important tasks.

2. **Research and Information Specialists:** Mr. Creamer reported that staff interviewed eight candidates for the two Research and Information Specialist positions. These are entry level positions for staff that will present outreach programs, conduct research, and support investigative tasks. Two excellent candidates have been identified and staff is contacting references, and we would like to make offers by the end of the month. The Clerical Assistant position has been posted on the Department of Personnel website and we received many resumes. Staff expects to conduct interviews for this position in late May.

Mr. Creamer stated that Charter Section 3-806 requires that the Board appoint the Executive Director and its General Counsel, and the Board has approved hiring for four additional positions: the Deputy Executive Director, Administrative Assistant, Director of Enforcement, and Associate General Counsel. Now that staff is involved in hiring for additional staff positions, the Board asked at last month's meeting whether it could delegate to the Executive Director its hiring authority granted by the City Charter.

Mr. Creamer reported that staff asked the Law Department for its interpretation of Section 3-806 on this question, and was advised that it would be permissible for the Board to delegate its hiring authority to the Executive Director for the remaining staff positions.

Mr. Creamer said he would therefore appreciate Board approval of a resolution to delegate hiring authority for the Information Specialist and Clerical Assistant positions to the Executive Director.

Mr. Glazer noted that the FY09 personnel budget is \$835,000. Since the hiring of Mr. Cooke and Ms. Nayak the personnel budget is at almost \$600,000. He expressed his concern for the budget, and the possible legal fees for outside counsel. He would like staff to be careful with future hiring until we receive the additional \$100,000 that the Board requested for the FY09 budget.

A motion was made to grant authority as requested to the Executive Director and was passed unanimously by members present. Mr. Creamer also advised the Board that staff plans to begin a search for an investigator in the near future.

3. **Summer Intern:** Mr. Creamer reported that Ms. Massar is scheduled to attend an orientation session later this month for agencies participating in the City's summer internship program. The Board requested a high school intern to assist with clerical tasks. Assuming that an intern is assigned to the Board, he/she will be here from July 7th through August 18th and will work for 16 hours per week. The City pays the intern's wages.

C. Budget

Mr. Creamer informed the Board that staff attended the budget meeting of the City Council Committee of the Whole on May 14th. No questions were asked of the Board. The Budget was voted out of Committee that day. Information currently available indicates that for FY09 our budget will be \$1 million, and the additional \$100,000 requested for FY09 has not been included in our budget. Mr. Creamer added that staff has been advised that we will be able to renew the request for the additional \$100,000 during the "target budget" process that occurs in June or July. Mr. Creamer said that staff will closely monitor this process because the additional funds are probably necessary for anticipated litigation costs during the next fiscal year.

D. "Stop & Frisk" Flyer Investigation Update

Mr. Creamer reported that on Monday, April 21, 2008, Cheryl Krause filed an Emergency Petition for Contempt against Tommie St. Hill and his firm, RCS Diversified Consultants, for their failure to comply with the April 15th Court Order issued by Judge Jane Cutler Greenspan.

Mr. Creamer also reported that the previous Order compelled the respondents to immediately produce any laptop computer or other media storage devices in their possession, so that they could be imaged and searched for documents, emails and communications relating to the illegal "stop & frisk" flyer that was distributed on May 15, 2007.

Mr. Creamer stated that the Board was forced to go back to the Court for another order because the Respondents would not comply with the April 15th Order. We sent the Board's forensic computer expert to Mr. St. Hill's office four

times on April 16th, 17th and 18th, after confirming with his attorney that someone would be there.

Mr. Creamer also stated that Judge Greenspan issued a second Order on April 21st compelling them to produce any responsive computer immediately. At the hearing, Mr. St. Hill's lawyer claimed that Mr. St. Hill created the flyer on a laptop in his office, but Mr. St. Hill did not own the laptop. He refused to identify who owned the laptop.

On April 23rd, Mr. St. Hill permitted the Board's forensic computer expert to scan a desktop computer in his office. However, his attorney represented that the desktop computer was "clean" and did not contain any responsive documents.

The second Order also requires Mr. St. Hill to submit to a deposition on the limited issue of the identity and whereabouts of computers and media storage devices that are responsive to the April 15th Order. His deposition is scheduled for June 14, 2008.

Finally, Mr. Creamer reported that Mr. St. Hill admitted that he was responsible for creating, printing and distributing 125,000 copies of the illegal flyer and for hiring 20-30 individuals and a driver to distribute them on election day. In his statement under oath to the Board last August, Mr. St. Hill testified that he could not recall that he had any PAC clients during the 2007 primary election. Instead, he claimed that he only had judicial candidates as clients. Months after his sworn statement, we discovered that COPE had paid Mr. St. Hill and his company \$22,500 from May 2, 2007 to July 3, 2007. Separately, Mr. St. Hill and his company was paid a \$4,000 monthly retainer by the Union in 2007.

E. Cozen O'Connor Suit Against the Board in the Court of Common Pleas

Mr. Creamer informed the Board that Cozen O'Connor filed a Response to the Board's Preliminary Objections to its Complaint on May 19, 2008. The Board's Objections raise three arguments in support of dismissal:

- First, there is no actual case or controversy between Cozen and the Board necessary to invoke the Pennsylvania Declaratory Judgment Act because advisory opinions by local agencies are not "final adjudications" that are reviewable in court.

- Alternatively, if the Advisory Opinion is deemed to be a “final adjudication,” the Court lacks subject matter jurisdiction because neither the Friends of Bob Brady nor Cozen filed a timely appeal of the Board’s opinion.
- Third, regardless of whether or not the Advisory Opinion is reviewable by the Court, Cozen lacks standing to sue the Board because it is merely an unpaid campaign vendor and does not have a direct, substantial, or immediate interest necessary to confer standing.

F. Local 98 IBEW COPE’s Federal Lawsuit Against the Board

Mr. Creamer stated that Local 98 COPE filed a Response to the Defendants’ Motions to Dismiss its Amended Complaint on April 30, 2008. Replies to COPE’s Response were filed by Cheryl Krause on behalf of the Board and Mr. Creamer, and also by the Attorney General, on behalf of the Commonwealth Defendants.

Mr. Creamer informed the Board that the oral argument is scheduled on May 30, 2008 at 10:30, before Chief Judge Harvey Bartle.

Mr. Creamer said that previously, Cheryl Krause filed a Motion to Dismiss Local 98 IBEW COPE’s Complaint on behalf of the Board and me on March 31st. The Attorney General filed a separate motion to dismiss on behalf of the Commonwealth Defendants and the District Attorney filed a third motion to dismiss.

G. Ethics Training

1. Integrity Officer Training: Mr. Creamer said that on April 22nd, the Board conducted the third of three ethics training sessions for departmental Integrity Officers and members of the Inspector General’s staff. Over 40 people attended the three sessions.

2. Future Training: Mr. Creamer informed the Board that two ethics training sessions are scheduled in June for officers of AFSCME, District Council 47. Starting in the summer, the Board will conduct ethics training sessions for the members of the City’s many boards and commissions. He added that staff will also coordinate with the Personnel Department to “train the trainers” who will offer annual ethics training to all other City officers and employees.

H. Records Management Update

Mr. Creamer stated that Ms. Formica received further training on the new filing system and searchable database for the Board's files.

I. Web Site Update

1. Mr. Creamer said that over the summer, staff hopes to master the new Collage program which is now being used by the City for its website management. Before we can assume responsibility for the Board's web site, we must redesign all of our website pages using the new software. This task will take much staff time to recreate the Board's web site in the new application and to ensure that all content has been included.

2. Mr. Creamer also said that he was pleased that MOIS quickly posted the agenda for today's meeting on the Board's website last week. He also said that staff asked MOIS to update content to include the many recent advices of counsel.

J. Planning for Annual Financial Disclosure Reporting

Mr. Creamer said that Mr. Meyer continued to provide advice for the May 1st annual financial disclosure reporting deadline for City officials and employees. More details will be reported later in the meeting.

IV. General Counsel's Report

Mr. Meyer requested to have the minutes reflect his full General Counsel report, but he did summarize his report for the Board members.

1. Formal Advices of Counsel. There were three of these issued since last month's report:

- a. Advice of Counsel of April 18, 2008 (Lienert). Advised a Telephone Maintenance Crew Chief for the City's Mayor's Office of Information Services (MOIS) who may seek to separate from the City and work for an employer that is a subcontractor for the company that provides the City with telephone and data service. Two questions: whether the ethics laws would prohibit his applying for the position; and what post-employment restrictions apply after leaving the City. Advised the requestor on how to avoid

conflicts of interest in pursuing future employment while still on the City payroll; and advised on the post-employment rules of the State Ethics Act and City Code.

- b. Advice of Counsel of April 22 (Collins-Greenwald). Advised L & I official regarding effect of post-employment rules on recently retired employee of L & I whom Mayor has just appointed to Board of Licenses & Inspections Review.
- c. Advice of Counsel of May 6 (Adkinson). Advised Personnel Administrator for Health Department that City employees in civil service title of Sanitarian are “public employees” under the State Ethics Act, and thus are required to file the State financial disclosure form.

2. Public versions of previously-issued Nonpublic Advices of Counsel. As required by Code Section 20-606(1)(d)(iii), after the Board issues a nonpublic advisory, the Board makes public an edited version of the advisory “with such deletions as may be necessary to prevent disclosure of the identity of any City officer or employee or other involved party.” There was one of these public versions issued in the past month:

- a. May 15, 2008. We received a request from a member of a certain board/commission of the City for nonpublic advice on whether a violation of the Ethics Code would occur if that board/commission were to award a consulting contract to a certain independent contractor who has in the past done business with a company in which a member of this board/commission is a principal. Advised that no conflict issue was raised by the facts provided, but that requestor might wish to avoid even the appearance of a conflict by complying with the “disclosure and disqualification” requirements of Code Section 20-608.

3. Informal e-mail guidance. Through Friday, May 16, there were more than 20 of these since last month’s meeting:

- a. Advised executive director of a City board/commission regarding question of conflict involving board/commission member who had interest in matter coming up for vote the next day. As more facts were needed, and not time to receive and evaluate them, provided newsletter on “Ethics” and noted section on disclosure and disqualification.

- b. Advised a departmental deputy who serves as alternate on a City board/commission for the department head that alternates on City boards must file the City financial disclosure form, just as if they were the appointed member.
- c. Advised counsel to a City board/commission regarding a person who was appointed to two City board/commissions. No problem under Charter Section 8-301 (dual government employment) if at least one of those positions is uncompensated, although interpretation of 8-301 is actually not in our jurisdiction. Member should avoid conflicts, such as where an employee of one of the bodies is subject to action by the other body.
- d. Advised a Law Dept. attorney regarding City employees soliciting charitable contributions for a nonprofit. Provided copy of Advice of Counsel of Sept. 12, 2007.
- e. Received a request regarding complimentary admission to a lecture. Advised that it was solely a question under the Mayor's Gift Executive Order, and referred the question to Chief Integrity Officer Joan Markman.
- f. Advised a board/commission member regarding lobbying federal agencies in Washington, D.C. So long as not lobbying any agency or office under the governments of the City of Philadelphia or the Commonwealth of Pennsylvania, no issues under any of the ethics laws that are in our jurisdiction.
- g. Provided standard post-employment advice to a City official.
- h. Advised a City official regarding recommending an outside nonprofit for a grant from a City agency (not the official's agency). Advice: generally no conflict of interest, but suggest recommendation be limited to factual recitation of satisfactory work done for City, rather than using the glowing testimonial template that was provided to the official.
- i. Advised Law Dept. attorney representing a department that no gift issues arise concerning offer to provide awards to department office and invite City employees to conference, where nothing of value is being provided to the employees.

- j. Advised City official regarding former City employee participating in proposal for a City contract, providing standard post-employment advice, and referring to Chief Integrity Officer for City policy on contracting where there is an issue under the ethics laws concerning conduct of a proposer.
- k. Financial Disclosure. Received approximately 10-11 requests for advice concerning the financial disclosure process, providing the following advice:
- All forms are filed in Room 156 City Hall, including the State Form. Employee need not use the triplicate original form provided by the State, but may submit on line or download form from our web site. Copy should be provided to the employee's supervisor, if in Executive Branch, under Executive Order 1-90.
 - Directorships in nonprofits. Not required to be disclosed on City Form. Currently required to be disclosed on State Form, but matter is in litigation. Filer wishing to amend State Form to include directorship in a nonprofit may have to file paper addendum, as on-line system will not accept this.
 - Filed forms are public information and the paper forms may be reviewed in the Department of Records by any citizen, but the information in the electronic data base is not available to be accessed electronically by the public.
 - We received a question concerning an official whose spouse works for a local law firm and did not wish to disclose certain spousal income information on the forms. Noted that the State Form does not require dollar amounts, and that the Mayor's Form allows for the filer to sign a "Certification B" if they are unable to obtain certain information from their spouse.
 - A member of a City board and another official who served in 2007 asked whether filing was required for the May 1, 2008 deadline. Answer: Yes, any official who served at any time in calendar year 2007 or 2008 (prior to 5/1/08) is required to file the applicable form(s). Advised a newly-hired (April) employee that filing requirement applies.
 - Income on investments is required to be disclosed on State Form, even if not payment for "services rendered." Language in instructions referring to "recognition of services rendered" is not dispositive, because instructions also refer to such gains as "expense, interest, dividend, royalty, capital gain, proceeds from a sale of a financial interest, and prize winnings."
 - Transportation, etc. Expenses. Reimbursement line on State Form refers only to reimbursement in connection with public position, not

reimbursement by a company for which the City employee worked as permissible outside employment.

- Advised Records Department that a filer who e-mailed scanned forms has not complied with filing requirement. We require physical delivery to the Records Department of a paper form, with an original signature of the filer.
- Advised a number of City boards/commissions as to which form their members file.
- Received a complicated question regarding capital gain realized by estate of the official's father-in-law, where the official's spouse was executor of the estate. Advice: in general, whether a gain is disclosable depends on whether it is "income." In this regard, I always advise that if the official reported the gain as "gross income" in his/her federal income tax return, then it is "income" for purposes of financial disclosure, and should be disclosed, unless it fits one of the specific exceptions found in the instructions for that particular line of that particular disclosure form.

V. Financial Disclosure

Ms. Massar said that as Evan's report indicates, there has been much activity surrounding the May 1st financial disclosure reporting deadline.

Ms. Massar also said that the Board would especially like to acknowledge and thank the Records Department for the essential role they played in this process. All financial disclosure statements, the City, State, and Mayor's forms, are required to be filed by City officials and employees with the Records Department. Not only did the Records Department staff receive and process thousands of reports, but they also provided support and training for people who used the new online electronic reporting software.

Ms. Massar stated that according to Records Department information, to date, more than 4,000 financial disclosure reports have been filed. This includes the City, State, and Mayor's forms. Because the Board has jurisdiction over the filing of the City FDS, Ms. Massar said that staff have confirmed that all officeholders who were required to file the City Form have in fact filed. She said that staff will next undertake a project to confirm that members of the City's many boards and commissions have also filed the City form. All board and commission members, whether compensated or not, must file the City form.

Ms. Massar informed the Board that staff is already taking steps to enhance the financial disclosure process for next year. For example, we are reviewing the many questions and responses described by Mr. Meyer in his report and will use this information to expand the Frequently Asked Questions on our website. Also, with more staff in place by next year, Ms. Massar said that the Board will have more people to assist callers with their basic disclosure questions.

Mr. Glazer asked for comments regarding the accessibility of the Financial Disclosure forms to the public and the press.

Ms. Massar responded that the Board is aware of the accessibility issue with the forms, and staff will work with the Records Department and address the issue for next year.

VI. New Business

There was no new business to discuss.

VII. Old Business

Mr. Glazer stated that there was a question of whether the Board should have a retreat. He spoke to the Los Angeles City Ethics Commission to find out what they do, and they actually had one retreat and are planning their second. He said that they hold their retreats with the public present to make sure they do not violate the Sunshine Act. Mr. Glazer said that the Board must give serious consideration to topics for a possible Board retreat. Ms. Massar will work with Ms. Haddon to develop topics for such a discussion.

VIII. Questions/Comments

Mr. Glazer noted that the Regulation No. 4 hearing will be held on Friday, May 30th if anyone is interested in attending.

Ms. Massar commented that she is working on preparing letters to interested parties and they will be sent out in the next day or so.

Sarah Stevenson from the Committee of Seventy asked when the Local 98 court appearance will be held. Mr. Creamer responded that it will be held on Thursday at 10:30.

Bob Warner from the Daily News said he raised the issue of gaining access to the Financial Disclosure forms on May 1st. He would like the City to address the issue of the physical facilities for the press to access the forms. Mr. Creamer noted that the forms are viewed in the Record Commissioner's office of 156 City Hall and there is not a clear workspace to look at the documents. Ms. Markman from the Mayor's Office said she is willing to speak to the Commissioner regarding the public's access to documents.