

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
**Public Session**  
*September 13, 2005*  
Municipal Services Building  
Room 16 B  
4:30 pm – 6:30 pm

**Present:**

Board

Charisse R. Lillie, Esq., Chair  
Daniel P. McElhatton, Esq., Vice Chair  
Romulo L. Diaz, Jr., Member

Staff

Evan Meyer, Esq.  
J. Shane Creamer, Jr., Esq.

Guests

Venia Hill, Mayor's Office of Information Services  
William F. Gill, Jr., Inspector General

**Agenda:**

**I. Approval of Minutes**

The Board approved the Meeting Minutes for the June 16<sup>th</sup>, July 11<sup>th</sup> and August 9<sup>th</sup> Board meetings, as previously amended.

At the request of Ms. Lillie, Mr. Meyer explained that he had researched the quorum requirements for the Board and determined that a quorum is determined by the a majority of the currently existing members of the body and that vacant positions are not counted. Therefore, since the current size of the Ethics Board is three, a quorum would be two.

## **II. Ethics Training Program Update**

Mr. Creamer informed the Board that tremendous progress had been made with the Ethics Training Program since the last Board meeting. Working with the Personnel Department, 125 trainers have been trained in four “Train the Trainers” sessions. Central Personnel also conducted the first ethics training session on Friday, September 9<sup>th</sup>, so the City’s live Ethics Training Program for *all* City employees has begun.

Initially, only 14 trainers were anticipated. At the last Board meeting, 71 trainers had been recruited. Mr. Creamer said that the dramatic increase in the number of trainers is a reflection of the enthusiasm for the program.

All but a few of the trainers have extensive training experience. The Sheriff’s Office sent two trainers and the District Attorney’s Office sent one. The Controller’s Office told the Personnel Department that they would send their employees to the City-wide ethics training sessions offered by Central Personnel.

The four “Train the Trainers” sessions took place on August 24<sup>th</sup> & 25<sup>th</sup> and September 7<sup>th</sup> & 8<sup>th</sup>. The September 7<sup>th</sup> date was added at the request of Prisons and the September 8<sup>th</sup> date served as a make-up session for those who missed the August training. Mr. Creamer spoke at three of the four sessions and stayed for the entire sessions, which lasted approximately two hours. Many questions were asked, particularly about who had been trained so far, the gift ban, vendor sponsored trips and even one question about whether someone who submits a complaint is protected by the whistleblower law.

Mr. Creamer explained that trainers from the various departments and agencies will create an ethics training schedule for their workers and submit the training schedules to the Personnel Department no later than December 15, 2005. Central Personnel has scheduled 22 ethics training sessions from September 9<sup>th</sup> through December 15<sup>th</sup> for all agencies that do not have an ethics trainer (typically agencies or offices with fewer than 80 workers). Mr. McElhatton suggested that the Board consider offering ethics training to members of the media. Central Personnel’s ethics training schedule is posted on the Ethics Board’s web site. Mr. Creamer said that the training schedules

from the various departments will be added to the website as they are submitted to Personnel.

Mr. Creamer also reported that Personnel Director Lynda Orfanelli had informed him that we have been able to save the City over \$100,000 in potential training costs by implementing the Ethics Training Program by partnering with the Personnel Department. The Program has also been expedited by using the embedded trainers to deliver the ethics training.

### **III. Whistleblower Protection Policy**

Mr. Diaz told the Board that he retained an outside law firm to research the whistleblower law. That request was inspired by the case of plumbing inspector John McFarlane, who explained his experiences with retaliations by coworkers to the Ethics Board at its May 23, 2005 meeting. Mr. Diaz explained that the Board and the City needed to have a clear understanding of the law in order to establish a policy, which is why he retained outside counsel to thoroughly research the issue to provide that understanding. Mr. Diaz then circulated the research memorandum by the firm Klett, Rooney, Lieber & Schoreling.

Mr. Diaz said that prohibited conduct must be identified and that a clear policy that such conduct will not be tolerated should be established. Establishing a policy against retaliatory conduct could be accomplished by an executive order, but that may not be enough, since such an order would only apply to the executive branch of City government. Therefore, Mr. Diaz suggested that the Board propose changing the ethics code to City Council to establish a City-wide whistleblower policy. He added that the Board's mandate includes making recommendations to improve the City's ethics rules and that suggesting legislation is an appropriate avenue for the Board to pursue to fulfill that mandate. Mr. McElhatton moved that the Board draft legislation to amend the ethics code to add a whistleblower protection policy. The Board approved the motion.

The proposal to amend the City's Code of Ethics prompted a discussion of the history of the 1962 Fordham Report (which can be viewed on the Board's new website), which led to the adoption of the Code of Ethics that same year. Mr. McElhatton inquired whether there were public hearings where people could voice their concerns. Mr. McElhatton then asked staff to

research the history of the Fordham Report and the adoption of the Code of Ethics in 1962.

Mr. Diaz stated that we need to educate the City's workforce on the policy and that we need to make it part of our ethics training program. Mr. Creamer said that he would send information on the policy to the Personnel Department and ask them to incorporate it into the ethics training PowerPoint presentation that is being used by the ethics trainers.

Mr. Diaz also explained that the City should establish a chain of authority for reporting a violation of the policy against engaging in prohibited retaliatory conduct against whistleblowers. That authority could be the Ethics Board, but the Board lacks the necessary enforcement powers. The Office of the Inspector General would be an alternative place for reporting violations. Inspector General William F. Gill, Jr. attended the Board's meeting and participated in the discussion.

Inspector General Gill explained that the federal whistleblower law was in the process of being rewritten. Federally, the office of special investigations looks into claims of retaliation against whistleblowers. He also explained that the state Inspector General conducts ad hoc investigations on occasion at the request of the Governor, but that criminal investigations are handled by the Attorney General. Mr. Gill explained that conflicts can emerge in his office when, for example, they investigate a crime reported by a whistleblower, and later are asked to investigate an alleged retaliation against that whistleblower. In those instances, Mr. Gill explained that the Office of the Inspector General may not be the best place to conduct the investigation and that they may need to ask the Solicitor to engage special counsel.

Mr. Diaz recommended that the Board define a policy and add that policy to the education model. He also recommended that the Board and the Office of the Inspector General should have an understanding about how referrals are handled and that we carefully monitor the process to determine whether we need to "add tools to the tool box." Mr. McElhatton emphasized that the Board needs to establish a process to respond to claims of harassment. He added that it would be meaningful for the Board to have done something in this regard within one year of hearing Mr. McFarlane's story. Mr. McElhatton added that he would like the Board to think more globally about the Board's functions and how it addresses some of these issues. Staff was

directed to draft a whistleblower protection policy for the Board to consider at its next meeting. Staff was also directed to add an explanation of the whistleblower protection policy to the Citywide Ethics Training Program.

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

##### **A. Website Update**

Mr. Creamer informed the Board that new content had been added to the Board's "beta" website since the August 9, 2005 Board Meeting. In addition, numerous other changes have been made on the site. Mr. Creamer announced that the site is ready to go "live.". The web site's address will be: [www.phila.gov/ethicsboard](http://www.phila.gov/ethicsboard). A press release announcing the new site has been prepared for distribution and was circulated to the Board prior to the meeting. To get more attention for the new site, Mr. Creamer informed the Board that the new website will be "featured" on the City's home page.

Content additions to the site since our last Board meeting include the following (support for the new content is indicated in parentheses):

- 1) Gift FAQs (Law Department)
- 2) Recent Ethics Legislation Chart/Summary (Law Department)
- 3) Recent Ethics Bills and Resolutions in PDF files (City Council Staff)
- 4) Ethics Training Schedule (Personnel Department)
- 5) State, City and Mayor Financial Disclosure Forms, with instructions (Records Department)
- 6) 1962 Fordham Report in PDF file
- 7) "Report a Concern" has been restored
- 8) Political Activity Guide 2005 (Law Department)
- 9) Bios and photos for all Board members and staff

Other changes include a revised history at the top of the home page, with links to the 1962 Fordham Report; the Executive Summary for the Twenty-First Century Review Forum's Report; Executive Order 001-04; and a link to the Board members page.

Many of the Charter provision links on the site were changed for technical reasons. Originally, the links went to LexisNexis, but they were often down.

A more reliable source for the provisions was located on the Personnel Department's web page.

In the future, more content will be added to the site, including information for vendors. In addition, the Recent Ethics Legislation Chart/Summary will be updated, as the various bills and resolutions move through the legislative process and new bills are introduced.

## **B. Financial Disclosure Review**

On August 23<sup>rd</sup>, Mr. Creamer met with Records Commissioner Joan Decker and Celia O'Leary and Joe Settefrati from the Personnel Department to discuss options on how to better identify City officials and employees who must file the state, City and/or Mayor Financial Disclosure Forms.

The City has never kept an accurate track of who should file the various financial disclosure forms. The Personnel Department's main database includes fields for the financial disclosure forms, but we have found with spot checks that the information in their database is unreliable, due to the fact that Personnel relies on the various departments, agencies and offices – 50 entities in all – to identify who must file the forms. Similarly, the Records Department has made attempts to identify filers by asking departments, agencies and offices to submit lists of the individuals who should file, but compliance has been sporadic.

Personnel's database has very accurate information on civil service employees in terms of financial disclosure when compared to exempt employees. Approximately 80% of the City's workforce is civil service and 20% is exempt. The distribution of financial disclosure filers roughly matches the same break down. Therefore, Personnel believes that it can accurately identify approximately 80% of those who must disclose through their database. The challenge remains in identifying the exempt employees who must file.

Most exempt employees are concentrated in the Managing Directors Office (90), the Law Department, The Mayor's Office, City Council and the DA's Office. In addition, each department typically has several exempt employees, including the commissioner, deputies and the commissioner's secretary.

To accurately identify exempt employees who must file financial disclosure forms, Mr. Creamer advised the Board that lists of people who Personnel believe should file will be submitted to the MDO, Law Department and the Mayor's Office. They will be asked to update Personnel's list. The Personnel Department will externally identify those who must file in City Council and will also identify the exempts in the departments (excluding the secretaries, who do not have to file). Personnel will then update its database and run an extract for all City employees who must file the financial disclosure forms.

Once that information is compiled, the revised list will be compared to the Record Department's three lists (state, City, Mayor) of filers. The Records Department will then list all non-matching names. The list of non-matching names will be checked for spelling differences (some filers might use a married name, or leave out an initial on their disclosure forms). Once the list of non-matching names is cleaned up, we will have identified non-filers.