

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
January 23, 2013  
Board of Ethics  
One Parkway Building  
1515 Arch Street, 18<sup>th</sup> Floor  
1:00 pm

**Present:**

Board

Michael H. Reed, Esq., Chair  
Judge Phyllis Beck (Ret.), Vice-Chair  
Sanjuanita González, Esq.  
Brian J. McCormick, Jr., Esq.

Staff

Nedda Massar, Esq.  
Evan Meyer, Esq.  
Maya Nayak, Esq.  
Michael Cooke, Esq.  
Elizabeth Baugh  
Bryan McHale  
Nina Bradley

A public hearing was held prior to the board meeting regarding Regulation No. 1, Campaign Finance. A court reporter was present during the hearing, as was Richard Feder, Esq., of the Philadelphia Law Department.

**I. Call to Order**

Chair Reed recognized a quorum was present and called the meeting to order at 1:20 pm.

**II. Approval of Minutes**

By a 4-0 vote, the Board approved the meeting minutes, as corrected, for the public meeting that was held on December 19th, 2012.

### III. Executive Director's Report

#### A. Litigation Update

##### i. McCaffery v. Creamer, et al.

Ms. Massar explained that on December 24, 2012, Judge Shelley Robins-New denied the Board's summary judgment motion. The case is scheduled to begin trial on March 4, 2013. Staff anticipates that litigation of this case will continue to consume significant amounts of staff time.

##### ii. Lodge No. 5 of the Fraternal Order of Police, et al. v. City of Philadelphia, et al.

Ms. Massar reported that on July 11th, Judge Sanchez heard oral argument on the parties' cross motions for summary judgment. The Board awaits Judge Sanchez's ruling. On behalf of the Board, Ms. Massar thanked Mark Maguire and Eleanor Ewing, the Board's counsel at the Law Department, for their representation in this matter.

##### iii. Cozen O'Connor v. Philadelphia Board of Ethics

Ms. Massar reported that on July 18th, Judge Tucker ruled in the Board's favor in resolving the case *Cozen O'Connor v. Board of Ethics*, a case challenging the Board's interpretation of the contribution limits found in the City's campaign finance law. Judge Tucker ruled that post-election forgiveness by Cozen O'Connor of the debt owed to it by the Friends of Bob Brady at one time and *in toto* would be subject to the City's contribution limits. Cozen has appealed Judge Tucker's ruling to Commonwealth Court. The parties have filed briefs in the appeal and the Board is waiting to hear if the Court will schedule oral argument.

#### B. Lobbying Update

**Software Project:** Ms. Massar explained that staff believes that they will complete the vendor selection process with the Office of Innovation and Technology (OIT) within the next month. The process includes review of the detailed technical aspects of the proposals by OIT technical staff and review by the Law Department.

Staff will have a better idea about how quickly the registration and expense report modules will be available for 2013 once a vendor is selected. Staff will then present alternatives to the Board concerning when online registration can be expected to begin and whether or not there is a possibility that the expense report module may be ready in time for filing the 2013 first quarter reports that are due on April 30<sup>th</sup>.

**Filing Update:** With assistance from OIT, lists of registrations through December 2012 and images of the third quarter expense reports have been posted on the Board of Ethics website. Expense reports for the fourth quarter of 2012 are due at the end of this month, and staff will arrange to have them posted on the website. Staff has begun to receive 2013 lobbying registrations using the interim paper filing system and continues to provide filing assistance to lobbyists, firms and principals who call the office every day.

### **C. Training**

**Ethics Training:** Ms. Massar said that she would discuss the plans for ethics training in 2013 with the Board in more detail later in the meeting.

**Campaign Finance Training:** Staff will conduct campaign finance training sessions on January 29<sup>th</sup>, February 14<sup>th</sup> and March 5<sup>th</sup>. Thirty people have already registered for the three sessions. Each session will be presented jointly by Michael Cooke and Tim Dowling, a member of the City Commissioners' staff. This format has been very effective because Michael and Tim address questions concerning both the City and State campaign finance laws.

### **D. FY2014**

Ms. Massar reported that the Board has received the FY14 "Budget Call," which means that staff has been advised by the Administration's Budget Director that the Board's proposed operating budget for FY14 totals \$912,589. This amount includes an increase of \$14,589 over the FY13 Adopted Budget amount of \$898,000 to account for the compensation increases ordered by the Administration.

Staff must submit budget documents with the Board's spending plan for FY14 by Monday, January 28<sup>th</sup>. The FY14 proposed budget includes \$802,589 for personnel (Class 100); \$96,000 for services (Class 200); and \$14,000 for materials, supplies, and equipment (Classes 300 and 400).

Staff recommends that the Board include with its budget documents a request and justification for \$87,411 in additional funds for FY14. This would restore the Board's budget to the amount anticipated in the Charter section that created the Board. Charter Section 2-300(4)(e) specifically provides that the Board was to receive "[f]or the first two fiscal years [of its existence] . . . , at least \$1,000,000; and for all subsequent fiscal years, an amount adequate to enable the Board to perform the functions assigned to it by this charter . . . ." The \$87,411 amount is the difference between the FY14 budget total of \$912,589, proposed by the Administration, and the \$1 million budget originally established in the Charter. Ms. Massar noted that because the Board was in start-up mode for the first two years of its existence and had not yet hired all necessary staff, the Board was not at full staffing levels and did not spend the \$1 million amount. The budget was then cut in FY09 to \$810,000, and the Board never reached the staff strength that it had expected.

As stated in the Charter, staff believes that the additional funds are necessary to “enable the Board to perform the functions assigned to it . . .” The Board’s responsibilities have increased substantially with the addition of the Lobbying Code, and cannot continue to meet its statutory mandates without additional staff.

Ms. Massar also noted that the Charter provides that if “Council fail[s] to make an adequate appropriation to the Board of Ethics, the Board may petition any court of Common Pleas of Philadelphia County for a mandamus to the Council to perform its duty under this section.”

Judge Beck asked if staff had already developed its justification for the base budget before requesting additional funds. Ms. Massar replied that staff developed a spending plan which fit within the budget amount in the Budget Call.

Judge Beck moved that the Board direct staff to file the paperwork seeking an increase to the budget of \$87,411 as part of submitting their spending plan for FY14. By a 4-0 vote, the Board approved the motion.

#### **IV. General Counsel’s Report**

**1. Board Opinions.** Mr. Meyer reported there were no Board Opinions since the December report.

**2. General Counsel Opinions.** Mr. Meyer reported there were four General Counsel Opinions since the December report.

a. General Counsel Opinion GC-2012-514 (December 27, 2012). He explained that a former City employee, a member of the bar, requested a nonpublic advisory opinion regarding post-employment restrictions that apply to her. Mr. Meyer said that we provided the standard post-employment advice, with the exception that the post-employment restrictions on representation do not apply to attorneys in the practice of law.

b. General Counsel Opinion GC-2012-515 (December 28, 2012). In this nonpublic advisory, a City official advised that he serves on a board/commission of the City, which seeks to contract with a professional firm, of which a child of the official is an associate employee (but not typically assigned to such matters as the contract in question). The official requested advice in how to avoid a conflict of interest in taking official action as a member of the board/commission.

The requestor was advised that there is no issue under the Charter. Code subsection 20-607(b) would require his disclosure and disqualification from any City decision that would have a financial impact on the professional firm only where the financial impact specifically extends to the official’s child—which may be limited, since he is an associate, not a partner, in the firm.

The fact that the requestor's City office contracts with a certain company would not create a conflict for the requestor in any matter in which the board/commission acts regarding that company, since there is no conflict through contractors to an official's office. Also the requestor's designee may participate in any board/commission matter in which the requestor is disqualified, provided that the designee acts independently, and not on instructions from the requestor.

Mr. Meyer explained the importance of identifying matters before the board/commission that may require disclosure and disqualification.

Since the requestor would not personally be representing any party before the board/commission, the "representation" provision of Code Section 20-602 does not apply to this matter.

The requestor was also advised that he may wish to request advice from the State Ethics Commission regarding the application of the State Ethics Act.

c. General Counsel Opinion GC-2012-516 (December 31, 2012). In this nonpublic advisory, a City employee who had been issued post-employment advice earlier in the year requested clarification of certain specific questions. In response to a question about "practice areas," we advised that it is not "practice areas" that the State Ethics Act restricts, but "representation." However, there were a number of issues under the Act on which only the State Ethics Commission can provide comprehensive and controlling advice, so it was suggested the requestor contact the Commission.

On the permanent restriction of Code Section 20-603, we further explained what it means to have "participated" in a City "transaction" and offered this further example:

If—as a City employee—the requestor worked on an administrative matter involving a particular citizen, that citizen later challenged the ruling, and the same matter is still in the courts, the requestor could not now assist the citizen in that particular matter, if that citizen, or an agency helping her, asked for the requestor's help.

On the two-year restriction of Code Section 20-607(c), Mr. Meyer said we advised that as to potential employers that may have contracts with the requestor's former department, it is a question as to whether, as an employee of that department, he was officially involved in awarding, renewing, amending, or administering the City contract with that employer. If so, he would be restricted for two years from working for that employer and being compensated under the City contract.

d. General Counsel Opinion GC-2013-501 (January 11, 2013). Samantha Matlin, a policy development and research psychologist employed by Community Behavioral Health (or CBH), a City-established nonprofit 501(c)(3) corporation with which the City contracts to provide mental health and substance abuse services for Philadelphia County Medicaid recipients, requested an opinion on the post-employment rules. She has been offered a position with the

City as the Food Access Director in the Mayor's Office of Community Services (MOCS), a temporary position that would expire after 12 months, and would like to accept this appointment, but only if such service does not present complications for her returning to CBH at the end of the temporary MOCS position.

In this, the seventh advisory on post-employment restrictions in the past two years, we summarized the three statutory rules, two from the City Code and one from the State Ethics Act. Ms. Matlin advised that she had asked the Law Department for advice on the State Act, and thus that issue was not presented in this request. We provided the standard advice on the two Code provisions, which should not restrict Ms. Matlin after returning to CBH from MOCS, unless certain narrowly-defined conditions occur.

**3. Informal e-mail guidance.** Mr. Meyer reported that through Thursday, January 17, 2012, there were two of these since the December report, issued either by him or Associate General Counsel Maya Nayak. *Note that in every such email we state the following: "This informal general guidance is not a ruling on your particular situation and does not provide you protection from an enforcement action." We add that if the requestor would like a definitive ruling that applies the Public Integrity Laws to his/her specific situation and that protects against a possible enforcement action, then they should ask us for an advisory opinion, providing, in writing, full and specific facts on which the opinion is to rely, including their name and title, specific question, and whether they are requesting a public or nonpublic advisory.*

a. Mr. Meyer said we provided a City employee, on request, with sample prior rulings on post-employment restrictions.

b. He said we provided a City official with a summary of past advice from the Law Department, to the extent that the Law Department has, in a few previous situations, ruled that certain advisory bodies are not legally "boards and commissions of the City" for purposes of the Ethics Code. Where a purely advisory body (whether styled a "board," "commission," "committee," "task force," "panel," "working group," "council," or other title) is created by the Mayor to advise the Mayor or the City on a particular issue of limited scope and definite duration (usually less than a year), particularly with a significant representation of members who are already City officials and often with any citizen members representing particular groups, and with the clear intention that once the body has completed that defined task and/or reached the specified duration, the advisory body will go out of existence, the Law Department has ruled that such a body is not a "board or commission."

## **V. Discussion of Board Opinion 2013-001**

Mr. Meyer summarized the request for a public advisory from Shoshana Bricklin, Esq., Legislative Counsel to the Majority Leader, Councilman Curtis Jones. Ms. Bricklin is considering running for judge in the City Court of Common Pleas or Municipal Court in the May 2013 primary. She understood that as a City employee she would have to resign when she became a

candidate, but wanted to know if she was considered a candidate by only circulating nominating petitions on her own behalf, prior to their being filed.

Mr. Meyer said that the Opinion was largely reflective of the Opinion issued to Councilman Rizzo in 2010, with the additional fact that Ms. Bricklin would be circulating nominating petitions herself rather than having others do it on her behalf. Mr. Meyer suggested that as long as Ms. Bricklin did not indicate that she had already decided to be a candidate, then she would not be considered a candidate until she crossed the “bright line” of filing the petitions.

Both Ms. González and Chair Reed praised the writing in the Opinion and indicated they had no edits. Mr. McCormick agreed that the bright line rule makes sense, but suggested that there needed to be a clearer statement about the difference between running as a candidate and “testing the waters.”

Chair Reed replied that he agreed the more specific the guidance the better, but that the Board had more of a common law approach where the law was shaped as cases come in.

Ms. González moved that the Board approve the Opinion as written. By a 4-0 vote, the Board approved the Opinion.

## **VI. Appointment of Hearing Officers for Administrative Adjudication**

Chair Reed said that there are two procedural tracks for enforcement actions. The first is a court process. The second is an administrative adjudication process. As part of the adjudication process the Board may appoint a Hearing Officer, who has authority to resolve and rule on issues that arise at all stages of the administrative adjudication process. Chair Reed said that former Chair Richard Glazer had volunteered to continue as a Hearing Officer for administrative adjudications. Chair Reed also volunteered to be an alternate in the event Mr. Glazer is unavailable.

By a 4-0 vote, the Board appointed Richard Glazer as the Board’s Hearing Officer with Chair Reed to serve as an alternate Hearing Officer until further decision by the Board.

## **VII. 2013 Ethics Training Plans**

Ms. Massar explained that the Board of Ethics was responsible for the ethics training of all City officers and employees. The Board is also responsible for providing lobbying and campaign finance training. Recognizing the limitations on staff, Ms. Massar offered a prioritization of ethics training for 2013.

To interpret the code requirements for ethics training the Board adopted Regulation No. 7, Annual and Routine Ethics Training. Regulation No. 7 identifies three levels of training: Initial training to all new City employees, Annual training based on staff position, and Routine training

on a recurring basis to those officers and employees not identified as needing annual training. Regulation No. 7 also authorizes the use of an online training system. In the past there were technical problems with the software which have been overcome with the help of the Office of Innovation and Technology. However, Ms. Massar pointed out that staff has been unable to devote the time needed to create the content for the software modules.

Ms. Massar recommended that the staff continue with in-person Initial training of new employees and, at the same time, prioritize developing the content modules to handle the online Annual training of City boards and commissions by September 2013. She also recommended postponing Routine training until the online system can be fully deployed.

Judge Beck inquired whether the new online training would require trainees to answer questions. Ms. Massar responded that it would not. Since the Board doesn't test employees in live trainings, the online trainings would not include a test. However, the training will include questions and help users reach correct answers. Further, trainees would not be able to sign the affidavit of completion at the end until they had seen all of the pages of the training.

Chair Reed asked whether the presentation was an informational report or if staff needed the Board to act. Ms. Massar indicated that it was informational.

## **VIII. New Business**

Chair Reed announced that the Board's respected General Counsel Evan Meyer would be retiring in March, and that the process to hire a new General Counsel would begin. Ms. Massar indicated that the first step would be to post a formal job description. She said that a draft position description had been circulated to the Board members for their review.

Judge Beck moved that the job description as written be posted for potential candidates. By a 4-0 vote the Board approved the posting of a formal job description for General Counsel.

Ms. Massar then briefly summarized the many responsibilities and requirements for a General Counsel candidate:

- Provides written advice concerning compliance with the City's public integrity laws (ethics, campaign finance, lobbying and financial disclosure). Advice includes written opinions and informal email guidance.
- Advises the Board and coordinates with outside counsel during litigation.
- Researches and drafts regulations and amendments to regulations.
- Acts as legal advisor to the Board during administrative adjudications.
- Participates in designing training programs.
- Advises the Board in matters such as open records and open meetings laws.
- Advises on legal requirements in contracting matters.

A General Counsel candidate must:

- Be knowledgeable of and proficient in interpreting the public integrity laws found in the Home Rule Charter, the Philadelphia Code, the State Ethics Act, and other applicable law.
- Be familiar with laws relating to the functioning of an administrative agency
- Have a law degree from an accredited law school, be a member in good standing of the Pennsylvania Bar, have at least six years of experience practicing law, and be a resident of the City of Philadelphia.
- Ideally have experience working in government and with ethics laws.

Staff suggested that the description be posted in four places: On the Board's website, the City's Human Resources website, the website of COGEL (Council on Government Ethics Laws), and the Legal Intelligencer.

Chair Reed closed by saying that the Board will greatly miss its dedicated General Counsel and that his shoes would be difficult to fill.

## **IX. Questions/Comments**

John Christmas, a member of City Council staff, offered clarification regarding the City budget process. He said that during the budget call the administration generally already has a target number for its various departments. In the case of the Board of Ethics it appears to be \$912,000. Mr. Christmas suggested that the Board discuss its budget needs with the Administration in advance of any budget hearings.

Chair Reed thanked Mr. Christmas for his presence and his interest in the Board's budget. He said that the Board fully understood the need to "get their ducks in a row" with the executive branch and will work to accommodate that.

Judge Beck asked Mr. Christmas for specific suggestions as to whom the Board's budget requests should be directed. Mr. Christmas responded that the issue should be taken up with the City Budget Director.

Mr. Christmas also addressed Regulation 1. Mr. Meyer pointed out that the public hearing was over, that it had been held at the proper time, and that the court reporter had left. He said that it would be hard to add anything to the transcript. Chair Reed responded by pointing out that during prior amendments to regulations, additional comment has been incorporated into the required hearing report even if it was not part of the transcript.

Mr. Christmas questioned the language defining what an independent expenditure was. He pointed out that it was theoretically possible that expenditures could be made by a candidate or candidate committee which by happenstance could benefit a different candidate without it in any way having been coordinated. He suggested that the language should not be so broad as to include such situations. Mr. Cooke responded that it was an issue which would be looked at during the drafting of the hearing report.

Chair Reed informed the public that the Board held an executive session by conference call on January 17, 2013 to consult with the Board's attorneys regarding ongoing litigation. Chair Reed also announced that the Board will go into executive session to address non-public advice and enforcement matters and to receive legal advice and consult with the Board's attorneys regarding ongoing litigation. The public session of the Board's meeting was adjourned at 2:23 pm.