Philadelphia Board of Ethics
Meeting Minutes
May 15, 2013 - 1:00 pm
One Parkway Building
1515 Arch Street, 18th Floor

Board Present
Michael H. Reed, Esq., Chair
Judge Phyllis Beck (Ret.), Vice-Chair
Sanjuanita González, Esq.
Brian J. McCormick, Jr., Esq.
Father C. Kevin Gillespie

Staff Present
Shane Creamer, Esq.
Nedda Massar, Esq.
Maya Nayak, Esq.
Michael Cooke, Esq.
Elizabeth Baugh
Bryan McHale
Tina Formica

I. Call to Order

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:03 pm.

II. Installation of New Board Member

Chair Reed introduced the Board's newest member, Father C. Kevin Gillespie, President of Saint Joseph's University. After brief remarks by the Chair, Judge Alice Beck Dubow administered the oath of office to Father Gillespie.

Chair Reed welcomed Father Gillespie to the Board.

III. Presentations

Chair Reed announced the presentation of a plaque to former Board Chair Richard Glazer, recognizing his service as the Board's first Chair.

Mr. Glazer accepted the plaque and made brief remarks thanking the Board.

IV. Approval of Minutes

By a 5-0 vote, the Board approved the meeting minutes, as corrected, for the public meeting that was held on April 17, 2013.

V. Executive Director's Report

A. Litigation Update

i. Lodge No. 5 of the Fraternal Order of Police, *et al*. v. City of Philadelphia, *et al.*

Mr. Creamer explained that the FOP had brought suit against the City and the Board of Ethics seeking to strike down the Home Rule Charter's ban on members of the Police Department making political contributions. He reported that on February 21, 2013 Judge Sanchez of the Federal District Court granted the City's motion for summary judgment and dismissed the FOP's case, thereby upholding the ban. The FOP has appealed Judge Sanchez's ruling. The FOP's brief in support of their appeal is due in late May and a brief from the Board in response will be due in late June.

ii. Cozen O'Connor v. Philadelphia Board of Ethics

Mr. Creamer reported that on July 18, 2012 Judge Tucker ruled in the Board's favor in resolving the case *Cozen O'Connor v. Board of Ethics*, a case in which Cozen O'Connor has challenged the Board's interpretation of the City's contribution limits. 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 oral argument was heard by a Commonwealth Court panel on May 14, 2013. On behalf of the Board, Mr. Creamer thanked the Board's counsel at Dechert for their pro bono representation in this matter.

B. Lobbying Update

Mr. Creamer explained that according to the Office of Innovation and Technology, the City is waiting for clarification from the vendor on contract issues for the lobbying software. Once the issues are resolved and the Law Department signs off on the contract, an "Intent to Award" the contract will be issued and work can begin on the system. Mr. Creamer said that implementation of the online lobbying system is expected to take four months from the issuance of the "Intent to Award."

C. Campaign Finance

Mr. Creamer reported that staff has been very busy since the April Board meeting with administration of the campaign finance law for the May 21, 2013 primary election. He explained that staff sent a reminder email on May 3, 2013 to alert people to the Friday, May 10, 2013 filing deadline for 2013 Cycle 2 (pre-primary) campaign finance reports. The reminder described who must file Cycle 2 reports and included information about the filing support center that is available to candidates and committees.

Mr. Creamer added that staff sent a second reminder email on May 6, 2013 explaining that if the authorized political committee of a current candidate for City office receives a contribution of $500 or more from May 7 through May 21, the committee must electronically file with the Board of Ethics a report disclosing that contribution within 24 hours of receipt. The reminder email also explained that if a political committee or other person makes an independent expenditure of $500 or more from May 7 through May 21, that committee or person must electronically file with the Board of Ethics a report disclosing that contribution within 24 hours of receipt.

Mr. Creamer explained that the purpose of the email reminders is specifically to increase compliance with the City's campaign finance law.

D. Financial Disclosure Preparation

Mr. Creamer reported that in cooperation with the Records Department, Board staff again administered the financial disclosure process for City officials and employees and the members of City boards and commissions. The filing deadline was May 1, 2013 for all three financial disclosure forms: the City Form, the Mayor's Form, and the State Form. Several of the Board's staff members are involved in the many tasks necessary to implement the financial disclosure process, including dozens of phone calls each day helping people to answer questions about the content of the forms and how to use the online financial disclosure system.

This year staff was very fortunate to have help from the Office of Human Resources which issued two blast email reminders, in early and late April, to more than 6,000 City employees alerting them to the financial disclosure requirements. The Board's staff issued two blast email reminders in May to approximately 500 members of City boards and commissions to alert them to their financial disclosure obligations, and mailed letters to 575 City employees who left City government during the past year, but still have to file one last time.

Mr. Creamer praised Hortencia, Elizabeth and Tina for handling most of the calls and always being incredibly helpful and professional.

E. Judicial Conduct Board Subpoena

Mr. Creamer informed the Board that he had been subpoenaed to testify before the Pennsylvania Court of Judicial Discipline as a witness for the Pennsylvania Judicial Conduct Board in the case of Thomas Nocella. Mr. Creamer said that he was being asked to discuss the general responsibilities and procedures of the Board of Ethics to provide context for the facts underlying Mr. Nocella's representation of a client in a Board enforcement action, which led to a court order finding him in contempt of two prior court orders.

VI. General Counsel's Report

I. Board Opinions

Ms. Nayak reported that on March 20, 2013, the Board issued Board Opinion 2013-005 to a requestor who asked whether a City Council employee who is an attorney may represent constituents in legal matters in which the City is an opposing party. The request raised an issue under the representation restriction of the City Code and the official duty exception to that restriction. She explained that the issue required a determination of whether it is within the scope of a Council staff member's permissible job duties to provide legal representation to a constituent.

Ms. Nayak stated that it is outside the jurisdiction of the Board of Ethics to determine what activities are within the scope of a Council staff member's employment, so the Board sought the advice of the City Solicitor. The Solicitor responded by providing an opinion on March 7, 2013 that concludes that providing legal representation to members of the public, whether or not in a transaction involving the City, would fall outside the official duties of a council staff member.

The Solicitor's Opinion, which has a detailed analysis and is attached to the Board Opinion, reasons that (page numbers referenced):

- Constituent services cannot properly encompass the advancement of purely private interests, without regard for the public good. Maintaining the primacy of the public interest necessarily places some limit on the proper scope of constituent services. (page 2)

- Because a lawyer is ethically obliged to place the client's interests above all others, the provision of legal representation to individual members of the public falls outside of the proper scope of constituent services, and, therefore, outside of the permissible duties of Council members and employees. This is the case whether or not the City itself is a party, and whether or not the person represented by the Council staff member is adverse to the City in the proceeding. (page 3)

- Undertaking an attorney-client relationship is categorically different from the usual type of constituent services in which a legislator or the legislator's staff provides information or serves as an ombudsman on behalf of members of the public. (page 3)

- Legal representation constitutes a specialized professional service subject to an array of ethical obligations that are fundamentally incongruent with the constituent service function. In particular, the public interest must be subordinate to the client's interest. (pages 3-4)

- To the extent the public interest can be recognized in the context of private representation at all, it must be subject to the client's determination of what is in the public interest, and the extent to which the public interest will be pursued in the course of the representation. Provision of legal representation in private matters as a constituent service is, by its nature, a private benefit. (page 5)

- If such representation were within the proper scope of a lawyer-staff member's duties, the City would become the staff member's de facto malpractice insurer through its indemnification of all City officers and employees for acts performed within the scope of their employment. (page 6)

- Providing legal representation as a constituent service is necessarily beyond the proper scope of a lawyer-staff member's proper job duties because public resources cannot be devoted to what is inherently a private endeavor. (page 6)

Ms. Nayak said that Board Opinion 2013-005 also advised that a City Council employee may refer constituents to attorneys where, as the requestor said is the case, no referral fee will be given, and no financial interest in the referral is held by the Council employee or the Councilmember for whom he works or certain of their relatives or business colleagues.

In light of the fact that Board Opinion 2013-005 may affect Council staff other than the particular requestor in this case, Ms. Nayak reported that Executive Director Creamer sent Council President Clarke a letter on April 30, 2013 enclosing and describing the Opinion.

II. General Counsel Opinions

On April 11, 2013, Ms. Nayak said she issued General Counsel Opinion 2013-503 advising a law firm that specializes in tax collections on behalf of state and municipal governments. The Opinion advised the firm that it is not required to register as a lobbyist when the firm provides tax collection-related services, advice, and expertise to the City pursuant to a contract with the Law Department and the firm has not been hired by the City to conduct any lobbying activity. The City's lobbying law contains an exemption for performing services pursuant to an existing contract.

Ms. Nayak noted that on May 15, 2013, she had received permission from the requestor to publish the un-redacted version of General Counsel Opinion 2013-503. She distributed to the Board copies of the un-redacted Opinion with a footnote indicating that the requestor had given permission for it to be published on the Board's website.

III. Informal General Guidance

Ms. Nayak reported that since the April Board meeting she and Mr. Cooke had begun tracking the informal guidance they provided and that information was summarized in the Summary of Informal Guidance Chart. Ms. Nayak reviewed the chart for Board members.

Summary of Informal Guidance Provided April 17 – May 8, 2013

General topic	Total #	phone	email	phone & email	in-person	Subtopics
Campaign finance	23	15	6	1	1	Most common topic was 24-hour reports because daily campaign finance reporting began May 7th and runs through May 21st. Fielded questions on filing requirements, contribution limits, corporate contributions, permissible expenditures, and independent expenditures.
Financial disclosure	15	9	3	3	--	Steep increase in questions due to the May 1 filing deadline. Explained how to report items such as wedding gifts, casino winnings, stocks, securities income, student loans, and travel and lodging given to City employees in an official capacity. Assisted people who did not know whether they had to file. Provided caveats that the State Ethics Commission is the authority on the State form and the Chief Integrity Officer is the authority on the Mayor's form and provided contact information.
Post-employment	3	1	--	1	1	
Lobbying	1	1	--	--	--	Explained lobbying registration requirements.
Other	2	2	--	--	--	Explained the Board's confidentiality requirements.

This chart provides a summary of informal guidance provided by two Board Staff members, the General Counsel and Director of Enforcement, during a three-week period. This is only a partial picture of guidance that Staff provided because many other Staff members who did not provide data for the chart give significant amounts of informal guidance.

VII. New Business

No new business was discussed.

VIII. Questions/Comments

There were no questions or comments from the public.

The public session of the Board's meeting was adjourned at 1:45 pm. Chair Reed announced the Board would meet in executive session following adjournment of the public meeting to address non-public advice, confidential enforcement matters, legal advice, and personnel matters.