

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
June 19, 2013 - 1:00 pm  
One Parkway Building  
1515 Arch Street, 18<sup>th</sup> Floor

**Board Present**

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

**Staff Present**

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

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:02 pm.

**I. Chair Comments**

**A. Executive Session**

Chair Reed announced that since its May 15, 2013 meeting, the Board held one executive session on May 31<sup>st</sup> to address a confidential enforcement matter and to consult with its attorneys regarding anticipated litigation.

**B. City Council Outreach**

Chair Reed reported that as part of the Board's outreach efforts with City Council, Chair Reed, new Board Member Reverend Gillespie and staff met with Council President Darrell Clarke on June 11, 2013. The discussion conveyed the Board's desire to expand training programs and to continue to promulgate regulations to clarify and interpret the City's public integrity laws. President Clarke said that he supports the Board's efforts to reach out to other Council members.

**C. General Counsel**

Chair Reed said he was pleased to announce that Maya Nayak is officially the Board General Counsel. He explained that the Board voted at its meeting on April 17, 2013 to approve Maya's appointment as General Counsel, pending receipt of necessary clearances required by the City. The clearances have been received and Ms. Nayak is officially General Counsel of the Board.

## **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 May 15, 2013.

## **III. 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 was filed in late May and a brief from the Board in response is due in late June.

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

Mr. Creamer was pleased to report that a panel of the Commonwealth Court has affirmed the trial court's ruling in the Board's favor in the case *Cozen O'Connor v. Board of Ethics*. The Commonwealth Court's Opinion, dated June 18, 2013, was written by Judge Kevin Brobson. Mr. Creamer explained that the Court first ruled that the scope of the Pennsylvania Supreme Court remand was limited to determine the issue of whether the law firm could forgive the debt owed to it by the Friends of Bob Brady. The Court then rejected Cozen's argument that the legal fees related to defending the ballot challenge were not incurred "for the purpose of influencing an election." Finally, the Court agreed with the Board's interpretation of the City's Campaign Finance Law, i.e., that the contribution limits applied post-election in 2007, and therefore, that the contribution limits would apply to Cozen's \$448,469.09 debt. This means that Cozen would not be able to forgive the entire debt at one time and *in toto*. However, the Court noted that Cozen could forgive the debt incrementally, within the annual limits, or at one time and *in toto*, by application to the Ethics Board, if the Firm meets the criteria for debt forgiveness under Regulation No. 1. On behalf of the Board, Mr. Creamer thanked the Board's counsel at Dechert for their excellent representation in this matter.

### **B. Lobbying Update**

Mr. Creamer said that staff is working with the Office of Innovation and Technology to continue to clarify the scope of work to be included in the contract for the lobbying software project, including the detailed information concerning direct and indirect lobbying communications that will be captured by the expense reporting software. He explained that the Lobbying Code

requires that all lobbying registrations and reports be easily accessible to the public in a searchable format on the Board's website. Staff is therefore focusing on the search functions to be sure that they are user-friendly.

Once the issues are resolved, the Law Department will review and sign off on the contract, and an "Intent to Award" the contract will be issued and work can begin on the system. Mr. Creamer said that staff expects implementation of the online lobbying system to take four months from the issuance of the "Intent to Award."

### **C. Campaign Finance**

Mr. Creamer reported that the 30-day post-primary (Cycle 3) report for the May 21, 2013 primary election is due for filing June 20, 2013. Staff therefore sent reminder emails on June 13, 2013 to candidates and committees to alert them to the June 20 campaign finance filing deadline. The reminder described who must file Cycle 3 reports and included information about the filing support center that is available to candidates and committees at the Marriott Residence Inn across from City Hall from June 17 to June 20 from 8:30am to 6:00pm.

The purpose of the email reminders is specifically to increase compliance with the City's campaign finance law.

## **IV. General Counsel's Report**

### **I. Advisory Opinions**

Ms. Nayak reported that there had been no Board Opinions or General Counsel Opinions since the May 15 Board meeting, but that there were several advisory opinions in process.

### **II. Associate General Counsel Search**

Ms. Nayak reported that the May 23 deadline for applications had passed and that she had been giving the search for an Associate General Counsel a significant amount of time and attention.

### **III. Regulations**

Ms. Nayak explained that with Michael Cooke in the lead, considerable progress has been made in drafting a gift regulation and thinking through the issues the regulation should address.

### **IV. Informal General Guidance**

Ms. Nayak briefly reviewed the informal guidance chart for Board members. Ms. Nayak indicated that the chart will be incorporated in the Minutes. She explained that the chart covers a four-week period rather than three, as was the case in May, and that the guidance given by Ms. Massar and Ms. Baugh was included in the current report.

**Summary of Informal Guidance Provided May 9 – June 11, 2013**

<b>General topic</b>	<b>Total #</b>	<b>phone</b>	<b>email</b>	<b>phone &amp; email</b>	<b>Subtopics</b>
Campaign finance	28	23	4	1	The most common topics were 24-hour reports and the campaign finance filing requirements generally. Other issues included corporate contributions and independent expenditures.
Lobbying	16	3	12	1	Quarter 1 expense report filings, which were due April 30th, were the focus of these contacts. Other common issues included lobbying registration requirements and the filing of amendments.
Political activity	4	2	1	1	Issues included voter registration drive participation, linking to candidate websites, and application of the rules to elected officials. Explained that no geographic limit exists on the prohibition on taking part in the management or affairs of a political campaign and performing political activity in coordination with a candidate.
Gifts	3	3	--	--	Issues included tickets to events and nominal donations to a fundraising event.
Conflicts	3	2	1	--	Assisted employee considering volunteer board membership in an outside entity. Separately advised employee's supervisor.
Post employment	3	1	--	2	Assisted employee about to leave City service. Separately advised employee's supervisor.
Representation	1	1	--	--	Explained application to City board members.
Financial Disclosure	1	--	1	--	Explained how to access filed forms.
Other	2	1	1	--	Assisted individual in seeking advice from State Ethics Commission. Referred pay-to-play law question to Finance Dept.

*This chart provides a summary of informal guidance provided during the specified time period. Four Board Staff members tracked the assistance they gave and provided data: the General Counsel, Director of Enforcement, Deputy Executive Director, and Public Integrity Compliance Specialist.*

**V. Preliminary Draft of Regulation No. 10, Gratuities and Gifts**

Mr. Cooke presented a first draft of Regulation No. 10 (Gifts and Gratuities) to the Board. He said that the goal was to give Board members a preview of the Regulation and an opportunity to thoroughly discuss the Regulation and suggest changes without the pressure of also having to vote on approval the same day. Mr. Cooke noted that he had also provided the draft to the Law Department for its review. He added that Board staff would begin outreach with other stakeholders, including the Mayor's Office and City Council, in order to get as much feedback as possible. Mr. Cooke then reviewed the major components of the draft Regulation, which clarifies the gift and gratuity restrictions applicable to City officers and employees, and Board members raised several issues.

Mr. Cooke said he would revise the draft to incorporate the Board's comments, as well as the grammatical edits the Board noted. Once staff has produced a new draft, Mr. Cooke said that they would coordinate with the Board Chair on outreach to stakeholders in order to solicit feedback. He added that the Board may be asked to approve a revised draft at the July Board Meeting to make available for public comment and potentially a public hearing.

Vice Chair Beck commended staff for its hard work in producing the draft regulation.

**VI. New Business**

No new business was discussed.

**VII. Questions/Comments**

There were no questions or comments from the public.

The public session of the Board's meeting was adjourned at 3:00 pm. Chair Reed announced the Board would meet in executive session to address non-public advice, confidential enforcement matters, and personnel matters.