

## **Philadelphia Board of Ethics**

**Contact:** J. Shane Creamer, Jr., Executive Director, 215-686-9450

**For Immediate Release:** December 3, 2014

**PHILADELPHIA** – On November 26, 2014, the Board of Ethics approved a settlement agreement involving David Krain, a City employee. The agreement resolves violations of Philadelphia Home Rule Charter Section 10-107(4) arising from Mr. Krain’s involvement in prohibited political activity.

A copy of the approved settlement agreement is attached.

*The Philadelphia Board of Ethics is a five-member independent board established by ordinance, approved by Philadelphia voters in May 2006, and installed on November 27, 2006. It is charged with providing ethics training for all City employees and enforcing City campaign finance, financial disclosure and conflict of interest laws. The Ethics Board has authority to render advice, investigate complaints and issue fines.*

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## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by the Board of Ethics of the City of Philadelphia, the Executive Director of the Board, and David Krain, jointly referred to as “the Parties.”

### **RECITALS**

- A. The Board of Ethics of the City of Philadelphia is a five-member, independent board established by ordinance, approved by Philadelphia voters in May 2006, and installed on November 27, 2006. Pursuant to section 4-1100 of the Home Rule Charter, the Board is charged with, among other things, enforcing the sections of the Philadelphia Home Rule Charter that impose restrictions on the political activity of City employees.
- B. David Krain is a City employee who works as a Social Worker in the office of the Department of Human Services. Mr. Krain has worked for the City since May 2004.
- C. Section 10-107(4) of the Philadelphia Home Rule Charter provides that a City employee may not engage in certain types of political activity. The political activity restrictions in the Home Rule Charter ensure that government operates effectively and fairly and that employees are free from improper influences and perform their duties without bias or favoritism for or against any political party, candidate, or partisan political group.
- D. Ethics Board Regulation No. 8, which became effective March 28, 2011, provides a detailed interpretation of the prohibitions on political activity of Charter Subsection 10-107(4).
- E. At Paragraph 8.1(n), Regulation No. 8 defines political activity as an activity directed toward the success or failure of a political party, candidate, or partisan political group.

- F. At Paragraph 8.11, Regulation No. 8 provides that a City employee shall not engage in any political activity that is performed in concert or coordination with a political party, candidate, or partisan political group, including:
- i. Circulating or initiating nomination petitions or papers for public elective office;
  - ii. Being a candidate for public elective office or political party office;
  - iii. Serving as a delegate to a political party convention
  - iv. Participating in get-out-the-vote activities organized or sponsored by a political party, candidate, or partisan political group; or
  - v. Any political activity performed by an appointed officer or employee using resources or materials paid for or provided by a political party, candidate, or partisan political group.
- G. If the Board finds a violation of § 10-107(4) of the Home Rule Charter through an administrative adjudication, it may impose a civil penalty of \$300.
- H. In March 2014, Board enforcement staff received information that Mr. Krain was involved in prohibited political activity while employed by the City. Enforcement staff initiated an investigation in which they interviewed witnesses and obtained documents. Enforcement staff also interviewed Mr. Krain.
- I. In 2009, Mr. Krain assisted a political committee in both the primary and general elections by helping the committee distribute sample ballots to wards as part of its get-out-the-vote efforts. Mr. Krain was paid \$300 for each election.
- J. From 2010 through 2011, Mr. Krain on several occasions notarized campaign finance reports without charge for candidates and a political committee.
- K. In 2011, Mr. Krain assisted a judicial candidate's campaign by introducing the candidate to a political consultant. On Mr. Krain's recommendation, the candidate hired and paid the consultant to distribute campaign literature.
- L. At all times, Mr. Krain fully cooperated with the Board's investigation.
- M. The Parties desire to enter into this Agreement in order to resolve the matters described herein.

## **AGREEMENT**

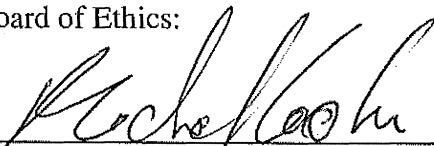
The Parties agree that:

1. By assisting a political committee's get-out-the-vote efforts in the 2009 primary and general elections, Mr. Krain violated § 10-107(4) of the Philadelphia Home Rule Charter. The civil penalty for Mr. Krain's violation is \$300. However, the penalty is reduced to \$150 to reflect Mr. Krain's cooperation with the Board's investigation.
2. By notarizing campaign finance reports for candidates and a political committee from 2010 through 2011, Mr. Krain violated § 10-107(4) of the Philadelphia Home Rule Charter. The civil penalty for Mr. Krain's violation is \$300. However, the penalty is reduced to \$150 to reflect Mr. Krain's cooperation with the Board's investigation.
3. By introducing and recommending a political consultant to assist with a judicial candidate's campaign in 2011, Mr. Krain violated § 10-107(4) of the Philadelphia Home Rule Charter. The civil penalty for Mr. Krain's violation is \$300. However, the penalty is reduced to \$150 to reflect Mr. Krain's cooperation with the Board's investigation.
4. Mr. Krain shall pay the aggregate civil penalty of \$450 by check or money order made payable to the City of Philadelphia and delivered to the offices of the Board of Ethics on the following schedule:
  1. \$150 within 30 days of the effective date of the Agreement;
  2. \$150 by February 28, 2015; and
  3. \$150 by March 31, 2015.
5. Mr. Krain will attend ethics training within 90 days of the effective date of the Agreement.
6. Mr. Krain releases and holds harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's investigation, enforcement, and settlement of the matters described in the Agreement.
7. In consideration of the above and in exchange for Mr. Krain's compliance with all of the terms of the Agreement, the Board waives any further penalties or fines against him for the violations described in the Agreement.
8. The Parties will not make any public statements that are inconsistent with the terms of the Agreement.
9. If the Ethics Board is forced to seek judicial enforcement of the Agreement, and prevails, Mr. Krain shall be liable for attorneys' fees and costs reasonably expended in enforcing compliance with the Agreement. Fees for time spent by Board staff attorneys shall be calculated based upon standard and customary billing rates in Philadelphia for attorneys with similar experience.

10. The Agreement contains the entire agreement between the Parties.
11. The Executive Director, or his designee, will submit a signed copy of the Agreement to the Board for approval.
12. The Agreement shall become effective upon approval by the Board. The effective date of the Agreement shall be the date the Board Chair signs the Agreement.
13. If the Board rejects the proposed Agreement, presentation to and consideration of the Agreement by the Board shall not preclude the Board or its staff from participating in, considering, or resolving an administrative adjudication of the matters described in the Agreement.
14. If the Board rejects the proposed Agreement, nothing in the proposed Agreement shall be considered an admission by either party and, except for paragraphs 13 and 14, nothing in the Agreement shall be effective.

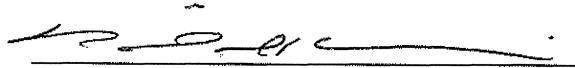
By the Executive Director of the  
Board of Ethics:

Dated: 11-13-14

  
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Michael J. Cooke, Esquire  
Director of Enforcement,  
Executive Director's Designee

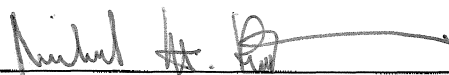
By David Krain

Dated: 11/15/14

  
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Approved by the Board of Ethics:

Dated: 11/26/2014

  
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Michael H. Reed, Esquire  
Chair