

Philadelphia Board of Ethics
Meeting Minutes
March 15, 2017 - 1:00 p.m.
One Parkway Building
1515 Arch Street, 18th Floor

DRAFT

Board Present

Michael H. Reed, Esq., Chair
Sanjuanita González, Esq.
Brian McCormick, Esq.
JoAnne Epps, Esq.

Staff Present

J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Maya Nayak, Esq.
Michael Cooke, Esq.
Diana Lin, Esq.
Jordan Segall, Esq.
Thomas Klemm, Esq.
Bryan McHale
Tina Simone
Hortencia Vasquez
Eileen Donnelly
Victoria Ruby

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:05 p.m.

I. Installation of Board Member, Brian J. McCormick, Jr., Esq. to His Second Term

The Honorable M. Teresa Sarmina administered the oath of office to Board Member Brian J. McCormick, Jr., Esq., for his second term on the Board of Ethics.

II. Minutes

By a 4-0 vote, the Board approved the minutes of the public meeting held on February 15, 2017, as presented.

III. Executive Director's Report

A. Training Update

Mr. Creamer noted that at the Board's February meeting, Board staff reported on the Board's ethics training responsibilities, its current ethics training program, and its short-term and long-term plans for expanding training in light of its staffing level.

Since that meeting, letters were sent to all City Council members announcing two annual "refresher" ethics training classes. The letters indicated that attendance at annual ethics training is mandatory for Council members. The first class was conducted last week on March 9th and nine Council members attended. Several Council Staff members, who are not required to attend annual ethics training, also attended.

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Board Staff have issued reminder letters to the Council members who did not attend the March 9th class advising that the second class will be held on April 6th. The letters reiterated that attendance at annual ethics training is required by the City Code. If Council members still do not attend the April 6th training, Board Staff will again contact them. Mr. Creamer thanked Mary McDaniel, City Council's Integrity Officer, for helping coordinate the ethics trainings for City Council members and Staff.

Board Staff also continue with the on-going full schedule of ethics training classes. For example, between February 1st and March 14th, Board Staff conducted 16 ethics training classes, including classes for new City employees and for members of City boards and commissions. Looking at the long-term, Board Staff also continue to work on implementation of the new City Learning Management System that will make it possible to centralize registration and record keeping for all training sessions conducted by the Board.

B. FY18 Budget

Mr. Creamer said that since the Board's February public session meeting, Mayor Kenney introduced his FY18 budget. The Board's total operating budget for FY18 will be \$1,095,489. This total is higher than the amount that Board Staff reported at the February public session meeting because \$21,725 has been added to Class 100 to cover the cost of anticipated City-wide three percent raises for all exempt employees. The Board's budget therefore now includes \$985,489 for salaries, \$96,000 for the purchase of services, and \$14,000 for supplies and equipment.

Board Staff are disappointed that the Board did not receive the additional \$65,000 that it had requested for FY18. That amount would have been used primarily to convert and upgrade an existing vacant entry level position to a Staff Attorney position. During the next few months, Board Staff will continue to explore receipt of the additional funding during the budget process.

Board Staff believe that the Staff Attorney position is critical to support the Board's administration of the City's Public Integrity Laws. Among other tasks, Board Staff expect that the Staff Attorney will prepare and conduct training, develop educational materials and draft regulations. Recasting the skills and tasks associated with the entry level position will not increase the Board's current number of budgeted positions (12), but it will enable the Board to expand its training capacity, including the preparation of online training courses, and allow Board Staff to draft new regulations and other new educational materials.

C. Staff Activities

- On February 28th, Mr. Creamer was a guest speaker in a class on election law at Temple Law School. The course for second and third year students is taught by Jim Eisenhower. Mr. Creamer spoke about the City's Campaign Finance Law and how the Board of Ethics administers and enforces the law.

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- Mr. Creamer announced that later in the day Staff Attorney Jordan Segall would be speaking at an event at the Philadelphia Bar Association entitled "Outside Activity for Government and Public Service Lawyers." Mr. Segall planned to discuss his experiences working for the City and why he decided to pursue a career in public service. He also planned to briefly touch on the various provisions of the Public Integrity Laws that impact attorneys for the City when engaging in political activity or working on volunteer or paid outside activity.

- Mr. Creamer was pleased to introduce Victoria Ruby, the Board's law student intern. Ms. Ruby is a third year law student at Temple University with prior experience working at the US Attorney's Office for the Eastern District of PA. She has an interest in working in public service after graduating from law school. Ms. Ruby will be volunteering with the Board for one day a week until the end of the semester. She will be working with Board Enforcement Staff on various enforcement and compliance initiatives. Mr. Creamer welcomed Ms. Ruby to Board Staff and said they are happy to have her help. Chair Reed joined Mr. Creamer in welcoming Ms. Ruby to the Board.

IV. General Counsel's Report

A. Advisory Opinions

Ms. Nayak announced that Non-public General Counsel Opinion 2017-501 was issued on February 21, 2017. The Opinion addresses the application of the Philadelphia Home Rule Charter political activity restrictions to an appointed City employee who was invited to contribute to the policy positions and policy papers of the campaign of a candidate for District Attorney. The Opinion advised that the Charter political activity restrictions prohibit the proposed behavior of assisting the campaign of a candidate, which qualifies as activity directed towards the success of the candidate and for the purpose of obtaining the candidate's election to public elective office. This proposed behavior constitutes prohibited participation in the candidate's campaign as well as prohibited political activity performed in concert and coordination with a candidate. The redacted version of Non-public General Counsel Opinion 2017-501 is available on the Board's website.

Ms. Nayak also announced that Non-public General Counsel Opinion 2017-502 was issued on March 7, 2017. The Opinion advises on the application of the City ethics laws to a City employee's proposed participation in a particular investment opportunity. Specifically, the Opinion addresses the Charter prohibition on interests in certain City contracts and other ethics restrictions. This Opinion has not yet been redacted.

B. Gift Educational Documents

Ms. Nayak said that General Counsel Staff have issued two educational documents about gifts since the February public session meeting:

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1. A document entitled “Key Points for City Officers and Employees Regarding Gifts” provides requestors with an overview of the City gift ordinance. This document is available on the Board’s website.

2. A document entitled “Template Letters for Returning Gifts and Gratuities” contains templates for letters for returning gifts and gratuities. The document addresses a question that General Counsel Staff frequently receive, which is how to return a prohibited gift or gratuity. The document is available on the Board’s website.

With the approach of financial disclosure season, General Counsel Staff are working on financial disclosure documents.

Ms. Nayak informed the Board that a Campaign Finance Advisory Alert was issued on February 21, 2017 describing the attribution of contributions from joint checking accounts. Board Staff also plan to issue a Campaign Finance Advisory Alert on filing deadlines for the May 2017 Municipal Primary Election.

Chair Reed congratulated General Counsel Staff for their outstanding work on both documents.

C. Presentation to Librarians

Ms. Nayak was invited to give a presentation on the Charter political activity restrictions to employees of the Free Library of Philadelphia, specifically regarding the permissibility of their displaying and providing patrons with materials regarding social services and issues. On February 2, 2017, Ms. Nayak served on a panel with immigration attorney Jill Soubel and spoke to approximately 40 library employees.

D. Informal Guidance

Ms. Nayak reviewed a chart summarizing informal guidance provided by Board Staff from December 10, 2016 through January 6, 2017.

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SUMMARY OF INFORMAL GUIDANCE PROVIDED, DECEMBER 10, 2016 – JANUARY 6, 2017

General Topic	monthly total (ytd. total)	email	phone	email & phone	in-person	Subtopics
Lobbying	12 (170)	1	10		1	<ul style="list-style-type: none"> ▪ Accessing filed expense reports ▪ Providing information regarding amendments to Board Regulation 9 ▪ Technical assistance regarding reviewing information on Philadelphia Lobbying Information System ▪ Applicability of City Lobbying Law to various activities of a non-profit ▪ Expense reports ▪ Lobbying training requirement ▪ Registration and reporting exemption for government officials acting pursuant to official duties ▪ Registration inquiries related to topics such as renewal thresholds, renewal requirements, and renewal dates
Gifts	7 (80)	2	5			<ul style="list-style-type: none"> ▪ Accepting free event ticket ▪ Application of gift ordinance to proposed gifts to City officials from an entity through a lobbyist ▪ Constituent giving gift cards to City employees who provide services to constituent ▪ Gift ordinance exception for discounts offered to a class of City employees ▪ Gift restrictions applicable to City elected officials ▪ Gratuity prohibition; permissibility of thank you notes ▪ Potential restricted source providing subsidized transportation to City employee

APPROVED BY BOARD OF ETHICS ON 4/19/17

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, DECEMBER 10, 2016 – JANUARY 6, 2017
(CONTINUED)**

General Topic	monthly total (ytd. total)	email	phone	email & phone	in-person	Subtopics
Political Activity	6 (119)	5			1	<ul style="list-style-type: none"> ▪ Attending political march ▪ City employee must resign from City employment before filing nomination petitions or papers and before publicly announcing candidacy ▪ City employee running to become a committeeperson ▪ Overview of political activity restrictions and financial disclosure requirements for members of a new City board ▪ Resign-to-run restriction not applicable to Philadelphia Housing Authority employees ▪ Social media use, including use of hashtags and Twitter handles
Conflicts	5 (116)		4	1		<ul style="list-style-type: none"> ▪ Business partner of City board member's outside employer has matter before City board ▪ City employee entering into contract with former employer in a private capacity ▪ Overview of restrictions applicable to outside employment by City employees ▪ Using City resources to sell products as part of private business
Campaign Finance	4 (152)		3	1		<ul style="list-style-type: none"> ▪ Differences between requirements of City Campaign Finance Law and State Election Code ▪ Political committee's reporting obligations when expenditures are made to influence a City covered election ▪ Contribution limits ▪ Political committee's reporting requirements when no expenditures are made to influence a City covered election ▪ Applicable reporting period for a campaign finance report

APPROVED BY BOARD OF ETHICS ON 4/19/17

SUMMARY OF INFORMAL GUIDANCE PROVIDED, DECEMBER 10, 2016 – JANUARY 6, 2017
(CONTINUED)

General Topic	monthly total (ytd. total)	email	phone	email & phone	in-person	Subtopics
Post-Employment	2 (42)			1	1	<ul style="list-style-type: none"> ▪ Applicability of restrictions to individual utilizing paid time off prior to end date of City employment ▪ Overview of post-employment restrictions
Other	3 (33)		2	1		<ul style="list-style-type: none"> ▪ Overview of Board’s jurisdiction ▪ Code Chapter 17-1400 (Non-Competitively Bid Contracts; Financial Assistance)

This chart summarizes the informal guidance provided by a number of Board staff members during the specified time period. The figures provided reflect the approximate number of inquiries that Board staff has responded to and do not indicate the amount of time spent per topic or inquiry.

V. Clarification of Paragraph 1.21 of Regulation No. 1

Mr. Cooke proposed a footnote clarifying Paragraph 1.21 of Board Regulation No. 1 (Campaign Finance). In the course of reviewing documents related to the filing deadlines for the upcoming May primary election, Staff Attorney Thomas Klemm noticed that Paragraph 1.21 does not fully reflect the filing requirements of Philadelphia Code Section 20-1006. Specifically, the table of filing cycles at Paragraph 1.21 should include not just Cycles 101, 201, 401, and 501, but also Cycles 1, 2, 4, and 5. After consulting with the Law Department, Mr. Cooke said that Board Staff proposed adding an Editor’s Note to the bottom of page 12 of Regulation No. 1. After discussion, Board members requested minor modifications to the proposed Editor’s Note. By a 4-0 vote, Board members approved the proposed footnote clarification of Paragraph 1.21 of Board Regulation No. 1, as modified.

VI. New Business

There was no new business presented at the public session meeting.

VII. Questions/Comments

Ellen Kaplan, the City Chief Integrity Officer, said that the Chief Integrity Office is working with the City Records Department to publicly post online the statements of financial interests filed by members of certain City boards and commissions, including the Board of Ethics. Her office will notify those filers prior to their statements being posted.

Chair Reed made the following announcement regarding Board sessions that would be held pursuant to Sections 708 and 716 of the Pennsylvania Sunshine Act:

After the public meeting, the Board would meet to address confidential enforcement matters.

The public session of the Board meeting was adjourned at approximately 1:45 p.m.

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