

Diana Lin

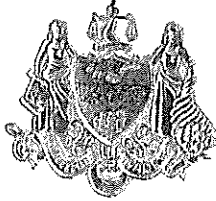
From: Michael Cooke
Sent: Wednesday, August 26, 2015 6:08 PM
To: Maya Nayak
Cc: Shane Creamer; Jordan Segall; Diana Lin; 'reachingback@aol.com'
Subject: Brief in Support of Notice, Creamer v Gordon
Attachments: Nayak, 8-26-2015.PDF; Brief in Support of Notice - Creamer v Gordon - 8-26-2015.pdf

Maya,

Attached, please find the Executive Director's Brief in Support of his Notice of Administrative Enforcement Proceeding in Creamer v. Gordon as well as a letter from me. We are serving the Appendix via hand delivery only.

Regards,

Michael J. Cooke, Esq.
Director of Enforcement
Board of Ethics
of the City of Philadelphia
1515 Arch St., 18th Floor
Philadelphia, PA 19102
(215) 686-9459
(f) (215) 686-9453



CITY OF PHILADELPHIA

BOARD OF ETHICS
ONE PARKWAY BUILDING
1515 Arch Street
18TH Floor
Philadelphia, PA 19102-1504
(215) 686 – 9450
FAX 686 – 9453

August 26, 2015

Via hand delivery and email

Maya Nayak
General Counsel
Board of Ethics
1515 Arch St., 18th Floor
Philadelphia, PA 19102

Re: Creamer v. Gordon, Matter No. 1412MU14

Dear Maya:

Enclosed, please find the Executive Director's Brief in Support of the Notice of Administrative Enforcement Proceeding in the above captioned matter. We are serving the Appendix via hand delivery only.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Cooke".

Michael J. Cooke, Esq.
Director of Enforcement

Enclosures

cc Tracey Gordon
(via hand delivery and email, Appendix via hand only)

**BOARD OF ETHICS
OF THE CITY OF PHILADELPHIA**

<u>J. Shane Creamer, Jr.</u>	:	
Executive Director	:	
Board of Ethics	:	
of the City of Philadelphia	:	
1515 Arch Street, 18 th Floor	:	
Philadelphia, PA 19102	:	
	:	Matter No. 1412MU14
v.	:	
	:	Date of Notice: December 11, 2014
Tracey Gordon	:	
6543 Windsor Street	:	
Philadelphia, PA 19142	:	
	:	
<u>Respondent</u>	:	

**BRIEF IN SUPPORT OF EXECUTIVE DIRECTOR’S NOTICE OF
ADMINISTRATIVE ENFORCEMENT PROCEEDING**

I. Introduction

The Executive Director submits this Brief in accordance with Paragraph 5 of the Board’s Supplemental Procedures Memorandum for Administrative Enforcement Proceedings and as directed by the Board’s Hearing Officer on August 4, 2015.

The facts and arguments set forth below substantiate the allegations set forth in the Executive Director’s Notice of Administrative Enforcement Proceeding and provide the basis for the Board to find that Respondent committed each of the violations alleged in the Notice.

II. Procedural History

a. Notice of Administrative Enforcement Proceeding and Response

This matter was initiated on December 11, 2014 when the Executive Director served a Notice of Administrative Enforcement Proceeding (“Notice”) on Respondent. *See* App. Ex. 1. On December 30, 2014, Respondent requested a hearing and asked for additional time to file a

Response to the Notice. *See* App. Ex. 2; App. Ex. 3. On January 6, 2015, the Board extended the deadline for Respondent to file a Response to February 2, 2015. *See* App. Ex. 4.

On February 2, 2015, Respondent filed her Response to the Notice. *See* App. Ex. 5. That same day, Respondent's first attorney, Michael Coard, withdrew his appearance. *See* App. Ex. 6.

On February 5, 2015, Respondent filed a Supplemental Response to the Notice. *See* App. Ex. 7. On February 24, 2015, the Board set March 30, 2015 as the date for the hearing Respondent had requested. *See* App. Ex. 8.

b. Pre-hearing exchanges and filings

On March 9, 2015, pursuant to Paragraph 6(A) of the Board's Supplemental Procedures Memorandum for Administrative Enforcement Proceedings ("Procedures Memorandum"), the Executive Director provided to Respondent a list of the witnesses he intended to call at the hearing and a list and copies of the exhibits he intended to introduce at the hearing. *See* App. Ex. 9; App. Ex. 10. On March 11, 2015, Respondent requested a continuance of the hearing because she was looking for an attorney and experiencing financial hardship. *See* App. Ex. 11. On March 12, 2015, the Board granted Respondent's request and set June 2, 2015 as the date of the hearing. *See* App. Ex. 12.

On May 12, 2015, Respondent provided to the Executive Director a list and copies of exhibits she intended to introduce at the hearing. *See* App. Ex. 13. Respondent did not provide to the Executive Director a list of witnesses she intended to call at the hearing.

On May 18, 2015, Rania Major entered her appearance as counsel for Respondent and requested a continuance of all deadlines. *See* App. Ex. 14. The Board granted Ms. Major's request for a continuance and set August 4, 2015 as the new date for the hearing. *See* App. Ex. 15; App. Ex. 16.

On June 25, 2015, the Executive Director, pursuant to Paragraph 6(A) of the Procedures Memorandum, provided to Respondent's counsel a list of the witnesses he intended to call at the hearing and a list and copies of the exhibits he intended to introduce at the hearing. *See App. Ex. 17.* On July 10, 2015, pursuant to Paragraph 6(C) of the Procedures Memorandum, the Executive Director filed a unilateral pre-hearing memorandum. *See App. Ex. 18.* Respondent did not file a pre-hearing memorandum with the Board. *See App. Ex. 19.*

On July 15, 2015, the Board informed Respondent's counsel that if Respondent did not file a pre-hearing memorandum with the Board by July 22, 2015, Respondent would be precluded from offering any contested evidence at the August 4, 2015 hearing. *See App. Ex. 19.* Respondent's counsel was also informed that if a pre-hearing memorandum was not filed the facts, witnesses, and evidence outlined in the Executive Director's Unilateral Pre-Hearing Memorandum would be admitted without objection. *See App. Ex. 19.* On July 16, 2015, Ms. Major withdrew her appearance as Respondent's second attorney. *See App. Ex. 20.*

On July 16, 2015 the Board reminded Respondent that she had until July 22, 2015 to file a pre-hearing memorandum with the Board. *See App. Ex. 21.* On July 20, 2015, Respondent requested another continuance of her hearing until she could obtain legal counsel. *See App. Ex. 22.* On July 21, 2015, the Board denied Respondent's request for a continuance. *See App. Ex. 23.* On July 21, 2015, the Board informed Respondent that if she did not a file pre-hearing memorandum with the Board by July 29, 2015 she would be precluded from offering contested evidence at the August 4, 2015 hearing. *See App. Ex. 23.* Respondent was also informed that if a pre-hearing memorandum was not filed the facts, witnesses, and evidence outlined in the Executive Director's Unilateral Pre-Hearing Memorandum would be admitted without objection. *See App. Ex. 23.* Respondent did not file a pre-hearing memorandum with the Board. As such,

pursuant to Paragraph 2.17(a)(v) of Ethics Regulation No. 2 (Investigations and Enforcement Proceedings), Respondent has waived her right to object to the Executive Director's facts, witnesses, and evidence outlined in his pre-hearing memorandum.

c. Administrative Enforcement Hearing of August 4, 2015

On August 4, 2015, at 11:00am, Respondent failed to appear for the hearing she had requested. *See* App. Ex. 24 at p. 3. At the direction of the Hearing Officer, Board General Counsel staff contacted Respondent via telephone and email, after which the hearing was continued to 2:00 pm to allow Respondent to reach the hearing location. *See* App. Ex. 24 at p. 3-12. At 2:00 pm, Respondent appeared but again asked to continue the hearing until she could obtain legal representation. *See* App. Ex. 24 at p. 12-20 and 23-25. The Hearing Officer denied Respondent's request for a continuance. *See* App. Ex. 24 at p. 26.

The Hearing Officer then commenced the hearing that Respondent had requested. *See* App. Ex. 24 at p. 27-43. Shortly thereafter, Respondent refused to proceed any further without legal representation. *See* App. Ex. 24 at p. 43. The Hearing Officer informed Respondent that such conduct would waive her requested hearing and that, pursuant to Paragraph 5 of the Memo, the parties would be limited to presenting their cases via written briefs. *See* App. Ex. 24 at p. 44-45. Respondent said that she understood and left the hearing. *See* App. Ex. 24 at p. 45-46.

III. Facts

Respondent was a Deputy City Commissioner for the City of Philadelphia from February 2012 to December 2014. *See* App. Ex. 18 at para. 2; App. Ex. 39 at para. 2.¹ Respondent worked in the office of City Commissioner Stephanie Singer. *See* App. Ex. 18 at para. 2; App. Ex. 39 at para. 2. On May 28, 2014, the City Commissioners suspended Respondent from her position without pay. *See* App. Ex. 18 at para. 3; App. Ex. 39 at para. 2. On December 3, 2014, the City Commissioners terminated Respondent from her position. *See* App. Ex. 18 at para. 3; App. Ex. 39 at para. 2.

a. Gordon Solicits and Accepts a Gratuity from Leslie Miles in April of 2014

On or about April 14, 2014, Leslie Miles came to Commissioner Singer's office seeking assistance for her candidacy for Resident Commissioner of the Philadelphia Housing Authority. *See* App. Ex. 5 at para. 4; App. Ex. 18 at para. 4. She met with two employees in Commissioner Singer's office: Respondent and Jasmine Winfield, a temporary worker who performed clerical tasks in the office from mid-March to mid-June of 2014. *See* App. Ex. 5 at para. 4; App. Ex. 18 at para. 4; App. Ex. 27 at para. 2; App. Ex. 28 at para. 2. Ms. Miles asked Respondent and Ms. Winfield to help her type and format a letter she had written by hand. *See* App. Ex. 5 at para. 5; App. Ex. 18 at para. 5; App. Ex. 27 at para. 2; App. Ex. 28 at para. 2; App. Ex. 29. Commissioner Singer encouraged employees in her City office to assist members of the public with such tasks as part of their official job duties. *See* App. Ex. 5 at para. 5; App. Ex. 18 at para. 6. Respondent agreed to type and format Ms. Miles' hand-written letter and Ms. Miles left the office. *See* App. Ex. 5 at para. 6; App. Ex. 18 at para. 7; App. Ex. 27 at para. 2; App. Ex. 28 at para. 2; App. Ex.

¹ The City Commissioners are responsible for administering all elections that occur in Philadelphia. *See* App. Ex. 18 at para. 2.

29. Later that day, Respondent emailed Ms. Miles a copy of the typed letter. *See* App. Ex. 5 at para. 6; App. Ex. 18 at para. 7; App. Ex. 27 at para. 2; App. Ex. 30.²

On or about April 15, 2014, Ms. Miles returned to Commissioner Singer's office. *See* App. Ex. 5 at para. 7; App. Ex. 18 at para. 8; App. Ex. 27 at para. 3; App. Ex. 28 at para. 3. She spoke with Respondent and Ms. Winfield in the hallway outside of Commissioner Singer's office. *See* App. Ex. 5 at para. 7; App. Ex. 18 at para. 8; App. Ex. 27 at para. 3; App. Ex. 28 at para. 3.³ Respondent told Ms. Miles that if Ms. Miles was going to ask for help, she should pay for the help she received. *See* App. Ex. 27 at para. 3; App. Ex. 28 at para. 3. Respondent specifically asked Ms. Miles to give Ms. Winfield money for the work done on her letter. *See* App. Ex. 27 at para. 3; App. Ex. 28 at para. 3. Ms. Miles asked Respondent if she also expected payment and Respondent replied "I'd appreciate it, and don't forget us." *See* App. Ex. 27 at para. 3; App. Ex. 28 at para. 3.

On or about April 16, 2014, Ms. Miles returned to Commissioner Singer's office with thank you cards for Respondent and Ms. Winfield. *See* App. Ex. 5 at para. 11; App. Ex. 18 at para. 9; App. Ex. 27 at para. 4; App. Ex. 28 at para. 4; App. Ex. 31. Neither Respondent nor Ms. Winfield were present when Ms. Miles returned to Commissioner Singer's office. *See* App. Ex. 5 at para. 12; App. Ex. 18 at para. 10; App. Ex. 27 at para. 4; App. Ex. 28 at para. 4. As a result,

² The emails from Respondent's City email mailbox (Tracey.Gordon@phila.gov) that are referenced in the Appendix of Exhibits to the Executive Director's Brief to Support his Notice of Administrative Enforcement Proceeding (App. Ex. 30; App. Ex. 41; App. Ex. 44; App. Ex. 46; and App. Ex. 47) were obtained from an image of Respondent's City email mailbox. *See* App. Ex. 26. By failing to file a pre-hearing memorandum with the Board, Respondent has waived her right to object to the authenticity of these emails (App. Ex. 30; App. Ex. 41; App. Ex. 44; App. Ex. 46; and App. Ex. 47). However, notwithstanding Respondent's waiver, the emails have been authenticated by Jeffrey Gardosh, Chief Information Security Officer, City of Philadelphia, pursuant to Pennsylvania Rule of Evidence 901(a). *See* App. Ex. 25 & Exhibit A.

³ Ms. Miles thought that both Respondent and Ms. Winfield worked on the letter for her. *See* App. Ex. 27 at para. 3.

Ms. Miles left the cards on Respondent's and Ms. Winfield's desks. *See* App. Ex. 5 at para. 12; App. Ex. 18 at para. 10; App. Ex. 27 at para. 4; App. Ex. 28 at para. 4. The card Ms. Miles left for Ms. Winfield contained \$20 in cash. *See* App. Ex. 27 at para. 4; App. Ex. 28 at para. 4. The card Ms. Miles left for Respondent contained \$10 in cash. *See* App. Ex. 27 at para. 4; App. Ex. 28 at para. 4. Ms. Miles also wrote a message in the thank you card for Respondent referencing the PHA letter and thanking Respondent for assisting her with the letter. *See* App. Ex. 31 at p. 2.

Ms. Winfield returned to the office before Respondent. *See* App. Ex. 28 at para. 4. She opened her card and found that it contained \$20 in cash. *See* App. Ex. 28 at para. 4. She then opened Respondent's card and saw that it contained \$10 in cash. *See* App. Ex. 28 at para. 4. Ms. Winfield closed Respondent's card and put it back on her desk. *See* App. Ex. 28 at para. 4. When Respondent came back to the office, she opened her card but did not say anything about the cash Ms. Miles had given her. *See* App. Ex. 5 at para. 16; App. Ex. 28 at para. 4.

b. Gordon Solicits a Gratuity from Leslie Miles in June of 2014

On or about June 21, 2014, while suspended from her position but still a City employee subject to Charter Section 10-105, Respondent held a chicken and fish fry fundraiser to raise money for herself. *See* App. Ex. 5 at para. 18; App. Ex. 18 at para. 12; App. Ex. 32 at para. 3 & Exhibit A. In advance of the fundraiser, she posted a flyer promoting the event on Facebook. *See* App. Ex. 5 at para. 18; App. Ex. 18 at para. 12; App. Ex. 32 at para. 3 & Exhibit A. Tickets to the fundraiser were sold for a minimum of \$20. *See* App. Ex. 5 at para. 18; App. Ex. 18 at para. 13; App. Ex. 27 at para. 5; App. Ex. 32 at para. 3 & Exhibit A.

On or about June 10, 2014, Respondent sent Ms. Miles the fundraiser flyer and asked her to attend. *See* App. Ex. 5 at para. 19; App. Ex. 18 at para. 14; App. Ex. 27 at para. 5; App. Ex. 32 at para. 3 & Exhibit A. After getting the flyer, Ms. Miles telephoned Respondent at telephone

number 267-235-0091 from telephone number 484-280-6760 for an explanation of the flyer. *See* App. Ex. 27 at para. 5; App. Ex. 32 at para. 1-2. Telephone records demonstrate that this call occurred on June 10, 2014 and lasted approximately two minutes. *See* App. Ex. 34 at Line 33 of Excel Spreadsheet (“Incoming_Outgoing 4842806760”);⁴ App. Ex. 36 at p. A9 of A103. Respondent told her that she was contacting all of the people who she had helped in her role as Deputy Commissioner so they could help her now. *See* App. Ex. 27 at para. 5. Respondent then demanded to know how many tickets Ms. Miles was going to purchase for her fundraiser. *See* App. Ex. 27 at para. 5. Ms. Miles did not buy a ticket for Respondent’s fundraiser. *See* App. Ex. 5 at para. 22; App. Ex. 18 at para. 15.

c. Gordon Recruits Susan McCall to Run as a Candidate for Committeeperson

In the spring of 2014, Susan McCall served as a volunteer in Commissioner Singer’s Office. *See* App. Ex. 5 at para. 23; App. Ex. 18 at para. 16; App. Ex. 37 at para. 1. She answered telephone calls from the public and answered inquiries regarding voting information. *See* App. Ex. 5 at para. 23; App. Ex. 18 at para. 16. Respondent supervised Ms. McCall and on occasion would ask her to perform clerical tasks. *See* App. Ex. 37 at para. 2.

In mid-April 2014, Respondent and Ms. McCall discussed elections for committeeperson and ward leader in the 32nd ward. *See* App. Ex. 5 at para. 24; App. Ex. 18 at para. 17; App. Ex.

⁴ In response to a request from Respondent in her Supplemental Response to the Notice, the Executive Director requested and the Board provided administrative subpoenas for the phone records of Leslie Miles (484-280-6760) and Respondent (267-235-0091). *See* App. Ex. 7; App. Ex. 33; and App. Ex. 35. These phone records were provided by Verizon and T-Mobile respectively. *See* App. Ex. 34 and App. Ex. 36. By failing to file a pre-hearing memorandum with the Board, Respondent has waived her right to object to the authenticity of App. Ex. 34 and App. Ex. 36. However, even assuming Respondent’s objection is not waived, the phone records were authenticated by both phone companies pursuant to Pennsylvania Rule of Evidence 803(6) and 902(12). *See* App. Ex. 34 and App. Ex. 36.

37 at para. 3.⁵ During their conversation, which occurred in Commissioner Singer's City Hall office during work hours, Respondent asked Ms. McCall to run for committeeperson in the 32nd ward with the understanding that, if elected, she would support a candidate who planned to run against Gary Williams for ward leader.⁶ *See* App. Ex. 37 at para. 3. After speaking with a committeeperson in the 32nd Ward, Ms. McCall told Respondent that she was not interested in running. *See* App. Ex. 37 at para. 4.

d. Gordon prevents Susan McCall from Submitting a Complaint to the Board of Ethics

After informing Respondent of her decision not to run for committeeperson, Ms. McCall drafted a letter to the Board of Ethics describing Respondent's recruitment of her to run for committeeperson. *See* App. Ex. 37 at para. 5.

On or about May 27, 2014, shortly after drafting the letter, Ms. McCall approached Seth Bluestein, a Deputy City Commissioner, outside Commissioner Singer's office and told him about the letter she had written to the Board. *See* App. Ex. 37 at para. 6; App. Ex. 38 at para. 3. She told him she had written to the Board and asked for his help. *See* App. Ex. 37 at para. 6; App. Ex. 38 at para. 3. Mr. Bluestein said he would speak further with her as soon as possible, and departed. *See* App. Ex. 37 at para. 6; App. Ex. 38 at para. 4.

Before Mr. Bluestein returned, Respondent approached Ms. McCall and said that she needed to speak privately with her. *See* App. Ex. 37 at para. 7. Respondent and Ms. McCall then went out to the City Hall courtyard to speak. *See* App. Ex. 37 at para. 8; App. Ex. 38 at para. 7.

⁵ A committeeperson is the elected party representative of a ward division. *See* App. Ex. 5 at para. 25; App. Ex. 18 at para. 18. The committeepersons in a ward elect the ward leader. *See* App. Ex. 5 at para. 25; App. Ex. 18 at para. 18. Committee persons and ward leaders are officers of the Democratic and Republican parties in Philadelphia. *See* App. Ex. 5 at para. 25; App. Ex. 18 at para. 18.

⁶ Gary Williams is the ward leader in the 32nd ward. *See* App. Ex. 5 at para. 25; App. Ex. 18 at para. 19.

In the courtyard, Respondent asked Ms. McCall not to submit the letter she had written to the Board. *See* App. Ex. 37 at para. 8; App. Ex. 38 at para. 7. Respondent told Ms. McCall that if she submitted the letter to the Ethics Board she would never be hired again. *See* App. Ex. 37 at para. 8. Respondent also told Ms. McCall that she was next in line for a job with Commissioner Singer's office. *See* App. Ex. 37 at para. 8; App. Ex. 38 at para. 7. Shortly thereafter, as a result of the discussion between Ms. McCall and Respondent, Ms. McCall's letter to the Board was torn up and not submitted to the Board. *See* App. Ex. 37 at para. 9; App. Ex. 38 at para. 7.

e. Gordon Participates in a Workshop for Committeepersons

On or about May 28, 2014 a workshop was held for recently elected committee persons, who are party officers. *See* App. Ex. 39 at para. 9; App. Ex. 40 at p. 1-2; App. Ex. 41; App. Ex. 43 at p. 1;⁷ App. Ex. 44; App. Ex. 45 at p. 2; App. Ex. 46 at p. 2; App. Ex. 47. The workshop instructed the new committeepersons on party rules, party governance, ward reorganization, and the election of ward leaders. *See* App. Ex. 39 at para. 9; App. Ex. 40 at p. 2; App. Ex. 43 at p. 1 and p. 5; App. Ex. 44; App. Ex. 45 at p. 2; App. Ex. 46 at p. 2; App. Ex. 47. Karen Bojar of the National Organization of Women was one of the primary organizers of the workshop. *See* App. Ex. 39 at para. 10; App. Ex. 40 at p. 1-2; App. Ex. 43 at p. 1; App. Ex. 45 at p. 1.

In the months leading up to the workshop, Respondent participated in the planning and promotion of the workshop for recently elected committeepersons through her City email account and her personal email account (reachingback@aol.com) by: (1) being involved in

⁷ By failing to file a pre-hearing memorandum with the Board, Respondent has waived her right to object to the authenticity of App. Ex. 43, or any other exhibit. However, notwithstanding Respondent's waiver, the screenshots from the Facebook event page for the Committee Persons workshop were obtained and are authenticated by Bryan McHale, Public Integrity Compliance Specialist, City of Philadelphia Board of Ethics, pursuant to Pennsylvania Rule of Evidence 901(a). *See* App. Ex. 42 at para. 5-6 & Exhibit A. The screenshots are also authenticated by City Commissioner Stephanie Singer pursuant to Pennsylvania Rule of Evidence 901(a). *See* App. 39 at para. 10 & Exhibit C.

logistical discussions; (2) providing location information, (3) receiving and providing promotional materials (including an event flier), and (4) promoting the event to her contact list. *See* App. Ex. 39 at para. 13; App. Ex. 40 at p. 1-2; App. Ex. 41; App. Ex. 44; App. Ex. 45 at p. 1-2; App. Ex. 46 at p. 1-2; App. Ex. 47. During this time, Respondent also participated in the planning and promotion of the workshop via social media by making numerous posts in the Facebook event page for the workshop. *See* App. Ex. 43 at p. 1-5.

In addition to the planning and promotional activity described above, Respondent was also scheduled to participate as a speaker at the workshop. *See* App. Ex. 39 at para. 11; App. Ex. 43 at p. 1; App. Ex. 45 at p. 2; App. Ex. 46 at p. 2. However, Respondent did not participate in or attend the workshop, which took place on the day of her suspension. *See* App. Ex. 5 at para. 37; App. Ex. 39 at para. 11; App. Ex. 43 at p. 1.

f. Gordon Promotes a Democratic City Committee Fundraiser

In 2012, Commissioner Singer launched the website patransparency.org to release election-related information to the public. *See* App. Ex. 5 at para. 39; App. Ex. 18 at para. 21; App. Ex. 39 at para. 3-4 & Exhibit A; App. Ex. 42 at para. 7 & Exhibit B.⁸ The website includes a link to a Google calendar. *See* App. Ex. 5 at para. 39; App. Ex. 18 at para. 21; App. Ex. 39 at para. 4-5 & Exhibit B; App. Ex. 42 at para. 8 & Exhibit C.⁹ Commissioner Singer authorized Respondent, as part of her job duties, to update and make entries on the Google calendar on Patransparency.org. *See* App. Ex. 5 at para. 40; App. Ex. 18 at para. 22; App. Ex. 39 at para. 6.

⁸ As with footnote 6, to the extent it is necessary, the screenshots in App. Ex. 39 at Exhibit A and App. Ex. 42 at Exhibit B are authenticated by Bryan McHale and Commissioner Singer. *See* App. Ex. 42 at para. 7; App. 39 at para. 3.

⁹ To the extent it is necessary, the screenshots in App. Ex. 39 at Exhibit B and App. Ex. 42 at Exhibit C are authenticated by Bryan McHale and Commissioner Singer. *See* App. Ex. 42 at para. 8; App. 39 at para. 4-5.

In May of 2013, Respondent created a calendar entry for the Democratic City Committee's annual fundraising dinner which was scheduled for May 13, 2013. *See* App. Ex. 42 at para. 10-12 & Exhibit D.¹⁰ On September 11, 2013, during an interview with Board enforcement staff, Ms. Gordon admitted to creating the City Committee calendar entry. App. Ex. 42 at para. 10-12. Moreover, the detail of the calendar entry states that it was created by "traceygordoncitycommission@gmail.com." App. Ex. 42 at Exhibit D.

Neither Commissioner Singer nor Ms. Gonzalez created the May 13, 2013 calendar entry. *See* App. Ex. 39 at para. 8; App. Ex. 48 at para. 1-5. Ms. Gonzalez has never used the email address traceygordoncitycommission@gmail.com and does not know the password for that address. App. Ex. 48 at para. 2-4. After meeting with Board of Ethics enforcement staff, Commissioner Singer removed the May 13, 2013 calendar entry. *See* App. Ex. 39 at para. 7.

IV. Argument

A. Respondent violated Section 10-105 of the Home Rule Charter by soliciting and accepting a gratuity from Leslie Miles in April 2014 and by soliciting a second gratuity from Leslie Miles in June 2014.

Officers and employees of the City of Philadelphia are prohibited from soliciting or accepting "any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his [or her] public work." Philadelphia Home Rule Charter Section 10-105 (bracket added). "In other words, a [gratuity is a] reward or tip in gratitude for something that official/employee did as part of his/her City job, for which their salary should have been the only compensation" General Counsel Opinion 2010-501 at 2 (bracket added). A gratuity is occasioned by, connected with, or in appreciation for a prior act or omission the City employee

¹⁰ To the extent it is necessary, the screenshot in App. Ex. 42 at Exhibit D. is authenticated by Bryan McHale *See* App. Ex. 42 at para. 9.

has taken or failed to take in the employee's public work for the City. *See* Board Opinion 2012-004 at 2; General Counsel Opinion 2014-501 at 3.

The gratuity prohibition was established by the framers of the Philadelphia Home Rule Charter because of the simple proposition that no public official or employee should do or not do that which he or she is supposed to do “because of the inducement of receiving directly or indirectly any benefit in addition to” the rights and privileges of their public position. Philadelphia Home Rule Charter Section 10-105, Annotation #1. Public officers and employees receive the privilege of being compensated with public funds to perform the task for which they were elected, appointed or employed. *Id.* Holding public office or employment presupposes the faithful discharge of such duties without the need for further benefit. *Id.*

The Federal gratuity statute (18 U.S.C.A. Section 201(c)) is almost identical¹¹ to the Charter's gratuity prohibition. Under the Federal statute, payment must be made or received for or because of an official act and corrupt intent is not required. *See* 18 U.S.C.A. Section 201(c)(1)(A), (B); *Scarantino v. Public Employees' Retirement Board*, 68 A.3d 375, 382-383 & fn. 6 (Pa. Comm. Ct. 2013). The gratuity “may constitute merely a reward for some future act that the public official will take . . . or for a past act that he has already taken.” *U.S. v. Kemp*, 500 F.3d 257, 281 (3rd Cir. 2007) (citing *U.S. v. Sun-Diamond Growers of California*, 526 U.S. 398, 405 (1999)). As described below, Respondent violated Charter Section 10-105 twice in April of 2014 and again in June of 2014.

¹¹ The one deviation between the federal statute and the Philadelphia Home Rule Charter is that the federal statute does not encompass gratuities for a public employee's *failure to perform* an official act. *See* 18 U.S.C.A. Section 201(c)(1)(A), (B) (prohibiting gratuities given or received “for or because of any official act performed or to be performed” by such official or person.); *Scarantino v. Public Employees' Retirement Board*, 68 A.3d 375, 382-383 & fn. 6 (Comm. Ct. 2013).

1. In April of 2014 Respondent Violated Section 10-105 of the Home Rule Charter by Soliciting a Gratuity for Assistance Provided to Leslie Miles

In April of 2014 Respondent solicited a cash payment from a member of the public for carrying out an act in the course of her public work as a Deputy City Commissioner. As part of her job duties as a Deputy City Commissioner, Respondent was encouraged by Commissioner Singer to provide assistance to members of the public that came to her office. In April of 2014, Leslie Miles came to Commissioner Singer's office and asked Respondent and Ms. Winfield for assistance with a letter to support her candidacy for Philadelphia Housing Authority ("PHA") Resident Commissioner. Ms. Miles asked Respondent to help her type and format the letter, which Respondent agreed to do. Respondent said that she would email the typed and formatted letter to Ms. Miles later that day, which she did.

The following day, Ms. Miles returned to Commissioner Singer's office to thank Respondent and Ms. Winfield for their assistance on the PHA letter. Respondent spoke with Ms. Miles in the hallway outside of Commissioner Singer's City Hall office. Ms. Winfield was also present. During that conversation, Respondent told Ms. Miles that if she was going to ask for help, she should pay for the services done for her. Respondent then asked Ms. Miles to pay Ms. Winfield for her assistance on Ms. Miles' PHA letter. Ms. Miles asked Respondent if she also expected payment and Respondent replied "she'd appreciate it and don't forget us."

Respondent denies that she asked Ms. Miles for payment for her assistance on the PHA letter. However, Respondent's denials are self serving and lack credibility. Both of the other participants in the conversation in the hallway have provided statements attesting that Respondent asked Ms. Miles for payment for her services. Neither Ms. Miles nor Ms. Winfield have any reason to lie. Moreover, the specificity and consistency of their accounts demonstrates the accuracy of their recollections.

Respondent's conduct was a solicitation from Ms. Miles for a reward or tip in gratitude for a specific past act that she performed as part of her job duties as a Deputy City Commissioner.¹² Respondent asked Ms. Miles to give her money in recognition of her assistance on the PHA letter. Respondent's assistance on Ms. Miles' letter was an official act that she was directed by Commissioner Singer to fulfill as part of her job as a Deputy City Commissioner. As such, Respondent's conduct violated Philadelphia Home Rule Charter Section 10-105. *See* Philadelphia Home Rule Charter Section 10-105, Annotation #1; Board Opinion 2012-004 at 2; General Counsel Opinion 2010-501 at 2. *See also* 18 U.S.C.A Section 201(c)(1)(B); *Sun- Diamond Growers of California*, 526 U.S. at 405-408; *Scarantino*, 68 A.3d at fn. 6.

¹² Respondent's conduct is distinguishable from *Philadelphia Parking Authority v. Transport Workers' Union of America*, 2010 WL 5577012 (Pa. Com. Pl. 2010) and *U.S. v. Sun-Diamond Growers of California*, 526 U.S. 398 (1999). In *Philadelphia Parking Authority*, Judge Divito of the Philadelphia Court of Common Pleas construed a gratuity prohibition in a collective bargaining agreement, not Charter Section 10-105. In dicta to the opinion, however, Judge Divito did discuss Charter Section 10-105. He noted that Section 10-105 includes "the condition that the gratuity must be accepted in exchange for the public employee's commission of some act or omission." 2010 WL 5577012 at p. 4. He reasoned that this condition "necessarily requires that more than just the mere acceptance of gratuity be proven in order for it to be prohibited." *Id.*

Similarly, in *Sun-Diamond Growers of California*, the U.S. Supreme Court held that the federal gratuity statute could not apply to a trade association giving of tickets and other items to federal officials. The government argued that the items were a prohibited gratuity because the federal officials held public office and had the ability to take official action in relation to the trade association. But the Court held that the transactions were not a prohibited gratuity because no nexus was proven between the receipt of the items and a specific official act performed by the public official. *Sun- Diamond Growers of California*, 526 U.S. at 402 and 406-08.

In this case, unlike in *Philadelphia Parking Authority* and *Sun-Diamond*, Respondent's solicitation and acceptance (See Section IV(A)(2) below) of the gratuity was occasioned by and connected with a specific prior official act she had performed, to wit, typing formatting, and emailing a letter for Ms. Miles.

Because Respondent has violated Home Rule Charter Section 10-105, pursuant to Charter Section 10-109 and Code Section 20-606(1)(h), the Board should impose a \$300 civil monetary penalty on her.

2. In April of 2014, Respondent again violated Section 10-105 of the Philadelphia Home Rule Charter by accepting a \$10 cash gratuity from Leslie Miles for typing and formatting a letter for Leslie Miles

The day after Respondent solicited a gratuity from Ms. Miles, Ms. Miles returned to Commissioner Singer's City Hall office and left a thank you card on Respondent's desk. Ms. Miles wrote a message in the thank you card referencing the PHA letter and thanking Respondent for assisting her with the letter. Ms. Miles also placed \$10 in cash in the card for Respondent. As such, the cash was in gratitude for Respondent's assistance on the PHA letter. Respondent opened Ms. Miles' card that same day and retained the \$10 and the card without telling anyone about the cash.

Respondent denies that any cash was in the thank you card from Ms. Miles. Again, Respondent's denials lack credibility and are self serving. Both Ms. Miles and Ms. Winfield have provided statements attesting that \$10 was in Respondent's thank you card from Ms. Miles. Neither Ms. Miles nor Ms. Winfield have any reason to lie. Moreover, the specificity and consistency of their accounts demonstrates the accuracy of their recollections.

Respondent accepted the \$10 in cash from Ms. Miles as a reward for the assistance she had provided Ms. Miles with the PHA letter. Respondent's assistance with the PHA letter was part of her official City job duties as a Deputy City Commissioner.¹³ Respondent's City salary was all the compensation she was entitled to for her assistance of Ms. Miles. As such, Respondent's acceptance of \$10 cash from Ms. Miles for assisting her with the PHA letter

¹³ As discussed above, Respondent assisted Ms. Miles as part of her job as a Deputy City Commissioner because of a directive from Commissioner Singer.

violated Philadelphia Home Rule Charter Section 10-105. *See* Philadelphia Home Rule Charter Section 10-105, Annotation #1; Board Opinion 2010-501 at 2; General Counsel Opinion 2010-501 at 2. *See also* 18 U.S.C.A Section 201(c)(1)(B); Sun- Diamond Growers of California, 526 U.S. at 405-406; Scarantino, 68 A.3d at fn. 6.

Because Respondent has violated Home Rule Charter Section 10-105, pursuant to Charter Section 10-109 and Code Section 20-606(1)(h), the Board should impose a \$300 civil monetary penalty on her.

3. In June of 2014, Respondent violated Section 10-105 of the Home Rule Charter by soliciting another gratuity from Leslie Miles

In June of 2014, Respondent contacted Ms. Miles and asked her to attend a chicken and fish fry fundraiser she was holding to raise money for herself. Tickets were sold for a minimum of \$20. After Respondent sent Ms. Miles a flyer for the fundraiser, she spoke with her by telephone. Respondent told Ms. Miles that she was contacting all of the people she had helped in her position as a Deputy Commissioner so they could help her now by giving her money. Respondent then demanded to know how many tickets Ms. Miles was going to purchase for the fundraiser. Ms. Miles did not purchase any tickets for the fundraiser.

In her Response, Respondent denies the June telephone call with Ms. Miles. However, telephone records for Ms. Miles and Respondent demonstrate that on June 10, 2014 Respondent and Ms. Miles spoke by telephone for approximately two minutes. Additionally, Ms. Miles has provided statements attesting to the facts of the June telephone call. Ms. Miles has no reason to lie. Moreover, the specificity of her statement demonstrates the accuracy of her recollections.

Similar to the April 2014 solicitation, Respondent's solicitation of money from Ms. Miles to attend her fundraiser is tied to her prior assistance on the PHA letter. Respondent did not simply ask for a fundraiser contribution from Ms. Miles. She asked Ms. Miles for money for her

fundraiser *because of* her prior assistance to Ms. Miles in her capacity as a Deputy City Commissioner.¹⁴ Based on the record of this case, the only occasion on which Respondent helped Ms. Miles in her capacity as a Deputy City Commissioner was with the PHA letter in April 2014. Thus, through her own words, Respondent linked her solicitation of money to the assistance she provided to Ms. Miles in April 2014.

Respondent asked Ms. Miles for payment as a reward for a prior act she performed as a Deputy City Commissioner. Respondent's City salary compensated her for the assistance she provided to Ms. Miles in April 2014 and presupposed the faithful discharge of her duties without the need for further benefit. As such, Respondent violated Philadelphia Home Rule Charter Section 10-105 when she solicited a fundraiser contribution from Ms. Miles in June 2014. Philadelphia Home Rule Charter Section 10-105, Annotation #1; Board Opinion 2010-501 at 2; General Counsel Opinion 2010-501 at 2.¹⁵

Because Respondent has violated Home Rule Charter Section 10-105, pursuant to Charter Section 10-109 and Code Section 20-606(1)(h), the Board should impose a \$300 civil monetary penalty on her.

B. Respondent violated the Philadelphia Home Rule Charter's political activity restrictions on three separate occasions

Subsection 10-107(3) of the Philadelphia Home Rule Charter strictly prohibits City officers and employees from being involved with political fundraising. Subsection 10-107(4) of the Charter imposes significant restrictions on the political activity of City officers and employees. Ethics Board Regulation No. 8, which became effective March 28, 2011, provides a

¹⁴ As discussed above, this specific prior act differentiates Respondent's conduct from the conduct in *Philadelphia Parking Authority and Sun-Diamond*.

¹⁵ For a similar analysis under the Federal gratuity statute *see* 18 U.S.C.A. Section 201(c)(1)(B); *Sun-Diamond Growers of California*, 526 U.S. at 405-406; *Scarantino*, 68 A.3d at fn. 6.

detailed interpretation of Charter Subsections 10-107(3) and 10-107(4) as applied to appointed City officers and employees.

The Board has also issued advisory opinions interpreting the Charter's political activity restrictions and has approved numerous settlements involving political activity violations, including a November 20, 2012 agreement in which Respondent admitted to violating Charter Subsections 10-107(4) by "access[ing] her Facebook page on her City computer and either shar[ing] links from or express[ing] support for or disagreement with the views of candidates or partisan political groups." (brackets added).

As described below, Respondent violated Charter Subsection 10-107(3) in May of 2013. She violated Charter Subsection 10-107(4) in April of 2014 and again in May of 2014.

1. Respondent violated Charter Subsection 10-107(3) in May of 2013 by promoting a fundraiser for the Democratic City Committee.

In 2012, Commissioner Singer launched the website patransparency.org to release election-related information to the public. The website includes a link to a Google calendar. Commissioner Singer authorized Respondent, as part of her job duties, to update and make entries on the calendar on Patransparency.org. In May of 2013, Respondent created a calendar entry for the Democratic City Committee's annual fundraising dinner which was scheduled for May 13, 2013.

Respondent claims that she did not make the entry in question. However, Respondent's denials are self serving and lack credibility. On September 11, 2013, Board enforcement staff interviewed Respondent about the patransparency.org calendar. Bryan McHale, a Public Integrity Compliance Specialist with the Board, attended the interview to take notes. He has provided an affidavit in which he attests that during that interview, Ms. Gordon admitted to creating the City Committee calendar entry. Moreover, the detail of the calendar entry states that

it was created by “traceygordoncitycommission@gmail.com.” In her Response to the Notice, Respondent claimed that Norys Gonzalez created the City Committee calendar entry. However, Ms. Gonzalez has provided a sworn statement in which she attests that she has never used the email address traceygordoncitycommission@gmail.com, does not know the password for that email account, and did not make the City Committee calendar entry. Given the self-serving nature of Respondent’s denial and the fact that she has made other incredible statements in this action (see, e.g., her denial of the telephone call to Ms. Miles, described in section IV(A)(3), above), the Board should find Ms. Gonzalez more credible than Ms. Gordon.

An appointed officer or employee shall not directly or indirectly be in any manner concerned in the collection, receipt, or solicitation of contributions intended for a political purpose. *See* Regulation No. 8, Paragraph 8.5.

By creating the calendar entry for a May 13, 2013 Democratic City Committee fundraiser, Respondent promoted and advertised the event. In doing so, Respondent was directly or indirectly involved or concerned in demanding or soliciting contributions intended for any political purpose. As such, Respondent violated Home Rule Charter Subsection 10-107(3). *See* Regulation No. 8, Paragraph 8.5.

Because Respondent has violated Home Rule Charter Subsection 10-107(3), pursuant to Charter Section 10-109 and Code Section 20-606(1)(h), the Board should impose a \$300 civil monetary penalty on her.

2. Respondent violated Charter Subsection 10-107(4) in April of 2014 by asking Susan McCall to run for committee person in order to support a candidate for ward leader in the 32nd ward.

In the spring of 2014, Susan McCall served as a volunteer in Commissioner Singer’s Office. Respondent supervised Ms. McCall and on occasion would ask her to perform clerical tasks.

In mid-April 2014, while in Commissioner Singer's City Hall office and during work hours, Respondent asked Ms. McCall to run for committeeperson in the 32nd ward with the understanding that, if elected, she would support a candidate who planned to run against the current ward leader. After speaking with a committeeperson in the 32nd Ward, Ms. McCall told Respondent that she was not interested in running.

Political activity is an activity "directed towards the success or failure of a political party, candidate, or partisan political group." Regulation No. 8, Paragraph 8.1(n). An appointed officer or employee shall not engage in political activity while on duty or in City Hall. *See* Regulation No. 8, Paragraph 8.3(a) and (d). In addition, an appointed officer or employee shall not use her authority, influence, title, or status as a City officer or employee for any political purpose, which includes using her authority or influence to coerce an individual to participate in political activity or requesting, directing, or suggesting that subordinate officer or employee participate in political activity. *See* Regulation No. 8, Paragraph 8.4(b) and (c). Nor may an appointed officer or employee take any part in the management or affairs of a political party, political campaign, or partisan political group. *See* Regulation No. 8, Paragraph 8.11.

The Board has previously opined on the application of the Charter's political activity restrictions to employees of the City Commissioners Office. *See* Board Opinion 2012-002. In that Opinion, the Board re-affirmed that political activity by employees of the City Commissioners is prohibited while on duty or in any City-owned building. A City Commissioner employee is on duty during normal working hours. *Id.* at 3-4.

The Board also addressed the Charter's political activity restrictions when it approved a December 9, 2012 settlement agreement with Michael Moore, a City Council employee. In that

agreement, Mr. Moore admitted to violating Charter Subsection 10-107(4) when, in City Hall, he directed a subordinate to prepare copies of a political flyer for distribution.

Respondent's recruitment of Ms. McCall to run for committee person constituted political activity because it was activity directed towards the success of a candidate for ward leader, a party officer. Respondent engaged in this political activity while on duty and in City Hall. In addition, similar to the Moore settlement, by asking a subordinate volunteer in her office to engage in political activity, Respondent used her authority, influence, and status as a City officer for a political purpose. Lastly, by supporting the candidacy of a challenger for ward leader in the 32nd ward, Respondent took part in the management and affairs of the City Democratic Party and in a political campaign. As such, Respondent violated Home Rule Charter Subsection 10-107(4). *See* Regulation No. 8, Paragraphs 8.3, 8.4, and 8.11.

Because Respondent has violated Home Rule Charter Subsection 10-107(4), pursuant to Charter Section 10-109 and Code Section 20-606(1)(h), the Board should impose a \$300 civil monetary penalty on her.

3. Respondent violated Charter Subsection 10-107(4) in May of 2014 by participating in the planning a promotion of a workshop for newly elected committee people.

On or about May 28, 2014 a workshop was held for recently elected committee persons. The workshop instructed the new committee persons on party rules, party governance, ward reorganization, and the election of ward leaders. From March through May of 2014, Respondent participated in the planning and promotion of the workshop for recently elected committee persons through her City email account and her personal email account (reachingback@aol.com) by: (1) being involved in logistical discussions; (2) providing location information, (3) receiving and providing promotional materials (including an event flier), and (4) promoting the event to her contact list. During this time, Respondent also participated in the planning and promotion of

the workshop via social media by making numerous posts in the Facebook event page for the workshop. In addition to the planning and promotional activity described above, Respondent was also scheduled to participate as a speaker at the workshop.

In her Response to the Notice, Respondent denies participating in the planning and promotion of the workshop and denies that she agreed to be a speaker at the event. However, numerous documents and emails in the record plainly contradict Respondent's self-serving and incredible denials. Specifically, App. Ex. 40 is a lengthy email chain about the planning and promotion of the workshop. Respondent's personal email address (reachingback@aol.com) is included in the chain. In an email found at App. Ex. 41, Respondent responds to a May 28, 2014 email from someone asking for the location of the workshop. On May 21 at 1:22pm, Respondent posted a note about the change of venue for the workshop on the event's Facebook page (screenshot found at App. Ex. 43). As seen in an email chain found at App. Ex. 46, on May 8, 2014, using her City email account, Respondent sent a flyer for the event to Verna Brown-Tyner. As seen in an email found at App. Ex. 45, Respondent obtained the flyer from Karen Bojar, the organizer of the event, and the flyer lists Respondent and Commissioner Singer as speakers at the workshop. Lastly, Respondent, along with Karen Bojar and Stephanie Singer, is a recipient of a May 15, 2014 email (found at App. Ex. 47) about promotion of the workshop. Any one of these documents demonstrates that Respondent participated in the planning and promotion of the workshop. Taken as a whole, they are overwhelming proof of her participation.

An appointed officer or employee may not take any part in the management or affairs of a political party, political campaign, or partisan political group. *See* Home Rule Charter Subsection 10-107(4); Regulation No. 8, Paragraph 8.11.

In Board Opinion 2012-002, the Board held that employees of the City Commissioners could engage in certain activity in their official capacities that, for other City employees, would be prohibited political activity. This is so because the official duties of employees of the City Commissioners' Office include "encouraging Philadelphians to register and vote and making sure elections are free and fair." *Id.* at 2. In order to carry out those duties, employees of the office must interact with and assist candidates and members of political parties and partisan political groups. In doing so, City Commissioner employees are not engaging in political activity, they are doing their job. Also, as part of the Opinion, the Board considered whether City Commission employees could attend or speak at a forum for primary candidates of a single party. The Board held that employees could attend and speak at the forums if they are carrying out their official duties, their statements are non-partisan, and they provide similarly-situated political parties the same opportunities for participation by employees of the Commissioners' Office. *See id.* at 6-7.

The Board specifically addressed the impermissibility of a City employee taking part in the affairs of a ward or political party when they approved the settlement agreement resolving violations of the Charter by Renee Tartaglione. In that agreement, Ms. Tartaglione admitted to violating Philadelphia Home Rule Charter Subsection 10-107(4) when she (1) organized and ran a meeting of the 19th ward to tell committee people about their assignments for the upcoming election and (2) arranged and attended a meeting of the ward to distribute campaign literature to committee people.

Instructing newly elected committee persons on party rules, party governance, ward reorganization, and the election of ward leaders is not within the scope of the City Commissioners duties. The City Commissioners have no role in the organization and rules of the

wards or the election of ward leaders. Therefore, Respondent's participation in the planning of the workshop is not the type of permissible official action that the Board, in Board Opinion 2012-002, said employees of the City Commissioners office may engage in. Rather, it is the equivalent of the type of activity that resulted in violations of Charter Subsection 10-107(4) for Renee Tartaglione.

By participating in the planning and promotion of a workshop that instructed newly elected committee persons on party rules, party governance, ward reorganization, and the election of ward leaders, Respondent took part in the management and affairs of a political party. As such, Respondent violated Home Rule Charter Subsection 10-107(4). *See* Regulation No. 8, Paragraph 8.11.

Because Respondent has violated Home Rule Charter Subsection 10-107(4), pursuant to Charter Section 10-109 and Philadelphia Code Section 20-606(1)(h), the Board should impose a \$300 civil monetary penalty on her.

C. In May of 2014, Respondent violated Philadelphia Code Section 20-606(2) when she failed to cooperate with the Board and obstructed the Board's investigation into her violations of the Home Rule Charter by threatening and influencing Susan McCall

The Ethics Code requires City officers and employees to "cooperate fully with any request of the Board made pursuant to the execution of the Board's powers and duties." Philadelphia Code Section 20-606(2). In Board of Ethics Regulation No. 2 (Investigations and Enforcement Proceedings), the Board has interpreted failure to cooperate to include:

- a. Telling another person not to meet with Board staff or answer questions relating to an investigation or preliminary inquiry; and
- b. Destroying evidence related to an investigation or preliminary inquiry.

Board of Ethics Regulation No. 2 at Para. 2.8(c), (e).¹⁶

In May 2014, after Respondent unsuccessfully attempted to recruit Ms. McCall to run for committeeperson in the 32nd ward, Ms. Miles drafted a letter to the Board describing Respondent's conduct. After Ms. McCall sought help from Seth Bluestein regarding the letter she had written to the Board about Respondent, Respondent approached her and said that she needed to speak privately with her. Respondent and Ms. Miles went outside to the City Hall courtyard where Respondent asked Ms. McCall not to submit the letter she had written about her to the Board. Respondent told Ms. McCall that if she submitted the letter to the Ethics Board she would never be hired again. She also told Ms. McCall that she was next in line for a job with Commissioner Singer's office. Shortly thereafter, as a result of the discussion between Ms. McCall and Respondent, Ms. McCall's letter to the Board was torn up and not submitted to the Board.

Respondent's conduct is a failure to cooperate with the Board as set forth in Board of Ethics Regulation No. 2. Respondent told Ms. McCall not to meet with Board staff or answer questions relating to a Board investigation or preliminary inquiry. She told Ms. McCall not to provide information to the Board by submitting her letter complaining about Respondent's violation of the Home Rule Charter's political activity restrictions. She also suggested that Ms. McCall would receive a position with Commissioner Singer's if she agreed not to provide her

¹⁶ To date, the Board has approved two settlement agreements that included violations of the Ethics Code's cooperation provisions. The first was a December 9, 2011 settlement agreement with Michael Moore, a City Council employee. The second was a June 18, 2015 settlement agreement with City Commissioner Anthony Clark. The failure to cooperate violation in the Moore agreement arose from Mr. Moore's refusal to meet with Board enforcement staff to answer questions about his alleged violations of the Charter's political activity restrictions. The failure to cooperate violation in the Clark agreement arose from Commissioner Clark's (1) threatening to take action against a subordinate employee for cooperating with a Board investigation and (2) attempting to influence the same subordinate employee by speaking with her before she met with Board enforcement staff to tell her what she should say and not say.

letter to the Board. As such, by threatening Ms. McCall and influencing her not to submit her letter to the Board, Respondent attempted to prevent Ms. McCall from meeting with Board enforcement staff to bring Respondent's misconduct to their attention.

Additionally, Respondent destroyed evidence relating to a Board investigation or preliminary inquiry. As a result of the conversation between Ms. McCall and Respondent, Ms. McCall's complaint letter to the Board about Respondent was torn up.¹⁷ Ms. McCall's letter would have served as evidence in the Board's investigation into Respondent's violations of the Home Rule Charter. However, because of Respondent's threats and influencing of Ms. McCall, the evidence was destroyed.

By threatening Ms. McCall and causing the destruction of her letter, Respondent failed to cooperate with Board staff, as required by Philadelphia Code Section 20-606(2). *See* Regulation No. 2, Paragraph 2.8. Therefore, Respondent violated the Ethics Code. *See* Philadelphia Code Sections 20-606(2); 20-612(1). A violation of the Ethics Code is subject to a base civil monetary penalty of \$1,000. *See* Philadelphia Code Section 20-1302. However, the base civil monetary penalty can be increased to \$2,000 if the aggravating factor of obstruction of a Board investigation is present. *See* Philadelphia Code Section 20-1302(b)(iii). As discussed above, Respondent's threats of Ms. McCall and destruction of evidence obstructed the Board's investigation into Respondent's violations of the Home Rule Charter. Therefore, the aggravating factor of obstruction of an investigation is present and the Board should impose a \$2,000 civil monetary penalty on Respondent. *See* Philadelphia Code Sections 20-1302; 20-1302(b)(iii).

¹⁷ It is unclear whether Respondent destroyed the letter or Ms. McCall destroyed the letter. On the one hand, in her affidavit, Ms. McCall attests that while in the City Hall courtyard Respondent grabbed the letter out of her hand and tore it up in front of her. On the other hand, in his affidavit, Mr. Bluestein attests that after Ms. McCall returned from the City Hall courtyard she tore up the letter in front of him. Either way, both witnesses agree that the letter was destroyed because of what Respondent said to Ms. McCall.

V. Conclusion

Based on the foregoing, the Executive Director respectfully requests that the Board make the following findings:

1. The facts set forth in Section III of this Brief are true and correct;
2. As alleged in Count 1 of the Notice of Administrative Enforcement Proceeding, Respondent violated Philadelphia Home Rule Charter Section 10-105 when, in April of 2014, she solicited a payment from Leslie Miles for assistance Respondent had provided to Ms. Miles in her official capacity *and* that Respondent should therefore be subject to a civil monetary penalty of \$300;
3. As alleged in Count 2 of the Notice of Administrative Enforcement Proceeding, Respondent violated Philadelphia Home Rule Charter Section 10-105 when, in April of 2014, she accepted \$10 from Leslie Miles for assistance Respondent had provided to Ms. Miles in her official capacity *and* that Respondent should therefore be subject to a civil monetary penalty of \$300;
4. As alleged in Count 3 of the Notice of Administrative Enforcement Proceeding, Respondent violated Philadelphia Home Rule Charter Section 10-105 when, in June of 2014, she solicited a payment from Leslie Miles for assistance Respondent provided in her official capacity *and* that Respondent should therefore be subject to a civil monetary penalty of \$300;
5. As alleged in Count 4 of the Notice of Administrative Enforcement Proceeding, Respondent violated Philadelphia Home Rule Charter Subsection 10-107(4) when, in April of 2014, she recruited Susan McCall to run for committee person with the

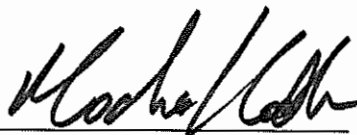
understanding that she would support a specific candidate for ward leader *and* that Respondent should therefore be subject to a civil monetary penalty of \$300;

6. As alleged in Count 5 of the Notice of Administrative Enforcement Proceeding, Respondent violated Philadelphia Code Section 20-606(2) when, in May of 2014, she failed to cooperate with Board enforcement staff and obstructed the Board's investigation into her potential violations of the Home Rule Charter by threatening and influencing a witness and destroying evidence *and* that Respondent should therefore be subject to a civil monetary penalty of \$2,000;
7. As alleged in Count 6 of the Notice of Administrative Enforcement Proceeding, Respondent violated Philadelphia Home Rule Charter Subsection 10-107(4) when she participated in the planning and promotion of a workshop for committee persons held on May 28, 2014 *and* that Respondent should therefore be subject to a civil monetary penalty of \$300; and
8. As alleged in Count 7 of the Notice of Administrative Enforcement Proceeding, Respondent violated Philadelphia Home Rule Charter Subsection 10-107(3) (Political Fundraising) when, in May of 2013, she created and posted a public calendar entry for a Democratic City Committee fundraiser *and* that Respondent should therefore be subject to a civil monetary penalty of \$300.

Date:

August 26, 2015

Respectfully submitted,



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CERTIFICATION OF SERVICE

I, Michael Cooke, hereby certify that on this date I caused a true and correct copy of the foregoing Brief in Support of the Executive Director's Notice of Administrative Enforcement Proceeding and Appendix of Exhibits, to be served upon the following:

By hand delivery and email:

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8/26/2015

