

Diana Lin

From: Rania Major-Trunfio, Esquire [allcourts@comcast.net]
Sent: Thursday, July 16, 2015 12:27 PM
To: Diana Lin
Cc: Maya Nayak; Shane Creamer; Michael Cooke
Subject: Tracey Gordon - Administrative Adjudication Matter #1412MU14

Dear Counsel,

Kindly be advised that Ms. Gordon is no longer able to afford Ms. Major's representation on the above-referenced matter.

We will forward all documents received in this office to Ms. Gordon's home address 6543 Windsor Avenue, Philadelphia, PA 19143.

Thank you for your time and consideration.

Very truly yours,

Emelinda Diaz, secretary to,
Rania M. Major, Esquire

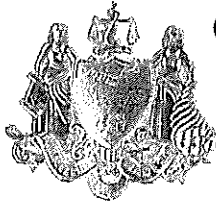
From: "Diana Lin" <Diana.Lin@Phila.gov>
To: allcourts@comcast.net
Cc: "Maya Nayak" <Maya.Nayak@phila.gov>, "Shane Creamer" <Shane.Creamer@phila.gov>, "Michael Cooke" <Michael.Cooke@phila.gov>
Sent: Wednesday, July 15, 2015 12:46:42 PM
Subject: RE: Tracey Gordon - Administrative Adjudication Matter #1412MU14

Dear Ms. Major:

Please find attached a letter regarding missed deadlines and important dates in Administrative Adjudication Matter #1412MU14 in which you are representing Ms. Gordon. If you have any questions regarding this letter or the Board's procedures between July 20-24, please contact me at Diana.lin@phila.gov or 215.686.9450.

Sincerely,
Diana Lin

Diana J. Lin, Esq.
Associate General Counsel
City of Philadelphia Board of Ethics
One Parkway Building, 18th Floor
1515 Arch Street
Philadelphia, PA 19102
diana.lin@phila.gov
215.686.9450 (t)
215.686.9453 (f)
www.phila.gov/ethicsboard



CITY OF PHILADELPHIA

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

Confidential

July 16, 2015

Via Email and Hand Delivery

Tracey L. Gordon
6543 Windsor Street
Philadelphia, PA 19142
reachingback@aol.com

Re: Administrative Adjudication Matter #1412MU14

Dear Ms. Gordon:

We received notice today that Rania Major has withdrawn her representation of you in the above-referenced administrative adjudication. I write regarding two important, upcoming deadlines in this matter.

All facts set forth in the Statement of Undisputed Facts in the Executive Director's Unilateral Memorandum served on July 10, 2015, and enclosed here for your convenience (without exhibits), will be deemed admitted unless specifically denied in a writing filed with the Board no later than **July 17, 2015**. Please submit your specific denials, if any, via email to **diana.lin@phila.gov** with a copy to Shane Creamer at **shane.creamer@phila.gov**.


The deadline for submitting a pre-hearing memorandum to the Board was Friday, July 10, 2015. To date, we have not received your pre-hearing memorandum. Hearing Officer Richard Glazer has determined that your pre-hearing memorandum must be submitted to the Board by **July 22, 2015** via email to **diana.lin@phila.gov** with a copy to Mr. Creamer at **shane.creamer@phila.gov**, or you will be precluded from offering any contested evidence at the hearing.

Pursuant to Paragraph 6(D) of the Supplemental Procedures Memorandum, your pre-hearing memorandum must also contain any objections you have to the witnesses or exhibits the Executive Director has identified in his Unilateral Pre-Hearing Memorandum, or you will be barred from objecting to any witnesses or exhibits offered by Mr. Creamer at the hearing. In your pre-hearing memorandum, please clarify whether you intend to utilize the exhibits you previously provided to Mr. Creamer on May 12, 2015.

We understand that Ms. Major is forwarding you all documents received in her office in this matter. We informed Ms. Major multiple times regarding these deadlines, the requirements for

Page 2 of 2

If you have questions about the Board's administrative enforcement procedures, please let me know.

Sincerely,

Diana Lin

Diana Lin
Associate General Counsel

cc (*via email*):

Maya Nayak, General Counsel
Shane Creamer, Executive Director
Michael Cooke, Director of Enforcement

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

J. Shane Creamer, Jr.
Executive Director
Board of Ethics
of the City of Philadelphia
1515 Arch Street, 18th Floor
Philadelphia, PA 19102

v.

Tracey Gordon
6543 Windsor Street
Philadelphia, PA 19142

Respondent

Matter No. 1412MU14

Date of Notice: December 11, 2014

EXECUTIVE DIRECTOR'S UNILATERAL PRE-HEARING MEMORANDUM

I. Statement of Undisputed Facts

1. J. Shane Creamer, Jr. is the Executive Director of the Board of Ethics.
2. Tracey Gordon was a Deputy City Commissioner for the City of Philadelphia from February 2011 to December 2014. The City Commissioners are responsible for administering all elections that occur in Philadelphia. Ms. Gordon worked in the office of City Commissioner Stephanie Singer.
3. On May 28, 2014, the City Commissioners suspended Ms. Gordon from her position without pay. On December 3, 2014, the City Commissioners terminated Ms. Gordon from her position.
4. 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. She met with two employees in Commissioner Singer's office: Tracey Gordon and Jasmine Winfield, a temporary worker who performed clerical tasks in the office from mid-March to mid-June of 2014.

5. Ms. Miles asked Ms. Gordon and Ms. Winfield to help her type and format a letter she had written by hand.
6. Commissioner Singer encouraged employees in her office to assist members of the public with such tasks as part of their job duties.
7. Ms. Gordon agreed to type and format Ms. Miles' hand-written letter and Ms. Miles left the office. Later that day, Ms. Gordon emailed Ms. Miles a copy of the typed letter.
8. On or about April 15, 2014, Ms. Miles returned to Commissioner Singer's office. She spoke with Ms. Gordon and Ms. Winfield in the hallway outside of Commissioner Singer's office.
9. On or about April 16, 2014, Ms. Miles returned to Commissioner Singer's office with thank you cards for Ms. Gordon and Ms. Winfield.
10. Ms. Gordon was not present when Ms. Miles returned to Commissioner Singer's office. As a result, Ms. Miles left the cards on Ms. Gordon's and Ms. Winfield's desks.
11. On May 28, 2014, the City Commissioners suspended Ms. Gordon from her position without pay.
12. In order to raise money while she was suspended without pay from her City position, Ms. Gordon decided to hold a fundraiser on June 21, 2014 for herself. She posted a flyer promoting the event on Facebook. She also sent the flyer to people to people she knew.
13. Tickets to the fundraiser were sold for a minimum of \$20.
14. On or about June 12, 2014, Ms. Gordon sent Ms. Miles a message asking her to attend the fundraiser.
15. Ms. Miles did not buy a ticket for Ms. Gordon's fundraiser.

16. In the spring of 2014, Susan McCall served as a volunteer in Commissioner Singer's Office. She answered telephone calls from the public and answered inquiries regarding voting information.
17. In mid-April 2014, Ms. Gordon and Ms. McCall discussed elections for committeeperson and ward leader in the 32nd ward.
18. A committeeperson is the elected party representative of a ward division. The committeepersons in a ward elect the ward leader. Committee persons and ward leaders are officers of the Democratic and Republican parties in Philadelphia.
19. Gary Williams is the ward leader in the 32nd ward.
20. Commissioner Singer helped organize and participated in a May 28, 2014 workshop for recently elected committeepersons.
21. 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.
22. Commissioner Singer directed Ms. Gordon, as part of her job duties, to update the calendar on Patransparency.org.

II. Executive Director Witnesses

The Executive Director intends to call the following people as witnesses at the hearing

1. Jeffrey Gardosh Chief Information Security Officer City of Philadelphia Office of Innovation and Technology 1234 Market Street, 15 th Floor Philadelphia, PA 19107 215-686-8222	2. Susan McCall 1713 N. Dover St. Philadelphia, PA 19121 267-592-0891 SUBPOENA REQUESTED
3. Tracey Gordon 6543 Windsor Street Philadelphia, PA 19142 267-235-0091	4. Norys Gonzalez Deputy City Commissioner Room 132, City Hall Philadelphia, PA 19107 215-686-3460 SUBPOENA REQUESTED
5. Hon. Stephanie Singer City Commissioner Room 132, City Hall Philadelphia, PA 19107 215-686-3460 SUBPOENA REQUESTED	6. Seth Bluestein Deputy City Commissioner Room 134, City Hall Philadelphia, PA 19107 215-686-3464 SUBPOENA REQUESTED
7. Leslie Miles 7011 N. 15 th St., Apt.2c3 Philadelphia, PA 19126 267-592-7187 484-280-6760 SUBPOENA REQUESTED	8. Bryan McHale Public Integrity Compliance Specialist 1515 Arch Street, 18 th Floor Philadelphia, PA 19102 215-686-9450
9. Jasmine Winfield 161 N. Robinson Street Philadelphia, PA 19139 267-274-8952 SUBPOENA REQUESTED	

III. Executive Director Exhibits

The Executive Director intends to introduce the following exhibits at the hearing, copies of which are enclosed with this memorandum:

1. Tracey.Gordon@phila.gov Email Mailbox Image (Requested May 29, 2014)
2. Selected emails from Tracey.Gordon@phila.gov email account
3. April 14, 2014 handwritten letter for Leslie Miles' candidacy for PHA Commissioner
4. April 28, 2014 Thank You Card provided by Leslie Miles to Tracey Gordon (2 pages)
5. July 30, 2014 affidavit of Jasmine Winfield
6. August 11, 2014 declaration of Leslie Miles
7. December 15, 2014 correspondence from Michael Cooke to Jasmine Winfield
8. December 15, 2014 money order from Jasmine Winfield to the City of Philadelphia
9. May 27, 2014-May 28, 2014 email chain between Michael Cooke and Seth Bluestein
10. June 3, 2014 Memorandum of Interview of Susan McCall by Board of Ethics enforcement staff
11. Screenshot from Facebook of Tracey Gordon June 21, 2014 fundraiser
12. February 20, 2015 Board of Ethics Administrative Subpoena served on Verizon Wireless Law Enforcement Resource Team for Leslie Miles phone records from June 1, 2014 to June 30, 2014
13. Leslie Miles phone records provided by Verizon Wireless Law Enforcement Resource Team on March 2, 2015 in response to Board of Ethics Administrative Subpoena with Certification of Authenticity of records provided by Verizon Wireless Law Enforcement Resource Team

14. February 20, 2015 Board of Ethics Administrative Subpoena served on T-Mobile Law Enforcement Relations Group for Tracey Gordon phone records from June 1, 2014 to June 30, 2014
15. Tracey Gordon phone records provided by T-Mobile Law Enforcement Relations Group in response to Board of Ethics Administrative Subpoena with Certification of Authenticity of records provided by T-Mobile Law Enforcement Relations Group
16. March 25, 2014-April 1, 2014 email chain between Karen Bojar, Stephanie Singer, and Tracey Gordon
17. May 7, 2014 email, with attachment: Karen Bojar to Tracey Gordon and Stephanie Singer
18. Screenshots from Facebook event page for Committee Persons workshop (6 pages)
19. September 11, 2013 Memorandum of Interview of Tracey Gordon
20. September 13, 2013 email from Hon. Stephanie Singer to Michael Cooke
21. Screenshots from patransparency.org front page and Google calendar (3 pages)
22. December 11, 2014 Notice of Administrative Enforcement Proceeding and Exhibits in Support of Notice of Administrative Enforcement Proceeding: Creamer v. Gordon
23. February 2, 2015 Response to Notice of Administrative Enforcement: Creamer v. Gordon
24. February 5, 2015 Supplemental Response to Notice of Administrative Enforcement: Creamer v. Gordon
25. November 10, 2014 affidavit of Norys Gonzalez
26. March 9, 2015 affidavit of Bryan McHale
27. November 20, 2012 Tracey Gordon settlement agreement

IV. Tracey Gordon Exhibits

To date, neither Ms. Gordon nor her counsel have provided to the Executive Director a list of witness she intends to call for the hearing. As such, the Executive Director will object if Ms. Gordon attempts to call any witnesses at the hearing.

V. Tracey Gordon Exhibits

On May 12, 2015, while she was *pro se*, Ms. Gordon provided the following exhibits that to the Executive Director. To date, Ms. Gordon's current counsel has not provided any proposed exhibits to the Executive Director.

Exhibit Number	Description	Executive Director Objection	Executive Director Basis for Objection
1	Letter written by Jasmine Winfield	Yes	Authenticity; Relevance; hearsay
2	Tracey Gordon May 2014 Google Calendar (2 pages)	No	N/A
3	Seven Thank You Cards from "Constituents" Provided to Ms. Gordon (6 pages)	Yes	Relevance; hearsay
4	Email from Tracey Gordon to Stephanie Singer dated April 11, 2014 (2 pages)	Yes	Relevance
5	Text Message between Commissioner Singer and State Senator Anthony Williams	Yes	Authenticity; Relevance; hearsay.
6	Email from Tracey Gordon to Stephanie Singer, Norys Gonzalez, Jasmine Winfield, and Dennis Lee dated May 1, 2014	Yes	Relevance
7	Email from Tracey Gordon to Stephanie Singer, Dennis Lee, and Norys Gonzalez dated May 8, 2014	Yes	Relevance

Exhibit Number	Description	Executive Director Objection	Executive Director Basis for Objection
8	Email from Stephanie Singer to Tracey Gordon dated May 21, 2014	No	N/A
9	Email from Tracey Gordon to Stephanie Singer dated May 28, 2014 (2 copies)	Yes	Relevance
10	Email from Stephanie Singer to Tracey Gordon and Alberta Walker	No	N/A
11	Letter from Michael Cooke to Tracey Gordon dated May 28, 2014	No	N/A
12	PA Transparency Google calendar screen shots (2 pages)	No	N/A
13	Philly.com news article pertaining to Commissioner Stephanie Singer (dated June 5, 2014)	Yes	Relevance
14	Screenshot from Tracey Gordon's Facebook account pertaining to Fish Fry Fundraiser on June 21, 2014	No	N/A
15	Affidavit of Stephanie Graham dated May 12, 2015	Yes	Relevance

VI. Time Estimate

The Executive Director anticipates that he will need approximately one and a half days to present his case.

VII. Unilateral Pre-Hearing Explanation

Board enforcement staff sent Ms. Gordon's lawyer, Rania Major, a letter on June 25, 2015 explaining that, as per paragraph 6(B) of the Board's supplemental memorandum, by Friday June 10, 2015, the parties were supposed to submit a joint pre-hearing memorandum to the Board. Enforcement staff suggested that the easiest way to collaborate on a joint memorandum would be to meet to discuss its contents. Enforcement staff asked Ms. Major to advise whether she would be free to meet on either July 6, 7, or 8. Ms. Major did not respond to this letter.

Not having heard from Ms. Major, on July 6, 2015, Board enforcement staff called her office and were informed that she was on vacation. Board enforcement staff were eventually able to reach Ms. Major on July 7, 2015. After briefly discussing the case and the status of Ms. Major's representation of Ms. Gordon, enforcement staff asked Ms. Major to let them know by July 9 whether she wanted to submit a joint memorandum. Ms. Major agreed to contact Board enforcement staff by July 9, but has not done so. Therefore, the Executive Director submits this unilateral pre-hearing memorandum

Date:

July 10, 2015

Respectfully submitted,



J. Shane Creamer, Jr., Esq.
Executive Director

Michael J. Cooke, Esq.
Director of Enforcement

Jordan E. Segall, Esq.
Staff Attorney

City of Philadelphia Board of Ethics
1515 Arch Street, 18th Floor
Philadelphia, PA 19102
Phone: (215) 686-9450
Fax: (215) 686-9453

CERTIFICATION OF SERVICE

I, Michael Cooke, hereby certify that on this date I caused a true and correct copy of the foregoing Executive Director's Unilateral Pre-Hearing Memorandum, with Exhibits, to be served upon the following:

By hand delivery and email:

Rania M. Major, Esq.
Rania Major P.C.
2915 North 5th Street
Philadelphia, PA 19133
allcourts@comcast.net

Counsel for Tracey Gordon

By hand delivery:

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

Date:

July 10, 2015

Michael Cooke



CITY OF PHILADELPHIA

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

Confidential

May 21, 2015

Via first-class, certified mail and email

Rania M. Major
2915 North 5th Street
Philadelphia, PA 19133
allcourts@comcast.net

Re: Administrative Adjudication Matter #1412MU14

Dear Ms. Major:

I write regarding the administrative enforcement proceeding that the Board's Executive Director Shane Creamer initiated against Tracey Gordon on December 11, 2014. I was forwarded your May 18, 2015 letter addressed to Board of Ethics Staff Attorney Jordan Segall indicating your intention to enter your appearance on behalf of Ms. Gordon in this matter and requesting a continuance of the hearing scheduled for June 2, 2015. In our phone conversation on May 19, you informed me that you would like the Board to treat your May 18 letter as your entry of appearance, and you provided me an outline of your general schedule in court but did not have your calendar to provide specific dates.

Treating the May 18 letter both as your entry of appearance and as a continuance request submitted to the Board, Chair Reed decided to grant your request for a continuance. Pre-hearing deadlines will also be reset to match the new hearing date. We are in the process of identifying new dates for a hearing. By next Wednesday May 27, 2015, please notify me of any dates from July 27, 2015 through August 21, 2015 that you would be unable to participate in a hearing.

This is the third extension of time that the Board and its Hearing Officer have granted to Ms. Gordon in this matter. On January 6, 2015, Board Hearing Officer Richard Glazer granted Ms. Gordon's request for a 30-day extension to file a written Response in this matter. On March 12, 2015, Chair Reed granted Ms. Gordon a continuance of the hearing which had been scheduled for March 30, 2015. That extension delayed the hearing by 64 days to June 2, 2015. Finally, Chair Reed is granting your request this week for a second continuance of the hearing. It is extremely unlikely that the Board will grant any additional requests.

Re: Administrative Adjudication Matter #1412MU14

May 21, 2015

Page 2 of 3

In administrative enforcement proceedings such as this, Board members act as the adjudicator with the assistance of General Counsel staff and a Hearing Officer. Neither party may engage in a substantive *ex parte* communication with any member of the Board, General Counsel staff, or the Hearing Officer concerning the administrative enforcement proceeding. The Board, General Counsel staff, and Hearing Officer are not informed of communications or possible settlement discussions you and Ms. Gordon may have with enforcement staff. Such discussions with enforcement staff would not relieve the obligation to follow filing deadlines and other procedural requirements set by the Board in this administrative enforcement proceeding.

Board of Ethics Regulation No. 2 and a Board memorandum approved on November 19, 2014 set forth the procedures that govern the Board's administrative adjudication proceedings; I have enclosed both documents with the first-class mailing of this letter. The November 19 memorandum contains important procedures for all phases of administrative enforcement proceedings, including the procedure for submission of filings and the required content of pre-hearing memoranda.

For your convenience, I am enclosing with the first class, certified mailing of this letter a number of previous filings and communications in this matter. I am enclosing copies of the December 11, 2014 Notice of Administrative Enforcement Proceeding with Exhibits and Proof of Service and Ms. Gordon's February 2, 2015 Response to the Notice. Please disregard the reference to a public hearing that appears in the bold text on the first page of the Notice. As described in Board of Ethics Regulation No. 2, Board administrative enforcement proceedings are confidential with closed hearings unless a respondent provides written consent to a public proceeding, which Ms. Gordon has not.

I am also enclosing copies of the following filings and communications in this matter:

- (1) December 12, 2014 introductory letter from General Counsel staff to counsel for Ms. Gordon, Michael Coard, indicating a deadline of December 31, 2014 for Ms. Gordon's Response;
- (2) December 19, 2014 letter from General Counsel staff to Mr. Coard indicating a corrected deadline of January 2, 2015 for Ms. Gordon's Response;
- (3) Letter from Ms. Gordon (dated December 24, 2014, received by Enforcement Staff December 29, 2014, and forwarded to General Counsel staff December 30, 2014) requesting a hearing and an extension of time to submit Response;
- (4) December 30, 2014 email from Mr. Coard requesting a 30-day extension of time to submit Response and December 31, 2014 email from Director of Enforcement Michael Cooke indicating no objection to the request;
- (5) January 6, 2015 letter from General Counsel staff notifying parties that Board's Hearing Officer granted Ms. Gordon's extension request and setting a deadline of February 2, 2015 for Response;

Re: Administrative Adjudication Matter #1412MU14

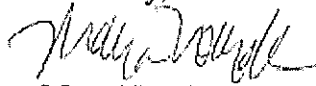
May 21, 2015

Page 3 of 3

- (6) February 2, 2015 email from Mr. Coard to General Counsel Maya Nayak, submitted with Ms. Gordon's Response, withdrawing as counsel in this matter;
- (7) February 5, 2015 email from Mr. Coard to General Counsel Maya Nayak, at Ms. Gordon's request, forwarding a supplement/revision to Response;
- (8) February 6, 2015 letter from General Counsel staff to Ms. Gordon acknowledging receipt of Response and communicating information previously communicated to Mr. Coard;
- (9) February 6, 2015 email from Director of Enforcement Michael Cooke to Hearing Officer Richard Glazer and General Counsel Maya Nayak requesting the Board to approve administrative subpoenas seeking phone records of Ms. Gordon and Leslie Miles.
- (10) Administrative Subpoenas signed February 19, 2015 by Hearing Officer Richard Glazer and February 20, 2015 email from General Counsel Maya Nayak to the parties notifying them that the signed subpoenas are being returned to Director of Enforcement Michael Cooke by hand delivery.
- (11) February 24, 2015 Notice of Hearing scheduling hearing for March 30, 2015 and February 25, 2015 letter from General Counsel staff to Ms. Gordon accompanying the mailing of the hearing notice;
- (12) March 11, 2015 emails from Ms. Gordon requesting a continuance and from Director of Enforcement Michael Cooke opposing a continuance;
- (13) March 12, 2015 letter from General Counsel to Ms. Gordon, with copy to Enforcement Staff, notifying parties that Board's Hearing Officer granted Ms. Gordon's continuance request and enclosing Revised Notice of Hearing rescheduling the hearing for June 2, 2015.

Please include the number that has been assigned to this administrative enforcement matter, #1412MU14, on all filings and communications related to this matter. Contact me with any questions you may have about the Board's administrative enforcement procedures.

Sincerely,



Maya Nayak
General Counsel

cc (via email): Shane Creamer, Executive Director
 Michael Cooke, Director of Enforcement

Enclosures (with first class, certified mailing)



CITY OF PHILADELPHIA

Confidential

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

May 29, 2015

Via first-class, certified mail and email

Rania M. Major
2915 North 5th Street
Philadelphia, PA 19133
allcourts@comcast.net

Via email

J. Shane Creamer, Jr.
Executive Director
Philadelphia Board of Ethics
1515 Arch Street, 18th Floor
Philadelphia, PA 19102

Re: Administrative Adjudication Matter #1412MU14

Dear Ms. Major and Mr. Creamer:

Chair Reed's grant of Ms. Major's May 18, 2015 request for a continuance of the hearing in this matter has necessitated a rescheduling of the hearing. On May 21, 2015, I requested that the parties notify me of any dates from July 27 through August 21, 2015 that you would be unable to participate in a hearing for Ms. Gordon. Mr. Cooke provided dates in response. Ms. Major did not respond to this request about availability and did not notify me of any dates in the timeframe that she would be unable to participate in a hearing. In an earlier phone conversation, Ms. Major had indicated that she often has courtroom appearances on Mondays and early mornings, and we have avoided those times when rescheduling Ms. Gordon's hearing.

Hearing Officer Richard Glazer has rescheduled the hearing to take place August 4 through August 7, 2015, from 11:30am to 5pm each day. A second revised hearing notice is enclosed. The deadline for parties to exchange witness lists and exhibits is Friday, July 3, 2015. The deadline for the parties to submit pre-hearing memoranda to the Board is Friday, July 10, 2015. Please note that these deadlines are earlier than the minimum deadlines indicated in the Board's memorandum on procedures for administrative enforcement proceedings that supplement Regulation No. 2.

Re: Administrative Adjudication Matter #1412MU14

May 29, 2015

Page 2 of 2

Failure to exchange lists of witnesses and exhibits with the opposing party and to submit to the Board a pre-hearing memorandum carries significant consequences:

- (1) Pursuant to Board Regulation No. 2, paragraph 2.17(a)(v), the Executive Director and Ms. Gordon shall not offer any contested evidence at the hearing other than from witnesses and documents identified in the pre-hearing exchanges and pre-hearing memoranda required in paragraph 2.17 of the Regulation. (The Board or its Hearing Officer may grant exceptions for good cause shown.)
- (2) Pursuant to paragraph 6(C) of the Board Supplemental Procedures Memorandum, if the parties cannot agree on the content of a Joint Pre-Hearing Memorandum, each party shall file a Unilateral Pre-Hearing Memorandum that includes all the information required in the Joint memorandum. All facts set forth in the Statement of Undisputed Facts in the Executive Director's Unilateral memorandum will be deemed admitted unless specifically denied by Ms. Gordon in writing no later than seven (7) days after service of the Executive Director's Unilateral memorandum.
- (3) Pursuant to paragraph 6(D) of the Supplemental Procedures Memorandum, any witness or exhibit offered by a party shall be admissible at the hearing, unless a party objects as required in a Joint or Unilateral Pre-Hearing Memorandum.

If you have questions about the Board's administrative enforcement procedures, please let me know.

Sincerely,



Maya Nayak
General Counsel

cc (via email): Michael Cooke, Director of Enforcement

Enclosure

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

J. Shane Creamer, Jr. :
Executive Director :
Philadelphia Board of Ethics :
1515 Arch Street, 18th Floor :
Philadelphia, PA 19102 :

v. :

Tracey Gordon :
6543 Windsor Street :
Philadelphia, PA 19142 :

Respondent :

Matter No. 1412MU14

Date of Second Revised Notice of Hearing:
May 29, 2015

SECOND REVISED NOTICE OF HEARING

In response to Respondent Tracey Gordon's May 18, 2015 request for a continuance in this matter, which Board Chair Michael Reed granted, the Board's Hearing Officer Richard Glazer has rescheduled the hearing to take place August 4, 5, 6, and 7 of 2015, from 11:30am to 5pm each day. Hearing Officer Glazer will schedule additional time as needed to complete the hearing.

The hearing will take place in the conference room at the Office of the Board of Ethics, Room No. 18-009, One Parkway Building, 1515 Arch Street, 18th Floor, Philadelphia, PA 19102.

The deadline for parties to exchange witness lists and exhibits is Friday, July 3, 2015. The deadline for the parties to submit pre-hearing memoranda to the Board is Friday, July 10, 2015.



CITY OF PHILADELPHIA

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

Confidential

July 2, 2015

Via first-class, certified mail and email

Rania M. Major
2915 North 5th Street
Philadelphia, PA 19133
allcourts@comcast.net

Via email

J. Shane Creamer, Jr.
Executive Director
Philadelphia Board of Ethics
1515 Arch Street, 18th Floor
Philadelphia, PA 19102

Re: Administrative Adjudication Matter #1412MU14

Dear Ms. Major and Mr. Creamer:

I am writing to remind you of the upcoming deadlines in this matter. The hearing that Ms. Gordon requested in her February 5, 2015 Response to the Executive Director's Notice is scheduled to take place August 4 through August 7, 2015, from 11:30am to 5pm each day. The deadline for parties to exchange witness lists and exhibits is Friday, July 3, 2015. The deadline for the parties to submit pre-hearing memoranda to the Board is Friday, July 10, 2015.

Failure to exchange lists of witnesses and exhibits with the opposing party and to submit to the Board a pre-hearing memorandum carries significant consequences:

- (1) Pursuant to Board Regulation No. 2, paragraph 2.17(a)(v), the Executive Director and Ms. Gordon shall not offer any contested evidence at the hearing other than from witnesses and documents identified in the pre-hearing exchanges and pre-hearing memoranda required in paragraph 2.17 of the Regulation. (The Board or its Hearing Officer may grant exceptions for good cause shown.)

Re: Administrative Adjudication Matter #1412MU14

July 2, 2015

Page 2 of 2

- (2) Pursuant to paragraph 6(C) of the Board Supplemental Procedures Memorandum, if the parties cannot agree on the content of a Joint Pre-Hearing Memorandum, each party shall file a Unilateral Pre-Hearing Memorandum that includes all the information required in the Joint memorandum. All facts set forth in the Statement of Undisputed Facts in the Executive Director's Unilateral memorandum will be deemed admitted unless specifically denied by Ms. Gordon in a writing filed with the Board no later than seven (7) days after service of the Executive Director's Unilateral memorandum.
- (3) Pursuant to paragraph 6(D) of the Supplemental Procedures Memorandum, any witness or exhibit offered by a party shall be admissible at the hearing, unless a party objects as required in a Joint or Unilateral Pre-Hearing Memorandum.

If you have questions about the Board's administrative enforcement procedures, please let me know.

Sincerely,



Maya Nayak
General Counsel

cc (via email): Michael Cooke, Director of Enforcement



CITY OF PHILADELPHIA

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

Confidential

July 15, 2015

Via E-mail and Hand Delivery

Rania M. Major
2915 North 5th Street
Philadelphia, PA 19133
allcourts@comcast.net

Re: Administrative Adjudication Matter #1412MU14

Dear Ms. Major:

I write regarding your failure to observe two important deadlines in this matter. The deadline for parties to exchange witness lists and exhibits was Friday, July 3, 2015. From the Executive Director's Unilateral Pre-Hearing Memorandum, it appears that you did not exchange a witness list or exhibits with Mr. Creamer. Further, the deadline for the parties to submit pre-hearing memoranda to the Board was Friday, July 10, 2015. To date, we have not received your pre-hearing memorandum.

As we have previously informed you in correspondence dated May 29, 2015 and July 2, 2015, failure to exchange lists of witnesses and exhibits with the opposing party and failure to submit to the Board a pre-hearing memorandum carry significant consequences. Pursuant to Board Regulation No. 2, Paragraph 2.17(a)(v), neither party shall offer any contested evidence at the hearing other than from witnesses and documents identified in the pre-hearing exchanges and pre-hearing memoranda as required in Paragraph 2.17.

I have conferred with Hearing Officer Richard Glazer regarding your failure to provide your witness list and exhibits to Mr. Creamer and your failure to submit a pre-hearing memorandum. Hearing Officer Glazer has determined that you will be precluded from offering any contested evidence at the hearing unless you have identified such witnesses and exhibits in a pre-hearing memorandum that you submit to the Board by **July 22, 2015** via e-mail to diana.lin@phila.gov with a copy to Mr. Creamer at shane.creamer@phila.gov. Pursuant to Paragraph 6(D) of the Supplemental Procedures Memorandum, your pre-hearing memorandum must also contain any objections you have to the witnesses or exhibits the

Re: Administrative Adjudication Matter #1412MU14

July 15, 2015

Page 2 of 2

Executive Director has identified in his Unilateral Pre-Hearing Memorandum, or you will be barred from objecting to any witnesses or exhibits offered by Mr. Creamer at the hearing. In your pre-hearing memorandum, you must clarify whether you intend to utilize the exhibits Tracey Gordon previously provided to Mr. Creamer on May 12, 2015 and to which he has objected in the Executive Director's Unilateral Pre-Hearing Memorandum.

Note that all facts set forth in the Statement of Undisputed Facts in the Executive Director's Unilateral Memorandum served on July 10, 2015 will be deemed admitted unless specifically denied in a writing filed with the Board no later than **July 17, 2015**.

As a final reminder, the hearing in this matter is scheduled to take place August 4 through August 7, 2015, from 11:30am to 5pm each day. If you have questions about the Board's administrative enforcement procedures, please let me know. I will be out of the office from July 20-24, so if you have any questions during this interim, please contact Diana Lin at diana.lin@phila.gov or 215.686.9450.

Sincerely,



Maya Nayak
General Counsel

cc (via email): J. Shane Creamer, Jr., Executive Director
Michael Cooke, Director of Enforcement

PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 2
INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

Table of Contents

Subpart A.	Scope; Definitions.....	pg. 2
Subpart B.	Separation of Functions	pg. 3
Subpart C.	Investigations	pg. 3
Subpart D.	Confidentiality of Complaints and Investigations	pg. 6
Subpart E.	Administrative Enforcement.....	pg. 8
Subpart F.	Judicial Enforcement	pg. 13
Subpart G.	Settlement and Conciliation.....	pg. 14
Subpart G.	Penalties.....	pg. 14

SUBPART A. SCOPE; DEFINITIONS.

2.0 Scope. This Regulation is promulgated by the Board pursuant to its authority under §§ 4-1100 and 8-407 of the Home Rule Charter and § 20-606(1) of the Philadelphia Code and interprets Code §§ 20-606(1)(f)-(k) and 20-606(2) regarding complaints, investigations enforcement proceedings, confidentiality, and related matters.

2.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

- a. Board.** The Board of Ethics and its individual members.
- b. Board Staff.** Employees of the Board of Ethics.
- c. Complainant.** A person who has submitted a complaint to the Board.
- d. Complaint.** A written document submitted to the Board for the purpose of initiating a Board investigation or enforcement action.
- e. Executive Director.** The Executive Director of the Board and his or her designees.
- f. General Counsel.** The General Counsel of the Board and his or her designees.
- g. Investigation.** The Board's inquiry into an alleged violation of the Public Integrity Laws.
- h. Person.** A business, individual, corporation, non-profit, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons.
- i. Public Integrity Laws.** Chapters 20-600, 20-1000, and 20-1200 of the Philadelphia Code and Sections 10-100, 10-102, 10-105, and 10-107 of the Philadelphia Home Rule Charter, and any other matters assigned to the Board by ordinance.
- j. Referral.** Information that a City department or a federal, state, or local governmental entity with civil or criminal enforcement powers, or an employee or representative of any of the foregoing, provides to the Board or Board Staff so they may determine whether a potential violation of the Public Integrity Laws has occurred.
- k. Respondent.** A person against whom the Executive Director has instituted an administrative enforcement proceeding or against whom the Board has instituted a judicial enforcement proceeding.
- l. Subject.** A person who is identified in a complaint, referral, investigation, or preliminary inquiry as having potentially violated the Public Integrity Laws.

SUBPART B. SEPARATION OF FUNCTIONS.

2.2 As required by law, in the context of administrative enforcement proceedings and related investigations the Board shall maintain a separation between the adjudicative functions and the investigatory or prosecutorial functions. In this regard, the individual members of the Board, any Hearing Officer in a particular case, and the General Counsel shall be considered to be part of the “adjudicative function,” and the Executive Director and professional staff or consultants directed by the Executive Director shall be considered to be part of the “investigatory” or “prosecutorial” function.

SUBPART C. INVESTIGATIONS.

2.3 Preliminary Inquiry. The Executive Director may, at his or her discretion, conduct a preliminary inquiry to determine if there is reason to believe a violation of the Public Integrity Laws has occurred. Board and Board staff shall keep preliminary inquiries confidential as required by this Regulation. A preliminary inquiry is not an investigation and is not subject to the disclosure limitations of Paragraph 2.11(a) or the notice provisions of Paragraph 2.6(e).

2.4 Initiation of Investigations. The Executive Director shall have the authority to initiate an investigation upon:

- a. Receipt of a complaint that meets the requirements of Paragraph 2.5;
- b. Receipt of a referral from another government and/or law enforcement agency, if the referral describes a potential violation of the Public Integrity Laws; or
- c. Determining, through a preliminary inquiry, that there is reason to believe a violation of the Public Integrity Laws may have occurred.

An investigation that is not initiated in response to a complaint shall not be subject to the requirements of Paragraph 2.5.

2.5 Complaints.

- a. Any person who believes a violation of the Public Integrity Laws has occurred may submit a written complaint to the Executive Director. A complaint shall:
 - i. Provide the full name and address of the complainant, and identify as the subject of the complaint the person or persons who is alleged to have committed violations of the Public Integrity Laws, including their names and addresses if known; and
 - ii. Contain facts that describe a violation of the Public Integrity Laws and shall include relevant times, places, and names of witnesses, if known.

- b. **Initial Review.** Upon receipt of a complaint, the Executive Director shall review the complaint for substantial compliance with the requirements of Paragraph 2.5(a). If the complaint is in compliance, the Executive Director shall notify the complainant that the complaint has been accepted. If a complaint does not comply with Paragraph 2.5(a), the Executive Director shall dismiss the complaint and shall notify the complainant of dismissal and the reasons therefore.
- c. **De Minimis Complaints.** The Executive Director may dismiss or suspend further processing of a complaint or other investigation if, in his or her judgment, the alleged violation is trivial, typographical or clerical, or in other respects a *de minimis* violation; provided, however, that the Executive Director shall report regularly to the Board on the number and nature of complaints dismissed or suspended under this Paragraph.
- d. **Frivolous Complaints prohibited.** No person shall submit a false or frivolous complaint to the Board. If the Executive Director receives information that a complaint is false or frivolous, he or she may initiate an investigation into the circumstances surrounding the drafting and filing of the complaint.

2.6 Conduct of an Investigation.

- a. **Purpose.** The purpose of an investigation is to determine whether there is probable cause to believe that a violation of the Public Integrity Laws has occurred. An investigation ends when the Executive Director either makes a finding of probable cause or terminates the investigation pursuant to Paragraph 2.6(e) or when the matter is resolved by a settlement agreement approved pursuant to Subpart G.
- b. **General.** An investigation may include, but is not limited to, field investigations and inspections, the issuance of subpoenas, the taking of sworn testimony, requests for the production of documents, interrogatories, requests for admissions, the review of public filings, and other methods of information gathering.
- c. **Subpoenas and Subpoenas Duces Tecum.** The Executive Director or the Board Chair shall have the authority to issue subpoenas and subpoenas duces tecum on behalf of the Board in connection to any investigation conducted pursuant to this Regulation. If any person refuses to comply with a subpoena issued under this Paragraph, or while appearing pursuant to it, refuses to answer any question or produce any records or materials, the Board, by majority vote, may direct the Executive Director to apply for the enforcement of the subpoena in the appropriate Court of Common Pleas.
- d. **Testimony.** The Executive Director shall have the authority to administer oaths and affirmations on behalf of the Board and to take testimony from any person in connection to any investigation conducted pursuant to this Regulation.

- e. **Termination.** The Executive Director shall have discretion to terminate an investigation upon reasonable notice to the Board. If the investigation is based on a complaint meeting the requirements of Paragraph 2.5(a), the Executive Director shall notify the complainant of the termination and the reasons therefore.

If the Executive Director knows that the subject of an investigation was aware of the investigation, he or she shall notify the subject of the termination and the reasons therefore. When notifying a complainant or subject of an investigation of the termination of an investigation, the Executive Director shall inform them that they are no longer bound by the disclosure prohibition of Paragraph 2.11(a).

The Executive Director may notify persons who have provided testimony or other information to the Board during the course of an investigation that the investigation has been terminated and that they are no longer bound by such disclosure prohibitions.

- f. **Referring matters to other government agencies.** The Board or Executive Director may refer any matter related to, or discovered in, an investigation to any other governmental or law enforcement agency as the Board or Executive Director deems appropriate. If the Board deems a potential violation by an officer or employee to be too minor to warrant enforcement by the Board, it may refer the matter to the head of the officer's or employee's agency to take appropriate disciplinary action.

2.7 Retaliation Prohibited. No officer or employee shall discharge, change the official rank, grade or compensation, or deny a promotion of an officer or employee, or threaten to do so, for filing a complaint with or providing information to the Board or Board staff, or for testifying in any Board proceeding.

2.8 Mandatory Cooperation with the Board. All City officers and employees shall cooperate fully with any request of the Board or Board staff made pursuant to the execution of the Board's powers and duties. Failure to cooperate with the Board or Board staff includes:

- a. Refusal to meet with Board staff to provide information related to an investigation or preliminary inquiry;
- b. Responding untruthfully to questions Board staff ask regarding an investigation or preliminary inquiry;
- c. Telling another person not to meet with Board staff or answer questions relating to an investigation or preliminary inquiry;
- d. Directing or suggesting that another person provide false information to the Board or Board staff; or
- e. Destroying evidence related to an investigation or preliminary inquiry.

SUBPART D. CONFIDENTIALITY OF COMPLAINTS AND INVESTIGATIONS

2.9 Board records, reports, memoranda, or files related to a complaint, preliminary inquiry, or investigation shall be confidential and shall not be disclosed, except as provided by this Subpart.

2.10 Confidentiality of complaints and referrals.

- a. **Disclosures by persons other than the Board or Board staff.** A person may disclose his or her intention to file a complaint or make a referral, the fact that he or she has filed a complaint or made a referral, or the substance of the complaint or referral itself.
- b. **Disclosures by the Board or Board staff.** The Board and Board staff shall not disclose the identity of a complainant or the complaint itself unless compelled to do so by court order. The Board and Board Staff may disclose the source of a referral in an approved settlement agreement or in the course of a judicial or administrative enforcement proceeding, appeal, or other legal proceeding, or in a public announcement concerning any of the foregoing.

2.11 Confidentiality of Investigations.

- a. **Disclosures by persons other than the Board or Board staff.** While an investigation is ongoing, a person may not disclose any information or documents related to that investigation that he or she has learned or obtained solely from the Board or Board staff, including the fact that an investigation is ongoing, except as follows:
 - i. A disclosure made for the purpose of seeking the advice of legal counsel;
 - ii. A disclosure made in the course of a judicial proceeding;
 - iii. A disclosure made to a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency;
 - iv. A disclosure made in testimony under oath before a governmental body or court; and
 - v. A disclosure required by law.

A person may disclose information or documents related to an investigation that he or she has obtained from a source other than the Board or Board staff, including the content of any statements he or she has made to the Board or Board staff. Once an investigation has ended, a person may disclose any information about that investigation.

- b. **Disclosures by the Board or Board staff.** The Board and Board Staff shall not disclose or acknowledge at any time any information or documents related to a preliminary inquiry or investigation except as necessary to fulfill their duties or if otherwise required by law. The following are examples of permissible disclosures:
- i. A disclosure made for the purpose of seeking the advice of legal counsel;
 - ii. A disclosure made to a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency;
 - iii. A disclosure made in a referral by the Board to a government agency, as provided in Paragraph 2.6(f);
 - iv. A disclosure made in testimony under oath before a governmental body or court;
 - v. A disclosure made to a complainant, source of a referral, or subject of a complaint, investigation, or preliminary inquiry or his or her legal counsel or agent;
 - vi. A disclosure made to a witness in a preliminary inquiry or investigation or his or her legal counsel or agent;
 - vii. A disclosure made in order to initiate or pursue a judicial enforcement proceeding or in a public announcement concerning a judicial enforcement proceeding; and
 - viii. A disclosure made in an approved settlement agreement or in a public announcement concerning such settlement agreement.

SUBPART E. ADMINISTRATIVE ENFORCEMENT.

2.12 Initiation of an Administrative Enforcement Proceeding. If the Executive Director finds there is probable cause to believe that a violation of the Public Integrity Laws has occurred, and that the matter is appropriate for an administrative adjudication by the Board, the Executive Director shall initiate an administrative enforcement proceeding. The Executive Director shall not engage in any *ex parte* communications with the Board, its General Counsel, or any Hearing Officer appointed by the Board, with respect to a pending administrative enforcement proceeding.

2.13 Notice of Administrative Enforcement Proceeding. To commence the enforcement proceeding, the Executive Director shall serve a Notice of Administrative Enforcement Proceeding ("Notice") on each respondent whom he or she alleges has violated the Public Integrity Laws.

- a. **Contents.** The Notice shall contain the following: (i) a description of the acts and/or omissions of the respondent that form the basis for each alleged violation; (ii) the applicable provisions of law that are alleged to be violated; and (iii) the deadline for the respondent's response required under Paragraph 2.14. The Notice shall inform the respondent of his or her right to request a hearing. The Notice shall also inform respondent that a request for a hearing shall be made in his or her written response to the Notice and that a respondent's failure to request a hearing is a waiver of the right to a hearing as set forth in Paragraph 2.14(c).
- b. **Service.** The Executive Director shall serve the Notice on each respondent by personal service, certified mail, or any other method that provides proof of delivery. The Executive Director may serve a respondent whose address is unknown either by personally delivering the Notice to such respondent, or his or her attorney or agent, or by any means of substituted or constructive service authorized by Pennsylvania statute or civil rule. The Executive Director shall serve a copy of the Notice on the General Counsel.

2.14 Opportunity to Respond. The respondent has the right to respond in writing to the Notice of Administrative Enforcement Proceeding. The response is due within twenty (20) days of the date of service of the Notice, unless, for exigent circumstances, the Board or its Hearing Officer shall fix a shorter time. Upon the request of the respondent, the Board its designee may grant an extension of time to respond to the Notice. A request for an extension shall be in writing and shall set forth the basis for the request.

- a. **Appearance before Board.** If the respondent wishes to appear before the Board to contest the allegations in the Notice, the respondent shall timely request a hearing in his or her response to the Notice. The respondent may be represented by counsel, and may call witnesses and present evidence in his or her defense at such hearing.
- b. **Representation.** If the respondent is represented by counsel, he or she shall so notify the Board and shall provide the General Counsel with counsel's name, address, e-mail address, telephone number, and attorney number.

- c. **Waiver.** A respondent's failure to request a hearing in his or her written response to the Notice is a waiver of the right to a hearing. A respondent's failure to respond in writing to the Notice by the deadline set forth in this Paragraph is a waiver of the right to a hearing. The Board may grant an untimely request for a hearing if such request is made before the Board votes to approve its final determination in the matter as provided in Paragraph 2.20.

2.15 Confidentiality of Administrative Enforcement Proceedings.

- a. The Board's administrative enforcement proceedings shall be confidential with closed hearings, unless the respondent has provided written consent to a public proceeding.
- b. Unless a respondent requests a public proceeding:
 - i. The Board and Board staff shall not make the proceeding public or disclose any information about it except as necessary to carry out their duties. Only persons who are necessary for the proceeding may be present during a hearing.
 - ii. Respondent and respondent's counsel may make such disclosures as are necessary to participate in the proceeding and to seek or provide legal advice or representation. In addition, respondent and counsel may disclose information related to a proceeding that they have obtained from a source other than the Board, Board staff, or the proceeding.
 - iii. A witness may make such disclosures as are necessary to participate in the proceeding or seek legal advice. In addition, a witness may disclose information related to a proceeding that he or she has obtained from a source other than the Board, Board staff, or the proceeding.
- c. If a respondent provides written consent to a public proceeding, it may not be withdrawn. If a respondent consents to a public proceeding, the Board will make all filings in the proceeding public while it is pending and will hold a public hearing.
- d. Once the Board has served notice of its final determination on the respondent, the adjudication is no longer pending and the Board and Board staff, respondents, respondents' counsel, and witnesses may disclose any information about the proceeding. However, the Board and Board staff shall not disclose the identity of a complainant or the complaint itself unless compelled to do so by court order.

2.16 Administrative Enforcement Hearings. The Board may conduct hearings to adjudicate alleged violations of the Public Integrity Laws. A quorum of Board members need not be present for a hearing to proceed. One or more Board members shall preside over all such hearings, and determine the conduct and order of the proceeding. The Board may, however, appoint a Hearing Officer to oversee pre-hearing disclosures, preside over a hearing, and prepare Findings of Fact and Conclusions of Law for the Board's consideration. Respondents to an enforcement proceeding will be afforded a full and fair opportunity to be heard, as set forth below.

- a. **Notice of Hearing.** The Board shall notify the parties of the date and time of the hearing in advance of the hearing. All hearings shall be held at the offices of the Board of Ethics, unless otherwise specified by the Board.
- b. **Oaths and Affirmations.** The Board and its designees shall have the power to administer oaths and take testimony on any matter relevant to the alleged violations that are the subject of the hearing.
- c. **Subpoenas.** The Board and its designees shall have the power pursuant to Charter § 8-409 to issue subpoenas to compel the attendance of witnesses and the production of documents and materials relevant to the alleged violations that are the subject of the hearing. After the Board issues subpoenas for administrative adjudication hearings, the Executive Director and respondents shall have the authority to apply for enforcement of the subpoenas in the appropriate Court of Common Pleas if any person refuses to comply with any such subpoena, or while appearing pursuant to it, refuses to answer any question or produce any records or materials.
- d. **Ex parte communications.** No party shall engage in a substantive *ex parte* communication with any member of the Board (including, for purposes of this subparagraph, the General Counsel and any Hearing Officer) concerning the administrative enforcement proceeding. Communicating with the General Counsel regarding issues such as scheduling is not a substantive *ex parte* communication.
- e. **Resolution of Pre-hearing Matters.** The Board may designate a single Board member or a Hearing Officer to resolve matters related to pre-hearing disclosures and submissions.
- f. **Maintenance of Order.** The Board, or its Hearing Officer, may exclude an individual from a hearing or limit the number of persons attending a hearing as necessary to limit disruption and maintain an orderly and efficient hearing.
- g. **Additional Procedures.*** The Board may approve additional procedures for the conduct and management of administrative enforcement proceedings. Any additional procedures approved by the Board will be provided to the parties in advance of a hearing.

* On November 19, 2014, the Board approved the additional procedures that are described in the document titled "Procedures for Administrative Enforcement Proceedings that Supplement Regulation No. 2," which immediately follows the last page of this copy of the Regulation.

2.17 Discovery.

a. Pre-hearing exchange and submission of information.

- i. At least 21 days prior to the hearing, the Executive Director and the respondent shall exchange the names and addresses of witnesses they plan to call to testify and copies of any documents they intend to offer as evidence.
- ii. At least 14 days prior to the hearing, the Executive Director and respondent shall submit to the Board the names of any witnesses they plan to call to testify and copies of any documents they intend to offer as evidence.
- iii. The Board may approve additional requirements for the pre-hearing submission of information to the Board. Any additional requirements approved by the Board will be provided to the parties in advance of a hearing.
- iv. The Board or its Hearing Officer may, for exigent circumstances, fix a shorter time for the exchange and submission of information described in this Paragraph.
- v. The Executive Director and the respondent shall not offer any contested evidence at the hearing other than from witnesses and documents identified as required by this Paragraph, provided that the Board or its Hearing Officer may grant exceptions for good cause shown.

b. No other discovery. Except for the exchanges of information described in this Paragraph, there shall be no other discovery, unless voluntarily agreed to by the Executive Director and the respondent.

2.18 Examination and Cross-Examination. Witnesses shall testify under oath or affirmation, and shall be subject to reasonable examination and cross-examination. Witnesses shall appear on behalf of or at the invitation or subpoena of the Board or on behalf of the parties to the proceeding.

- a. **Written Testimony.** The Board, or its Hearing Officer, may allow any party or witness to offer testimony in written form. Such written testimony shall be received in evidence with the same force and effect as though it were stated orally at the hearing by the party or witness who has given the evidence, provided that such testimony is sworn under penalty of perjury, and the party or witness is available to appear at the hearing for cross examination as requested by any party to the proceeding.
- b. **Examination of Witnesses by the Board.** Board members, or the Board's Hearing Officer, may ask questions of witnesses at any time.
- c. **Limitation of Witnesses and Examination.** The Board, or its Hearing Officer, may limit the testimony of witnesses whose testimony is cumulative or similar. The Board, or its Hearing Officer, may limit the time to be spent on the direct or cross-examination of a witness or of a party's overall examination and cross examination of witnesses.

2.19 Evidence. The Board, or its Hearing Officer, shall not be bound by technical rules of evidence in administrative enforcement proceedings, and all relevant evidence of reasonably probative value may be received.

- a. **Official Notice.** The Board, or its Hearing Officer, may take official notice of relevant laws, official regulations and transcripts of prior administrative enforcement proceedings; and of judicially cognizable facts, facts of common public knowledge, and physical, technical or scientific facts within the Board's specialized knowledge.
- b. **Documentary Evidence.** The Board, or its Hearing Officer, may accept, at its discretion, copies and excerpts of documents and other records if the original is not in the possession of a party or readily available.

2.20 Final Board Determinations.

- a. After providing the respondent with an opportunity to respond to the Notice of Administrative Enforcement Proceeding and to contest any alleged violations at a hearing conducted pursuant to this Regulation, the Board shall deliberate on the evidence and determine, by a preponderance of the evidence, whether a violation of applicable law has occurred, and whether to assess penalties for any such violations. A determination to find a violation and assess a penalty requires a majority vote of Board members present and voting. A quorum of Board members must participate in the vote on a final determination. The decision of the Board shall be the final agency action.
- b. If the respondent does not request a hearing, the Board may make its final determination based on:
 - i. Undisputed allegations in the Executive Director's Notice of Administrative Enforcement Proceeding; or
 - ii. Evidence submitted by the Executive Director in support of the Notice of Administrative Enforcement Proceeding, including but not limited to deposition transcripts, documents, and affidavits or declarations.
- c. The Board shall serve notice of the final determination on the respondent by any method identified in Paragraph 2.13(b).

2.21 Publication of Final Determinations. The Board shall make its final determination public, including all adjudication filings and the hearing transcript. The Board shall not make public internal documents concerning the adjudication, such as internal legal memoranda drafted by General Counsel staff for the Board or by Enforcement staff for the Executive Director. The Board and Board staff shall not disclose the identity of a complainant or the complaint itself unless compelled to do so by court order.

SUBPART F. JUDICIAL ENFORCEMENT

2.22 Scope. This Subpart shall apply to enforcement actions initiated by the Board in the Court of Common Pleas.

2.23 Request for Authorization of Judicial Enforcement. If the Executive Director finds there is probable cause to believe that a violation of the Public Integrity Laws has occurred, and that the matter is appropriate for judicial enforcement, then the Executive Director shall present the Board with the allegations and an explanation of his or her finding of probable cause and request authorization from the Board to initiate judicial enforcement.

2.24 Opportunity to Address the Board. The Executive Director shall notify the subject of the finding of probable cause by the Executive Director and shall provide him or her with the allegations submitted to the Board pursuant to Paragraph 2.23. The Executive Director shall inform the subject that he or she may appear at the next public meeting of the Board to address the Board and respond to the allegations.

The provisions of Paragraph 2.24 shall not apply to actions to enforce a subpoena issued by the Board or to actions seeking emergency relief.

2.25 Board Action on Request for Authorization of Judicial Enforcement. After reviewing the allegations submitted by the Executive Director and considering the information, if any, provided by the subject, the Board shall:

- a. Reject the Executive Director's finding of probable cause and direct that the matter be dismissed;
- b. Direct the Executive Director to initiate judicial enforcement; or
- c. Determine that the matter is appropriate for administrative enforcement and direct the Executive Director to proceed under Subpart E of this Regulation, but only if the subject consents, in writing, to the matter being so resolved and agrees to waive any due process challenge based on the commingling of adjudicatory and prosecutorial functions arising from prior consideration of or exposure by any member of the Board or its staff to the relevant facts, allegations, or legal theories.

The Board shall notify the subject of its decision regarding the Executive Director's request for authorization of judicial enforcement.

SUBPART G. SETTLEMENT AND CONCILIATION

2.26 Settlement negotiations. At any time, the Executive Director may seek to settle a matter that is the subject of an investigation or enforcement proceeding.

2.27 Settlement Agreement. The Board and a subject of an investigation or a respondent to administrative or judicial enforcement may agree to enter into a written settlement agreement resolving violations of the Public Integrity Laws. The Executive Director shall submit a proposed settlement agreement to the Board in writing with a copy provided to the subject of the investigation or the respondent to the administrative or judicial enforcement. A proposed settlement agreement must be signed by both the Executive Director and the subject or respondent before being submitted to the Board for approval. The adoption of a settlement agreement is entirely within the discretion of the Board. A settlement agreement is not binding until it is signed by the subject or respondent and the Executive Director and approved by a majority vote of the Board. All approved settlement agreements shall be made available to the public.

SUBPART H. PENALTIES

2.28 Any person who does not comply with Subpart D or Paragraphs 2.5(d), 2.7, 2.8, or 2.15 of this Regulation shall be subject to a civil penalty of \$1,000, which may be increased \$2,000 if aggravating factors are present or decreased to \$250 if mitigating factors are present, as set forth in Code Chapter 20-1300.

Initially approved for public comment by Board on April 17, 2007
Public Hearing held on June 19, 2007
Adopted by Board, with modifications on June 26, 2007
Effective July 12, 2007

Proposed amendments approved for public comment by the Board on December 16, 2009
Public Hearings held on January 20, 2010 and February 17, 2010
Adopted by Board, with modifications on February 17, 2010
Effective February 28, 2010

Proposed amendments approved for public comment by the Board on May 21, 2014
Posted at Department of Records on May 27, 2014
Public Hearing held on July 16, 2014
Adopted by Board, with modifications on August 6, 2014
Effective August 18, 2014



**CITY OF PHILADELPHIA
BOARD OF ETHICS**

One Parkway Building, 18th Floor
1515 Arch Street
Philadelphia, PA 19102
(215) 686-9450

Procedures for Administrative Enforcement Proceedings that Supplement Board Regulation No.2

The following procedures for Board of Ethics administrative enforcement proceedings supplement the requirements and procedures described in Board Regulation No. 2 (“Investigations and Enforcement Proceedings”) at Subpart E. These additional procedures have been approved by the Board pursuant to Regulation No. 2 Paragraphs 2.16(g) and 2.17(a)(iii). The terms used here have the same meaning as in Regulation No. 2, and the Executive Director and respondent are referred to as the parties. To understand the procedures required for Board of Ethics administrative enforcement proceedings, it is important to read Regulation No. 2 Subpart E as well as this memo. Please contact the Board’s General Counsel with questions regarding these procedures.

1. Submission of Filings to the Board. Filings shall be submitted to the Board as follows:

- i. By email as a PDF less than five megabytes in size to the Board’s General Counsel, Maya Nayak (maya.nayak@phila.gov), with a copy to the Board’s Clerical Assistant, Hortencia Vasquez (hortencia.vasquez@phila.gov); or
- ii. By mail to General Counsel Maya Nayak, City of Philadelphia Board of Ethics, 1515 Arch Street, 18th floor, Philadelphia, 19102.

Filings shall be received by the Board (not merely be postmarked) by the date due. All filings submitted to the Board must simultaneously be served on the opposing party. Filings shall include a signed certificate of service that indicates the date and method of service on the opposing party. Service may be made upon opposing counsel by email. The parties shall not send filings directly to individual Board members.

2. Requests for Extension of Time. A party may be granted an initial extension for the submission of a filing upon written request that alleges good cause for an extension and that is filed at least four days prior to a deadline. A Hearing Officer or the General Counsel (if a Hearing Officer has not been appointed) may grant an initial extension of up to 30 days to a party for good cause shown. The Board Chair may grant further extension if extraordinary circumstances are demonstrated by a party in a written request that is filed at least four days prior to the extended deadline. Extensions granted will correspondingly advance other administrative enforcement proceeding deadlines.

3. Format of Notice of Administrative Enforcement Proceeding. The allegations in the Notice of Administrative Enforcement Proceeding (the "Notice") shall be set forth in consecutively numbered paragraphs.

4. Format of Response to Notice of Administrative Enforcement Proceeding. A Response to the Notice of Administrative Enforcement Proceeding shall be set forth in consecutively numbered paragraphs that admit or deny each allegation in the corresponding numbered paragraphs of the Notice. A respondent may provide any additional facts that are relevant to the respondent's defense.

5. Briefs by the Executive Director and Respondent. If a respondent does not request a hearing, the Executive Director may file a brief in support of the Notice of Administrative Enforcement Proceeding. The Executive Director may attach to the brief exhibits such as deposition transcripts, documents, affidavits or declarations. The Executive Director's brief shall be filed within 14 days of the date that respondent's Response to the Notice was due. A respondent may file a brief in response within 14 days of service of the Executive Director's brief.

6. Pre-Hearing Matters.

A. Exchange of witness lists and exhibits. At least 21 days prior to the hearing, the parties shall exchange a list of witnesses they each intend to call to testify and copies of exhibits they intend to offer as evidence at the hearing.

B. Joint Pre-Hearing Memorandum. At least 14 days prior to the hearing, the parties shall file a joint Pre-Hearing Memorandum that shall contain the following information:

- i. A Statement of Undisputed Facts, in numbered paragraphs;
- ii. The name, address, and telephone number of each person each party intends to call as a witness. The parties shall identify those witnesses whose appearance at the hearing they wish the Board to compel by subpoena;
- iii. Any witness to whom a party objects, the nature of the objection, and the opposing party's response to the objection;
- iv. A list of exhibits that the parties agree may be admitted;
- v. A list of exhibits to which either party objects, the nature of the objection, and the opposing party's response to the objection; and
- vi. An estimate of the time each party believes will be necessary to present its case at the hearing.

C. Unilateral Pre-Hearing Memorandum. If the parties cannot agree on the content of a Joint Pre-Hearing Memorandum, then at least 14 days prior to the hearing each party shall file a Unilateral Pre-Hearing Memorandum that includes all the information required by Subparagraph 6.B as well as an explanation of why the parties did not file a Joint Pre-Hearing Memorandum. All facts set forth in the Executive Director's Statement of Undisputed Facts will be deemed to be admitted unless specifically

denied by the respondent in writing no later than seven days after service of the Executive Director's Unilateral Pre-Hearing Memorandum.

D. Failure to object leads to admissibility of witness or exhibit. Any witness or exhibit offered by a party shall be admissible at the hearing, unless a party objects as required by Subparagraphs 6.B.(iii) & (v) in a Joint or Unilateral Pre-Hearing Memorandum.

E. Issuance and Service of Subpoenas. The Board, Board Chair, or a Hearing Officer may issue subpoenas. The subpoenas that are issued will be provided to the requesting party who shall be responsible for service of the subpoenas.

7. Order of Presentation. The order of presentation at the hearing shall be as follows:

- a. Opening statements
 - i. Executive Director
 - ii. Respondent
- b. Presentation of facts: witnesses & exhibits
 - i. Executive Director
 - ii. Respondent
- c. Summation
 - i. Executive Director
 - ii. Respondent

8. Opening Statements and Summation. Opening statements shall be limited to 10 minutes per party. Summation shall be limited to 20 minutes per party. The Board or its Hearing Officer may increase the amount of time available for opening statements or summation at the request of a party.

9. Transcripts. The General Counsel will provide a copy of the hearing transcript to the parties.

10. Proposed Findings of Fact and Conclusions of Law. Each party may file proposed findings of fact and conclusions of law after the hearing has concluded. Proposed findings of fact and conclusion of law shall be set forth in numbered paragraphs and shall be filed within seven days of the General Counsel transmitting the hearing transcript to the parties. A party shall support each proposed finding of fact by citing to a specific part of the record of the administrative enforcement proceeding, which includes filings, the hearing transcript, and hearing exhibits, unless the fact is undisputed.

The Board's Administrative Enforcement Proceedings Are Confidential. The City Code requires that the Board's administrative enforcement proceedings, including filings and testimony, are confidential while pending unless the respondent provides written consent to a public proceeding. Paragraph 2.15 of Regulation 2 describes the confidentiality requirements with which the Board, the parties, and all witnesses must comply.

Approved by the Board on: November 19, 2014