

Diana Lin

From: Diana Lin
Sent: Wednesday, August 12, 2015 9:53 AM
To: 'reachingback@aol.com'; Shane Creamer
Cc: Maya Nayak; Michael Cooke; Jordan Segall
Subject: Administrative Adjudication Matter #1412MU14
Attachments: Letter to T Gordon and S Creamer re Procedures Encl Transcript 08 12 2015.pdf

Dear Parties,

Please find attached a letter outlining procedures to follow going forward in Administrative Adjudication Matter #1412MU14. Please let me know if you have any questions.

Sincerely,
Diana Lin

Diana J. Lin, Esq.
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City of Philadelphia Board of Ethics
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CITY OF PHILADELPHIA

BOARD OF ETHICS
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(215) 686 - 9450
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Confidential

August 12, 2015

Via first-class, certified mail and email (reachingback@aol.com)

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

Via email (shane.creamer@phila.gov)

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. Gordon and Mr. Creamer:

Please allow this letter to confirm the procedures to be followed in the above-referenced matter as described to the parties by Hearing Officer Glazer on August 4, 2015. On August 4, 2015, Ms. Gordon refused to proceed with the hearing that she had requested and therefore waived her right to a hearing in this matter.

As a result, going forward, the following procedures based on the Board's Supplemental Procedures Memorandum at Paragraph 5 apply and must be followed:

1. General Counsel staff will obtain and send to the parties a transcript of the August 4, 2015 proceeding. ***A transcript of the proceeding is enclosed;***
2. The Executive Director may file a brief with supporting exhibits (including but not limited to deposition transcripts, documents, affidavits, and declarations) in support of the Notice of Administrative Enforcement Proceeding within 14 days from the date of receipt of the transcript. The Executive Director's brief with supporting exhibits shall be due on or before August 26, 2015;

Re: Administrative Adjudication Matter #1412MU14

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3. Respondent Gordon may file a brief with supporting exhibits (including but not limited to deposition transcripts, documents, affidavits, and declarations) in response to the Executive Director's brief within 14 days from service of the Executive Director's brief;
4. The Board will make its final determination of whether a violation of City ethics laws has occurred and whether to assess penalties for any such violations based on the parties' filings, including the Notice of Administrative Enforcement Proceeding, Respondent's Response to the Notice of Administrative Enforcement Proceeding, undisputed allegations in the Executive Director's Notice of Administrative Enforcement Proceeding, and any briefs and exhibits filed by the parties as described above.

The Board will serve notice of its final determination on the parties. The final determination of the Board shall be the final agency action.

Please let Maya Nayak (maya.nayak@phila.gov) or me know if you have any questions regarding the Board's procedures in administrative enforcement proceedings.

Sincerely,



Diana Lin
Associate General Counsel

cc (via email): Maya Nayak, General Counsel
 Michael Cooke, Director of Enforcement
 Jordan Segall, Staff Attorney

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. :MATTER NO. 1412MU14
:
Tracey Gordon :
6543 Windsor Street :
Philadelphia, PA 19142 :
Respondent :

TRANSCRIPT OF HEARING, taken by and before
ERICA CRAGER HEARN, Court Reporter and Notary
Public, at the CITY OF PHILADELPHIA, BOARD OF
ETHICS, Conference Room 18-009, 1515 Arch Street,
18th Floor, Philadelphia, Pennsylvania, on
Tuesday, August 4, 2015, commencing at 11:45 a.m.

- - -
ERSA COURT REPORTERS
30 South 17th Street
United Plaza - Suite 1520
Philadelphia, PA 19103
(215) 564-1233

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A P P E A R A N C E S:

HEARING OFFICER:

RICHARD GLAZER

GENERAL COUNSEL STAFF:

MAYA NAYAK, General Counsel

DIANA LIN, Associate General Counsel

AYODEJI PERRIN, Staff Attorney

ENFORCEMENT STAFF:

J. SHANE CREAMER, JR., Executive Director

MICHAEL J. COOKE, Director of Enforcement

JORDAN SEGALL, Staff Attorney

BRYAN MCHALE, Public Integrity

Compliance Specialist

RESPONDENT:

TRACEY GORDON

ALSO PRESENT:

ANDRE SAWYER

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HEARING OFFICER GLAZER: My name is Richard Glazer. I'm the Hearing Officer in the matter number 1412MU14, J. Shane Creamer, Jr., Executive Director of Philadelphia Board of Ethics versus Tracey Gordon.

This hearing was called today for 11:30. It is presently 11:45 and we are going to call the Respondent, Tracey Gordon, at telephone number 267-235-0091.

Thank you.

(At this time, a short recess was taken after which hearing was recommenced.)

HEARING OFFICER GLAZER: Would you identify yourself for the record and tell us what you just did, please?

MR. PERRIN: Yes, my name is Ayodeji Perrin. I'm a Board of Ethics staff attorney.

I just telephoned Tracey Gordon at the phone number that we have on file for her. I also sent her an email, copied the parties, and general counsel staff on

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1 the email asking her for her status with
2 regard to this hearing. I asked her to
3 phone the Board of Ethics and inform The
4 Board of her status when she receives the
5 message.

6 HEARING OFFICER GLAZER: Mr.
7 Perrin, was there any response other
8 than voicemail or was there voicemail on
9 the number that you called?

10 MR. PERRIN: Her voicemail box
11 was full. I wasn't able to leave a
12 message, and so, hence, she didn't answer,
13 obviously, but got me to the voicemail.

14 HEARING OFFICER GLAZER: Thank
15 you.

16 Off the record.

17 (At this time, a short recess was
18 taken after which the hearing
19 recommenced.)

20 HEARING OFFICER GLAZER: Back on
21 the record.

22 Mr. Perrin, would you please say
23 for the record what you had just done.

24 MR. PERRIN: I did reach

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1 Ms. Gordon by telephone. She said she was
2 confused with her dates and she thought
3 the hearing began tomorrow. She said she
4 would be able to attend the hearing today
5 at 2:00 p.m., if it was possible to
6 postpone the hearing. She is for sure
7 available tomorrow because that's the day
8 she thought the hearing began.

9 HEARING OFFICER GLAZER: Okay.
10 Still on the record, please.

11 Any thoughts from the Executive
12 Director?

13 MR. COOKE: Thank you,
14 Mr. Hearing Officer.

15 Michael Cooke, Director of
16 Enforcement, on behalf of the Executive
17 Director.

18 We are, of course, prepared to
19 proceed. We have witnesses who are
20 currently waiting. We don't want to do
21 anything that might jeopardize the
22 attendance of witnesses and, therefore,
23 would be reluctant to delay the beginning
24 of the hearing. And we certainly

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1 understand if we're talking about a brief
2 stay of an hour or two to allow her to be
3 here, we can probably be amenable to that.
4 I have to say that we're skeptical that
5 Ms. Gordon will actually appear today,
6 tomorrow or any other day, and, of course,
7 are not thrilled about postponements that
8 might cause damage to our ability to put
9 on our case.

10 HEARING OFFICER GLAZER: Thank
11 you.

12 (A discussion was held off the
13 record.)

14 HEARING OFFICER GLAZER: Back on
15 the record, please.

16 The Hearing Officer is inclined
17 to grant the brief delay until 2:00.

18 I would just ask the Executive
19 Director if there are any of his proposed
20 witnesses that would not be able to
21 testify because of the passage of time
22 between now and 2:00?

23 MR. COOKE: Well, we have two
24 witnesses that are here right now and we

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1 can go ask them if that would, you know,
2 affect their availability in any way and
3 then come back and let you know.

4 HEARING OFFICER GLAZER: Okay.
5 Please.

6 MR. COOKE: Actually, we've got,
7 three of the witnesses here; one of them
8 I'm sure, will be available, though, since
9 he is a staff member.

10 Thank you.

11 (A discussion was held off the
12 record.)

13 HEARING OFFICER GLAZER:
14 Mr. Cooke, have you had a chance to speak
15 to your witnesses?

16 MR. COOKE: Yes, thank you,
17 Mr. Hearing Officer.

18 We have spoken with both of our
19 witnesses. They are both available at
20 2:00 and would be able to return at that
21 time.

22 HEARING OFFICER GLAZER: Okay.
23 I'm instructing Mr. Perrin to contact
24 Ms. Gordon and advise her that we will

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1 proceed at 2:00, and that if she does not
2 show up at 2:00, she will be deemed to
3 have waived her right to a hearing.

4 MR. COOKE: So, a couple of
5 questions: One is what will happen if
6 Mr. Perrin is unable to reach her?

7 HEARING OFFICER GLAZER: He will
8 be sending an email.

9 MR. COOKE: The other is, I would
10 say that -- or the Executive Director's
11 position or preference would be that if
12 Ms. Gordon does not appear at 2:00, that
13 we begin the hearing. We have witnesses
14 that we would like to put on. We feel
15 it's important for us to have their
16 testimony be part of the record, given
17 that Ms. Gordon has filed an answer that
18 denies many of the allegations in the
19 Notice, so we can't rest on the Notice
20 itself.

21 We would propose that if we began
22 the hearing today and she came tomorrow,
23 there would be nothing to bar her from
24 joining the hearing at that point and to

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1 cross-examine whoever is being called that
2 day by the Executive Director, or put on
3 her own case if she chooses to. Just to
4 share with you what our thoughts on that
5 are, not that she would, by failing to
6 appear at 2:00 today, have fully waived
7 the right or ability to appear at the
8 hearing.

9 HEARING OFFICER GLAZER: We
10 anticipated that you might take that
11 position, and we are going to confer to
12 see whether the failure to appear is
13 tantamount to a waiver of the hearing.

14 MR. COOKE: Such that we would
15 not be able to conduct one?

16 HEARING OFFICER GLAZER: That's
17 correct.

18 MR. COOKE: Okay.

19 HEARING OFFICER GLAZER: We would
20 work under Board Reg 2, Supplemental
21 Procedures Memorandum Section 5, which
22 talks about filing a Brief in Support of
23 the Notice in lieu of a hearing. But
24 we're going to confer on that should

1 that --

2 MR. COOKE: I would just note
3 that if the Executive Director was unable
4 to present testimony through witnesses
5 tomorrow, especially witnesses -- the
6 witness -- one witness in particular who
7 is called tomorrow, I believe it would
8 impair our ability to make that witness's
9 testimony part of the record as I am
10 concerned about ability to obtain that
11 witness's testimony, either in Affidavit
12 or Declaration form, such that it could be
13 submitted with a brief.

14 HEARING OFFICER GLAZER: But you
15 would have been in that same position
16 should a hearing not have been requested
17 by the Respondent.

18 MR. COOKE: Potentially.

19 HEARING OFFICER GLAZER: Yes.

20 MR. COOKE: But we do have the
21 witness committed to appear tomorrow, and
22 so our view is that we are reluctant to
23 relinquish the opportunity to take her
24 testimony under oath.

1 The other thing I wanted to ask,
2 if I may, is we do have some prehearing
3 administrative matters we wanted to raise
4 with the Hearing Officer. I'm certainly
5 happy to wait until 2:00 to do that, but
6 to also ask, you know, in the interest of
7 efficiency, if we could raise any of that
8 now.

9 HEARING OFFICER GLAZER: I'm
10 reluctant to proceed without Respondent
11 present.

12 As far as preserving this
13 witness's testimony, the witness is under
14 subpoena?

15 MR. COOKE: The witness is not.

16 HEARING OFFICER GLAZER: Not
17 under subpoena, but the witness, as you
18 understand it, will be present?

19 MR. COOKE: Yes.

20 This is a witness that we tried
21 to serve and were unable to do so, but
22 that we spoke with yesterday, Susan
23 McCall, and she said that she would avoid
24 being served with a subpoena, but promised

1 that she would, in fact, be here tomorrow.

2 HEARING OFFICER GLAZER: Well, if
3 you choose to take the route that the
4 failure to appear is a waiver, then you
5 would obviously have the ability to depose
6 her.

7 MR. COOKE: We can try.

8 HEARING OFFICER GLAZER: Yes.

9 Thank you.

10 (At this time, a short recess was
11 taken at 12:18 p.m. The hearing
12 recommenced at 2:04 p.m.)

13 (At this time, Tracey Gordon and
14 Andre Sawyer joined the hearing.)

15 MR. COOKE: Just note, Mr. Sawyer
16 is not an attorney and given the
17 confidentiality requirements of the
18 Board's Regulation No. 2, I'm not sure
19 that -- it doesn't seem to me that the
20 regulation provides for the participation
21 in an Administrative Adjudication Hearing,
22 of someone, you know, who is not counsel
23 to the Respondent.

24 HEARING OFFICER GLAZER: Ms.

1 Gordon, on the record, would you address
2 Mr. Cooke's concern about Mr. Sawyer's
3 presence?

4 Could you tell us why he is here
5 and what assistance, if any, he's going to
6 help you with?

7 MS. GORDON: Yes. He's a very,
8 very close friend and confidant of mine,
9 and he's just coming for support services
10 because I don't have anyone here to be
11 able to support me, such as an attorney.
12 So, he has -- I give him permission to
13 hear anything there is to be heard about
14 the case. He knows everything about the
15 case already because he's been one that I
16 confide in as well.

17 HEARING OFFICER GLAZER:
18 Mr. Sawyer, we are going to explain in a
19 few minutes some of the responsibilities
20 of people who are present at these types
21 of hearings.

22 MR. SAWYER: Okay.

23 HEARING OFFICER GLAZER: The one
24 that would be most pertinent to you would

1 be this issue of confidentiality.

2 MR. SAWYER: Understood.

3 HEARING OFFICER GLAZER: And the
4 question that I would like you to address
5 is that are you willing to fulfill that
6 obligation of maintaining confidentiality
7 of these proceedings with respect to
8 communicating with anyone outside?

9 MR. SAWYER: Affirm.

10 HEARING OFFICER GLAZER: You
11 agree?

12 MR. SAWYER: Yes.

13 HEARING OFFICER GLAZER: Okay.
14 I'm going to be explaining that in a
15 little more detail later.

16 Any objections, Mr. Cooke?

17 MR. COOKE: No, that's fine.

18 HEARING OFFICER GLAZER: Okay.

19 Ms. Gordon, if you wanted to say something
20 before we started.

21 MS. GORDON: Yes, sir.

22 First, I would like to apologize.
23 I actually got the date mixed up and I had
24 something personal to do, and when I

1 called, I made sure I got down here. So,
2 I want to apologize to you. I wasn't
3 disrespecting your court and I wasn't
4 disrespecting the counsel over here.

5 I have tried to attain -- retain
6 two attorneys on two occasions. One was
7 too busy and the other one was on
8 vacation, and when she gave me the price,
9 it was just like way over my head because
10 of my financial situation.

11 When looking at this case, the
12 only way I would be able to prove my
13 innocence is being able to have an
14 attorney to be able to sort out the
15 technicalities that I've been given by the
16 Board of Ethics.

17 So, I would like to read this
18 statement because I would like -- I don't
19 feel that it's in my constitutional best
20 interest to go about a hearing without
21 having an attorney with me who would
22 thereby be able to get proof of things of
23 the circumstances based on this hearsay.

24 So, I would like to just read

1 this statement that I'm currently
2 petitioning the Board of Ethics of the
3 City of Philadelphia to afford me the
4 opportunity to legal representation as a
5 result of my current indigent disposition,
6 because the current process is
7 unconstitutional and doesn't allow due
8 process.

9 My inability not to obtain
10 comprehensive counsel is a direct result
11 of the legal termination by the Singer
12 Administration. As noted in official City
13 documents, all of the charges carry a fine
14 of no more than \$300 for termination. I
15 continue to dispute the charges as being
16 politically generated and without merit,
17 but my current financial status impedes my
18 ability to address and challenge the
19 charges with capable representation.

20 Under the report issued by the
21 Task Force and Advisory Committee on
22 Services to Indigent Defendants called A
23 Constitutional Default, Services to
24 Indigent Defendants 2011, it clearly

1 states in the landmark case of Gideon vs.
2 Wainwright, the U.S. Supreme Court ruled
3 that free counsel for criminal and civil
4 defendants who cannot afford to hire an
5 attorney is mandated upon by the 6th
6 Amendment of the United States
7 Constitution.

8 Justice Hugo Black explained why
9 this conclusion is necessary if the courts
10 of this nation are to adhere to genuine
11 justice.

12 These reflections require us to
13 recognize that it is our adversary system
14 of criminal and civil justice. Any person
15 haled into court, who is too poor to hire
16 a lawyer, cannot be assured a fair trial
17 unless counsel is provided for him or her.
18 This seems to us to be an obvious truth.
19 Governments, both state and federal, quite
20 properly spend vast sums of money to try
21 defendants accused of a crime. Lawyers
22 to prosecute are everywhere deemed
23 essential to protect the public's interest
24 in an orderly society. Similarly, there

1 are a few defendants charged with crime,
2 few indeed, who fail to hire the best
3 lawyers they can get to prepare and
4 present their defenses. That government
5 hires lawyers to prosecute and defendants
6 who have the money hire lawyers to defend
7 are the strongest indications of the
8 wide-spread belief that lawyers in
9 criminal courts are necessities, not
10 luxuries. The right of one charged with
11 crime to counsel may not be deemed
12 fundamental and essential to fair trials
13 in some countries, but it is in ours.

14 The United States Supreme Court
15 has subsequently extended the requirement
16 of free counsel from the felony
17 prosecution involved in Gideon to civil
18 and misdemeanor prosecutions and juvenile
19 proceedings and from the trial -- trial
20 itself to all critical proceedings.

21 I would like to schedule a date
22 and time to further discuss how legal
23 representation will be afforded in my case
24 and how I can continue to look for,

1 because I have been diligently looking for
2 legal counsel -- sorry, I'm so nervous.

3 I was approached by counsel to
4 take a plea, an agreement, to drop all the
5 charges except one, and the one charge
6 that they wanted me to keep was the one
7 that would be most damaging to my
8 reputation. Because my reputation is
9 community service, and this one charge is
10 a charge that's really based on hearsay, I
11 rejected that. I rejected that because I
12 felt like I didn't do it. And I'm not
13 going to plead guilty based on a plea deal
14 for something that I didn't do.

15 So right now, I'm nervous. I
16 can't -- I can't go up with a machine of
17 attorneys without having an attorney for
18 myself and I do think that it is my right.

19 Now, I don't know all the
20 requirements that's going on, but I did
21 try my best and I do have a letter where
22 Michael Cooke even said, himself, that I'm
23 not going to be able to find an attorney
24 for this case, and I didn't understand

1 where that came from, because everybody
2 should be able to find an attorney. The
3 problem is would everybody be able to
4 afford an attorney.

5 So, in all due respect to you,
6 your time and The Court, I do not want to
7 proceed with this because it's like
8 hanging a noose around my neck to proceed
9 in a trial when I don't have expert advice
10 on what to say, what not to say, how to do
11 deposition. I even tried to research to
12 see how I could do my own deposition. I
13 didn't have access to witnesses that I
14 felt that could have come in here and
15 could defend my reputation.

16 So, at this point, I just want to
17 come and pay respect. I don't know the
18 process, but I am in no position to
19 proceed with this procedure without an
20 attorney.

21 HEARING OFFICER GLAZER: Thank
22 you.

23 MS. GORDON: Thank you.

24 HEARING OFFICER GLAZER:

1 Mr. Cooke.

2 MR. COOKE: Thank you,
3 Mr. Hearing Officer.

4 We note that, in fact, what
5 Respondent Gordon has requested is another
6 continuance to allow her time to find an
7 attorney. The Board rejected her most
8 recent request along those lines and we
9 opposed it as well.

10 We certainly sympathize with
11 Ms. Gordon's desire to be represented by
12 counsel. We would certainly prefer that
13 she was represented by counsel at the
14 hearing, but the unfortunate reality is,
15 based on our experience with this
16 particular proceeding, we are very
17 skeptical that Ms. Gordon would, in fact,
18 be able to retain counsel. This matter
19 was initiated in December of last year,
20 that is over eight months ago, that is an
21 extensive amount of time in which to find
22 an attorney to represent her. There have,
23 in fact, been at least two attorneys who
24 have entered their appearance in this

1 matter and subsequently withdrawn. We
2 don't have confidence that if the matter
3 was to be continued indefinitely until
4 Ms. Gordon was able to be represented by
5 counsel, that the matter would, in fact,
6 ever go forward. We, of course, are
7 keenly sympathetic to the difficult
8 circumstances for folks who are unable to
9 afford representation in a civil context
10 and do not wish to down-play the
11 seriousness of that difficulty that
12 Ms. Gordon faces, and note, of course,
13 that Gideon vs. Wainwright only applied to
14 representation in a criminal context.
15 While The Courts have extended the right
16 to counsel in some circumstances in the
17 civil context, an Administrative
18 Proceeding of The Board is not one of
19 them. There is not an obligation of the
20 State to provide counsel to Ms. Gordon in
21 a hearing such as this, or to decline to
22 prosecute that matter if she is not
23 represented.

24 So, for those reasons, we would

1 continue to oppose the request for the
2 continuance.

3 I do want to make a final point
4 to correct what I believe is a
5 misunderstanding or misrepresentation by
6 Ms. Gordon. At no point has Enforcement
7 staff offered a settlement that would
8 involve dropping all of the charges
9 against her but one. We, of course, are
10 always open to settlement discussions, but
11 that is not at all something that we have
12 discussed with her as the specifics that
13 she outlined.

14 So, I'll just conclude there and
15 say, again, it is with regret that we feel
16 that we must oppose her request for a
17 continuance at this time.

18 MS. GORDON: Can I say one more
19 thing?

20 HEARING OFFICER GLAZER: Yes.

21 MS. GORDON: Okay. I understand
22 that when -- when -- when this case first
23 came up, before the investigation even
24 took place, I was automatically suspended

1 without pay. After the findings from The
2 Board, before I appealed them, the
3 recommendations from The Board was fines.
4 I was terminated.

5 So, I'm not asking for sympathy,
6 but imagine you don't have pay and you
7 have a house, and you have electric and
8 bills that you have to pay, so it's easy
9 to say I have enough time to get
10 attorneys, but attorneys that you hire
11 have to feed their families as well. And
12 just because I don't have an attorney does
13 not mean I'm guilty.

14 I'm saying -- I'm asking The
15 Court could they afford me an attorney,
16 because my circumstances is now currently
17 I don't even get Unemployment. I am
18 currently on public assistance. And so I
19 am not looking for sympathy -- sympathy or
20 a handout, I'm looking for consideration
21 that they got two binders full of
22 allegations that they were willing to
23 throw out all of them except one, and the
24 one that they wasn't willing to throw out

1 was most damaging to my reputation.

2 Because I am a community leader in my
3 community, when you Google my name the
4 first thing that comes up is a mean
5 picture of me violating ethics, and to the
6 public, that looks like I'm guilty, even
7 though I haven't even gotten a chance to
8 defend myself. But public perception is
9 real in this city, so I'm just saying that
10 I understand that the way The Board and
11 the City is set up, based on the reactions
12 of the Commission, I'm already guilty
13 because even The Board said that I got
14 suspended from the Commission before the
15 investigation even started. Then after
16 their recommendations was finable
17 offenses, I got fired.

18 This is all politically
19 motivated, I --

20 HEARING OFFICER GLAZER:

21 Ms. Gordon, I don't mean to cut you off.

22 MS. GORDON: Okay.

23 HEARING OFFICER GLAZER: I think
24 you made your points already.

1 MS. GORDON: Okay.

2 Thanks, Your Honor. I apologize,
3 Mr. Glazer.

4 HEARING OFFICER GLAZER: I'm the
5 Hearing Officer, so I'm not a judge, but
6 I'm going to deny your request for a
7 continuance.

8 I am going to take great pains
9 and make great effort to explain these
10 proceedings as we go forward, and if at
11 any point you don't understand anything,
12 please ask me and I will do my best to try
13 to make it understandable to you.

14 MS. GORDON: Okay.

15 HEARING OFFICER GLAZER: Are you
16 ready to proceed?

17 MS. GORDON: Proceed with what?

18 HEARING OFFICER GLAZER: With the
19 hearing.

20 MS. GORDON: One second.

21 I am not ready to proceed with
22 the hearing.

23 (A discussion was held off the
24 record.)

1 HEARING OFFICER GLAZER: I've
2 consulted with my counsel and, again, I
3 will restate that you had requested a
4 hearing in this matter, and that's what is
5 taking place today. This is your
6 opportunity to defend yourself at this
7 hearing. So, we are going to go forward
8 and I am going to read a series of things
9 that are going to outline how this day is
10 going to go forward.

11 MS. GORDON: Well, I need to take
12 a break before we start.

13 HEARING OFFICER GLAZER: Okay.
14 We'll take a short postponement. Is five
15 minutes going to be sufficient?

16 MS. GORDON: Yes.

17 HEARING OFFICER GLAZER: Okay.

18 (At this time, a short break was
19 taken.)

20 HEARING OFFICER GLAZER: We're
21 now on the record and we didn't identify
22 ourselves on the record, so I will go on
23 the record.

24 Would the parties and counsel,

1 please identify themselves?

2 MR. COOKE: Michael Cooke,
3 Director of Enforcement for the Board of
4 Ethics.

5 MR. SEGALL: Jordan Segall, staff
6 attorney, Board of Ethics.

7 MR. MCHALE: Bryan McHale, Public
8 Integrity Compliance Specialist, Board of
9 Ethics.

10 MR. CREAMER: Shane Creamer,
11 Executive Director of the Board of Ethics.

12 HEARING OFFICER GLAZER:

13 Ms. Gordon.

14 MS. GORDON: Tracey Gordon.

15 HEARING OFFICER GLAZER: Sir.

16 MR. SAWYER: Andre Sawyer.

17 HEARING OFFICER GLAZER: Thank
18 you.

19 Good afternoon, everyone. Today
20 we are gathered to consider Board of
21 Ethics matter No. 1412MU14, J. Shane
22 Creamer, Jr., Executive Director of
23 Philadelphia Board of Ethics versus Tracey
24 Gordon, and to provide Respondent Gordon

1 the hearing she has requested in this
2 matter.

3 My name is Richard Glazer. I am
4 The Board's Hearing Officer presiding over
5 this hearing.

6 The date is Tuesday, August 4th,
7 2015 and the time is 2:30 p.m. The
8 location of this hearing is the Board of
9 Ethics Conference Room 18-009 located at
10 1515 Arch Street, 18th Floor,
11 Philadelphia, Pennsylvania 19102.

12 This hearing is convened under
13 Section 4-1100 of the Home Rule Charter,
14 Section 20-606(1)(h) of the Philadelphia
15 Code and Board Regulation No. 2.

16 The Board of Ethics has
17 jurisdiction to enforce all provisions of
18 the Charter and Code pertaining to ethical
19 matters including adjudication of alleged
20 violations. The Board may conduct the
21 hearing, may make findings of violation
22 and may issue civil penalties.

23 On December 12, 2014, the
24 Executive Director served the Respondent,

1 Ms. Tracey Gordon, with a Notice of
2 Administrative Enforcement Proceeding.
3 The Notice alleges that Respondent Gordon
4 solicited gratuities and accepted a
5 gratuity in violation of 10-105 of the
6 Philadelphia Home Rule Charter, engaged in
7 political activity in violation of
8 10-107(3) and 10-107(4) of the Charter and
9 failed to cooperate with The Board and
10 obstructed The Board's investigation in
11 violation of Code Section 20-606(2).

12 The Executive Director is seeking
13 an aggregate civil penalty of \$3,800 based
14 on the following:

15 Under Code Section 20-606(1) (h)
16 and Board Regulation No. 8.26 and Charter
17 Section 10-109, a violation of Sections
18 10-105 and 10-107 of the Home Rule Charter
19 subject to a civil penalty of \$300 that
20 The Board may impose.

21 The Executive Director is seeking
22 a separate civil penalty of \$300 for each
23 of the six counts alleging a violation of
24 Charter Section 10-105 and 10-107.

1 Under Code Sections 20-606(1) (h)
2 and 20-1302 in violation of Section
3 20-606(2) is subject to a base penalty of
4 \$1,000 which may be reduced or increased
5 subject to mitigating or aggregating
6 factors. And the Executive Director is
7 seeking a penalty of \$2,000 based on an
8 aggregating factor of obstructing a Board
9 investigation that is identified in Code
10 Section 20-1302(1) (b) (iii).

11 Board Regulation No. 2, Paragraph
12 2.13(a) and 2.14 provide Respondent with
13 the right to respond in writing to the
14 Notice of Administrative Enforcement
15 Proceeding and the right to a hearing to
16 contest the allegations in the Notice,
17 which must be requested in Respondent's
18 written response to the Notice by the
19 established deadline.

20 The Board of Ethics's
21 determination once this hearing is
22 completed will be based on whether the
23 Executive Director has met the burden of
24 proof by a preponderance of the evidence.

1 As the party prosecuting the charges of
2 violation, the Executive Director bears
3 the burden of demonstrating by a
4 preponderance of the evidence that it is
5 more likely than not, that is that there
6 is a greater than 50 percent chance, that
7 the facts he alleges are true based on the
8 evidence in the record and that Respondent
9 Gordon committed each alleged violation.

10 I am now going to explain the
11 roles of the various people here.

12 The role of the Hearing Officer:

13 Once again, my name is Richard
14 Glazer, I was formerly the Chair of the
15 Ethics Board from its inception in 2006
16 until 2012. The Board of Ethics has
17 appointed me as its Hearing Officer. I
18 will preside over this hearing, including
19 issuing oaths of testimony, ruling on
20 admissibility of evidence and maintaining
21 order, and I will prepare Findings of Fact
22 and Conclusions of Law for The Board's
23 consideration. I may ask questions of the
24 witnesses and the parties. As The Board's

1 designee presiding over this hearing, it
2 is my duty to conduct a fair hearing. I
3 will do this by allowing the parties to
4 present their positions at reasonable
5 length by listening carefully and
6 attentively, by maintaining decency and
7 decorum, by following The Board's
8 procedures and ensuring an orderly
9 presentation of the evidence and issues,
10 and by ensuring that a complete record is
11 made of the proceedings. I may exclude an
12 individual from a hearing or limit the
13 number of persons attending the hearing as
14 necessary to maintain order and
15 efficiency. Since the Respondent, Ms.
16 Gordon, is proceeding pro se, that means
17 without a lawyer, I'm going to take extra
18 time, if requested, to explain procedures
19 and legal terminology. While doing this,
20 it is not my intention to unduly delay the
21 proceedings or in any way to treat either
22 party unfairly.

23 The role of the Hearing Officer
24 Counsel:

1 To my right are three lawyers
2 that are representing the Hearing Officer,
3 they are General Counsel Maya Nayak,
4 Associate General Counsel Diana Lin, and
5 Staff Attorney Ayodeji Perrin who will
6 advise me.

7 The Board observes walls of
8 division to separate its adjudicative from
9 its investigatory and prosecutorial
10 functions.

11 Under the walls of division
12 structure established by The Board, during
13 an administrative enforcement proceeding,
14 such as this, the Executive Director and
15 professional staff or consultants
16 directed by the Executive Director
17 carry out the investigatory and
18 prosecutorial functions. The individual
19 members of The Board, The Board's Hearing
20 Officer, General Counsel Nayak, Associate
21 General Counsel Lin and Staff Attorney
22 Perrin carry out the adjudicative
23 functions.

24 The Board of Ethics observes the

1 walls of divisions with respect to all of
2 its adjudicative enforcement matters and
3 has observed the walls of division in this
4 particular matter No. 1412MU14.

5 Next, the role of the court
6 reporter:

7 This hearing is being
8 transcribed. The court reporter is Erica
9 Hearn. The Board Members will rely upon
10 the transcript in their deliberations on
11 this matter. Please speak loudly, slowly
12 and clearly so that Erica Hearn can make
13 an accurate record. It is my
14 understanding that this transcript will
15 become public after The Board renders its
16 final determination in this matter. As
17 Hearing Officer, only I can direct the
18 court reporter to go off the record. It
19 is only when I so indicate that the court
20 reporter should abstain from taking notes.
21 A statement by parties or attorneys that
22 what they are saying is off the record
23 must be ignored by the court reporter.

24 This is the outline of what we're

1 going to go through. The hearing is going
2 to proceed as follows:

3 First, any preliminary motions or
4 matters will be raised, and then there
5 will be an opening statement first by the
6 Executive Director and then the Respondent
7 can make an opening statement. After the
8 opening statements, there will be
9 presentation of facts, witnesses and
10 exhibits. Each party has an opportunity
11 for cross-examination of the other party's
12 evidence. The Executive Director would go
13 first, the Respondent next in terms of
14 presentation of facts and evidence and any
15 documents, and then finally at the end
16 there will be summations by the Executive
17 Director and the Respondent.

18 Here are the policies relating to
19 this proceeding, and I talked about this
20 briefly, sir, before and that has to do
21 with confidentiality, and please pay close
22 attention:

23 As the parties have previously
24 been advised, Section 20-606(1)(i), the

1 City Code and Board Regulation 2,
2 Paragraph 2.15(a) require that The Board's
3 administrative enforcement proceedings,
4 including filings of testimony, are
5 confidential while the adjudication is
6 pending unless the Respondent provides
7 written consent to a public proceeding,
8 which the Respondent in this matter,
9 Ms. Gordon, has not done, therefore, this
10 hearing is confidential.

11 The Board, Board staff and I
12 shall not make the proceeding public or
13 disclose any information about it, except
14 as necessary to carry out their duties.
15 Likewise, Respondent Gordon must keep this
16 proceeding confidential. Respondent
17 Gordon may not disclose information
18 related to this proceeding that she has
19 obtained from The Board or the staff or
20 the proceeding such as the testimony of
21 witnesses. Board Regulation 2, Paragraph
22 2.15(b)(ii) provides two exceptions: One,
23 Respondent Gordon may make such
24 disclosures as are necessary to

1 participate in the proceeding or to seek
2 legal advice or representation. And, two,
3 Respondent Gordon may disclose information
4 relating to this proceeding that she has
5 obtained from a source other than The
6 Board, Board staff, or the proceeding
7 itself.

8 Finally, all witnesses are bound
9 to keep this proceeding confidential.

10 And, sir, you're not a witness
11 and you're not a party, but this will also
12 apply to you as well.

13 A witness may not disclose
14 information related to this proceeding
15 that the witness has obtained from The
16 Board, Board staff, or the proceeding.
17 Witnesses are not to disclose anything
18 they observe that occurs during this
19 proceeding, including the testimony of
20 other witnesses. However, Board
21 Regulation 2, Paragraph 2.15(b) (iii)
22 provides that a witness may, one, make
23 such disclosures as are necessary to
24 participate in the proceeding or to seek

1 legal advice, and, two, disclose
2 information related to a proceeding that
3 the witnesses obtained from a source other
4 than The Board, Board staff, or proceeding
5 itself. Once The Board has served notice
6 of its final determination on the
7 Respondent, this adjudication will no
8 longer be pending and The Board and Board
9 staff, Respondent Gordon, and witnesses
10 may disclose any information about the
11 proceeding.

12 Next is ex parte communications.
13 The parties, that is the Executive
14 Director, Counsel for Executive Director,
15 and Respondent Gordon, must not engage in
16 any substantive ex parte communication
17 with any member of The Board, with me as
18 Hearing Officer, the general counsel,
19 Ms. Nayak, or with other general counsel
20 staff concerning this administrative
21 enforcement proceeding. The opposing
22 party should be present or copied on all
23 communications you may have with us about
24 the substance of these proceedings.

1 Communicating with us regarding the issue,
2 such as scheduling without including
3 opposing party, would not be a substantive
4 ex parte communication.

5 Offering and admitting evidence:

6 The Board and I, as its Hearing
7 Officer, are not bound by technical Rules
8 of Evidence in administrative enforcement
9 proceedings. And I will admit on The
10 Board's behalf all relevant evidence of
11 reasonably probative value. First, I
12 specifically address hearsay evidence
13 which involves a statement made outside
14 this hearing that is offered in this
15 hearing as evidence to prove the truth of
16 the matter asserted. After hearing brief
17 argument on the hearsay objection, I may
18 choose to defer the ruling on the
19 objection and allow the party offering the
20 evidence to present the evidence. I note
21 the Rule regarding hearsay evidence the
22 Pennsylvania Supreme Court has established
23 regarding administrative agency hearings.
24 One, hearsay evidence properly objected to

1 is not competent evidence to support a
2 finding of fact by an administrative
3 agent. Two, hearsay evidence admitted
4 without objection will be given its
5 natural probative effect and may support a
6 finding of fact if it is corroborated by
7 any competent evidence in the record.
8 Three, a finding of fact based solely on
9 hearsay, even though admitted without
10 objection, will not stand.

11 Second, as Hearing officer, I may
12 take official notice of relevant laws and
13 additional regulations and judicially
14 permissible facts, facts of public
15 knowledge, and physical, technical and
16 scientific facts within The Board's
17 specialized knowledge.

18 Third, it is within my
19 discretion to accept on behalf of The
20 Board copies and excerpts of documents and
21 other records if the original is not in
22 the possession of a party or readily
23 available.

24 I note that Regulation No. 2,

1 Paragraph 2.17(a) (v) represents that the
2 Executive Director and Respondent must not
3 offer any contested evidence at the
4 hearing, other than from witnesses and
5 documents identified in prehearing
6 exchanges and memorandum filings provided
7 that The Board or I, as its Hearing
8 Officer, may grant exceptions for good
9 cause shown.

10 Adjournments and recesses:

11 I plan to adjourn at
12 approximately 5:00 p.m. each afternoon. I
13 will adjourn slightly earlier if we reach
14 a sensible breaking point or slightly
15 later so as not to interrupt the taking of
16 testimony. I will take brief recesses to
17 provide our court reporter with a needed
18 break. I will also consider requests from
19 the parties to recess for brief periods.
20 It is within my discretion to grant or
21 deny a request for adjournment or recess.
22 Based on the availability of prior
23 counsel, we had scheduled to reconvene at
24 11:30 a.m. each morning.

1 Would either party object to
2 reconvening at 9:30 a.m. for the remaining
3 days of this hearing?

4 MR. COOKE: Mr. Hearing Officer,
5 could we defer that decision until the
6 conclusion of today's hearing? I think
7 we'll have a better sense if there's
8 anything we feel like we might need to use
9 that time for.

10 HEARING OFFICER GLAZER: Okay.

11 Ms. Gordon? In other words --

12 MS. GORDON: I know what it --

13 HEARING OFFICER GLAZER: Okay.

14 MS. GORDON: I am not going to
15 proceed with this hearing without an
16 attorney. I'm not going to do that.
17 Because I may say something incriminating,
18 it's not fair. So, I'm not going to
19 proceed at all today. I need an attorney.
20 I don't know the technicality. You are
21 four of the best attorneys in the city. I
22 have none.

23 HEARING OFFICER GLAZER: Would
24 you like me to explain the consequences of

1 your not proceeding?

2 MS. GORDON: Yes.

3 HEARING OFFICER GLAZER: Okay.

4 Your failure to participate, having
5 requested this hearing in the first place,
6 would result in your waiving your right to
7 a hearing. Under Board Regulation No. 2,
8 Supplemental Procedures Memo, Section 5,
9 if a Respondent, that would be you, does
10 not request a hearing, the Executive
11 Director may file a Brief in support of
12 the Notice of Administrative Enforcement
13 Proceeding. Because there will not be a
14 hearing without you present, we are going
15 to utilize The Board's procedures that
16 apply as a result of the Respondent not
17 requesting a hearing.

18 And what's going to happen will
19 be The Board's going to grant the
20 Executive Director 14 days to file a Brief
21 in support of his Notice of Administrative
22 Enforcement Proceeding. The Executive
23 Director may attach to the Brief exhibits,
24 such as deposition transcripts, documents

1 and affidavits. You, the Respondent, can
2 file a Brief in response to that within 14
3 days of the service of the Executive
4 Director's Brief. Then the Board of
5 Ethics themselves will deliberate on the
6 Briefs and determine by a preponderance of
7 the evidence whether violations of
8 applicable law occurred and The Board will
9 assess penalties for any such violation.
10 The Board will serve notice of its final
11 determination on the Respondent.

12 Do you understand?

13 MS. GORDON: Yes, sir.

14 HEARING OFFICER GLAZER: All
15 right.

16 Would the Executive Director want
17 to say anything before Ms. Gordon leaves?

18 MS. GORDON: And what is the
19 appeal process of that?

20 HEARING OFFICER GLAZER: The --

21 MS. GORDON: Of the findings?

22 HEARING OFFICER GLAZER: My
23 counsel advises me that we should not be
24 giving you legal advice, but we can tell

1 you and we would urge you to get legal
2 advice on it, that --

3 MR. SAWYER: She's just
4 requesting the protocols.

5 HEARING OFFICER GLAZER: -- The
6 Board's procedure, The Board's decision is
7 final. There are rights of appeal to
8 certain courts, but you would need to get
9 counsel to advise you on that.

10 MS. GORDON: Thank you.

11 And that will be put in writing
12 to me, what you just read?

13 MR. SAWYER: The transcript.

14 HEARING OFFICER GLAZER: The
15 transcript will be available to you.

16 MS. GORDON: Okay. Thank you.

17 MR. COOKE: Do I understand that
18 you have made a decision that even if the
19 Executive Director requests an
20 opportunity --

21 (At this time, Ms. Gordon left
22 the hearing room.)

23 MR. COOKE: -- to utilize the
24 hearing to take testimony, that that is

1 not the procedure that you are going to
2 follow?

3 HEARING OFFICER GLAZER: We feel
4 comfortable that the failure to
5 participate, the leaving of a hearing, is
6 tantamount to waiving.

7 MR. COOKE: I completely agree
8 that it constitutes waiver. You know, my
9 view is that just because she has waived
10 the right to hearing does not mean that
11 The Board is precluded from holding a
12 hearing.

13 4-1100 of the Charter
14 specifically provides that The Board can
15 convene hearings. Other administrative
16 agencies in similar contexts will proceed
17 with the hearing if the Respondent fails
18 to appear, but you've made your decision.
19 I don't want to belabor the point.

20 HEARING OFFICER GLAZER: I'm
21 happy to confer with counsel.

22 Do you have anything to provide
23 to us in terms of legal authority?

24 MR. COOKE: Yes, I do. But, I

1 mean, Ms. Gordon has left now with the
2 understanding that this is going to be
3 handled on Briefs. So, I think it's kind
4 of difficult for us to change that.

5 HEARING OFFICER GLAZER: I mean,
6 would it have been nice if the language
7 specifically said once having requested a
8 hearing and failing to show up will be
9 deemed a waiver? Yes, it would be nice if
10 it said that, but we see it as being on
11 equal footing with not having requested a
12 hearing in the first place, in which case,
13 it would have been handled on -- you
14 couldn't have had a hearing if she didn't
15 request one, correct?

16 MR. COOKE: Correct.

17 HEARING OFFICER GLAZER: Okay.

18 MR. COOKE: Correct.

19 HEARING OFFICER GLAZER: Okay.

20 We see it on equal footing --

21 MR. COOKE: I think that's
22 correct.

23 HEARING OFFICER GLAZER: -- with
24 her not -- that's correct.

1 MR. COOKE: Okay.

2 HEARING OFFICER GLAZER: Okay.

3 Off the record.

4 (A discussion was held off the
5 record.)

6 HEARING OFFICER GLAZER: I have a
7 final statement.

8 I would to thank the Executive
9 Director for taking the time to prepare
10 for and for appearing at this hearing.

11 I thank the court reporter for
12 transcribing this proceeding.

13 The Respondent having appeared
14 and refusing to participate and
15 voluntarily leaving, this hearing is now
16 adjourned.

17 General counsel, our staff, will
18 provide a copy of this hearing transcript
19 to the parties.

20 Thank you.

21 MR. COOKE: May I clarify the
22 date on which a Brief is due, is it two
23 weeks from today?

24 HEARING OFFICER GLAZER: 14 days

1 from -- well, let me ask you from
2 receiving the transcript to how much time
3 would you like?

4 MR. COOKE: Well, two weeks from
5 receiving the transcript will be fine.
6 I'm going to be out of town next week. Do
7 you know how long it would take to do the
8 transcript?

9 COURT REPORTER: Two weeks is the
10 normal, ten business days.

11 MR. COOKE: Then that should be
12 fine.

13 HEARING OFFICER GLAZER: Thank
14 you.

15 (Hearing adjourned at 2:55 p.m.)
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C E R T I F I C A T I O N

I, ERICA CRAGER HEARN, Professional Court Reporter and Notary Public, do hereby certify that the foregoing is a true and accurate transcript of the stenographic notes taken by me in the aforementioned matter.

- - -

DATE: AUGUST 5, 2015 _____

ERICA CRAGER HEARN

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