

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

<u>J. Shane Creamer, Jr.</u>	:	
Executive Director	:	
Board of Ethics	:	
of the City of Philadelphia	:	
1515 Arch Street, 18 th Floor	:	
Philadelphia, PA 19102	:	
	:	Matter No.: 2106ET19
v.	:	
	:	
Celena Morrison	:	
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	:	
<u>Respondent</u>	:	

**EXECUTIVE DIRECTOR’S RESPONSE TO
STATUS REPORT AND CONFERENCE ORDER**

The Executive Director hereby files his response to the Hearing Officer’s September 17, 2021 Status Report and Conference Order:

- a) Identify and describe any differences between you and your opposing counsel regarding material facts that you believe present a barrier to resolving this matter.**

Respondent’s Answer to the Executive Director’s Amended Notice of Administrative Enforcement is due on September 30, 2021. Per the Procedural Instructions provided to all parties the Respondent is expected to “admit or deny the statements in each paragraph of the Notice” and/or include additional facts. The Executive Director expects this Response will provide an answer to this question and is reluctant to concede any material fact at this time. However, for purposes of settlement discussion only – and after multiple discussions with Respondent’s Counselors – currently, the Executive Director is unaware of any material facts presenting a barrier to settlement resolution.

- b) Identify and describe any differences between you and your opposing counsel regarding the application of governing law that you believe present a barrier to resolving this matter.**

Since settlement discussions began in March 2021, the Respondent has indicated that she will not agree to any settlement that indicates – either directly or indirectly – that she “knowingly” violated Philadelphia Code Section 20-604. Per her Counsel, her position remains unchanged today.

The Executive Director disputes this interpretation of Philadelphia Code Section 20-1304. Specifically, the Executive Director believes that knowledge does not refer to violating the Code provision, but rather refers to knowledge of the underlying conduct.

- c) **Identify and describe any differences between you and your opposing counsel regarding the legal requirements of a settlement that you believe present a barrier to resolving this matter. Specifically, counsel should identify any settlement terms that they believe must be either included or excluded for a settlement agreement to be legally sufficient to obtain Board approval to the extent that such terms may present a barrier to settlement.**

It is not clear what this question is requesting.

To be enforceable, a settlement agreement must only possess the elements of a valid contract: offer, acceptance, and consideration. Muhammad v. Strassburger, McKenna, Messer, Shilobod & Gutnick, 526 Pa. 541, 547 (1991). As with any contract, the enforceability of a settlement agreement largely requires that “the minds of the parties should meet upon all the terms, as well as the subject-matter, of the agreement.” Mazzella v. Koken, 559 Pa. 216, 224 (1999) (inner citations omitted). The Executive Director is aware of these requirements. At this time, a fundamental difference, outlined in paragraph “b,” prevents a “meeting of the minds” but no other structural barrier exists to the Executive Director’s knowledge.

Philadelphia Board of Ethics Regulation 2 sets forth minimal and deliberately broad settlement requirements. Regulation 2.26 provides that “the Executive Director may seek to settle a matter that is the subject of an investigation or enforcement proceeding” at any time.

While the Board has developed a practice of requiring certain elements in settlement agreements – including a requirement that the respondent admit to violations of law – these are not legal requirements; they are agency norms. It is not clear whether this question requests that we consider these norms in our answer. It does appear from discussion with Respondent’s Counsel that the Respondent is unwilling to admit to liability or the knowing aggravating factor.

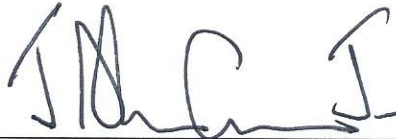
The Executive Director is also mindful of the precedent set by each settlement agreement. The Board does compare past settlements to determine whether a settlement under review is consistent with precedent. The Board will consider the impact a settlement under review may have

on future settlement negotiations if it deviates from past precedent in prior settlements, but it is not bound by those prior settlement agreements.

At this time, the Executive Director does not believe any terms exist that present a legal barrier to settlement. The Executive Director cannot opine as to what terms the Board would require to approve a settlement in this matter (*See* Reg. 2.27 “The adoption of a settlement agreement is entirely within the discretion of the Board.”). However, the Executive Director believes that the settlement agreement he has proposed are entirely consistent with Board precedent established by previously approved settlement agreements.

September 24, 2021

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'J. Creamer', written over a horizontal line.

J. Shane Creamer, Jr. Esq.
Executive Director

Caroline Curley, Esq.
Staff Attorney

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above-captioned Executive Director's Response to the Status Report and Conference Order was served upon the following as indicated:

By Email:

Hearing Officer

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Date: September 24, 2021

/s/ Caroline Curley

Caroline Curley, Esq.

Staff Attorney, City of Philadelphia Board of Ethics