

Thomas Klemm

Subject: RE: Creamer v. Ben, Matter No. 1510ET17
Attachments: 02_11_16 Letter to Eli Gabay (re Admin Adjud #1510ET17) with three attachments.pdf

From: Diana Lin
Sent: Thursday, February 11, 2016 2:58 PM
To: Eli Gabay
Cc: Michael Cooke; Shane Creamer; Maya Nayak; Jordan Segall
Subject: RE: Creamer v. Ben, Matter No. 1510ET17

Mr. Gabay,

Leron Ben just called me, but I was in a meeting. Can you please explain to Mr. Ben that I am not able to communicate directly with him without you present now that he is represented by counsel? Please let Mr. Ben know that this is the reason I will not be returning his call.

Please also find attached correspondence related to Administrative Adjudication Matter #1510ET17.

Sincerely,
Diana

Diana J. Lin, Esq.
Associate General Counsel
City of Philadelphia Board of Ethics
diana.lin@phila.gov
215.686.9450 (t)

From: Eli Gabay [<mailto:egabay18@gmail.com>]
Sent: Wednesday, February 10, 2016 3:42 PM
To: Diana Lin
Cc: Michael Cooke; Shane Creamer; Maya Nayak; Jordan Segall
Subject: Re: Creamer v. Ben, Matter No. 1510ET17

Thank you for your message. I hereby confirm that I represent Leron Ben in the above matter.

Thank you.

Eli Gabay, Esquire
Solomon, Sherman, & Gabay
1628 JFK Blvd., Suite 2200
Philadelphia, PA 19103
215-665-1100- Office
215-568-1088- Direct
215-665-8471- Fax

On Wed, Feb 10, 2016 at 3:38 PM, Diana Lin <Diana.Lin@phila.gov> wrote:

Thank you for this information. Mr. Gabay, please confirm as soon as possible that you are representing Mr. Ben in this matter. I had prepared a response to Mr. Ben's February 9, 2016 email and will hold that response for the moment in light of this new information.

Thanks,

Diana

Diana J. Lin, Esq.

Associate General Counsel

City of Philadelphia Board of Ethics

diana.lin@phila.gov

[215.686.9450](tel:215.686.9450) (t)

From: Michael Cooke
Sent: Wednesday, February 10, 2016 2:52 PM
To: Diana Lin; Shane Creamer
Cc: Maya Nayak; Jordan Segall; egabay18@gmail.com
Subject: RE: Creamer v. Ben, Matter No. 1510ET17

Diana,

Thank you for forwarding Mr. Ben's email. We have been told that Mr. Ben has retained a lawyer, Eli Gabay. I have cc'd Mr. Gabay on this email and we expect him to enter his appearance shortly. We are scheduled to meet with Mr. Gabay tomorrow and will explain to him the administrative adjudication process and procedures. In particular, we will explain to him the steps he will need to take to identify witnesses he wishes to call at the hearing.

We have used two addresses for mailings to Mr. Ben in order to ensure that he receives all of our communications and disclosures. Assuming that Mr. Gabay does enter his appearance on Mr. Ben's behalf, we will, of course, direct all future correspondence to him.

Regarding Mr. Ben's accusations, it seems that much of his unhappiness is driven by confusion about the administrative enforcement process. Such confusion is understandable given that, to date, Mr. Ben has been proceeding *pro se*. However, it should go without saying that none of the Board enforcement staff handling this matter have anything personal against Mr. Ben. Moreover, Board enforcement staff have never lied to or mislead Mr. Ben in any way.

Please let us know if you have any questions.

Regards,

Michael J. Cooke, Esq.

Director of Enforcement

Board of Ethics

of the City of Philadelphia

1515 Arch St., 18th Floor

Philadelphia, PA 19102

[\(215\) 686-9459](tel:(215)686-9459)

(f) [\(215\) 686-9453](tel:(215)686-9453)

From: Diana Lin
Sent: Wednesday, February 10, 2016 9:45 AM
To: Leron Ben; Shane Creamer
Cc: Maya Nayak; Michael Cooke; Jordan Segall
Subject: FW: Creamer v. Ben, Matter No. 1510ET17

Please find below Mr. Shoshan's email to General Counsel staff last night. Mr. Shoshan, please be sure to copy the Board's Executive Director on your emails to General Counsel staff.

Sincerely,

Diana J. Lin, Esq.

Associate General Counsel

City of Philadelphia Board of Ethics

diana.lin@phila.gov

[215.686.9450](tel:215.686.9450) (t)

From: Leron Ben [<mailto:rent2158332547@gmail.com>]

Sent: Tuesday, February 09, 2016 7:02 PM

To: Diana Lin; Maya Nayak

Subject: Re: Creamer v. Ben, Matter No. 1510ET17

Ms.Lin.And Ms.Nayak

1 I'm being fled with certified letter from Mr. Creamer. (it seems that something personal is happening), And he keep sending them to multiple addresses even though I PROVIDED MORE THAN ONCE MY PERSONAL ADDRESS

22 EVERGREEN WAY PHILADELPHIA PA 19115 (This is embarrassing me, that i'm not guilty but he treat me like i am)

2. i see that he subpoena too many people to the hearing (i don't understand why some of the are relevant for this hearing)..(going back to my first statement...it looks like its becoming a personal matter)

3. i do not want to be contacted by Mr. Creamer and his friends since they mislead me (and lied) so i will not reply to any of their request (unless it's a judge order)

4. My accountant call me and notify me that Mr. Creamer or Segall contacted her..(i didn't see a subpoena for that) ..and i would like to add her as a witness at the hearing(if i'm allowed to call and have the board hear her confirming that phone call it's fine, or a notarized letter from her about this indecent) ...(it seems that this guy have something personal against me)

5 also if Mr Argaman Shai And Rabbi Kopel will be there i would like to have them speak on my behalf since they know me.

6 I would like to Question at the hearing Mr. Creamer, Mr Segall And Mr. Vincent

7 since i have a feeling that One of the 3 Lawyers representing the city have something personal against me i'm seeking for a lawyer(since the city will not provide me one, but will have 3 against me)

Please get back with me before the due date to let me know what to do to request these thing

Thank you

On Wed, Jan 13, 2016 at 11:48 AM, Diana Lin <Diana.Lin@phila.gov> wrote:

Mr. Shoshan,

Please find attached correspondence related to Administrative Adjudication Matter #1510ET17.

Sincerely,

Diana

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

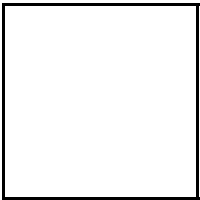
[215.686.9450](tel:215.686.9450) (t)

[215.686.9453](tel:215.686.9453) (f)

www.phila.gov/ethicsboard

www.twitter.com/PhillyEthicsBd

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Leron Ben

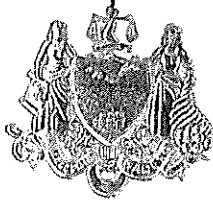
[215-833-2547](tel:215-833-2547)

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Eli Gabay, Esquire
Solomon, Sherman, & Gabay
1628 JFK Blvd., Suite 2200
Philadelphia, PA 19103
215-665-1100- Office
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215-665-8471- Fax

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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

February 11, 2016

Via first class mail and e-mail

Eli Gabay
Solomon, Sherman, & Gabay
1628 JFK Blvd., Suite 2200
Philadelphia, PA 19103
egabay18@gmail.com

Re: Administrative Adjudication Matter #1510ET17

Dear Mr. Gabay:

Thank you for your February 10, 2016 e-mail informing us that you represent Respondent Leron Ben Shoshan ("Respondent") in the above-referenced matter. We are treating your February 10 e-mail as your entry of appearance on behalf of Respondent.

For your convenience, I enclose a copy of the Second Revised Notice of Hearing. This document includes important dates and deadlines related to the upcoming hearing.

Board of Ethics Regulation No. 2 and the Board's Procedures for Administrative Enforcement Proceedings that Supplement Board Regulation No. 2 ("Procedures Memorandum") set forth the procedures that govern the Board's administrative adjudication proceedings. I enclose both documents for your review. The Procedures 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. General Counsel staff, which includes Maya Nayak (General Counsel), Tom Klemm (Staff Attorney), and me, are available to answer questions you may have regarding the Board's administrative adjudication procedures.

By way of background, in administrative enforcement proceedings, Board members act as the adjudicator with the assistance of General Counsel staff and a Hearing Officer. Neither party may engage in substantive *ex parte* communications 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 Respondent may have with enforcement staff. Such discussions with enforcement staff would not relieve you or the Respondent of the obligation to

Re: Administrative Adjudication Matter #1510ET17

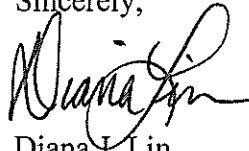
February 11, 2016

Page 2 of 2

follow filing deadlines and other procedural requirements set by the Board in this administrative enforcement proceeding.

Please contact me with any questions you may have about the Board's administrative enforcement procedures or if you need copies of any additional documents related to this matter. Going forward, please include the number that has been assigned to this administrative enforcement matter, #1510ET17, on all filings and communications related to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Diana J. Lin", written over a horizontal line.

Diana J. Lin

Associate General Counsel

cc (via email): Maya Nayak, General Counsel
Shane Creamer, Executive Director

Enclosures: Second Revised Notice of Hearing
Board of Ethics Regulation 2 and the Board's Procedures for Administrative
Enforcement Proceedings that Supplement Board Regulation No. 2

**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.

Leron Ben Shoshan
22 Evergreen Way
Philadelphia, PA 19115

Respondent

Matter No. 1510ET17

Date of Issue: January 6, 2016

SECOND REVISED NOTICE OF HEARING

In response to the Executive Director's January 4, 2016 request that the hearing in this matter be rescheduled, the Board's Hearing Officer Richard Glazer has rescheduled the hearing to begin on **Tuesday, March 1, 2016 at 10:30 a.m.** The hearing will continue as necessary on **Wednesday, March 2, 2016 at 9:30 a.m.** Hearing Officer Glazer will schedule additional time as needed to complete the hearing.

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

Pursuant to Board of Ethics Regulation No. 2 and the Board's November 19, 2014 Memorandum on Supplemental Procedures for Administrative Enforcement Proceedings, the rescheduled deadline for parties to exchange witness lists and exhibits is **Friday, February 5, 2016**. The rescheduled deadline for the Board to receive the parties' pre-hearing memoranda is **Friday, February 12, 2016**.

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

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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**

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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