

**A. Legal Authority**

This Board was created by an amendment to the Philadelphia Home Rule Charter that voters approved via a ballot question at the May 2006 primary election. See Philadelphia Home Rule Charter §§ 3-806 and 4-1100. The Board is charged with administering and enforcing all provisions of the Charter and City Code that pertain to ethical matters, such as conflicts of interest, financial disclosure, standards of governmental conduct, campaign finance, prohibited political activities, and such additional duties as City Council may assign. The Board has the power to conduct investigations and may enforce the laws over which it has jurisdiction in either the Court of Common Pleas or by administrative adjudication, if so authorized by City Council. City Council has authorized the Board to administratively adjudicate alleged violations of Code Chapters 20-600 (Ethics Code), 20-1000 (campaign finance law), 20-1200 (lobbying law) and Home Rule Charter §§ 10-102 (interest in a City contract), 10-105 (gratuities), and 10-107 (political activity). See Code §§ 20-606(1)(h), 20-1008, & 20-1206(1), (7).

**B. Procedural Introduction**

The Board followed the procedures set forth in Home Rule Charter Section 8-407 when promulgating this amendment to Board Regulation No. 2 (Investigations and Enforcement Proceedings). On May 21, 2014, the Board voted to approve posting of a proposed amendment to Regulation No. 2 at the Department of Records. The Law Department approved the Regulation for public comment posting and, on May 27, 2014, the Board submitted the proposed amendment to the Records Department. On June 22, 2014, Adam C. Bonin, Esq. requested a public hearing on the proposed amendment. Accordingly, the Board scheduled a hearing for July 16, 2014, notice of which was advertised in local newspapers and posted prominently on the Board's website.

Through this report on the July 16, 2014 hearing, the Board modifies the amendment and adopts the amendment as modified. A copy of the regulation as amended is attached as Exhibit A and shall become effective 10 days after the filing of this report with the Records Department. A blackline showing all changes made to the regulation by the amendment is attached as Exhibit B. The Regulation as amended incorporates the subject matter of existing Board Regulations No. 3 (Referrals to and Cooperation with Other Governmental Enforcement Agencies) and 5 (Confidentiality of Enforcement and Investigative Matters and Prohibited Disclosures). The Board will rescind Regulations No. 3 and 5.

**C. The July 16, 2014 Hearing**

The hearing was conducted by Michael Reed, Chair of the Board of Ethics, along with Vice Chair Phyllis Beck and Board member Fr. Kevin Gillespie. Martha Johnston, Senior Attorney, attended on behalf of the Law Department. The hearing transcript is attached as Exhibit C. The proposed amendment as posted for public comment at the Records Department and written testimony submitted to the Board are included in Exhibit C as attachments to the hearing transcript. Two witnesses provided testimony: Michael Cooke, the Board's Director of Enforcement, and Adam Bonin, who submitted written testimony in advance of the hearing.



**D. Summary of testimony and Board response**

**1. Michael J. Cooke, Esq., Director of Enforcement**

Mr. Cooke presented testimony on behalf of Board staff in order to propose several technical changes to the Regulation. The proposed changes are found at pages 8 through 13 of the hearing transcript, which is attached as Exhibit C.

**Board Response**

The Board adopts the proposed changes.

**2. Adam C. Bonin, Esq.** Mr. Bonin's testimony is attached to the hearing transcript at Exhibit C.

In his testimony, Mr. Bonin asserted that the provisions of the proposed Regulation relating to confidentiality of investigations unnecessarily stifle the free speech of subjects of investigations because, in his view, they are subject to more stringent restrictions than complainants.

**Board Response**

Philadelphia Code Section 20-606(1)(i) prohibits a person from disclosing or acknowledging to any other person "any information relating to a complaint, investigation, referral, or pending adjudication, except as provided by law." The proposed amendment to Regulation No. 2 - and the existing provisions in Regulation No. 5 - considerably narrow the breadth of the language in the ordinance in recognition of court rulings striking down portions of similar prohibitions as violative of the First Amendment to the U. S. Constitution. *See, e.g., Butterworth v. Smith*, 494 U.S. 624, 626 (1990) (holding that a Florida statute was unconstitutional insofar as it prohibited a grand jury witness from disclosing his or her own testimony after the term of the grand jury had ended); *Stilp v. Contino*, 613 F.3d 405, 415 (3d Cir. 2010) (holding that a Pa. State Ethics Commission regulation was unconstitutional for prohibiting a complainant from disclosing that he had filed an ethics complaint or the content of that complaint); *First Amendment Coalition v. Judicial Inquiry and Review Board*, 784 F.2d 467, 479 (3d Cir. 1986) (holding that a Pa. Judicial Inquiry and Review Board regulation was unconstitutional for preventing witnesses from disclosing their own testimony).

As set forth in the proposed Regulation, and consistent with the relevant case law, the confidentiality restriction applies the same standard to both complainants and subjects of an investigation. In either case, the restriction only prohibits a person from disclosing information related to a complaint, referral, investigation, or pending adjudication while an investigation is ongoing or an adjudication is pending and, even then, only if the person has obtained that information solely from the Board or its staff. As such, a person can disclose information related to an investigation or adjudication if either a) he or she has obtained the information from a source other than the Board, or b) the investigation has ended or the adjudication is no longer pending. Thus, if a complainant makes public a complaint he or she has filed with the Board, the subject of that complaint may publicly refute its allegations, or otherwise comment on it, because the subject learned of the complaint from the complainant, who is a source other than the Board.

Mr. Bonin proposes several specific changes to the Regulation:

- a. **Allow the subject of an investigation to waive his or her right to confidentiality.**

**Board Response**

On its face, Code Section 20-606(1)(i) prohibits the disclosure of information regarding an investigation by the subject of that investigation. The Board has created exceptions to the broad language of Code Section 20-606(1)(i) where failure to do so would create a conflict with another law or lead to an unreasonable interpretation of the ordinance. For example, in light of the Third Circuit's ruling in *Stilp v. Contino*, the Board is compelled to provide in this Regulation that a complainant may disclose the fact that he or she has filed a complaint with the Board. Similarly, with regard to the confidentiality of administrative adjudications, the City Solicitor has advised the Board that, in her view, Code Section 20-606(1)(i) is intended to serve the presumed interest of the respondent in keeping confidential the fact of the adjudication and alleged violations pending resolution of those charges. *See* Solicitor Opinion issued to Board on 8/7/2013, pg. 6. As such, the right of the respondent to waive confidentiality and request an open hearing must be implied. *Id.* (advising that denying respondent's request for an open hearing could violate right to due process).

In the context of an investigation, however, the Code's confidentiality restriction serves other interests in addition to protecting the reputation of the subject of the investigation. The restriction also ensures the integrity of Board investigations by encouraging cooperation by witnesses and their complete and truthful testimony. Furthermore, confidentiality guards against attempts by subjects of investigations to influence the information witnesses provide to Board staff. Courts have found that these considerations justify narrowly tailored confidentiality rules such as the one found in the proposed amendment of Regulation No. 2. *See Kamasinski v. Judicial Review Council*, 44 F.3d 106, 111 (2d Cir. 1994) (upholding prohibition on disclosure of information gained through interaction with Conn. Judicial Review Council while investigation is ongoing); *First Amendment Coalition*, 784 F.2d at 479 (upholding Judicial Inquiry and Review Board's confidentiality requirement insofar as it prevented a witness from disclosing information learned from the testimony of other witnesses or from the Board or its staff); *see also Smith v. Butterworth*, 866 F.2d 1318, 1321 (11 Cir. 1989), *aff'd*, *Butterworth*, 494 U.S. at 1382 (upholding portion of Florida grand jury statute that prohibited witnesses from disclosing testimony of another witness); *Stilp*, 613 F.3d at 414.

Therefore, because the restriction set forth in the proposed amendment serves the purposes of Section 20-606(1)(i) and does so in accordance with relevant case law, the Board declines to adopt Mr. Bonin's suggestion that the Regulation allow the subject of an investigation to waive confidentiality.

- b. Create an additional exception in Regulation No. 2 using language from the State Ethics Commission regulation that provides that individuals may reveal information that was already in their possession and disclose their own statements.

**Board Response**

As provided in the proposed amendment at Paragraph 2.11(a), a person is prohibited from disclosing information related to an investigation only while an investigation is ongoing and even then, only if the person has obtained that information solely from the Board or its staff. Therefore, a person may reveal information that was already in his or her possession or the disclosure of his or her own statements. However, in order to make the existing rule even more clear, the Board adds the following sentence to Paragraph 2.11(a):

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.

- c. Impose a time limit on investigations similar to the limits that apply to State Ethics Commission investigations, which is 180 days, with the possibility of two extensions of 90 days each.

**Board Response**

With two 90 day extensions, the effective time limit for an investigation under Mr. Bonin's proposal would be approximately one year. The vast majority of Board investigations are completed within that time frame. In addition, delays in resolving investigations usually result from causes outside the Board's control, such as waiting for the subject of an investigation to obtain counsel, the unavailability of the subject's counsel (vacation, sickness, trial, etc.), waiting for third-party witnesses, such as financial institutions, to produce documents, or waiting for another government agency to take action. Moreover, we believe imposing a time limit on investigations could have unintended, negative consequences, such as having to postpone settlement discussions until after staff have completed all fact gathering. An approaching deadline could also put staff in the difficult position of having to decide whether to drop an investigation or make a finding of probable cause before obtaining all relevant information. Therefore, the Board does not accept Mr. Bonin's suggestion. Moreover, staff update the Board on a monthly basis on the number of open investigations and their subject matter. In order to ensure that investigations continue to be resolved expeditiously, we direct staff to supplement this monthly update by informing the Board of the age of each open investigation.

DEPARTMENT OF REVENGE  
2014-AUG-7 PM 2:13

- d. Add a requirement that the Board publish, on an annual basis, summary data as to its investigations, broken down by subject matter area.**

**Board Response**

Philadelphia Code section 20-606(1)(l)(i) requires the Board to include in its annual report “a summary and evaluation of complaints and referrals received and their disposition.” Accordingly, in the annual report, we identify for each calendar year the number of investigations opened and dismissed and the number of complaints rejected, enforcement actions initiated, and settlements reached. We also describe the subject matter of settlement agreements the Board has approved. In response to Mr. Bonin’s suggestion, in our next annual report, we will also identify the subject matter area of investigations that terminated without resulting in a settlement agreement. However, the Board does not believe it is necessary or advisable to require by regulation the inclusion of such information in the annual report.

- e. Provide a sanction for the filing of false and frivolous complaints.**

**Board Response**

The proposed amendment to Regulation No. 2 addresses frivolous complaints at Paragraph 2.5(d) which states, in part: “Frivolous complaints are prohibited. No person shall submit a false or frivolous complaint to the Board.” As such, filing a frivolous complaint would be a violation of the Ethics Code and would be subject to a civil monetary penalty of up to \$2,000. However, in order to make the possibility of this sanction even more clear, we will add the following provision to the Regulation:

**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 to \$2,000 if aggravating factors are present or decreased to \$250 if mitigating factors are present, as set forth in Code Chapter 20-1300.

- f. Require complaints to be signed, sworn to, and notarized.**

**Board Response**

Philadelphia Code Section 20-606(1)(f)(i) requires only that complaints be written and signed. Requiring that complaints also be sworn and notarized could chill the submission of complaints to the Board, especially given that it would impose a monetary cost on the filing of a complaint. The Board believes that the sanctions available if a person files a frivolous complaint are sufficient to deter such behavior. Therefore, the Board does not accept Mr. Bonin’s suggestion.

### **E. Approval**

At a public meeting on August 6, 2014, the Board voted 4-0 to approve the proposed amendment to Regulation No. 2 as modified and to approve this hearing report. (Fr. Kevin Gillespie did not attend the meeting.) The Regulation as amended is attached as Exhibit A.

\* \* \*

The Board of Ethics appreciates the input of the Law Department and the participation of those who spoke and those who simply attended the hearing on this Regulation.

782257

DEPARTMENT OF RECORDS  
2014 AUG -7 PM 2:13



**EXHIBIT A**

**782258**

**DEPARTMENT OF RECORDS  
2014 AUG - 7 PM 2:13**



782259

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

**Table of Contents**

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

## **SUBPART A. SCOPE; DEFINITIONS.**

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

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

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

## **SUBPART B. SEPARATION OF FUNCTIONS.**

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

## **SUBPART C. INVESTIGATIONS.**

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

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

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

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

### **2.5 Complaints.**

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

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

## 2.6 Conduct of an Investigation.

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

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

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

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

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

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

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

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

## **SUBPART D. CONFIDENTIALITY OF COMPLAINTS AND INVESTIGATIONS**

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

### **2.10 Confidentiality of complaints and referrals.**

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

### **2.11 Confidentiality of Investigations.**

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

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

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

78226  
DEPARTMENT OF STATE  
2014 AUG -7 PM 2:13

## **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.

## **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.

DEPARTMENT OF RECORDS  
182262  
01 AUG PM 2:13

## **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 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

**EXHIBIT B**

**782263**

**DEPARTMENT OF DEFENSE  
2014 AUG - 7 PM 2:13**



**PHILADELPHIA BOARD OF ETHICS**

**REGULATION NO. 2**

**INVESTIGATIONS AND  
ENFORCEMENT PROCEEDINGS.**

**Table of Contents**

<u>Subpart A. Scope; Definitions.....</u>	<u>pg. 1</u>
<u>Subpart B. Separation of Functions .....</u>	<u>pg. 3</u>
<u>Subpart C. Investigations.....</u>	<u>pg. 3</u>
<u>Subpart D. Confidentiality of Complaints and Investigations .....</u>	<u>pg. 6</u>
<u>Subpart E. Administrative Enforcement.....</u>	<u>pg. 7</u>
<u>Subpart F. Judicial Enforcement .....</u>	<u>pg. 12</u>
<u>Subpart G. Settlement and Conciliation</u>	<u>pg. 13</u>
<u>  Subpart G. Penalties</u>	<u>pg. 14</u>

782264

DEPARTMENT OF RECORDS

2014 AUG -7 PM 2:14

**SUBPART A. SCOPE; DEFINITIONS; SCOPE.**

**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. Public Integrity Laws.** Chapters 20-600 and 20-1000 of the Philadelphia Code, relevant provisions of the Philadelphia Home Rule Charter and such other laws and regulations over which the Board has jurisdiction under Charter Section 4-1100, as well as other matters assigned to the Board by City Council.

**b. Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.

**c. Executive Director.** The Executive Director of the Board (including the interim Executive Director until a permanent Executive Director is appointed), and his or her designee or designees.

**d. General Counsel.** The General Counsel of the Board, and his or her designee or designees.

**e. Paragraph.** A numbered paragraph contained in this Regulation.

**f. Subject of a complaint or an investigation.** Those individuals or entities alleged in a complaint to have violated the Public Integrity Laws or those individuals or entities being investigated to determine whether there is probable cause to believe they have violated the Public Integrity Laws.

**g. Respondent.** Those individuals or entities against whom the Executive Director has instituted an administrative enforcement proceeding or against whom the Board has instituted a judicial enforcement proceeding.

**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.

**AMENDMENT APPROVED BY BOARD ON AUGUST 6, 2014**

- 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 Powers of the Board.** The Board shall have the power to investigate all matters related to its responsibilities under the Public Integrity Laws. Pursuant to Ethics Code § 20-606(1)(g) and Charter §§ 8-409 and 8-412, the Board and its designated agents shall have the power to inspect books and records; receive and investigate complaints; issue subpoenas to require the attendance of witnesses and the production of books, accounts, papers and other evidence; and administer oaths and take the testimony of witnesses. The Board may refer any matter related to, or discovered in, an investigation to any other governmental or law enforcement agency as the Board deems appropriate.

**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.B. INVESTIGATIONS.**

**2.3 2.4 Preliminary Inquiry.** The Executive Director may, at his or her discretion, conduct a preliminary inquiry to determine if there is reason to believe a potential violation of the Public Integrity Laws has occurred. Board and Board staff shall keep preliminary inquiries confidential as required by this Regulation No. 5 Paragraph 5.5. However, a preliminary inquiry is not an investigation and is not subject to the disclosure limitations provisions of Board of Ethics Regulation No. 5, Paragraph 2.10(a) or 5.3 and the notice provisions of Regulation No. 5, Paragraph 2.6(e).5.4.

**2.4 2.5 Initiation of Investigations.** The Executive Director shall have the authority to initiate an investigation upon:on the basis of any of the following three circumstances:

- a. Receipt of a complaint that meets the requirements of Paragraph 2.5; 2.6(b); submitted pursuant to Ethics Code § 20-606(1)(f) and Paragraph 2.6(a);
- b. Receipt of upon 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 potential violation of the Public Integrity Laws may havehas occurred.

An investigation initiated by the Executive Director that is not initiated in response to a complaint from any other person shall not be subject to the requirements of Paragraphs 2.5. 2.6(a), (b), and (c).

2.5    2.6 Complaints.

a. **General.** 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 be mailed to, or personally served on, the Board at: City of Philadelphia Board of Ethics, Packard Building, 2nd Floor, 1441 Sansom Street, Philadelphia, PA 19102. For purposes of the foregoing sentence, a complaint shall be considered mailed if sent via electronic mail to the Board via the Board's Web site or by other electronic means.

b. **Requirements.** A complaint shall conform to the following requirements:

- i. It shall provide the full name and address of the complainant, and identify the subject of the complaint ~~the person~~ those individuals or ~~person~~ entities who ~~is~~ are alleged to have committed violations of the Public Integrity Laws, including their names and addresses ~~if known; and to the extent known.~~
- ii. It shall contain ~~facts~~ clear allegations of fact, including times, places, and names of witnesses to the extent known, which ~~that~~ describe a violation of the Public Integrity Laws ~~and shall include relevant times, places, and names of witnesses, if known.~~

b. **e. 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).~~subparagraph (b).~~ If the complaint is in compliance, the Executive Director staff shall notify mail the complainant notice—that the complaint has been accepted. If a complaint ~~does~~ is not comply with Paragraph 2.5(a).~~in compliance,~~ the Executive Director shall dismiss the complaint and shall notify mail notice thereof to the complainant of dismissal and the reasons therefore.

c. **d. De Minimis Complaints.** ~~Complaints; Frivolous 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 subsection Paragraph.

DEPARTMENT OF ETHICS  
2014 AUG - 7 PM 2:14

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 or reasonably finds after review that a complaint is false or frivolous, the Executive Director, pursuant to Ethics Code § 20-606(1)(k), may initiate an investigation on behalf of the Board into the circumstances surrounding the drafting and filing of the complaint, ~~complaint~~, including requesting or compelling testimony from the complainant.

| **2.6 2.7 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 Ethics Code § 20-606(1)(g) and Subpart B of this Regulation. If any person refuses to comply with any 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 Ethics Code § 20-606(1)(g) and Paragraph Subpart B of 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 upon a complaint meeting the requirements of Paragraph 2.5(a), 2.6(b), the Executive Director~~staff~~ shall notify~~mail~~ both the complainant and the subject of the ~~complaint~~ notice of this termination and the reasons therefore.

**AMENDMENT APPROVED BY BOARD ON AUGUST 6, 2014**

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.
- f. **Confidentiality.** All investigations shall be subject to the confidentiality provisions of Code § 20-606(1)(i) as described in Board of Ethics Regulation No. 5.

**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.

AMENDMENT APPROVED BY BOARD ON AUGUST 6, 2014

- 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 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.

DEPARTMENT OF PROSECUTIONS  
782266  
2014 AUG - 7 PM 2:14

**SUBPART E.C. ADMINISTRATIVE ENFORCEMENT.**

**2.122.8 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~~direct~~ the initiation of an administrative enforcement proceeding ~~pursuant to Code § 20-606(1)(h)~~. In accordance with Code § 20-605, 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 ~~any such matter~~. See Paragraphs 2.3 and 2.11(d).

**2.132.9 Notice of Administrative Enforcement Proceeding.** To commence the enforcement proceeding, the Executive Director shall serve~~issue~~ written notice to each respondent regarding the violations of the Public Integrity Laws for which probable cause has been found. The Notice of Administrative Enforcement Proceeding (“Notice”) on each respondent whom he or she alleges has violated the Public Integrity Laws ~~may also be referred to as the Notice~~.

- 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 2.14.2.10. 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~~must~~ be made in his or her written response to the Notice and that a respondent’s failure to request a hearing is~~shall be~~ deemed a waiver of the right to a hearing as set forth in Paragraph 2.14(c). 2.10(e).
- b. **Service.** The Executive Director shall serve the Notice of Administrative Enforcement Proceeding on each respondent either by personal service, or by first class, certified mail, or ~~or overnight mail~~. The Executive Director shall serve a candidate or treasurer of a campaign for City elective office at the addresses provided in the campaign’s disclosure reports filed with the Board pursuant to Code § 20-1006. The candidate and treasurer are responsible for maintaining a correct address on file with the Board, and for notifying the Board in writing of any other method that provides proof of delivery.~~change in their addresses~~. 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~~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.

**2.142.10 Opportunity to Respond.** The respondent has the right to respond in writing to the ~~allegations of violation in the Notice of Administrative Enforcement Proceeding~~. The response ~~is due~~ shall be deemed timely if it is received by the Board within twenty (20) days ~~off from~~ 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, ~~in its designee~~ discretion, may grant the respondent an extension of time to respond to the Notice. ~~An~~ No request for an extension shall be granted unless such request is in writing, and shall set forth the basis ~~alleges~~ good cause for the request ~~such extension~~.

- a. **Appearance before Board.**— If the respondent wishes to appear before the Board to contest the ~~allegations of violation~~ 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~~ wishes to be represented by counsel, ~~he or she in any matter before the Board, the respondent shall so notify~~ advise the Board ~~and in his or her response to the Notice, or shall provide the General Counsel~~ Board with ~~counsel's a letter of representation, stating the name, address, e-mail address, telephone number, and attorney number~~ of the counsel.
- c. **Waiver.** A respondent's failure to request a hearing in his or her written response to the Notice ~~is~~ shall be deemed a waiver of the right to a hearing, ~~by the respondent~~. A respondent's failure to respond in writing to the Notice by the deadline set forth in this Paragraph 2.10 ("Opportunity to Respond") shall be deemed a waiver of the right to a hearing, ~~by the respondent~~. The Board, ~~in its~~ discretion, 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.

**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 authorized by court order.

**2.16 Administrative Enforcement Hearings.** The Board may Ethics Code § 20-606(1)(h) to conduct public hearings to adjudicate alleged violations of the Public Integrity Laws, and/or Board regulations. 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, subject to the Pennsylvania Local Agency Law, 2 Pa.C.S. §§ 551-555, the Charter, the Philadelphia Code, this Regulation, and other applicable law. 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, before the Board 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 Upon issuing subpoenas for administrative adjudication hearings, the Board will grant 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.** In accordance with Code § 20-605, no party person shall engage in a substantive or inappropriate *ex parte* communication with any member of the Board (including, for purposes of this subparagraph, the General Counsel and any designated Hearing Officer) concerning the administrative enforcement proceeding. Communicating with the General Counsel regarding non-substantive issues, such as scheduling, is not a substantive or inappropriate *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 designated 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.

**2.172.12 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 disclosures. All parties to an enforcement proceeding shall give notice of the names and addresses of the witnesses they plan to call to testify and copies of any documents, or whose testimony they intend plan to offer as evidence.
- ii. submit, at least fourteen (14) days prior to the hearing, the Executive Director and the respondent shall submit to the Board the names of any -at which the witnesses they plan to call are 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, unless the Board or its designated Hearing Officer may, shall, for exigent circumstances, fix a shorter time for the exchange and submission of information described in this Paragraph. The Board, or its designated Hearing Officer, may require the Executive Director and respondent to exchange copies of documents they intend to offer as evidence at the hearing.
- v. The Executive Director and the respondent shall not offer any contested evidence at the hearing.**b. Evidence.** Other than from witnesses and documents as identified as required by this Paragraph under (a) above, there shall be no evidence admitted at the hearing, provided that the Board or its designated Hearing Officer may grant exceptions for good cause shown.

**b.e.—No other discovery.** Except for the exchanges of information described in as provided in subparagraphs (a) and (b) of this paragraph, there shall be no other discovery, unless although the parties in an enforcement proceeding may voluntarily agreed to by the Executive Director and the respondent, between themselves to other forms of discovery.

**2.182.13 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 designated Hearing Officer, at its discretion, 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 designated Hearing Officer, may ask questions of witnesses at any time.
- c. **Limitation of Witnesses and Examination.** The Board, or its designated Hearing Officer, may limit the testimony of witnesses whose testimony is cumulative or similar. The Board, or its designated 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.

**2.192.14 Evidence.** As provided in the Pennsylvania Local Agency Law, the Board, or its designated Hearing Officer, shall not be bound by technical rules of evidence in administrative enforcement proceedings at Board hearings, and all relevant evidence of reasonably probative value may be received.

- a. **Official Notice.** The Board, or its designated 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 designated 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.

**2.202.15 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 Ethics Code § 20-606(1)(h) and 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.a. Basis of Final Determination When Hearing Not Requested.** 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.b. Notice of Final Determinations.** The Board shall serve notice of the final determination on the respondent by any method identified in the manner described in Paragraph 2.13(b). 2.9(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 E.D. JUDICIAL ENFORCEMENT**

**2.222.16 Scope.** This Subpart C shall not apply to, and this Subpart D shall apply, to those enforcement actions initiated to be instituted by the Board filing an action in the Court of Common Pleas.

**2.232.17 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.

**2.242.18 Opportunity to Address the Board.** The Executive Director shall notify the subject potential respondent to the judicial enforcement 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 2.23.2.17. The Executive Director shall inform the subject potential respondent to the judicial enforcement that he or she may appear at the next public meeting of the Board to address the Board and respond to the allegations submitted to the Board pursuant to Paragraph 2.17.

The provisions of Paragraph 2.242.18 shall not apply to actions to enforce a subpoena issued by the Board or to actions seeking emergency relief.

**2.252.19 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 potential respondent to the judicial enforcement, the Board shall:may do one of the following:

- 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 respondent 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, by any member of the Board or its staff.
- The Board shall notify the subject respondent of its decision regarding the Executive Director's request for authorization of judicial enforcement.

#### **SUBPART G.E. SETTLEMENT AND CONCILIATION**

**2.262.20 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.2.21 Stipulation of settlement.** 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 stipulation of settlement agreement is entirely within the discretion of the Board. A stipulation of 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 final stipulations of settlement agreements shall be made available to the public.

**AMENDMENT APPROVED BY BOARD ON AUGUST 6, 2014**

**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 mitigating factors are present, as set forth in Code Chapter 20-1300.**

Initially approved for public comment by Board April 17, 2007

Public Hearing held June 19, 2007

Adopted by Board, with modifications June 26, 2007

Effective July 12, 2007

Proposed amendments approved for public comment by the Board on December 16, 2009.

Public Hearings held January 20, 2010 and February 17, 2010.

Adopted by Board, with modifications

Effective

Proposed amendments approved for public comment by the Board on March 19, 2014

March 19, 2014 proposed amendments rescinded on May 21, 2014

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

## **EXHIBIT C**

**782269**

**DEPARTMENT OF RECORDS**

**2014 AUG -7 PM 2:14**



IN RE:

CITY OF PHILADELPHIA BOARD OF ETHICS  
HEARING ON PROPOSED AMENDMENT  
TO REGULATION #2

- - -

TRANSCRIPT OF THE ABOVE MATTER,  
taken by and before CAROL NEALIS,  
Professional Reporter and Notary Public, at  
the CITY OF PHILADELPHIA BOARD OF ETHICS,  
1515 Arch Street, 18th Floor, Philadelphia,  
Pennsylvania, on Wednesday, July 16, 2014,  
commencing at 1:03 p.m.

782270

DEPARTMENT OF RECORDS  
2014 AUG -7 PM 2:14

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

## HEARING ON PROPOSED AMENDMENT TO REGULATION #2

	2		4
1 APPEARANCES:		1 a copy.	
2 PANEL MEMBERS:		2 As required by Section 8-407,	
3 MICHAEL REED, CHAIR		3 Home Rule Charter, its May 21, 2014 public	
4 JUDGE PHYLLIS BECK, VICE-CHAIR		4 meeting, the Board approved these proposed	
5 REVEREND C. KEVIN GILLESPIE		5 amendments for public posting at the	
6		6 Records Department.	
7 STAFF:		7 The Department of Records	
8 MICHAEL COOKE, DIRECTOR OF ENFORCEMENT		8 advertised the proposed amendments giving	
9 J. SHANE CREAMER, JR., EXECUTIVE DIRECTOR		9 public notice of them as required by the	
10 MAYA NAYAK, GENERAL COUNSEL		10 charter. The Board also took action	
11 NEDDA MASSAR, DEPUTY EXECUTIVE DIRECTOR		11 notifying interested parties of the public	
12 ELIZABETH DOWNEY, ASSOCIATE GENERAL COUNSEL		12 by email and giving notice of the proposed	
13		13 amendments on its website. Attorney Adam	
14 ALSO PRESENT:		14 Bonin requested a hearing which is what	
15 MARTHA JOHNSTON, WATER DEPARTMENT		15 we're having right now.	
16 UNIDENTIFIED SPECTATORS		16 The Board and staff are not here	
17		17 to engage in a dialogue with witnesses.	
18		18 The Board will not take any action at this	
19 EXHIBITS		19 hearing. Again, this hearing is an	
20 PAGE PAGE		20 opportunity for the public to make comments	
21 NUMBER DESCRIPTION MARKED ATTACHED		21 or recommendations for modifications to	
22 Exhibit-1 Proposed Amendments 5 21		22 these proposed changes to Regulation 2.	
23 Exhibit-2 Letter 14 22		23 A hearing report will be prepared	
24		24 and approved by the Board at a future Board	
	3		5
1 PROCEEDINGS		1 meeting. I think that we're going to be	
2		2 asking the Board to schedule that meeting	
3 MR. REED: I'm Michael Reed. I'm		3 today.	
4 Chairman of the Ethics Board. Our first		4 The Board will not take action at	
5 activity is going to be a public hearing on		5 this hearing. The hearing report will	
6 proposed amendments to regulation No. 2.		6 respond to testimony and is the mechanism	
7 I would note for the record that		7 by which changes may be made to the	
8 the Water Department is represented today		8 proposed amendment in its present form.	
9 by Martha Johnston. Welcome.		9 After the amendment is approved	
10 And Vice-Chair, Judge Beck and		10 by the Board at that subsequent hearing,	
11 Father Gillespie are also present. So the		11 the hearing report will be filed with the	
12 Chair will recognize the presence of the		12 Department of Records and posted on the	
13 quorum.		13 Board's website.	
14 Today's hearing is an opportunity		14 A court reporter is present to	
15 for members of the public and other		15 transcribe this hearing. At this time the	
16 interested parties to provide comments and		16 proposed amendments filed at the Records	
17 recommendations for modifications to		17 Department should be entered on the record	
18 proposed amendments to the Board's		18 of this hearing and marked as Exhibit-1.	
19 Regulation 2 concerning investigations and		19 (At this time, a document was	
20 enforcement procedures.		20 marked for identification as Exhibit No.	
21 Copies of these proposed		21 1.)	
22 amendments have been made available		22 MR. REED: With that said, we	
23 electronically, and hard copies are		23 will now take testimony. I ask witnesses	
24 available here today for anybody who needs		24 to sit at -- somewhere there's a gentleman	

2 (Pages 2 to 5)

**ELECTRONIC REPORTING STENOGRAPHIC AFFILIATES**

## HEARING ON PROPOSED AMENDMENT TO REGULATION #2

<p>1 named McHale who's getting up. And he is 2 going to -- we're going to ask witnesses to 3 sit at that table.</p> <p>4 And we've asked any witness to 5 identify themselves before they begin their 6 testimony. Before hearing from members of 7 the public, I'd like to invite Board staff 8 to testify. You're so invited, Mr. Cooke.</p> <p>9 MR. COOKE: Thank you, Mr. Chair. 10 My name is Michael Cooke. I'm the Board's 11 Director of Enforcement and I have some 12 brief testimony today on behalf of staff 13 for proposed changes to the Regulation No. 14 2 which was posted at the Department of 15 Records.</p> <p>16 These are wording changes that we 17 have identified in consultation with the 18 Board Chair and also a couple that were 19 suggested by Ellen Kaplan of the Committee 20 of 70.</p> <p>21 MR. REED: So just to clarify and 22 hopefully not confuse, what you've just 23 said is that you're going to give testimony 24 about some additional edits to the document</p>	<p>6</p> <p>1 Please proceed. 2 MR. COOKE: Thank you. The first 3 item is on page 5 of the proposed 4 regulation in paragraph 2.5. 5 Specifically -- 6 JUDGE BECK: I'm a little bit 7 lost here. 8 MR. COOKE: Tab one, Judge. 9 JUDGE BECK: Okay. 10 MR. COOKE: So page 5, paragraph 11 2.5:A:II. The subparagraph there begins 12 contain clear allegation of fact that 13 describe a violation. 14 Ellen Kaplan pointed out when I 15 was talking to her on the phone that 16 allegations are not something of fact but 17 of a violation and suggested that it would 18 be clearer and more accurate if it said 19 contained facts that describe a violation 20 of the Public Integrity Laws. And we agree 21 and think that would be a beneficial 22 change. 23 MR. REED: So we're striking 24 clear allegations of and we're putting an S</p>
<p>7</p> <p>1 that is currently posted at the Department 2 of Records? 3 MR. COOKE: Correct. 4 MR. REED: And you have given 5 us -- we have available, and I guess we 6 have copies available, a copy of the 7 document that reflects the edits about 8 which you're going to testify; is that 9 correct? 10 MR. COOKE: We have today in your 11 Board books and also to members of the 12 public who have come today, given copies of 13 the regulation as it appears at the Records 14 Department. 15 I was going to verbally identify 16 the proposed changes. They're fairly 17 straightforward. 18 MR. REED: So the proposed 19 changes are not going to be reflected -- 20 are not currently reflected in the document 21 in our possession. You're going to 22 describe them verbally? 23 MR. COOKE: Correct. 24 MR. REED: Okay. Thank you.</p>	<p>9</p> <p>1 on fact? 2 MR. COOKE: Exactly. The next 3 proposed change would be on page 13. The 4 top of the page, paragraph 2.16 which 5 currently begins with the header hearings. 6 We propose that directly before 7 the word hearings the words administrative 8 enforcement be added. So it now reads 9 administrative enforcement hearings to make 10 it clear that it's only that particular 11 type of Board hearing that these provisions 12 apply to, not a hearing, for example, on a 13 regulation such as we're having today. 14 On the same page at subparagraph 15 D, the N in the word no should be 16 capitalized as no is the first word in that 17 sentence. And instead of person, we 18 propose using the word party. 19 At the end of the sentence, we 20 propose, which ends after the 21 parenthetical, which ends with the words 22 hearing officer, we propose adding the 23 phrase concerning the administrative 24 enforcement proceeding.</p>

**HEARING ON PROPOSED AMENDMENT TO REGULATION #2**

<p>1           On the next page at 2.17 --</p> <p>2           MR. REED: And let's just -- I</p> <p>3           mean I think the reason for that, and I see</p> <p>4           that since I was the source of that edit</p> <p>5           and you have improved it, the thinking was</p> <p>6           to make it clear that there will be</p> <p>7           communications between -- there almost</p> <p>8           certainly will be communications between</p> <p>9           Board and staff and enforcement staff and</p> <p>10          of Board about other stuff.</p> <p>11          And the ex parte rule is intended</p> <p>12          to prohibit communications about the</p> <p>13          proceeding.</p> <p>14          MR. COOKE: Correct. On page 14</p> <p>15          at 2.17 at A:I, the end of that line where</p> <p>16          it says and respondent, it should say and</p> <p>17          the respondent. So add the word the before</p> <p>18          respondent.</p> <p>19          Same thing down at V, the</p> <p>20          Executive Director and the respondent, add</p> <p>21          the. And on the second line of that same</p> <p>22          subparagraph, the O in other should be</p> <p>23          lower case since it occurs in the middle of</p> <p>24          the sentence.</p>	<p>10</p> <p>1           subject is a defined term of the regulation</p> <p>2           that more accurately describes the person</p> <p>3           at that time than potential respondent to</p> <p>4           the judicial enforcement does. And does it</p> <p>5           with one word instead of six.</p> <p>6           MR. REED: And just by way of</p> <p>7           clarification, one does not become a</p> <p>8           respondent unless and until the enforcement</p> <p>9           staff, I guess through the Board through</p> <p>10          enforcement staff, has initiated either an</p> <p>11          administrative enforcement proceeding or a</p> <p>12          judicial enforcement proceeding.</p> <p>13          The defined term subject is</p> <p>14          intended to capture people against whom a</p> <p>15          complaint has been lodged or who are the</p> <p>16          targets not used with any negative</p> <p>17          implications of an investigation.</p> <p>18          So a subject is someone who is in</p> <p>19          that capacity up to the point they become a</p> <p>20          respondent.</p> <p>21          MR. COOKE: Correct. Similarly,</p> <p>22          on the fourth line in the same</p> <p>23          subparagraph, the phrase potential</p> <p>24          respondent is used. And that should be</p>
<p>11</p> <p>1           In subparagraph B at the bottom</p> <p>2           of that page the second to last line says,</p> <p>3           agreed to by the Executive Director and</p> <p>4           respondent. It should be the respondent so</p> <p>5           add the there.</p> <p>6           The next page at paragraph 2.19</p> <p>7           with the header evidence, the T in the word</p> <p>8           the immediately following the period should</p> <p>9           be capitalized.</p> <p>10          At the end of the second line</p> <p>11          where it says at Board hearings, we propose</p> <p>12          replacing that with in administrative</p> <p>13          enforcement proceedings.</p> <p>14          At the bottom of 15, 2.20 headed</p> <p>15          final determinations, the subparagraph A</p> <p>16          there should be dropped down a line and</p> <p>17          indented as a new paragraph.</p> <p>18          On page 16, towards the bottom in</p> <p>19          paragraph 2.24, it says the Executive</p> <p>20          Director shall notify the potential</p> <p>21          respondent to the judicial enforcement of</p> <p>22          the finding. We propose substituting</p> <p>23          potential respondent to the judicial</p> <p>24          enforcement with the word subject since</p>	<p>11</p> <p>1           replaced with subject.</p> <p>2           Likewise, on the next page,</p> <p>3           paragraph 2.25, in the third line at the</p> <p>4           beginning there that phrase potential</p> <p>5           respondent to judicial enforcement</p> <p>6           proceeding is repeated. And we propose,</p> <p>7           again, it be replaced with just the word</p> <p>8           subject.</p> <p>9           Same change also in 2.25 C,</p> <p>10          second line, it says at the end, but only</p> <p>11          if the respondent consents. As the Chair</p> <p>12          pointed out, the person is not a</p> <p>13          respondent, yet. So they should be called</p> <p>14          the subject. So replace respondent with</p> <p>15          subject.</p> <p>16          And that is all there is for</p> <p>17          staff testimony.</p> <p>18          MR. REED: Thank you. We're now</p> <p>19          going to welcome any other witnesses who</p> <p>20          are here today in person to testify.</p> <p>21          Seeing no ground swell of people</p> <p>22          here coming up to testify, the Chair will</p> <p>23          note that our good friend, Attorney Adam</p> <p>24          Bonin, has favored us with a letter dated</p>

4 (Pages 10 to 13)

**ELECTRONIC REPORTING STENOGRAPHIC AFFILIATES**

## HEARING ON PROPOSED AMENDMENT TO REGULATION #2

	14		16
1	July 10, 2014 through which he has provided	1	And the Board would make any changes at
2	testimony concerning the proposed	2	once in response to his testimony.
3	regulation.	3	So I think that was part of the
4	And absent objection from any of	4	reason for not passing it along. There was
5	my colleagues, I would ask that that	5	quite a lot in the Board book.
6	document be marked Exhibit-2 and made a	6	And because you wouldn't be
7	part of this record.	7	acting on it, I think staffs' thought was
8	(At this time, a document was	8	it would be okay for you to see it today.
9	marked for identification as Exhibit No.	9	Because you don't need to comment on it
10	2.)	10	substantively at all.
11	MR. REED: I've heard no	11	JUDGE BECK: So in the hearing
12	objections from my colleagues.	12	testimony we'll note everything that Bonin
13	JUDGE BECK: I have several	13	has to say --
14	comments, though.	14	MS. NAYAK: His letter will be --
15	One is, I mentioned to Shane, I	15	JUDGE BECK: He made a lot of
16	would have appreciated the Board received	16	suggestions about what was said today. In
17	this letter from Bonin last week. And I	17	a hearing, will you come to any resolutions
18	would have appreciated it being emailed to	18	about suggestions he's made?
19	me.	19	MS. NAYAK: No, not at all. So
20	I really at this point don't know	20	the purpose of the hearing --
21	what -- I mean I have sped read it, but I	21	MR. REED: Let's be clear. Which
22	really don't know what he has said in	22	hearing are we talking about, Judge
23	detail.	23	You understand we're not doing anything
24	So I think in the future when you	24	to this hearing?
	15		17
1	get letters that are public comment, as	1	JUDGE BECK: I understand we're
2	soon as you can you should email those to	2	not doing anything. There will be a
3	the Board. And I've made that request to	3	hearing report. That's what I'm referring
4	Shane. So that's a procedural question.	4	to. In the hearing report --
5	Substantively, Bonin now has made	5	MR. REED: There will be
6	these comments. What do we as a Board do	6	responses to Mr. Bonin. And then the
7	about them?	7	Board --
8	MS. NAYAK: Sure. So I think I	8	JUDGE BECK: Will the Board be
9	can field that one.	9	open-minded or will they be all negative?
10	With this specific hearing, it's	10	We reject Bonin.
11	only for testimony. And so the Board	11	MS. NAYAK: No.
12	should not and will not act in response to	12	MR. REED: That hasn't been the
13	this testimony at all during the hearing.	13	way we've operated before. We have
14	Chair Reed attaching the	14	hearing report. And most of the time
15	testimony to the record is how it's being	15	recollection is we agree with a high
16	formally received. And then the hearing	16	percentage of whatever comments we
17	will close at some future date. The Board	17	perceive. But we may not agree with all of
18	isn't going to take any action with respect	18	them.
19	to this testimony today at all not even in	19	So that is the -- we handle this
20	the public meeting.	20	the way we've handled all our other
21	At some future public meeting,	21	regulations which is that there will be a
22	the Board will respond to Mr. Bonin's	22	hearing report by which staff is given an
23	testimony through a hearing report. And	23	opportunity to comment on his suggestions.
24	that's how we respond to the testimony.	24	And maybe we agree with some of them and

**HEARING ON PROPOSED AMENDMENT TO REGULATION #2**

	18	
1	explain that perhaps some of them are	1 C E R T I F I C A T E
2	wrong.	2
3	And then the Board can agree or	3 I, CAROL NEALIS, Court Reporter, certify that
4	disagree with staff. So it's -- that's the	4 the foregoing is a true and accurate transcript of
5	way we always operate and that's the way	5 the foregoing deposition, that the witness was first
6	this will be handled.	6 sworn by me at the time, place and on the date
7	JUDGE BECK: So when you send out	7 herein before set forth.
8	the hearing, you will communicate with us.	8 I further certify that I am neither attorney nor
9	In the next Board book, will there be a	9 counsel for, not related to nor employed by any of
10	hearing report?	10 the parties to the action in which this deposition
11	MS. NAYAK: It will be a draft	11 was taken; further, that I am not a relative or
12	only, a staff prepared draft.	12 employee of any attorney or counsel employed in this
13	JUDGE BECK: Do me a favor and	13 case, nor am I financially interested in this
14	just attach it.	14 action.
15	MS. NAYAK: Absolutely, yes. We	15
16	will definitely go to the Board again with	16
17	the hearing report. And that's	17
18	traditionally how the Board has critiqued	18
19	the testimony at the judicial hearing.	19
20	JUDGE BECK: Okay. Thank you.	20
21	MR. REED: I see no reason,	21 Carol Nealis
22	however, why in the future if we get	22 Notary Public # 1261298
23	testimony in written form that we can't	23 County of Philadelphia
24	share that promptly unless there's	24 My commission expires 3/22/2015
	19	
1	something -- some unusual circumstance.	1
2	But it being understood that the	2 EXHIBIT NO. 1
3	Board, as an accommodation to the witness,	3
4	is permitting the testimony to come in in	4
5	writing ahead of the people who are coming	5
6	here physically and testifying.	6
7	So I don't know that there's a	7
8	compelling reason why we have to get those	8
9	things before everybody else testifies.	9
10	But I don't see any reason why there's any	10
11	harm. So we'll try to follow that	11
12	procedure.	12
13	JUDGE BECK: Thank you.	13
14	MR. REED: So now is there any	14
15	further business that we need to address at	15
16	this public hearing on this regulation?	16
17	So I am going to declare the	17
18	public hearing on Reg 2 closed. And thank	18
19	everybody for attending.	19
20	(Hearing concluded at 1:24 p.m.)	20
21		21
22		22
23		23
24		24

6 (Pages 18 to 21)

**ELECTRONIC REPORTING STENOGRAPHIC AFFILIATES**

HEARING ON PROPOSED AMENDMENT TO REGULATION #2

22

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

EXHIBIT NO. 2

<p><b>A</b></p> <p><b>absent</b> 14:4  <b>Absolutely</b> 18:15  <b>accommodation</b> 19:3  <b>accurate</b> 8:18 20:4  <b>accurately</b> 12:2  <b>act</b> 15:12  <b>acting</b> 16:7  <b>action</b> 4:10,18 5:4    15:18 20:10,14  <b>activity</b> 3:5  <b>Adam</b> 4:13 13:23  <b>add</b> 10:17,20 11:5  <b>added</b> 9:8  <b>adding</b> 9:22  <b>additional</b> 6:24  <b>address</b> 19:15  <b>administrative</b> 9:7,9    9:23 11:12 12:11  <b>advertised</b> 4:8  <b>agree</b> 8:20 17:15,17    17:24 18:3  <b>agreed</b> 11:3  <b>ahead</b> 19:5  <b>allegation</b> 8:12  <b>allegations</b> 8:16,24  <b>amendment</b> 1:5 5:8,9  <b>amendments</b> 2:22    3:6,18,22 4:5,8,13    5:16  <b>anybody</b> 3:24  <b>APPEARANCES</b> 2:1  <b>appears</b> 7:13  <b>apply</b> 9:12  <b>appreciated</b> 14:16,18  <b>approved</b> 4:4,24 5:9  <b>Arch</b> 1:16  <b>asked</b> 6:4  <b>asking</b> 5:2  <b>ASSOCIATE</b> 2:12  <b>attach</b> 18:14  <b>ATTACHED</b> 2:21  <b>attaching</b> 15:14  <b>attending</b> 19:19  <b>attorney</b> 4:13 13:23    20:8,12  <b>available</b> 3:22,24 7:5</p>	<p>7:6  <b>A:I</b> 10:15</p> <hr/> <p><b>B</b></p> <p><b>B</b> 2:19 11:1  <b>Beck</b> 2:4 3:10 8:6,9    14:13 16:11,15 17:1    17:8 18:7,13,20    19:13  <b>beginning</b> 13:4  <b>begins</b> 8:11 9:5  <b>behalf</b> 6:12  <b>beneficial</b> 8:21  <b>bit</b> 8:6  <b>Board</b> 1:4,15 3:4 4:4    4:10,16,18,24,24    5:2,4,10 6:7,18 7:11    9:11 10:9,10 11:11    12:9 14:16 15:3,6    15:11,17,22 16:1,5    17:7,8 18:3,9,16,18    19:3  <b>Board's</b> 3:18 5:13    6:10  <b>Bonin</b> 4:14 13:24    14:17 15:5 16:12    17:6,10  <b>Bonin's</b> 15:22  <b>book</b> 16:5 18:9  <b>books</b> 7:11  <b>bottom</b> 11:1,14,18  <b>brief</b> 6:12  <b>business</b> 19:15</p> <hr/> <p><b>C</b></p> <p><b>C</b> 2:5 13:9 20:1,1  <b>called</b> 13:13  <b>capacity</b> 12:19  <b>capitalized</b> 9:16 11:9  <b>capture</b> 12:14  <b>Carol</b> 1:13 20:3,21  <b>case</b> 10:23 20:13  <b>certainly</b> 10:8  <b>certify</b> 20:3,8  <b>Chair</b> 2:3 3:12 6:9,18    13:11,22 15:14  <b>Chairman</b> 3:4</p>	<p><b>change</b> 8:22 9:3 13:9  <b>changes</b> 4:22 5:7    6:13,16 7:16,19    16:1  <b>charter</b> 4:3,10  <b>circumstance</b> 19:1  <b>CITY</b> 1:4,15  <b>clarification</b> 12:7  <b>clarify</b> 6:21  <b>clear</b> 8:12,24 9:10    10:6 16:21  <b>clearer</b> 8:18  <b>close</b> 15:17  <b>closed</b> 19:18  <b>colleagues</b> 14:5,12  <b>come</b> 7:12 16:17 19:4  <b>coming</b> 13:22 19:5  <b>commencing</b> 1:18  <b>comment</b> 15:1 16:9    17:23  <b>comments</b> 3:16 4:20    14:14 15:6 17:16  <b>commission</b> 20:22  <b>Committee</b> 6:19  <b>communicate</b> 18:8  <b>communications</b>    10:7,8,12  <b>compelling</b> 19:8  <b>complaint</b> 12:15  <b>concerning</b> 3:19 9:23    14:2  <b>concluded</b> 19:20  <b>confuse</b> 6:22  <b>consents</b> 13:11  <b>consultation</b> 6:17  <b>contain</b> 8:12  <b>contained</b> 8:19  <b>Cooke</b> 2:8 6:8,9,10    7:3,10,23 8:2,8,10    9:2 10:14 12:21  <b>copies</b> 3:21,23 7:6,12  <b>copy</b> 4:1 7:6  <b>correct</b> 7:3,9,23    10:14 12:21  <b>counsel</b> 2:10,12 20:9    20:12  <b>County</b> 20:22</p> <hr/> <p><b>D</b></p> <p><b>D</b> 9:15  <b>date</b> 15:17 20:6  <b>dated</b> 13:24  <b>declare</b> 19:17  <b>defined</b> 12:1,13  <b>definitely</b> 18:16  <b>Department</b> 2:15 3:8    4:6,7 5:12,17 6:14    7:1,14  <b>deposition</b> 20:5,10  <b>DEPUTY</b> 2:11  <b>describe</b> 7:22 8:13,19  <b>describes</b> 12:2  <b>DESCRIPTION</b> 2:21  <b>detail</b> 14:23  <b>determinations</b>    11:15  <b>dialogue</b> 4:17  <b>directly</b> 9:6  <b>Director</b> 2:8,9,11    6:11 10:20 11:3,20  <b>disagree</b> 18:4  <b>document</b> 5:19 6:24    7:7,20 14:6,8  <b>doing</b> 16:23 17:2  <b>DOWNEY</b> 2:12  <b>draft</b> 18:11,12  <b>dropped</b> 11:16</p> <hr/> <p><b>E</b></p> <p><b>E</b> 2:19 20:1,1  <b>edit</b> 10:4  <b>edits</b> 6:24 7:7  <b>either</b> 12:10  <b>electronically</b> 3:23  <b>ELIZABETH</b> 2:12  <b>Ellen</b> 6:19 8:14  <b>email</b> 4:12 15:2  <b>emailed</b> 14:18  <b>employed</b> 20:9,12</p>
---	--	---

<p><b>employee</b> 20:12  <b>ends</b> 9:20,21  <b>enforcement</b> 2:8 3:20    6:11 9:8,9,24 10:9    11:13,21,24 12:4,8    12:10,11,12 13:5  <b>engage</b> 4:17  <b>entered</b> 5:17  <b>ERSA</b> 1:21  <b>Ethics</b> 1:4,15 3:4  <b>everybody</b> 19:9,19  <b>evidence</b> 11:7  <b>ex</b> 10:11  <b>Exactly</b> 9:2  <b>example</b> 9:12  <b>Executive</b> 2:9,11    10:20 11:3,19  <b>Exhibit</b> 5:20 14:9    21:2 22:2  <b>Exhibit-1</b> 2:22 5:18  <b>Exhibit-2</b> 2:23 14:6  <b>expires</b> 20:22  <b>explain</b> 18:1</p> <hr/> <p><b>F</b></p> <p><b>F</b> 20:1  <b>fact</b> 8:12,16 9:1  <b>facts</b> 8:19  <b>fairly</b> 7:16  <b>Father</b> 3:11  <b>favor</b> 18:13  <b>favored</b> 13:24  <b>field</b> 15:9  <b>filed</b> 5:11,16  <b>final</b> 11:15  <b>financially</b> 20:13  <b>finding</b> 11:22  <b>first</b> 3:4 8:2 9:16 20:5  <b>Floor</b> 1:16  <b>follow</b> 19:11  <b>following</b> 11:8  <b>foregoing</b> 20:4,5  <b>form</b> 5:8 18:23  <b>formally</b> 15:16  <b>forth</b> 20:7  <b>fourth</b> 12:22  <b>friend</b> 13:23</p>	<p><b>further</b> 19:15 20:8,11  <b>future</b> 4:24 14:24    15:17,21 18:22</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>GENERAL</b> 2:10,12  <b>gentleman</b> 5:24  <b>getting</b> 6:1  <b>Gillespie</b> 2:5 3:11  <b>give</b> 6:23  <b>given</b> 7:4,12 17:22  <b>giving</b> 4:8,12  <b>go</b> 18:16  <b>going</b> 3:5 5:1 6:2,2,23    7:8,15,19,21 13:19    15:18 19:17  <b>good</b> 13:23  <b>ground</b> 13:21  <b>guess</b> 7:5 12:9</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>H</b> 2:19  <b>handle</b> 17:19  <b>handled</b> 17:20 18:6  <b>hard</b> 3:23  <b>harm</b> 19:11  <b>headed</b> 11:14  <b>header</b> 9:5 11:7  <b>heard</b> 14:11  <b>hearing</b> 1:5 3:5,14    4:14,19,19,23 5:5,5    5:10,11,15,18 6:6    9:11,12,22 15:10,13    15:16,23 16:11,17    16:20,22,24 17:3,4    17:14,22 18:8,10,17    18:19 19:16,18,20  <b>hearings</b> 9:5,7,9    11:11  <b>high</b> 17:15  <b>Home</b> 4:3  <b>hopefully</b> 6:22</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>identification</b> 5:20    14:9  <b>identified</b> 6:17</p>	<p><b>identify</b> 6:5 7:15  <b>immediately</b> 11:8  <b>implications</b> 12:17  <b>improved</b> 10:5  <b>indented</b> 11:17  <b>initiated</b> 12:10  <b>Integrity</b> 8:20  <b>intended</b> 10:11 12:14  <b>interested</b> 3:16 4:11    20:13  <b>investigation</b> 12:17  <b>investigations</b> 3:19  <b>invite</b> 6:7  <b>invited</b> 6:8  <b>item</b> 8:3</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p><b>J</b> 2:9  <b>Johnston</b> 2:15 3:9  <b>JR</b> 2:9  <b>Judge</b> 2:4 3:10 8:6,8    8:9 14:13 16:11,15    16:22 17:1,8 18:7    18:13,20 19:13  <b>judicial</b> 11:21,23    12:4,12 13:5 18:19  <b>July</b> 1:17 14:1</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>Kaplan</b> 6:19 8:14  <b>KEVIN</b> 2:5  <b>know</b> 14:20,22 19:7</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>Laws</b> 8:20  <b>letter</b> 2:23 13:24    14:17 16:14  <b>letters</b> 15:1  <b>let's</b> 10:2 16:21  <b>Likewise</b> 13:2  <b>line</b> 10:15,21 11:2,10    11:16 12:22 13:3,10  <b>little</b> 8:6  <b>lodged</b> 12:15  <b>lost</b> 8:7  <b>lot</b> 16:5,15  <b>lower</b> 10:23</p>	<p style="text-align: center;"><b>M</b></p> <p><b>marked</b> 2:21 5:18,20    14:6,9  <b>Martha</b> 2:15 3:9  <b>MASSAR</b> 2:11  <b>MATTER</b> 1:12  <b>MAYA</b> 2:10  <b>McHale</b> 6:1  <b>mean</b> 10:3 14:21  <b>mechanism</b> 5:6  <b>meeting</b> 4:4 5:1,2    15:20,21  <b>members</b> 2:2 3:15    6:6 7:11  <b>mentioned</b> 14:1  <b>Michael</b> 2:3,8    6:10  <b>middle</b> 10:23  <b>modifications</b> 5:7    4:21</p> <hr/> <p style="text-align: center;"><b>N</b></p> <p><b>N</b> 9:15  <b>name</b> 6:10  <b>named</b> 6:1  <b>NAYAK</b> 2:10 15:8    16:14,19 17:1    18:11,15  <b>Nealis</b> 1:13 20:3  <b>NEDDA</b> 2:11  <b>need</b> 16:9 19:15  <b>needs</b> 3:24  <b>negative</b> 12:16 17:9  <b>neither</b> 20:8  <b>new</b> 11:17  <b>Notary</b> 1:14 20:21  <b>note</b> 3:7 13:23 16:12  <b>notice</b> 4:9,12  <b>notify</b> 11:20  <b>notifying</b> 4:11  <b>NUMBER</b> 2:21</p> <hr/> <p style="text-align: center;"><b>O</b></p> <p><b>O</b> 10:22  <b>objection</b> 14:4  <b>objections</b> 14:12  <b>occurs</b> 10:23</p>
--	---	---	---

officer 9:22 okay 7:24 8:9 16:8 18:20 once 16:2 open-minded 17:9 operate 18:5 operated 17:13 opportunity 3:14 4:20 17:23	possession 7:21 posted 5:12 6:14 7:1 posting 4:5 potential 11:20,23 12:3,23 13:4 prepared 4:23 18:12 presence 3:12 present 2:14 3:11 5:8 5:14 procedural 15:4 procedure 19:12 procedures 3:20 proceed 8:1 proceeding 9:24 10:13 12:11,12 13:6 proceedings 3:1 11:13 Professional 1:14 prohibit 10:12 promptly 18:24 propose 9:6,18,20,22 11:11,22 13:6 proposed 1:5 2:22 3:6,18,21 4:4,8,12 4:22 5:8,16 6:13 7:16,18 8:3 9:3 14:2 provide 3:16 provided 14:1 provisions 9:11 public 1:14 3:5,15 4:3,5,9,11,20 6:7 7:12 8:20 15:1,20 15:21 19:16,18 20:21 purpose 16:20 putting 8:24 p.m 1:18 19:20	really 14:20,22 reason 10:3 16:4 18:21 19:8,10 received 14:16 15:16 recognize 3:12 recollection 17:15 recommendations 3:17 4:21 record 3:7 5:17 14:7 15:15 Records 4:6,7 5:12 5:16 6:15 7:2,13 Reed 2:3 3:3,3 5:22 6:21 7:4,18,24 8:23 10:2 12:6 13:18 14:11 15:14 16:21 17:5,12 18:21 19:14 referring 17:3 reflected 7:19,20 reflects 7:7 Reg 19:18 regulation 1:6 3:6,19 4:22 6:13 7:13 8:4 9:13 12:1 14:3 19:16 regulations 17:21 reject 17:10 related 20:9 relative 20:11 repeated 13:6 replace 13:14 replaced 13:1,7 replacing 11:12 report 4:23 5:5,11 15:23 17:3,4,14,22 18:10,17 reporter 1:14 5:14 20:3 REPORTERS 1:21 represented 3:8 request 15:3 requested 4:14 required 4:2,9 resolutions 16:17 respect 15:18 respond 5:6 15:22,24 respondent 10:16,17	10:18,20 11:4,4,21 11:23 12:3,8,20,24 13:5,11,13,14 response 15:12 16:2 responses 17:6 <b>REVEREND</b> 2:5 right 4:15 rule 4:3 10:11
P		S	
PA 1:22 page 2:20,20 8:3,10 9:3,4,14 10:1,14 11:2,6,18 13:2 PANEL 2:2 paragraph 8:4,10 9:4 11:6,17,19 13:3 parenthetical 9:21 part 14:7 16:3 parte 10:11 particular 9:10 parties 3:16 4:11 20:10 party 9:18 passing 16:4 Pennsylvania 1:17 people 12:14 13:21 19:5 perceive 17:17 percentage 17:16 period 11:8 permitting 19:4 person 9:17 12:2 13:12,20 Philadelphia 1:4,15 1:16,22 20:22 phone 8:15 phrase 9:23 12:23 13:4 PHYLLIS 2:4 physically 19:6 place 20:6 Plaza 1:22 Please 8:1 point 12:19 14:20 pointed 8:14 13:12			
Q			
R	R 20:1 read 14:21 reads 9:8		

## HEARING ON PROPOSED AMENDMENT TO REGULATION #2

26

<p>9:14 10:22 11:1,15 12:23 <b>subsequent</b> 5:10 <b>substantively</b> 15:5 16:10 <b>substituting</b> 11:22 <b>suggested</b> 6:19 8:17 <b>suggestions</b> 16:16,18 17:23 <b>Suite</b> 1:22 <b>Sure</b> 15:8 <b>swell</b> 13:21 <b>sworn</b> 20:6</p> <p><b>T</b></p> <p><b>T</b> 2:19 11:7 20:1,1 <b>Tab</b> 8:8 <b>table</b> 6:3 <b>take</b> 4:18 5:4,23 15:18 <b>taken</b> 1:13 20:11 <b>talking</b> 8:15 16:22 <b>targets</b> 12:16 <b>term</b> 12:1,13 <b>testifies</b> 19:9 <b>testify</b> 6:8 7:8 13:20 13:22 <b>testifying</b> 19:6 <b>testimony</b> 5:6,23 6:6 6:12,23 13:17 14:2 15:11,13,15,19,23 15:24 16:2,12 18:19 18:23 19:4 <b>thank</b> 6:9 7:24 8:2 13:18 18:20 19:13 19:18 <b>thing</b> 10:19 <b>things</b> 19:9 <b>think</b> 5:1 8:21 10:3 14:24 15:8 16:3,7 <b>thinking</b> 10:5 <b>third</b> 13:3 <b>thought</b> 16:7 <b>time</b> 5:15,19 12:3 14:8 17:14 20:6 <b>today</b> 3:8,24 5:3 6:12 7:10,12 9:13 13:20</p>	<p>15:19 16:8,16 <b>Today's</b> 3:14 <b>top</b> 9:4 <b>traditionally</b> 18:18 <b>transcribe</b> 5:15 <b>transcript</b> 1:12 20:4 <b>true</b> 20:4 <b>try</b> 19:11 <b>type</b> 9:11</p> <p><b>U</b></p> <p><b>understand</b> 16:23 17:1 <b>understood</b> 19:2</p> <p><b>UNIDENTIFIED</b> 2:16</p> <p><b>United</b> 1:22</p> <p><b>unusual</b> 19:1</p> <p><b>V</b></p> <p><b>V</b> 10:19 <b>verbally</b> 7:15,22 <b>Vice-Chair</b> 2:4 3:10 <b>violation</b> 8:13,17,19</p> <p><b>W</b></p> <p><b>Water</b> 2:15 3:8 <b>way</b> 12:6 17:13,20 18:5,5 <b>website</b> 4:13 5:13 <b>Wednesday</b> 1:17 <b>week</b> 14:17 <b>welcome</b> 3:9 13:19 <b>we'll</b> 16:12 19:11 <b>we're</b> 4:15 5:1 6:2 8:23,24 9:13 13:18 16:23 17:1 <b>we've</b> 6:4 17:13,20 <b>witness</b> 6:4 19:3 20:5 <b>witnesses</b> 4:17 5:23 6:2 13:19 <b>word</b> 9:7,15,16,18 10:17 11:7,24 12:5 13:7 <b>wording</b> 6:16 <b>words</b> 9:7,21 <b>wouldn't</b> 16:6</p>	<p><b>writing</b> 19:5 <b>written</b> 18:23 <b>wrong</b> 18:2</p> <p><b>X</b></p> <p><b>X</b> 2:19</p> <p>#</p> <p>#2 1:6</p> <p><b>1</b></p> <p>1 5:21 21:2 1:03 1:18 1:24 19:20 10 14:1 <b>1261298</b> 20:21 13 9:3 14 2:23 10:14 15 11:14 <b>1515</b> 1:16 <b>1520</b> 1:22 16 1:17 11:18 17th 1:21 18th 1:16 <b>19103</b> 1:22</p> <p><b>2</b></p> <p>2 3:6,19 4:22 6:14 14:10 19:18 22:2 <b>2.16</b> 9:4 <b>2.17</b> 10:1,15 <b>2.19</b> 11:6 <b>2.20</b> 11:14 <b>2.24</b> 11:19 <b>2.25</b> 13:3,9 <b>2.5</b> 8:4 <b>2.5:A:II</b> 8:11 <b>2014</b> 1:17 4:3 14:1 <b>21</b> 2:22 4:3 <b>215</b> 1:23 <b>22</b> 2:23</p> <p><b>3</b></p> <p><b>3/22/2015</b> 20:23 <b>30</b> 1:21</p> <p><b>5</b></p> <p><b>5</b> 2:22 8:3,10</p>	<p><b>564-1233</b> 1:23</p> <p>7</p> <p><b>70</b> 6:20</p> <p>8</p> <p><b>8-407</b> 4:2</p> <p><b>782273</b></p> <p>DEPARTMENT OF RECORDED 2014 AUG - 7 PM 2: 15</p>
--	---	--	--



**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**PHILADELPHIA BOARD OF ETHICS**

**REGULATION NO. 2**

**INVESTIGATIONS AND  
ENFORCEMENT PROCEEDINGS.**

**Table of Contents**

<u>Subpart A. Scope; Definitions.....</u>	<u>pg. 1</u>
<u>Subpart B. Separation of Functions .....</u>	<u>pg. 3</u>
<u>Subpart C. Investigations.....</u>	<u>pg. 3</u>
<u>Subpart D. Confidentiality of Complaints and Investigations .....</u>	<u>pg. 6</u>
<u>Subpart E. Administrative Enforcement.....</u>	<u>pg. 7</u>
<u>Subpart F. Judicial Enforcement .....</u>	<u>pg. 12</u>
<u>Subpart G. Settlement and Conciliation .....</u>	<u>pg. 13</u>

781569

DEPARTMENT OF RECORDS  
2014 MAY 27 PM 2:42

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**SUBPART A. SCOPE; DEFINITIONS; DEFINITIONS; SCOPE.**

**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. Public Integrity Laws.** Chapters 20-600 and 20-1000 of the Philadelphia Code, relevant provisions of the Philadelphia Home Rule Charter and such other laws and regulations over which the Board has jurisdiction under Charter Section 4-1100, as well as other matters assigned to the Board by City Council.

**b. Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.

**c. Executive Director.** The Executive Director of the Board (including the interim Executive Director until a permanent Executive Director is appointed), and his or her designee or designees.

**d. General Counsel.** The General Counsel of the Board, and his or her designee or designees.

**e. Paragraph.** A numbered paragraph contained in this Regulation.

**f. Subject of a complaint or an investigation.** Those individuals or entities alleged in a complaint to have violated the Public Integrity Laws or those individuals or entities being investigated to determine whether there is probable cause to believe they have violated the Public Integrity Laws.

**g. Respondent.** Those individuals or entities against whom the Executive Director has instituted an administrative enforcement proceeding or against whom the Board has instituted a judicial enforcement proceeding.

**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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

- 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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**SUBPART B. Separation of Functions.**

**2.2 Powers of the Board.** The Board shall have the power to investigate all matters related to its responsibilities under the Public Integrity Laws. Pursuant to Ethics Code § 20-606(1)(g) and Charter §§ 8-409 and 8-412, the Board and its designated agents shall have the power to inspect books and records; receive and investigate complaints; issue subpoenas to require the attendance of witnesses and the production of books, accounts, papers and other evidence; and administer oaths and take the testimony of witnesses. The Board may refer any matter related to, or discovered in, an investigation to any other governmental or law enforcement agency as the Board deems appropriate.

**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.B. INVESTIGATIONS.**

**2.3 2.4 Preliminary Inquiry.** The Executive Director may, at his or her discretion, conduct a preliminary inquiry to determine if there is reason to believe a potential violation of the Public Integrity Laws has occurred. Board and Board staff shall keep preliminary inquiries confidential as required by this Regulation No. 5 Paragraph 5.5. However, a preliminary inquiry is not an investigation and is not subject to the disclosure limitations provisions of Board of Ethics Regulation No. 5, Paragraph 2.10(a) or 5.3 and the notice provisions of Regulation No. 5, Paragraph 2.6(e).5.4.

**2.4 2.5 Initiation of Investigations.** The Executive Director shall have the authority to initiate an investigation upon:on the basis of any of the following three circumstances:

- a. Receipt of a complaint that meets the requirements of Paragraph 2.5; 2.6(b), submitted pursuant to Ethics Code § 20-606(1)(f) and Paragraph 2.6(a);
- b. Receipt ofupon 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 potential violation of the Public Integrity Laws may havehas occurred.

An investigation initiated by the Executive Director that is not initiated in response to a complaint from any other person shall not be subject to the requirements of Paragraphs 2.5, 2.6(a), (b), and (c).

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**2.5      2.6 Complaints.**

**a. General.** 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 be mailed to, or personally served on, the Board at: City of Philadelphia Board of Ethics, Packard Building, 2nd Floor, 1441 Sansom Street, Philadelphia, PA 19102. For purposes of the foregoing sentence, a complaint shall be considered mailed if sent via electronic mail to the Board via the Board's Web site or by other electronic means.

**b. Requirements.** A complaint shall conform to the following requirements:

i. It shall provide the full name and address of the complainant, and identify as the subject of the complaint the person~~those individuals or person~~entities who is~~are~~ alleged to have committed violations of the Public Integrity Laws, including their names and addresses if known; and to the extent known.

ii. It shall contain clear allegations of fact, including times, places, and names of witnesses to the extent known, which ~~that~~ describe a violation of the Public Integrity Laws and shall include relevant times, places, and names of witnesses, if known.

b. ~~e.~~**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)~~subparagraph (b)~~. If the complaint is in compliance, the Executive Director staff shall notify~~mail~~ the complainant notice—that the complaint has been accepted. If a complaint does~~is~~ not comply with Paragraph 2.5(a)~~in~~ compliance, the Executive Director shall dismiss the complaint and shall notify~~mail~~ notice thereof to the complainant of dismissal and the reasons therefore.

c. ~~d.~~**De Minimis Complaints; Frivolous 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 subsection Paragraph.

DEPARTMENT OF RECORDS  
AUG 26 2014

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**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 or reasonably finds after review that a complaint is false or frivolous, the Executive Director, pursuant to Ethics Code § 20-606(1)(k)~~, may initiate an investigation on behalf of the Board into the circumstances surrounding the drafting and filing of the complaint, ~~complaint, including requesting or compelling testimony from the complainant~~.

**2.6    2.7 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 ~~Ethics Code § 20-606(1)(g) and Subpart B~~ of this Regulation. If any person refuses to comply with any 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 ~~Ethics Code § 20-606(1)(g) and Paragraph Subpart B~~ of 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 upon a complaint meeting the requirements of Paragraph 2.5(a), 2.6(b), the Executive Director staff shall notify mail both the complainant and the subject of the complaint notice of this termination and the reasons therefore.~~

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

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.
- f. **Confidentiality.** All investigations shall be subject to the confidentiality provisions of Code § 20-606(1)(i) as described in Board of Ethics Regulation No. 5.

**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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**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 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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

- 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.

782275

DEPARTMENT OF REVENGE  
2014 AUG -7 PM 2:16

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**SUBPART E.C. ADMINISTRATIVE ENFORCEMENT.**

**2.122.8 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~~direct the initiation of an ~~administrative~~ enforcement proceeding, ~~pursuant to Code § 20-606(1)(h).~~ In accordance with Code § 20-605, 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.~~ ~~ny such matter.~~ See Paragraphs 2.3 and 2.11(d).

**2.132.9 Notice of Administrative Enforcement Proceeding.** To commence the enforcement proceeding, the Executive Director shall ~~serve~~issue ~~written notice to each respondent regarding the violations of the Public Integrity Laws for which probable cause has been found.~~ The Notice of Administrative Enforcement Proceeding (“Notice”) on each ~~respondent whom he or she alleges has violated the Public Integrity Laws.~~ ~~may also be referred to as the Notice.~~

- 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 2.14.2.10. 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~~must be made in his or her written response to the Notice and that a respondent’s failure to request a hearing ~~is~~shall be deemed a waiver of the right to a hearing as set forth in Paragraph 2.14(c), 2.10(e).
- b. **Service.** The Executive Director shall serve the Notice of ~~Administrative Enforcement Proceeding~~ on each respondent either by personal service, or by first class, certified ~~mail, or~~ overnight mail. The Executive Director shall serve a candidate or treasurer of a campaign for City elective office at the addresses provided in the campaign’s disclosure reports filed with the Board pursuant to Code § 20-1006. The candidate and treasurer are responsible for maintaining a correct address on file with the Board, and for notifying the Board in writing of any other method that provides proof of delivery change in their addresses. 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, ~~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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**2.142.10 Opportunity to Respond.** The respondent has the right to respond in writing to the ~~allegations of violation~~ in the Notice of Administrative Enforcement Proceeding. The response ~~is due~~ shall be deemed timely if it is received by the Board within twenty (20) days off from 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, in its ~~design~~ discretion, may grant ~~the respondent~~ an extension of time to respond to the Notice. ~~An~~ No request for an extension shall be granted unless such request is in writing, and shall set forth the basis ~~alleges~~ good cause for the request ~~such extension~~.

- a. **Appearance before Board.** If the respondent wishes to appear before the Board to contest the ~~allegations of violation~~ 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~~ wishes to be represented by counsel, ~~he or she~~ in any matter before the Board, the respondent shall so notify ~~advise~~ the Board and in his or her response to the Notice, or shall provide the General Counsel ~~Board~~ with counsel's a letter of representation, stating the name, address, e-mail address, telephone number, and attorney number, of the counsel.
- c. **Waiver.** A respondent's failure to request a hearing in his or her written response to the Notice ~~is~~ shall be deemed a waiver of the right to a hearing, by the respondent. A respondent's failure to respond in writing to the Notice by the deadline set forth in this Paragraph ~~is~~ 2.10 ("Opportunity to Respond") shall be deemed a waiver of the right to a hearing, by the respondent. The Board, in its discretion, 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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**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 authorized by court order.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**2.16 Hearings.** The Board may ~~Ethics Code § 20-606(1)(h)~~ to conduct public hearings to adjudicate alleged violations of the Public Integrity Laws, ~~and/or Board regulations~~. 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 proceeding~~, ~~subject to the Pennsylvania Local Agency Law, 2 Pa.C.S. §§ 551-555, the Charter, the Philadelphia Code, this Regulation, and other applicable law.~~ 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, ~~before the Board~~ 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~~designated agents 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~~Upon issuing subpoenas for administrative adjudication hearings, the Board will grant 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.** ~~In accordance with Code § 20-605, no person shall engage in a substantively inappropriate ex parte communication with any member of the Board (including, for purposes of this subparagraph, the General Counsel and any designated Hearing Officer). Communicating with the General Counsel regarding non-substantive issues, such as scheduling, is not a substantively inappropriate 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 ~~designated~~ 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.

DEPARTMENT OF RECORDS

7820276

2014 AUG - 7 PM 2:16

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

- 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.

**2.172.12 Discovery.**

a. **Pre-hearing exchange and submission of information.**

- i. At least 21 days prior to the hearing, the Executive Director and respondent shall exchange disclosures. All parties to an enforcement proceeding shall give notice of the names and addresses of the witnesses they plan to call to testify and copies of any documents, or whose testimony they intend plan to offer as evidence.
- ii. submit, at least fourteen (14) days prior to the hearing, the Executive Director and respondent shall submit to the Board the names of any at which the witnesses they plan to call are 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, unless the Board or its designated Hearing Officer may, shall, for exigent circumstances, fix a shorter time for the exchange and submission of information described in this Paragraph. The Board, or its designated Hearing Officer, may require the Executive Director and respondent to exchange copies of documents they intend to offer as evidence at the hearing.
- v. The Executive Director and respondent shall not offer any contested evidence at the hearing. b. **Evidence.** Other than from witnesses and documents as identified as required by this Paragraph under (a) above, there shall be no evidence admitted at the hearing, provided that the Board or its designated Hearing Officer may grant exceptions for good cause shown.

- b.e. **No other discovery.** Except for the exchanges of information described in as provided in subparagraphs (a) and (b) of this paragraph, there shall be no other discovery, unless although the parties in an enforcement proceeding may voluntarily agreed to by the Executive Director and respondent between themselves to other forms of discovery.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**2.182.13 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 designated Hearing Officer, ~~at its discretion~~, 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 designated Hearing Officer, may ask questions of witnesses at any time.
- c. **Limitation of Witnesses and Examination.** The Board, or its designated Hearing Officer, may limit the testimony of witnesses whose testimony is cumulative or similar. The Board, or its designated 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.

**2.192.14 Evidence.** As provided in the Pennsylvania Local Agency Law, the Board, or its designated Hearing Officer, shall not be bound by technical rules of evidence at Board hearings, and all relevant evidence of reasonably probative value may be received.

- a. **Official Notice.** The Board, or its designated 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 designated 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.

**2.202.15 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 Ethics Code § 20-606(1)(h) and 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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

- | **b.a. Basis of Final Determination When Hearing Not Requested.** 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.b. Notice of Final Determinations.** The Board shall serve notice of the final determination on the respondent by any method identified in the manner described in Paragraph 2.13(b), 2.9(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.D. JUDICIAL ENFORCEMENT**

**2.222.16 Scope.** This Subpart C shall not apply to, and this Subpart D shall apply, to those enforcement actions initiated to be instituted by the Board filing an action in the Court of Common Pleas.

**2.232.17 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.

**2.242.18 Opportunity to Address the Board.** The Executive Director shall notify the potential respondent to the judicial enforcement 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 2.23.2.17. The Executive Director shall inform the potential respondent that he or she may appear at the next public meeting of the Board to address the Board and respond to the allegations, submitted to the Board pursuant to Paragraph 2.17.

| The provisions of Paragraph 2.242.18 shall not apply to actions to enforce a subpoena issued by the Board or to actions seeking emergency relief.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

| **2.252.19 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 potential respondent to the judicial enforcement proceeding, the Board shall:may do one of the following:

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~~C~~ of this Regulation, but only if the respondent 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.by any member of the Board or its staff.

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

782277

| **SUBPART G.E. SETTLEMENT AND CONCILIATION**

| **2.262.20 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.2.21 Stipulation of settlement.** 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 stipulation of settlement agreement is entirely within the discretion of the Board. A stipulation of 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 final stipulations of settlement agreements shall be made available to the public.

DEPARTMENT OF RECORDS  
2014 AUG -7 PM 2:16

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

Initially approved for public comment by Board April 17, 2007

Public Hearing held June 19, 2007

Adopted by Board, with modifications June 26, 2007

Effective July 12, 2007

Proposed amendments approved for public comment by the Board on December 16, 2009.

Public Hearings held January 20, 2010 and February 17, 2010.

Adopted by Board, with modifications

Effective

Proposed amendments approved for public comment by the Board on March 19, 2014

March 19, 2014 proposed amendments rescinded on May 21, 2014

Proposed amendments approved for public comment by the Board on May 21, 2014

Posted at Department of Records on

Effective

The Law Office of  
ADAM C. BONIN

ADAM C. BONIN  
Direct Phone 215.864.8002  
Direct Fax 215.701.2321  
[adam@boninlaw.com](mailto:adam@boninlaw.com)

July 10, 2014

Hortencia Vasquez  
*Hortencia.Vasquez@phila.gov*  
City of Philadelphia Board of Ethics  
One Parkway Building  
1515 Arch Street, 18th Floor  
Philadelphia, PA 19102-1504

**re: Proposed Revisions to Regulation 2**

Dear Ms. Vasquez:

I am writing to raise my concerns regarding the proposed Amendments to Regulation 2, chiefly as they deal with the confidentiality of investigations. Unfortunately, I will not be available to testify in support of these comments at the July 16 hearing. These comments are in my personal capacity, as an attorney whose practice encompasses the representation of individuals and entities before the Board, including during its investigations, and are not offered on behalf of any particular client past or present.

While I recognize that Regulation 2 does not materially affect the existing confidentiality rules, I nonetheless believe that the structure of the regulation unnecessarily stifles free speech in the one-way nature of its restrictions. Consider: the complainant under proposed Reg. 2.10(a) can announce that he or she has filed a complaint, the subject of the complaint, and the complete substance of the complaint. The complainant has free rein to attack the subject of the complaint and to seek relief from the local media if he or she is disappointed by the way in which the Board's staff is, or isn't, investigating the allegations. Or if the complainant wants to remain private, he or she can, with identity (and the complaint itself) protected by regulations as confidential. Proposed Reg. 2.21.

The respondent, however, is severely restricted under proposed Reg. 2.11. The respondent cannot confirm the existence of the complaint, or that an investigation is ongoing, as these are facts learned via the Board of Ethics. As I interpret the regulation, a respondent cannot respond to press inquiries regarding the complaint, or offer a defense of its actions in the media, as this would constitute the revelation of "information or documents related to that investigation that he or she has learned or obtained from the Board or Board staff, including the fact that an

DEPARTMENT OF RECORDS  
JULY 16, 2014 - PM 2:18

1900 Market Street, Philadelphia, PA 19103

investigation is ongoing.” Nor can the respondent to a complaint reach out to the media to criticize the conduct of the Board’s staff in pursuing an investigation, whether as to the invasiveness of its subpoenas and other investigatory methods, the scope of its review, or the duration of an inquiry.

Due respect for the rights of the accused suggests the Board’s proposed regulation has this precisely backwards. Consider the parallel federal law. Under 2 U.S.C. § 437g(a)(12) and 11 CFR § 111.21, a notification or investigation cannot be made public “without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.” In other words, the respondent has the freedom to choose whether to make matters public, a choice denied under the proposed regulations. [Moreover, the parallel FEC rule has sharp teeth: a fine of up to \$2,000 for confidentiality violations in general and up to \$5,000 if the violation is knowing and willful. *Id.*]

A presumption of confidentiality for Board complaints and investigations makes sense, but the proposed regulation is imbalanced as to the rights of those involved. Please consider revising this regulation to allow respondents to waive their rights to confidentiality at their discretion. And the Board may further (or alternatively) wish to consider borrowing language from the parallel state regulations, which confirm that individuals may reveal “information that was already in their possession or the disclosure of their own statements,” 51 Pa. Code §21.6(10), and explicitly codify this protection within the exceptions under Proposed 2.11(a).

**Time Limits:** State regulations impose time limits on Ethics Commission investigations. These regulations do not. Under 51 Pa. Code §21.5(j), within 180 days of an investigation’s commencement, either (a) the investigation terminates, (b) the Commission issues its findings, or (c) the Commission can grant an extension upon a showing of need by the Executive Director, not to exceed 90 days (or two extensions in total). I believe such restrictions are a worthy means of cabining potentially limitless investigations and protecting the due process rights of those under investigation, as they have a right to finality and peace at some point.

**Transparency:** Would the Board consider adding a regulation requiring it to publish, on an annual basis, summary data as to its investigations? To its credit, the Board does publish this information in its annual report, but it’s not broken down by subject matter area. (See 2012-13 Annual Report at 15-16.) Codify this voluntary exercise as a requirement, and do a little more by requiring a breakdown by subject matter area (Public Officials, Campaign Finance, Lobbying, etc., or however the Board sees fit), listing the number of complaints filed and investigations initiated in each area under the Board’s jurisdiction, and the manner of resolution.

**One final thing:** I appreciate that the Board wishes to investigate false or frivolous complaints filed – see proposed Reg. 2.5(d) – but there seems to be no consequences or doing so. While the public deserves to have all legitimate complaints investigated and I recognize that onerous fines might deter the filing of plausible complaints, surely there’s some way for the Board to impose some deterrent upon the filing of claims which waste the time of the Board, its staff, and the affected respondents.

Proposed Regulation No. 2

July 10, 2014

Page 3

---

Perhaps, at a minimum, the regulations could require that all complaints are signed, sworn to, and notarized, thus filed under penalty of perjury as is required of complaints on the federal level? See 11 CFR §§ 111.4(b)(2), (c). I do not know if the Board perceives that there is a problem with frivolous or false complaints, but that might be one way to address it.

\* \* \*

I am sorry I cannot attend the July 16 hearing. Thank you for your consideration of these comments, and members of the Board and Staff should feel free to contact me if there are any questions.

Very truly yours,



ADAM C. BONIN

ACB

782279

DEPARTMENT OF DEFENSE

2014 AUG - 7 PM 2:16



**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**PHILADELPHIA BOARD OF ETHICS**

**REGULATION NO. 2**

**INVESTIGATIONS AND  
ENFORCEMENT PROCEEDINGS.**

**Table of Contents**

<u>Subpart A. Scope; Definitions.....</u>	<u>pg. 1</u>
<u>Subpart B. Separation of Functions .....</u>	<u>pg. 3</u>
<u>Subpart C. Investigations.....</u>	<u>pg. 3</u>
<u>Subpart D. Confidentiality of Complaints and Investigations .....</u>	<u>pg. 6</u>
<u>Subpart E. Administrative Enforcement.....</u>	<u>pg. 7</u>
<u>Subpart F. Judicial Enforcement.....</u>	<u>pg. 12</u>
<u>Subpart G. Settlement and Conciliation</u>	<u>pg. 13</u>

781569

DEPARTMENT OF RECORDS  
2014 MAY 27 PM 2:42

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**SUBPART A. SCOPE; DEFINITIONS; SCOPE.**

**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. Public Integrity Laws.** Chapters 20-600 and 20-1000 of the Philadelphia Code, relevant provisions of the Philadelphia Home Rule Charter and such other laws and regulations over which the Board has jurisdiction under Charter Section 4-1100, as well as other matters assigned to the Board by City Council.

**b. Board.** The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.

**c. Executive Director.** The Executive Director of the Board (including the interim Executive Director until a permanent Executive Director is appointed), and his or her designee or designees.

**d. General Counsel.** The General Counsel of the Board, and his or her designee or designees.

**e. Paragraph.** A numbered paragraph contained in this Regulation.

**f. Subject of a complaint or an investigation.** Those individuals or entities alleged in a complaint to have violated the Public Integrity Laws or those individuals or entities being investigated to determine whether there is probable cause to believe they have violated the Public Integrity Laws.

**g. Respondent.** Those individuals or entities against whom the Executive Director has instituted an administrative enforcement proceeding or against whom the Board has instituted a judicial enforcement proceeding.

**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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

- 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.

781570

DEPARTMENT OF REVENUE  
2014 MAY 27 PM 2:43

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**SUBPART B. Separation of Functions.**

**2.2 Powers of the Board.** The Board shall have the power to investigate all matters related to its responsibilities under the Public Integrity Laws. Pursuant to Ethics Code § 20-606(1)(g) and Charter §§ 8-409 and 8-412, the Board and its designated agents shall have the power to inspect books and records; receive and investigate complaints; issue subpoenas to require the attendance of witnesses and the production of books, accounts, papers and other evidence; and administer oaths and take the testimony of witnesses. The Board may refer any matter related to, or discovered in, an investigation to any other governmental or law enforcement agency as the Board deems appropriate.

**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.B. INVESTIGATIONS.**

**2.3 2.4 Preliminary Inquiry.** The Executive Director may, at his or her discretion, conduct a preliminary inquiry to determine if there is reason to believe a potential violation of the Public Integrity Laws has occurred. Board and Board staff shall keep preliminary inquiries confidential as required by this Regulation No. 5 Paragraph 5.5. However, a preliminary inquiry is not an investigation and is not subject to the disclosure limitations provisions of Board of Ethics Regulation No. 5, Paragraph 2.10(a) or 5.3 and the notice provisions of Regulation No. 5, Paragraph 2.6(e).5.4.

**2.4 2.5 Initiation of Investigations.** The Executive Director shall have the authority to initiate an investigation upon on the basis of any of the following three circumstances:

- a. Receipt of a complaint that meets the requirements of Paragraph 2.5; 2.6(b); submitted pursuant to Ethics Code § 20-606(1)(f) and Paragraph 2.6(a);
- b. Receipt of upon 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 potential violation of the Public Integrity Laws may have has occurred.

An investigation initiated by the Executive Director that is not initiated in response to a complaint from any other person shall not be subject to the requirements of Paragraphs 2.5, 2.6(a), (b), and (c).

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**2.5    2.6 Complaints.**

- a. General.** 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 be mailed to, or personally served on, the Board at: City of Philadelphia Board of Ethics, Packard Building, 2nd Floor, 1441 Sansom Street, Philadelphia, PA 19102. For purposes of the foregoing sentence, a complaint shall be considered mailed if sent via electronic mail to the Board via the Board's Web site or by other electronic means.
- b. Requirements.** A complaint shall conform to the following requirements:
  - i. It shall provide the full name and address of the complainant, and identify as the subject of the complaint the personthose individuals or personentities who isare alleged to have committed violations of the Public Integrity Laws, including their names and addresses if known; and to the extent known.
  - ii. It shall contain clear allegations of fact, including times, places, and names of witnesses to the extent known, which that describe a violation of the Public Integrity Laws and shall include relevant times, places, and names of witnesses, if known..
- b. e. 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).subparagraph (b). If the complaint is in compliance, the Executive Director staff shall notify mail the complainant notice that the complaint has been accepted. If a complaint doesnot comply with Paragraph 2.5(a).in compliance, the Executive Director shall dismiss the complaint and shall notify mail notice thereof to the complainant of dismissal and the reasons therefore.
- c. d. De Minimis Complaints, Complaints; Frivolous 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 subsection Paragraph.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

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 or reasonably finds after review that a complaint is false or frivolous, the Executive Director, pursuant to Ethics Code § 20-606(1)(k), may initiate an investigation on behalf of the Board into the circumstances surrounding the drafting and filing of the complaint, including requesting or compelling testimony from the complainant.

**2.6    2.7 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 Ethics Code § 20-606(1)(g) and Subpart B of this Regulation. If any person refuses to comply with any 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 Ethics Code § 20-606(1)(g) and Paragraph Subpart B of 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 upon a complaint meeting the requirements of Paragraph 2.5(a), 2.6(b), the Executive Director staff shall notify mail both the complainant and the subject of the complaint notice of this termination and the reasons therefore.

2014 MAY 22 PM 2:47

DEPARTMENT OF RECORDS

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

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.
- f. **Confidentiality.** All investigations shall be subject to the confidentiality provisions of Code § 20-606(1)(i) as described in Board of Ethics Regulation No. 5.

**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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**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 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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

- 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.

781572

DEPARTMENT OF RECORDS  
2014 MAY 27 PM 2:44

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**SUBPART E.C. ADMINISTRATIVE ENFORCEMENT.**

**2.122.8 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~~ direct the initiation of an ~~administrative~~ enforcement proceeding pursuant to Code § 20-606(1)(h). In accordance with Code § 20-605, 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 ~~in~~ such matter. See Paragraphs 2.3 and 2.11(d).

**2.132.9 Notice of Administrative Enforcement Proceeding.** To commence the enforcement proceeding, the Executive Director shall ~~serve~~ issue written notice to each respondent regarding the violations of the Public Integrity Laws for which probable cause has been found. The Notice of Administrative Enforcement Proceeding ("Notice") on each respondent whom he or she alleges has violated the Public Integrity Laws ~~may also be referred to as the Notice.~~

- 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 2.14.2.10. 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~~ must be made in his or her written response to the Notice and that a respondent's failure to request a hearing ~~is~~ shall be deemed a waiver of the right to a hearing as set forth in Paragraph 2.14(c), 2.10(e).
- b. **Service.** The Executive Director shall serve the Notice of Administrative Enforcement Proceeding on each respondent either by personal service, or by first class, certified mail, or overnight mail. The Executive Director shall serve a candidate or treasurer of a campaign for City elective office at the addresses provided in the campaign's disclosure reports filed with the Board pursuant to Code § 20-1006. The candidate and treasurer are responsible for maintaining a correct address on file with the Board, and for notifying the Board in writing of 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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**2.142.10 Opportunity to Respond.** The respondent has the right to respond in writing to the allegations of violation in the Notice of Administrative Enforcement Proceeding. The response is due shall be deemed timely if it is received by the Board within twenty (20) days offrom 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, in its designeediscretion, may grant the respondent an extension of time to respond to the Notice. ANo request for an extension shall be granted unless such request is in writing, and shall set forth the basisalleges good cause for the request.such extension.

- a. **Appearance before Board.** If the respondent wishes to appear before the Board to contest the allegations of violation 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 iswishes to be represented by counsel, he or she in any matter before the Board, the respondent shall so notifyadvise the Board and in his or her response to the Notice, or shall provide the General CounselBoard with counsel's a letter of representation, stating the name, address, e-mail address, telephone number, and attorney number, of the counsel.
- c. **Waiver.** A respondent's failure to request a hearing in his or her written response to the Notice isshall be deemed a waiver of the right to a hearing, by the respondent. A respondent's failure to respond in writing to the Notice by the deadline set forth in this Paragraph is2.10 ("Opportunity to Respond") shall be deemed a waiver of the right to a hearing, by the respondent. The Board, in its discretion, 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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**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 no longer 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 authorized by court order.

7815  
2014 MAY 27 PM 2:44  
DEPARTMENT OF RECORDED

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**2.16 Hearings.** The Board may ~~Ethics Code § 20-606(1)(h)~~ conduct public hearings to adjudicate alleged violations of the Public Integrity Laws, and/or Board regulations. 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, proceeding, subject to the Pennsylvania Local Agency Law, 2 Pa.C.S. §§ 551-555, the Charter, the Philadelphia Code, this Regulation, and other applicable law.~~ 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, before the Board 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~~ designated agents 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~~ Upon issuing subpoenas for administrative adjudication hearings, the Board will grant 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.** In accordance with Code § 20-605, no person shall engage in a ~~substantive~~ inappropriate *ex parte* communication with any member of the Board (including, for purposes of this subparagraph, the General Counsel and any designated Hearing Officer). Communicating with the General Counsel regarding ~~non-substantive~~ issues, such as scheduling, is not a ~~substantive~~ inappropriate *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 ~~designated~~ 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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

- 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.

| **2.172-12 Discovery.**

a. **Pre-hearing exchange and submission of information.**

- i. At least 21 days prior to the hearing, the Executive Director and respondent shall exchange ~~disclosures~~. All parties to an enforcement proceeding shall give notice of the names and addresses of the witnesses they plan to call to testify and copies of any documents, or whose testimony they intend plan to offer as evidence.
- ii. ~~submit, at least fourteen (14) days prior to the hearing, the Executive Director and respondent shall submit to the Board the names of any at which the witnesses they plan to call are 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, unless the Board or its designated Hearing Officer may, shall, for exigent circumstances, fix a shorter time for the exchange and submission of information described in this Paragraph. The Board, or its designated Hearing Officer, may require the Executive Director and respondent to exchange copies of documents they intend to offer as evidence at the hearing.
- v. The Executive Director and respondent shall not offer any contested evidence at the hearing.~~b. Evidence.~~ Other than from witnesses and documents as identified as required by this Paragraph, under (a) above, there shall be no evidence admitted at the hearing, provided that the Board or its designated Hearing Officer may grant exceptions for good cause shown.

- b.e.—No other discovery. Except for the exchanges of information described in as provided in subparagraphs (a) and (b) of this paragraph, there shall be no other discovery, unless although the parties in an enforcement proceeding may voluntarily agreed to by the Executive Director and respondent, between themselves to other forms of discovery.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

**2.182.13 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 designated Hearing Officer, at its discretion, 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 designated Hearing Officer, may ask questions of witnesses at any time.
- c. **Limitation of Witnesses and Examination.** The Board, or its designated Hearing Officer, may limit the testimony of witnesses whose testimony is cumulative or similar. The Board, or its designated 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.

**2.192.14 Evidence.** As provided in the Pennsylvania Local Agency Law, the Board, or its designated Hearing Officer, shall not be bound by technical rules of evidence at Board hearings, and all relevant evidence of reasonably probative value may be received.

- a. **Official Notice.** The Board, or its designated 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 designated 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.

**2.202.15 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 Ethics Code § 205.606(1)(h) and 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.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

- b.a. Basis of Final Determination When Hearing Not Requested.** 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.b. Notice of Final Determinations.** The Board shall serve notice of the final determination on the respondent by any method identified in the manner described in Paragraph 2.13(b), 2.9(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.D. JUDICIAL ENFORCEMENT**

**2.222.16 Scope.** This Subpart C shall not apply to, and this Subpart D shall apply, to those enforcement actions initiated to be instituted by the Board filing an action in the Court of Common Pleas.

**2.232.17 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.

**2.242.18 Opportunity to Address the Board.** The Executive Director shall notify the potential respondent to the judicial enforcement 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 2.232.17. The Executive Director shall inform the potential respondent that he or she may appear at the next public meeting of the Board to address the Board and respond to the allegations submitted to the Board pursuant to Paragraph 2.17.

The provisions of Paragraph 2.242.18 shall not apply to actions to enforce a subpoena issued by the Board or to actions seeking emergency relief.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

| **2.252.19 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 potential respondent to the judicial enforcement proceeding, the Board shall:~~may do one of the following:~~

|     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~~C~~ of this Regulation, but only if the respondent 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.~~, by any member of the Board or its staff~~.

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

| **SUBPART G.E. SETTLEMENT AND CONCILIATION**

| **2.262.20 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.**~~2.21 Stipulation of settlement.~~ 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 stipulation of settlement agreement is entirely within the discretion of the Board. A stipulation of 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 final stipulations of settlement agreements shall be made available to the public.

**PROPOSED AMENDMENTS APPROVED BY BOARD  
AT MAY 21, 2014 MEETING FOR PUBLIC COMMENT POSTING**

Initially approved for public comment by Board April 17, 2007

Public Hearing held June 19, 2007

Adopted by Board, with modifications June 26, 2007

Effective July 12, 2007

Proposed amendments approved for public comment by the Board on December 16, 2009.

Public Hearings held January 20, 2010 and February 17, 2010.

Adopted by Board, with modifications

Effective

Proposed amendments approved for public comment by the Board on March 19, 2014

March 19, 2014 proposed amendments rescinded on May 21, 2014

Proposed amendments approved for public comment by the Board on May 21, 2014

Posted at Department of Records on

Effective

781575

DEPARTMENT OF RECORDS

2014 MAY 27 PM 2:45