

Executive Director's Report
2/22/19

New Board Member

On behalf of the staff, it is my honor and privilege to welcome to the Board our newest member, the Honorable Barbara McDonald. Judge McDonald is a graduate of the University of Dayton and received her law degree from the University of Notre Dame Law School. She served as a Circuit Judge for the Circuit Court of Cook County from 1996 to 2012. Prior to that, she served as Chief Assistant Corporation Counsel in the City's Law Department, Torts Division, and began her legal career with the Chicago firm of Lord, Bissell and Brook. She was confirmed by the City Council at its January 2019 meeting.

Education

Classes and other presentations

Since the Board's last regularly scheduled meeting, 59 employees attended classes here on January 29 and February 7 and 19. There are 75 scheduled for classes here on February 26, March 7, and 19.

All Board classes cover sexual harassment.

On February 20, staff made a 30 minutes presentation to all incoming SSA (Special Service Area) Commissioners and staff of various SSA Service Providers, at the request of the Department of Planning & Development.

On March 6, I will be a guest speaker at a class on Public Corruption at the University of Chicago's Law School, at the request of its instructor, Sharon Fairley.

On March 12, I will make a 30 minute presentation to graduate students from the DePaul School of Public Health on ethics in organizations and government agencies.

On March 21, we will present a class for the alderman and staff of the 38th Ward.

On-line Training

For appointed officials. We are finalizing a PowerPoint for all appointed officials, including members of this Board. Currently the sexual harassment section is being reviewed by the Department of Human Resources, which is revising the City's EEO Policy, and may include appointed officials within its ambit. When the program is completed, we will email it to all appointed officials, and have them complete it, with the Assistance of the Office of Legislative Counsel and Government Affairs (which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials). An Ordinance was submitted to City Council at our request, and at the request of the Mayor's Office, that would provide that all appointed officials are subject to the Ordinance's prohibition against sexual harassment. The proposed amendment is attached.

For lobbyists. While the 2017-2018 lobbyist training cycle was completed on July 1, 2018, we are working on the 2018-2019 training program, and I'm pleased to report that several lobbyists requested and were provided with soft copies of the last training, because they said it was so helpful.

City Council Educational Initiative/Handbook

In conjunction with the Law and Finance Departments, IG, and members and staff of the City Council, including representatives from its various caucuses, the Board met January 16 and February 27, March 27, April 16, and May 21, and attended briefings with aldermen on December 4 to finalize a “handbook” that will address and provide guidance on certain issues common to aldermen and their staff; these include some ethics ordinance issues. The Board, Law Department, and IG are acting under the guidance of the City Council on this project, in an effort to identify and promote various best practices. The Board submitted its extensive comments and entries, covering topics from political activity to social media to recusals.

We submitted brief revisions to the Handbook on February 19.

Amendments to the Ordinance.

I have suggested and had a chance to review and share with legal staff and the Chair the various drafts of the ethics reform package that the Mayor submitted to City Council on January 23 as they pertain to the Ordinance. We will discuss this, time permitting, in Executive Session. In addition, this is an opportunity for the Board to propose additional reforms and amendments to the Ordinance.

I will brief aldermen on the package on February 28, as well as testify at the next meeting of the City Council’s Committee on Committees, Rules and Ethics on March 12.

Council on Governmental Ethics Laws (“COGEL”)

COGEL’s 2019 annual conference will be here in Chicago, at the Michigan Avenue Marriott in early December of that year. We will work closely with the current and next Mayor’s Office, City Council, and Budget Office to ensure a successful conference. We expect about 450 ethics, campaign financing, lobbying, freedom of information, and election administration officials from across the U.S. and Canada to attend, plus private practitioners and academics. We are serving on the conference’s program committee, and will be reaching out to various elected and appointed officials, attorneys, public figures, and media personnel to serve on panel discussions or otherwise contribute to the Conference. We will co-host the Conference with our colleagues at the Cook County Board of Ethics, Chicago Board of Election Commissioners, Illinois State Board of Elections, and Illinois State Executive Ethics Commission, as well as possibly other local agencies involved in ethics or freedom of information administration.

As President-elect of COGEL, I also serve on the Program and Host committees, and continue to Chair the Publications committee. The 2019 Conference is an opportunity to showcase our agency, our mission, our ethics, campaign financing, lobbying, and election administration colleagues at the City, County, and State levels. And I am hoping that our Board members will lend support to make the 41st Conference nonpareil.

On February 7, I sent an email to 17 media and good government personnel, soliciting ideas for breakout sessions. I received one serious response, from Madeleine Doubek, Executive Director of Change Illinois, a good government group, and have been in touch with Alisa Kaplan, Head of Outreach at Reform Illinois, another good government group, and have several outstanding ideas from them [unfortunately, but probably inevitably, one media person tweeted, snarkily, “Seriously: Chicago is hosting the 41st Annual COGEL Conference”]. In fact, hosting this Conference is a great honor, and the work of COGEL and its members is serious.

Executive Editorship – Public Integrity/Guardian issue

I am a member of the Executive Editorial Board of the journal Public Integrity, which is affiliated with the American Society for Public Administration. It is published by Taylor & Francis six (6) times a year. We are in the midst of a joint project between this journal and the COGEL Guardian to bridge gaps between academics and practitioners. The first edition of the 2019 COGEL Guardian will be published around April 15, 2019.

Sister Agency Ethics Officers

We met on December 18 with our ethics counterparts at other local governmental agencies: the Cook County Board of Ethics and the Ethics Officers from the Chicago Public Schools, City Colleges of Chicago, and Chicago Housing Authority. We will meet next on March 21.

2019 Statements of Financial Interests

On or before March 1, notices to about 3,950 City employees and officials will be sent via email and U.S. first class mail advising them of the requirement to file 2019 Statements of Financial Interests before June 1. This will include individuals identified by each Ward or alderman who fall into the definition in the Ordinance of “City Council employee” even though they are paid as independent contractors.

Forms are posted on our website as soon as they are processed by staff – our goal is to have all filed forms posted within 24 hours of when they are filed. Once posted, they reside on the Board’s website for seven (7) years from the date of filing, after which they are removed and destroyed, pursuant to the Board’s Document Retention Schedule kept with the Illinois Secretary of State and Local Records Commission of Cook County.

Candidates’ Statements of Financial Interests

Pursuant to §2-156-150(d)(iii), each person who qualifies as a candidate for elected City office must file a Statement of Financial Interests with the Board within five (5) days after so qualifying. By following media reports – particularly those by thedailyline.com – Board staff tracks and notifies each candidate in writing of the filing requirement. To date, 182 known qualified candidates (not including incumbents) for the February 2019 Consolidated Municipal Election have been notified to file, and all have done so.

We post all filed Statements on our website. Two (2) candidates were found in violation of the Ordinance for failure to file by their deadline, and were fined \$250 and \$500, respectively. Their names and violations were posted on our website.

I again want to acknowledge here the fine work of the reporters at thedailyline.com, who enable us to contact newly declared candidates as they are reported, thereby enabling us to make candidates’ information publicly available to the electorate.

Note: incumbents also must file, but their forms are posted and searchable through a different page, and their deadline was before June 1, 2018.

Advisory Opinions

Since the Board’s last meeting on January 18, we have issued 461 informal advisory opinions – an astoundingly large number. The leading categories were, in descending order: travel; gifts; City property (including proper website postings or blockings); conflicts of interest; campaign financing; post-employment; political activity; employment of relatives/nepotism; and lobbying.

The leading City departments from which requesters came in this period were (in descending order): City Council; Mayor’s Office; Chicago Police Department; Chicago Public Library; Cultural Affairs and Special Events; Planning & Development; and Office of Inspector General.

Informal opinions are not made public but are logged, kept, and used for training and future advisory purposes. (This is the same practice that occurs with our colleagues at the New York City Conflicts of Interest Board, who issue roughly the same number of informal opinions.) They form the basis for much of our annual and periodic educational programs. Formal opinions are made public, in full text, with names and other identifying information redacted out.

Waivers.

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. Two (2) have been granted, each involving former City employees; a third request is on today's agenda. By law, we must make these waivers public. We added a new page on our website whereby users can search these waivers.

Summary Index of Formal Advisory Opinions/Text of all Formal Advisory Opinions

Every formal Board opinion issued since 1986 is posted on the Board's website (902 of them), redacted in accordance with the Ordinance's confidentiality provisions. Redacted opinions are posted once issued by or reported to the Board. Further, summaries and keywords for each of these opinions are available on the Board's searchable index of opinions. Only a handful of other ethics agencies have comparable research tools.

We are unaware of jurisdictions that make their *informal* opinions public—though others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement.

Summary Index of Board-Initiated Regulatory Actions/Adjudications/pre-2013 Investigations

We post the summary index of all investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board undertook without an IG investigation.

The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There have been, to date, 116 such matters, but only in those that occurred after July 1, 2013 can the Board release the names of those found to have violated the Governmental Ethics Ordinance.

The document makes clear that, despite comments made in the media over the last decade, the Board has been a robust enforcement agency, hardly a "do-nothing" agency. This continues through the Board's ongoing regulatory actions, described above, and with respect to lobbying and campaign financing, even though the Board no longer has investigative authority.

Summary Index of Ongoing IG/LIG Investigations/Adjudications

We post and continually update, on our website, an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (a total of eight (8) since July 1, 2013) and the former Office of the Legislative Inspector General ("LIG"), since January 1, 2012, and the status of all 50 petitions to commence investigations presented to the Board by the LIG. It is updated as appropriate, consistent with the Ordinance's confidentiality provisions.

Whenever the IG presents the Board with a completed ethics investigation in which the IG believes there have been any violations of the Governmental Ethics Ordinance, the procedure that follows is governed by §2-156-385(3) and (4) of the Ordinance: the Board reviews the IG's report, recommendations, and the entirety evidence submitted in its completed ethics investigation, including a review to ensure that the IG conformed with the requirement that it complete ethics investigations within two (2) years of commencing them (unless there is evidence that the subject took affirmative action to conceal evidence or delay the investigation), and that investigations are commenced within two (2) of the last alleged act of misconduct.

Then, if the Board finds that the evidence presented warrants a *prima facie* finding of probable cause to believe the subject violated the Ordinance, it notifies the subject of the allegations and affords the subject the opportunity to present written submissions and meet with the Board, together with an attorney or other representative present. The Ordinance provides that this meeting is *ex parte* – no one from the City's Law Department or IG is present. Note that the Board may request clarification from the IG as to any evidence

adduced in its investigation before making a probable cause finding (and indeed has done so). The Board cannot administer oaths at this meeting, but can and does assess the subject's credibility and the validity and weight of any evidence the subject provides.

If the subject is unable to rebut the Board's *prima facie* probable cause finding, the Board may enter into a settlement agreement – all settlement agreements are made public – or the Board or subject may decide to proceed to a merits hearing that is not open to the public. That hearing would be held before an administrative law judge (ALJ) appointed by the Department of Administrative Hearings. The City would be represented by the Law Department (or a specially hired Assistant Corporation Counsel for that purpose), and the subject by his or her attorney. At the conclusion of the hearing, the ALJ submits his or her findings of fact and law to the Board, which can accept or reject them, based solely on the record of the hearing. The Board will then issue a public opinion in which it finds one or more violations of the Governmental Ethics Ordinance (or finds none) and impose appropriate fines.

This process may seem cumbersome. However, it was added to the Ordinance and became effective on July 1, 2013, based on specific recommendations of the Mayor's Ethics Reform Task Force in Part II of its 2012 Report – the primary purposes being (i): to guarantee due process for all those investigated by the IG or former LIG; (ii) to ensure that *only* the Board of Ethics could make legal determinations as to whether a person investigated by the IG or LIG violated the Ordinance, given the Board's extensive jurisprudence and unique expertise in ethics matters; and (iii) to balance due process for those investigated by the IG with an accurate and precise adjudication by the Board of Ethics and the public's right to know of ethics violations.

On our website, we have a publication that describes this process in detail:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/EnforceProcedures.pdf>

One (1) of these eight (8) IG matters remain pending, and in two (2) others, the Board has commenced enforcement actions against secondary subjects. Specifically:

In Case No. 18039.IG (corresponding to IG Case # 17-0082), the final investigative report was sent to our office on November 30, 2018. The case involves prohibited gifts offered to a current and a now-former City employee from a City subcontractor. The case is on today's agenda for a finding of probable cause.

In Case No. 18012.IG (corresponding to IG Case #16-0240) the IG presented the Board with a fifth completed investigation and petition for probable cause in April 2018. At the Board's May 2018 meeting, it dismissed one part of the IG's petition (the part of the case dismissed by the Board pertained to the alderman's job interviews with a potential post-City employer while that potential employer had matters pending, finding that there was no evidence in the IG's investigative record to show that the alderman acted on any matters involving the potential employer and that the employer had no matters pending before the alderman), but made a *prima facie* finding of probable cause in the other. The matter involves violations of the Ordinance's post-employment provisions by a former alderman (the Ordinance's post-employment provisions prohibit former aldermen from engaging in lobbying the City for one year after leaving office). The Board settled the matter with the former alderman for a \$5,000 fine. At its January 2019 meeting, the Board also found probable cause to conclude that the former alderman's employer violated the Ordinance by employing a lobbyist who failed to register as required by the Ordinance. The employer is subject to a fine between \$500-\$2,000. That part of the case remains pending.

In Case No. 18023.IG (corresponding to IG Case #17-0148), the IG presented its completed investigative report and corroborating evidence on June 20, 2018. The case involves a now-former employee who, the IG concluded (and identified as a former Water Management employee), violated the Ordinance by accepting gifts to a Cubs' post-season game from a business over which he had official authority, in excess of the Ordinance's \$50 per source/per year limit, failed to report the gift on his annual Statement of

Financial Interests, and provided advice or assistance on matters concerning City business that were not wholly unrelated to his City job. The Board made a *prima facie* probable cause finding at its July 2018 meeting, and settled the matter with the former employee for a \$500 fine. At its January 2019 meeting, the Board found that there is probable cause to conclude that the gift-giver violated the Ordinance by giving the former employee a prohibited gift. The gift-giver is subject to a fine between \$1,001 - \$5,000.

Please note finally that, in all matters adjudicated or settled on or after July 1, 2013, the Board makes public the names of all violators and penalties assessed, or a complete copy of the settlement agreement.

Disclosures of Past Violations

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct, and discloses to the Board facts leading it to conclude that he or she committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, under current law, the person is advised that he or she may self-report to the IG or, if he or she fails to do so within two (2) weeks, the Board must make that report.

Since the time this provision (§2-156-070(b)) became effective on July 1, 2013, the Board has advised three (3) aldermen, two (2) aldermanic staffers, one (1) mid-level City employee in an operating department, one (1) department head and one (1) former department head that their past conduct violated the Ordinance. In three (3) of these cases, one (1) involving an alderman, the second an aldermanic staffer, and the third a former department head, the Board concluded that the apparent violations were *not* minor or technical, and the aldermen and aldermanic staff self-reported to the former LIG, and the former department head self-reported to the IG. Since the time that all matters involving the former LIG were consolidated with the IG, the IG has informed us that it has no record that the LIG ever commenced an investigation in the matter involving the alderman, and that the matter involving the aldermanic staff was closed, apparently without further investigation by the LIG.

As noted above, the Board received a completed investigative report from the IG on May 26, 2017, with a petition for a probable cause finding. The case was based on the Board's earlier conclusion that the subject appeared to have committed a past violation of the Ordinance that was not minor, and then advised the subject of the self-reporting-to-the-IG provisions in the Ordinance. After the IG investigated and confirmed the Board's earlier conclusion, the matter was settled for a \$1,500 fine. The agreement is posted on our website.

In the three (3) cases in which the Board determined that minor violations had occurred, the Board sent confidential letters of admonition, as required by Ordinance.

There is no legal requirement imposed on the IG to report back to the Board on any actions it takes on matters or persons referred to it by the Board, unless the IG completes an investigation and submits a petition for a finding of probable cause to the Board based on that investigation. This is unlike the arrangement in New York City between its Conflicts of Interests Board and Department of Investigation.

Lobbyists-regulation and enforcement

Lobbyists' registrations and 4thQ activity reports were due before January 23, 2019. Unfortunately, I had to find 75 lobbyists in violation of the Ordinance for failing to timely re-register or terminate (fines totaling \$20,000 have already been levied, and three (3) lobbyists have ongoing fines). 30 lobbyists were found in violation for failing to timely file their 4thQ activity reports. One (1) has ongoing fines.

To date for 2019, there are 722 registered lobbyists, and we have collected \$348,425 in lobbyists' registration fees.

Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received eight (8) new requests under the Freedom of Information Act. The first request was for current copies of all aldermen's Statements of Financial Interests; the link to those records was provided, as they are all on our website. The second request, sent City-wide, was for certain information pertaining to City employees and contractors; based upon advice from the Law Department, we responded that we did not have such records. The third was for violations and code information on three distinct properties; we responded that we did not have such records. The fourth was for records respecting the City's parking meter transaction; we responded that we did not have such records. The fifth was for a list designating lobbyists' paper filings; we responded that we did not have such records but would provide those lobbyists' paper filings that we did possess. The sixth, seventh and eighth were virtually the same (from the same requestor) for "any and all" records mentioning either the name of a particular alderman, and the name of the alderman's campaign committee or ward committee. After consultation with the Law Department, we responded that the request would have to be narrowed in order not to be unduly burdensome.