

Philadelphia Board of Ethics

Contact: J. Shane Creamer, Jr., Executive Director, 215-686-9450

For Immediate Release: December 12, 2011

PHILADELPHIA – The Philadelphia Board of Ethics has approved settlement agreements with two members of Councilwoman Donna Reed Miller’s staff: Kacy Nickens and Michael Moore. Both agreements resolve violations of the political activity restrictions under the Philadelphia Home Rule Charter. The Moore agreement also resolves violations of a provision of the Ethics Code that requires all City employees and officials to cooperate with requests made by the Ethics Board.

On November 28, 2011, the Ethics Board approved a settlement agreement with Kacy Nickens resolving a violation of section 10-107(4) of the Philadelphia Home Rule Charter.

On December 9, 2011, the Ethics Board approved a settlement agreement with Michael Moore resolving violations of sections 10-107(3) and 10-107(4) of the Philadelphia Home Rule Charter and section 20-606(2) of the Philadelphia Code. The Board’s Executive Director had previously initiated an administrative enforcement proceeding against Mr. Moore for the violations resolved by the settlement agreement. At Mr. Moore’s request, the Board had scheduled a hearing for December 13, 2011. That hearing is now cancelled.

Section 10-107(3) of the Home Rule Charter prohibits City employees from, directly or indirectly, being in any manner concerned in the collection, receipt, or solicitation of contributions intended for a political purpose.

Section 10-107(3) of the Home Rule Charter prohibits City employees from engaging in political activity while on duty or while using city resources.

Section 20-606(2) of the Philadelphia Code provides that all City employees must cooperate fully with any request of the Board or its staff made pursuant to the execution of the Board's powers and duties.

Copies of the approved settlement agreements are attached.

The Philadelphia Board of Ethics is a five-member independent board established by ordinance, approved by Philadelphia voters in May 2006, and installed on November 27, 2006. It is charged with providing ethics training for all City employees and enforcing City campaign finance, financial disclosure and conflict of interest laws. The Ethics Board has authority to render advice, investigate complaints and issue fines.

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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into between the Board of Ethics of the City of Philadelphia and Kacy Nickens, jointly referred to as “the Parties.”

RECITALS

- A. The Board of Ethics of the City of Philadelphia is a five-member, independent board established by ordinance, approved by Philadelphia voters in May 2006, and installed on November 27, 2006. Pursuant to section 4-1100 of the Home Rule Charter, the Board is charged with, among other things, enforcing the sections of the Philadelphia Home Rule Charter that imposes restrictions on the political activity of City employees.
- B. Kacy Nickens is a City employee who works in the office of City Councilmember Donna Reed Miller. Nickens has worked for the City since January of 2011.
- C. Section 10-107(4) of the Philadelphia Home Rule Charter provides that a City employee may not engage in certain types of political activity. The political activity restrictions in the Home Rule Charter ensure that government operates effectively and fairly, that elections play their proper part in representative government, and that employees are free from improper influences and execute the programs of the Government without bias or favoritism for or against any political party.
- D. Ethics Board Regulation No. 8, which became effective on March 28, 2011, provides a detailed interpretation of the Charter’s prohibitions on political activity. Pursuant to Regulation No. 8, a City employee may not engage in political activity while on duty, in City Hall, or while using City resources such as printers or computers.
- E. If the Board finds a violation of § 10-107 of the Home Rule Charter through administrative adjudication, it may impose a civil penalty of \$300. If a City employee is found to have violated § 10-107, he or she is subject to immediate dismissal and is ineligible for City employment for one year.
- F. City Council employees are subject to the Charter’s Political activity restrictions and to Regulation No. 8. On April 7, 2011, Ethics Board presented a training at City Hall on Regulation No. 8 and the Charter’s political activity restrictions. All City Council employees were invited to the training.

- G. Councilwoman Donna Reed Miller is the City Council representative for Philadelphia's 8th Council District. Councilwoman Miller is also the ward leader of the 59th Democratic ward.
- H. In January of 2011, Councilwoman Miller announced that she would not seek reelection. In the May 2011 primary election, seven candidates sought nomination to be the Democratic candidate for the 8th Council District, including Verna Tyner.
- I. On May 10, 2011, Councilwoman Miller announced she was endorsing Verna Tyner's candidacy.
- J. On May 12, 2011, in Councilwoman Miller's offices in City Hall, Michael Moore, a senior member of Councilwoman Miller's staff, gave Nickens more than 1,000 copies of a flyer entitled "An Important Message from your 59th Ward Democratic leader." The flyer urged residents of the 59th ward to vote for Verna Tyner. Moore directed Nickens to fold up the flyers so that they would be ready for distribution. A copy of the flyer is attached to the Agreement as Exhibit A.
- K. On May 13, 2011, at approximately 10:30am, Ethics Board enforcement staff served a subpoena on members of Councilwoman Miller's staff at the Councilwoman's offices in rooms 312 and 317A in City Hall.
- L. When enforcement staff arrived, Nickens was seated at Councilwoman Miller's desk surrounded by hundreds of copies of the 59th Ward flyer promoting Verna Tyner. Nickens was folding up the flyers so that they could be distributed in the 59th ward in the days leading up to the May 17th primary election. At the same time, the office photocopier was printing out additional copies of the flyer. Enforcement staff stopped the photocopier and seized all copies of the flyer on the copier, on Councilwoman Miller's desk, and in bags and baskets on the floor around Councilwoman Miller's desk.
- M. The 59th Ward flyer Moore created included a disclosure at the bottom reading "Labor Donated." In reality, the labor was paid for by the tax payers of Philadelphia.
- N. After serving the subpoena on May 13th, Ethics Board enforcement staff directed Nickens to appear at the offices of the Board to provide a statement under oath. Nickens complied and truthfully answered all questions Board staff asked her.
- O. The Parties desire to enter into this Agreement in order to resolve the matters described herein.

AGREEMENT

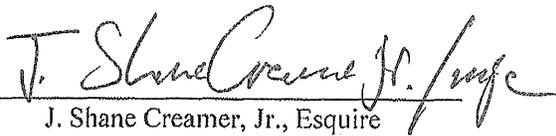
The Parties agree that:

1. By preparing campaign literature for distribution while in City Hall and while on-duty, Nickens violated § 10-107(4) of the Philadelphia Home Rule Charter and shall be subject to a civil penalty of \$300.
2. Nickens shall pay the civil penalty of \$300 within 14 days of the effective date of the Agreement. Payment shall be made by check or money order made out to the City of Philadelphia and delivered to the offices of the Board.
3. Within 14 days of the effective date of the Agreement, Nickens shall resign her position as a City employee. Nickens shall neither seek nor hold City office or employment for one year following the effective date of the Agreement.
4. Nickens releases and holds harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's investigation, enforcement, and settlement of the matters described in the Agreement.
5. In consideration of the above and in exchange for Nickens' compliance with all of the terms of the Agreement, the Board waives any further penalties or fines against her for the violation described in the Agreement.
6. The Parties will not make any public statements that are inconsistent with the terms of the Agreement.
7. If the Ethics Board is forced to seek judicial enforcement of the Agreement, and prevails, Nickens shall be liable for attorneys' fees and costs reasonably expended in enforcing compliance with the Agreement. Fees for time spent by Board staff attorneys shall be calculated based upon standard and customary billing rates in Philadelphia for attorneys with similar experience.
8. The Agreement contains the entire agreement between the Parties.
9. The Parties will submit a signed copy of the Agreement to the Board for approval.
10. The Agreement shall become effective upon approval by the Board.

11. If the Board rejects the proposed Agreement, presentation to and consideration of the Agreement by the Board shall not preclude the Board or its staff from participation in, or consideration or resolution of, any administrative adjudication of the matters described in the Agreement.

By the Executive Director of the
Board of Ethics:

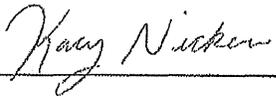
Dated: 11-17-11



J. Shane Creamer, Jr., Esquire

By Kacy Nickens

Dated: _____



Kacy Nickens

Approved by the Board of Ethics:

Dated: 11/28/2011



Richard Glazer, Esquire
Chair

EXHIBIT A



An Important Message from your 59th Ward Democratic leader

Donna Reed Miller

Dear Neighbor:

As the 59th Democratic Ward Leader, I am please to recommend **VERNA TYNER** for 8th District City Council.

Verna has over fifteen years of work in the community which she has dedicated; and the commitment to those she represented while working for three other Council members.

Verna Tyner has a wealth of knowledge in regards to the operation of City Council and city government; and I know she has the necessary experience to represent the Eighth Council District.

While so much has been accomplished, there is still a lot to be done. **Verna Tyner** brings with her the kind of pragmatic leadership that is required to continue this task.

Verna Tyner knows what it takes to make things happen in city government. Furthermore, she has the requisite relationships to effectively serve the constituents of the Eighth Council District. I ask you to join me in support of **Verna Tyner's** candidacy.

On Tuesday, May 17th

Vote VERNA TYNER

Push Button # 195



Creamer v. Moore
Administrative Adjudication
Matter No. 1110MU13

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by the Board of Ethics of the City of Philadelphia, J. Shane Creamer, Jr., Executive Director of the Board, and Michael Quintero Moore, jointly referred to as “the Parties.”

RECITALS

- A. The Board of Ethics of the City of Philadelphia is a five-member, independent board established by ordinance, approved by Philadelphia voters in May 2006, and installed on November 27, 2006. Pursuant to section 4-1100 of the Home Rule Charter, the Board is charged with, among other things, enforcing the sections of the Philadelphia Home Rule Charter that imposes restrictions on the political activity of City employees.
- B. Michael Quintero Moore is a City employee who works in the office of City Councilmember Donna Reed Miller. Moore has worked for the City since 2005.
- C. Section 10-107(3) of Philadelphia’s Home Rule Charter provides that a City employee may not “directly or indirectly demand, solicit, collect, or receive, or be in any manner concerned in demanding, soliciting, collecting or receiving, any assessment, subscription or contribution, whether voluntary or involuntary, intended for any political purpose whatever.”
- D. Section 10-107(4) of the Philadelphia Home Rule Charter provides that a City employee may not engage in certain types of political activity. The political activity restrictions in the Home Rule Charter ensure that government operates effectively and fairly, that elections play their proper part in representative government, and that employees are free from improper influences and execute the programs of the Government without bias or favoritism for or against any political party.
- E. Ethics Board Regulation No. 8, which became effective on March 28, 2011, provides a detailed interpretation of the Charter’s prohibitions on political activity. Pursuant to Regulation No. 8, a City employee may not engage in political activity while on duty, in City Hall, or while using City resources such as printers or computers.
- F. Regulation No. 8 also reiterates the Charter’s mandate that a City employee shall not directly or indirectly be in any manner concerned in the collection, receipt, or solicitation of contributions intended for a political purpose.
- G. If the Board finds a violation of § 10-107 of the Home Rule Charter through administrative adjudication, it may impose a civil penalty of \$300. If a City employee is found to have violated § 10-107, he or she is subject to immediate dismissal and is ineligible for City employment for one year.

- H. City Council employees are subject to the Charter's Political activity restrictions and to Regulation No. 8. On April 7, 2011, Ethics Board presented a training at City Hall on Regulation No. 8 and the Charter's political activity restrictions. All City Council employees were invited to the training.
- I. Section 20-606(2) of the Philadelphia Code provides that all City employees must cooperate fully with any request of the Board made pursuant to the execution of the Board's powers and duties and further provides that any City employee who fails or refuses to cooperate with the Board shall be deemed to be in violation of this Chapter. Code § 20-606(2) recognizes the basic principle that the City may require an employee to provide information concerning his or her performance of public duties and may sanction the employee if he or she refuses to comply.
- J. Councilwoman Donna Reed Miller is the City Council representative for Philadelphia's 8th Council District. Councilwoman Miller is also the ward leader of the 59th Democratic ward.
- K. In January of 2011, Councilwoman Miller announced that she would not seek reelection. In the May 2011 primary election, seven candidates sought nomination to be the Democratic candidate for the 8th Council District, including Verna Tyner.
- L. On May 10, 2011, while in City Hall and on duty, Moore used his City computer to create a letter from Councilwoman Miller endorsing Tyner's candidacy. The letter was entitled "Statement from Councilwoman Donna Reed Miller: I will endorse Verna Tyner for 8th Council District Council Race."
- M. Moore also used his City computer in City Hall to create an endorsement of Tyner written in the third person. This document was entitled: "Councilwoman Donna Reed Miller Endorses Verna Tyner for 8th Council District Race." Moore used a City printer to print out the third person endorsement letter. Both the first person and third person endorsement letters were produced using City letterhead.
- N. On May 10, 2011, Moore used his City email account to send the first person endorsement letter to various media outlets and individuals. Moore copied the text of the endorsement letter into the body of the email and attached a PDF of the letter to the email. Moore also used a City printer in City Hall to print out a version of Councilwoman Miller's endorsement letter.
- O. On May 12, 2011, while in City Hall and on duty, Moore used his City computer to create a flyer entitled "An Important Message from your 59th Ward Democratic leader." The flyer urged residents of the 59th ward to vote for Verna Tyner. On May 12, 2011, Moore used a City printer in City Hall to print out the 59th Ward flyer promoting Verna Tyner.

- P. On May 12, 2011, while in Councilwoman Miller's offices in City Hall. Moore gave more than 1,000 copies of the flyer to Kacy Nickens, a junior member of Councilwoman Miller's staff, and directed her to fold them up so that they would be ready for distribution.
- Q. On April 29, 2011, the 59th ward held a "Beef, Turkey, and Beer" fundraiser at the Elks Lodge at 210 East Haines Street. Prior to the fundraiser, Moore used his City computer in City Hall to create a flyer promoting the event.
- R. Moore also made expenditures in advance of the fundraiser in order to cover its cost. The ward reimbursed Moore for these expenditures. At the fundraiser, candidates and political committees gave the ward committee contribution checks. After the fundraiser, Moore used his City computer in City Hall to review checks received at the fundraiser.
- S. On May 13, 2011, Ethics Board enforcement staff served a subpoena on Moore and other members of Councilwoman Miller's staff at the Councilwoman's offices in rooms 312 and 317A in City Hall. Through the subpoena, enforcement staff directed Moore and the other members of Councilwoman Miller's staff to turn over campaign materials and related documents.
- T. Enforcement staff made images of three computers in Councilwoman Miller's office, including Moore's computer. However, Moore saved the majority of his documents on a server located in City Hall room 310, not on his desktop computer. Several documents requested by the subpoena served on Moore resided in his user folder on the server in room 310. Moore deleted those documents from his user folder. However, Board staff were able to recover these documents from Mr. Moore's computer files and use them in their investigation and enforcement action.
- U. As part of the investigation into Moore's violations of the Home Rule Charter, Board enforcement staff directed Moore to appear at the offices of the Board pursuant to Code § 20-606(2) to provide a statement under oath. Despite the direction from Board staff to appear, Moore, following the advice of counsel, refused to provide a statement under oath.
- V. On October 5, 2011, the Executive Director filed a Notice of Administrative Enforcement Proceeding (Matter No. 1110MU13) alleging multiple violations by Moore of Home Rule Charter § 10-107 and Code § 20-606(2).
- W. The Parties desire to enter into this Agreement in order to resolve the matters described herein.

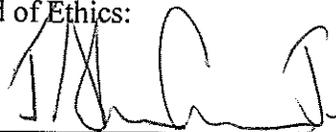
AGREEMENT

The Parties agree that:

1. By using a City computer to create and print endorsement letters promoting the candidacy of Verna Tyner, Moore violated § 10-107(4) of the Philadelphia Home Rule Charter and shall be subject to a civil penalty of \$300.
2. By using the City email system to send to members of the media an endorsement letter promoting the candidacy of Verna Tyner, Moore violated § 10-107(4) of the Philadelphia Home Rule Charter and shall be subject to a civil penalty of \$300.
3. By using a City computer to create and print flyers promoting the candidacy of Verna Tyner, Moore violated § 10-107(4) of the Philadelphia Home Rule Charter and shall be subject to a civil penalty of \$300.
4. By directing a junior City employee to prepare for distribution flyers promoting the candidacy of Verna Tyner, Moore violated § 10-107(4) of the Philadelphia Home Rule Charter and shall be subject to a civil penalty of \$300.
5. By using a City computer to create a flyer promoting a fundraiser for the 59th ward and to review contribution checks received at the fundraiser, Moore violated § 10-107(4) of the Philadelphia Home Rule Charter and shall be subject to a civil penalty of \$300.
6. By making expenditures to pay for the 59th ward fundraiser, Moore violated § 10-107(3) of the Philadelphia Home Rule Charter and shall be subject to a civil penalty of \$300.
7. By refusing to provide a statement under oath to Ethics Board staff and by deleting documents requested by Ethics Board staff, Moore violated § 20-606(2) of the Philadelphia Code and shall be subject to a civil penalty of \$2,000.
8. By December 31, 2011, Moore shall resign his position as a City employee. Moore shall not hold City office or employment for one year following the effective date of the Agreement.
9. Moore shall pay the aggregate civil penalty of \$3,800 on the following schedule:
 - 9.1. \$500 within 14 days of the effective date of the Agreement;
 - 9.2. \$1,000 within 30 days of obtaining post-City employment;
 - 9.3. \$1,000 within 120 days of obtaining post-City employment;
 - 9.4. \$1,300 within 210 days of obtaining post-City employment.
10. Payments shall be made by check or money order made out to the City of Philadelphia and delivered to the offices of the Board.

11. Moore shall notify the Executive Director when he obtains post-City employment, within 14 days of obtaining such employment.
12. Moore releases and holds harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's investigation, enforcement, and settlement of the matters described in the Agreement.
13. In consideration of the above and in exchange for Moore's compliance with all of the terms of the Agreement, the Executive Director withdraws the Notice and the Board waives any further penalties or fines against Moore for the violations described in the Agreement.
14. The Parties will not make any public statements that are inconsistent with the terms of the Agreement.
15. If the Ethics Board is forced to seek judicial enforcement of the Agreement, and prevails, Moore shall be liable for attorneys' fees and costs reasonably expended in enforcing compliance with the Agreement. Fees for time spent by Board staff attorneys shall be calculated based upon standard and customary billing rates in Philadelphia for attorneys with similar experience.
16. The Agreement contains the entire agreement between the Parties.
17. The Executive Director and Moore will submit a signed copy of the Agreement to the Board for approval.
18. The Agreement shall become effective upon approval by the Board.
19. If the Board rejects the proposed Agreement, presentation to and consideration of the Agreement by the Board shall not preclude the Board or its staff from participation in, or consideration or resolution of, the administrative adjudication of the matters described in the Agreement.

By the Executive Director of the
Board of Ethics:



J. Shane Creamer, Jr., Esquire

Dated: 12/2/11

By Michael Quintero Moore



Dated: 12-2-11

Approved by the Board of Ethics:



Richard Glazer, Esquire
Chair

Dated: 12/9/2011