

Philadelphia Board of Ethics

Contact: Michael J. Cooke, Director of Enforcement, 215-686-9450

For Immediate Release: June 22, 2015

PHILADELPHIA – On June 18, 2015, the Board of Ethics approved a settlement agreement with City Commissioner Anthony Clark relating to violations of the City of Philadelphia Ethics Code and resolving an administrative enforcement proceeding.

A copy of the approved settlement agreement is 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 among other things, City campaign finance, financial disclosure, lobbying, and conflict of interest laws. The Ethics Board has authority to render advice, investigate complaints and issue fines.

###

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., the Executive Director of the Board of Ethics, and the Hon. Anthony Clark, 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 Chapter 20-600 of the Philadelphia Code (Standards of Conduct and Ethics).
- B. The Hon. Anthony Clark is one of the City’s three elected City Commissioners. The City Commissioners are responsible for administering all elections that occur in Philadelphia.
- C. In early November of 2013, Board enforcement staff received a complaint alleging that Commissioner Clark had violated the Ethics Code. Because the complaint stated a potential violation of the Ethics Code, enforcement staff accepted it and opened an investigation during which they obtained documents and interviewed and took statements from numerous witnesses.
- D. At the conclusion of the investigation, the Executive Director found probable cause to believe Commissioner Clark had violated the Ethics Code. Accordingly, on January 22, 2015, he served a Notice of Administrative Enforcement Proceeding on Commissioner Clark. On February 4, 2015, Commissioner Clark filed an Answer to the Executive Director’s Notice. On February 10, 2015, the Executive Director filed a Reply to Commissioner Clark’s Answer. These documents are attached hereto as Exhibit A.
- I. The Parties desire to enter into this Agreement in order to resolve the administrative enforcement proceeding the Executive Director initiated on January 22, 2015.

AGREEMENT

The Parties agree that:

1. As a subordinate employee of Commissioner Clark, Alex Clark had a financial interest Commissioner Clark could affect. In order to avoid a conflict of interest, Philadelphia Code § 20-608(1)(c) required Commissioner Clark to file a disclosure and disqualification letter prior to any City action that affected Alex Clark's financial interest, even if Commissioner Clark did not directly participate in that City action. By failing to file a disclosure and disqualification letter prior to City action that affected that interest, Commissioner Clark violated Philadelphia Code § 20-608(1)(c) and is therefore subject to a civil monetary penalty of \$1,000.
2. By failing to remove himself from an October 21, 2013 discussion regarding the adjustment to his brother's payroll status, Commissioner Clark violated Philadelphia Code § 20-607(b) and is therefore subject to a civil monetary penalty of \$1,000.
3. By failing to cooperate with the investigation conducted by Board enforcement staff, Commissioner Clark violated Philadelphia Code § 20-606(2) and is therefore subject to a civil monetary penalty of \$2,000.
4. Commissioner Clark shall pay the aggregate civil monetary penalty of \$4,000 on the following schedule:
 - 1.1. \$500 within 21 days of the effective date of the Agreement;
 - 1.2. \$500 by August 20, 2015;
 - 1.3. \$500 by October 20, 2015;
 - 1.4. \$500 by December 20, 2015;
 - 1.5. \$500 by January 20, 2016;
 - 1.6. \$750 by March 20, 2016; and
 - 1.7. \$750 by April 20, 2016.

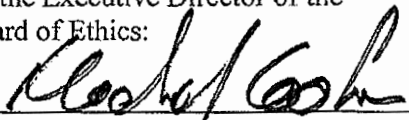
Payments shall be by check made payable to the City of Philadelphia and delivered to the offices of the Board.

5. If by March 20, 2016, Commissioner Clark has made payment of the amount due for the first six payments totaling \$3,250, he shall be relieved of his obligation to make the payment of \$750 that is due by April 20, 2016.
6. Commissioner Clark will voluntarily attend ethics training within the next 12 months.
7. Commissioner Clark 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.
8. In consideration of the above and in exchange for Commissioner Clark's compliance with all of the terms of the Agreement, the Board waives any further penalties or fines against him for the violations described in the Agreement.
9. The Parties will not make any public statements that are inconsistent with the terms of the Agreement.

10. If the Ethics Board is forced to seek judicial enforcement of the Agreement, and prevails, Commissioner Clark 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.
11. The Agreement contains the entire agreement between the Parties.
12. The Executive Director will submit a signed copy of the Agreement to the Board for approval.
13. The Agreement shall become effective upon approval by the Board. The effective date of the Agreement shall be the date the Board approves the Agreement.
14. 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 participating in, considering, or resolving an administrative adjudication of the matters described in the Agreement.
15. If the Board rejects the proposed Agreement, nothing in the proposed Agreement shall be considered an admission by either party and, except for paragraphs 14 and 15, nothing in the Agreement shall be effective.

Dated: 6/18/2015

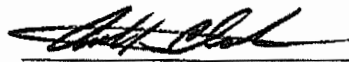
By the Executive Director of the
Board of Ethics:



Michael J. Cooke, Director of Enforcement
Executive Director's Designee

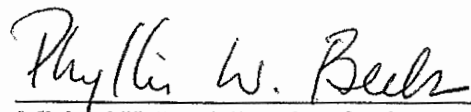
Dated: 6/18/2015

By the Hon. Anthony Clark



Approved by the Board of Ethics:

Dated: 6-18-15



Michael H. Reed, Esquire, Chair;
or, in the alternative,
Judge Phyllis W. Beck (Ret.), Vice Chair

EXHIBIT A

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

J. Shane Creamer, Jr. :
Executive Director :
Board of Ethics :
of the City of Philadelphia :
1515 Arch Street, 18th Floor :
Philadelphia, PA 19102 :
v. :
Hon. Anthony Clark :
Office of the City Commissioners :
City Hall, Room 130 :
Philadelphia, PA 19107 :
Respondent :

Matter No. 1501ET15

Date of Notice: January 22, 2015

NOTICE OF ADMINISTRATIVE ENFORCEMENT PROCEEDING

By serving this Notice on you, the Executive Director of the Philadelphia Board of Ethics initiates an administrative enforcement proceeding against you. The Executive Director is asking the Board to find that you have violated the conflict of interest and retaliation provisions of Philadelphia's Ethics Code (Code §§ 20-606(1)(j), 607, and 608).

If you wish to submit a written Response to this Notice, you must do so within 20 days of the date of the Notice. You have the right to request a hearing before the Board. If you wish to request a hearing, you must include the request in your written Response to the Notice. If you fail to request a hearing in a written Response to this Notice, you will waive your right to a public hearing.

Board Regulation No. 2 and the Memorandum on Procedures for Administrative Enforcement Proceedings set forth the rules and procedures for administrative enforcement proceedings before the Board. A copy of each is enclosed.

As set forth in Regulation No. 2, administrative enforcement proceedings are confidential, unless you request a public hearing in your Response to this Notice. *See* Board Regulation 2, ¶2.15.

If you have any questions regarding the procedures for administrative enforcement proceedings before the Board, you should contact the Board's General Counsel, Maya Nayak, at 215-686-9450 or maya.nayak@phila.gov.

I. RELEVANT LAW

Section 20-607 of the Philadelphia Code provides that a City officer may not take official action on a matter in which he or she knows that certain relatives of the officer, including a sibling, have a financial interest. A person has a financial interest in matters that have a potential impact on his or her income, compensation, value of assets, wealth, employment prospects, or business prospects. *See* Board Opinion 2012-001 at 5.

Pursuant to Philadelphia Code Sections 20-607(b) and 20-608(1)(c), if a City officer knows a sibling has a financial interest he or she can affect, he or she must disclose the interest and disqualify himself or herself from any City action affecting that financial interest. *See* Board Opinion 2009-003 at 10. A City official must disqualify himself or herself from any participation in any matter that may ultimately affect the financial interests of a close relative, even if someone else makes the ultimate decision. *See* Board Opinion 2012-001 at 6; *see also* Solicitor Opinion 97-10 at 2.

Section 20-606(1)(j) of the Philadelphia Code provides that a City officer may not discharge, or change the official rank, grade or compensation, or deny a promotion or threaten to do so of an employee for filing a complaint with or providing information to the Board.

Violations of Sections 20-606(1)(j), 20-607(b), and 20-608(1)(c) are subject to a civil penalty of \$1,000 which may be increased to \$2,000 if an aggravating factor is present or decreased to as low as \$250 if mitigating factors are present. *See* Code §§ 20-612(1); 20-1302. Pursuant to Code Sections 20-1302(1)(b)(i) and (iii), an aggravating factor will be found if a violator either acts knowingly or obstructs a Board investigation.

II. PARTIES

1. J. Shane Creamer, Jr. is the Executive Director of the Philadelphia Board of Ethics.
2. The Honorable Anthony Clark is one of the City's three elected City Commissioners. The City Commissioners are responsible for administering all elections that occur in Philadelphia.

III. FACTUAL ALLEGATIONS

3. Alex Clark is the brother of City Commissioner Anthony Clark and is a Trades Helper employed by the City Commissioners. He has held that position since 2008.
4. In September of 2013, Commissioner Clark told Deputy City Commissioner Carla Moss that he wanted to explore ways for Alex Clark to earn more money at the City Commissioners.
5. In September of 2013, Ms. Moss met with Tahirah Jiles, the Human Resources Manager for the City Commissioners, to discuss whether Alex Clark could be paid out-of-class.
6. Ms. Moss did not have a specific position in mind when she met with Ms. Jiles in September 2013. Instead Ms. Jiles told her about approximately three positions for which

Alex Clark could receive out-of-class pay. Ms. Jiles gave her job descriptions for each position.

7. A civil service employee can be approved for out-of-class pay if he or she is performing work temporarily that would ordinarily be done by a more highly compensated job title. The employee's pay is adjusted to match what it would be if he or she held the more highly compensated position.

8. An employee can be paid out-of-class even if the position is not listed in the department's budget so long as the department has money available in its budget to pay the employee.

9. According to Ms. Jiles, on October 7, 2013, Ms. Moss told Ms. Jiles to change Alex Clark's payroll status to pay him at the level of a Clerical Supervisor II.

10. As of October 7, 2013, Alex Clark was not performing work that would ordinarily be done by an employee in a Clerical Supervisor II position.

11. On or about October 9, 2013, Ms. Jiles directed Payroll Clerk Amope Lewis to adjust Alex Clark's payroll status to allow him to be paid out-of-class at the level of a Clerical Supervisor II. The adjustment resulted in Alex Clark being paid an extra \$268.66 per two week pay period. Alex Clark's pay check for the pay period ending October 13, 2013, included an additional \$268.66 as a result of the adjustment.

12. Alex Clark's supervisor is Joe Lynch, the Election Activities Supervisor. Mr. Lynch reports to Greg Irving, the Voter Registration Administrator, who was formerly a Clerical Supervisor II.

13. Neither Mr. Lynch nor Mr. Irving requested or recommended an out-of-class pay adjustment for Alex Clark. No one asked either of them whether Alex Clark should

receive such an adjustment or was capable of performing the work required of a Clerical Supervisor II.

14. At no time in his tenure at the City Commissioners, including while he was being paid out-of-class, did Alex Clark ever perform work that would ordinarily be done by a more highly compensated Clerical Supervisor II.

15. On the morning of October 21, 2013, while meeting with Deputy City Commissioner and Counsel Fred Voigt, Ms. Moss learned that Alex Clark's payroll status had been changed to allow him to be paid out-of-class. Ms. Moss became very upset upon learning that Alex Clark was being paid out-of-class.

16. Mr. Voigt and Ms. Moss agreed that the change to Alex Clark's payroll status should be revoked immediately, but they did not know the process for doing so.

17. In the afternoon on October 21, 2013, Ms. Moss and Ms. Jiles met in Commissioner Clark's personal office. Commissioner Clark was also present and they were joined by Ms. Crawford-Keith.

18. When Ms. Crawford-Keith arrived, Ms. Moss and Ms. Jiles were discussing the change to Alex Clark's pay status. Commissioner Clark asked the group what they should do about Alex Clark being paid out-of-class.

19. Ms. Jiles replied that they needed to find temporary workers for Alex Clark to supervise in order to justify his increased pay. Commissioner Clark asked Ms. Crawford-Keith whether there was money available in the budget to keep paying Alex Clark the out-of-class pay. Ms. Crawford-Keith said there was money in the budget.

20. At that point, Commissioner Clark asked Ms. Moss “don’t you remember we talked about this?” Ms. Moss said she did not and left the office. Commissioner Clark commented that Ms. Moss was “becoming forgetful.”

21. At 4:27 pm on October 21, 2013, after the meeting with Commissioner Clark, Ms. Jiles, and Ms. Crawford-Keith, Ms. Moss sent Ms. Jiles an email directing her to immediately revoke the change to Alex Clark’s payroll status. A copy of the email is attached hereto as Exhibit A.

22. Normally, Ms. Jiles would not inform the Commissioners about a change to somebody’s payroll status.

23. However, on October 22, 2013 at 8:45 am, Ms. Jiles bcc’d Commissioner Clark when she responded to Ms. Moss’ October 21st email and stated “The change will take effect immediately and will not be included on his next pay and forward.” A copy of the email is attached hereto as Exhibit B.

24. Ms. Jiles also bcc’d Commissioner Clark on two emails she sent to City Commissioner Al Schmidt in response to a telephone inquiry from him about Alex Clark’s pay adjustment. Copies of the emails are attached hereto as Exhibit C.

25. In addition to bcc’ing Commissioner Clark on her emails to Ms. Moss and Commissioner Schmidt, Ms. Jiles was in frequent telephone contact with Commissioner Clark from October 20th to 24th of 2013.

26. On October 23, 2013, the City Commissioners held a public meeting. After the public meeting, Commissioners Clark, Schmidt, and Stephanie Singer, Ms. Moss, Mr. Lee, Mr. Garecht, and Mr. Voight participated in an executive session. During the

executive session, they discussed two topics: the job performance of Ms. Jiles and the adjustment to Alex Clark's payroll status.

27. After some very brief discussion of Alex Clark's pay adjustment, Mr. Voight proposed that he investigate the matter and that the Commissioners postpone further action until he had done so. The Commissioners consented to this proposal and the executive session adjourned.

28. Commissioner Clark was present for the entire October 23, 2013 executive session, including the discussion of Alex Clark's pay status.

29. In early November of 2013, Board enforcement staff received a complaint alleging that Commissioner Clark's involvement in the change to his brother's payroll status violated the Ethics Code. In response to the complaint, Board enforcement staff opened an investigation.

30. One of the witnesses Board enforcement staff interviewed was Ms. Crawford-Keith.

31. In November of 2013, having learned that she was to meet with Board enforcement staff, Commissioner Clark called Ms. Crawford-Keith on her personal cell phone.

32. Ms. Crawford-Keith did not answer the phone. Alex Clark subsequently told Ms. Crawford-Keith that the reason his brother Commissioner Clark had called was because he wanted to tell her what she should and shouldn't say to Board enforcement staff when she met with them.

33. In mid-January of 2014, Ms. Crawford-Keith met with Commissioner Clark to discuss budget issues.

34. During that meeting, Commissioner Clark brought up the Board investigation. He noted that the 2015 elections were coming and stated that he was planning to get re-elected. He said to Ms. Crawford-Keith that, given potential changes at the Commission, it would be good to “have someone on your side.” He also told her that, even though she is a civil service employee, “that doesn’t mean nothing can happen to you.”

35. By threatening Ms. Crawford-Keith for providing information to Board enforcement staff, Commissioner Clark retaliated against her for cooperating with the Board’s investigation and obstructed the Board’s investigation into his potential violations of the Ethics Code.

36. On April 15, 2014, after learning of the Board’s investigation, Commissioner Clark filed a letter with the Board stating:

I was just informed by Commissioner Singer today that she has asked for an Executive Session tomorrow, of the City Commissioners; and that one of the subjects she intends to raise is Alexander Clark.

Alexander Clark is my brother. I therefore disqualify myself from the matter.

37. Prior to April 15, 2014, Commissioner Clark had never filed a disqualification letter with the Board.

IV. ALLEGED VIOLATIONS

COUNT 1 –VIOLATION OF PHILADELPHIA CODE SECTION 20-608(1)(c): FAILURE TO FILE DISCLOSURE AND DISQUALIFICATION LETTER

38. Because Commissioner Clark knew that his brother, Alex Clark, had a financial interest he could affect, Commissioner Clark should have filed a letter disclosing that interest and disqualifying himself from City action affecting that interest.

39. By failing to file a disclosure and disqualification letter, prior to the change to Alex Clark's payroll status in October of 2013, Commissioner Clark violated Philadelphia Code § 20-608(1)(c).

40. Aggravating factors:

- a. By attempting to influence a witness, Valerie Crawford-Keith, Commissioner Clark obstructed the Board's investigation into his potential violations of the Ethics Code. Commissioner Clark's obstruction constitutes an aggravating factor pursuant to Philadelphia Code Section 20-1302(1)(b)(iii).
- b. In violating Philadelphia Code Section 20-608(1)(C) Commissioner Clark acted knowingly, that is voluntarily and intentionally, and not because of mistake or accident. The fact that Commissioner Clark acted knowingly constitutes an aggravating factor under Philadelphia Code Section 20-1302(1)(b)(i).

WHEREFORE, pursuant to Philadelphia Code §§ 20-612(1), 20-1302 and 20-1302(1)(b)(i) and (iii), the Executive Director requests that the Board impose upon Commissioner Clark a civil penalty of \$2,000.

**COUNT 2 –VIOLATION OF PHILADELPHIA CODE SECTION 20-607(b):
CONFLICT OF INTEREST**

41. By participating in the October 21, 2013 meeting with Ms. Moss, Ms. Jiles, and Ms. Crawford-Keith regarding the adjustment to his brother Alex Clark’s payroll status, Commissioner Clark violated Philadelphia Code § 20-607(b).

42. Aggravating factors:

- a. By attempting to influence a witness, Valerie Crawford-Keith, Commissioner Clark obstructed the Board’s investigation into his potential violations of the Ethics Code. Commissioner Clark’s obstruction constitutes an aggravating factor pursuant to Philadelphia Code Section 20-1302(1)(b)(iii).
- b. In violating Philadelphia Code Section 20-607(B) Commissioner Clark acted knowingly, that is voluntarily and intentionally, and not because of mistake or accident. The fact that Commissioner Clark acted knowingly constitutes an aggravating factor under Philadelphia Code Section 20-1302(1)(b)(i).

WHEREFORE, pursuant to Philadelphia Code §§ 20-612(1), 20-1302 and 20-1302(1)(b)(iii), the Executive Director requests that the Board impose upon Commissioner Clark a civil penalty of \$2,000.

**COUNT 3 –VIOLATION OF PHILADELPHIA CODE SECTION 20-607(b):
CONFLICT OF INTEREST**

43. By participating in the October 23, 2013 executive session discussion regarding the adjustment to his brother Alex Clark’s payroll status, Commissioner Clark violated Philadelphia Code § 20-607(b).
44. Aggravating factors:
- a. By attempting to influence a witness, Valerie Crawford-Keith, Commissioner Clark obstructed the Board’s investigation into his potential violations of the Ethics Code. Commissioner Clark’s obstruction constitutes an aggravating factor pursuant to Philadelphia Code Section 20-1302(1)(b)(iii).
 - b. In violating Philadelphia Code Section 20-607(B) Commissioner Clark acted knowingly, that is voluntarily and intentionally, and not because of mistake or accident. The fact that Commissioner Clark acted knowingly constitutes an aggravating factor under Philadelphia Code Section 20-1302(1)(b)(i).

WHEREFORE, pursuant to Philadelphia Code §§ 20-612(1), 20-1302 and 20-1302(1)(b)(iii), the Executive Director requests that the Board impose upon Commissioner Clark a civil penalty of \$2,000.

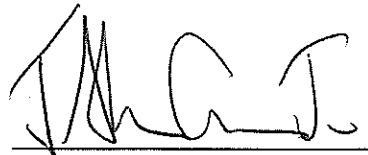
**COUNT 4 –VIOLATION OF PHILADELPHIA CODE SECTION 20-606(1)(j):
RETALIATION**

45. By threatening to take action in mid-January 2014 against Valerie Crawford-Keith for cooperating with the Board’s investigation into his potential violations of the Ethics Code, Commissioner Clark violated Philadelphia Code § 20-606(1)(j).
46. Aggravating factors:
- a. By attempting to influence a witness, Valerie Crawford-Keith, Commissioner Clark obstructed the Board’s investigation into his potential violations of the Ethics Code. Commissioner Clark’s obstruction constitutes an aggravating factor pursuant to Philadelphia Code Section 20-1302(1)(b)(iii).
 - b. In violating Philadelphia Code Section 20-606(1)(J) Commissioner Clark acted knowingly, that is voluntarily and intentionally, and not because of mistake or accident. The fact that Commissioner Clark acted knowingly constitutes an aggravating factor under Philadelphia Code Section 20-1302(1)(b)(i).

WHEREFORE, pursuant to Philadelphia Code §§ 20-612(1), 20-1302 and 20-1302(1)(b)(iii), the Executive Director requests that the Board impose upon Commissioner Clark a civil penalty of \$2,000.

Date: 1/22/15

Respectfully submitted,

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

J. Shane Creamer, Jr., Esq.
Executive Director

Michael J. Cooke, Esq.
Director of Enforcement

Jordan E. Segall, Esq.
Staff Attorney

City of Philadelphia Board of Ethics
1515 Arch Street, 18th Floor
Philadelphia, PA 19102
Phone: (215) 686-9450
Fax: (215) 686-9453

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

J. Shane Creamer, Jr. :
Executive Director :
Board of Ethics :
of the City of Philadelphia :
1515 Arch Street, 18th Floor :
Philadelphia, PA 19102 :

v. :

Hon. Anthony Clark :
Office of the City Commissioners :
City Hall, Room 130 :
Philadelphia, PA 19107 :

Respondent :

Matter No. 1501ET15

Date of Notice: January 22, 2015

**EXHIBITS IN SUPPORT OF
NOTICE OF ADMINISTRATIVE ENFORCEMENT PROCEEDING**

- Exhibit A October 21, 2013 4:27 pm email from Carla Moss to Tahirah Jiles
- Exhibit B October 22, 2013 8:45 am email from Tahirah Jiles to Carla Moss with Anthony Clark bcc'd
- Exhibit C Two October 22, 2013 emails between Tahirah Jiles and Al Schmidt with Anthony Clark bcc'd

EXHIBIT A

From: [Carla Moss](#)
To: [Tahirah Jiles](#)
Cc: [Al Schmidt](#); [Don Garecht](#); [Carla Moss](#)
Subject: Mr. Alexander Clark
Date: Monday, October 21, 2013 4:27:49 PM

Tahirah,

As of today, Monday, October 21, 2013, Please take Mr. Alexander Clark out of class pay and restore him into his original position.

Graciously yours,

Carla Moss
Chief Deputy
Anthony Clark, Chairman
City Commissioners
Room 130, City Hall
215-686-3462/63

EXHIBIT B

From: [Tahirah Jiles](#)
To: [Carla Moss](#)
Cc: [Al Schmidt](#); [Don Garecht](#)
Bcc: [Anthony Clark](#)
Subject: RE: Mr. Alexander Clark
Date: Tuesday, October 22, 2013 8:45:51 AM

The change will take effect immediately and will not be included on his next pay and forward.

Tahirah Jiles
Human Resources Manager
City Commissioners
520 N Delaware Ave - Suite 502
Philadelphia PA 19123

Phone: 215-686-1512
Fax: 215-686-1715
Email: Tahirah.Jiles@phila.gov

From: Carla Moss
Sent: Monday, October 21, 2013 4:29 PM
To: Tahirah Jiles
Cc: Al Schmidt; Don Garecht; Carla Moss
Subject: Mr. Alexander Clark

Tahirah,

As of today, Monday, October 21, 2013, Please take Mr. Alexander Clark out of class pay and restore him into his original position.

Graciously yours,

Carla Moss
Chief Deputy
Anthony Clark, Chairman
City Commissioners
Room 130, City Hall
215-686-3462/63

EXHIBIT C

From: [Tahirah Jiles](#)
To: [Al Schmidt](#)
Bcc: [Anthony Clark](#)
Subject: Out of Class
Date: Tuesday, October 22, 2013 10:03:12 AM

Commissioner Schmidt,

I was instructed by Carla Moss, Chief Deputy Commissioner (designee) to start paying Alexander Clark out of class as a Clerical Supervisor 2.

Tahirah Jiles
Human Resources Manager
City Commissioners
520 N Delaware Ave - Suite 502
Philadelphia PA 19123

Phone: 215-686-1512
Fax: 215-686-1715
Email: Tahirah.Jiles@phila.gov

From: [Tahirah Jiles](#)
To: [Al Schmidt](#)
Bcc: [Anthony Clark](#)
Subject: RE: Out of Class
Date: Tuesday, October 22, 2013 11:55:58 AM

Verbally not written while at the meeting on Oct. 7th

Tahirah Jiles
Human Resources Manager
City Commissioners
520 N Delaware Ave - Suite 502
Philadelphia PA 19123

Phone: 215-686-1512
Fax: 215-686-1715
Email: Tahirah.Jiles@phila.gov

From: Al Schmidt
Sent: Tuesday, October 22, 2013 10:34 AM
To: Tahirah Jiles
Subject: RE: Out of Class

When and how?

Al Schmidt
City Commissioner
134 City Hall
Philadelphia, PA 19107
P: 215-686-3464
F: 215-686-3472
www.philadelphiavotes.com

From: Tahirah Jiles
Sent: Tuesday, October 22, 2013 10:03 AM
To: Al Schmidt
Subject: Out of Class

Commissioner Schmidt,

I was instructed by Carla Moss, Chief Deputy Commissioner (designee) to start paying Alexander Clark out of class as a Clerical Supervisor 2.

Tahirah Jiles
Human Resources Manager
City Commissioners
520 N Delaware Ave - Suite 502
Philadelphia PA 19123

Phone: 215-686-1512
Fax: 215-686-1715
Email: Tahirah.Jiles@phila.gov

CERTIFICATION OF SERVICE

I, Michael Cooke, hereby certify that on this date I caused a true and correct copy of the foregoing Notice of Administrative Enforcement Proceeding, with Exhibits, to be served upon the following:

By hand delivery:

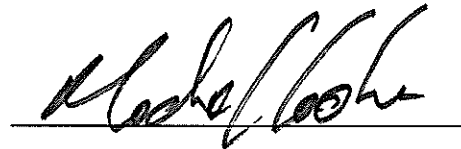
Hon. Anthony Clark
Office of the City Commissioners
City Hall, Room 130
Philadelphia, PA 19107

By email:

Maya Nayak
General Counsel
Board of Ethics
1515 Arch St., 18th Floor
Philadelphia, PA 19102
Maya.nayak@phila.gov

Date:

1/22/2015



BOARD OF ETHICS
OF THE CITY OF PHILADELPHIA

J. SHANE CREAMER, JR. : MATTER NO. 1501ET15
EXECUTIVE DIRECTOR :
BOARD OF ETHICS : DATE OF NOTICE: 01/22/15
OF THE CITY OF PHILADELPHIA :
1515 Arch Street, 18 Floor :
Philadelphia, PA 19102, :
PETITIONER :
V. : REQUEST FOR A HEARING BEFORE
THE BOARD OF ETHICS
:
HONORABLE ANTHONY CLARK :
OFFICE OF THE CITY COMMISSIONER :
CITY HALL, ROOM 130 :
PHILADELPHIA, PA 19107, :
RESPONDENT :

ANSWER AND NEW MATTER AND REQUEST FOR A HEARING BEFORE THE BOARD
OF THE RESPONDENT, THE HONORABLE ANTHONY CLARK

The Respondent, Anthony Clark, by his counsel, Samuel C. Stretton, Esquire, respectfully answers and raises New Matter to the Notice of Administrative Enforcement and respectfully requests a hearing before the Board and further requests the allegations be denied for the following reasons:

II. PARTIES

1. Admitted.
2. Admitted. But the City Commissioner's Office is a statewide office.

III. FACTUAL ALLEGATIONS

3. Admitted.
4. Denied. There was never such a conversation. The three Commissioners had delegated to Carla Moss the employment

management responsibilities at a sunshine meeting. The three Commissioners maintained the right to hire or fire or promote when acting as a body at a public meeting.

5. Denied as stated. The Respondent had no knowledge and was not present at that meeting and has no knowledge of that discussion.

6. Denied. The Respondent was not present and has no knowledge what was said at that particular meeting since he was not there.

7. Admitted, although the Commissioner normally allowed the designee, Ms. Moss, who was appointed by all three Commissioners, to do this. The Commissioners had delegated that responsibility to Ms. Moss, but obviously maintained the right as a body to make the final decisions.

8. Admitted, but the Respondent and his fellow Commissioners had delegated this responsibility to Ms. Moss. See answer to number 7.

9. Denied as stated. The Respondent was not present and has no knowledge of the request to change Alex Clark's payroll status. The Respondent and the other Commissioners were not involved with that since the Commissioners had a delegated employee to handle those matters.

10. Denied as stated. To the Respondent's knowledge, his brother was performing work that would be done by a clerical

supervisor. But the Respondent was not involved in his brother's pay or work change. See answers to numbers 4, 7 and 8.

11. Admitted, but the Respondent was not involved with that since he was not involved with payroll activities and/or job changing activities on a regular basis. See answers to numbers 4, 7 and 8.

12. Admitted.

13. Denied as stated. The Respondent has no knowledge about who requested the out of class pay adjustment. The Respondent had no involvement with that. See answers to numbers 4, 7 and 8. Neither he nor the Commissioners were initially involved in those personnel type of matters since that was left to the designee, Ms. Moss. The employment and personnel matters were handled by the designated employee, who had been designated by the three Commissioners.

14. Denied as stated. The Respondent has no specific knowledge, but it was his understanding, after the fact, that Mr. Clark was given additional work. It was further the Respondent's understanding Mr. Clark has returned the additional salary, which totaled approximately \$268.66.

15. Denied. The Respondent has no knowledge of that. Ms. Moss was the designated person and certainly would be aware of what Alex Clark was earning.

16. Denied as stated. The Respondent has no knowledge as to as to the change in Mr. Clark's payroll status at the time and was not present at the meeting. He was not involved in that. Those matters were left to the designated employee, who was Ms. Moss.

17. Denied as stated. Ms. Moss and Ms. Jiles met in the office adjoining the Respondent's office. Mr. Clark was present in his office, but he had not called the meeting, did not participate and chastised Ms. Moss for having the meeting when they moved into his office.

18. Denied. To the Respondent's recollection, he was not involved in the discussion about Alex Clark. See answer to number 17. The Respondent was not involved with the discussion and did not contribute to the discussion.

19. Denied. The Respondent does not recall that and was not involved in that conversation.

20. Denied. The Respondent was not involved with this. He was in his office when Ms. Moss and Ms. Crawford came into his office. The Respondent recalls chastising her for having a meeting by his office without telling him. He said something to the effect, don't you remember that, meaning not having meetings by or in his office.

21. Denied. The Respondent did not participate in the meeting. The Respondent had nothing to do with the email. It

must be remembered, Ms. Moss was the designee for the employment matters.

22. Denied. To the Respondent's knowledge, the Commissioners were normally informed and that was at the request of Commissioner Schmidt.

23. The Respondent denies this since he has no recollection of receiving that email. It is possible he did, but he has no recollection of the same.

24. Admitted.

25. Denied as stated. The Respondent does not recall being in frequent telephone contact with Ms. Giles. There were some conversations since she was involved with personnel at the time. There was never any discussion about the Respondent's brother.

26. Denied as stated. To the Respondent's recollection, at the October 23, 2013 executive session, there was no mention of Alex Clark and he did not participate in anything involving his brother.

27. Denied as stated. The Respondent does not recall the any discussion about his brother's situation.

28. Admitted that Mr. Clark was present, but denied he was involved in any discussion with or about Alex Clark. The Respondent has no recollection of the subject being raised, but

it is possible there could have been a brief mention of it. But he did not participate.

29. Denied as stated. The Respondent, Commissioner Clark, has no knowledge of when a complaint was filed and when it was opened.

30. Denied. Commissioner Clark has no idea who was interviewed and was not invited to be present.

31. Denied. It is absolutely denied that Commissioner Clark called Ms. Crawford-Keith about her interview.

32. Denied. Commissioner Clark did not speak to Ms. Crawford-Keith on this subject. He did not speak to his brother on the subject and he has no idea what his brother would have said to her, if anything.

33. Admitted.

34. Denied that during this meeting Commissioner Clark brought up the Board investigation. He never brought up this subject. Denied that he said to Ms. Crawford-Keith, it would be good to have someone on your side. Denied that Commissioner Clark told her "that doesn't mean nothing can happen to you." These allegations are emphatically denied.

35. Denied. It is denied that the Respondent ever threatened Ms. Crawford-Keith. It is denied that he was retaliating.

36. Admitted. This was the first time that Commissioner Clark ever was advised in advance that his brother was going to be the subject of conversation. He, therefore, immediately disqualified himself.

37. To the Respondent's knowledge, he had never filed any disqualification letter before. To his knowledge, there was no advance notice his brother was going to be discussed and he has no recollection really of his brother being discussed.

IV. ALLEGED VIOLATIONS

COUNT 1 - VIOLATION OF PHILADELPHIA CODE SECTION 20-608(1)(c): FAILURE TO FILE DISCLOSURE AND DISQUALIFICATION LETTER

38. Denied as stated. Mr. Clark did file a letter disqualifying himself when there was advance notice that the subject of his brother was going to be raised with the Board. Commissioner Clark was not involved at any time with his brother's salary or position change. Therefore, there was no need for him to disqualify himself since he was not involved and did not vote on any such thing.

39. Denied that there was a violation. Commissioner Clark was not involved in any change of his brother's payroll status. He and the other Commissioners had designated an employee, Ms. Moss, to handle employment management issues. Mr. Clark never requested anything and never took any votes or actions on it. As soon as he was aware that his brother was going to be the subject of discussions, he disqualified himself.

40. Denied. It is denied there were any aggravating factors. It is denied he attempted to influence Valerie Crawford-Keith. Denied that he acted knowingly and intentionally.

WHEREFORE, the Respondent, the Honorable Anthony Clark, respectfully contends that he did not violate the charged rules and requests the allegations be dismissed.

COUNT 2 - VIOLATION OF THE PHILADELPHIA CODE SECTION 20-607(b):
CONFLICT OF INTEREST

41. Denied. The Respondent did not participate in that meeting. The meeting was held without advanced notice in his office. He did not participate and raised the subject at the meeting that he was to be advised in advance.

42. Denied. It is denied there was any attempt to influence a witness. It is denied that he acted knowingly and voluntarily.

WHEREFORE, Commissioner Clark respectfully contends that the charged violations should be dismissed.

COUNT 3 - VIOLATION OF PHILADELPHIA CODE SECTION 20-607(b):
CONFLICT OF INTEREST

43. Denied. It is denied that Mr. Clark participated in an Executive Session concerning his brother. There was no advanced notice that his brother was going to be on the Executive Session. He does not personally recall the discussion

about his brother, but did not participate in it if there was one.

44. Denied there was any attempt to influence a witness. Denied there was any obstruction. Denied that the Respondent voluntarily or knowingly violated any rules.

WHEREFORE, the Respondent respectfully contends the charges should be dismissed and there should be no finding of violations.

COUNT 4 - VIOLATION OF PHILADELPHIA CODE SECTION 20-606(1)(j):
RETALIATION

45. Denied. It is emphatically denied that the Respondent threatened Valerie Crawford-Keith in any way and it is emphatically denied he violated any rule.

46. Denied. It is denied that Commissioner Clark attempted to influence or obstruct any investigation. It is denied there was a rule violation. It is denied that he acted knowingly and intentionally and denied that he violated the rules.

WHEREFORE, the Respondent, Commissioner Clark, denies the charged rule violations and requests the Complaint be dismissed.

NEW MATTER

The Respondent, the Honorable Anthony Clark, raises the following New Matters by way of defense:

47. The Respondent raises the defense that the Board of Ethics commingles the prosecutorial, adjudicative and administrative functions. The Complaint was signed by the Executive Director of the Board. The Board is acting both in an adjudicative, investigative and prosecutorial fashion. Therefore, these matters should be dismissed since it is a fundamental violation of fundamental due process pursuant to the Fourteenth Amendment of the United States Constitution and related provisions in the Pennsylvania Constitution.

48. Commissioner Clark contends that the Philadelphia Board of Ethics has no jurisdiction over him since the County Commissioner's Office is a statewide office.

49. Commissioner Clark, the Respondent, contends that only the Pennsylvania State Ethics Board has jurisdiction over him. Since the Pennsylvania State Ethics Board has jurisdiction, the Doctrine of Preemption applies because of statewide authority of the State Ethics Commission would prevail and the Philadelphia investigation is preempted. Under the Doctrine of Preemption, these allegations of violations should be dismissed. The Philadelphia Ethics Commission is preempted by the State Board of Ethics.

50. The Respondent, Commissioner Clark, raises the defense that the Commissioners delegated to their designee, Ms. Moss,

management of employment issues. See answers to numbers 4, 7 and 8.

51. The Respondent, Commissioner Clark, raises the defense that no pay increase or issues involving his brother were ever before him nor did he vote on any of them.

52. The Respondent, Commissioner Clark, emphatically denies ever threatening or retaliating against any employee.

53. The Respondent, Commissioner Clark, emphatically denies violating any of the charged rules.

54. The Respondent incorporates by reference his answers into this New Matter.

WHEREFORE, the Respondent, Commissioner Clark, respectfully requests this Honorable Board dismiss this Complaint for all the reasons above. As noted, the Respondent respectfully requests a hearing on these matters before the Board.

Respectfully submitted,

Samuel C. Stretton, Esquire
Attorney for Respondent,
Honorable Anthony Clark
301 S. High Street
P.O. Box 3231
West Chester, PA 19381
610-696-4243
Attorney I.D. No. 18491

BOARD OF ETHICS
OF THE CITY OF PHILADELPHIA

J. SHANE CREAMER, JR. : MATTER NO. 1501ET15
EXECUTIVE DIRECTOR :
BOARD OF ETHICS : DATE OF NOTICE: 01/22/15
OF THE CITY OF PHILADELPHIA :
1515 Arch Street, 18 Floor :
Philadelphia, PA 19102, :
PETITIONER :
V. :
HONORABLE ANTHONY CLARK :
OFFICE OF THE CITY COMMISSIONER :
CITY HALL, ROOM 130 :
PHILADELPHIA, PA 19107, :
RESPONDENT :

CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the Answer and New Matter and Request for a Hearing of the respondent, Commissioner Anthony Clark, in the captioned matter upon the following person in the manner indicated below.

Service by First Class Mail addressed as follows:

1. Maya Nayak
General Counsel
City of Philadelphia Board of Ethics
1515 Arch Street, 18th Floor
Philadelphia, PA 19102
maya.nayak@phila.gov
2. J. Shane Creamer, Jr.
Executive Director
City of Philadelphia Board of Ethics
1515 Arch Street, 18th Floor
Philadelphia, PA 19102

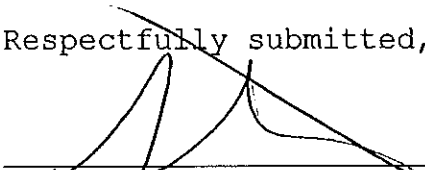
3. Michael J. Cooke, Esquire
Director of Enforcement
City of Philadelphia Board of Ethics
1515 Arch Street, 18th Floor
Philadelphia, PA 19102

4. Honorable Anthony Clark
City Commissioner
Room 130 City Hall
Philadelphia, PA 19107

Respectfully submitted,

2/4/15

Date



Samuel C. Stretton, Esquire
Attorney for Respondent,
Honorable Anthony Clark
301 S. High St., P.O. Box 3231
West Chester, PA 19381-3231
(610) 696-4243
Attorney I.D. No. 18491

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

<u>J. Shane Creamer, Jr.</u>	:	
Executive Director	:	
Board of Ethics	:	
of the City of Philadelphia	:	
1515 Arch Street, 18 th Floor	:	
Philadelphia, PA 19102	:	
	:	Matter No. 1501ET15
v.	:	
	:	Date of Notice: January 22, 2015
Hon. Anthony Clark	:	
Office of the City Commissioners	:	
City Hall, Room 130	:	
Philadelphia, PA 19107	:	
	:	
<u>Respondent</u>	:	

REPLY TO NEW MATTER

The Executive Director submits this Reply to the New Matter Respondent Commissioner Clark included in his Response to the Notice of Administrative Enforcement Proceeding.

47. Denied. Specifically denied that the Board is acting in an investigative or prosecutorial capacity. Board Regulation No. 2, Paragraph 2.2 provides:

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.

These “walls of division” constructed by Regulation No. 2 “eliminate the threat or appearance of bias” and ensure that administrative enforcement proceedings are constitutional. *Lyness v. Com. of Pennsylvania State Board of Medicine* 605 A.2d 1204,

1209 & 1211 (Pa. 1992). Moreover, in the course of this investigation and adjudication, the Executive Director has scrupulously adhered to the requirements of Regulation No. 2 and maintained walls of division between his prosecutorial functions and the adjudicatory functions of the Board. The Board has not participated in any way in the investigation or prosecution of Respondent's alleged violations of the Ethics Code. Respondent does not, and cannot credibly, allege any facts to the contrary. As such, it is entirely lawful and permissible for the Executive Director to prosecute this action before the Board. *See Adams Outdoor Advertising, Ltd. v. Dept. of Transp.*, 860 A.2d 600, 610-11(Pa. Cmwlth. 2004).

48. Denied. In 1953, in *Lennox v. Clark*, the Pennsylvania Supreme Court held that, as a result of the City-County Consolidation Amendment of the Pennsylvania Constitution, county officer became officers and employees of the City, including the former County (now City) Commissioners. 93 A.2d 834, 838-39 & 841(Pa. 1953); *see also Clark v. Meade*, 104 A.2d 465, 466 (Pa. 1954). The Court further held that when these former county officers became City officers, "they automatically became subject thereby to the laws then in effect governing and regulating city officers...and also, of course, to any such laws as might thereafter become effective[.]"*Lennox* at 839 & 841 (brackets added). In so holding, the Court noted that while the former county officers in a few instances "performed certain duties on behalf of the Commonwealth and to that extent were acting in the capacity of an officer, agent or employee of the State," the performance of such duties did not conflict with their general status as City officers. *Id.* at 840-41. Therefore Respondent is a City, not a State, officer and is subject to the City's Ethics Code and the jurisdiction of the Ethics Board.

49. Denied. Both the State Ethics Commission and the Ethics Board have jurisdiction over Respondent. The Pennsylvania State Ethics Act explicitly states "any governmental body may adopt requirements to supplement this chapter [the State Ethics Act], provided that no such requirements shall in any way be less restrictive than the chapter." 65 Pa. C.S. §1111 (brackets added). Courts of the Commonwealth have held that municipal governments may supplement the State Ethics Act for employees under their control through statutes and regulations pertaining to ethical conduct. *See, e.g., Ricci v. Matthews*, 2 A.3d 1297, 1301 & fn. 5 (Pa. Cmwlth. 2010) (holding that Montgomery County Sheriff and District Attorney may enact political activity restrictions over their employees); see also *Nutter v. Dougherty*, 938 A.2d 401, fn. 19 (Pa. 2007) ("Clearly, the General Assembly had little concern for 'balkanization' when it expressly invited local supplementation of the Ethics Act."). Therefore, neither the City's Ethics Code, nor the Board itself, is preempted by State law.

50. Admitted in part and denied in part. Admitted that the Commissioners delegated management of employment issues to Deputy City Commissioner Carla Moss. Denied that this delegation excuses or is a defense to Respondent's alleged violations of the Ethics Code.

51. Admitted in part and denied in part. Admitted that the question of whether to increase Alex Clark's pay was never put before the Commissioners for a vote. Denied that Respondent did not take official action on a matter in which he knew that Alex Clark had a financial interest. Further denied that Respondent did not know that Alex Clark had financial interest Respondent could affect.

52. To the extent this averment is an expression of opinion or legal argument, no response is required. To the extent this averment is a statement of fact or law, it is denied.

53. To the extent this averment is an expression of opinion or legal argument, no response is required. To the extent this averment is a statement of fact or law, it is denied.

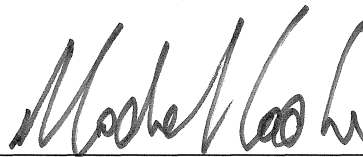
54. To the extent any the averments so incorporated are inconsistent with the allegations set forth in the Notice of Administrative Enforcement Proceeding, they are denied.

WHEREFORE, the Executive Director submits that this administrative enforcement proceeding is lawful and proper and that the Board should proceed to adjudicate all of the violations alleged in the Notice of Administrative Enforcement Proceeding.

Date:

2/10/2015

Respectfully submitted,



J. Shane Creamer, Jr., Esq.
Executive Director

Michael J. Cooke, Esq.
Director of Enforcement

Jordan E. Segall, Esq.
Staff Attorney

City of Philadelphia Board of Ethics
1515 Arch Street, 18th Floor
Philadelphia, PA 19102
Phone: (215) 686-9450
Fax: (215) 686-9453

CERTIFICATION OF SERVICE

I, Michael Cooke, hereby certify that on this date I caused a true and correct copy of the foregoing Reply to New Matter to be served upon the following:

By email and U.S. MAil:

Samuel C. Stretton
301 South High Street
P.O. Box 3231
West Chester, PA 19381-3231
strettonlaw.samstretton@gmail.com

Counsel for Respondent the Hon. Anthony Clark

By email:

Maya Nayak
General Counsel
Board of Ethics
1515 Arch St., 18th Floor
Philadelphia, PA 19102
Maya.nayak@phila.gov

Date:

2/10/2015