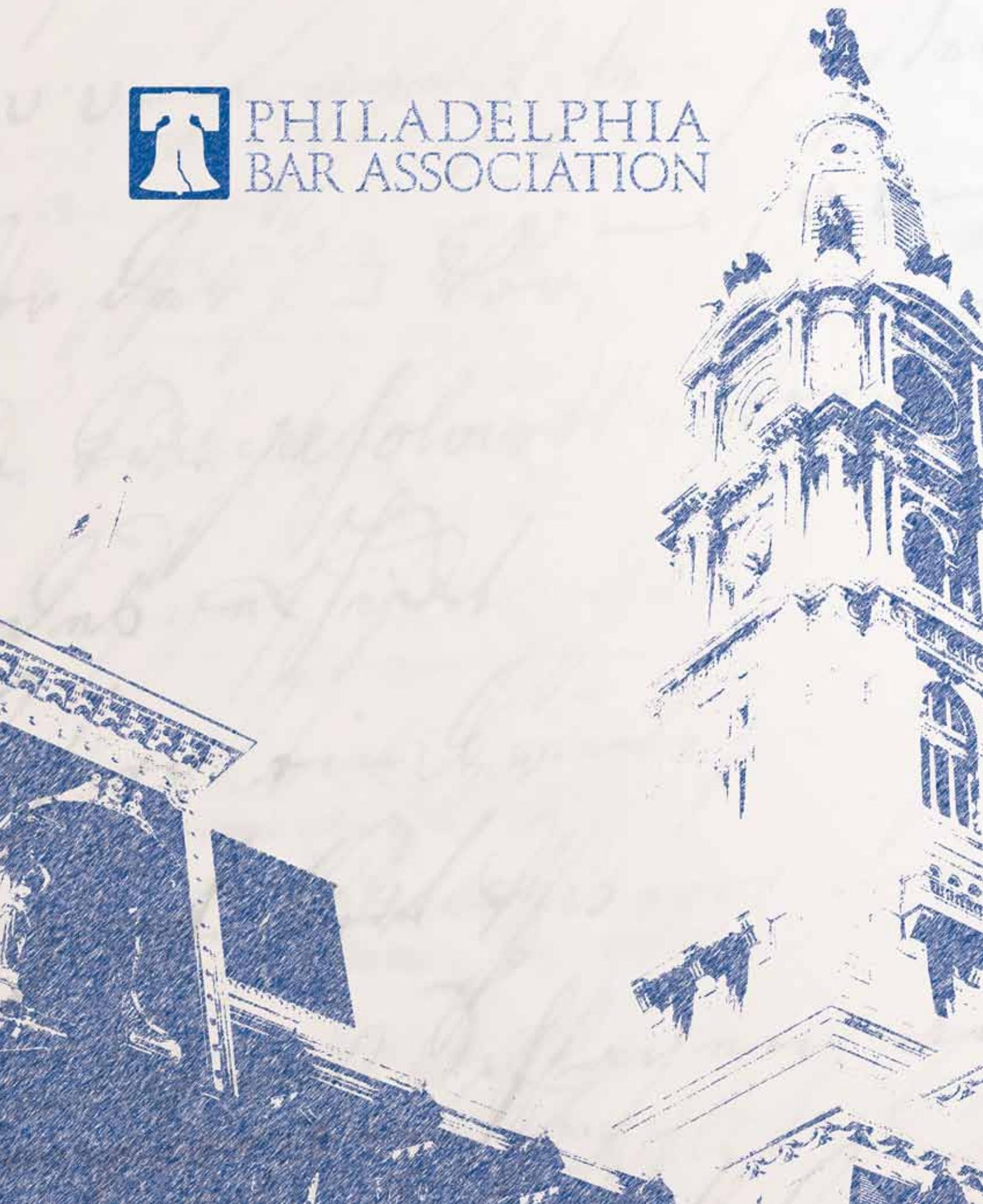




PHILADELPHIA
BAR ASSOCIATION



LOBBYING CRISIS AVERTED

THE BAR ASSOCIATION SPEAKS OUT ON BEHALF OF ITS MEMBERS

By Denise J. Smyler and David L. Hyman

This summer, the Philadelphia Bar Association took an unprecedented stand against the City of Philadelphia and the City of Philadelphia Board of Ethics regarding a new city ordinance that significantly curbs the ability of Philadelphia lawyers to advocate on behalf of their clients before city agencies. Although this battle went unrecognized by many of our members, the impact of the ordinance on our members' ability to practice law is significant. By commencing its action against the city, the Bar Association thwarted the adoption of provisions that could have had devastating effects on many of our members and their clients.

Most lawyers who practice in Philadelphia are unaware of this new regulation and the Bar Association's critical intervention. The lawyers of Philadelphia have greatly benefited from the swift actions by Chancellor Rudolph Garcia; Executive Director Kenneth Shear; Counsel Lawrence Beaser; Bar Association Legislative Liaison Committee Co-Chair Pedro Ramos; and the Board of Governors of the Bar Association. Let us more fully explain exactly what the Bar

Association was up against and what it has accomplished on your behalf.

In June 2010, Philadelphia City Council passed an ordinance regulating lobbying. This ordinance includes onerous reporting and registration requirements, untenable fees and burdensome restrictions on certain activities. The lobbying ordinance broadly defines "lobbying" to include any effort to influence legislative or administrative action, and the ordinance applies to anyone, including attorneys, who engages

in such efforts for compensation. Notably, the ordinance is only applicable to lawyers to the extent permissible under the Pennsylvania Rules of Professional Conduct. Without this limitation of applicability, the ordinance would restrict an attorney's ability to engage in routine matters, such as requesting a zoning permit, responding to a tax notice or, under certain circumstances, providing pro bono representation to an indigent client. Additionally, the ordinance does not exempt

litigation in courts. Thus, negotiation of a potential pre-litigation or post-litigation settlement would be considered “lobbying.”

In February 2011, Ramos initiated internal discussions with Chancellor Garcia, Shear and Beaser regarding the ordinance, expressing concerns pertaining to various provisions. Following these discussions, Ramos and Beaser discussed their concerns with the drafter of the Board of Ethics’ regulations. Afterward, Beaser delivered to the Board proposed alternative regulatory language that would clarify many of the ambiguous phrases contained in the ordinance. Beaser argued, among other things, that the Constitution of Pennsylvania prohibited the Board of Ethics from applying the ordinance to attorneys absent approval from the Supreme Court of Pennsylvania.

While the Board of Ethics did adopt some of Beaser’s suggested language and clarified several issues, the Board’s regulations left many unanswered questions and numerous unresolved issues. However, in answering “frequently asked questions” on its website, the Board made it clear that it intended to enforce the ordinance against lawyers regardless of whether it was permissible under the Pennsylvania Rules of Professional Conduct.

As a result of the Board’s regulations, coupled with answers to the “frequently asked questions,” Chancellor Garcia quickly assembled a task force to address the Bar Association’s concerns with the ordinance. The task force was charged with determining alternative methods the Bar Association could pursue to address the issues raised by the ordinance. The task force, spearheaded by Ramos and Beaser, began by dissecting the ordinance, comparing it to the proposed regulations and highlighting many significant weaknesses. They collaborated with a group of lawyers with practices that would likely be disproportionately harmed by the enforcement of the ordinance and the regulations. Based upon information received from members of the task force, Beaser prepared a series of substantive and procedural comments and delivered them to the Board on behalf of the Bar Association.

After the comments were distributed to the Board of Ethics, Chancellor Garcia testified before the Board regarding the concerns of the Bar Association. The Ethics Board took the comments and testimony “under consideration,” but the Board expressed reluctance to issue amendments to the regulations prior to the July 1, 2011 effective date of the ordinance.

In light of the Board’s position, Chancellor Garcia, Shear and Beaser met with Philadelphia City Solicitor Shelley Smith and other key officials in an effort to delay the July 1, 2011

implementation of the ordinance. Other representatives of the Bar Association engaged in additional dialogue with City Council members and their staff. The City Council staffers were receptive to discussing possible amendments to the ordinance, but the City Council’s session had ended for the summer and would not resume activities until September.

By the end of June 2011, the Bar Association determined that it had explored and exhausted all options for delaying the implementation of the ordinance except litigation. Thus, in a bold and unprecedented move, the Bar Association Board of Governors called an emergency meeting and voted to file an action against the City of Philadelphia and the Board of Ethics, seeking an injunction. In light of the value the Bar Association places on its cooperative relationships with the city and the Board of Ethics, the decision was only made after careful deliberation.

Chancellor Garcia, a seasoned litigator, represented the Bar Association in this action on a pro bono basis. On July 7, 2011, one day before the scheduled hearing, the Board of Ethics passed a resolution suspending all requirements of the ordinance until 30 days after a revised regulation is finalized and becomes effective. Thanks to the tireless efforts of the Bar Association leadership and its members, significant progress has been made toward practical and effective enforcement of the city’s lobbying ordinance in a way that is faithful to the intent of its drafters.

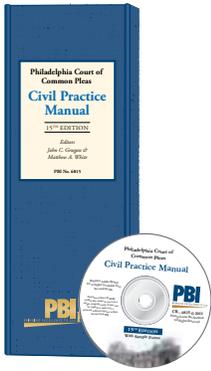
Although this article focuses on the Bar Association’s actions with respect to the city’s lobbying ordinance, the Bar Association routinely advocates for its members with respect to city ordinances and regulations that have been proposed or adopted. Our City Policy Committee, which we co-chair, leads this effort and frequently liaises with city officials

and their staff on the behalf of our members to oppose legislation that would negatively affect our members and to offer creative alternatives that take into account the interests of all stakeholders while protecting the interests of lawyers in Philadelphia. Much work is left to be done, but the Bar Association remains committed to advancing the interests of its members with effective and decisive action. ■

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