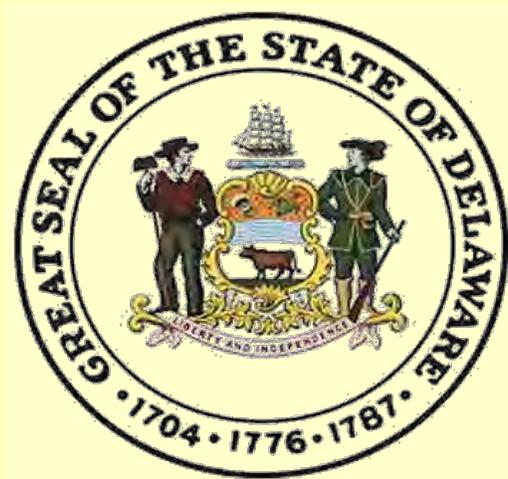


*State of Delaware*

*State Public Integrity Commission*



**ANNUAL REPORT**  
**March 1, 2014**

*Dr. Wilma Mishoe, Chair,  
William F. Tobin, Jr. and Andrew Gonser, Esq., Vice Chairs*

*Commissioners*

*Mark Dunkle, Esq.  
Lisa Lessner*

*William Dailey, Jr.  
Jeremy Anderson, Esq.*

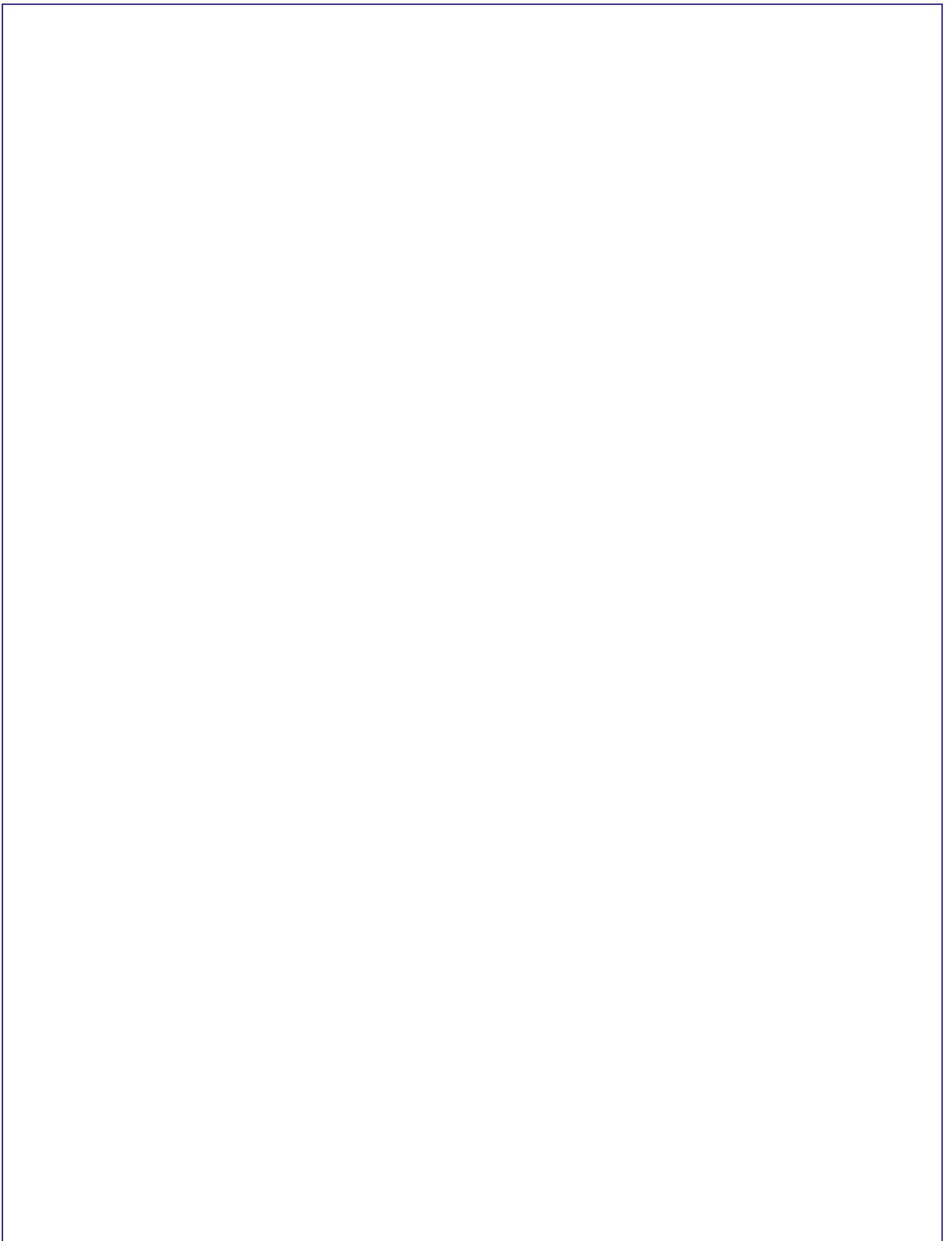
Published March 7, 2014

# STATE PUBLIC INTEGRITY COMMISSION

## Annual Report - March 1, 2014

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# I. *M*ission:

*Administer, interpret and enforce the Code of Conduct (ethics); Financial Disclosure; Dual Compensation; and Lobbying Laws.*

## *Jurisdictional History*

- ☑ **1991 – State Ethics:** Executive Branch officers and employees, including casual/seasonal; (over 48,000); non-legislative elected officials; State Board and Commission appointees (In 2013, over 300 Boards and Commissions).
- ☑ **1993 – Local Ethics:** 57 local governments' employees, officers, elected officials, and Board and Commission appointees, unless they submit a Code for the Commission's approval. (As of 2013, only 8 have an approved Code, leaving PIC with 49 local jurisdictions).
- ☑ **1994 – Dual Compensation:** State and local employees and officials with a second elected or paid appointed job in government.
- ☑ **1995 – Financial Disclosure:** elected officials; State candidates; Judges, Cabinet Secretaries, Division Directors and equivalents. (2013: 388 officers filed).
- ☑ **1996 – Lobbying:** State lobbyists registration, authorization and expense reports (2013: 337 lobbyists; 1,057 organizations; 4228 expense reports).
- ☑ **2000 – Ethics:** School Districts and Boards of Education
- ☑ **2001 – Ethics:** Charter School Boards of Education
- ☑ **2010 – Organizational Disclosures:** State elected officials & candidates must disclose private organizations if they are Board or Council members.
- ☑ **2010 – Newark Housing Authority:** Newark's Code of Conduct the Authority, but the General Assembly changed the law to make it a State agency so that PIC would have jurisdiction.
- ☑ **2012 – Lobbyists:** Report within 5 business days legislative bill number or administrative action number or title on which they are lobbying. Report weekly on lobbyists' legislative/administrative action.



# DELAWARE PUBLIC INTEGRITY COMMISSION

410 Federal St., Suite 3; Dover, Delaware 19901  
Phone (302) 739-2399 Fax (302) 739-2398

## *Commission Structure*

### *Appointments, Qualifications and Compensation*

- ☑ *7 Citizens are the "Public Eye" on Government Ethics*
- ☑ *Nominated by the Governor; Confirmed by the Senate*
- ☑ *Elect their Own Chair*
- ☑ *Cannot be:*
  - Elected or Appointed Official - State, Federal or Local*
  - Holder of Political Party Office*
  - An officer in a political campaign*
- ☑ *Generally are Appointed from all three Counties*
- ☑ *Terms - one full 7 year term; may serve until successor is appointed and confirmed*
- ☑ *Vacancies filled just as Original Appointments*
- ☑ *Pay - \$100 each official duty day; reimbursement of reasonable and necessary expenses*

## ***II. Commission Structure and Biographies of Commissioners and Staff***

### ***A. Commission Appointee Status***

During 2012, Commissioner Dailey's term expired. However, a replacement has not yet been appointed. By law, Commissioner Dailey will continue to serve until the nomination and confirmation of any replacement. PIC hopes to welcome a new Commissioner in the near future. Please check our website for updates.

### ***B. Commission Staff***

The Commission has had a two person full-time staff since 1995—its attorney and administrative specialist—performing day-to-day operations. Its attorney, beyond legal duties, conducts training, prepares Strategic Plans, Budgets, and performs other non-legal duties. The Commission's Administrative Assistant performs the administrative functions, updates the website's calendar of events with the Commission agenda, minutes, etc.

**In 2013**, the Commission completed the transition to a new database designed to accept on-line filing for lobbyists and public officers. Upon completion of the initial phase of the project, PIC said goodbye to the temporary administrative assistant hired to provide technical assistance.

### ***C. Biographies of Commissioners***

#### ***Wilma Mishoe, Ed.D., Chair***

Dr. Mishoe was confirmed as a 7-year appointee to the Public Integrity Commission on March 15, 2011. Her term expires in 2017. She was elected as the Vice Chair for Procedures during the first full year of her term. In 2012,

she was elected as Chair and re-elected in 2013.

Dr. Mishoe earned her doctorate at Temple University where her dissertation was on the preferred learning styles of learning disabled adults at post-secondary institutions.

She earned both her Masters and Bachelor Degrees from Howard University, Washington, D.C.

Dr. Mishoe retired from Delaware Technical and Community College at the end of 2010, after serving as Dean of Student Services followed by Dean in Office of Instruction. She also had been Dean of Students and Director of Financial Aid at Wilmington College (now University). Before that employment, she worked for The Brookings Institution in Washington, D.C.

She remains active in educational and community activities. She is presently a Board member of Wilberforce University in Ohio, where she serves as Board Secretary and also Chairs the Academic, Student Affairs and Compliance Committee. She is on the Board of Directors for Children and Family First, and is a member and Treasurer of the Dover Rotary Club. She presently is the Vice President of the Dover, DE Chapter of The Links, Incorporated. Founded in 1946, it is one of the oldest and largest volunteer service organizations of women who are committed to enriching, sustaining and ensuring the culture and economic survival of African Americans and other persons of African ancestry.

Dr. Mishoe has also held the position of Vice President, Dover Alumnae Chapter, Delta Sigma Theta Sorority, and is the Board of Stewards Pro Tem for Mt. Zion A.M.E Church. She has received numerous honors and awards for her community leadership and work in education. Most recently, the Delmarva Black Chamber of Commerce awarded her its Leadership and Service Award in Education. In

past years, she received the Citizen of the Year Award from Psi Iota Chapter, Omega Psi Phi Fraternity, Inc.; Employee of the Year Award from DelTech (Terry Campus); and Super Stars in Education Finalist from the Central Delaware Chamber of Commerce. She is a Certified Mediator by the Center for Community Justice, and received the First Line Leadership Certification from the State of Delaware.

She co-chaired the Mid-Eastern Association of Education Opportunity Program Personnel Student Leadership Conference; and through the National Council of Education Opportunity Association's Legislative Policy Seminar, she gave a presentation to Delaware's congressional assistants on the Title IV Federal TRIO program funding. TRIO is a compilation of Federal outreach and student services programs designed to identify and provide services for individuals from disadvantaged backgrounds.

Dr. Mishoe resides in Dover, Delaware.

***Andrew W. Gonser, Esq.***  
***Vice Chair, Personnel***

Mr. Gonser was confirmed to serve a seven-year term on the Commission in June 2011, with his term ending in June 2017. In 2012, he was elected to serve as Vice Chair, Personnel and re-elected in 2013.

Mr. Gonser is a partner in the law firm of Gonser and Gonser in Wilmington. He is experienced in all aspects of Family Court matters from divorce, property division, custody and visitation, to paternity issues, guardianships and adoptions. He

currently serves as Chair of the Family Law Section of the Bar Association and was Voted 2012 Top Family Law Attorney in Delaware Today.

For two years while working on his law degree at Widener University School of Law, he was on the school's law journal, Delaware Corporate Law. After graduating *cum laude* in 2004, he clerked for the Honorable Jan Jurden, Delaware Superior Court. He also was a judicial extern in the U.S. District Court for the Honorable Sue L. Robinson. He is admitted to practice in all Delaware Courts, the U.S. District Court (Delaware), and the U.S. Supreme Court.

His undergraduate degree is in English from the University of Delaware, where he received the Division I Men's Soccer Letterman's Award.

Mr. Gonser is actively engaged in legal and non-legal activities. He is a volunteer attorney for the Legal Self-Help Center and volunteers as a Guardian *ad Litem* for children in Delaware's foster care system. He also is a member of the Delaware State Bar Association and the Melson-Arsht Inns of Court.

Mr. Gonser resides in Wilmington with his wife and five children.

***William F. Tobin, Jr.***  
***Vice Chair, Policies & Procedures***

William F. Tobin was appointed to complete a few months of the remaining term of former Chair, Barbara

Green. Mr. Tobin was reappointed by the Governor to serve his own 7-year term which expires on May 7, 2020. In 2012, he was elected to serve as Vice Chair, Policies & Procedures and re-elected in 2013.

Mr. Tobin has served many years in private sector positions, both for-profit and non-profit. His work has included managing budgets of more than \$500,000, and other fiscal aspects such as inventory control, asset management and audit reviews. He is presently a credit manager and safety director for George Sherman Corporation, Lewes, Delaware. He also has an extensive background in sales, and trained and mentored new and existing sales staff.

His public sector experience ranges from 7 years of active duty in the U.S. Coast Guard, where he developed extensive emergency management skills, to training fire company members on Small Boat Handling in conjunction with the Delaware State Marine Police.

He has long been an active member and officer of organizations in the fire and rescue areas, serving as Treasurer and Co-Chair of the Fire and Rescue Boat Committee, Memorial Fire Company; Sussex County Technical Rescue Team as the Finance and Budget Executive, and member of the Delaware State Fire Police and Indian River Fire Company; and Executive Administrator, assistant treasurer, finance Board member of Georgetown American Legion Post #8, Ambulance State #93.

Aside from his interest in fire and safety, he is active in his community as Treasurer, Lower Delaware Shield and Square; American Legion Post #5 member; St. John's Masonic Lodge

member; DE Consistory member, and Nur Temple member.

Commissioner Tobin resides in Harbeson, Sussex County, Delaware.

### ***William W. Dailey, Jr.***

In 2007, William W. Dailey, Jr., was appointed to serve until November 8, 2012. The statute provides that he may continue to serve until a new Commissioner is nominated by the Governor and confirmed by the Senate to replace him. Until that time, Mr. Dailey has remained throughout 2013, as a dedicated member of the Commission.

Mr. Dailey has an extensive engineering and surveying background, through his education and service in the United States Army's Engineer Corps. After an honorable discharge, he continued his education. He was also Certified in Reduction and Flood Hazards, Inshore and Coastal Hydrographic Surveying. He is a licensed Land Surveyor in Delaware, Maryland, New Jersey and Pennsylvania.

Prior to retiring, he worked for VanDemark & Lynch, Inc., gaining experience in all phases of surveying and land development. He supervised field operations for the company, including property, topographic, construction, geodetic and hydrographic surveys; supervised field crews in those areas; compiled and reviewed field data; conducted legal research where necessary; and was recognized by Courts as a legal expert in the field, and has given expert testimony.

His projects ranged from small

tracts to areas exceeding 5,000 acres, where he gained extensive experience in horizontal and vertical controls for aerial mapping and hydrographic surveys. His Delaware work covered projects such as supervising field surveys for the Delaware Army and Air National Guard at the Greater Wilmington Airport; Dover Air Force Base; and Georgetown Airport. His work for the military focused on runway and taxiway extensions and improvements. He also was responsible for field surveys on Delaware's major shopping centers: Christiana Mall, Concord Mall and Brandywine Town Center.

He has taught seminars and classes on various aspects of surveying, including Boundary Law, Surveying Basics, Surveying Issues, Title Insurance, Metes and Bounds Descriptions, etc. For 15 years, he was an instructor at Delaware Technical and Community College, Stanton Campus.

He has served on and been a member of numerous Surveyor Societies, including Chair of the State of Delaware Board of Land Surveyors (1981-1990). In 1993, the Delaware Association of Surveyors selected him as its Surveyor of the Year. He also was active in the Gull Point Condominium Council in Millsboro, Delaware.

Aside from his service on many boards and committees related to surveyors, he was Youth Chairman, President and Vice President of the Red Clay Kiwanis Club. Although retired, he remains involved with VanDemark & Lynch as a consultant.

He is a Sussex County resident

with his spouse in Millsboro.

***Mark F. Dunkle, Esq.***

Mr. Dunkle was confirmed for a seven year appointment to the Commission on June 30, 2009. His term will expire on June 30, 2016.

Mr. Dunkle is an Attorney/Director in the law firm of Parkowski, Guerke & Swayze, P.A., which has offices in all three counties. He has been a Director in this firm since July 1996.

Before receiving his law degree from Emory University School of Law in Georgia, he graduated with distinction from the University of Virginia with a degree in history. Upon completion of his law degree, he was admitted to the Georgia Bar, and three years later was admitted to the Delaware Bar. Aside from his admission to practice in all Delaware State Courts, he is admitted to practice in Pennsylvania, the U.S. District Court, District of Delaware, and the United States Supreme Court.

Mr. Dunkle is well-published in, and has made presentations on, land use law. Among his publications and presentations are: "Municipal Annexation Law in Delaware," "Delaware Land Use Law," "Delaware Condemnation Law," and "Eminent Domain Law in Delaware." His presentations have been through the auspices of the Delaware Urban Studies Institute, the National Business Institute, and the Delaware State Bar Association. Also, in the area of land use, he was a member of the Kent County Comprehensive Development

Plan Update Committee, and a member of the Kent County Transfer of Development Rights Committee. In the area of publications, he also served as co-editor of *In Re*, the Journal of the Delaware State Bar Association. Mr. Dunkle also serves as Chair of the Delaware Chapter of the American College of Mortgage Attorneys.

He chaired the Governor's Magistrate Screening Committee for over ten years. Presently, he is a member of the Delaware Board of Bar Examiners Character and Fitness Committee and serves by appointment of the Delaware Supreme Court on the Preliminary Investigatory Committee of the Court on the Judiciary. He also has served on the Executive Committee of the Delaware State Bar Association and is a past-President of the Kent County Bar. Presently, he is a member of the Permanent Advisory Committee on Supreme Court Rules by appointment of the Chief Justice.

Mr. Dunkle has been active in the community of Dover and surrounding areas by serving as President of the Capital City Rotary Club and as a member of the Greater Dover Committee and the local Chamber of Commerce.

Mr. Dunkle resides in Wyoming, Kent County, Delaware.

***Lisa Lessner***

Mrs. Lisa Lessner was confirmed as a Commissioner on June 16, 2010 for a seven year term, expiring in 2017.

For the past 16 years, Mrs. Lessner has actively worked as a community volunteer for various non-

profits. She is currently a board member of the Boys and Girls Club of Delaware and also volunteers as a mentor for Creative Mentoring and in various capacities at Wilmington Friends School. Mrs. Lessner was a founder and board member of the Delaware Children's Museum for 14 years. Volunteering more than 1,000 hours a year, she chaired its Marketing and Exhibits Committees. In 1997, she was elected Vice President, until elected President in 2004. She served in that role until February 2010.

Mrs. Lessner's efforts for Delaware's first children's museum included extensive market research, writing an extensive business plan, attending conferences and networking with professionals in other States from children's museums, securing start-up funds, hosting fund raising events, hiring professional exhibit designers and architects, creating an exhibit master plan, hiring an executive director, and securing \$5 million in funds from the Riverfront Development Corporation for the museum's land and building. Her efforts were rewarded when the Museum opened in April 2010—on time and on budget.

While undertaking those efforts, she also was a Board member of Albert Einstein Academy (2001-2007), and a Delaware Theatre Company Board member (2009-2010).

Mrs. Lessner's business acumen began with a University of Delaware Bachelor of Science Degree in Accounting. That was followed by an MBA in Health Care Administration from Widener University, Chester, Pennsylvania. After interning for IBM and Morgan Bank, she worked for the

Hospital of the University of Pennsylvania in a variety of positions, including Budget Specialist, Budget Manager, Senior Associate for Clinical Effectiveness and Senior Associate to the Executive Director. Later, she used her skills as an independent consultant for the Clinical Care Associates, University of Pennsylvania Health System. Her consultant work encompassed being the temporary Chief Financial Officer, and working on special projects, including establishing financial and human resources policies and procedures.

Mrs. Lessner, and her family, reside in Wilmington, DE.

### ***Jeremy D. Anderson, Esq.***

Mr. Anderson was confirmed for a seven-year appointment to the Commission on June 30, 2011. His term will expire on June 30, 2017.

Mr. Anderson is a principal at the law firm of Fish & Richardson, PC, leads and tries corporate and complex commercial cases in the Delaware Court of Chancery. Mr. Anderson handles technology-related cases that are brought to protect and defend the intellectual property of companies across several industry sectors such as Life Sciences, Computer Software, and Media and Entertainment. He has successfully represented clients in actions involving non-practicing entities (NPEs) regarding the fraudulent transfer of patents and breaches of covenants not to sue. He recently obtained a motion to dismiss a multi-forum shareholder derivative lawsuit that was based on his client's substantial monetary settlement with the federal

government, and in another case defended a preliminary injunction seeking to stop a technology company from filing a patent infringement action in federal court.

As the head of Fish & Richardson's Corporate Governance and Chancery Litigation Practice, Mr. Anderson also represents corporations in high-profile cases involving mergers and acquisitions, stock appraisal, indemnification of officers and directors, demands for corporate records and misappropriation of trade secrets.

Mr. Anderson is the co-author of Technology Litigation in the Delaware Court of Chancery, a treatise that provides comprehensive analysis of technology-related claims such as breach of fiduciary duty, misappropriation of trade secrets, breach of contract, unfair competition, civil conspiracy, and aiding and abetting. He is a thought leader on stock appraisal actions, and has authored articles that have been quoted in the Wall Street Journal, New York Times, Financial Times and Bloomberg. He frequently contributes to the "Chancery Daily" as a guest columnist and to Fish & Richardson's commercial litigation blog.

Mr. Anderson is a member of the American Bar Association where he served as Assistant to the President and as member of the Executive Committee from 2010-2011. In October 2007, Mr. Anderson founded the Delaware Chapter of the J. Reuben Clark Law Society, a service organization that strives to promote fairness and virtue founded on the rule of law. He has been named a "Delaware Rising Star"

by Super Lawyers in multiple years.

Mr. Anderson received his law degree from Georgetown University Law Center, in Washington, D.C., where he was the Senior Editor for Law and Policy in International Business. After graduation, he clerked for the Honorable Kent A. Jordan, United State District Court for the District of Delaware.

Mr. Anderson resides in Hockessin, Delaware.

#### ***D. Commission Staff***

##### ***Deborah J. Moreau, Esq. Commission Counsel***

As an independent agency, the Commission appoints its own attorney. 29 *Del. C. § 5809(12)*. Deborah Moreau was appointed in June 2013, replacing the Commission's previous counsel of 18 years.

A Widener University School of Law graduate (cum laude), Ms. Moreau was a member of the Delaware Journal of Corporate Law. During law school she received two awards for her writing submissions. The Herman V. Belk Memorial Award was given in recognition of excellence in writing for an article written to gain admission to the law review in 2003. In 2004, she received the Donald E. Pease Best Student Article Award. Ms. Moreau's (*ne* Buswell) award-winning article was published in the law review. (Foreign Trade Antitrust Improvements Act: A Three Ring Circus – Three Circuits, Three Interpretations (Delaware Journal of Corporate Law, Vol. 28, No. 3, 2004)). The article has been cited in numerous professional materials.

During her third year of law school, Ms. Moreau worked as an intern at the Delaware Department of Justice and was provisionally admitted to the Delaware Bar under Delaware Supreme Court Rule 55. That early admission allowed Ms. Moreau to prosecute misdemeanor cases in Family Court before graduation from law school.

Ms. Moreau was formally admitted to practice law in Delaware in 2004. The following year she was admitted to the U.S. Third Circuit Court of Appeals. Ms. Moreau continued her career at the Delaware Department of Justice as a Deputy Attorney General for the Criminal Division. While she was a prosecutor, Ms. Moreau handled hundreds of cases, in a variety of courts. She has practiced in Family Court, the Court of Common Pleas and Superior Court. Her varied caseloads included domestic violence, juvenile crime, sexual assaults, guns, drugs, property, robbery, burglary, and murder. Ms. Moreau's work as a prosecutor allowed her to gain extensive trial experience.

Ms. Moreau resides in Smyrna, Delaware with her husband.

### ***Administrative Assistant Jeannette Longshore***

Jeannette Longshore was hired in 2006, as a temporary employee when the Commission's full-time State administrative specialist was absent. She was hired full-time in June 2007.

Ms. Longshore worked at Delaware Technical Community College, Hewlett-Packard, and Agilent Technologies. She has experience in Microsoft Word, Excel, Access, and

other computer skills. She performs the day-to-day administrative specialist functions, and updates the Commission's calendar of events on its web site with its agenda and minutes, and attends and takes minutes at the meetings, etc. She has completed courses on the State Budget and Accounting; Program Management Office Training; and Grammar and Proofreading. Ms. Longshore has become proficient in the technical aspects of the Public Integrity Reporting System.

Ms. Longshore volunteers at The Emmanuel Dining Hall in Wilmington, Delaware, feeding the homeless.



### *III. Laws Administered by the Commission*

☑ **Subchapter I, Code of Conduct**--Executive Branch and local government ethics;

☑ **Subchapter II, Financial and Organization Disclosures**--Executive, Legislative and Judicial Branch public officers annual report of financial interests, such as assets, creditors, income, and gifts. All State elected officials and State candidates must also disclose private organizations of which they are a Board or Council member.

☑ **Subchapter III, Compensation Policy**--State or local employees or officials holding dual government jobs with procedures to monitor and prevent “double-dipping;”

☑ **Subchapter IV, Lobbying**—Lobbyists’ registrations, authorizations, expense reports, and specific legislative or administrative action on which they are lobbying State officials or employees.

## A. *Subchapter I, Code of Conduct – Ethical Standards*

**Purpose and Jurisdiction:** Twelve (12) rules of conduct set the ethical standards for “State employees,” “State officers,” and “Honorary State Officials,” in the Executive Branch. [29 Del. C. § 5804\(6\), \(12\) and \(13\)](#). It also applies to local governments, unless the local government has a PIC approved Code that is as stringent as State law. [29 Del. C. § 5802\(4\)](#). The purpose is to instill the public’s respect and confidence that employees and officials will base their actions on fairness, rather than bias, prejudice, favoritism, etc., arising from a conflict, or creating the appearance thereof. [29 Del. C. § 5802](#).

### **Personal Jurisdiction – State Level:**

The Code of Conduct applies to all Executive Branch employees (rank and file, including part-time), officers (elected and appointed senior level Executive Branch officials), and honorary State officials (appointees to more than 300 Boards and Commissions). Approximately 48,000 persons are in those State categories.

### **Personal Jurisdiction – Local Level:**

At the local level, the number of employees, officers and officials in the local governments over which the Commission has jurisdiction is unknown.

**In 2013**, PIC approved a proposed Code of Conduct for the Town of Dewey Beach which has not yet been adopted by the town council. It is the ninth local government to do so. Local governments who have adopted their own Codes of Conduct are: New Castle County, Dover, Lewes, Millsboro, Newark, Smyrna, Delaware City, and Wilmington. As they now have their own Code, the Commission no longer has

jurisdiction over their employees, officers, and appointed officials. The remaining 49 local governments are under PIC's jurisdiction.

### **Subject Matter Jurisdiction**

The Code of Conduct restricts participating in an official government capacity if there is a personal or private interest in a matter before them; bars all employees, officers and officials from representing or assisting a private enterprise before their own agency in their private capacity; bars officers (senior level officials) from representing or assisting a private enterprise before any agency; limits public servants in obtaining contracts with the government entity with which they serve; restricts their activities for 2 years after terminating State employment. [29 Del. C. § 5805](#). The law also restricts acceptance of gifts, outside employment or anything of monetary value; use of public office for personal gain or benefit; improper use or disclosure of government confidential information; and/or use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a state agency. [29 Del. C. § 5806](#). The Code also bars conduct that creates a justifiable impression, or that may "raise public suspicion," of improper conduct, [29 Del. C. § 5802\(1\)](#) and [§ 5806\(a\)](#). Thus, the Commission considers if there is an appearance of impropriety.

The appearance of impropriety, under the Code of Conduct, is evaluated using the Judicial Branch standard, as interpretations of one statute may be used to interpret another when the subject (ethics) and the standard (appearance of an ethics violation) apply in both (public servant) cases. *Sutherland Stat. Constr. § 45-15, Vol. 2A (5th ed. 1992)*.

**Penalties:** Both criminal and administrative penalties may be imposed.

**(1) Criminal Prosecution:** The General Assembly, in passing the law, found that some standards of conduct are so “vital” that the violator should be subject to criminal penalties. [29 Del. C. § 5802\(2\)](#). Four (4) rules carry criminal penalties of up to a year in prison and/or a \$10,000 fine. [29 Del. C. § 5805\(f\)](#). Those rules are that employees, officers, and honorary officials may not: (1) participate in State matters if a personal or private interest would tend to impair judgment in performing official duties; (2) represent or assist a private enterprise before their own agency and/or other State agencies; (3) contract with the State absent public notice and bidding/arm’s length negotiations; and (4) represent or assist a private enterprise on certain State matters for 2 years after leaving State employment. [29 Del. C. § 5805\(a\)2\(2\)](#). Beyond referring suspected Code violations for prosecution, if a majority of Commissioners finds reasonable grounds to believe a violation of other State or Federal laws was violated, they may refer those matters to the appropriate agency. [29 Del. C. § 5807\(b\)\(3\) and\(d\)\(3\); § 5808\(A\)\(a\)\(4\); and § 5809\(4\)](#).

**(2) Administrative Sanctions**

Violating the above rules may, independent of criminal prosecution, lead to administrative discipline. [29 Del. C. § 5810\(h\)](#).

Under some rules both criminal and/or administrative sanctions may occur, but violating the following rules results only in administrative action: (1) improperly accepting gifts, other employment, compensation, or anything of monetary value; (2) misuse of public office for private gain or unwarranted privileges; and (3) improper use or disclosure of confidential information. [29 Del. C. § 5806\(b\), §5806\(e\) and § 5806\(f\) and \(g\)](#).

**Disciplinary levels:** (1) reprimand/censure of any person; (2) removing, suspending, demoting, or other appropriate disciplinary action for persons other than elected officials; or (3) recommending removal from office of an honorary official. [29 Del. C. § 5810\(h\)](#).



## ***B. Subchapter II, Financial and Organizational Disclosure Requirements***

**Purpose: Financial Disclosure:** Subchapter II is meant to instill the public's confidence that its officials will not act on matters if they have a direct or indirect personal financial interest that may impair objectivity or independent judgment. [29 Del. C. § 5811](#). Compliance, in part, is insured when they report financial interests shortly after becoming a public officer, (14 days), and each year thereafter on March 15, while a public officer. [29 Del. C. § 5813\(c\)](#). Identifying the interests helps the public officer recognize a potential conflict between official duties and personal interests that may require recusal or ethical guidance.

**Personal Jurisdiction: Financial Disclosure:** More than 300 “public officers” in the Executive, Legislative, and Judicial branches must file financial disclosure reports within 14 days of becoming a public officer and on March 15 each year thereafter. [29 Del. C. § 5813\(c\)](#). Filers include: All Executive and Legislative Branch elected officials; all cabinet secretaries, division directors, and their equivalents; all members of the judiciary; and candidates for State office. [29 Del. C. § 5812\(n\)\(1\)](#). As State candidates must file, the number of filers varies depending on the number of candidates in a given year. **In 2013**, there were no candidates for State office. However, with 2014 being an election year, the Commission expects a large number of candidate filers.

**Subject Matter Jurisdiction:** Assets, creditors, income, capital gains, reimbursements, honoraria, and gifts exceeding \$250 are reported. Aside from their own financial interests, officials must report: assets held with another if they receive a direct benefit, and assets held with or by their spouses and children, regardless of direct benefits. [29 Del. C. § 5813](#).

**Penalties:** Willful failure to file a report is a Class B misdemeanor. Knowingly filing false information is a Class A misdemeanor. [29 Del. C. § 5815](#). The Commission may refer suspected violations to the Commission Counsel for investigation and to the AG for investigation and prosecution. *Id.* The penalties are: (1) up to six months incarceration and/or a fine of up to \$1,150 for a Class B misdemeanor, [11 Del. C. § 4206\(b\)](#); and (2) up to one year incarceration and a fine of up to \$2,300 for a Class A misdemeanor, [11 Del. C. § 4206\(a\)](#). The Court may also require restitution or set other conditions as it deems appropriate. [11 Del. C. § 4206\(a\) and \(b\)](#).

**Personal Jurisdiction: Organizational Disclosures:**

Only State elected officials and Candidates for State officer file this report. [29 Del. C. § 5813A](#). Other public officers, e.g. cabinet secretaries, division directors, and their equivalents are not required to file this information.

**Subject Matter Jurisdiction:** The elected officials and candidates must disclose the name and address of every nonprofit organization, (excluding religious organizations), civic association, community association, foundation, maintenance organization, or trade group incorporated in the State or having activities in the State, or both, of which the person is a council member or board member. [29 Del. C. § 5813A](#).

**Purpose:** Potential conflicts can arise from associational interest, even without a financial interest, and if the organization seeks action by the General Assembly, the Governor, Lt. Governor, Treasurer, Auditor, Insurance Commissioner, or Attorney General, the annual reporting reminds them of that possibility. The reports are public records, and may be requested on the [FOIA form](#), on the Commission's website. That allows the public to also monitor the financial and associational interests of these officials.

Both the financial disclosure report and the organizational disclosure are snapshots of the interest as of the date reported. The decision on whether those interests, or any acquired after that date, but not yet reported, create a conflict of interest, is based on the conflict laws for that particular officer. Executive Branch elected officers are subject to the [State Code of Conduct](#); Legislators are subject to the [Legislative Conflicts of Interest law](#); and Judicial officers are subject to the [Judicial Code of Conduct](#).

**Penalties:** Same as for financial disclosure reporting violations.



### ***C. Subchapter III - Compensation Policy – “Anti-Double Dipping Law”***

**Purpose:** Some elected and paid appointed officials hold a second job with State agencies or local governments. Taxpayers should not pay an individual more than once for overlapping hours of the workday. [29 Del. C. § 5821\(b\)](#). To build taxpayers’ confidence that such employees and officials do not “double-dip,” those with dual positions must have the Supervisor verify time records of hours worked at the full-time job on any occasion that they miss work due to the elected or paid appointed position. [29 Del. C. § 5821\(c\)](#) and [§ 5822\(a\)](#). The full-time salary may be prorated, unless the dual employee uses leave, compensatory time, flex-time or personal time. *Id.*

**Jurisdiction:** The number of people to whom this law applies varies based on how many State and local government employees hold dual employment.

For those holding dual positions, who also are subject to the Code of Conduct—

Executive Branch and local governments--the “double-dipping” restrictions are reinforced by the ethical limits on holding “other employment.” [29 Del. C. § 5806\(b\)](#). Complying with the ethics provision is extra insurance against “double-dipping,” and also helps insure the “other employment” does not raise ethical issues. Further assurance against double-dipping is that the statute requires the Auditor to annually audit time records. [29 Del. C. § 5823](#). Generally, that audit is primarily of time records for General Assembly members who are also State employees.

**In November 2013**, the State Auditor’s Office informed PIC that the annual review of records would be changing from a fiscal year format to a calendar year format. The Auditor’s Office is currently reviewing records from July 1, 2011, through December 31, 2011, to close the gap caused by the shift in review periods. That review will be followed by a review of records from calendar year 2012. PIC is awaiting the final reports to determine if any action is required.

**Penalties:** Aside from pro-rated pay where appropriate, discrepancies are reported to the Commission for investigation, and/or the AG for investigation and prosecution under any appropriate criminal provision. [29 Del. C. § 5823](#).



## ***D. Subchapter IV – Lobbyists Registration and Reporting***

**Purpose:** Individuals authorized to act for another, whether paid or non-paid, must register with the Commission if they will be promoting, advocating, influencing or opposing matters before the General Assembly or a State agency by direct communication. [29 Del. C. § 5831](#). Lobbying registration and reporting informs the public and government officials whom they are dealing with so that the voice of the people will not be “drowned out by the voice of special interest groups.” *United States v. Harris*, 347 U.S. 612, 74 S. Ct. 808 (1954).

### **Jurisdiction:**

When PIC began administering the lobbying registration law in 1996, there were about 200 organizations with lobbyists. **At the end of 2013**, 337 lobbyists, representing 1,057 organizations, were registered.

**Reporting Requirements:** Each lobbyist is to file quarterly reports revealing direct expenditures on General Assembly members and/or State agency members. [29](#)

[Del. C. § 5835\(c\)](#). That results in 4,228 expense reports. If the expense exceeds \$50, the lobbyist must identify the public officer who accepted the expenditure, and notify the official of the value. *Id.* In 2012, legislation was passed creating an additional reporting requirement. Under that law, with an effective date of January 1, 2013, lobbyists must report legislation by bill number or administrative action by number or title, within 5 business days of lobbying a State official. [29 Del. C. § 5836](#). “Lobbying” consists of direct communication with a State employee or official, including General Assembly members, for the purpose of advocating, promoting, opposing, or influencing legislation or administrative action. [29 Del. C. § 5831\(5\)](#). The law also required that all registration, expense reports, and the new “Lobbying Activity Report” be filed on line. [29 Del. C. § 5832\(a\)](#).

Beyond the “Lobbying Activity Reports” that the lobbyists must file, the 2012 legislation required PIC to report all lobbying activity to the General Assembly on at least a weekly basis while the General Assembly is in session. [29 Del. C. § 5836\(d\)](#). Further, it required that a [searchable public database](#) be created so that the public could search for information on the names of lobbyists and their employers, expense reports, and the Lobbying Activity Report. [29 Del. C. § 5836\(d\)](#).

**In 2013**, the Public Integrity Reporting System (PIRS) was created in an effort to accommodate the new legislative reporting requirements. The new database was announced as the Web 2.0 Award winner in the “Harnessing the Power of Civic Media” category by the Public Technology Institute (PTI). Users of PIRS can see which lobbyists are involved in specific legislation or administrative regulation, and view lobbyists’ employers and financial disclosures. The new system also makes it easier for

lobbyists and public officials to submit required lobbying and gift-related reports online. The PIRS online interface is also mobile-friendly, allowing lobbyists to report, and citizens to search using smartphones, tablets and other mobile devices.

**Penalties:**

**Administrative:** A very effective compliance tool is using the administrative penalty of cancelling a lobbyist's registration if they fail to file required reports. *Id.* They may not re-register or act as a lobbyist until all delinquent authorizations and/or reports are filed. *Id.* Obviously, this personally affects their ability to represent an organization in which they are interested enough to volunteer, or affects their job performance if they cannot perform their paid duties. Recognizing the impact on lobbyists if their registrations are cancelled, the Commission sends several failure to file notices, by e-mails, followed by certified letter. If the lobbyist does not respond, before their registration is cancelled, the organization which they represent is also notified. That notice generally triggers the required filing.

**At the end of 2013**, there were 15 delinquent lobbyists whose registration was cancelled by PIC and the names were reported to the legislature. Of the 15 delinquent lobbyists, PIC terminated the employer registration of 8 lobbyists for repeatedly failing to file their reports. None of the 15 delinquent lobbyists are permitted to lobby until all of their delinquent reports are filed. The names of delinquent filers are available on PIC's website by searching lobbyist reports by quarter.

**Criminal:** Any person who knowingly fails to register or knowingly furnishes false information may be found guilty of a misdemeanor. [29 Del. C. § 5837.](#) Unclassified misdemeanors carry a penalty of up to 30 days incarceration and a fine up

to \$575, restitution or other conditions as the Court deems appropriate. [11 Del. C. § 4206\(c\)](#).



#### ***IV. Methods for Achieving Compliance***

##### **(1) Training and Publications - [29 Del. C. § 5808\(A\)\(a\)\(1\)](#)**

As the Commissioners normally meet monthly, the day-to-day work of providing guidance and facilitating compliance with the laws, conducting seminars and workshops, publishing materials, etc., are the Commission Counsel's statutory duties.

*Id.*

To best assist government officials and lobbyists in understanding and complying with the law, the Commission's primary focus is on training. Training is reinforced by handouts of publications which can be reviewed later. For quick reference, an Ethics Brochure with the 12 rules of conduct with some brief cases examples is provided. It also has procedures for obtaining advice or waivers, and filing complaints. Opinion synopses have more specific cases decided over the years. As individuals encounter similar situations, they can refer to the cases. These publications also are on the Commission's web site. The web site includes the statutes, all Ethics Bulletins, a

brochure on Delaware's gift laws, the Commission's rules and its annual reports. For Financial Disclosure filers and Lobbyists, it has instructions for on-line filing. Lobbyists can link to the Legislative Bill Drafting manual if drafting legislation for clients. It includes links to related laws such as the Legislative Conflicts of Interest Law and the Judicial Code of Conduct.

**In 2013**, the Commission gave 4 training classes to a total of 51 attendees. That number was down from 9 classes with 177 attendees in 2012. The decline in the number of trainings was due to the retirement of previous Commission Counsel and the hiring of new counsel. During the transition period, trainings were rescheduled or postponed. PIC looks forward to increasing the number of trainings and attendees in 2014.

**(2) Advisory Opinions - [29 Del. C. § 5807\(c\)](#).** Any employee, officer, honorary official, agency, or lobbyist may seek the Commission's advice on the provisions applying to them. While training and publications expose those subject to the law to a broad and general view, the Commission's advisory opinions and waiver service on particular fact situations gives the individual personal attention on a potential conflict, guiding them through the steps that would prevent crossing the ethics line. While advisory opinions are non-binding, if the individual follows the advice, the law protects them from complaints or disciplinary actions. [29 Del. C. § 5807\(c\)](#). Synopses of those opinions later become learning tools at training classes.

**In 2013**, the Commission acted on 35 requests for formal advisory opinions; 5 requests for written, informal advice; plus 4 requests carried over from late 2012 to January 2013.

**(B) Waivers** - [29 Del. C. § 5807\(a\)](#) Any employee, officer, honorary official, agency, or lobbyist may seek a waiver. In rare cases, an individual may need to deviate from the law. The Commission may grant waivers if: (1) the literal application of the law is not necessary to serve the public purpose; or (2) an undue hardship exists for the agency or employee. Waivers are open records so the public knows why a deviation from the law was allowed in a particular case. As some standards are so “vital” that they carry criminal penalties, making the information public further instills confidence that an independent body makes the decision. It also gives the public better exposure to the Commission’s deliberation process which may not be as clear when only a synopsis that cannot identify the individual by name or through sufficient facts is permitted.

**In 2013**, four waivers were granted. Commission Op. Nos. 12-42; 12-43; 13-12; and 13-13. (See Appendix A-D). When a waiver is granted, the proceedings become a matter of public record. Those decisions are on the Commission’s website and at Tab 1 in this report.

**(c) Complaints** - [29 Del. C. § 5810\(a\)](#). Any person, public or private, can file a sworn complaint. The Commission may act on the sworn complaint, or its own initiative. A majority (4) must find “reasonable grounds to believe” a violation may have occurred. [29 Del. C. § 5808\(A\)\(a\)\(4\)](#). If probable cause is found, the Commission may conduct a disciplinary hearing. [29 Del. C. § 5810](#). The person charged has statutory rights of notice and due process. Violations must be proven by clear and convincing evidence. If a violation is found, the Commission may impose administrative discipline. [29 Del. C. § 5810\(d\)](#). It may refer substantial evidence of criminal law violations to appropriate federal or State authorities. [29 Del. C. § 5810\(h\)\(2\)](#). Frivolous or non-merit complaints,

or those not in the Commission's jurisdiction, may be dismissed. [29 Del. C. § 5809\(3\)](#).

**In 2013**, the Commission acted on one complaint. It was dismissed for lack of jurisdiction, pursuant to [29 Del. C. § 5809\(3\)](#) and for failure to sufficiently state a claim. The complainant alleged numerous violations of laws governing Charter Schools. PIC has no jurisdiction over such matters and as a result, those claims were dismissed. As to the remaining claims, the complainant alleged violations of the Code of Conduct but did not include facts which would substantiate the allegations. The complainant was advised that those matters could be resubmitted once the complaint included the appropriate factual information.

The total number of advisory opinions, waivers and complaints acted on was 44.



## *V. FOIA Requests*

**In 2013**, PIC responded to 8 requests for information under the Freedom of Information Act (FOIA). The requests were submitted by a mix of news media, citizens, and private political organizations. Due to the efficiencies of the PIRS database, PIC was able to respond to 7 of those requests within 24 hours. For the remaining request, the information requested was not related to data maintained in the database and required research to fulfill the request. PIC was able to gather the information and

responded to that request within 14 days.



## *VI. Funding*

**In FY2014**, which encompasses the last half of the 2013 calendar year, the General Assembly appropriated \$192.2 for PIC, with an operating budget of \$30,600. The Commission continues to spend less than 1¢ per person on the more than 58,000 people it regulates, while at the same time its duties have increased.



## VII. Legislation

**In 2013**, the legislature removed the Director of the Victim's Compensation Board as a person required to file an annual financial disclosure form. The Victim's Compensation Board became part of the Department of Justice and, as a result, its director was no longer considered a "public officer" required to file.

Senate Bill No. 49, which would require a two year waiting period during which no former legislator could lobby, was not passed in the last legislative session which ended in June 2013. It is still pending in the Senate. An almost identical Bill left over from the last legislative session, H.B. 13, is still pending. That Bill would require only a one year waiting period before legislators would be permitted to lobby.

Similarly, a Bill pending in the House, H.B. 184, would prohibit lobbying for two years by former heads of State agencies, Cabinet officials, and the executive staff of the Governor, also did not pass before the end of the last legislative session. It is still pending in the House.

While not technically legislation, **in December 2013**, former Chief Justice Norman Veasey reported his findings following an independent campaign finance investigation. PIC featured prominently in the recommendation section of the report. Chief Justice Veasey recommended greater resources and powers for PIC. It remains to be seen what, if any, changes will be made as a result of the report. Due to the release date of the report, PIC's 2014 Annual Report will document any resulting effects or changes. [Read the report.](#)



## *VIII. Future Goals*

The Commission's focus will continue to emphasize education of employees, officers, officials, lobbyists.



STATE OF DELAWARE  
**DELAWARE STATE PUBLIC INTEGRITY COMMISSION**

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January 31, 2013

Imran Trimzi, M.D.  
Mary Diamond, M.D.  
1901 North DuPont Highway  
New Castle, DE 19901

**12-42 and 12-43 – Contracting with the State**  
***Hearing and Decision by: Wilma Mishoe, Chair; Commissioners: William Dailey,  
Mark Dunkle, Lisa Lessner and Jeremy Anderson***

Dear Doctors Trimzi and Diamond, and Mr. Yeatman:

The Public Integrity Commission (PIC) reviewed the Department of Services for Children, Youth and their Families (DSCYF) request for a waiver to allow it to privately contract with Doctors Imran Trimzi and Mary Diamond. Based on the following law and facts, a waiver is granted until the beginning of the new fiscal year, because of the dire need to provide psychiatric services to children at the Terry Children's Center. It is our understanding that the positions will be publicly noticed for bidding at that time.

**I. Applicable Law and Facts**

**(A)** State employees who have a financial interest in a private enterprise that does business with, or is regulated by the State, must file a full disclosure with PIC as a condition of commencing and continuing employment with the State. [29 Del. C. § 5806\(d\)](#). Doctors Trimzi and Diamond's private contract with the State constitutes a "private enterprise" and their employment constitutes a "financial interest." [29 Del. C. § 5804\(9\)](#) and [§ 5804\(5\)\(b\)](#). Both have complied with this requirement.

**(B)** State employees may not review or dispose of State matters if they have a personal or private interest in the matter. [29 Del. C. § 5805\(a\)\(1\)](#). Here, the State matter was their private contracts. However, Dr. Trimzi and Dr. Diamond work for a totally separate Department—Health and Social Services (DHSS). Thus, they were not in any manner responsible for the contract, as that was a matter handled by Mr.

**APPENDIX A**

Yeatman and others at DSCYF.

(C) State employees may not represent or otherwise assist a private enterprise before the agency with which they are associated by employment. [29 Del. C. § 5805\(b\)\(1\)](#). As noted, the Doctors work for a totally separate agency, DHSS, so they will have no occasion to deal with their own agency.

(D) State employees may not contract with the State if the contract is for more than \$2,000 unless there is public notice and bidding. [29 Del. C. § 5805\(c\)](#). Here, the agency has not yet publicly noticed and bid the contracts, and requests that a waiver be granted.

On the written request of any State agency, or an individual subject to the Code, the Commission may grant a waiver to the specific prohibition if the Commission determines that the literal application of the law is not necessary to serve the public purpose, or would result in an undue hardship on an employee, officer, official or State agency. [29 Del. C. § 5807\(a\)](#).

Here, the agency seeks a waiver based on the following facts: In early 2012, it lost two full-time Child Psychiatrists who worked in the Terry Children's Center. Such psychiatrists are required to have an additional two years of training in Child and Adolescent Psychiatry over psychiatrists not in that specialty. As a result, they usually have increased payments to be made on student loans, so the salary can be a critical issue. As far as State of Delaware employment, these positions have a lower salary than the rate paid to full-time Psychiatrists in DHSS, even though those positions do not require the additional 2 years for training required for Child Psychiatrists. Pulling from other States also is difficult because there has been a recognized national shortage of Child and Adolescent Psychiatrists in studies identified to DFYCF in September 25, 2012, and this shortage has been on-going since at least 2006, and is expected to continue. Moreover, due to changes in Delaware laws that require a more stringent background investigation of Physicians who deal with children, it can take longer for out-of-State licensees to receive a State of Delaware license which they must have for the positions.

Efforts made to fill the full-time positions included multiple job notice advertisements in the Regional Council of Child and Adolescent Psychiatry of the Delaware Valley (Philadelphia and Southern New Jersey region) and the Regional Council of Child and Adolescent Psychiatry of Delaware. The agency also distributed the job notice to members of the Psychiatric Society of Delaware, and contacted provider services including Delaware Guidance, Psychiatry at Crozier-Keystone Health System, and Child Guidance Resource Center, and had the Director of the Department of Child and Adolescent Psychiatry at Jefferson University Hospital assist in recruiting attempts. The only applicant for the full-time State job would not even accept an interview because of the pay offered.

Other attempts to solve the problem included contracting with, as opposed to direct hiring of, a full-time child psychiatrist to work at the Terry Center, but he only worked for approximately 4 months: February – June 2012. During that time, a State

#### **APPENDIX A**

Task Force had completed a report on Child Mental Health Needs in Kent and Sussex County, which identified a need to recruit two psychiatrists to Sussex County, because the Terry Center presently provides child and youth residential services <http://ltgov.delaware.gov/taskforces/cmhtf/finalreport.shtml> That report was submitted to the Governor, the Speaker of the House of Representatives, and the President Pro Tem of the Senate on March 12, 2012.

The agency continued trying to recruit child psychiatrists for the Terry Center, and were able to hire a part-time Child Psychiatrist in July 2012, who continues to work there. However, that is insufficient for the caseload at the Terry Center. In the meantime, the agency had lost other full-time Child and Adolescent Psychiatrists in other programs, such as at the Stevenson House Detention Center and the Youth Rehabilitation Services, in October 2012, Two other full-time Child & Adolescent Psychiatrists with whom DSCYF contracted, left their positions at Delaware Guidance in August and September 2012. Another part-time contract child psychiatrist is not able to provide additional time. The agency again sent job announcements to the Regional Council of Child & Adolescent Psychiatry of Delaware and the Psychiatric Society of Delaware; personally contacted practicing psychiatrists; and had a potential hiring of one psychiatrist who decided not to pursue their offer.

Beyond the difficulties encountered in trying to find replacements, the agency had to consider the impact on children in need of services by the Terry Children's Center. It has a capacity to provide services to 12 residential clients, 24 day treatment clients, 15 intensive outpatient clients and up to 4 crisis clients. That dictates that the facility have psychiatric services year round, 24 hours per day. Without a psychiatrist to work with the children and issue medications, their health and welfare could be affected. As a result, the agency turned to Dr. Trimzi and Dr. Diamond to see if they would contract for part-time services to insure the facility remained operational and could meet the needs of youth in care. The agency said it is continuing to try to find other sources for services. It also plans to work toward having a more competitive salary so it can attract full-time employees, and plans to publicly notice and bid the contract in the next fiscal year, which starts in July 2013.

While it is conceivable that public notice and bidding of the part-time contract may have attracted others who would be willing to contract part-time, as Dr. Trimzi and Dr. Diamond have done, we recognize the agency's focus was on obtaining full-time employees due to the operational nature of the Terry Center. Also, the time spent on trying to find either full-time, part-time or contractual hires has apparently identified the reality of the shortage in a manner not fully recognized before because the 2 full-time employees who left at the beginning of the year had been working for the State for almost 2 decades. Further, there has been an increased need for assistance to children identified not only during the Bradley investigation but also as a result of dangerous behaviors such as suicides of youth, which dictates timely evaluations and treatment for children, which is not as readily attainable at present without the assistance of Doctors Trimzi and Diamond.

Also, as waivers become a matter of public record, the public will have access to this information on why the need was critical and be assured that actions are being taken to insure uninterrupted service to the Terry Center's children.

#### **APPENDIX A**

## II. Conclusion

Based on the above facts and law, we grant a waiver to the agency to continue with these private contracts until the new fiscal year, beginning July 1, 2013, when public notice and bidding is expected.

**FOR THE PUBLIC INTEGRITY COMMISSION**

A handwritten signature in cursive script, appearing to read "Wilma Mishoe", is written over a horizontal line.

**Wilma Mishoe, Chair**



STATE OF DELAWARE

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May 9, 2013

Jacqueline Wisnauskas  
Supervisor Special Programs  
Lake Forest School District  
5423 Killens Pond Road  
Felton, DE 19943

**13-12 – Hiring an Honorary State Official in a Full-Time State Position**  
***Hearing and Decision by: Wilma Mishoe, Chair; Andrew Gonser, Esq., Vice Chair;***  
**Commissioners Lisa Lessner, Jeremy Anderson, Esq., and William Tobin**

Dear Ms. Wisnauskas:

The Public Integrity Commission reviewed your request for an opinion on whether you could apply for the full-time position of the Executive Director of the Professional Standards Board (PSB), when you are concurrently a member of that Board. Based on the following law and facts, a majority of the Commission concluded it would grant a waiver to allow you to remain a Board member while being considered for the full time position.

Under the Code of Conduct, appointees to State Boards and Commissions are “honorary State officials.” [29 Del. C. § 5804\(6\)](#). In their official capacity, Honorary State officials may not review or dispose of matters if they have a personal or private interest that may tend to impair judgment in performing their official duties. [29 Del. C. § 5805\(a\)\(1\)](#). You stated that you would recuse from any Board decisions pertaining to the hiring of the Executive Director. That recusal would resolve that conflict. As far as recusal, you should recuse “from the outset” and not make even “neutral” or “unbiased” statements about any applicant. [Beebe Medical Center v. Certificate of Need Appeals Board](#).

**APPENDIX B**

In a prior decision, we held that while recusal by the applicant who was on the Board could cure their personal conflict, the difficulty with having a fellow Board member apply and remain on the Board, is that it could, at a minimum, raise suspicion among the public that the decision may not have been based on the merits, but rather on personal relationships arising from the collegial association of the other Board members; that as a fellow Board member, he could receive preferential treatment over other candidates; or that he was using his appointed position to secure a personal gain or benefit by parlaying the appointment into a full-time position. Commission Op. No. 97-34. It found that would be contrary to both the letter of the law which bars contact that may raise public suspicion, [29 Del. C. § 5806\(a\)](#); that he used public office for personal benefit, [29 Del. C. § 5806\(e\)](#). It also found it would be contrary to the spirit of the law—the purpose—which is to instill the public’s respect and confidence in its government. [29 Del. C. § 5802\(1\) and \(2\)](#). As a consequence, the Commission held it would create at least the appearance of impropriety if he remained on the Board while seeking the full-time job, and would not grant a waiver on the grounds that the literal application of the law was not necessary to serve the public purpose. Commission Op. No. 97-34.

However, that opinion also weighed the General Assembly’s findings “that all citizens should be encouraged to assume public office and employment, and that therefore, the activities of officers and employees of the State should not be unduly circumscribed.” [29 Del. C. § 5802\(3\)](#).

We weighed those two competing interests based on the particular facts of your case as they related to a waiver. [29 Del. C. § 5807\(a\)](#). First, when a waiver is granted, it becomes a matter of public record. Thus, the public would know about your relationship to the Board, and other facts pertaining to your situation. It will also know that there are specific criteria for every applicant: 10 years experience as a professional educator in a public school system and 5 years experience as a classroom teacher in a public school. That lengthy term of experience helps insure a level of expertise related to the duties of the job which include educator licensure, certification and professional development with a goal of improving the educator workforce and as a result, improve student achievement. That not only speaks to the merits of the candidates, but also narrows the field of who may apply. If Board members could not apply, it could further reduce the field. Moreover, it may unduly circumscribe their activities when they, by already serving voluntarily in a non-paid Board position that deals with educator’s qualifications, have evidenced an interest in that field. We understand that all Board members apparently were encouraged to consider the job. That means you could be competing with other Board members, making it less likely that the remaining Board members would select you simply because you are a Board member because that single criteria would apply to any other applicant Board member. This helps insure the remaining Board members who make the decision would have to use some quality beyond being a Board member to distinguish between the candidates.

Finally, as a practical matter, you were recently re-nominated (March) for a 3-year term. In effect, if we dictated that you leave the Board to apply for the job, which has an expected starting date of May 22, 2013, if you were not selected, you could end

## **APPENDIX B**

up being reappointed again to fill your own open position and serving anyway. Conversely, if you are selected as the Executive Director, you would be on the Board anyway, because the statute provides that the Executive Director serves as a non-voting Board member.

## **II. Conclusion**

Based on the above law and facts, we grant a waiver to allow you to continue to serve on the Professional Standards Board while applying for the position of Executive Director.

**FOR THE PUBLIC INTEGRITY COMMISSION**

A handwritten signature in cursive script, reading "Wilma Mishoe", is written over a horizontal line.

**Wilma Mishoe, Chair**

**APPENDIX B**



STATE OF DELAWARE  
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May 9, 2013

Cris Kenton  
Lake Forest High School  
5423 Killens Pond Road  
Felton, DE 19943

**13-13 – Hiring an Honorary State Official in a Full-Time State Position**  
***Hearing and Decision by: Wilma Mishoe, Chair; Andrew Gonser, Esq., Vice Chair;***  
**Commissioners Lisa Lessner, Jeremy Anderson, Esq., and William Tobin**

Dear Mr. Kenton:

The Public Integrity Commission reviewed your request for an opinion on whether you could apply for the full-time position of the Executive Director of the Professional Standards Board (PSB), when you are concurrently a member of that Board. Based on the following law and facts, a majority of the Commission concluded it would grant a waiver to allow you to remain a Board member while being considered for the full time position.

Under the Code of Conduct, appointees to State Boards and Commissions are “honorary State officials.” [29 Del. C. § 5804\(6\)](#). In their official capacity, Honorary State officials may not review or dispose of matters if they have a personal or private interest that may tend to impair judgment in performing their official duties. [29 Del. C. § 5805\(a\)\(1\)](#). You stated that you would recuse from any Board decisions pertaining to the hiring of the Executive Director. That recusal would resolve that conflict. As far as recusal, you should recuse “from the outset” and not make even “neutral” or “unbiased” statements about any applicant. [Beebe Medical Center v. Certificate of Need Appeals Board](#).

In a prior decision, we held that while recusal by the applicant who was on the Board could cure their personal conflict, the difficulty with having a fellow Board member

**APPENDIX C**

apply and remain on the Board, is that it could, at a minimum, raise suspicion among the public that the decision may not have been based on the merits, but rather on personal relationships arising from the collegial association of the other Board members; that as a fellow Board member, he could receive preferential treatment over other candidates; or that he was using his appointed position to secure a personal gain or benefit by parlaying the appointment into a full-time position. Commission Op. No. 97-34. It found that would be contrary to both the letter of the law which bars contact that may raise public suspicion, [29 Del. C. § 5806\(a\)](#); that he used public office for personal benefit, [29 Del. C. § 5806\(e\)](#). It also found it would be contrary to the spirit of the law—the purpose—which is to instill the public’s respect and confidence in its government. [29 Del. C. § 5802\(1\) and \(2\)](#). As a consequence, the Commission held it would create at least the appearance of impropriety if he remained on the Board while seeking the full-time job, and would not grant a waiver on the grounds that the literal application of the law was not necessary to serve the public purpose. Commission Op. No. 97-34.

However, that opinion also weighed the General Assembly’s findings “that all citizens should be encouraged to assume public office and employment, and that therefore, the activities of officers and employees of the State should not be unduly circumscribed.” [29 Del. C. § 5802\(3\)](#).

We weighed those two competing interests based on the particular facts of your case as they related to a waiver. [29 Del. C. § 5807\(a\)](#). First, when a waiver is granted, it becomes a matter of public record. Thus, the public would know about your relationship to the Board, and other facts pertaining to your situation. It will also know that there are specific criteria for every applicant: 10 years experience as a professional educator in a public school system and 5 years experience as a classroom teacher in a public school. That lengthy term of experience helps insure a level of expertise related to the duties of the job which include educator licensure, certification and professional development with a goal of improving the educator workforce and as a result, improve student achievement. That not only speaks to the merits of the candidates, but also narrows the field of who may apply. If Board members could not apply, it could further reduce the field. Moreover, it may unduly circumscribe their activities when they, by already serving voluntarily in a non-paid Board position that deals with educator’s qualifications, have evidenced an interest in that field. We understand that all Board members apparently were encouraged to consider the job. That means you could be competing with other Board members, making it less likely that the remaining Board members would select you simply because you are a Board member because that single criteria would apply to any other applicant Board member. This helps insure the remaining Board members who make the decision would have to use some quality beyond being a Board member to distinguish between the candidates.

Finally, as a practical matter, you indicated your 3-year term has expired. In effect, if we dictated that you leave the Board to apply for the job, which has an expected starting date of May 22, 2013, if you were not selected, you could end up being reappointed again to fill your own open position and serving anyway. Conversely, if you are selected as the Executive Director, you would be on the Board anyway,

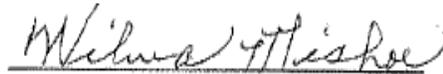
#### **APPENDIX C**

because the statute provides that the Executive Director serves as a non-voting Board member.

## **II. Conclusion**

Based on the above law and facts, we grant a waiver to allow you to continue to serve on the Professional Standards Board while applying for the position of Executive Director.

**FOR THE PUBLIC INTEGRITY COMMISSION**

A handwritten signature in cursive script, reading "Wilma Mishoe", is written over a horizontal line.

**Wilma Mishoe, Chair**

**APPENDIX C**