

The Rules of Conduct

(1) Do not review or dispose of State matters if you have a “personal or private interest” that tends to impair judgment in performing official duties. 29 Del. C. § 5805(a).

Ex. State appointee’s “neutral” & “unbiased” remarks on an application were improper when the applicant before his Board had a business agreement with the official’s private employer.

--Beebe Medical Center v. Certificate of Need Appeals Board, Del. Super., C.A. No. 94-A-01-004, Terry, J. (June 30, 1995), aff’d., Del. Supr., No. 304 (January 29, 1996).

Ex. State employee’s “unsubstantial” & “indirect” participation in a State contract that his wife’s employer was seeking, was “undoubtedly improper” although he was not on the contract committee & she was a “low-level employee” in the company.

--Prison Health Services, Inc. v. State, Del. Ch., C.A. No. 13,010, Hartnett III, V.C. (July 2, 1993).

Ex. Uncle wrote test for State job & sat on hiring panel. His nephew was selected. The Court said it was “the most blatant discrimination based on nepotism & favoritism.”

--Brice v. State, 704 A.2d 1176 (Del., 1998).

(2) Do not represent or assist a private enterprise before your own agency. Executive Branch “officers” may not represent or assist a private enterprise before any agency. 29 Del. C. § 5805(b).

Ex. State appointee wanted private contract with his agency. Court upheld agency’s

decision to deny him the contract, as the award of State contracts “has been suspect, often because of alleged favoritism, undue influence, conflict and the like.”

--W. Paynter Sharp & Son v. Heller, 280 A.2d 748 (Del. Ch., 1971).

(3) Do not contract with the State for more than \$2,000 unless there is public notice & bidding. If less than \$2,000, there must be “arms’ length negotiations.” 29 Del. C. § 5805(c).

(4) For 2 years after leaving a State job, you may not represent or assist a private enterprise on State matters where you: (a) gave an opinion; (b) conducted an investigation; or (c) were otherwise directly and materially responsible. 29 Del. C. § 5805(d).

Ex. Former State appointee represented client before his former Board. He was not “directly & materially responsible” for the matter before the Board, as it was not considered by him before he left the State.

--Beebe Medical Center, supra.

(5) Do not incur any obligation or interest that substantially conflicts with public duties. 29 Del. C. § 5806(b).

Ex. Where a State officer placed his personal interest first, “it necessarily follows that...he violated the duty that he owed to the public.”

--In re Ridgely, 106 A.2d 527 (Del. 1954).

(6) Do not accept other employment, compensation, gifts, or anything of monetary value if it may result in: (a) impaired judgment; (b) preferential treatment; (c) official decisions outside official channels; or (d) any adverse effect on the public’s

confidence in its government. 29 Del. C. § 5805(b).

If “other employment” is in another State agency or local government, your pay may be prorated. 29 Del. C. § 5822, *et. seq.* See PIC on prorating. Also, Merit Rules 4.3 & 4.3.1 may apply. See Human Resources Representative for Merit Rules.

Or

If “other employment” is in the private sector, Merit Rules 15.2.1 & 15.2.2 may apply. They also restrict accepting gifts, compensation, payment of expenses & anything of monetary value. See Human Resources Representative for Merit Rules.

(7) To commence & continue State employment or appointment, you must file a full disclosure with PIC if you have a financial interest in a private enterprise that does business with, or is regulated by the State. 29 Del. C. § 5806(d).

“Financial Interest” includes:

- ownership or investment interest;
- receiving \$5,000 or more as an employee, officer, director, trustee or independent contractor;
- creditor of private enterprise. 29 Del. C. § 5804(5).

“Private Enterprise” is any activity by any person, for profit or not for profit. 29 Del. C. § 5804(9).

(8) Do not acquire financial interests in a private enterprise that may be directly involved in your State decisions. 29 Del. C. § 5806(c).

See also, Merit Rule 15.2.2 on financial interest.

(9) Do not use public office for unwarranted privileges, private advantage or gain. 29 Del. C. § 5806(e).

Ex. State official had a duty not to personally profit from the State’s services & property by using School materials & employees during State work hours at his home. His action was more than an ethics violation. It violated the criminal law on “Misconduct in Office.”

--Howell v. State, 421 A.2d 892 (Del., 1980).

(10) Do not improperly disclose or use confidential information. 29 Del. C. § 5805(d); 5806(f) & (g).

Ex. “Indeed, common decency and the most modest norms of privacy command that the State not permit its files to be used in the manner here alleged”—that confidential information on State clients was made public.

--Pajewski v. Perry, 363 A.2d 429 (Del., 1976).

(11) Do not use sex as a condition for an individual’s favorable treatment by you or a State agency. 29 Del. C. § 5806(h).

(12) Your conduct must not “raise suspicion” of violating the public trust. 29 Del. C. § 5806(a).

Ex. Close relatives had no financial interest in government decision, but it would “be prudent” for officials to recuse themselves.

--Harvey v. Zoning Board of Adjustment of Odessa, Del. Super., C.A. No. 00A-04-007 CG, Goldstein, J. (November 27, 2000), aff’d., 781 A.2d 697 (Del, 2000).

--Actual misconduct is not required; only the appearance thereof. --Commission Op. No.92-11.

To Whom Does the Law Apply?

The Code of Conduct applies to all Executive Branch employees (rank & file), officers (Division Directors & above), and honorary officials (appointees to State Boards and Commissions); & local government officers & employees unless they adopt a Code at least as stringent as the State's. The Judicial & Legislative Branches have their own Code of Conduct or Conflict of Interests laws.

Why Ethics?

In our democratic form of government, the conduct of State officers & employees must hold the respect & confidence of the people. Thus, State officers & employees must avoid conduct that violates the public trust or creates a justifiable impression by the public that such trust is being violated.

How Can I Promote Ethics?

By following the Code of Conduct rules.

How Can I Comply with the Rules?

Know the Rules
Follow the Rules
Get Advice When Unsure

Where are the Rules?

Delaware Code, Title 29, Chapter 58. The law and opinions are on the Public Integrity Commission's (PIC's) web site at www.deplic.delaware.gov under the heading, "Code of Conduct." Opinions are grouped by topic to narrow your search.

How Can I Understand the Rules?

Read the Statute --- Read Commission Opinions --- Go to "Ethics in Government" classes offered by PIC through your agency or through OMB's State CEP/MDI programs - -- Call the Public Integrity Commission with questions --- Seek an Advisory Opinion from the Commission

What is an Advisory Opinion?

An interpretation of the rules by the Public Integrity Commission based on the proposed particular conduct of a State employee, officer or official. It gives guidance on whether the conduct will or will not violate the public trust.

Why Would I Seek an Opinion?

It will clarify if you should or should not engage in such conduct. It also can protect you against complaints. If you fully disclose your situation to the Commission and follow its advice, the law provides protection against disciplinary action.

How Can I Seek an Opinion?

Your request must be in writing; there is no formal format. Before you start to write, contact the Commission's office, at 302-739-2399, to obtain help in writing your request.

Should I E-Mail My Request?

By law, you are entitled to confidentiality concerning your requests. If you are confident in your system's security, the Commission accepts email submissions.

When Will I Know if the Conduct is Permitted?

If the situation has been clearly addressed by the Commission, the Commission's staff will provide you with that information. If there is no clear ruling, your written request will be sent to the Commissioners one week prior to the monthly meeting. On the meeting day, the Commission likes to have the requestor present so that if there are questions not answered by the written request, it can obtain the answers at the meeting and issue an oral opinion that same day with a written opinion to follow.

What If a Complaint is Filed Against Me?

You will be formally notified of the allegations against you, and of the rights you have, such as a right to legal counsel, right to a hearing, right to cross-examine, right to examine evidence, etc. If a violation is found, you have the right to appeal to the Superior Court.

What are the Penalties?

Criminal Violations: Up to a year in prison and/or a \$10,000 fine.

Administrative Discipline includes: Letter of Reprimand --- Suspension, demotion, removal or other appropriate disciplinary action.

How Can I Reach the Commission?

Public Integrity Commission
410 Federal St., Suite 3
Margaret O'Neill Bldg.
Dover, DE 19901
Phone: 302- 739-2399
www.deplic.delaware.gov

State Public Integrity Commission



ETHICS
TRANSPARENCY IN GOVERNMENT

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