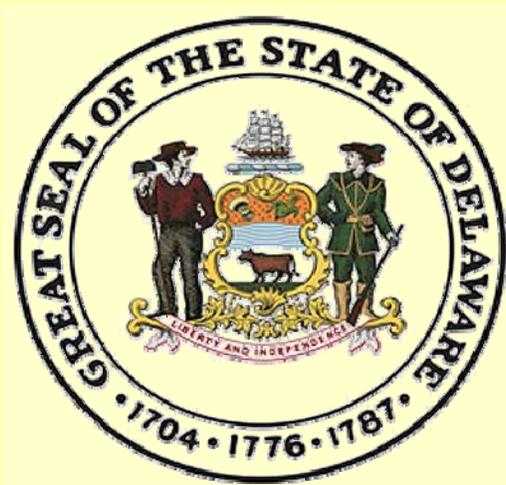


State of Delaware

State Public Integrity Commission



ANNUAL REPORT

March 1, 2011

Barbara Green, Chair

William D. Dailey, Jr., and Wayne T. Stultz, Vice Chairs

Commissioners

Bernadette Winston

Mark Dunkle, Esq.

Lisa Lessner

One Vacancy

STATE PUBLIC INTEGRITY COMMISSION

Annual Report - March 1, 2010

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I. Mission & History

Mission: An independent agency, the Public Integrity Commission administers, interprets and enforces four State laws: Code of Conduct (ethics); Financial Disclosure; Dual Compensation; and Lobbyists' Registration.

Public Integrity Commission Jurisdiction History

- ☑ **1991 - *State Ethics*:** Executive Branch officers and employees, including casual/seasonals; (over 48,000); non-legislative elected officials; State Board and Commission appointees (In 2010, 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 2010, only 7 have an approved Code, leaving PIC with 50 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. (2010: 380 officers filed).
- ☑ **1996 - *Lobbying*:** State lobbyists registration, authorization and expense reports (2010: 363 lobbyists; 893 organizations; 3572 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*:** Although covered by a local government approved Code of Conduct, the General Assembly changed the law to make it a State agency so that PIC would have jurisdiction.



DELAWARE PUBLIC INTEGRITY COMMISSION

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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 reasonable and necessary expenses*

II. Commission Structure and Biographies of Commissioners and Staff 29 Del. C. § 5808 and 5808A

(A) Commission Appointee Status

During 2010, the terms of two Commissioners expired. Commissioner Dennis Schrader had been appointed to complete the remaining 6 year term of a Commissioner who moved out of State. That term expired in June 2010. Although Commissioner Schrader could have been appointed to serve his own 7 year term, he advised the Governor that due to commitments to the State Bar Association, he would not be available for nomination. Commissioner Wayne Stultz was appointed to complete the three year term of another Commissioner in January 2007. Although Commissioner Stultz's term expired in January 2010, he may continue to serve until either he is appointed to serve his own 7 year term, or another individual is appointed. Commissioner Patrick Vanderslice, appointed in 2010, resigned in February 2011 so he could run for elective office. Commission members may not seek an elective office while serving. Commissioner Bernadette Winston's term will expire in 2011; the terms of Commissioners Green and Dailey will expire in 2012. That could mean a turn-over of 4 of the 7 Commissioners in less than 2 years.

(B) Commission Staff

The Commission has had a two person staff since 1995—its attorney and administrative specialist—performing the day-to-day operations. Its attorney, in addition to legal duties, conducts all 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.

(C) *Biographies of Commissioners*

Barbara Hitchens Green ***Chair***

Commissioner Green was appointed in June 25, 2004 to complete the term of Paul E. Ellis, with the term expiring July 8, 2005. She was reappointed to serve her own 7-year term, which expires November 8, 2012. Her fellow members have elected her four times as one of the Commission's Vice-Chairs, and she is currently the Chair of the Commission.

Ms. Green has a bachelor's degree in Medical Technology with a minor in Biology from the University of Delaware. She previously worked for Dade Behring, (now Siemens) a global medical diagnostics products company, the DuPont Company, and the Wilmington Medical Center.

In her early career, she spent several years in hospital laboratory supervision before moving to the corporate world. While with the DuPont Company, she worked in research and development creating new medical diagnostic tests for DuPont chemistry analyzers. The bulk of her career was in management, mainly in the medical products manufacturing environment. More recently, she was with Dade Behring as a Director of Manufacturing for a 500 person medical diagnostics manufacturing organization. She was also responsible for global implementation of corporate level quality and efficiency processes for that organization, throughout the US and in Europe.

Ms. Green retired from corporate life, and is currently a real estate sales agent, and a resident of Rehoboth Beach, in Sussex County.

William W. Dailey, Jr. ***Vice Chair*** ***Policies & Procedures***

In 2007, William W. Dailey, Jr., was appointed to serve until November 8, 2012.

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 extension 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.

Wayne R. Stultz
Vice Chair, Personnel

The Delaware Senate confirmed Mr. Stultz's appointment as a Commissioner in January 2007 to serve until January 2010, to complete the term of a prior Commissioner. By law, he may be reappointed to serve a seven year term of his own

Mr. Stultz retired from the State of Delaware as a project manager for

advanced electronic card systems. He is a principal with the Stultz Group, an electronic card consulting company.

Mr. Stultz holds degrees of Bachelor of Science for Business Administration and Master of Business Administration.

His community service includes current Director and past Treasurer of the Dover Rotary Club; Board member and Operations Officer for the Volunteer Ambulatory Surgical Access Program; Business administrator for Operation We Care Overseas Medical Missions; Member of the Asset Liability Management Committee, and past Vice Chair, for the Del-One Federal Credit Union; and an assistant director for the Maryland Interstate Senior Golf Association

Mr. Stultz resides in Dover.

Bernadette P. Winston

Bernadette P. Winston was the fourth Commissioner appointed in 2004. Her term expires May 12, 2011. In 2006, her fellow Commissioners elected her as the Vice Chair of Personnel. In 2009, she was elected as the Commission's Chair. She declined to seek the position in 2010 because her term will expire in less than a year

Ms. Winston is the Executive Director of the Kingswood Community Center, Inc., in Wilmington, Delaware. In that position, she is responsible for the day-to-day operations of the Center's three sites.

She has had more than 35 years of experience in government and non-profit programs. Among her past activities, she was Board President, West Center City Early-Learning Center; Vice Chair, Interfaith House; Board of the Food Bank

of Delaware; Advisory Board Member for Girls Scouts and YMCA; and Second Vice President, NAACP; Treasurer of Monday Majors; and President of Thursday Women's Major League.

She currently chairs the Wilmington Housing Authority Board of Commissioners; is a member of Community and Schools Boards; is active with the Junior Board of Christiana Care; and is a member of the Order of the Eastern Star and the Illustrious Commandress of the Daughters of Isis.

Ms. Winston resides in Wilmington, New Castle County, with her husband, George. She has two grown daughters and four grandchildren.

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.

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.

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, Delaware.

Lisa Lessner

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

For 13 years, Mrs. Lessner has

actively worked as a community volunteer for various non-profits. During that time, one of her key focuses was as a founder and board member of the Delaware Children's Museum. 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.

Her 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 in 2009 became a Delaware Theatre Company Board member, although she recently stepped down as member of that Board.

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.

Patrick E. Vanderslice, Esq.

Mr. Vanderslice was confirmed by the Senate in June, 2010 to serve a seven-year term. He is an attorney with the Georgetown law firm of Moore and Rutt.

His practice areas include Family Law; Civil Litigation; Collections; Wills; Contracts; and Real Estate. He received his Bachelor of Science degree from the University of Delaware. He earned his law degree at Widener University School of Law, and was admitted to practice in 1999.

Mr. Vanderslice resigned from the Commission in February 2011 so he could seek elective office. As of this publication, no one has been selected to complete his term.

Commission Staff

Janet A. Wright Commission Counsel

As an independent agency, the Commission appoints its own attorney. 29 Del. C. § 5809(12). Janet A. Wright was appointed in 1995.

A Widener University School of Law graduate (cum laude), she was admitted to practice in Delaware in 1989. She also is admitted to the bar in the Delaware U.S. District Court, and the U.S. Third Circuit Court of Appeals. Ms. Wright was a Superior Court law clerk for the Honorable Richard S. Gebelein. She then was an Assistant Solicitor for the City of Wilmington. Initially prosecuting Building, Housing and Fire Codes, and animal protection laws, she periodically prosecuted criminal matters in Municipal Court. Later, as a litigator, she defended the City and its employees, primarily in federal court, against alleged civil rights violations.

She has an American Jurisprudence Award in Professional Responsibility, and completed the National Institute for Trial Advocacy's skills course. She is a member of the Northeastern Regional Conference on Lobbying (NORCOL) and the Council on Government Ethics Laws (COGEL). NORCOL members administer lobbying laws from Washington, D.C. to New England. COGEL members regulate ethics, lobbying, financial disclosure, and campaign finance in all fifty states, local governments, the federal government, and Canada and Mexico. Ms. Wright served on its Site Selection Committee; moderated a Lobbying seminar; conducted a Dual Government employment session; and was on its Model Lobbying Law Committee. Her review of Alan Rosenthal's Drawing the

Line: Legislative Ethics in the States was published in the "COGEL Guardian." She has given Government Ethics sessions at the Delaware Bar Association's Continuing Legal Education Classes. Her ethics presentation on "Land Use Planning and Eminent Domain in Delaware" was selected by the National Business Institute (NBI) for its on-line training program. In 2010, she gave a session on "Ethical Client Communications" as part of the "Legal Ethics for Everyday Practice" NBI presentation for the DSBA.

Administrative Assistant Jeanette Longshore

Jeanette 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 competed courses in courses on the State Budget and Accounting; Program Management Office Training; and Grammar and Proofreading.

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 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, and expense reports by those seeking legislative or administrative action with the State.

A. Subchapter I, Code of Conduct – Ethical Standards

Purpose and Jurisdiction: These 12 rules of conduct set the ethical standards for State employees, officers, and honorary officials in the Executive Branch and local governments, unless the local government has a Code as stringent as the State law.¹ 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 of interest. *29 Del. C. § 5802(1)*.

The Code applies to all Executive Branch employees (rank and file, including part-

¹*Seven local governments have approved Codes. New Castle County, Dover, Lewes, Millsboro, Newark, Smyrna, and Wilmington.*

time), officers (elected and appointed Senior level Executive Branch officials), and honorary State officials (appointees to Boards and Commissions). Approximately 48,000 persons are in those State categories. The number of employees, officers and officials in the 50 local governments over which the Commission has jurisdiction is unknown. These laws restrict participation in their State capacity if the individual has a personal or private interest in a matter pending 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 from representing or assisting a private enterprise before any agency; limits the individuals from obtaining State contracts; and restricts their activities for 2 years after terminating State employment. The law also restricts acceptance of gifts, outside employment or anything of monetary value; use of public office for personal gain or benefit; and improper use or disclosure of government confidential information.

An appearance of impropriety provision applies to all the restrictions, even if no actual violation occurs. The appearance issue, 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).

The test for an appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all relevant circumstances that a reasonable inquiry would disclose, a perception that the official's ability to carry out official duties with integrity, impartiality and competence is impaired. In re Williams, 701 A.2d 825 (Del. 1997).

The 12 rules of conduct, with some case examples follow:

The Rules of Ethical Conduct

(1) State employees may not review or dispose of State matters if they 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) Rank and file State employees may not represent or assist a private enterprise before their own agency. Senior Level 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) State employees may 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, State employees may not represent or assist a private enterprise on State matters where they: (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) State employees may 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) State employees may 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, their pay may be prorated. 29 Del. C. § 5822, *et. seq.*

(7) To commence & continue State employment or appointment, State employees must file a full disclosure with PIC if they 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:

T ownership or investment interest;

T receiving \$5,000 or more as an employee, officer, director, trustee or independent contractor;

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

(9) State employees may 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. After he failed to timely repay the State, his action was found to be more than an ethics violation. It violated the criminal law on “Misconduct in Office.”

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

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

(12) State employees may not engage in conduct that would “raise suspicion” they are violating the Code of Conduct. 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 because of the familial relationship.

--*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*.

Penalties: If the conduct exceeds the rules, 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 of conduct 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 before the State on certain matters for two years after leaving State employment. In addition to being able to refer suspected Code of Conduct violations for prosecution, if a majority of Commissioners finds reasonable grounds to believe a violation of any other State or Federal law 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 also, 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 are: (1) issuing letters of reprimand/censure to 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: 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 for each year thereafter. Identifying the interests helps the public officer recognize a potential conflict between official duties and personal interests that may require recusal or ethical guidance. The reports are public records.

Jurisdiction: More than 300 "public officers" in the Executive, Legislative, and Judicial branches must file reports within 14 days of becoming a public officer and on March 15 each year thereafter. 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. As State candidates must file, the number of filers varies depending on the number of candidates in a given year.

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.

The report is only a snapshot of the financial interests frozen as of the date of the information. If those financial interests, or others later incurred, raise ethical issues in day-to-day functions, the conflict issue is made under the ethics laws for that particular officer-- Executive Branch officers - Code of Conduct, 29 Del. C., Ch. 58;--Legislative Branch

officers - Legislative Conflicts of Interest, 29 Del. C. Ch. 10;--Judicial officers - Code of Judicial Conduct, *Delaware Rules Annotated*.

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).

Organizational Disclosures:

In 2010, legislation was passed requiring all elected State officials and all candidates for State office to disclose private organizations of which they are a Board of Council member. The law was passed in June 2010, but became effective 6 months later to allow the Commission time to have its on-line filing and database system developed to accommodate the new filing requirements. The new filings will begin in 2011, with the filing of the annual disclosure report which is due by March 15, 2011.

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 that ethics provision is insurance against "double-dipping," and that the "other employment" does not raise any other ethical issues.

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 – Registration and Expense Reporting of Lobbyists –

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. Harriss, 347 U.S. 612, 74 S. Ct. 808 (1954)*.

Jurisdiction: At the end of 2010, 363 lobbyists, representing 893 organizations, were registered and, therefore, subject to the Commission's jurisdiction. Each lobbyist is to file quarterly reports revealing all direct expenditures on General Assembly members and/or State agency members. 29 Del. C. § 5835. If the expense exceeds \$50, the lobbyist must identify the public officer who accepted the expenditure, and notify the official of the value.

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 one of their paid duties. Recognizing the impact on lobbyists if their registrations are cancelled, the Commission sends several failure to file notices, by e-mail, letter and 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.

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.

(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(a) and (c)*. Those opinions later become the updates at training classes.

(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.

(D) 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)*.

V. Commission Accomplishments in 2010

A. Training Accomplishments

STATUTORY MANDATE: The Commission's Counsel is to "assist the Commission in" seminars, workshops, educating individuals covered by the law about its requirements and purposes. 29 *Del. C.* § 5808A(a)(1).

While the Commission is mandated to give training, the law has no counterpart requiring attendance. Thus, the number of classes and attendees depends on voluntary attendance unless a particular agency directs its personnel to attend.

PERFORMANCE MEASURE: INCREASE NUMBER OF CLASS ATTENDEES

The Commission was highly successful in attracting a larger number of attendees. In its Fiscal Year budget request, the Commission projected a performance measure of 300 trainees. However, the number attending was slightly less, as only 286 attended. Two ethics classes were cancelled because of lack of registrants. Cancellation for lack of attendees used to be a rarity, but unfortunately is becoming more common.

Classes focus on specific subchapters but incorporate references to the others. For example, when the Ethics courses covers restrictions on other employment, attendees are told about the dual compensation law that applies if the other employment is with the government. When accepting gifts is discussed, the session includes references to the financial disclosure and lobbying reports, and how those laws could effect the receiver. Financial disclosure classes incorporate references to the applicable ethics laws for the three branches, and discuss ethics and the lobbying law as they related to gifts. Lobbying classes discuss the difference between what the lobbyists report on expenditures on public

officials and what the public officials must report under the Financial Disclosure law.

Jurisdiction is discussed, explaining that the Ethics Law applies to the Executive branch and local governments, but it is made clear that PIC has no jurisdiction over the ethics laws for Legislators and Judges, as they have their own separate Codes.

(1) Ethics Training

In 2010, the number of Ethics classes held doubled from 2009. In 2010, there were 16 classes; in 2009 there were 8. The number of attendees also increased from 239 to 276.

(2) Financial Disclosure Training

One financial disclosure training class was given in 2010 to Justices of the Peace. There were 10 attendees. In 2009, no classes were held as no one registered to attend the offered class, and no agency requested a class.

B. Advisory Opinions, Waivers, Complaints, and Referrals

(1) ADVISORY OPINIONS AND WAIVERS STATUTORY MANDATE: POWERS AND DUTIES OF THE COMMISSION: Issue advisory opinions to State employees, officers, honorary officials, agencies, public officers, lobbyists and local government employees and officials. *29 Del. C. § 5809(2)*. It may grant waivers if the literal application of the law is not necessary to serve the public purpose, or if an undue hardship is created for employee, officer, official or agency. *29 Del. C. § 5807(a)*.

(2) POWERS AND DUTIES OF COMMISSION COUNSEL: Provide legal counsel to the Commission on matters connected with exercising this statutory mandate, and draft its opinions. *29 Del. C. § 5808A(a)(2) and (5)*.

PERFORMANCE MEASURE: NUMBER OF ADVISORY OPINIONS, WAIVERS AND COMPLAINTS

Ideally, as the result of training, the number of complaints should decrease because of knowledge of complying with the law. The number of requests for advisory opinions should fluctuate. The fluctuation occurs because of changes to: (1) the number of trainees exposed to the law; (2) the number of persons who leave State employment during a given year and may need post-employment advice; (3) the number of opinions further clarifying the law, which can be used as advice; (4) the number of new employees, number of Boards and Commission's added or eliminated; (5) the number of new appointees to Board and Commissions who may seek advice; and (6) the amount of changes to the law, etc. The number of waivers should always be rate because they are an exception to complying with a criminal law.

In 2010, the Commission responded to forty (40) submissions. This was 11 less than in 2009. Most of the requests for advice were from State employees seeking to hold outside employment, or seeking advice on post-employment jobs. Nineteen (19) of the opinions covered those areas. Concurrent and post-employment issues continue to be an area with high requests because of the existing economic situation. The concurrent employment requests have to cover a multitude of provisions. That is because mandatory full disclosures are required when a State employer or office has a financial interest in a private enterprise that does business with the State, or is regulated by the State.

The legal issues are: (1) if the filing was, in fact, a "full disclosure;" (2) if the individual reviewed or disposed of the contract in their official capacity; (3) if the individual was dealing with their own agency in their private capacity; (4) if the individual bid on a contract, was it publicly noticed and bid if the amount exceeded \$2,000; (5) if for less than \$2,000, does it show arms' length negotiations; and (6) if they compromised confidential

information from their government job. *29 Del. C. § 5805(a), (b) and (c); 29 Del. C. § 5806(e), (f) and (g).*

Eight complaints were filed, but four were on matters over which this Commission has no jurisdiction. They covered such things as election procedures; allegations against Judges; allegations that the Constitution or Criminal laws were violated; allegations that agency policies were violated; and allegations that unqualified personnel were hired by the State.

In one case, where the Commission had jurisdiction, a preliminary hearing was held, and probable cause was found to believe a violation may have occurred. The next step in the process is for the Respondent to respond to the Commission's preliminary hearing decision. On another complaint, some allegations were dismissed for lack of jurisdiction. However, other allegations appeared to have merit and the Commission referred the matter to its Counsel to obtain additional information from the complainant. In another case, the State employee waived the statutory rights to an attorney, a trial, etc., and accepted its decision through an advisory opinion that he had violated the Code of Conduct by using State resources and time to conduct his private business. Aside from the Commission's ruling that he had violated the Code of Conduct, his agency planned to suspend him for 3 days without pay. [Commission Op. No. 10-24](#). (Appendix A). In another case, a local elected official also waived some of his statutory rights. While he did have an attorney representing him, he waived the formal procedures of trial, cross-examination, etc. The Commission found he violated the Code because he had a personal or private interest in conduct occurring at Rehoboth Beach patio restaurants, and used his public office to get local officials to take action against the restaurants. Aside from that, he owned property abutting one of the patio restaurants. [Commission Op. No. 10-34](#). (Appendix B).

The number of matters submitted, as noted above, is based on each request or complaint filed by an individual. However, the number of legal issues in each request or complaint may be more than one. For example, in one of the above mentioned complaints, the alleged violations dealt with three provisions of the Code, and since it has been pending, another alleged violation pertaining to another provision occurred. In another complaint, in addition to the Code of Conduct there are allegations pertaining to matters over which the Commission may have to refer the charges to other State agencies, and work together on overlapping matters.

C. Publications

Statutory Mandate: Commission Duties: The Commission is to publish synopses of its advisory opinions without disclosing the identity of the applicant if no violation is found, and is to prescribe forms, and publish manuals and guides explaining the duties of individuals covered by the laws the Commission administers. See, 29 Del. C. § 5807(d)(4); 29 Del. C. § 5809(8) and (9).

To curb costs, the Commission publishes most of the information on the web site rather than hard copies. However, It does still publish hard copies of some synopses of opinions and its brochure on the 12 rules of conduct as handouts for training classes. The synopses of its most recent decisions are posted on the web site within 5 days of the approval of the Commission minutes.

D. Local Government

STATUTORY MANDATE: LOCAL GOVERNMENT DUTIES: Local governments are subject to the State Code of Conduct unless they adopt their own Code of Conduct. 68 Del. Laws, c. 433 § 1. Local governments can seek advice and/or waivers, just as can be done at the

State level. Local governments are exempt from Subchapter II, Financial Disclosure.

At present, only seven of 57 local governments have adopted an approved Code of Conduct, leaving the Commission with responsibility for the majority of them. Those with approved Codes are: Dover, Lewes, Millsboro, New Castle County, Newark, Smyrna and Wilmington.

In addition to approving the initial Code, the Commission must approve any amendments to the local Code. In 2010, New Castle County submitted proposed amendments which the Commission found not to be as stringent as State law and therefore the amendments were not approved.

In 2010, of the total 40 items handled by the Commission, 7 dealt with the conduct of local officials. Additionally, two local governments proposed to amend their Charters in a manner that was inconsistent with the State Code of Conduct. The Commission worked with the General Assembly and the attorney's for the Towns to insure the amendment met the Code of Conduct standards.

E. Legislative Interest Items

STATUTORY MANDATE: COMMISSION DUTIES: The Commission can recommend legislation for rules of conduct for public and officials, if appropriate. *29 Del. C. § 5809(1)*. It also monitors legislation sought by other entities if it affects the Commission, such as the local government proposed Charter changes discussed above.

In 2010, it recommended two changes to the financial disclosure law. First, it asked that the annual filing date be changed from February 15 to March 15 because campaign finance reports were due around the same time and a number of elected officials thought they had filed their personal financial disclosure report with PIC, but had actually

filed a campaign finance report with the Board of Elections. The proposal was enacted. PIC also asked that the Election law be amended to cross-reference the financial disclosure law. The purpose was because although the requirement to file is in the State Code of Conduct and the Commission has linked that information to the State Board of Election's website, there are still a number of State Candidates who fail to timely file. It was hoped that the cross-reference would reduce those numbers.



DELAWARE PUBLIC INTEGRITY COMMISSION

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

Legislation of Interest - 145th General Assembly

2009 & 2010 - Key Legislation

➤ *Budget - H.B. 290* - PIC's Operating Budget was cut by \$7, 100, which is 17.7% - It is performing its duties for less than 1¢ per person. Its duties were increased by additional legislation requiring additional disclosure reports, and adding additional jurisdiction.

➤ *Organization Disclosures - H.B. 172* – Requires Elected officials and Candidates for State office to file reports of non-profits, community and civic associations, foundations, maintenance organizations or trade associations if they are Board or Council members. Effective December 2010.

➤ *New Jurisdiction - H.B. 446* – PIC had ruled that the Newark Housing Authority members were not under its jurisdiction because they were a local government agency that was already covered by an approved local Code of Conduct. The General Assembly redefined them as a “State agency,;” which places them now under PIC’s jurisdiction.

➤ *Financial Disclosure: H.B. 361* – PIC proposed amendment to election law to add a cross reference to the requirement for State Candidates to file financial disclosure reports in an effort to insure better compliance by State candidates. **Filing Date – H. B. 360** - Changes filing date from February 15 to March 15 to avoid confusion on filing dates for officials since campaign finance reports were due at about the same time.

➤ *Local Government Conflicts of Interest - H.B. 431 and S.B. 253* – The

Towns of Wyoming and Magnolia wanted to amend their Charters in a manner contrary to the Code of Conduct regarding its employees and official's contracting with the local government. The Commission worked with the General Assembly and attorneys for the Towns to insure the Charters properly reflected the State law mandating disclosure of such contracts, and other Code of Conduct provisions restricting such contracts.

Legislation that would have increased jurisdiction that was not passed:

H.B. 12 and H.B. 20 - Would require Public officers to report family members working for State agency.

H.B. 27 - Legislators, agency heads cabinet officials and Governor's Executive Staff barred from lobbying for 1 year after leaving State.

H.B. 16 - Lobbyists to disclose nonprofits, civic and community associations, foundations, maintenance organizations or trade groups if they are a Council or Board member.

S.B. 305- All County elected officials and Candidates to file financial disclosure report.

It is anticipated that most of these will be reintroduced in 2011.

A chart with all legislation monitored and/or acted on is attached. Appendix C.

VI. Funding

As noted in the legislative section above, the General Assembly reduced the Commission's operating budget by more than 17%. This brings the operating budget down to \$31,600. That means the Commission is spending less than 1¢ per person on the more than 58,000 people it regulates, while at the same time increasing the Commission's responsibilities.

VII. Future Goals

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

Appendix A – Advisory Op. No. 10-24



STATE OF DELAWARE

DELAWARE STATE PUBLIC INTEGRITY COMMISSION

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September 28, 2010

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R. Anthony Kemmerlin, Sr.
19306 Elks Lodge Rd.
Milford, DE 19963

10-25 Outside Employment

Hearing and Decision By: Bernadette Winston, Chair; Vice Chairs William Dailey and Wayne Stultz; Commissioners: Patrick Vanderslice, Lisa Lessner and Barbara Green

Dear Mr. Kemmerlin:

The Public Integrity Commission reviewed your disclosure of your outside employment. While the Code of Conduct generally does not bar you from holding outside employment, we did find that in the process of conducting your outside employment you violated the Code by using State resources and time for your personal benefit. You are reprimanded for that conduct, and if you maintain your outside job, that conduct, as discussed herein, must cease. You also are reprimanded for not timely filing a full disclosure of your company's State contract. We do note that you complied with other provisions, and must continue to do so.

When those are violated, the Commission may issue a reprimand, and the decision becomes a public record. *29 Del. C. § 5810(h)*. That reprimand does not bar your agency, or other agencies, from taking other appropriate action, as we have no jurisdiction over such things as personnel laws and rules; fleet vehicle use policies; or acceptable use of State communications systems.

I. Applicable Law and Facts

(1) State employees with a financial interest in a private enterprise that does business with, or is regulated by the State, must file a full disclosure with the Commission as a condition of commencing and continuing employment with the State.

You are the founder and chief training officer for a private business: Confrontational Science Research Center. It is certified by the Department of Education as a trade school that trains in security, aggression management, and use of force fundamentals, and certified by the Delaware State Police Licensing Division to give training and certification in defensive tactics, e.g., handcuffing, expandable baton, etc. It also contracts with the Department of Labor (DOL).

You did not file the disclosure until after being notified by this office that it received an inquiry alleging you had a private business that contracts with the State. While you may not have known about this particular requirement, Delaware Courts have held that "ignorance of the law is no excuse." *Kipp v. State*, 704 A.2d 839 (Del., 1998). The plain language of the law places the burden on the State employee to comply with the law.

However, you are entitled to a strong legal presumption of honesty and integrity. *Beebe Medical Center v. Certificate of Need Appeals Board*, C.A. No. 94A-01-004 (Del. Super. June 30, 1995), *aff'd.*, No. 304 (Del., Jan. 29, 1996). That presumption is supported by the fact that you immediately filed the disclosures when contacted, even admitting your use of the State vehicle and State time for your private business. We, therefore, presume your failure to file was not intentional. We do admonish you that in the future, if you plan to contract with any State agency, you must promptly file a disclosure so the Commission can decide if any conflicts may arise from the contract.

(2) State employees may not review or dispose of matters if they have a personal or private interest that may tend to impair judgment in performing official duties. 29 Del. C. § 5805(a)(1).^[1]

You work for the Department of State, Division of Professional Regulation, investigating medical related complaints for the Board of Medical Licensure and Discipline. As noted above, you also have a private business: The Center does not contract with your Division or any Department of State entity. Your private work is unrelated to your investigatory work. You have no occasion to review or dispose of matters related to the Center.

You are in compliance with this provision. As of this date, none of your private clients have come before your State agency. You said you would recuse if, for example, a private client were a physician and you had to investigate that doctor. However, we caution you that while recusal is the general solution to a conflict, your State job must command precedence over your private interest. *In re Ridgely*, 106 A.2d 527 (Del. 1954). If the Center begins to routinely deal with organizations such as hospitals, etc., where medical licensing issues could arise,

^[1] Unlike the provision discussed in (1) above which carries no criminal penalties, this provision, if violated carries criminal penalties of up to 1 year in prison, and/or up to \$10,000 in fines if violated. 29 Del. C. § 5805(f).

you may need to monitor your involvement with those clients, and let someone else from the Center be responsible for them, and recuse if those clients come before your agency. You must recuse “from the outset” and even “neutral” and “unbiased” comments are prohibited. *Beebe, supra*.

(3) State employees may not represent or assist a private enterprise before the agency with which they are associated by employment. 29 Del. C. § 5805(b)(1).^[2]

This rule is to insure your colleagues or co-workers are impartial if they have to render a decision about the Center. However, it does not contract with your agency, and its employees are not licensed as medical practitioners. As they are not subject to your Board’s jurisdiction, no facts suggest you represented or assisted your private enterprise before your agency. Thus, you are in compliance with this provision.

(4) State employees may not contract with any State agency for a contract of more than \$2,000 unless the contract is publicly noticed and bid. If the contract is for less than \$2,000, it must reflect arms’ length negotiations. 29 Del. C. § 5805(c)(1).^[3]

(A) DOL Contract: Your disclosure shows this contract has a value of \$1,995.00. Accordingly, the arms’ length negotiation standard applies.

The Commission has ruled that “arms’ length negotiations” means that unrelated parties negotiate the contracts, each acting in their own self-interest, which forms the basis for a fair market value determination. *Commission Op. Nos. 98-23 & 97-17*. It noted that for State employees, part of that arms’ length distance to insure fairness is built into the Code of Conduct by barring them from: (1) reviewing or disposing of matters if they have a personal or private interest, and (2) contracting with their own agency. Here, that distance was maintained. Also, Delaware Courts, in ruling on arms’ length negotiations, have noted that “the most economically meaningful way to judge fairness is to compare the price paid with the price likely to be available in alternative transactions.” *Id. (citing Oberly v. Kirby, 92 A.2d 445 (Del. Super., 1991))*. This contract price is the price advertised on the Center’s website for a single individual who takes the 80-hour Commissioned Security Officer (Armed) course. *Atch. 1. Assuming* the contract was for a single individual, as that is the standing rate, no facts suggest the price was lowered to avoid any public notice and bidding requirement.^[4] Further, when a contract is not required to be publicly noticed and bid, State agencies seeking services normally check with at least 3 companies to insure a fair market price.

^[2] Violations of this provision also carry the aforementioned criminal penalties.

^[3] Violations of this provision also carry the aforementioned criminal penalties

^[4] If the contract reflects only the cost for one person, when the actual value was for more than one, giving the contract a greater value, you should immediately file an amended disclosure.

With those assumptions, you are in compliance with this provision. We discuss some pitfalls to avoid in contracting with the State by discussing the DHCI contract.

(B) DHCI Contract: The e-mail to this office asking about your outside employment said you contract with the Department of Health and Social Services (DHSS) Delaware Hospital for the Chronically Ill. (DHCI). You meet with DHCI, but were later notified it will not contract at this time because of concerns about contracting with a State employee.

If it should reconsider contracting with you, bear in mind the public notice and bidding and/or arms' length negotiations requirements, to insure compliance. Moreover, as noted above, you must file a full disclosure with this Commission to insure no Code violation exists. If the contract is for more than \$2,000, but DHCI decides not to publicly notice and bid it, which is within its discretion, you cannot seek that contract. Also, bear in mind our earlier caution about contracting with entities where a medical license issue could arise for investigation, which could occur at DHCI.

(5) State employees may not use public office for personal benefit or gain. 29 Del. C. § 5806(e).^[5]

The e-mail inquiry about your private business also said you were using your State position to market your own business; you give your State business card to promote your private business; "you can google his name and find his business"; and you are using your State office for your personal business office. Additionally, you admitted you met with DHCI and discussed your private business, and that the meeting time exceeded your lunch hour.

(A) The Web Site: "Goggling" your name does lead to the Center's website. However, it does not: refer to the State; say you work for the State; give your State phone number; or show the Center has State contracts. As long as it does not in any way connect its activities to you as a State employee, or your State office, etc., the allegation does not support a violation of this provision.

(B) Your Meeting with DHCI: You provided the Commission with lengthy information about this meeting. In one e-mail, you said,

"A DHCI Training Administrator contacted me a couple of month ago to see if I would be interested in providing an Aggression Management training for his staff. The Administrator told me that another trainer from a sister facility had come across information on my training programs on the internet. I subsequently met with members of DHCI senior staff on one occasion during lunch to discuss their needs and what my private

^[5] This provision does not carry a criminal penalty.

company had to offer. They appeared to be very pleased with the information. We agreed to an all day staff training in "Confrontation Mitigation Training" on September 21, 2010. This training was being done with the use of one of my vacation days (which I have done for other non-stated sponsor training in the past). Prior to signing a contract, I was contacted by DHCI Training Administrator on Friday and told that concerns had been raised regarding my State of Delaware employment status and that the training was being put on hold pending further investigation and clarification by DHCI. No other contacts (other than a couple of emails) with DHCI have been made."

In a separate e-mail, you were more detailed.

"In early July of 2010, Rudy Bailey (hereafter Bailey), Training Administrator II at DHCI contacted me at (302) 744-4510. Bailey told me that another Training Administrator at Emily Bassett [sic] Hospital had located an article ("Low-Intensity Management of Physically Aggressive Patients in Long-term Care Facilities") on the internet that I had authored in the Mid-90s while an employee at Courtland Manor Nursing Home. Bailey invited me to meet with his administrative staff to discuss the possibility of staff training in the area of "aggression management".

On July 16, 2010 at 1030 hrs, I met with approximately eight senior members of DHCI staff. I arranged the meeting to converge with my lunch break. I traveled to DHCI (Smyrna) in my State of Delaware assigned vehicle. The meeting actually lasted approximately 30 minutes past my lunch break because the meeting started late. At this meeting, everyone introduced themselves and their positions at DHCI. I introduced myself. I mentioned that I was an employee with the Division of Professional Regulation. I even gave the members present a copy of my State of Delaware business card (I never gave DHCI staff my private business card because at this point I had thought about the type of relationship they were interested in having).

At the end of the meeting, I agreed to submit my ideas for a future training, which was subsequently completed the following weekend at my home office and sent to Bailey on my home business computer. Bailey sent me an email to let me know that DHCI would be interested in contracting with my private business to offer two day training in "Confrontation Mitigation Training". I reassured Bailey that I could take personal days off to complete the training.

This was the first and only meeting I had with DHCI staff, and contrary to allegation by the anonymous reporter, I have never trained DHCI staff or any other Stated [sic] Agency staff on State time or otherwise. All training by my private company is done week day evenings and on week ends."

Clearly, you used State resources and hours for your private business.

First, Mr. Bailey called you at (302) 744-4510. That is your State phone number. The conversation was clearly about your private business because it was about “aggression management.” That is your private work, not your State job. He asked you to meet with his staff to discuss having aggression management training—not training on any aspect of your State job. No facts indicate if the call was made to you during your lunch hour or after duty hours. If it were not during those hours, you were using State time to discuss your private business and schedule a meeting to discuss a potential contract. Even if it were during those hours, you were still using the State phone.

Second, you met with DHCI staff. While at some point you seemed to indicate you did not realize the meeting would be about your private work, based on your detailed description of your conversation with Mr. Bailey, it should have been intuitively obvious why you were going to that meeting. However, you drove a State vehicle. While it is not in the e-mails, you said at the Commission meeting that you were returning from a State related job and DHCI was on your way back. Even giving you the presumption of honesty, the Code of Conduct does not have an exemption that states you can use State resources for your personal interest if it is convenient.^[6]

Third, you said you set this up 10:30 a.m. meeting so it would be during your lunch hour. That seems to contradict your suggestion you did not know the meeting was about your private business. Certainly, since under the Code you cannot use State hours for private business, you may use your lunch hour for private business—assuming you are not using State resources in the process. However, the meeting went beyond your lunch hour, which means you used State time. You did not indicate in your e-mails or at the meeting if you sought to correct that use of State time by such things as requesting approval for leave for that time from your agency.^[7]

^[6] While we have authority to conclude that based on these particular facts, including tying up a State vehicle for personal business for 1 ½ is improper under the Code, we have no authority to interpret the Fleet Service policies on private use of a State vehicle. *Operating Policies and Procedures, 02-06-09*. However, to the extent that policy is less stringent than the State Code of Conduct, we note that the Delaware Supreme Court has held that an agency cannot write a policy that is less stringent than State law. *See, Nardini v. Willin, 245 A.2d 164 (Del., 1968)*.

For example, if under its “Auxiliary Use” provision, you are a “Control Employee” or qualify for an exemption on a limited basis, such that you could use a State vehicle for “incidental personal benefit,” an interpretation of all of these very same facts that concluded your particular use was an authorized “incidental personal benefit,” would not override the finding of a violation under the Code of Conduct. You should review with your Supervisor what action you may need to take under that policy, and whether any penalty is appropriate.

^[7] While we have authority to conclude that using State time violates the Code, other rules and regulations govern the use of leave, e.g., annual leave, leave without pay, approval by a Supervisor, etc., e.g., Merit Rules. You should review with your Supervisor what action you need to take under those rules regarding your Istatus State, and whether any penalty is involved.

Fourth, you informed the DHCI staff that you were a State employee, and gave them your State business card. As the meeting was about your private business, by mentioning your State job and giving out your State business card, they, or members of the public, might believe the State is endorsing your private business. Moreover, giving them your business card may lead them, or the public, to think it is acceptable to call you at your State job to discuss your private business, set up meetings, set up training, etc. That is especially true since that was the only contact information you gave them

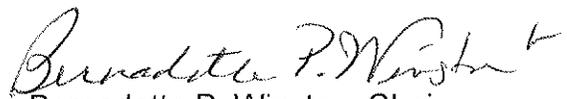
You must immediately cease all use of State resources and State time for your private work. Provide your clients or prospective clients with information on how to contact you at a number or an e-mail address other than the State's. If your private clients presently have only your State information you should promptly advise them not to use it to contact you about your private business. In the interim, if any client or potential client contacts you by State phone, fax, e-mail, etc., immediately tell them you cannot engage in private business, and give them another option of contacting you.^[8]

We do note that you said: "All training by my private company is done week day evenings and on week ends." The Center's website confirms that the Center's training schedule offers training only on nights and week ends. *Atch. 2*. However, in the DHCI situation the training would be done during the day, but you planned to take leave from your State job. The Code of Conduct deals only with whether State hours were misused. It does not address the conditions for leave, e.g., annual leave, leave without pay, approval by your Supervisor, etc.

II. Conclusion

Based on the above, we find no violations of the law in paragraphs 2, 3, and 4. We do find violations of the law in paragraphs 1 and 5.

Sincerely,


Bernadette P. Winston, Chair
Public Integrity Commission

cc: The Honorable Thomas Wagner, State Auditor

Again, to the extent those rules may be less stringent than the Code of Conduct, the Code of Conduct decision still applies.

^[8] While we have authority to decide if use of State resources is improper under the Code of Conduct, other rules, such as the Department of Technology and Information's Acceptable Use Policy, or your agency's policies, may have more stringent requirements and/or penalties. Please check with your Supervisor on that matter.

James Collins, Dept. of State, Deputy Director, and Division of Professional Regulations, Division Director

Sam Nickerson, Division of Professional Regulations, Investigative Supervisor

Crystal Webb, Dept. of Health and Social Services, Division of Public Health, Deputy Director

**Confrontational Science Research Center (CSRC™)
Training Schedule
(Basic Courses in Red; Restricted courses in blue)**

Monday, 5:00 pm - 9:00 pm

Tactical Handcuffing
Special Operations Mission-Specific Exercise Program (SOMSEP)
Certified Entertainment Security Professional (CESP)

Tuesday, 5:00 pm - 9:00 pm

Tactical Expandable Baton
Special Operations Strength and Conditioning Program (SOSACP)
Certified Entertainment Security Professional (CESP)

Wednesday, 5:00 pm - 9:00 pm

Confrontational Science Research (CSR) Instructor Development Program
Special Operations Endurance Program (SOEP)

Thursday, 5:00 pm - 9:00 pm

Tactical Oleoresin Capsicum Aerosol Training (OCAT)
Special Operations Mission-Specific Exercise Program (SOMSEP)
Certified Entertainment Security Professional (CESP)

Friday, 5:00 pm - 9:00 pm

Counterpredatorism Training (CPT)
Certified Personal Protection Specialist (CPPS) Training
Certified Non-Commissioned Security Officer (CNCSO) Training
Certified Commissioned Security Officer (CCSO) Training
Special Operations Strength and Conditioning Program (SOSACP)

Saturday, 9:00 am - 9:00 pm

Counterpredatorism Training (CPT)
Certified Personal Protection Specialist (CPPS) Training
Certified Non-Commissioned Security Officer (CNCSO) Training
Certified Commissioned Security Officer (CCSO) Training
Special Operations Endurance Program (SOEP)
First Aid, CPR, AED Training
State of Delaware 16 Hours Mandatory Security Training
Tactical Handcuffing (THC) Instructor Training
Tactical Expandable Baton (TEB) Instructor Training
Tactical Oleoresin Capsicum Aerosol (OCAT) Instructor Training

Sunday, 9:00 am - 9:00 pm

Counterpredatorism Training (CPT)
Certified Personal Protection Specialist (CPPS) Training
Certified Non-Commissioned Security Officer (CNCSO) Training
Certified Commissioned Security Officer (CCSO) Training
Special Operations Endurance Program (SOEP)
First Aid, CPR, AED Training
State of Delaware 16 Hours Mandatory Security Training
Tactical Handcuffing (THC) Instructor Training
Tactical Expandable Baton (TEB) Instructor Training
Tactical Oleoresin Capsicum Aerosol (OCAT) Instructor Training

ATCH - 1

CONFRONTATIONAL SCIENCE RESEARCH CENTER (CSRC™)
19306 Elks Lodge Road
Milford, Delaware 19963
(302) 424-2488

“YOUR SURVIVAL IS YOUR BUSINESS,
YOUR TRAINING IS OURS”

Commissioned Security Officer (Armed)

Total Hours: 80 Cost: \$1,995.00

Unarmed Security Officer Total Hrs: 40 Cost: \$1,495.00

Student Name _____ Email _____
Start Date _____ Completion Date _____

**Delaware State Police Detective Licensing Division: Private
Security Training and Certification – Minimum Mandatory
16 Hours**

Unit 1: Rules & Regulations, Title 24, Chapter 13
Hours: 2

Unit 2: Ethics
Hours: 1

Unit 3: Emergency Services/1st Responders
Hours: 2

Unit 4: Use of Force/Verbal & Non-Verbal
Hours: 2

Unit 5: Cultural Diversity/Awareness
Hours: 1

Appendix B – Advisory Op. No. 10-34



STATE OF DELAWARE

DELAWARE STATE PUBLIC INTEGRITY COMMISSION

MARGARET O'NEILL BUILDING
410 FEDERAL STREET, SUITE 3
DOVER, DELAWARE 19901

TELEPHONE: (302) 739-2399
FAX: (302) 739-2398

January 25, 2011

Vincent G. Robertson, Esq.
Griffin & Hackett, P.A.
19264 Miller Rd., Unit A
Rehoboth, DE 19971

10-34 Personal or Private Interest

Hearing and Decision By: *Barbara Green, Chair, William Dailey, Vice Chair and Commissioners: Mark Dunkle and Patrick Vanderslice*

Dear Mr. Robertson:

The Public Integrity Commission reviewed the question of whether City of Rehoboth Beach Commissioner Stanley Mills should have recused from matters related to the enforcement of, and subsequent discussions related to such things as possible amendments to the restaurant patio ordinance which "evolved into review and possible amendment to the City's Noise Ordinance, based on how best to deal with possible concerns and effects of outdoor restaurant patios occupied at night." *Mills' Request, Atch. 1, p. 2 ¶ 1*. Based on the following, he should have recused. We also were asked to provide advice for his future conduct. In summary, he should recuse from matters: (1) pertaining to issues arising from the above referenced activities; (2) directly related to the Blue Moon Restaurant; and (3) directly pertaining to the Aqua Grill and its owners for a reasonable period of time. We can only address the particular facts of each case. *29 Del. C. § 5807(a)*. Thus, we cannot address every related matter from which he may need to recuse. However, he may return to the Commission for additional advice as needed.

I. Procedural Posture:

Joseph Maggio, co-owner of Aqua Grill, contacted the Commission about Mr. Mills' participation in matters relating to the City's restaurant patio ordinance, the recent enforcement action, and subsequent discussions. *Maggio e-mail*,

Atch. 2. Mr. Maggio agreed not to file a complaint if Mr. Mills would seek an advisory opinion on whether he should participate in such matters, and Mr. Mills did so. *Atch. 1, p. 1.*

II. Facts:

Mr. Maggio and his partner, Bill Shields, operate a local restaurant, Aqua Grill. *Atch. 2.* On September 11, 2010, police came to the restaurant, fingerprinted and arrested Mr. Shields, alleging a violation of the restaurant patio ordinance by having people on the patio. *Id.* Such enforcement also occurred at 8 other restaurants. *Id.* Mr. Shields says 6 of the 8 were gay owned and operated. *Id.*

Under the patio law, among other things, "Patrons must leave the patio by 11:00 p.m." § 270-19(a). However, "a patio existing as of June 14, 1991, shall be considered a legal nonconforming use but shall be subject to all of the provisions of this chapter if expanded pursuant to a permit of compliance." *Id. at (a)(4).* For example, if a restaurant had a patio that was open later than 11:00 p.m. before that date, they can keep the same hours on the patio that existed before the ordinance. In other words, those restaurants are grandfathered. Violations of Chapter 270, including violations of the patio law, "shall constitute a misdemeanor, punishable by a fine of not less than \$25, not to exceed \$250 per offense, plus court costs." *Id. at § 270-69.*

The Aqua Grill is grandfathered. *Atch. 2.* According to Mr. Maggio, on the night of the arrest, the police would not accept the information that they were grandfathered. *Id.* He believes Mr. Mills spearheaded the enforcement activity. *Id.*

At this Commission's meeting, Mr. Mills said he "went around town two nights on Labor Day weekend,"^[1] September 4-6, 2010. He said: "I went by every restaurant that had a patio and said this one is good and this one is not." He said he did not have any information with him on which restaurants were grandfathered. After his weekend activity, he called Mayor Sam Cooper on Tuesday, September 7, and asked to meet with him and City Manager Gregory Ferrese. He said at that time he did not know anyone else had complained to Mr. Ferrese. They met at 3 p.m. that day. He gave them a verbal report on his "observations." When this Commission asked for an example of what he reported, he said: "I walked around well after the 11:00 hour and observed that, ah,--my recollection was that--I went through my walking tour; that Adriatico was fine; that Eden had people on the patio after 11:00;" that "Atlantic Sands" had no one on the patio.^[2] At another point, he said the Blue Moon was complying.

^[1] Unless otherwise cited, statements from Mr. Mills are from his statements to the Commission. The transcript is not yet been finalized.

^[2] Mr. Mills said he could not remember the restaurant name, then referred to it as "Atlantic Sands." There is no Atlantic Sands, but there is an "Atlantic Seafood Grill" and "Atlantic Jazz

According to the Mayor, Mr. Mills spoke from his notes. *Mills' Exhibit C, Statement of the Mayor, November 8, 2010, p. 2*. He said Mr. Mills identified many establishments he felt were in compliance as well as those he felt were not. *Id.* The City Manager said there were 12 restaurants violating the Ordinance. *Mills' Exhibit B, Minutes, City's Workshop, October 4, 2010*. He said the meeting was in regard to that issue. *Id.* According to the Mayor, the City Manager said he would call a meeting with the Chief of Police, the Building Inspector and the City Solicitor the next morning. *Id.* The Mayor and Mr. Mills were asked to come, and did. *Id.*

The next day, September 8, according to the Mayor, the City Manager asked for "input of those assembled" [Mayor, Mr. Mills, Mr. Ferrese, the Police Chief, Building Inspector, and City Solicitor]. The Mayor said it was decided a "more comprehensive enforcement of the patio rules was needed." *Id.* "Those establishments that Commissioner Mills had observed people on the patio after hours were to be notified that they may have violated the patio rules, and that in the future this was going to be more closely monitored." *Id.* at p. 2, ¶ 3. Mr. Mills said in a public statement that a list was compiled of complaints from all the restaurants which had been discussed at the meeting. *Mayor and Commissioners' Workshop Meeting, October 4, 2010, p. 4 ¶ 2*. At the Commission meeting, Mr. Mills' said the list was the result of complaints made by the Mayor, Commissioner Lorraine Zellers, and others.^[3]

That same day, a letter was prepared to go to 12 patio restaurants saying they may be violating the law and that enforcement of the patio ordinance would occur. *Atch. 3*. Mr. Mills' said the majority of the letters were hand-delivered by the police and Building and Licensing that day or the next, with enforcement planned for the weekend. Mr. Shields and others were arrested that weekend.

Yard." Both have patios; neither received a "warning" letter. Adriatico and Blue Moon did not receive a "warning." Eden received a "warning." *Mills' Exhibit D*. Eden is grandfathered. *Id.*

^[3] The City Manager said that in a matter of three weeks in late August and early September 2010, three Commissioners came to him about patio ordinance violations. *Id.* at ¶ 3. He did not mention complaints from others. At a public meeting, the Mayor said on August 14 he was out after 11:00 p.m. on an errand and heard loud noises from a couple of unnamed establishments. *Mills' Exhibit C, Statement of the Mayor, November 8, 2010, p. 1*. He came back later with an inexpensive noise meter, and although he said he was not trained, he thought the noise was about 100 decibels. *Id.* He also said he saw persons on a patio after 12:30 a.m. at another unnamed establishment. *Id.* On August 28, he was out to have dinner with his wife and friends, and said as he made his way onto the premises of an unnamed restaurant on Wilmington Avenue, he was confronted with music coming from an amplifier and speakers located on the patio areas. He said he could not describe the equipment further as he was "so offended by what I saw that I left immediately." *Id.* at p. 2, ¶ 2. According to Mr. Mills, Commissioner Lorraine Zellers also had complained, but no details were given. We do know she was not invited to the meetings, and according to Mr. Mills, does not have any business interest in the City. We render no decision on the conduct of the Mayor or Ms. Zellers as we must base our opinions on the particular facts of each case. 29 Del. C. § 5807(c).

The charges against Mr. Shields and other restaurant operators were later dropped. Apparently, the records have not been expunged.

It was not until September 29 that a list of patio restaurants who were grandfathered, and who were not, was prepared by the City. *Mills' Exhibit D*. There are 36 patio restaurants; 12 were given notice; 2 of those are grandfathered: Eden and Aqua Grill. Mr. Mills said that list was generated because of a request for that information from a restaurateur.

On October 15, the City held a public meeting on proposed changes to Chapter 270-19(a) relating to the regulation of restaurant patios. *Atch. 1, p. 4*. Mr. Mills said the enforcement and/or amendment of the patio ordinance "evolved to include review and possible amendment to the City's noise ordinance in Chapter 189 based on a discussion of how best to deal with possible concerns and effects of outdoor restaurant patios occupied at night." *Id. at p. 2, ¶ 1*. The noise ordinance makes specific reference to the patio law in the Zoning code. *City Code §189-9(G)*. Both, among other things, restrict music and use of speakers on patios. *Id.*, and *City Code § 270-19(A)(1)(d)*. At that meeting, some Commissioners suggested Mr. Mills recuse because he "was previously involved in the enforcement of one of them (the patio ordinance)." *Atch. 1, p. 1 ¶ 2*. After a discussion involving the Mayor and City Solicitor, he did not recuse. *Id.*

On October 22, 2010, Mr. Maggio contacted this Commission about filing a complaint. *Atch. 2*. He believed Mr. Mills should have recused because: (1) he was involved in enforcing the ordinance; (2) his involvement targeted gay restaurants; and (3) his home and rental units are next to a restaurant with a patio. *Id.* Mr. Mills said he has an "obligation to enforce the laws" and "has participated in such enforcement." *Atch. 1, p. 5*. At this Commission's meeting, he said he was not involved in "enforcing" the ordinance because he was just passing along his "observations." He denies targeting any restaurant. He acknowledged that he owns property, including a rental unit, next to the Blue Moon. He said his participation in the proceedings on the possible amendment of the City of Rehoboth Beach's Patio and Noise Ordinances did not violate the Code. *Id.*

III. Jurisdiction:

(a) Personal Jurisdiction: This Commission has jurisdiction over local officials if the local government has not adopted a Code of Conduct approved by this Commission to be at least as stringent as State law. *29 Del. C. § 5802(4)*. Rehoboth Beach adopted an ordinance saying it has adopted the State Code of Conduct. *City of Rehoboth Code § 27-1*. However, it never submitted the ordinance to this Commission. Even if the ordinance were submitted, it is just an adoption of the State law, and Rehoboth has no independent Ethics Commission

which would be required in any approved ordinance. Thus, this Commission has personal jurisdiction over Mr. Mills.

(b) Subject Matter Jurisdiction:

This Commission's jurisdiction is limited to issuing advice on "this chapter"—29 Del. C, chapter 58. *29 Del. C. § 5809(2) and § 5807(c)*. To the extent Mr. Maggio is alleging the conduct discriminated against a protected group; and/or improper or false arrest, those acts are not found within "this chapter," but in other laws. We have held that we have no jurisdiction over such claims. *Commission Op. No. 98-25 (Commission has no jurisdiction over Constitutional issues, federal law, claims of improper arrest, etc.)*.

IV. Application of Law to Facts

Within "this chapter" there are provisions that apply:

(a) Officials may not review or dispose of matters in which they have a personal or private interest which may tend to impair judgment in performing official duties. *29 Del. C. § 5805(a)(1) and (2)*.

(b) Officials may not use public office to secure unwarranted privileges, private advantage or personal gain. *29 Del. C. § 5806(e)*.

(c) Officials may not engage in conduct that may raise suspicion among the public that they are engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the government. *29 Del. C. § 5806(a)*. This is, in essence, an appearance of impropriety test. *Commission Op. No. 92-11*. The standard is if the conduct would create in reasonable minds, with knowledge of all relevant facts that a reasonable inquiry would disclose, a perception that the official's ability to carry out official duties with integrity, impartiality and competence is impaired. *In re Williams, 701 A.2d 825 (Del. Super., 1997)*.^[4]

Here, two personal or private interests exist. First, Mr. Mills has a personal and financial interest in his property and rental units which abut the Blue Moon. He told the Commission that in the past he had had complaints from his tenants about the Blue Moon patio noise. He also said restaurants that are complying with the patio law have complained to him about those that are not. However, those past events were not given as the basis for triggering his patrol of "every restaurant with a patio."

^[4] *In re Williams* interpreted the Judicial Code of Conduct. Interpretations of one law can be used in interpreting another if language of one is incorporated in another or both statutes are such closely related subjects that consideration of one brings to mind the other. *Sutherland Stat. Constr. § 45.15, Vol. 21A (5th ed. 1992)*. Both judges and local elected officials are public officers subject to Codes of Conduct with similar purposes and obligations, including avoiding the appearance of impropriety.

Mr. Mills admits his property abuts the Blue Moon, but states “the location of his property is no different than hundreds of other properties that are directly adjacent to commercial districts, commercial uses, or restaurants.” *Atch. 1, p. 4 ¶ 4*. However, as it relates to the Blue Moon, there is a distinct difference. He shares the same property line. He has an on-going direct personal and financial interest in owning and renting his property. Aside from his unique location, he is not like hundreds of others because this was not about a broad concern about being directly adjacent to commercial districts, commercial uses, or restaurants. It was about patio restaurants like the one with which he shares a property line. Moreover, he is not like other hundreds of others because he is in a position to take that personal or private interest and create laws or take other actions impacting on his next door neighbor which might also benefit his property.

Second, beyond his on-going personal interest in his next door neighbor’s activities, that Labor Day weekend he expanded his personal interest from just his next door neighbor to those like it—“every restaurant that had a patio,” to make note of, and report, “establishments he felt were in compliance as well as those he felt were not.” That was a personal interest; not an official duty.^[5]

His “evidence” admittedly did not differentiate between restaurants with patios who were grandfathered and those who were not. Mr. Mills said told this Commission he has owned that property for 12 years, and during that time had complaints about the Blue Moon from tenants. For three years, he has been an elected official, and said restaurant owners who were complying with the law had complained to him about those who were not. It is difficult to believe he had no inkling that some restaurants, including the one next door, were grandfathered. Yet, he never weighed that factor. He acted on his personal interest, then personally called the Mayor and asked to meet with him and the City Manager. They met at 3 p.m. that same day. Based on Mr. Mills’ “evidence,” the City Manager arranged for them to meet the next day with the Police Chief, Building Inspector and the City Solicitor, with the Mayor and Mr. Mills. The meeting resulted in a declaration that the patio ordinance would be enforced and letters sent to those restaurants Mr. Mills’ identified, according to the Mayor.^[6] The

^[5] The City’s Charter and Code identify whose duty it is to deal with such matters: if it is nonconformity with the Zoning Code, the “existence and extent...is a question of fact to be determined by the Building Inspector.” *City Code § 270-52*. If it is a violation of the noise law, which includes a direct citation to the Zoning ordinance on patios, it is the duty of the City Manager to “respond to complaints.” *City Code § 189-11*. Additionally, under the Charter the Police Force “shall compel obedience within the limits of the City to the ordinances....” *City Charter § 21*.

^[6] As previously noted, Mr. Mills’ version is that it was based on not only his complaints but the Mayor’s and Commissioner Zellers and others. The Mayor and City Manager do not give the exact same account. However, even assuming Mr. Mills is correct, the meeting was initiated by him without knowing of those complaints; the letter had to have been, in good part, based on his notes because nothing suggests the Mayor or Commissioner Zellers was going to “every restaurant with a patio;” the letter was only for patio restaurants; and the results in the notice clearly reflect his judgment about compliance (discussed *supra*) regarding Eden, Blue Moon,

letter, dated the same day as the meeting, and hand-delivered, said they may be violating the patio law and enforcement would occur. *Atch. 3*. The Commission was told that enforcement was planned for the weekend.

Mr. Mills points out that he did not act alone. *Atch. 1, p. 4 ¶*. Delaware Courts have held that where a State Board member had a personal or private interest, he should have recused "from the outset" and even "neutral" and "unbiased" statements should not have occurred. *Beebe Medical Center, Inc. v. Certificate of Need Appeals Board, Del. Super., C.A. No. 94A-01-004, J. Terry (June 30, 1995) aff'd, Del. Supr., No. 304 (January 29, 1996)*. In *Beebe*, it was Board so that official did not act alone in discussing the matter. After he made "neutral" and "unbiased" comments, he recused from the vote. It did not matter—the Court said he should have recused from the outset. It is the duty of the official with the conflict is to recuse. See also, *Prison Health v. State, Del. Ch., C.A. No. 13,010, V.C. Hartnett, III (June 29, 1993)(state employee was not even on the Committee that made contract decision, but he discussed it with them before the decision when he had a personal or private interest)*.

Mr. Mills took his personal interest to a level beyond which a private citizen could go. The ordinary citizen, as admitted by Mr. Mills, would likely contact the City Manager, the police, or someone like him. In fact, Mr. Mills said that in the past, when he was told of suspected violations, he went to the City Manager. Nothing suggests in those instances he decided who was violating the law or that he called the Mayor to set up a meeting with him and the City Manager.

Nothing suggests a private citizen could call the Mayor and arrange a meeting with him and the City Manager, much less get it that same day. Even if the Mayor and Commissioner Zellers complaints were considered as part of the 12, no facts suggest they called a hurried meeting and got enforcement within days. Nothing suggests a private citizen would have the kind of "entrée" to get their notes of "restaurants with a patio" who were "violating the law" result in another immediate meeting for them—this time with the Police Chief, Building Inspector, and City Solicitor added. Nothing suggests a private citizen could have their notes and decisions of who was violating the law become a basis to decide "more comprehensive enforcement was needed," with a warning issued the same day; hand-delivered; and enforcement by the police within days.^[7]

This is not to say Mr. Mills could not file a complaint like any other citizen. Apparently, he has done so in the past. He may certainly do so, but when he decides to go on "patio patrol" and become the complainant/witness, he needs

Adriatico, and the Atlantic restaurant of which he was not sure of the name. Eden was the only one of those four that received a warning.

^[7] Mr. Mills' pointed out that the Building Inspector is not on duty in the evenings to see who is violating the law. That is a personnel issue for the City, not a reason for Mr. Mills to become the "Inspector." Moreover, it appears irrelevant since the arrests were achieved by the police.

to stay in that private role. When he moves on to call the Mayor to get the City Manager who oversees the Police and Building Inspector to meet with him; identifies who was violating the law; has a immediately written and hand-delivered to those he identified as violators; followed by immediate enforcement action; he is not being treated like any other citizen. He is using public office to secure unwarranted privileges, private advantage or gain, 29 Del. C. § 5806(e), or at a minimum, creating the appearance of such conduct. 29 Del. C. § 5806(a).

Mr. Mills allowed his personal or private interests to drive his decision to become an officer patrolling the “patio front,” gathering “evidence” and judging for himself that they were in violation. Nothing suggested an outcry from his constituents complaining about the patio activities. It was a personal tour of just patio restaurants. He points to the fact that the Mayor and another Commissioner had complained. However, he admitted he did not know about those other complaints when he went on patrol, made his list of those complying and those violating the law, and then called the Mayor. The Mayor was there, apparently not because of his observations in August, but because Mr. Mills called him. In fact, the Mayor said the warning letters were based on Mr. Mills’ list. He does not say they were based on his observations the previous month.

Mr. Mills was elected as a City Commissioner to perform such duties as preparing legislation—not enforcing it or judging compliance. There is a reason for separating such powers and duties. The Delaware Supreme Court addressed why it is incompatible for a person to take on the dual roles of law enforcement officer and legislator and/or legislator and judge. *In Re: Request of the Governor for An Advisory Opinion, No. 466, 1998, (Del., October 28, 1998).*

One expressed concern was that the member of the legislative branch could sit in that position and carry out their own law enforcement agenda, and that agenda might not necessarily be that of the constituents of the legislator’s district. *Id. at p. 5.* It went on to say that if the executive and legislative powers are mixed together, the judge can enact the laws, then execute them in the manner and with the power he thinks proper, which he has given himself, as a legislator. *Id. at 7.*

In that situation, the Court advised that if elected the police officer who was seeking office as a legislator could not hold the dual roles.

Mr. Mills did not officially seek to hold dual roles. Rather, he decided to undertake them in his personal capacity. He was not on “patio patrol” at the request of his constituents, but on a personal mission. He was “the witness”—giving his “observations.” However, he went beyond merely reporting an observation, e.g., “people on the patio after 11 p.m.” He decided who was complying and who was not, then used that as the basis for calling for a meeting.

His personal and private interest lead him to not only inject himself into Executive Branch decisions on law enforcement, but also to then, in an official capacity as a legislator, participate in reviewing, with the potential to dispose of, matters that arose directly from that personal or private interest—e.g., whether the criminal penalty should be changed to civil, etc. The law bars officials from reviewing or disposing of matters if they have a personal or private interest that may *tend* to impair judgment in performing official duties, or “raise suspicion” by the public of such concern. *29 Del. C. § 5805(a)(1) and (2) and § 5805(a)*. Actual violations are not required; only the appearance thereof. *Commission Op. No. 92-11; 29 Del. C. § 5811(2)(public officers and employees should avoid even the appearance of impropriety where they have a financial interest); 63C Am. Jur. 2d Public Officers and Employees § 252 (actual conflict is not the decisive factor; nor is whether the public servant succumbs to the temptation; rather it is whether there is a potential for conflict)*.

He should have recused as suggested by his colleagues. As directed below, he should recuse on these matters as they continue before the City Commissioners.

V. Advice for Future Conduct

(a) Mr. Mills’ Spouse and/or Tenants

Mr. Maggio also points to concerns about Mr. Mills’ spouse being involved in complaints. *Atch. 2*. Mr. Mills says her involvement in complaints was a number of years ago. *Mills’ Supplement to His Initial Request, December 20, 2010, pp. 1-2. Atch. 4*. He is entitled to a legal presumption of honesty and integrity. *Beebe Medical Center, Inc. v. Certificate of Need Appeals Board, Del. Super., C.A. No. 94A-01-004, J. Terry (June 30, 1995) aff’d, Del. Supr., No. 304 (January 29, 1996)*. To give him that presumption, we will accept that statement. Moreover, we have already found that his conduct was contrary to the Code, or at a minimum, appeared to be. However, we remind Mr. Mills that he cannot officially participate in matters where he has a personal or private interest. If his spouse is involved, he has a personal or private interest. *Prison Health v. State, Del. Ch., C.A. No. 13,010, V.C. Hartnett, III (June 29, 1993)*. In that case, the State employee was not on the contract committee that decided which company would be awarded a contract. However, before the committee’s decision, he discussed the contract with the Committee, when his wife was, according to the Court an “albeit, low-level employee” in the company which was awarded the contract. The Court found his conduct was “indirect” and “unsubstantial” but held that it was “undoubtedly improper” for him to have been involved even to that extent. Thus, on any matters arising in which his spouse is involved, he should recuse. Similarly, he should recuse if the complaint is from one of his tenants. He also should not use his public position, or appear to do

so, to have any complaint by her, or his tenants, treated different from a complaint from any other citizen.

(b) The Blue Moon

Regarding the Blue Moon, Mr. Mills said it was not violating the patio law the nights he patrolled. However, his foot patrol was for the very purpose of going to “every restaurant with a patio.” We have already noted that his property shares the property line with the Blue Moon. Beyond just owning the land, he leases. The restaurant may be a benefit or detriment to him as a property owner and landlord. Tenants may complain about the patio activity whether the restaurant is violating the law or not. As a businessman, he has a personal interest in keeping his tenants happy. Conversely, tenants may also want to rent because of his location, with its convenience to a long-established local restaurant and bar, making it a selling point for him. As noted, he is in a unique position regarding that particular restaurant. As a result, it creates a personal or private interest and he should recuse from matters pertaining to the Blue Moon.

(c) The Aqua Grill and Its Owners

Regarding the Aqua Grill, Mr. Mills said he understood Mr. Maggio had an upcoming hearing on a matter, and he would recuse because of the filing with the Commission by Mr. Maggio. That was the correct call. However, he should not limit his recusal to just that particular matter.

We must base our advice on the particular facts of each case. This case demonstrates Mr. Mills’ personal and private interest in the patio law as it relates to its enforcement in this particular instance. As noted above, he should have recused from the discussions on enforcing or changing that law when they arose immediately. The tensions arising from those events and possible changes in the law are apparently still on the table. His personal interests arising from his conduct pertaining to those matters still exist. He should recuse from participating in matters that would be the direct derivative of his personal actions on the Labor Day weekend.

Whether he should recuse from other matters is something on which we cannot speculate. We must base our opinions on the particular facts of each case. *29 Del. C. § 5807(a)*. Accordingly, Mr. Mills, bearing these findings in mind, should freely seek advice on whether he should participate in a particular matter as an issue arises.

(d) The Criminal Charges

This Commission is more than aware of the impact an arrest, even if the charges are later dropped—both the immediate lose of liberty, and the subsequent impact of having to disclose any arrest in such things as resumes,

applications for jobs or other career opportunities, etc. We understand his concern about the expunging records, and his remarks that Mr. Mills has not apologized.

However, even if this had been prosecuted under a complaint, the only action this Commission may take as far as administratively disciplining an elected official is that it can issue a reprimand or censure against that particular official. *29 Del. C. § 5810(h)*. It has no authority to require the official to apologize, even if that apology were undoubtedly sincere. Further, it has no authority to direct the City Commissioners, as a body, to take any action regarding expungement.

VI. Conclusion

Based on the above, we find that Mr. Mills acted in a manner contrary to the Code in pursuing a personal or private interest, which resulted in the use of public office for unwarranted privileges, or, at a minimum, appeared to do so. He should have recused from subsequently participating in official matters that directly arose from his personal conduct. For the future, he should recuse from participation in the matters identified in this opinion, and seek further advice as needed.

Sincerely,


Barbara Green, Chair
Public Integrity Commission

Appendix C – Legislation Monitored by the Commission

SUMMARY OF LEGISLATION AFFECTING LAWS ADMINISTERED BY THE PUBLIC INTEGRITY COMMISSION OR EFFECTING ITS OPERATION

For Current Status Click on Hyperlinks	<i>Senate Legislation 145th General Assembly January to July 2009 & January to July 2010</i>	PIC Comments
<u>S.B. 57</u> Stricken 5/6/09	Amends Freedom on Information Act (FOIA) definitions of “meeting” and “quorum”; eliminates the 60-day limit for citizens’ suit enforcement, leaving only the 6-month deadline to challenge a public body’s action. “Meeting” means the gathering of a quorum of any public body’s members to discuss or take action on public business or the formal or informal simultaneous communication of a quorum of members. If a quorum of a public body is not present at a public meeting, no discussion or action on public business shall take place. If a public body holds a series of meetings to discuss public business, it shall be considered a “meeting of the quorum” when the number of participants reaches the public body’s “quorum” requirements.	PIC is subject to FOIA.
<u>S.B. 58</u> Stricken 5/6/09	Amends FOIA, e.g. (1) Cannot ask why a person wants the information; (2) reasonable effort to provide access as promptly as possible absent exceptional circumstances; (3) reasonable effort to accommodate the number of persons expected at a meeting; (4) public body to prepare meeting minutes no later than 30 days from the meeting date or by the time of the next regularly scheduled meeting, whichever comes first.	PIC has been making these deadlines for posting its minutes, and usually provides requested information in about 2 days or less. It has never asked why the information is needed.
<u>S.B. 71</u> Senate Judiciary Out of Committee 01/13/10	Would add 2 more Judges to Superior Court, if funding provided.	PIC administers Financial Disclosure Law. New Judges’ information would need to be put in database, notice to file sent, etc.

SUMMARY OF LEGISLATION AFFECTING LAWS ADMINISTERED BY THE PUBLIC INTEGRITY COMMISSION OR EFFECTING ITS OPERATION

<p>S.B. 80 LOT 6/11/09 See S.B. 231</p>	<p>Creates Delaware Health Consortium to implement and operate a Statewide Health Information Network. Its 12-member oversight board will be subject to the Freedom of Information Act. Its by-laws are to establish conflict of interest rules.</p>	<p>Usually, entities subject to FOIA are "public bodies"; basically like "State agencies" in the Code of Conduct. S.B. 80 appears to exempt these members from the Code of Conduct by having them put their Code in the by-laws.</p>
<p>S.B.125 Senate Exec. Committee 6/4/09</p>	<p>Amend State Constitution so that no Senator or Representative shall receive wages or salary from the State other than in their capacity as a General Assembly member. 1st leg of a Constitution Amendment. Would need to pass in 145th 1st and 2nd Sessions.</p>	<p>PIC administers dual compensation law. Would reduce the number of officials to whom the Dual Compensation law applies.</p>
<p>S.B. 104 Signed 09/17/2009</p>	<p>Any public body subject to the Freedom of Information Act may conduct a meeting by videoconferencing if each attending member's participation occurs at a noticed public location where the public may attend the meeting, and a member's participation if in compliance with the law would be included for purposes of a quorum.</p>	<p>Not feasible for PIC. Most everything on the agenda is confidential. Also, costs would be prohibitive as the phone/video line costs must be paid by the user. Most Commission meetings run for many hours.</p>
<p>S.B. 120 Senate Finance Committee 6/4/09</p>	<p>Creates Delaware Health Security Authority. It will have a Division of Planning.</p>	<p>Division Directors file financial disclosure reports. Will need to add to info to database, notify to file, etc.</p>

SUMMARY OF LEGISLATION AFFECTING LAWS ADMINISTERED BY THE PUBLIC INTEGRITY COMMISSION OR EFFECTING ITS OPERATION

<p>S.B. 165 Signed 07/08/2009</p>	<p>City of Dover Charter: Bars Council members from holding: (1) other elected offices, city employment or office while they are Council members. After they leave office, they are barred for one year from holding any compensated appointive office or employment with the city, unless a waiver is granted by the Board of Ethics.</p>	<p>More stringent than State dual compensation law. 29 Del. C. § 5821 allows dual offices but mandates time keeping actions. More stringent than State post-employment law. 29 Del. C. § 5805(d) does not bar public jobs after termination; only certain private sector work. PIC sent Ltr to City pursuant to 29 Del. C. § 5802(4), which requires PIC to approve any Code of Conduct changes as being at least as stringent as State law.</p>
<p>S.B. 196 Senate Finance Committee 01/28/2010</p>	<p>Governor's Proposed Budget Bill for FY2012</p>	<p>Recommends total appropriations of \$178.9 for PIC—reducing operating budget of \$32,100 by \$1,000.</p>
<p>S.B. 231 Signed 07/12/2010</p>	<p>Creates Delaware Health Consortium to implement and operate a Statewide Health Information Network. Its 12-member oversight board will be subject to the Freedom of Information Act. Its by-laws are to establish conflict of interest rules.</p>	<p>Usually, entities subject to FOIA are “public bodies”; basically like “State agencies” in the Code of Conduct. S.B. 80 appears to exempt these members from the Code of Conduct by having them put their conflict rules in their by-laws. PIC will send letter advising them of existing conflict law.</p>

SUMMARY OF LEGISLATION AFFECTING LAWS ADMINISTERED BY THE PUBLIC INTEGRITY COMMISSION OR EFFECTING ITS OPERATION

<p>S.B. 253 Passed w/ Amend 2 Signed 07/30/2010</p>	<p>Town of Magnolia Charter: Includes provision on contracting with Town that allows Councilmembers to decide conflict issue.</p> <p>Amendment 2: Clarifies that contracts with the Town by employees and officials, and other conflict of interest matters are governed by 29 Del. C., Chapter 58 and any official or employee seeking to contract with Town must file a full disclosure. (Charter Section 5.3.2)</p>	<p>Language on contracting is contrary to State Code of Conduct.</p> <p>PIC Ltr to Committee 5/12/2010</p> <p>Worked with Town Attorney on language for amendment 2 to make it consistent with State Code of Conduct.</p>
<p>S.B. 305 Senate Executive Committee 06/17/2010</p>	<p>Requires all County elected officials and candidates to file a financial disclosure report.</p>	<p>PIC will need to find all names and enter into system, send notices to file, etc.</p>
<p>S.B. 310 Signed 07/01/2010</p>	<p>Appropriations for Fiscal Year 2012.</p>	<p>Gov. proposed \$178.9 to cover PIC's wages and operating expenses based on a continued 2.5% cut in wages. That would mean a \$1,000 cut in operating expenses, leaving the operating budget at \$30,100. The General Assembly approved \$178.0, a \$500 cut.</p>
<p>S.B. 315 Signed 07/01/2010</p>	<p>Grants-In-Aid FY2011 - None of these funds may be spent on partisan political campaigns, to hire lobbyists, or pay any part of an elected official's salary or benefits.</p>	<p>Of interests to lobbyists of non-profits.</p>

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	<p><i>House Legislation</i></p> <p><i>145th General Assembly Session</i></p> <p><i>January-July 2009 & January – July 2010</i></p>	
<p><u>H. R. 2</u> Passed House 1/13/2009</p>	<p>RULE 54 - REGISTRATION OF LOBBYISTS: Lobbyists shall be registered by the State Public Integrity Commission pursuant to Chapter 58, Title 29 of the Delaware Code. No lobbyist shall be granted privilege of the floor unless so registered.</p> <p>RULE 16(d) (7) A member shall not fail to comply with the financial disclosure requirements of Chapter 58, Title 29 of the Delaware Code.</p>	<p>PIC administers the lobbying registration and financial disclosure laws.</p>
<p><u>H. R. 40</u> Passed House 4/01/2010</p>	<p>RULES 16 & 54 – same as in House Resolution 2 (above) during prior session.</p>	<p>PIC administers lobbying and financial disclosure laws.</p>
<p><u>H.B. 1</u> Signed 06/12/2009</p>	<p>Amends Freedom of Information Act: Grants public access to meetings of the General Assembly except for caucuses. Also allows public access to General Assembly records. The current exceptions that apply to other public bodies and public records would apply to meetings and records of the General Assembly.</p>	<p>Of interest to lobbyists because it gives them another opportunity to access meetings with the General Assembly.</p>

SUMMARY OF LEGISLATION AFFECTING LAWS ADMINISTERED BY THE PUBLIC INTEGRITY COMMISSION OR EFFECTING ITS OPERATION

<p>H.B. 12 House Admin. Committee 3/10/09</p> <p>Compared to H.B.20 Out of Committee 4/29/09</p>	<p>Public Officers: annual report of relatives who are State workers, or work for entities receiving at least 1/3 of its annual operating budget from the State.</p> <p>Similar Legislation: H.B. 20: Difference: H.B. 20 adds reporting of relatives who work for institutes of higher learning, Delaware River and Bay Authority, Port of Wilmington, Riverfront Development Corporation and Solid Waste Authority, without limits.</p> <p>H.B 20 would require sworn certification—meaning no on-line filing as signatures and notarization cannot occur on line.</p> <p>H.B. 12 limits the scope to entities receiving at least 1/3 of its operating budget from the State. H.B. 20 requires reporting if relative’s agency receives any State funds.</p> <p>H.B. 12 annual filing by Mar. 15. H.B. 20 annual filing by Feb. 15.</p>	<p>New Jurisdiction over Subject Matter</p> <p>H.B. 20 “Sworn statements” would not permit on-line filing. Creates yearly on-going costs, e.g., printing more than 300 forms, etc. On-line saves costs and is more efficient and convenient. In 2002, the Legislature removed “sworn statement” requirement for the Financial Disclosure reports so they can be filed on-line. Courts have held there is a “strong legal presumption of honesty and integrity” in public officials. That presumption, rather than a sworn statement could be applied. It works that way for other documents from public officers, such as reimbursement requests--no sworn statement.</p> <p>If filed electronically: one-time upgrade of existing public officer database. Est. \$1,800.</p> <p>New jurisdiction over persons added to the definition of “public officers.”</p> <p>H.B. 20 adds persons who are not now “Public officers” and some who are now specifically exempt from filing financial disclosure reports, e.g. persons from institutes of higher learning. <i>29 Del. C. § 5812(n)(2)</i>. The original Financial Disclosure law had a proposed amendment to include the River & Bay Authority, & Solid Waste Authority. It</p>
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SUMMARY OF LEGISLATION AFFECTING LAWS ADMINISTERED BY THE PUBLIC INTEGRITY COMMISSION OR EFFECTING ITS OPERATION

		<p>was not passed. <i>H.A. 14 to H.S. 1 to H.B. 83 (6/9/83)</i>. The Port of Wilmington & Riverfront Development Authority were never considered or included. If they become public officers, the exemption of persons in institutions of higher learning would have to be deleted from § 5812(n)(2). Those persons & River & Bay persons would need to be added to the definition of “public officers” in § 5812(n)(1).</p> <p>Filing dates: May be more convenient to file this report at the same time as the financial disclosure report.</p> <p>PIC Ltr to General Assembly House passed Similar bill last year.</p>
<p>H.B. 16 House Passed w/ HA 1 Senate Exec. Committee 4/9/09</p>	<p>Lobbying Disclosure: The name and address of every nonprofit organization, civic association, community association, foundation, maintenance organization or trade group of which the lobbyist is a council or board member.</p> <p>H.A. 1 Limits reporting to organizations incorporated in the State and/or having activities in Delaware.</p>	<p>New Jurisdiction. One-time upgrade to lobby database. Est. cost: \$1,800. Nothing on how often to file. Presently, they file quarterly expense reports. PIC Ltr to General Assembly.</p> <p>Identical bill passed House last year.</p>

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<p>H.B. 20 HA. 1 House Admin. Committee Out of Committee 4/29/2009</p>	<p>Public officers to report family members working for a State agency, school district or any organization, including college, university or like institute of higher learning, including, without limits, the Univ. of Delaware, Delaware State Univ., and Delaware Technical & Community College, or any other entity, including the Delaware River and Bay Authority, Port of Wilmington, Riverfront Development Corporation, and Delaware Solid Waste Authority, that receive State funds.</p> <p>To be filed within 14 days of becoming an officer and, annually thereafter, by February 15th.</p> <p>H.A. 1: requires sworn certification that officer read the report & believes it true, complete and correct to the best of the officer’s knowledge.</p>	<p>New Jurisdiction. See H.B. 12 comments comparing H.B. 20.</p> <p>If filed on-line a one time cost for upgrading Public Officer database. Est. cost \$1,800. PIC Ltr to General Assembly</p> <p>Similar bill passed House last year. Senate amended to remove “sworn” statement to allow on-line filing, then session ended.</p>
<p>H.B. 25 House Appropriations Comm. 01/15/2009</p>	<p>Governor’s Proposed Budget. Recommends \$6,000 decrease in PIC’s Operating Budget from prior appropriations of \$40, 100 since FY 1996, except when those were cut. Total for salaries & operations: \$188.2</p> <p>See subsequent appropriations bill: H.B. 290 – reduced by \$7,000</p>	<p>PIC is already spending less than 1-cent per person on those under its State jurisdiction with the present \$40,100. It also has jurisdiction of 51 local governments.</p>
<p>H.B. 27 HA 1 HA 2 HA 1 to HA 2 HA 3 - HA 4- HA 5 House Admin. Committee Out of Committee 3/24/09 On House</p>	<p>Legislators may not lobby for 1 year after their term ends.</p> <p>H.A. 1 restricts heads of State agencies, Cabinet Officials and the Executive Staff of the Governor from lobbying for a period of one (1) year after their term of office ends or such State employment ends.</p> <p>H.A. 2 bars lobbyists from State jobs for 1 year after lobbying.</p> <p>H.A. 1 to H.A. 2 limits the bar on hiring lobbyists to high-level State jobs.</p> <p>H.A. 3 restricts agency heads, Cabinet Officials & the Gov.’s Executive Staff from lobbying for 1 year after their term or State employment ends.</p> <p>H.A. 4 bars legislators from lobbying for 2 years after their term ends.</p> <p>H.A. 5 clarifies: (1) enactment clause to reflect a simple majority, rather than 2/3 majority; (2) clarifies the term “cooling off” period;(3) maintain consistency with other statutes: (4) penalty section re-designated; (5) clarifies that the 1 year applies to any Legislator elected at an election</p>	<p>New jurisdiction: Legislators’ post employment; lobbyists’ pre-employment with State; more stringent post-employment rule for Executive Branch.</p> <p>Executive Branch law now bars new employees from reviewing or disposing of matters for a period after being hired if they have a conflict. That includes decisions on prior employer. The Legislative and Judicial rules, 29 Del. C. § 1002(a) and Canon 3(c), are the same: recusal, rather than barring public service. The Code says it is not</p>

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<p>agenda three times; Deferred</p>	<p>occurring after the Act's effective date.</p>	<p>to be so “unduly circumscribed” as to discourage citizens from public service. <i>29 Del. C. § 5802(3)</i>.</p> <p>Pre-employment may create legal concerns: (1) equal employment opportunities, as it targets a select group of people (lobbyists) to bar them from State employment, which is an Equal Opportunity employer; (2) would bar them based on “speech” to elected officials. May also be a jurisdiction issue for the State to have jurisdiction over people who do not work or have not worked for the State.</p> <p>The bar basically effects only the Executive Branch as lobbyists could still be elected as Legislators, or appointed as Judges.</p> <p>Monitoring difficulty: if a former lobbyist is being hired, hiring decisions do not go through PIC. Agencies would have to call PIC to find out if one year had passed.</p>
<p>H.B. 134 House Admin. Committee 4/22/09</p>	<p>Establishes State Inspector General Office to investigate state employees and state agencies for waste, fraud, abuse and corruption, make reports to the Governor and refer to the Attorney General the report findings for possible prosecution.</p>	<p>Dept. of State will provide office space & staff but have no control or oversight “similar to the independent nature of the Public Integrity Commission.” Uses same definitions as PIC law for State agency; State employee.</p> <p>Reinforces PIC's independence. PIC has asked for reinforcement of its</p>

SUMMARY OF LEGISLATION AFFECTING LAWS ADMINISTERED BY THE PUBLIC INTEGRITY COMMISSION OR EFFECTING ITS OPERATION

		independence from DOS and/or put it in the Judicial Branch to further remove potential conflicts with the DOS.
H.B. 117 House Passed Senate Finance Committee 6/16/09	School Board Elections HA 4 to HB 117 Within 15 days of certification of the results of an election, elected board members must file a financial disclosure report with Public Integrity Commission.	Would need database upgrade. The filings are not due at the same time as other public officers. Need program added to send notices, etc., at a different time. PIC Ltr to Finance Committee
H.B. 172 Signed 07/12/2010	Elected officers and Candidates to file reports of State non-profits, associations, foundations, maintenance organizations, or trade groups, and such entities having activities in the State. Takes effect 180 days after enactment. H.A. 1 – exempts reporting of religious entities H.A. 2 – amends to clarify that penalties are specified in § 5815.	Will need upgrade to database (reason for the 180 time frame). Cost approx. \$1800. Similar legislation last year.
H.B. 222 Senate Finance Committee 01/12/2010	All state agencies, including Commissions that prepare reports for the General Assembly shall offer each member the option to receive the report in electronic format instead of hard copies.	PIC prepares annual reports and annual financial disclosure synopses for Legislators. Electronic version would reduce costs.
H.B. 245 Signed 02/01/2010	Amends Titles of Board of Elections Administrators by deleting the word “Administrative” and leaving “Director” and “Deputy Director.”	Would need to amend PIC’s financial disclosure law, 29 Del. C. § 5812(n)(15). Letter sent to Code Revisors: Daniel F Wolcott, Jr. and David A. Boswell.
H.B. 251 Vetoed 02/09/2010	Town of Felton Charter: Any person otherwise eligible to be a Council member shall not have a family member holding an elected office for the Town, nor have a family member nominated for and/or appointed to an elected office.	Felton does not have a PIC approved Code of Conduct, so is subject to the State Code. State Code bars relatives from reviewing or disposing of matters if they have a personal or private

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		interest arising from a familial connection, e.g., cannot not review or dispose of nominating or appointing relative.
H.B. 290 Signed 07/01/2009	Appropriations: Governor had proposed total for personnel and operating cost: of 188.2 – This bill appropriates: \$179.9.	See H.B. 25 above re: spending less than 1 penny of its operating budget per person for those under PIC’s jurisdiction. Gov. proposed a \$6,000 cut in the operating budget from the \$40,100 operating budget PIC has had since FY 96. PIC had asked the JFC to preserve its operating budget \$40,100 operating budget. Instead it was cut \$7,100 which is 17.7%.
H.B. 295 Signed 07/01/2009	Grant in Aid: None of these funds may be spent on partisan political campaigns or lobbyists.	Of interest to lobbyists.
H.B. 253 Signed 07/31/2009	Changes name of Violent Crimes Compensation Board to the Victims’ Compensation Assistance Program. Changes title of Executive Secretary to Executive Director.	Will need that information changed in the Financial Disclosure law. 29 Del. C. § 5812(12). Letter sent to Code Revisors: Daniel F Wolcott, Jr. and David A. Boswell.
H.B. 300 House Passed 01/26/2010	Freedom of Information Act (FOIA) requests to be responded to within 10 days after request received. Response may be the records or the reason for needing additional time. Additional time “shall be reasonable.”	PIC is subject to FOIA
H.B. 310 Signed 01/28/2010	Creates Division of Gaming Enforcement, Department of Safety & Homeland Security	Division Director will be added to financial disclosure database for annual filing requirements
H.B. 360 Signed	Changes Financial Disclosure Report filing date from February 15 to March 15 of each year.	PIC suggested change because reports for campaigns finance are due

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<p>7/12/010</p>		<p>around the same time. Some elected public officers thought they had filed the financial disclosure report with PIC, when they had filed the campaign report. Also, the notice to file by Feb 15 goes out by Jan 10, and for officers who file immediately, they may not have the information on gifts reported by lobbyists for the last quarter of the year because they are not due until Jan. 20.</p>
<p>H.B. 361 Signed 07/23/2010</p>	<p>Amends Election law to add the cross reference that State candidates shall file financial disclosure reports as required by the Financial Disclosure law.</p>	<p>Frequently, new persons running for State office think that filing their campaign finance report is all that is required, even though Elections puts a copy of the financial disclosure report in their package, and has a link on its website to PIC's form. The legislation to amend the Election law to add the cross-reference was sought by PIC because candidates may be more likely to read the election law, and see that they must also file a financial disclosure with PIC.</p>
<p>H.B.431 Signed 07/02/2010</p>	<p>Town of Wyoming Charter: Provides that contracts with the Town by employees, officers and officials are subject to the State Code of Conduct. Also provides that a full disclosure of such contracts must be filed with the Public Integrity Commission, or if it adopts its own Code, then with the Town's Ethics Commission.</p>	<p>PIC worked with Legislators before the Charter was introduced to remove a suggested provision that Town employees could contract with the Town to clarify that such contracts are subject to the Code of Conduct.</p>
<p>H.B.446</p>	<p>Statutory creation of Newark Housing Authority</p>	<p>PIC ruled NHA was not under its</p>

SUMMARY OF LEGISLATION AFFECTING LAWS ADMINISTERED BY THE PUBLIC INTEGRITY COMMISSION OR EFFECTING ITS OPERATION

<p>Signed 07/02/2010</p>		<p>jurisdiction because it was not a “State agency,” which is defined as created by the Legislature. NHA was not created by the General Assembly, but by the Delaware State Housing Authority. Also, while PIC has jurisdiction over local governments if they have not adopted a PIC approved Code, the City of Newark and New Castle County have their own Codes of Conduct, which could apply. <i>Commission Op. No. 09-52</i>. This legislation appears to mean NHA is under PIC’s jurisdiction. No ruling at this point.</p>
<p>H.B. 480 Signed 07/23/2010</p>	<p>Changes “Division of Soil and Water Conservation” to “Division of Watershed Stewardship,” and makes other Division name changes.</p>	<p>Division Directors file financial disclosures. Database must be updated.</p>