

## **LOCAL CODES OF CONDUCT 1991-2016**

**13-22 - Dewey Beach Code of Conduct:** Dewey Beach submitted its Code of Conduct for reconsideration by the Commission. Counsel for Dewey Beach, worked with PIC Counsel to finalize the changes. Dewey Beach had complied with all the requests of the Commission to change the Dewey Beach Code of Conduct to conform to the State Code of Conduct. The only remaining change the Commission was asking Dewey Beach to make was to remove the requirement that a complaint be “hand-delivered” in Section 10-8, Line 33. The concern was the public would be less likely to file complaints if they had to show up in person to deliver it to the Dewey Beach Ethics Board. Counsel verbally agreed to make the change. With that change, the Commission concluded that the Dewey Beach Code of Conduct was at least as stringent as the State Code of Conduct as required by 29 Del. C. § 5802(4). The Commission accepted the Dewey Beach Code of Conduct with the caution that in addition to the wording change, they must keep their Ethics Board fully staffed. Staffing shortages lead to improper administration of the code and an indifferent attitude toward enforcement.

**12-39 - Delaware City Code of Conduct:** Delaware City submitted a Code of Conduct for PIC to review. For a local government to have its own Code of Conduct, it must be at least as stringent as State law. 29 Del. C. § 5802(4). In comparing the State law to the local Code, it was determined there were several areas where its Code was not as stringent: (1) the provision dealing with representing or otherwise assisting a private enterprise before one’s own agency, did not bar such action; it only required that they disclose the conflict; (2) provided that the City’s employees and officials adhere to the conflicts of interest standards established by State law. The purpose of adopting their own Code was to remove them from an obligation to comply with State law so that provision could be misleading; (3) there was no right of appeal provision; (4) there was no provision that provided applicants were protected against a complaint or disciplinary action if they followed the City Commission’s advice. It was suggested the City may want to stagger the terms of its members so that they do not lose the experience of all members at the same time; and that the City itself be authorized to request an advisory opinion. There was discussion about the “civility” provisions in the City Code, which are not in the State law, which the City wanted to maintain. As a matter of format, it was suggested the paragraphs be numbered so that it would be easier to cite to them. The Commission recommended that those matters be identified for them so they could make the necessary changes and resubmit.

**Update:** The City made the required changes, and it was approved by PIC at the January 22, 2013 meeting.

**10-01 - NCC Code of Conduct Amendments:** (1) would permit persons involved in partisan politics to serve on the Commission. The Commission decided that it was not as stringent as State law which bars those involved from partisan politics. (2) complaint to be submitted “under penalty of perjury.” State law requires a “sworn complaint.” The Commission decided it was not as stringent as State law; (3) allows telephone conferences; The Commission advised that the State Code has no similar provision as such matters are determined under the Freedom of Information Act and this Commission has no jurisdiction to interpret FOIA, but PIC noted it was unclear why they put provisions from other laws in the Code of Conduct which would put them in the position of having to interpret and respond to challenges based on a law over which the Attorney General’s office has jurisdiction. (4) added a 14 day time period for respondent to

respond to a summary of the complaint. The Code of Conduct does not provide for a “summary” of a complaint – only a complaint--to go to the respondent. The Commission advised that: (1) giving a summary was less than giving a complaint so it was not as stringent; and (2) the State Code has no set time frame for respondents to answer, and NCC could have made that part of their procedural rules, not the law, but it was not less stringent since the State law does not have a more stringent time frame, but that we note that set time limits can create problems. (5) another time frame set. The Commission decided as in (2) in the previous motion. (6) deletion of certain confidentiality provisions in several sections. The Commission found that deleting the confidentiality provisions was inconsistent with Section 5810(h). (7) would allow respondent to only “admit” or “deny”. The Commission advised that the State Code did not place those substantive limits on respondents, so limiting the response, without giving such things as the ability to respond that they are without knowledge or belief, etc., is a right they would be entitled to under State law, and is the manner in which Delaware legally operates in terms of responding to complaints. (8) would allow a union representative to be at hearings. The Commission previously addressed but NCC took no action. The Commission advised as before. (9) permitted letters of reprimand even if no violation was found and discussed removal of elected officials. The Commission advised that the State law provides if a violation is found reprimands may be issued, with no reference to any sanction if a violation is not found, and the penalty of removal does not apply to elected officials, and generally where the law is silent it expresses the legislative intent. (10) added a prohibition on retaliation—essentially a whistleblower’s statute. The State Code of Conduct has no such provision. The State whistleblower’s law is under the Attorney General’s jurisdiction. PIC has no authority to interpret a whistleblower’s law, and again PIC noted that it was unclear why NCC added substantive law to its Code of Conduct that is under the purview of other agencies.

**08-96 – Lewes Code of Conduct Amendment:** Amendment to include that persons appointed to Boards and Commissions were subject to the Code to bring it into compliance with State law. 29 Del. C. § 5802(4). The Commission approved the amendment contingent on a change to reflect all such appointees; not just those paid more than \$5,000. **UPDATE:** Town Attorney advised that no limit was intended; the wording will be changed to reflect all Board and Commission members are subject to the law.

**08-67- Georgetown Code of Conduct:** Submitted Code identical to Smyrna’s PIC approved Code. It was found to be at least as stringent as the State Code. 29 Del. C. § 5802(4).

**08-31 – New Castle County Code of Conduct Amendment:** Less stringent areas:

(1) Union representative at hearings. Not in State Code. Same comments as above on laypersons.

(2) Commissioner to act as investigator, fact finder, and give a recommendation to the other Commissioners. State law: Those are Legal Counsel’s duties. Aside from usurping Counsel’s statutory duties, separating the duties instills public confidence because co-Commissioners are not reviewing their colleague’s work. The same applied when all members participated, because it meant another “public eye” was deciding on the critical issue of conflicts. It also could provide an odd number for the vote to reduce possible split decisions, etc.

**08-29 - Lewes Code of Conduct Amendment:** The Town submitted an amendment so PIC could decide if it was as stringent as the State Code. 29 Del. C. § 5802(4). Three areas

were less stringent:

(1) Would give the Mayor and Council approval of Commission decisions. State law: Ethics Commissions are to be independent, and if they must have approval from other officials, it does not insure that independence.

(2) Page 1, definitions: "Personal or private interests" should be substantive law.

(3) Page 3 – Parties had a right to legal counsel or be assisted by a layperson. Not in State law. Concern: practicing law without a license (occurred when a layperson came before another State Board). As they were not as stringent as State law, these areas of the amendment were not approved.

**08-19 - Dewey Beach Code of Conduct:** Local governments are subject to the State Code of Conduct unless they adopt their own Code which must be approved by this Commission as being as stringent as State law. 29 Del. C. § 5802(4). Dewey Beach rewrote its Code with some changes after the Commission identified areas that were less stringent than State law. See, 07-55. This was a review of the rewrite. Areas identified last time as not as stringent were still not included, e.g., post-employment. Again, the Commission found it was still less stringent than the State Code of Conduct.

**07-55 - Dewey Beach Code of Conduct:** The Town of Dewey Beach submitted a Code for the Commission's review and asked if it were as stringent as State law. 29 Del. C. § 5802(4). Its Code lacked some provisions, e.g., post-employment. It also had a provision that read as if Dewey's Ethics Commission would make some decisions interpreting its Code, but leave other decisions to this Commission to interpret under State law, which could not be done. The Commission found it was not as stringent as State law.

**06-58 - Smyrna Code of Conduct:** The Town of Smyrna submitted a draft Code of Conduct to the Commission to decide if its Code was as stringent as the State Code. 29 Del. C. § 5802(4). It was basically identical to the State Code, and was approved as being as stringent.

**06-38 – Local Government Amendments:** A local government submitted two ordinances for the Commission to review to decide if the amendments were at least as stringent as State law. 29 Del. C. § 5802(4). The Commission concluded that one ordinance had confusing language on preliminary hearings and confidentiality, making it appear that the local government would open complaint proceedings after the preliminary hearing. State law requires the proceedings be closed throughout, absent approval by the person charged. 29 Del. C. § 5810(h). If the ordinance is meant to open the proceedings after a preliminary hearing, the ordinance is not as stringent as State law. The other ordinance was to change the local government's gift law, financial disclosure reporting law, and add solicitation as authorized under the ordinance. The Commission found that: (1) as previously ruled, it had no jurisdiction over the financial disclosure law of local Governments; (2) delegation of authority to persons other than the Commission to approve gift acceptance was less stringent than the State law and would leave the local government employees without the statutory protection to which they are entitled; and (3) the authority for local government employees and officers to solicit gifts was found to be not as stringent as the State code, as State law has a rule regarding only acceptance. 29 Del. C. § 5806(b). Moreover, there are criminal provisions against public servants soliciting. See, e.g., 11 Del. C. § 1206 & § 1209(4). The Commission also determined that the local government's

Ethics Commission should be advised that its process, which results in ordinances being passed by the local government (with hearings, etc.,) before the ordinance is reviewed for stringency by this Commission can confuse employees and officials as to which law is in place at the time, and that a letter to that effect should be sent to the local government officials.