

State of Delaware
Public Integrity Commission



ETHICS
TRANSPARENCY IN GOVERNMENT

ANNUAL REPORT
2018

Bonnie Smith, Chair
William F. Tobin, Jr., and Michele Whetzel, Vice-Chairs

Commissioners

*Jeremy Anderson, Esq. * Andrew Gonser, Esq.*
*Andrew Manus * Kyle Evans Gay, Esq.*

**STATE PUBLIC INTEGRITY COMMISSION
Annual Report - 2018**

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I. *M*ission:

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

Jurisdictional History

- ✓ **1991 – State Ethics:** Executive Branch officers and employees, including casual/seasonal; (over 52,000); non-legislative elected officials; State Board and Commission appointees (In 2015, 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 2015, only 8 have an approved Code, leaving PIC with 49 local jurisdictions).
- ✓ **1994 – Dual Compensation:** State and local employees and officials with a second elected or paid appointed job in government.
- ✓ **1995 – Financial Disclosure:** elected officials; State candidates; Judges, Cabinet Secretaries, Division Directors and equivalents. (2015: 329 officers filed).
- ✓ **1996 – Lobbying:** State lobbyists registration, authorization and expense reports (2015: 343 lobbyists; 1015 organizations; over 3000 expense reports).
- ✓ **2000 – Ethics:** School Districts and Boards of Education
- ✓ **2001 – Ethics:** Charter School Boards of Education
- ✓ **2010 – Organizational Disclosures:** State elected officials & candidates must disclose private organizations if they are Board or Council members.
- ✓ **2010 – Newark Housing Authority:** Newark's Code of Conduct included the Authority, but the General Assembly changed the law to make it a State agency so that PIC would have jurisdiction.
- ✓ **2012 – Lobbyists:** Report within 5 business days legislative bill number or administrative action number or title on which they are lobbying. Report weekly on lobbyists' legislative/administrative action.
- ✓ **2014 – Lobbyists:** Successfully proposed legislation to charge lobbyists a fee for failure to file their expense reports in a timely manner.



PUBLIC INTEGRITY COMMISSION

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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 appointed from all three counties
- Terms – one full 7 year term; may serve until successor is appointed and confirmed
- Vacancies filled just as original appointments
- Pay - \$100 each official duty day; reimbursement of reasonable and necessary expenses

II. Commission Structure and Biographies of Commissioners and Staff

A. Commission Appointee Status

In 2018, the Commission said goodbye to Commission member Lisa Lessner and welcomed Andrew Manus and Kyle Evans Gaye, Esq. Of the Commission's seven members, four members represent New Castle County, one member represents Kent County and two members represent Sussex County.

B. Commission Staff

The Commission had a two person full-time staff from 1995 – 2017, an attorney and an administrative assistant, responsible for maintaining day-to-day operations. In early 2017, the Commission decided not to fill a vacancy for the administrative assistant position due to efficiencies in electronic recordkeeping and automated processes.

The Commission's attorney, beyond legal duties, conducts training, prepares Strategic Plans, Budgets, and performs other non-legal duties. The current Commission Counsel has served for five years.

C. Organizational Chart



D. Biographies of Commissioners



***Bonnie O'Day Smith
Chair***

Ms. Smith was appointed to the Public Integrity Commission on March 26, 2014. Her term expires on March 26, 2021. Ms. Smith was elected Vice-Chair of Personnel in November 2015. In 2017, Ms. Smith was elected Chair.

Ms. Smith retired from Sussex County government in November 2013, after 44 years of dedicated service. During her employment, Ms. Smith worked her way up the career ladder from an entry level position to become the Director of Data Processing. Ms. Smith developed the computer software used by all County employees.

Ms. Smith received her Associates Degree from Delaware Technical & Community College in Georgetown and was a member of the school's first graduating class. During the course of her career, she also received several training certificates from IBM.

Ms. Smith has previously served on the Delaware Technical and Community College Advisory Computer Information Systems Board. She has been involved in community activities such as the Lions Club and the Bridgeville Volunteer Fire Company. She attended Chaplain Chapel and is now attending Union United Methodist Church of Bridgeville. Ms. Smith has become a Fund for Women Founder, a Delaware organization that raises funds for various charities throughout the State.

She currently resides with her husband Thomas and their dog Greedy in Bridgeville, Delaware.



***William F. Tobin, Jr.
Vice-Chair, Personnel***

William F. Tobin was appointed to complete a few months of the remaining term of former Chair, Barbara Green. Mr. Tobin was reappointed by the Governor in 2013 to serve his own 7-year term

which expires in May 2020. He was elected Vice Chair, Policies & Procedures in 2012 and served in that role until he was elected Chair in September 2014. Mr. Tobin was re-elected Chair in 2015 and 2016. Having served the maximum three year term as Chair, Mr. Tobin was elected Vice-Chair, Personnel in 2017.

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

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

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

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

Nur Temple member.

Commissioner Tobin resides in Harbeson, Sussex County, Delaware.



Michele Whetzel
Vice-Chair, Admin & Procedures

Mrs. Whetzel was confirmed as a Commissioner on June 15, 2016 for a seven-year term expiring in 2023. Mrs. Whetzel was elected Vice-Chair, Admin. & Procedures in 2016, and re-elected in 2017.

Mrs. Whetzel has lived in Delaware since 1976. She graduated from Newark High School and earned a degree in Finance and Economics from the University of Delaware. After college she worked in financial services and was a Trust Officer with American Guaranty & Trust Company. In 1993 Mrs. Whetzel chose to stay at home with her two (now adult) children. She became active in their schools, the neighborhood, and the greater community through charitable and volunteer activities. Mrs. Whetzel is currently the Executive Vice President and Chief Financial Officer for her family's property management business, Thinking Eye Dog, LLC.

For over 25 years Mrs. Whetzel has been an active volunteer in the nonprofit sector, serving on the Ministry of Caring Guild Board (treasurer), the New Castle County Adopt-a-Family Board, and the Delaware Community Foundation Board. She recently completed a two-year term as Chair of the Fund for Women and has held other offices on the organization's board since 2008. During her term as Chair the Fund increased its membership by 28% from 1,297 members to 1,660, the largest increase since the organization was founded in 1993.

In addition to the board activities, Mrs. Whetzel also volunteers for Kind to Kids and Child, Inc., serves as an advisor for the Delaware Community Foundation's New Castle County Youth Philanthropy Board, and is on the steering committee for ERANow. She also represents the Fund for Women on the Delaware Grantmakers Association and is starting her 10th year as a mentor through Creative Mentoring at Shue-Medill Middle School.

Mrs. Whetzel and her husband Robert reside in Newark.



Andrew W. Gonser, Esq.

Mr. Gonser was confirmed to serve a seven-year term on the Commission in June 2011, with his term ending in June 2018. In 2012, he was elected to serve as Vice Chair, Personnel and re-elected in 2013 and 2014. Mr. Gonser relinquished his position as Vice-Chair in 2015, per PIC Rules limiting the maximum term of office to three years.

Mr. Gonser is the founding partner in the law firm of Gonser and Gonser in Wilmington. He is experienced in all aspects of Family Court matters from divorce, property division, custody and visitation, to paternity issues, guardianships and adoptions. He currently serves as Chair of the Family Law Section of the Bar Association and has won numerous awards including being Voted Top Family Law Attorney in Delaware Today multiple times.

After graduating *cum laude* from Widener University of School of Law in 2004, he clerked for the Honorable Jan R. Jurden, Delaware Superior Court. He is admitted to practice in all Delaware Courts, the U.S. District Court (Delaware), and the U.S. Supreme Court.

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

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

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



Jeremy D. Anderson, Esq.

Mr. Anderson was appointed on June 30, 2011. His term expired in June 2017. Mr. Anderson continues to serve until his successor is appointed.

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

company from filing a patent infringement action in federal court.

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

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

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

Mr. Anderson received his law degree from Georgetown University Law Center, in Washington, D.C., where he was the Senior Editor for Law and Policy in International Business. After graduation,

he clerked for the Honorable Kent A. Jordan, United States District Court for the District of Delaware.

Mr. Anderson resides in Hockessin, Delaware.



Andrew T. Manus

Mr. Manus was confirmed as a Commissioner on March 28, 2018, for a seven year term expiring in March 2025. Mr. Manus received his undergraduate degree from the University of New Hampshire and his Master's degree from Texas A&M University.

Mr. Manus' very active retirement includes managing his wife's family farm. As part of his management duties he practices land stewardship of forested tracts and rehabilitates and repurposes old farm outbuildings. In his spare time he enjoys being a hobbyist woodworker.

Prior to his retirement, Mr. Manus was the Director of Conservation Programs at The Nature Conservancy in Milton, Delaware from 2004-2014. As Director he managed conservation stewardship operations and land protection staff and

assisted staff in promoting ecological restoration and/or management projects and private lands protection strategies.

From 2002-2004, Mr. Manus was the Director of the Ducks Unlimited, Inc., Conservation Programs, Chesapeake Bay and Delaware Bay, Mid-Atlantic Field Office, Stevensville, Maryland. In that role he directed and delivered conservation programs in the five state Mid-Atlantic region while also supervising six staff habitat restoration specialists.

Mr. Manus worked for the Delaware Department of Natural Resources and Environmental Control ("DNREC") from 1990-2001. He was the Deputy Director of the Divisions of Soil and Water Conservation and Water Resources for three years before being appointed Director of the Division of Fish and Wildlife, a position he held for eight years. Mr. Manus was responsible for providing leadership and strategic direction for the Division of 126 full-time employees, 75 seasonal workers and a volunteer corps of 300 individuals. He provided direction to scientists and other professional staff in the development of research, regulatory, planning and enforcement programs designed to manage and conserve the fish, wildlife and habitat resources of Delaware. Mr. Manus administered an operating budget of \$13.5 million, a land acquisition budget of \$6.5 million and a capital budget of \$2.5 million. In addition, he implemented two legal settlement agreements that totaled \$11.5 million.

Between 1980 and 1989, Mr. Manus was Assistant Director and Executive Director of the University of Delaware Sea Grant College Program. He managed the Program through multidisciplinary activities in research, education and

technical assistance. Mr. Manus oversaw a budget totaled \$2.5 million for a staff of 35.

Mr. Manus has served on numerous boards, commissions and committees related to his love for the outdoors and conservation. A few of those are: Chairman, Atlantic Coast Joint Venture, 2003-2007; Member Executive Committee, International Association of Fish and Wildlife Agencies 1996-2000; President, Northeast Fish and Wildlife Directors Association, 1996-1998; Commissioner, Atlantic States Marine Fisheries Commission, 1993-2001; Member, Atlantic Flyway Council, 1993-2001.

Over the course of his career Mr. Manus received numerous awards and honors. Some of those include: Atlantic Coast Joint Venture Leadership Appreciation Award, 2007; Ducks Unlimited, Conservation Service Award, 2002; Atlantic Flyway Council Leadership Recognition Award, 2002; USFWS, Region 5 Division of Federal Aid, Certificate of Appreciation, 2002; USFWS, Northeast Region, Certificate of Special Appreciation, 2002; Pennsylvania Fish and Boat Commission, Outstanding Support Award, 2002; New Castle County Council, Resolution of Appreciation for Outstanding Public Service, 2002; Conservation Foundation Recognition of Appreciation for Commitment to Chesapeake Forest Project, 2001; North American Wetlands Conservation Council Resolution of Appreciation, 2001; Delaware Chapter of The Nature Conservancy's Conservation Partnership Award, 1999; University of Delaware Public Service Fellowship, 1989.

Mr. Manus resides in Clayton, Delaware (Kent County).



Kyle Evans Gay, Esq.

Ms. Gay was confirmed as a Commissioner on April 25, 2018, for a seven year term, ending in 2025.

Ms. Gay is an attorney at the law firm of Connolly Gallagher LLP in Wilmington, DE. Her practice focuses on commercial litigation and government law. Prior to entering private practice, Ms. Gay served as a law clerk to the Honorable Paul R. Wallace in the Delaware Superior Court and worked at the Delaware Department of Justice as a law clerk and a Deputy Attorney General in the Appeals Division. Ms. Gay is licensed to practice law in Delaware and Pennsylvania.

Before becoming an attorney, Ms. Gay obtained a Bachelor's Degree from Brown University in Providence, Rhode Island and graduated from Boston University Law School with a Juris Doctor.

Ms. Gay is also a dedicated community volunteer and is active in many boards, commissions and organizations including the Delaware State Bar Association, the Delaware Supreme Court Commission on Law and Technology and the

Delaware Board of Bar Examiners. She is active in the Junior League of Wilmington and the Delaware Fund for Women, and she volunteers with the Office of the Child Advocate and the Federal Civil Panel.

Ms. Gay resides in Wilmington, Delaware with her husband and daughters.

D. Commission Staff

Deborah J. Moreau, Esq. Commission Counsel

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

A Widener University School of Law graduate (*cum laude*), Ms. Moreau was a member of the Delaware Journal of Corporate Law. During law school she received two awards for her writing submissions. The Herman V. Belk Memorial Award was given in recognition of excellence in writing for an article written to gain admission to the law review in 2003. In 2004, she received the Donald E. Pease Best Student Article Award. Ms. Moreau's (*nee* Buswell) award-winning article was published in the law review. (Foreign Trade Antitrust Improvements Act: A Three Ring Circus – Three Circuits, Three Interpretations (Delaware Journal of Corporate Law, Vol. 28, No. 3, 2004)). The article has been cited in numerous professional materials. During her third year of law school, Ms. Moreau worked as an intern at the Delaware Department of Justice and was provisionally admitted to the Delaware Bar under Delaware Supreme Court Rule 55. That early admission allowed Ms. Moreau to prosecute misdemeanor cases in Family Court before graduation from law school.

Ms. Moreau was formally admitted to practice law in Delaware in 2004. The following year she was admitted to the U.S. Third Circuit Court of Appeals. Ms. Moreau continued her career at the

Delaware Department of Justice as a Deputy Attorney General for the Criminal Division. While she was a prosecutor, Ms. Moreau handled hundreds of cases, in a variety of courts. She has practiced in Family Court, the Court of Common Pleas and Superior Court. Her varied caseloads included domestic violence, juvenile crime, sexual assaults, guns, drugs, property, robbery, burglary, and murder. Ms. Moreau's work as a prosecutor allowed her to gain extensive trial experience.

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



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 officer's annual report of financial interests, such as assets, creditors, income, and gifts. All State elected officials and State candidates must also disclose private organizations of which they are a Board or Council member.

❖ **Subchapter III, Compensation Policy**

State or local employees or officials holding dual government jobs with procedures to monitor and prevent "double-dipping;"

❖ **Subchapter IV, Lobbying**

Lobbyists' registration, authorization, expense reports, and specific legislative or administrative actions on which they are lobbying State officials or employees.

A. Subchapter I, Code of Conduct – Ethical Standards

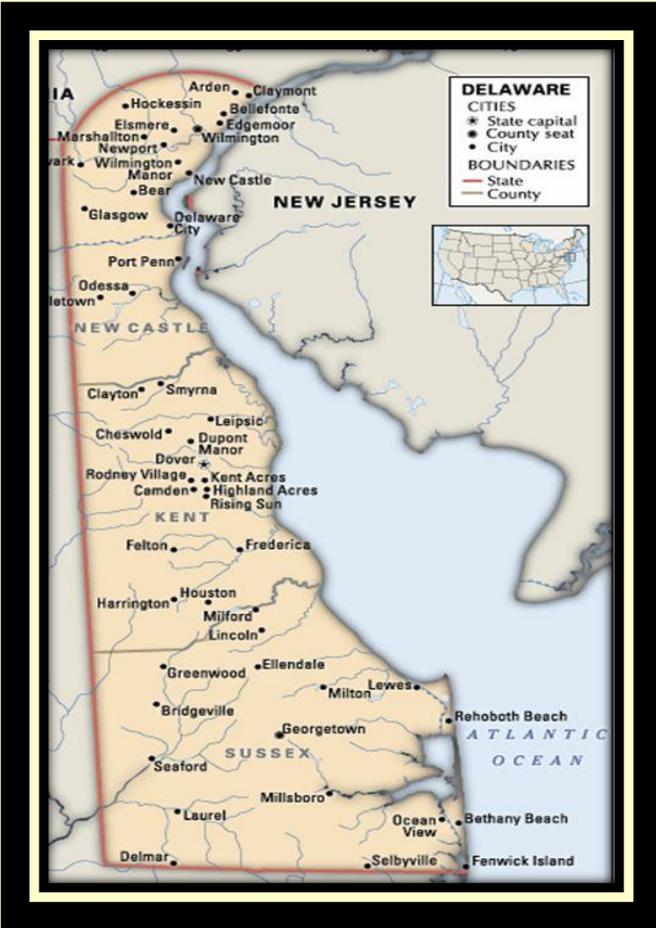
Purpose and Jurisdiction:

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

Personal Jurisdiction – State Level:

The Code of Conduct applies to all Executive Branch employees (rank and file, including part-time), officers (elected and appointed senior level Executive Branch officials), and honorary State officials (appointees to more than 300 Boards and Commissions). Approximately 53,000 persons are in those State categories.

Personal Jurisdiction – Local Level:



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

In **2018**, local governments who had adopted their own Codes of Conduct included: New Castle County, Dover, Lewes, Millsboro, Newark, Smyrna, Delaware City, and Wilmington. As they have their own Code, the Commission no longer has jurisdiction over their employees, officers, and appointed officials. The remaining 49 local governments are under PIC's

jurisdiction. In 2013, PIC approved a proposed Code of Conduct for the Town of Dewey Beach which has not yet been formally adopted by the town council.

Subject Matter Jurisdiction:

The Code of Conduct restricts participating in an official government capacity if there is a personal or private interest in a matter before them; bars all employees, officers and officials from representing or assisting a private enterprise before their own agency in their private capacity; bars officers (senior level officials) from representing or assisting a private enterprise before any agency; limits public servants in obtaining contracts with the government entity with which they serve; restricts their activities for 2 years after

terminating State employment. 29 *Del. C.* § 5805. The law also restricts acceptance of gifts, outside employment or anything of monetary value; use of public office for personal gain or benefit; improper use or disclosure of government confidential information; and/or use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a state agency. 29 *Del. C.* § 5806. The Code also bars conduct that creates a justifiable impression, or that may “raise public suspicion,” of improper conduct, 29 *Del. C.* § 5802(1) and § 5806(a). Thus, the Commission considers if there is an appearance of impropriety.

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

Penalties:

Both criminal and administrative penalties may be imposed.

(1) Criminal Prosecution: The General Assembly, in passing the law, found that some standards of conduct are so “vital” that the violator should be subject to criminal penalties. 29 *Del. C.* § 5802(2). Four (4) rules carry criminal penalties of up to a year in prison and/or a \$10,000 fine. 29 *Del. C.* § 5805(f). Those rules are that employees, officers, and honorary officials may not: (1) participate in State matters if a personal or private interest would tend to impair judgment in performing official duties; (2) represent or assist a private enterprise before their own agency and/or other State agencies; (3) contract with the State absent public notice and bidding/arm’s length negotiations; and

(4) represent or assist a private enterprise on certain State matters for 2 years after leaving State employment. 29 *Del. C.* § 5805(a)(2). Beyond referring suspected Code violations for criminal prosecution (see more information below), if a majority of Commissioners finds reasonable grounds to believe a violation of other State or Federal laws was violated, they may refer those matters to the appropriate agency. 29 *Del. C.* § 5807(b)(3) and(d)(3); § 5808(A)(a)(4); and § 5809(4).

In 2015, PIC's criminal enforcement power was enhanced by the Attorney General's creation of the Office of Civil Rights and Public Trust ("OCRPT"). Now, when PIC uncovers a Code of Conduct violation for which there are criminal penalties, the matter may be referred to OCRPT for further investigation and possible criminal prosecution. In **2018**, PIC referred two matters to the Attorney General's office, involving possible violations of the confidentiality requirements in 29 *Del. C.* §§ 5806(d), 5807(b) or (d) and 5810(h). Before referring those matters, Commission Counsel discovered applicable case law from the Third Circuit Court of Appeals which indicated that confidentiality requirements in statutes are usually a violation of the U.S. Constitution's First Amendment right to free speech. That additional information was included in the referral. At the end of 2018, those matters were still pending.

(2) Administrative Sanctions: Violating the above rules may, independent of criminal prosecution, lead to administrative discipline. 29 *Del. C.* § 5810(h).

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

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



B. Subchapter II, Financial and Organizational Disclosure Requirements

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

FINANCIAL DISCLOSURE:

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

each year thereafter on March 15, while a public officer. 29 *Del. C.* § 5813(c). Identifying the interests helps the public officer recognize a potential conflict between official duties and personal interests that may require recusal or ethical guidance.

Personal Jurisdiction:

More than 350 “public officers” in the Executive, Legislative, and Judicial branches must file financial disclosure reports within 14 days of becoming a public officer and on March 15 each year thereafter. 29 *Del. C.* § 5813(c). Filers include: All Executive and Legislative Branch elected officials; all cabinet secretaries, division directors, and their equivalents; all members of the judiciary; and candidates for State office. 29 *Del. C.* § 5812(n)(1). PIC received 342 Financial Disclosure filings between January 1st and March 15th in **2018**. As State candidates must also file, the number of filers per year varies depending on the number of candidates in a given year.

Subject Matter Jurisdiction:

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

Penalties:

Willful failure to file a report is a Class B misdemeanor. Knowingly filing false information is a Class A misdemeanor. 29 *Del. C.* § 5815. The Commission may refer suspected violations to the Commission Counsel for investigation and to the AG for investigation and prosecution. *Id.* The penalties are: (1) up to six months incarceration and/or a fine of up to \$1,150 for a Class B misdemeanor, 11 *Del. C.* § 4206(b); and (2)

up to one year incarceration and a fine of up to \$2,300 for a Class A misdemeanor, 11 *Del. C. § 4206(a)*. The Court may also require restitution or set other conditions as it deems appropriate. 11 *Del. C. § 4206(a) and (b)*.

2018 was an election year. Three candidates were referred to the Attorney General's office for failure to file their financial disclosure reports. They were also reported to the Department of Elections ("DOE") where their names were posted on the DOE website. Publishing the names on the DOE website allows the public to access that information prior to the election. None of the people referred to the DOE were elected to office.

ORGANIZATIONAL DISCLOSURES:

Purpose:

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

Personal Jurisdiction:

State elected officials and Candidates for State office are required to disclose their memberships on councils or boards. 29 *Del. C. § 5813A*. Other public officers, e.g. cabinet secretaries, division directors, and their equivalents are not required to file this information.

Subject Matter Jurisdiction:

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

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 their 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, government (state, municipal, county)

employment.

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

In **2018**, PIC did not receive a Dual Compensation Report from the State Auditor’s Office. Previous reports have found that the State does not have adequate rules and procedures in place to allow for adequate oversight of the Dual Compensation law. Most significantly, the population of individuals who received dual compensation from government entities was unable to be determined from data available to PIC. While PIC does collect financial information from the State’s Public Officers, it does not have jurisdiction to collect that information from individuals employed by towns, municipalities or counties within the State who may collect dual government income. Substantial changes to the Dual Compensation law are necessary to allow PIC to gather the information necessary to properly administer this portion of the code. To that end, HB 252 was introduced in the General Assembly in January 2016, attempting to remedy some of the problems identified in the State Auditors CY 2014 report. The Bill was never released from committee. A similar Bill was introduced in March 2017, HB 73, which was released from committee in March **2018** but was never brought to the floor for a vote.

PIC supports any effort to strengthen and improve our ability to collect and oversee the Dual Compensation law. That includes collecting and analyzing Financial Disclosures from municipal and county employees, as long as it receives additional manpower and resources to ensure the additional responsibilities are properly administered.

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 – Lobbyist Registration and Reporting

Purpose:

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

Jurisdiction:

When PIC began administering the lobbying registration law in 1996, there were approximately 200 organizations represented by lobbyists. At the end of **2018**, 338 lobbyists, representing 1205 organizations, were registered.

Reporting Requirements:

Each lobbyist is to file quarterly reports revealing direct expenditures on General Assembly members and/or State agency members. 29 *Del. C.* § 5835(c). That results in 4988 expense reports. If the expense exceeds \$50, the lobbyist must identify the public officer who accepted the expenditure, and notify the official of the value. *Id.* In **2018**, lobbyists reported expenditures totaling \$83,953.32. In addition to reporting expenditures, lobbyists are also required to report their lobbying activity. Lobbyists must report legislation by bill number or administrative action by number or title, within 5 business days of lobbying a State official. 29 *Del. C.* § 5836. “Lobbying” consists of direct communication with a State employee or official, including General Assembly members, for the purpose of advocating, promoting, opposing, or influencing legislation or administrative action. 29 *Del. C.* § 5831(5). The law also required that all registration, expense reports, and the new “Lobbying Activity Report” be filed online. 29 *Del. C.* § 5832(a).

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

In 2013, the Public Integrity Reporting System (PIRS) was created in an effort to accommodate the new legislative reporting requirements. The new database was announced as the Web 2.0 Award winner in the “Harnessing the Power of Civic Media”

category by the Public Technology Institute (PTI). Users of PIRS can see which lobbyists are involved in specific legislation or administrative regulation, and view lobbyists' employers and financial disclosures. The new system also made it easier for lobbyists and public officials to submit required lobbying and gift-related reports online. The PIRS online interface is also mobile-friendly, allowing lobbyists to report, and citizens to search using smartphones, tablets and other mobile devices.

Penalties:

Administrative: PIC may impose the administrative penalty of cancelling a lobbyist's registration for failure to timely file their expense reports at the end of each calendar quarter. They may not re-register or act as a lobbyist until all delinquent authorizations and/or reports are filed. *Id.* Obviously, this affects their ability to represent an organization in which they are interested enough to volunteer, or affects their job performance if they cannot perform their paid duties. Recognizing the impact on lobbyists if their registrations are cancelled, the Commission sends several failure-to-file notices via e-mail, followed by certified letter. If the lobbyist does not respond, before their registration is cancelled, the organization which they represent is also notified. The names of delinquent filers are available on PIC's website by searching lobbyist reports by quarter.

Over time the administrative penalty ceased to be an effective compliance tool. In the first quarter of 2014, there were 79 delinquent lobbyists. By the end of the third quarter there were over 100 delinquent lobbyists. Compare those numbers with a total of 15 delinquent lobbyists for the fourth quarter of 2013.

Financial: As a result of the increasing number of delinquent filers, in 2014 PIC successfully introduced legislation to impose a financial penalty on lobbyists for failure to file expense reports in a timely manner. Beginning in 2015, delinquent lobbyists were required to pay a \$25 fine for the first day of their delinquency. Thereafter, an additional \$10 per day accumulated to a maximum fee of \$100. Lobbyists may not resume lobbying until all fees have been paid and all delinquent reports have been filed. In the fourth quarter of 2017, the number of delinquent filers was reduced to 10. In **CY2018**, PIC collected \$4865 in late fees.

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.*

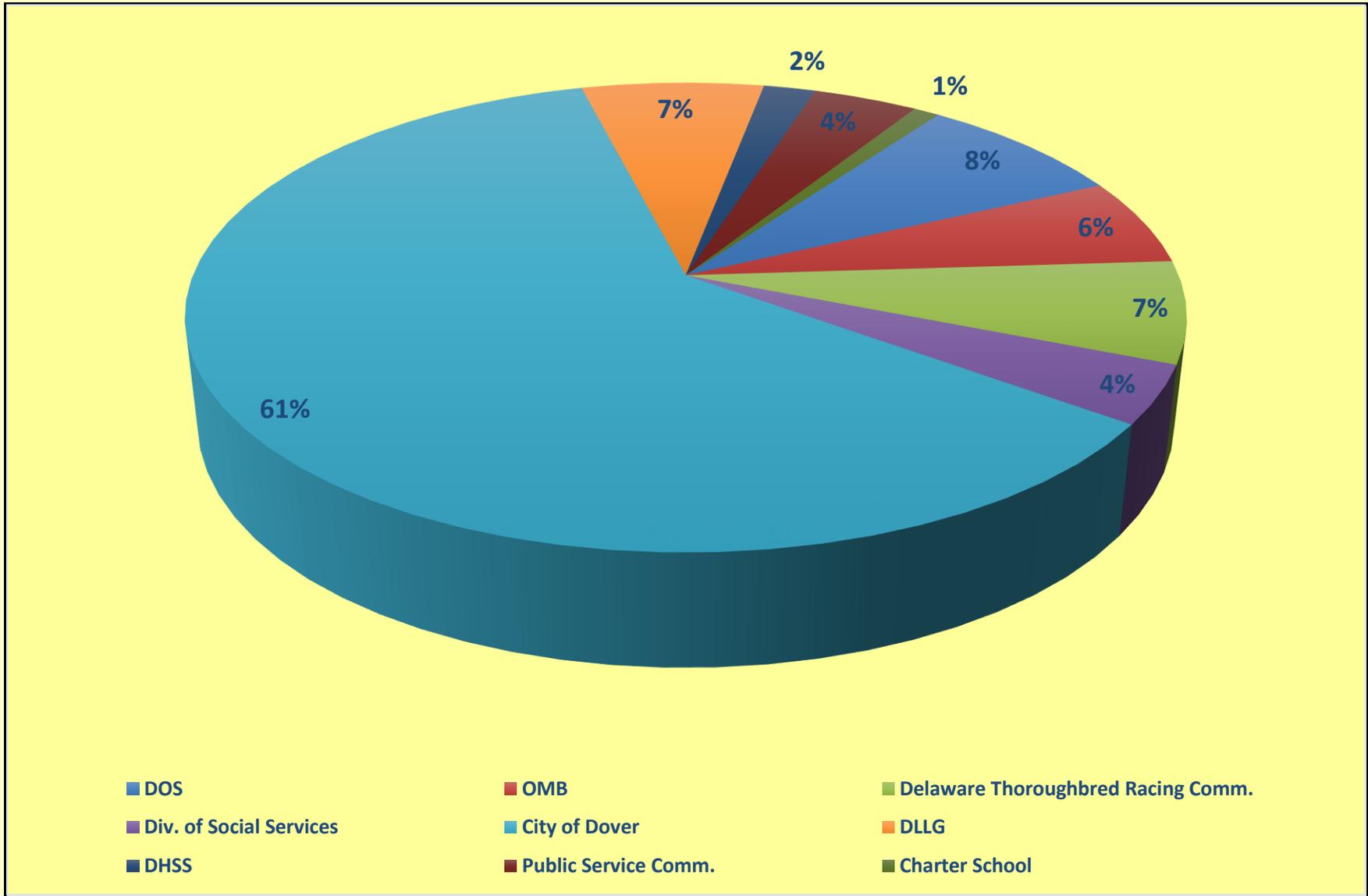
To best assist government officials and lobbyists in understanding and complying with the law, the Commission's primary focus is on training. Training is reinforced by handouts and publications which can be reviewed later. For quick reference, an Ethics Brochure with the 12 rules of conduct with some brief case examples is provided. It also has procedures for obtaining advice or waivers, and filing complaints.

Opinion synopses are available on PIC's website. The synopses are sorted by topic and include a summary of all matters decided by the Commission from 1991 to 2018. As individuals encounter similar situations, they can refer to the cases. The web site also includes the Delaware Code of Conduct, all Ethics Bulletins, a brochure on Delaware's gift laws, the Commission's rules and its Annual Reports. For Financial Disclosure filers

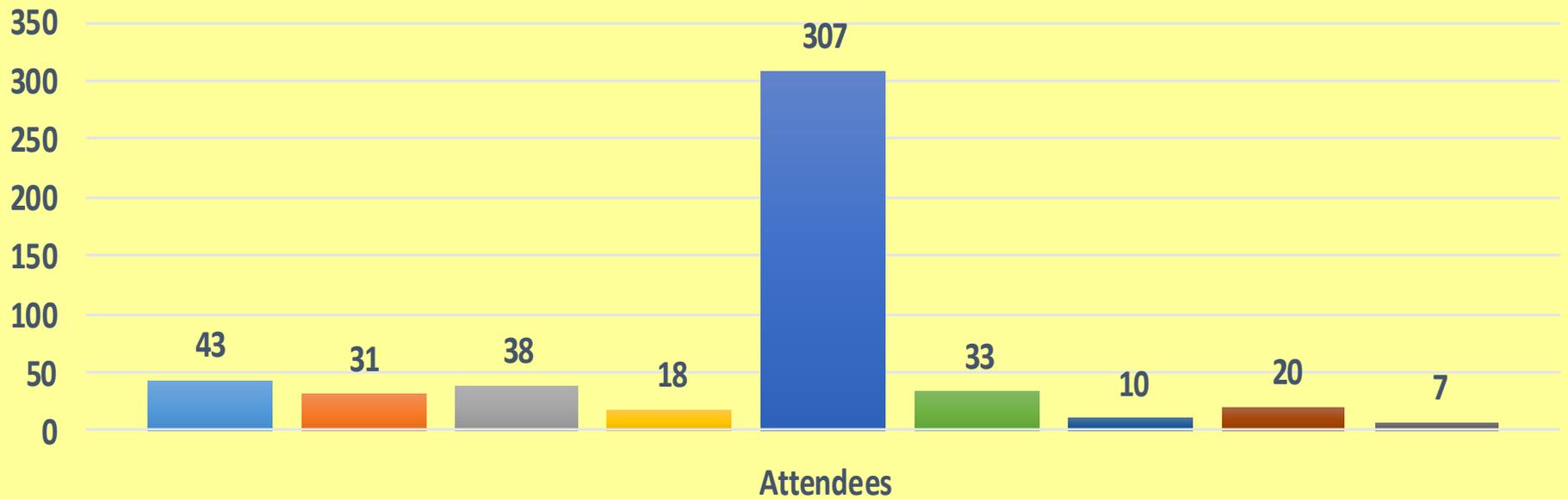
and Lobbyists, the web site has instructions for on-line filing. Lobbyists can link to the Legislative Bill Drafting Manual if drafting legislation for clients. The web site also includes links to related laws such as the Legislative Conflicts of Interest Law and the Judicial Code of Conduct.

In **2018**, the Commission presented 19 training classes to a total of 507 attendees, five times the 2017 number. The training classes were presented to a wide variety of state, county, municipal and legislative entities. In an effort to reach more State employees, PIC created an online training module which is available through the Office of Management and Budget's Training Website. The module is a 30 minute introduction to common ethics issues facing State employees. It does not replace the more in-depth, in-person training sessions. In **2018**, 680 employees completed the training module. PIC will continue to focus more training resources to school districts and municipalities in order to reach larger audiences.

2018 Live Ethics Training--% of Total Per Agency



of Attendees Per Agency



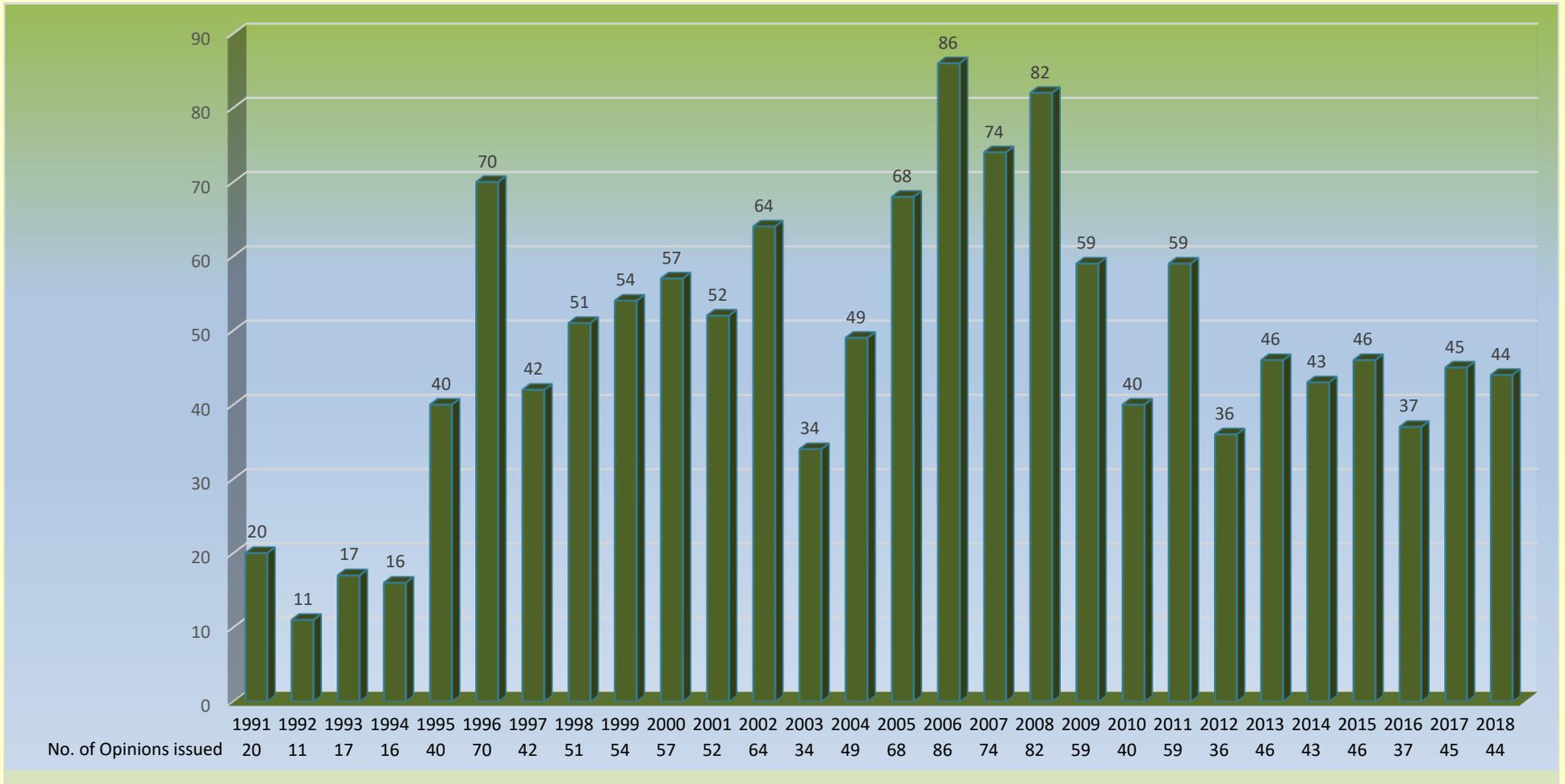
- DOS
- OMB
- Delaware Thoroughbred Racing Comm.
- Div. of Social Services
- City of Dover
- DLLG
- DHSS
- Public Service Comm.
- Charter School

(2) Advisory Opinions - 29 Del. C. § 5807(c).

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

In **2018**, PIC acted on 44 requests for written advice. 35 formal advisory opinions were issued by the Commission and Commission Counsel responded to 9 requests for written informal advice. (See chart below). The number of requests for opinions has been fairly stable over the past five years. This is likely due to the fact there have not been any changes to the Code of Conduct. The Commission typically sees spikes in the number of requests when there is a change in the Code.

Number of Opinions Issued 1991-2018



(A) Waivers - 29 Del. C. § 5807(a)

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

In **2018**, two waivers were granted. *Commission Op. Nos. 18-40; 18-49.* (See Appendices A-B). When a waiver is granted, the proceedings become a matter of public record. Those decisions are also available on the Commission’s website.

(B) Complaints - 29 Del. C. § 5810(a).

Any person, public or private, can file a sworn complaint. The Commission may act on the sworn complaint, or its own initiative. A majority (4) must find “reasonable grounds to believe” a violation may have occurred. 29 Del. C. § 5808(A)(a)(4). If probable cause is found, the Commission may conduct a disciplinary hearing. 29 Del. C. § 5810. The person charged has statutory rights of notice and due process. Violations must be proven by clear and convincing evidence. If a violation is found, the Commission may impose administrative discipline. 29 Del. C. § 5810(d). It may refer substantial evidence of criminal law violations to appropriate federal or State authorities. 29 Del. C. § 5810(h)(2). Frivolous or non-merit complaints, or those not in the Commission’s jurisdiction, may be dismissed. 29 Del. C. § 5809(3).

In **2018**, the Commission received a record high six properly submitted complaints. Four were dismissed for failure to properly allege a violation of the Code of Conduct. One Complaint was

investigated and then dismissed. The remaining complaint proceeded to a formal hearing. After reviewing the evidence and listening to the testimony in the matter, the Commission found that the subject of the Complaint did not violate the State Code of Conduct.

A complaint must be in writing, allege violations of specific portions of the Code of Conduct with supporting facts, and be properly notarized. The correct form of notarization is below:

29 Del. C. § 4328(3) For a verification upon oath or affirmation:

State of.....

County of.....

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

(signature of notarial officer)

(Seal)

(title and rank)

(my commission expires:.....)



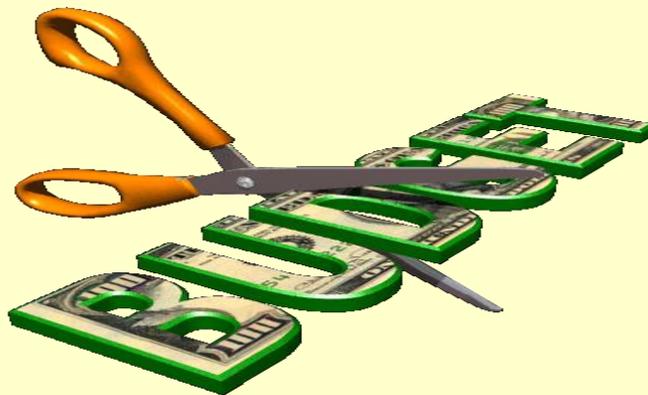
V. FOIA Requests

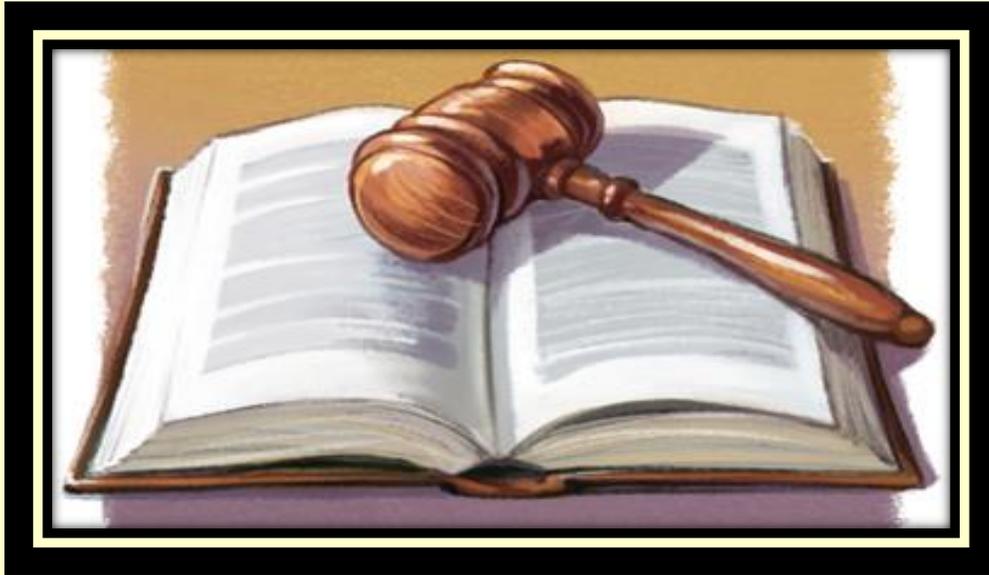
In **2018**, PIC responded to 16 requests for information under the Freedom of Information Act (FOIA). The FOIA requests were submitted by a mix of news media, citizens, and private political organizations. Due to the efficiencies of the PIRS database, PIC was able to respond to all of those requests within 5 days.



VI. Funding

In **FY 2019**, which includes the last half of the 2018 calendar year, the General Assembly appropriated \$185,100 for PIC, with an operating budget of \$18,300. That amount is the smallest operating budget since PIC was created in 1996 when the operating budget was \$40,100. Today, PIC's operating budget is 55% less than in 1996. When adjusted for inflation, the operating budget has been **cut** by 72% over the past 20 years. Meanwhile, PIC's duties continue to increase.





VII. Legislation

Legislation:

During the 2018 legislative session HB 53, requiring municipal employees to file a Financial Disclosure form with PIC, continued to await legislative action. It was finally released from committee in March 2018 but was never brought to the floor for a vote.



VIII. Future Goals

The Commission's focus will be to continue to emphasize education of employees, officers, officials, and lobbyists with the limited resources at our disposal.



STATE OF DELAWARE

DELAWARE STATE PUBLIC INTEGRITY COMMISSION

MARGARET O'NEILL BUILDING
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TELEPHONE: (302) 739-2399

VIA EMAIL

November 30, 2018

**18-40—Robert Colton--Personal or Private Interest
(WAIVER GRANTED)**

Hearing and Decision By: *William F. Tobin, Jr. (Vice-Chair) (Acting Chair), Commissioners: Jeremy Anderson, Esq.; Andrew Gonser, Esq.; Andrew Manus*

Dear Mr. Colton,

Thank you for attending the November 20, 2018, Commission meeting. After considering all the relevant facts and circumstances, the Commission decided that it is a conflict of interest for you to be both a State Employee and also a State contractor. The Commission grants the Department of Agriculture a 6 month waiver to work on a solution to your conflict.

I. FACTS

You work for the Delaware Thoroughbred Racing Commission (“DTRC”) as a Safety Steward. Your primary job duties are to communicate and coordinate track activities with stewards, the track superintendent, emergency medical technicians, jockeys, exercise riders, trainers and stable employees. As an employee of the DTRC, you report directly to them. However, you are considered a State employee and are paid by the Department of Agriculture.

You are also the Administrator for the Delaware Jockeys’ Health and Welfare Fund (“DJH&WF”). You were hired as a contractor and report directly to the Delaware Jockeys’ Health and Welfare Benefit Board (“DJH&WBB”). Your job duties include: overseeing the eligibility, enrollment, financial reporting and budgeting for the fund; communicating with the jockeys about health and safety issues; educating jockeys about safety equipment, program benefits, and insurance issues; acts as an industry advocate for health and safety issues. You stressed that you are not hired by the jockeys, do not receive a commission based on the jockey’s premiums and the monies in the fund are controlled by the Department of Agriculture. However, as the Administrator of the plan, you are compensated \$3000 per month.

You previously represented jockeys before the DTRC and stewards at disciplinary hearings, rule changes and appeals. However, your decision to represent those jockeys was a personal choice and not part of your duties as Administrator of the DJH&WF. Recognizing a potential conflict of interest between those actions and your position as Safety Steward, you stopped representing jockeys at those hearings at the beginning of the 2016 racing season.

You would like the Commission to consider whether your private interest as an Administrator for the DJH&WF creates a conflict of interest with your position working for the DTRC.

II. APPLICATION OF THE FACTS TO THE LAW

1. In their official capacity, employees may not review or dispose of matters if they have a personal or private interest in a matter before them. 29 Del. C. § 5805(a)(1).

A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter." 29 Del. C. § 5805(a)(1). As a matter of law, a person has a personal or private interest if any decision "with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent" than others similarly situated or if "the person or a close relative has a financial interest in a private enterprise which would be affected" by a decision on the matter to a greater or lesser degree than others similarly situated. 29 Del. C. § 5805(a)(2)(a) and (b). A personal or private interest is not limited to narrow definitions such as "close relatives" and "financial interest." 29 Del. C. § 5805(a)(2). Rather, it recognizes that a State official can have a "personal or private interest" outside those limited parameters. It is a codification of the common law restriction on government officials. See, e.g., *Commission Op. Nos. 00-04 and 00-18*. When there is a personal or private interest, the official is to recuse from the outset and even neutral and unbiased statements are prohibited. *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., January 29, 1996).

You work with jockeys as the Safety Steward and you also enroll them in the benefit plan for which you are the Administrator. It is unlikely that you make decisions as Safety Steward that are directly affected by your role as Administrator of the benefit plan. However, because benefit plans are predicated on risk vs. reward types of analysis and Safety Stewards are to monitor and reduce risk, there could be the potential for conflict. For example, a decision you make as Safety Steward could have a direct or indirect effect on eligibility for benefits under the benefit plan. If you implemented a safety recommendation for jockeys at the horse track, it may be possible that failure to follow those recommendations would affect a jockey's qualification for benefits under the benefit fund. It may also be possible that you could be called as a witness, in your capacity as Safety Steward, to provide testimony in litigation of claims by a jockey against the benefit fund. As such, the Commission decided you should not continue working in both positions.

The Commission then turned to the issue of whether you or the DA qualified for a waiver of this provision which is discussed below.

2. Employees may not engage in conduct that may raise suspicion among the public that they are engaging in conduct contrary to the public trust. 29 Del. C. § 5806(a).

The purpose of the code is to insure that there is not only no actual violation, but also not even a "justifiable impression" of a violation. 29 Del. C. § 5802. The Commission treats that as an appearance of impropriety standard. *Commission Op. No. 07-35*. The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be

performed with honesty, integrity and impartiality. *In re Williams*, 701 A.2d 825 (Del. 1997). Thus, in deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances. See, e.g., *Commission Op. No. 97-23* and *97-42*. Those circumstances should be examined within the framework of the Code's purpose which is to achieve a balance between a "justifiable impression" that the Code is being violated by an official, while not "unduly circumscribing" their conduct so that citizens are encouraged to assume public office and employment. 29 *Del. C.* §§ 5802(1) and 5802(3).

Your involvement with jockeys as both a regulator and as a compensated benefit Administrator is likely to raise suspicion among the public that you are engaging in conduct that is contrary to the public trust. At a very minimum, your work as Safety Steward gives you direct access to potential customers for the benefit plan. The jockey's may feel that they have to participate in the benefit plan in order to receive fair and equitable treatment from you in your capacity as Safety Steward. That is not to say you would do so, you are entitled to a strong 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., January 29, 1996). However, this provision of the Code of Conduct requires only a justifiable impression of a violation and the Commission decided that your dual roles create such an impression.

In deciding if the conduct would raise the appearance of impropriety, the Commission also considered whether the Code would be contrary to the restrictions on misuse of public office. 29 *Del. C.* § 5806(e). One prohibition considered by the Commission under that provision is that the State employee may not use State time or State resources (i.e. computer, fax, phone, etc.) to work on the private interest. You stated that you do not work for your private interest during State work hours.

3. Waiver. 29 Del. C. § 5807(a)

A waiver may be granted if there is an "undue hardship" on the applicant or the agency. 29 *Del. C.* § 5807(a). "Undue" means "more than required" or is "excessive." *Commission Op. No. 97-18* (citing *Merriam Webster's Collegiate Dictionary*, p. 1290 (10th ed. 1992)).

You have been the Administrator of the DJH&WF for 11 years. Without going into too much detail, the program was created by you and is virtually a one-of-a-kind benefit plan for Delaware jockeys. Because you created and administered the fund for 11 years, no one else has the same level of experience in identifying and remedying issues that arise with the plan or its members. As such, the Commission decided it would be in the State's interest to grant a six month waiver to the Department of Agriculture to remedy your conflict of interest. Although the Commission cannot dictate a course of action, some agencies with similar conflicts have decided to take the state position and the contractor position and make it one job. Alternatively, other agencies have converted the contractor position into a casual/seasonal position so that the contractor position becomes a state position, thus eliminating the conflict.

You should know that when a waiver is granted, the proceedings become a matter of public record. This aids the entire public in understanding the factual basis for granting a waiver. That will serve to diminish any public perception that you are circumventing the law.

III. CONCLUSION

Your position as a contractor for the DJH&WF creates a conflict of interest with your State position as

Safety Steward. The Commission has granted a six month waiver to allow the agency to remedy the situation.

Sincerely,

/s/ William F. Tobin, Jr.

William F. Tobin, Jr.
Acting Chair



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DELAWARE STATE PUBLIC INTEGRITY COMMISSION

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TELEPHONE: (302) 739-2399

VIA EMAIL

1/3/2019

18-49 Post Employment (WAIVER GRANTED)

Hearing and Decision By: *Bonnie Smith (Chair); William F. Tobin, Jr. (Vice-Chair); Commissioners: Andrew Gonser, Esq.; Andrew Manus*

Dear Mr. Vild,

Thank you for attending the December 18, 2018, Commission meeting. As you know, our Commission Counsel recused herself from this matter due to a conflict of interest. As a consequence, this letter will only address the Commission's decision.

The Commission reviewed the letter request from yourself and Aaron Goldstein, Chief Deputy Attorney General, within the Delaware Department of Justice. After consideration of the facts and circumstances set forth in the letter and during your appearance at the meeting, the Commission decided that it would violate the two year post-employment restriction in the Code of Conduct for you to continue working on the Opioid Litigation, as a private attorney, after you leave the DOJ. However, due to the public purpose of the litigation, the time invested and the State's need for your expertise, the Commission granted a waiver of the two year post-employment restriction in the Code of Conduct due to agency hardship. The waiver will last two years or until the end of the Opioid Litigation, whichever comes first.

Please be aware that because a waiver has been granted, this letter will be published on our website in its entirety so that the public may know that the prohibited conduct has been approved by this Commission.

Sincerely,

/s/ Bonnie Smith

Bonnie Smith
Chair