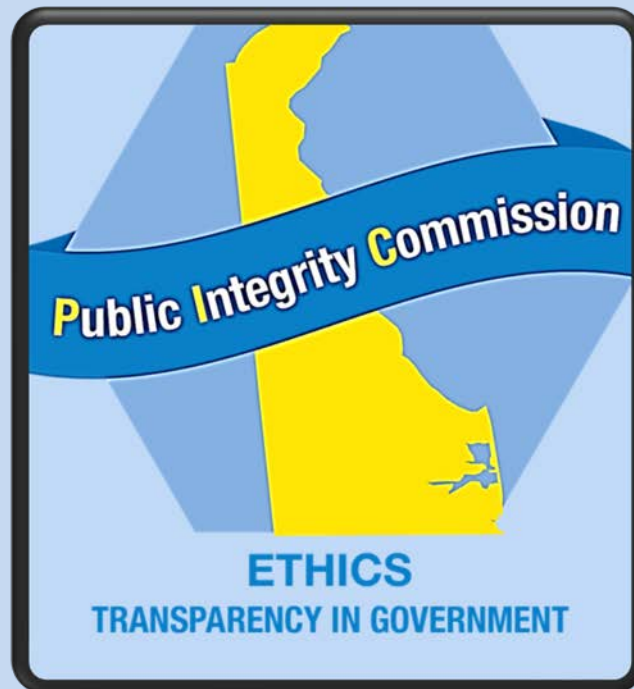


State of Delaware Public Integrity Commission



ANNUAL REPORT 2021

Andrew T. Manus, Chair

Michele Whetzel & (Hon.) Rourke Moore, Vice-Chairs

Commissioners

*Bonnie Smith * (Hon.) F. Gary Simpson * Marjorie Biles*

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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 30,000); non-legislative elected officials; State Board and Commission appointees (in 2021, over 300 Boards and Commissions with approximately 2200 appointees).
- ✓ **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 2021, only 9 have an approved Code, leaving PIC with 48 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. (2020: 361 officers filed).
- ✓ **1996 – Lobbying:** State lobbyists registration, authorization and expense reports (2020: 364 lobbyists; 1283 organizations; over 5000 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.

II. Commission Structure and Biographies of Commissioners and Staff

- Appointments
 - Qualifications
 - Compensation



- ❖ 7 citizens are the 'public eye'
- ❖ 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
- ❖ Terms – one full 7-year term; may serve until successor is appointed and confirmed
- ❖ Vacancies filled like original appointments
- ❖ Pay - \$100 each official duty day; reimbursement of reasonable and necessary expenses

A. Commission Appointee Status

In **2021**, we said goodbye to Commissioner William F. Tobin, Jr. who served one year past the expiration of his term. In June, Marjorie Biles was appointed to the Commission. At that time, the Commission was operating with six Commissioners instead of the seven allotted by statute. The Commission expects that it will be fully staffed with the appointment of new Commissioners in 2022.

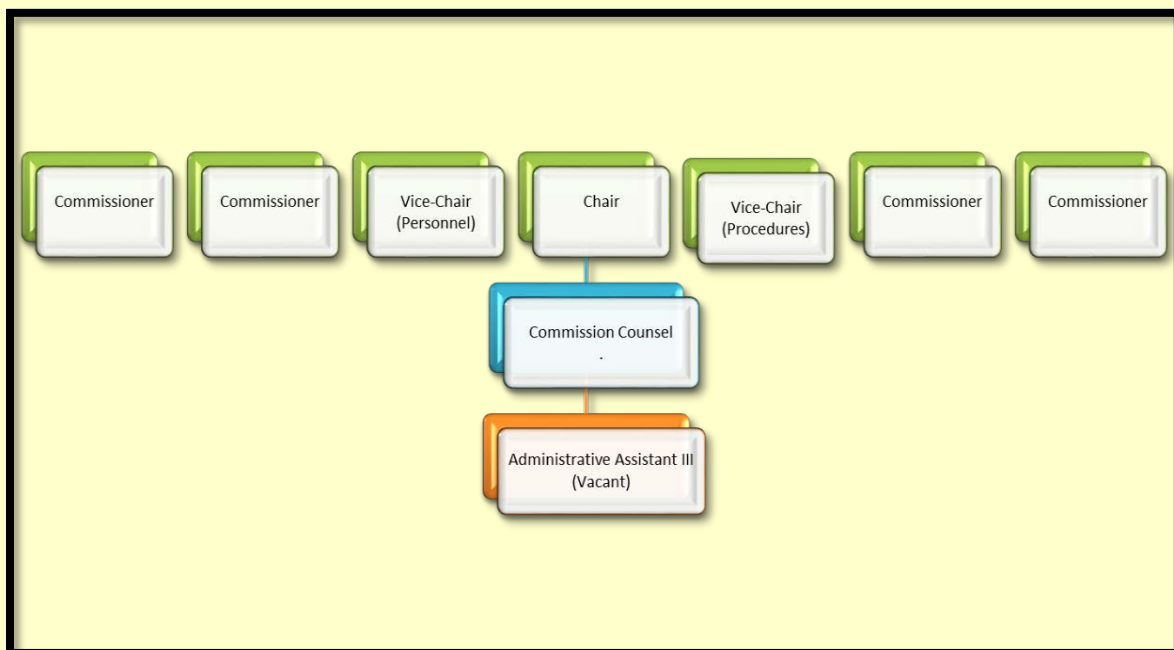
Of the Commission's six members, three members represent New Castle County, one member represents Kent County and two members represent Sussex County. The Commission had one vacancy which will likely be filled in early 2022.

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 nine years.

C. Organizational Chart



D. Biographies of Commissioners

Andrew T. Manus Chair



Mr. Manus was confirmed as a Commissioner on March 28, 2018, for a seven-year term expiring in March 2025. He was elected Chairperson in 2020 and again in 2021. 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 Mr. Manus 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/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).

Michele Whetzel ***Vice-Chair***



Mrs. Whetzel was confirmed as a Commissioner on June 15, 2016, for a seven-year term expiring in 2023. Mrs. Whetzel was Vice Chair, Personnel from 2016 through 2019. She was elected Vice, Chair Policies and Procedures in 2020 and 2021.

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.

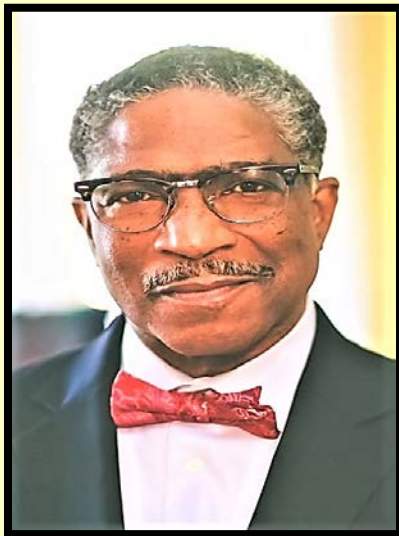
For over 25 years Mrs. Whetzel has been an active volunteer in the nonprofit sector, serving on the Ministry of Caring Guild Board (treasurer), the New Castle County Adopt-a-Family Board, and the Delaware Community Foundation Board. She recently completed a two-year term as Chair of the Fund for Women 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 12th year as a mentor through Creative Mentoring at Shue-Medill Middle School.

Mrs. Whetzel and her husband Robert reside in Newark.

(Hon.) Rourke A. Moore
Vice-Chair



Mr. Moore was appointed to the Commission on June 26, 2019, for a seven-year term, ending in 2026. He was elected Vice-Chair, Personnel in 2020 and 2021.

Mr. Moore is a native of Wilmington, Delaware. He graduated from Wilmington High School and earned a Bachelor of Arts degree in Psychology from Delaware State University. Mr. Moore continued his education and graduated from Clark Atlanta University with a Master of Arts degree in Counseling/Psychological Services.

After serving in the U.S. Air Force, Mr. Moore began his career in higher education. He has had a distinguished career in the public and private sector. Mr. Moore has held administrative and teaching positions with area colleges and universities and served as Vice President with Apex/Pryor Securities, an investment bank. He has been active in education, civic and community organizations. Mr. Moore is currently serving as a Reading Interventionist for Chester Community Charter School and is a Commissioned Ruling Elder of New Castle Presbytery. He is a Ruling Elder member of Council at Community Presbyterian Church. Mr. Moore serves as Moderator and COMC liaison of Christiana Presbyterian Church and liaison of New Castle Presbyterian Church.

Mr. Moore completed extensive graduate coursework in Human Resources at the University of Delaware. He is a former Delaware State Representative, a former President of the Board of Read Aloud/Delaware and Secretary to the Board of the Walnut Street Y. In addition, Mr. Moore is past Chair of the Grants Committee of the

African-American Empowerment Fund/Delaware, a Life Member of Kappa Alpha Psi, Fraternity, Inc. and a member of Star in the East Lodge #1 F & A.M. PHA.

Mr. Moore currently resides in Wilmington. He is the father of two adult children, Ian and Justin.

***Bonnie O'Day Smith
Commissioner***



Ms. Smith was appointed to the Public Integrity Commission on March 26, 2014. Her term was scheduled to expire on March 26, 2021. However, the appointment and confirmation of her successor was delayed by the COVID health crisis. Ms. Smith will continue to serve until her replacement has been appointed. Ms. Smith served as the Vice Chair of Personnel from 2014 to 2017, and was Chairperson from 2017 to 2020.

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.

Ms. Smith resides with her husband Thomas and their dog Greedy in Bridgeville, Delaware.

**(Hon.) F. Gary Simpson
Commissioner**



Senator Simpson was appointed to the Commission on June 19, 2019, for a seven-year term, ending in 2026.

Senator Simpson is a graduate of Milford High School. He has a Bachelor of Science in Pre-Veterinarian Medicine and a Master's of Science in Agricultural Economics, both from the University of Delaware.

Senator Simpson began his career as a 2nd Lieutenant in the U.S. Army Medical Service Corps. After his military service he spent a few years working as a real estate agent and then spent two decades as a management executive working for the Delaware State Fair and the Harrington Raceway. Senator Simpson returned to the University of Delaware as the

Assistant Director of University Relations from 1992 to 2012 and was a State Senator from 1998 to 2018.

Senator Simpson is a past board member of the Milford Housing Development Council; the Cape Henlopen Senior Center; March of Dimes; and a council member of the U of D Sea Grant Advisory Council. He has also served as a board and Executive Committee member for Bayhealth Medical Center, Milford Memorial Hospital and the Council of State Governments where he was Chair of the Agriculture Committee for the Eastern Region. Senator Simpson was previously President of the Milford High School Alumni Association, a charter member and President of the Delaware 4-H Foundation, member and Elder of the Milford First Presbyterian Church and a softball coach and umpire. He most recently stepped down from the Delaware Economic & Financial Advisory Council and the Southern Region Education Board.

Senator Simpson is a board and Executive Committee member for the Delaware State Fair, Inc. and is a member and board member of Eagle's Nest Fellowship Church.

Senator Simpson has received numerous awards for his community involvement including: Order of the First State, as ordered by Governor John Carney; Legislator of the Year, Delaware State Chamber of Commerce; Conservator of the Year, Conservation Service; Legislative Friend of Education Award, Delaware State Education Assoc.; Eagle Award, Associated Builders & Contractors, Inc.; Legislator of the Year, Delaware Standardbred Breeders Association.

Senator Simpson resides in Middletown with his wife, Debbie. They have three daughters and seven grandchildren.

**Marjorie Biles
Commissioner**



A life-long Delawarean, Ms. Biles grew up in Rehoboth Beach and graduated from Rehoboth High School. She subsequently earned a Bachelor of Science Degree in Business Management from Wilmington University.

Ms. Biles was employed by PNC Bank as a Customer Relations Representative and Teller Supervisor for 20 years. Following her career in banking, Ms. Biles worked for U.S. Senator Thomas Carper as a Constituent Relations Representative for 13 years, retiring in 2014.

Ms. Biles is a member of Faith United Methodist Church. She is also a member of the Dover (DE) Chapter of The Links Incorporated and Epsilon Iota Omega Chapter (Dover) of Alpha Kappa Alpha Sorority Incorporated. She serves on the Wilmington Trust Scholarship Board of Sussex County, the Rehoboth Beach Historical Society Board and is affiliated with the Cancer Support Community Delaware.

Past affiliations include: Board of Directors for the Sussex YMCA, Sussex County Democratic Executive Committee, and the Dr. Martin Luther King Organization of Sussex County.

Ms. Biles continues to reside in Rehoboth Beach, Delaware. She has two sons and three grandchildren.

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.

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, Brian.



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), honorary State officials (approximately **2200** appointees to more than **300** Boards and Commissions), as well as public/charter school employees. Approximately **30,000** 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 **2021**, local governments who had adopted their own Codes of Conduct included:

New Castle County
Dover
Lewes

Millsboro
Newark
Smyrna

Delaware City
Georgetown
City of Wilmington

As these municipalities have their own Code, the Commission no longer has jurisdiction over their employees, officers, and appointed officials. The remaining 48 local governments are under the 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, the 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 the 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 **2021**, the PIC referred **2** matters to the Attorney General’s office involving violations of 29 Del. C. §§ 5805 (conflicts of interest).

(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).

Case Law Regarding Jurisdiction:

In 2019, Commission Counsel successfully argued to the Delaware Superior Court that the PIC did not proceed improperly, or exceed their authority, by dismissing a Complaint filed against a state-employed attorney who was also subject to the Delaware Lawyers' Rules of Professional Conduct. On appeal, the decision was upheld by the Delaware Supreme Court which issued their *en banc* opinion on February 25, 2019. (See *Abbott v. PIC*, No. 155, 2018, C.A. No. N16A-09-009 FWW (Del. Supr., February 25, 2019).





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 ensured 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 **366** Financial Disclosure filings between January 1st and March 15th in **2021**. As State candidates must also file, the number of filers per year varies depending on the number of statewide elections in a given year. **2021** was not an election year, consequently, the Commission collected **0** financial disclosures from non-incumbent candidates.

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 of 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:

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 (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, flextime 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 ensure 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 **2021**, 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 the PIC. While the 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 the 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 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 **2021**, **366** lobbyists, representing **891** 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 **3564** expense reports annually. 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 **2021**, lobbyists reported expenditures totaling **\$19,023.37**. That is approximately

74% less than the amount of money lobbyists spent in 2019. The difference is likely attributable to the COVID pandemic and the resulting limitations on social gatherings.

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.

In **2021**, the Department of Technology (DTI) and the Government Information Center (GIC) collaborated with the PIC to re-build and update PIRS. The new system is more user-friendly and intuitive. It also has additional security to protect the State's data. The new & improved PIRS was launched in August 2021.



Penalties:

Administrative: The 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 the 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 and only **4** delinquent lobbyists in the 4th quarter of **2021**.

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 **CY2021**, PIC collected **\$4430** in late fees, which is slightly more than the amount collected in 2020. The Commission waived approximately \$2785 in late fees due to lobbyist log-on difficulties with the updated system.

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

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.

A comprehensive **1074-page** opinion synopses is available on the PIC's website. The synopses are sorted by topic and include a summary of all matters decided by the Commission from 1991 to 2021. As individuals encounter similar situations, they can refer to the synopses for general guidance. The website 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 **2021**, Commission Counsel presented **7** training classes to a total of **140** attendees. The training classes were presented to a wide variety of state, county, and municipal entities. In an effort to reach more State employees, the PIC created its own Ethics in Government online training module which

was available through the Department of Human Resources' training website. The online module did not replace the more in-depth, in-person training sessions. In **2021**, **558** employees completed the online module, a **50%** drop from 2020. The decrease is likely attributable to 'market saturation'. At the point of saturation, the best way for the PIC to attract new trainees is through new product improvements or a replacement of the existing training module which has been in place since 2015.

(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. Training and publications provide a broad, general view about the State Code of Conduct. However, the Commission's advisory opinions and waivers provide applicants with personal attention



on potential conflicts, 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.

The PIC's offices, Margaret O'Neill Building, Dover, Delaware



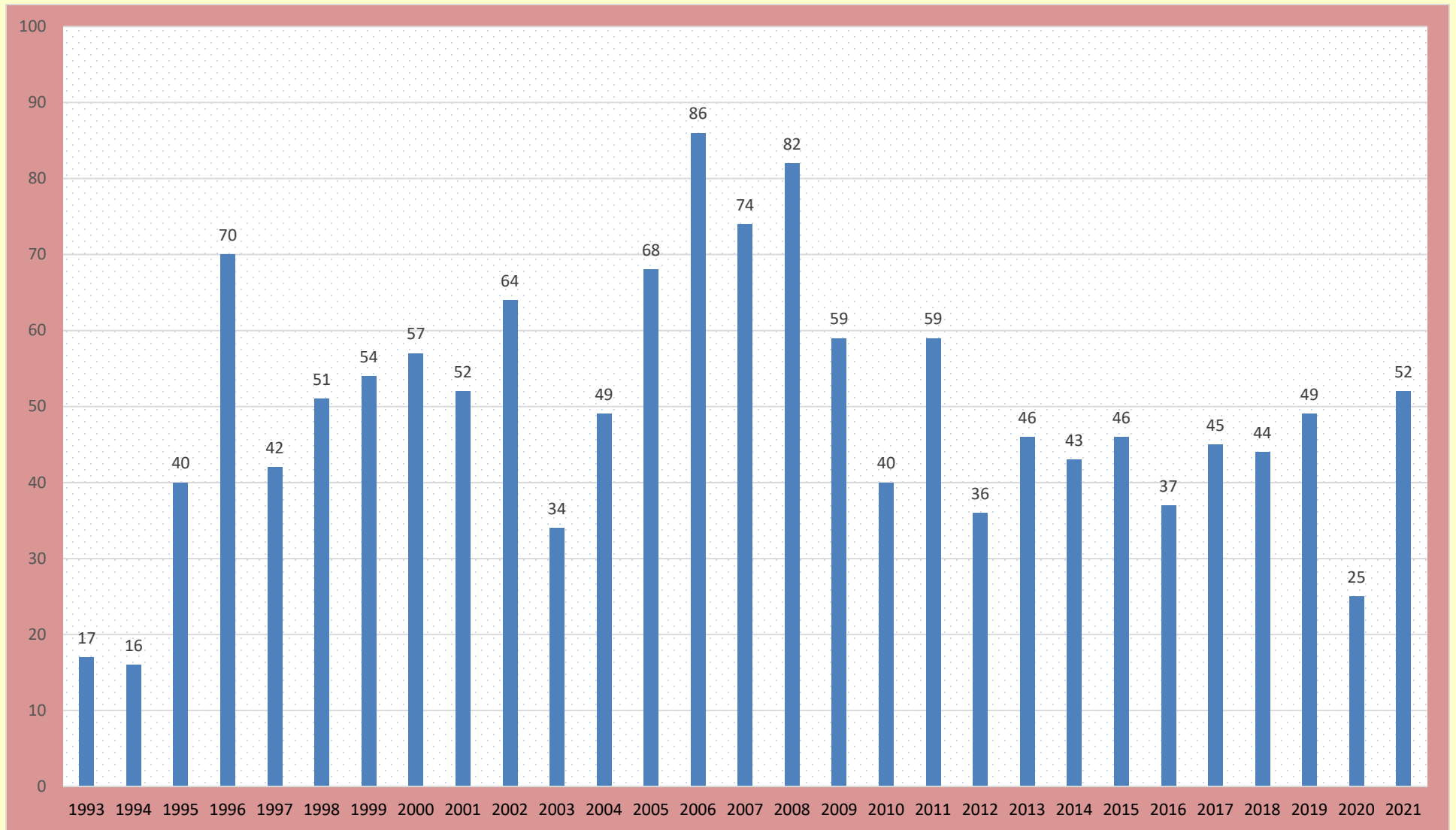
In **2021**, the PIC acted on **52** requests for written advice. **39** formal advisory opinions were issued by the Commission and Commission Counsel responded to **13** requests for informal written advice. (See chart below). The number of requests for opinions is roughly the same number of requests the Commission processed last year. The COVID pandemic is likely responsible for the drop in numbers of matters before the Commission.

The most commonly sought-after advice topics include:



Gifts
Meals
Post-retirement employment

Number of Opinions Issued 1991-2021



(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 **2021**, **1** waiver was granted. *Commission Op. No. 21-32*. (See Appendix A). When a waiver is granted, the proceedings become a matter of public record. Copies of those decisions are also available on the PIC’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 **2021**, the Commission received **4** properly submitted complaints and conducted **3** investigations. All four Complaints were dismissed for failure to properly allege a violation of the 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).

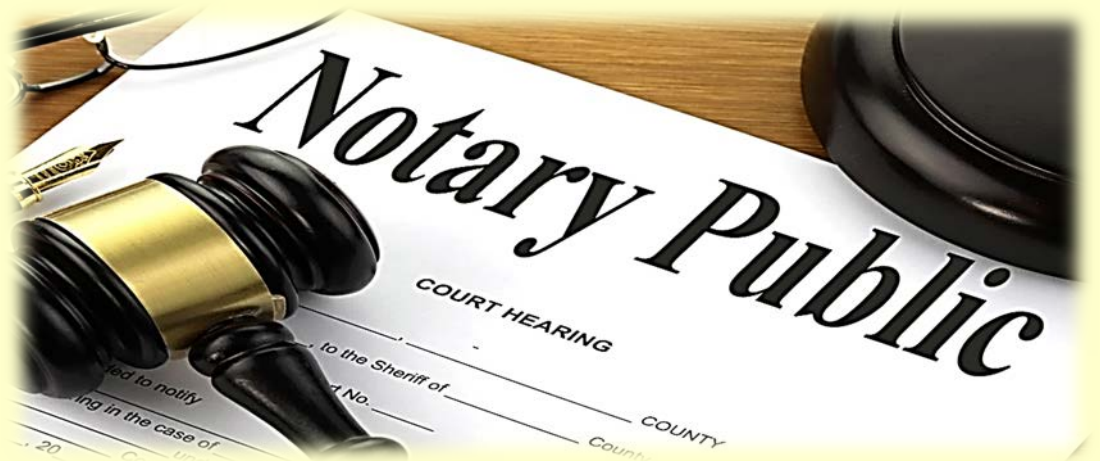
(signature of notarial officer)

(Seal)

(title and rank)

(my commission expires:.....)

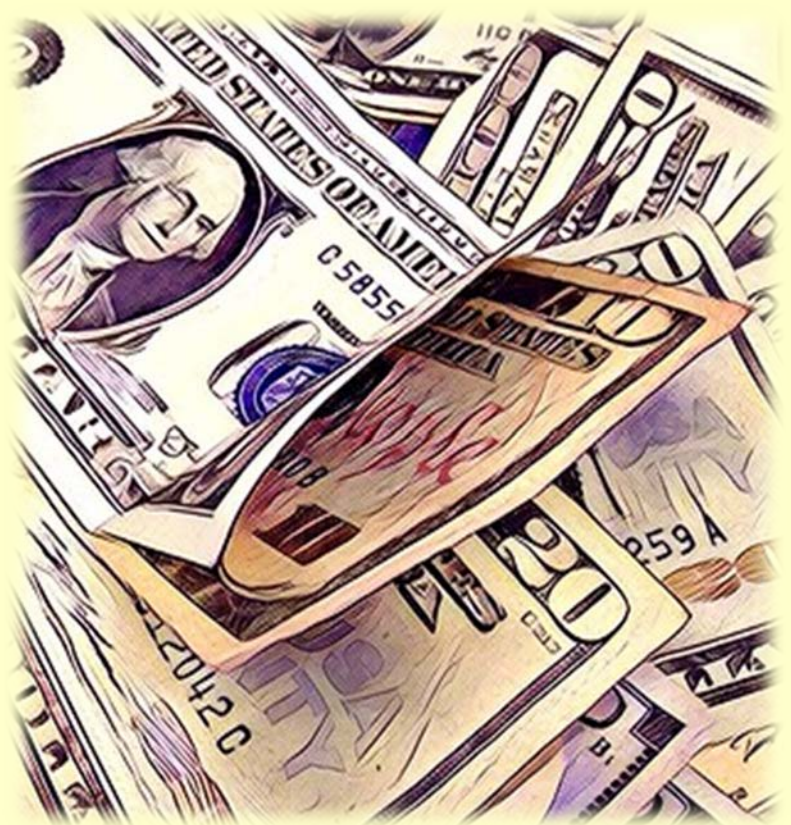
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VI. Funding

In **FY 2022**, which includes the last half of the 2021 calendar year, the General Assembly appropriated **\$188,800** for the PIC, with an **operating budget of \$18,500**. That amount is the third lowest operating budget since the PIC was created in 1996 when the operating budget was \$40,100. Today, the 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, the PIC's duties continue to increase.





VII. Legislation

During the 2021 legislative session HB 217 was introduced which required members of the General Assembly to abide by the State Code of Conduct's two-year post-employment restriction under certain circumstances.



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

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VIA EMAIL

October 12, 2021

21-32—Post Employment (Waiver Granted)

Hearing and Decision By: Andrew T. Manus, (Chair); Michele Whetzel (Vice-Chair), Rourke Moore (Vice-Chair); Commissioners: Bonnie Smith, Marjorie Biles

Dear Ms. Catalon,

Thank you for participating in the September 21, 2021, Public Integrity Commission meeting which was held via Zoom videoconference. After considering all the relevant facts and circumstances, the Commission decided that hiring Ms. Nonnenmacher as a contractor would violate the post-employment restriction in the Code of Conduct. However, due to the time-limited nature of the project she would be working on, the Commission decided to grant an 18-month waiver. The Commission's reasoning is set forth below.

I. FACTS

You are the Director of the Division of Developmental Disabilities Services (“DDDS”) within the Department of Health and Social Services (“DHSS”). Prior to your appointment as Director, you were Deputy Director of the Division under Marie Nonnenmacher.

According to your written submission, “the American Rescue Plan Act of 2021 provides states a time-limited opportunity to expand and enhance Medicaid Home and Community-Based Services. The division’s Medicaid cost allocation efforts currently enables DDDS to leverage over \$2M a year to support the cost of administering existing Medicaid programs for people with intellectual/developmental disabilities. As those programs are expanded and enhanced, it will be essential that the existing cost allocation plan keeps pace with that growth; failing to do so will result in a loss of federal revenue and a higher cost to the State of Delaware to administer those programs. Additionally, an expansion of services will necessitate the development of new or adjusted service rates. DDDS needs technical assistance with this rate development and rate studies.” Essentially, the American Rescue Plan will pay for extra client services if DDDS expands their services during a prescribed time period. The Federal government will continue to pay for some or all of those services as long as DDDS has developed Medicaid cost allocation and rate setting methods to support the extra reimbursement.

Ms. Nonnenmacher was Director of DDDS from February 2018 through July 2020. Before then, Ms. Nonnenmacher was Deputy Director of DDDS from November 2012 through August 2017. She also worked for a couple of other State agencies in the years prior to her time at DDDS, including the Division of Medicaid and Medical Assistance and the Department of Services for Children, Youth and their Families. In your request letter, you stated that Ms. Nonnenmacher acquired the job skills necessary for Medicaid cost allocation and rate setting methods while employed at the Division of Medicaid, not during her employment with DDDS.

You asked the Commission if contracting with Ms. Nonnenmacher would violate the two-year post-employment restriction in the Code of Conduct.

II. APPLICATION OF THE FACTS TO THE LAW

A. For 2 years after leaving State employment, State employees may not represent or otherwise assist a private enterprise on matters involving the State, if they are matters where the former employee: (1) gave an opinion; (2) conducted an investigation, or (3) were otherwise directly and materially responsible for the matter while employed by the State.

One reason for post-employment restrictions is to allay concerns by the public that ex-government employees may exercise undue influence on their previous co-workers and colleagues. Nevertheless, Delaware Courts have held that although there may be a subject matter overlap in the State work and the post-employment work, that where a former State official was not involved in a particular matter while with the State, then he was not “directly and materially responsible” for that matter. In *Beebe*, while with the State, an official’s responsibilities were to review and make decisions on applications from hospitals to expand their services. It was alleged that he was violating the post-employment law because after he left the State he was representing a hospital on its application. However, the Court found that as to the particular application before his former agency for Nanticoke Hospital, he had not been involved in that matter while with the State, so he was not “directly and materially responsible” for that particular matter.

The Federal Courts have stated that “matter” must be defined broadly enough to prevent conflicts of interest, without defining it so broadly that the government loses the services of those who contemplate private careers after their public service. To decide if Ms. Nonnenmacher would be working on the same “matter,” Courts have held that it is the same “matter” if it involves the same basic facts, the same parties, related issues and the same confidential information. Similarly, this Commission has held that the facts must overlap substantially.

To ascertain if there is substantial overlap, the Commission compares the duties and responsibilities during employment to the post-employment activities. Like the matter in *Beebe*, Ms. Nonnenmacher worked on the subject matter, health services, while working for the State. However, the court in *Beebe* drew a specific line between the subject matter and its application to specific facts. In this case, Ms. Nonnenmacher has specific knowledge that would benefit DDDS. While she is a former employee of DDDS, she acquired the necessary skills during her employment with a different State agency prior to 2012. Additionally, Ms. Nonnenmacher’s job duties while employed by DDDS did not include Medicaid rate setting and cost allocation. Therefore, it could not have been a duty for which she was materially responsible, while employed by the State.

However, permitting Ms. Nonnenmacher to engage in such activities would distort the purpose of the post-employment provision by allowing a former employee to get a “leg up” on other private enterprises that deal with the State. As to the specific issue of contracting with her former agency, Delaware Courts have noted that where government officials seek contracts with their governmental

entity, that the award of such contracts "has been suspect, often because of alleged favoritism, undue influence, conflict and the like." The Code of Conduct was subsequently enacted with restrictions, such as the post-employment law, which aids in avoiding those very types of allegations and suspicions.

As a consequence, hiring Ms. Nonnenmacher as a contractor is likely to create an appearance of impropriety.

B. Employees may not engage in conduct that may raise suspicion among the public that they are engaging in conduct contrary to the public trust.

The purpose of the code is to ensure that there is not only no actual violation, but also not even a "justifiable impression" of a violation. The Commission treats that as an appearance of impropriety standard. 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. Thus, in deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances. 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.

Hiring Ms. Nonnenmacher as a contractor to her former division would likely create an appearance of impropriety amongst the public because she recently retired from the same division with which she wants to contract. The public is likely to believe that she obtained a contract with DDDS as a direct result of contact with her former colleagues. Having decided that contracting with Ms. Nonnenmacher would create an appearance of impropriety, the Commission next considered whether to grant a waiver.

C. Waivers may be granted if there would be an undue hardship on the State employee or State agency, or the literal application of the law is not necessary to serve the public purpose.

(a) Undue Hardship

A waiver may be granted if there is an "undue hardship" on the applicant or the agency. "Undue" means "more than required" or is "excessive."

The American Rescue Plan's invitation to expand services is time limited. At the meeting, you stated that hiring contractors with Ms. Nonnenmacher's skills would become almost impossible in the near future because other states are also planning to take advantage of the American Rescue Plan's proposal to increase covered services for vulnerable populations. As the state's compete with each other to hire staff or contractors with the necessary job skills, the pool of qualified applicants will shrink significantly. You are trying to get ahead of the game by asking permission to contract with Ms. Nonnenmacher while her services are still available.

It is important to note that the time limitation you must abide by is one that is imposed by the federal government. Your Division has no control over that time limitation and you are concerned that if you don't get started quickly, you may lose this opportunity to expand services to your clients. Furthermore, you do not have the time to go through the traditional hiring or contracting process. Given the circumstances, the Commission decided that the time-limitation, and the need to hire an employee or contractor with special skills, created a hardship for DDDS.

(b) Is literal application of the law necessary to serve the public purpose?

The overall purpose of the Code of Conduct is to instill the public's confidence in its government. The statute was designed to protect against self-dealing and its enforcement is generally the best way to serve the public purpose.

This is a one-time offer by the federal government to cover the costs of services provided to citizens with developmental disabilities. The program is time limited and your Division must devise Medicaid reimbursement rates and rate setting methods to qualify for the extra funding. Once the new services have been developed, the federal government will continue to pay for those services after the American Rescue Plan ends. In essence, your Division has an opportunity to expand services to your clients, at the federal government's expense.

The Commission decided that it would best serve the public purpose to grant a waiver to Ms. Nonnenmacher and DDDS to allow you to contract with her for the necessary services. The waiver will be in place for 18 months. A waiver of limited length assures the public that the waiver exists for a specific purpose, thus reducing the public's concerns about self-dealing while also promoting the public's confidence in their government. If you cannot complete your project before the expiration of the waiver, you should return to the Commission for further advice.

III. CONCLUSION

Contracting with Ms. Nonnenmacher would violate the two-year post-employment restriction in the Code of Conduct. However, the Commission has decided to issue a waiver for 18 months because obtaining additional services for DDDS' clients best serves the public purpose.

Sincerely,

/s/ Andrew T. Manus

Andrew T. Manus
Chair