State of Delaware Public Integrity Commission



Andrew T. Manus, Chair Michele Whetzel & (Hon.) Rourke Moore, Vice-Chairs

> Commissioners (Hon.) F. Gary Simpson * Marjorie Biles * Ronald Chaney * Judge (Ret.) Alex Smalls

Published March 3, 2023

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

Jurisdictional History

 State Ethics--Executive Branch officers and employees, including casual/seasonal; (over 30,000); non-legislative elected officials; State Board and Commission appointees (in 2022, 1991 over 300 Boards and Commissions with approximately 2200 appointees). 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 1993 2022, only 9 have an approved Code, leaving PIC with 48 local jurisdictions). Dual Compensation--State and local employees and officials with a second elected or paid appointed job in government. 1994 Financial Disclosures--Elected officials; State candidates; Judges, Cabinet Secretaries, Division Directors and equivalents. (2022: 440 officers filed). 1995 Lobbying--State lobbyists registration, authorization and expense reports (2022: 341 lobbyists; 1597 organizations; over 6000 expense reports). 1996 Ethics--added oversight of School Districts and Boards of Education. 2000 • Ethics--added oversight of Charter School Boards of Education. 2001 Organizational Disclosures--State elected officials & candidates must disclose private organizations if they are Board or Council members. Newark Housing Authority--Newark's Code of Conduct included the Authority, but the General 2010 Assembly changed the law to make it a State agency so that PIC would have jurisdiction. 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 actions.

2012

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 **2022**, we said goodbye to Commissioner Bonnie Smith and welcomed Ronald Chaney and Judge (Ret.) Alex Smalls to the Commission. The Commission is fully staffed with seven Commissioners.

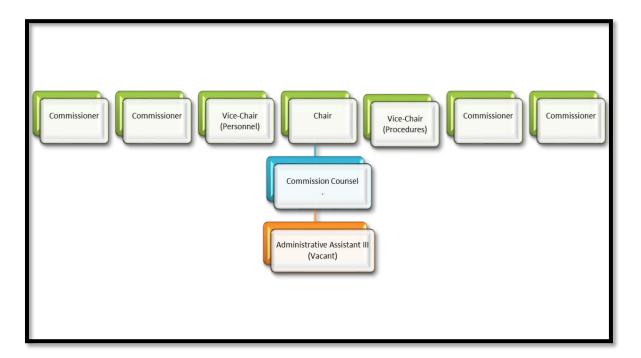
Of the Commission's seven members, four members represent New Castle County, one member represents Kent County and two members represent Sussex County.

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 ten 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, 2021 and again in 2022. 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 Community



currently the Executive Vice President and Chief Financial Officer for her family's property management business, Thinking Eye Dog, LLC.

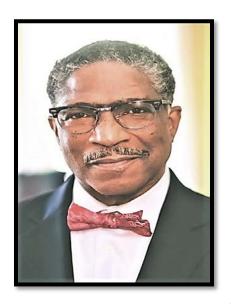
For over 25 years Mrs. Whetzel has been an active volunteer in the nonprofit sector, serving on the Ministry of Caring Guild Board (treasurer), the New Castle County Adopta-Family Board, and the Delaware Community Foundation Board. She recently completed a two-year term as Chair of the Fund for Women 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 ERA*Now.* 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, lan and Justin.

(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 lota 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 the nation's favorite beach town, Rehoboth Beach, Delaware. She has two sons and three grandchildren.

Ronald Chaney Commissioner

Mr. Chaney was appointed to the Commission on March 9, 2022, for a seven-year term, ending in 2029.

A graduate of Woodbridge High School and the University of Delaware, Mr. Chaney also attended The Delaware Law School and graduate school at UD.

Mr. Chaney was commissioned as an Infantry Officer in the United States Army, serving twenty-one years, during which he deployed multiple times. Among other assignments, Mr. Chaney was Deputy Ground Component Commander for Operation Vigilant Warrior in Southeast Asia and the J3, Director of Operations for US Forces Haiti. In his final assignment, as Chief of the Combat Maneuver Division on the Army Staff, he managed Army procurement program



funding for all Infantry, Armor, Engineer, Soldier Systems and Combat ID programs, totaling over four billion dollars annually. His military awards and decorations include the Legion of Merit and the Joint Meritorious Service Medal. Mr. Chaney is one of only a few Officers to ever be awarded the Tomb of the Unknown Soldier Identification Badge, and also has the Expert Infantryman's Badge, Airborne Badge and the Army Staff Badge. He was inducted into the Order of Saint Maurice, the US Army Infantry's Honor Society.

After retirement, Mr. Chaney worked in the Defense Industry; first with SYColeman, Inc, where he became Vice President of Programs, and then with ESP, LLC, where he was Director of Operations for the National Capital Region.

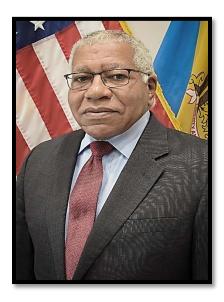
In 2015, Mr. Chaney was asked to assume responsibilities as the Director of Ceremonies for the Military District of Washington, where he planned, coordinated and managed engagement events with national strategic importance. He advised the President, Vice President, Secretary of State, Secretary of Defense and the Chairman of the Joint Chiefs; coordinated directly with Heads of State and Heads of Government throughout the world and provided direct oversight of ceremonial support to the 58th Presidential Inauguration. Civilian awards include the Meritorious Service Award (twice) and the Superior Service Award.

Mr. Chaney is a past member of the Randolph Macon Woman's College Board of Advisors and the Azalea Charities Board of Directors (Co-chair of the Aid for Wounded Warriors Committee). He served on the ESP, LLC Board of Directors, the R&M Buses Inc. Board of Directors, and Co-chaired the URS Coleman Board of Directors. He also

was a member of the Liberty County (GA) School Board. He continues to serve his community on his neighborhood Advisory Committee and Transition Committee (Chair) and Architectural Review Committee (Chair). He currently is a member of the Rehoboth Beach Country Club's Long Range Planning Committee.

Mr. Chaney and his wife, Betsy, returned to Delaware in 2018 and reside in Rehoboth Beach. Continuing the commitment to service, they have one daughter, married to a US Navy Captain, and two grandchildren.

Judge (Ret.) Alex J. Smalls, Jr. Commissioner



Chief Judge (Ret.) Smalls was appointed to the Commission on March 9, 2022, for a term to end on April 25, 2025.

Judge Smalls retired from the Delaware Court of Common Pleas in May 2021, after 29 years on the bench. Judge Smalls was appointed or reappointed by four different governors and served under five different Delaware Supreme Court Chief Justices. Judge Smalls was the longest-serving Chief Judge of any Delaware State Court in history.

Judge Smalls graduated from Morgan State University in Baltimore with a BA in Political Science and went on to earn his law degree from Rutgers University School of Law. He began his public sector career in March 1980 as

a Deputy Attorney General for the State of Delaware in the criminal division, and later joined the City of Wilmington as Commissioner of Licenses and Inspections in 1985. He then became the city's Director of Public Safety from 1985 until joining the bench in 1991.

Judge Smalls' career on the bench began in the former Municipal Court for the City of Wilmington in 1991, where he served with Judge Leonard L. Williams. In 1993, he was appointed to the Court of Common Pleas and was elevated to the position of Chief Judge in 1997, making him the first African American to serve as a Chief or President Judge of any Delaware State Court. As Chief Judge, he oversaw Wilmington Municipal Court being merged into the Court of Common Pleas in 1998, a change that made the Court of Common Pleas a truly statewide misdemeanor court. In addition, Chief Judge Smalls oversaw an increase in both the size and jurisdiction of the court during his tenure. This included an increase in the number of Court of Common Pleas judges from five to nine, expansion of the court's criminal and civil jurisdiction, and broadening of the court's role as an appellate court for the Justice of the Peace Court and Alderman's Courts. He also oversaw and implemented numerous innovations including the creation of drug diversion programs and specialty courts such as the DUI Court. He was also instrumental in the creation and launch of the Wilmington Community Court program.

Judge Smalls also previously served on: the Governor's Justice Reinvestment Task Force; the Delaware Racial Justice Improvement Project Task Force; the Delaware Criminal Justice Council; the Board of Directors of the Layton Home; the Board of Trustees for both St. Edmond's Academy for Boys and Ezion-Mount Carmel United Methodist Church; and was the Chairman of the Community Legal Society.

Judge Smalls is enjoying his retirement in Delaware.

E. 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".

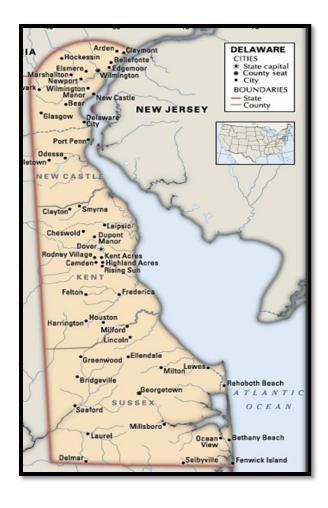
Subchapter IV, Lobbying

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 **2022**, local governments who had adopted their own Codes of Conduct included:

New Castle CountyMillsboroDelaware CityDoverNewarkGeorgetownLewesSmyrnaCity 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 **2022**, the PIC referred **1** matter 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 financial the 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 Legislators Conduct; 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 **374** Financial Disclosure filings between January 1st and March 15th in **2022**. As State candidates must also file, the number of filers per year varies depending on the number of statewide elections in a given year. **2022** was an election year, consequently, the Commission collected **66** additional 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 disclosure 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 **2022**, the 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 **2022**, **341** lobbyists, representing **597** organizations, were registered.

Reporting Requirements:

Each lobbyist files quarterly reports revealing direct expenditures on General Assembly members and/or State agency members. 29 *Del. C.* § 5835(c). That results in **6388** 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 **2022**, lobbyists reported expenditures totaling **\$50,942.85**. After a 74% drop in 2021 (due to the COVID pandemic), lobbyist expenditures are increasing back to pre-pandemic levels.

Lobbyist Expenses

Year	Food & Refresh	Entertainment	Lodging	Travel	Recreation	Travel	Total
2022	\$20,527.24	\$15,899.00	\$400.00	\$796.29	\$45.00	\$13,275.32	\$50,942.85
2021	\$5,408.51	\$7,828.50	\$0.00	\$0.00	\$225.00	\$5,561.36	\$19,023.37
2020	\$24,277.89	\$451.00	\$0.00	\$0.00	\$130.00	\$4,946.93	\$29,805.82
2019	\$57,931.14	\$4,620.00	\$970.30	\$2,764.26	\$1,048.00	\$4,326.98	\$71,660.68

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, influencing opposing, or 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 2021, the Public Integrity Reporting System (PIRS) was updated to be more user-friendly. Public 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: 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 **2022**.

Financial: As a result of the increasing number of delinquent filers, in 2014 the 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 **CY2022**, the PIC collected **\$4610** in late fees, which was slightly more than the amount collected in 2021.



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

(A)Training & 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 2022. 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 **2022**, Commission Counsel presented **20** training classes to a total of **415** 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 purchased a professional training module which was

available to employees through the Department of Human Resources' training website. The online module did not replace the more in-depth, in-person training sessions. In **2022, 498** 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 to provide new material. The PIC expects to have a new training module available to all State employees in Spring 2023.

(B) 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, 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, 410 Federal Street, 2nd Floor, Dover, Delaware 19901



In 2022, the PIC acted on 53 requests for written advice. 43 formal advisory opinions were issued by the Commission and Commission Counsel responded to 10 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 most commonly sought-after advice topics include:

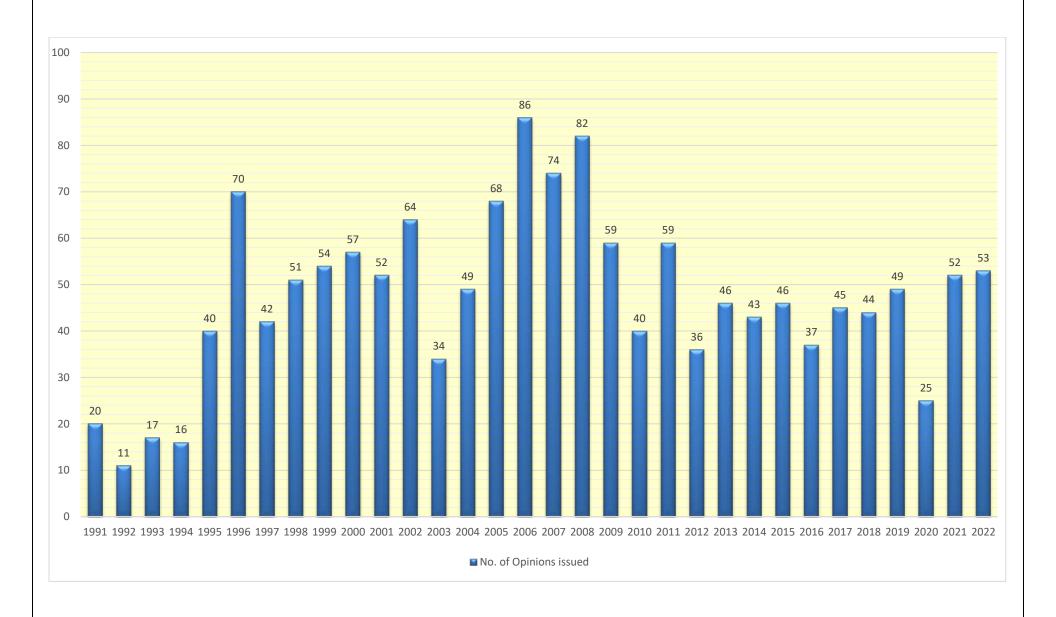






Gifts
Meals
Post-retirement employment

Number of Opinions Issued 1991-2022



(C) 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 **2022**, **5** waivers were granted. *Commission Op. Nos. 22-01; 22-06; 22-19; 22-20; 22-30.* (See Appendices A-E). 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.

(D) Complaints - 29 Del. C. § 5810(a)

Any person, public or private, can file a sworn complaint. The Commission may act on the sworn complaint, or its own initiative. A majority (4) must find "reasonable grounds to believe" a violation may

have occurred. 29 Del. C. § 5808(A)(a)(4). If probable cause is found, the Commission may conduct a disciplinary hearing. 29 Del. C. § 5810. The person charged has statutory rights of notice and due process. Violations must be proven by clear and convincing evidence. If a violation is found, the Commission may 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).



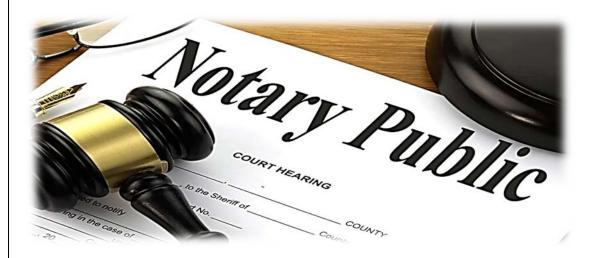
In **2022**, the Commission received **4** properly submitted Complaints. Three were dismissed, after investigation, for failure to properly allege a violation of the Code of Conduct and 1 was referred to the Delaware Division of Revenue for investigation and follow-up.



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).						
(signatur	e of notarial officer)					
(title and	d rank) mission expires:)					

(Not an actual image)





V. FOIA Requests

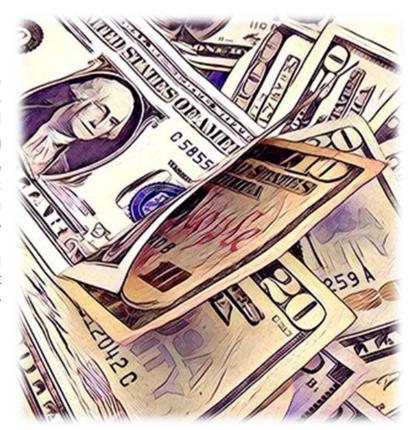


In **2022**, the PIC responded to **19** requests for information under the Freedom of Information Act (FOIA). The FOIA requests were submitted by a mix of news media, citizens, and private political organizations. Due to the efficiencies of the PIRS database, PIC was able to respond to a majority of those requests within 5 days and responded to all of the requests within the statutory time period of 15 business days.



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 25 years. Meanwhile, the PIC's duties continue to increase.





VII. Legislation

In **2022**, Commission Counsel participated in a working group created for the purpose of updating the Code of Conduct's definition of 'family' and to include the word 'nepotism' in the conflicts of interest statute. Members of the working group included staff from the Delaware House of Representatives, a State Senator, a State Representative and the President of Common Cause Delaware. The legislation is expected to be introduced during the 2023 legislative session.



VIII.Future Goals

The PIC participated in Global Ethics Day, held on October 19, 2022, with the theme of Ethics Empowered. Established by Carnegie Council for Ethics in International Affairs, Global Ethics Day is an annual event designed to empower ethics through the actions of both individuals and organizations. Starting in 2014, citizens, businesses, professional organizations and governments from over 75 countries have participated in Global Ethics Day. In advance of the event, Governor John Carney signed a proclamation acknowledging Global Ethics Day in Delaware and encouraged State employees to "re-dedicate" themselves to workplace ethics. The PIC plans to celebrate the event again in 2023.

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



OFFICE OF THE GOVERNOR

PROCLAMATION IN OBSERVANCE OF GLOBAL ETHICS DAY

Whereas, the State of Delaware instituted the State Code of Conduct in 1992 to set forth specific standards of ethical conduct required of State officials and employees while also strengthening the public's confidence in their government; and

Whereas, the State Public Integrity Commission was formed in 1995 to enforce the State Code of Conduct and to educate State employees and officials about the ethics guidelines; and

Whereas, established by the Carnegie Council for Ethics in International Affairs, Global Ethics Day is an annual event. Since 2014, citizens; businesses; professional organizations; schools; governments; and nonprofits from over 75 countries have participated in Global Ethics Day. This year's theme is Ethics Empowered; and

Whereas, in support of Ethics Empowered, the Public Integrity Commission announces that it has received funding to provide online ethics training to over 30,000 State employees and officials over the next three years.

Now, Therefore, We, John C. Carney, Governor, and Bethany A. Hall-Long, Lieutenant Governor, do hereby declare October 19th, 2022

GLOBAL ETHICS DAY

in the State of Delaware, and encourage all State employees and officials to rededicate themselves to ethics in government by completing the training provided by the State Public Integrity Commission.

OF DELAWRENCE

John C. Carney

Bothany N. Wall-Bethany A. Wall-Long Lieutenant Governor

> 17-4280 Number



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

TELEPHONE: (302) 739-2399

VIA EMAIL

February 8, 2022

22-01 Conflict of Interest (Waiver Granted)

Hearing and Decision By: Andrew T. Manus, (Chair); Commissioners: Bonnie Smith; F. Gary Simpson; Marjorie Biles
Rourke Moore (Vice-Chair) recusing

Dear Deputy Commissioner Merced, Mr. Snyder and DAG Makowski,

Thank you for participating in the January 18, 2022, Public Integrity Commission meeting which was held via Zoom videoconference. After consideration of all the relevant facts and circumstances, the Commission decided that Ms. Brittingham may be hired as a Director of BERG as long as she, and the agency, abide by the advice in this opinion letter.

I. FACTS

As you know, but by way of background, the Department of Insurance ("DOI") is made up of six divisions. The Director of the Bureau of Company Examination, Rehabilitation & Guarantee ("BERG") notified the DOI that he would be retiring on December 31, 2021. BERG oversees insurance company regulation and is responsible for conducting financial analysis and solvency determinations for Delaware-domiciled insurers. It also determines regulatory compliance with the Department's enabling statute.

Prior to the meeting, you provided the Commission with a copy of the DOI's organizational chart. Pertinent to this analysis, the BERG Director reports to the Insurance Commissioner. The Chief Insurance Financial Examiner ("CFE"), next in the reporting chain, reports to the Director. Financial Analysis Supervisors ("Ins. Fin. Analyst IV") report to the CFE and the Financial Analysts ("Ins. Fin. Analyst I and II") report to their assigned Financial Analysis Supervisor. "There are two supervisory levels between a Financial Analyst and the Director - the first level is the Financial Analysis Supervisor and the second level is the CFE."

The DOI published posting # 101121-MABZ51-120300 on October 13, 2021, for the BERG Director position and received two internal submissions. "One submission was from Nicole Brittingham, a Financial Analysis Supervisor, who is the biological sister of Danielle Hopp, a financial analyst." "In her current position, Ms. Brittingham has no supervisory responsibility over Ms. Hopp and does not review her work product." Both employees work from the DOI's office building in Dover. Ms. Brittingham has been employed by the DOI for over 20 years and Ms. Hopp for over 15 years. Neither employee has had any disciplinary problems and they

both produce excellent work product. The DOI has not received any complaints regarding the current arrangement.

On November 22, 2021, the DOI scheduled two rounds of interviews with both candidates. The interview panelists were Roberta Jones, the DOI's Human Resource Director, Tanisha Merced, Deputy Insurance Commissioner, the current BERG Director, and Kathleen Makowski, Deputy Attorney General. At the conclusion of the interviews, the panelists recommended selecting Ms. Brittingham as the next Director.

The DOI asked the Commission to determine whether Ms. Brittingham's selection as the Director of BERG would create a conflict of interest by virtue of her familial relationship with an employee in that same Division? If so, the DOI requested a waiver.

II. APPLICATION OF THE FACTS TO THE LAW

A. In their official capacity, a state employee, state officer or state official may not review or dispose of matters if they have a personal or private interest in a matter before them.

"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." As a matter of law, a person has a personal or private interest when they make official decisions about a close relative. A close relative is defined as "parents, spouse, children...and *siblings* of the whole and half-blood." 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." When there is a personal or private interest, the official is to recuse from the outset and even neutral and unbiased statements are prohibited. "[T]he decision as to whether a particular interest is sufficient to disqualify is necessarily a factual one and depends upon the circumstances of the particular case."

Ms. Brittingham and Ms. Hopp are sisters. As a consequence, Ms. Brittingham may not review or dispose of matters regarding Ms. Hopp, lest it create a conflict of interest. However, conflicts of interest are routinely cured by recusal. The DOI proposed reporting structure will require Ms. Hopp to report directly to the assigned Financial Analysis Supervisor and the CFE for employment-related matters. Should the matter need to be further addressed, the CFE will confer with the DOI's Chief of Staff. While that arrangement is intended to provide a level of separation between Ms. Brittingham and Ms. Hopp, the Supervisor and the CFE also report to Ms. Brittingham, effectively cancelling out the mitigating effect of the recusal. In large agencies, such a reporting structure may be permissible as long as there are other factors that reduce the likelihood of a conflict. Those factors may include multiple agency locations, dozens of supervisors and hundreds of employees. However, in this instance, the DOI is a relatively small agency with 80-100 employees, even fewer in the BARG. Most of those employees are located in the same building and, while job duties vary among employees, the work is all insurance related.

The Commission decided it would not be appropriate to ask the Financial Analysis Supervisor or the CFE to supervise an employee that is related to their own supervisor. It creates a separate conflict of interest for them. It is only when matters reach the supervisory level of the Chief of Staff that there appears to be sufficient independence of judgment to allow that person to make decisions about Ms. Hopp without fear of reprisal, thus removing the influence of conflict. As a consequence, Ms. Hopp should only be directly supervised by staff in the reporting structure that are on the same level as Ms. Brittingham or higher.

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.

In weighing the totality of the circumstances, the Commission considered that: Ms. Hopp will be working in the Division over which her sister is the Director; the two levels of supervision immediately above Ms. Hopp in the proposed chain of command are subject to supervision by the Director (the employee's sister); the small size of the agency; and the nexus between Ms. Brittingham's job duties and those of her sister. The Commission decided that all of those factors, when considered together, created an appearance of impropriety.

C. Waivers [of specific provisions of the Code of Conduct] 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.

Having found an appearance of impropriety, the Commission "may grant a waiver to the specific prohibitions contained therein if the Commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee, officer, official or state agency."

(1) "Undue hardship," means "more than required" or is "excessive."

You reported that there were only two applicants for the Director position. During the meeting, Ms. Merced stated that she asked several other employees why they did not apply for the position to which they responded that they needed more experience. Something that cannot be easily remedied or provided. Even after following up with employees, the response to the job posting was extremely limited. It would be another hardship to ask your agency to overlook a very well qualified candidate because of a familial relationship, if the reporting structure can be arranged to remove the influence of the conflict. Lastly, the Commission considered the fact that Ms. Brittingham has worked for the State for 20 years and Ms. Hopp for 15 years. It would be a hardship for the State to lose their valuable work experience. As a result of the above-described hardships, the Commission decided to grant a waiver to allow Ms. Brittingham to accept the position of Director. It is the agency's responsibility to arrange a reporting structure whereby Ms. Hopp reports to an employee that shares equal status (or higher) with Ms. Brittingham.

(2) 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. Publication of the waiver 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.

III. CONCLUSION

The Commission has granted a waiver to allow the DOI to hire Ms. Brittingham as the Director of BERG. Please follow the advice in this letter opinion/waiver and call if you have any further questions.

Sincerely,

Is Andrew 7. Manus



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

TELEPHONE: (302) 739-2399

VIA EMAIL

April 14, 2022

22-06—Brandywine School District-Post-Employment (Waiver Granted)

Hearing and Decision By: Andrew T. Manus, (Chair); Michele Whetzel (Vice-Chair); Rourke Moore (Vice-Chair); Commissioners: Sen. (ret.) F. Gary Simpson; Marjorie Biles; Ronald Chaney; Judge (ret.) Alex Smalls

Dear Dr. Warner,

Thank you for participating in the March 15, 2022, Commission meeting which you attended via Zoom videoconference. After consideration of the relevant facts and circumstances, the Commission decided to grant a hardship waiver of the post-employment restriction to allow the Brandywine School District to contract with a former employee who is prohibited from returning to the District as a contractor until February 2023. The Commission's reasoning is set forth below.

I. FACTS

Lauryn Elder was previously a Behavior Specialist with the Brandywine School District ("BSD" or "District") before resigning in February 2021 to work for a private business. Her job duties were districtwide, meaning she was not assigned to a specific school but would travel to different schools in the District. Ms. Elder's employment with the private business did not work out and she wanted to return to the BSD and work as a contractual Board-Certified Behavior Analyst ("BCBA"). Ms. Elder did not want to return as a full-time employee of the District.

You are the Director of Special Education for the BSD. The District has "two students with Individual Education Plan ("IEP") support needs requiring in-home BCBA services to address behavioral concerns." You reached out to the District's contractual BCBAs but were unable to find a professional that would provide in-home services. You then contacted Ms. Elder and she confirmed that she would be willing to accept the part-time contractual position but that she could not do so due to the two-year post-employment restriction in the Code of Conduct. You stated that if the District cannot contract with Ms. Elder, the District will be unable to comply with their Individuals with Disabilities Education Act ("IDEA") obligations. You stated that the contractual position is unlike Ms. Elder's previous State job because it requires home services, something Ms. Elder did not provide in the past.

You asked the Commission whether Ms. Elder's position as a part-time BSD contractor would violate the two-year post-employment restriction in the Code of Conduct. If so, you requested a hardship waiver.

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 exgovernment 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 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. Elder 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 determine if there would be substantial overlap, the Commission compared the duties and responsibilities during employment to the post-employment activities. Like the matter in *Beebe*, Ms. Elder worked on the subject matter, providing behavioral health services, while employed by the State. However, the court in *Beebe* drew a specific line between the subject matter and its application to specific facts. The Commission is to strive for consistency in their opinions.

The Commission considered whether the fact that Ms. Elder would provide home-based services in a slightly different capacity was enough of a difference to exclude her contractual work from the post-employment restriction in the Code of Conduct and decided it did not. Ms. Elder would be working for the same school district, in the same geographic location, with the same population of students. The Commission then considered whether the District qualified for a waiver.

B. 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.

Having decided that the post-employment restriction was applicable to this matter, the Commission "may grant a waiver to the specific prohibitions contained therein if the Commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee,

officer, official or state agency."

(1) 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."

It is difficult to think of a hardship more problematic than the District not being able to meet its federal IDEA obligations. Indeed, in a letter to the Delaware Secretary of Education dated June 24, 2021, the federal Director of the IDEA program, David Cantrell, PhD., advised that Delaware's rating in achieving IDEA compliance was "needs assistance". In addition, two students of your District have been underserved while the resolution of this matter was pending. Based on the foregoing, the Commission determined that the District qualified for a hardship waiver.

(2) 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. Publication of the waiver 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.

It is important to note that you, the Director of Special Education for the BSD, requested permission to hire Ms. Elder. The request was not made by a former State employee seeking to evade the confines of the post-employment restriction.

III. CONCLUSION

Based solely on these facts and circumstances, the Commission determined that the BSD qualifies for a waiver of the post-employment restriction to allow the hiring of Lauryn Elder as a contractor to provide in-home BSBA services to the two students identified by the BSD.

Sincerely,

ISI Andrew 7. Manus



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

TELEPHONE: (302) 739-2399

VIA EMAIL

September 14, 2022

22-19—Post-Employment (Waiver GRANTED)

Hearing and Decision By: Andrew T. Manus, (Chair); Michele Whetzel (Vice-Chair); Rourke Moore (Vice-Chair); Commissioners: Sen. (Ret.) F. Gary Simpson; Ronald Chaney, Judge (Ret.) Alex Smalls

Dear Ms. Wingert,

Thank you for participating in the August 16, 2022, Commission meeting, which you attended via Zoom videoconference. After consideration of the relevant facts and circumstances, the Commission decided that it would be a violation of the two-year post-employment restriction to allow your agency to contract with a former DTI employee. However, the Commission granted a waiver due to agency hardship. The Commission's reasoning is set forth below.

I. FACTS

You are the Director of Project Management within the Department of Technology and Information ("DTI"). Your office provides oversight of the Enterprise Information Technology Project and Program Portfolios from beginning to end. A project portfolio is a collection of projects that are similar in nature or meet a set of pre-defined criteria. Portfolio management is centralized management of multiple portfolios that facilitates identifying, evaluating, prioritizing, authorizing, and controlling projects or programs to achieve the organization's goals. You contacted the PIC on July 25, 2022, regarding the resignation of one of your employees and you submitted an email request for an advisory opinion on July 26, 2022.

Ray Veenema was previously employed as a Project/Portfolio Management System ("PPMS") Administrator. He resigned from his position on July 29, 2022. Mr. Veenema was the only employee that knew how to fully administer the system DTI uses to track and manage the State's IT projects. At the time of the August meeting, you had posted the vacancy internally to other DTI employees, but had not yet selected an applicant. Consequently, Mr. Veenema's replacement will be hired after his departure, leaving no time for training.

The manufacturer of the PPMS provides an online training program at a cost of \$3000 per person (two sessions). In your opinion, the training is adequate, but not customized to your use of the product. You want to extend a contract to Mr. Veenema to provide on-the-job training to the individual selected as his replacement (as well as yourself) for 5-8 hours per week for "a few months". You expected that he would charge approximately \$800 per person, a significant cost savings over the manufacturer's cost. Mr. Veenema has moved on to another full-time position but is willing to return on a limited basis to help train his replacement.

You asked the Commission for a waiver of the post-employment restriction to allow Mr. Veenema to return to DTI as a contractor for a limited term so that he may provide training to other DTI employees, including the person hired as his replacement.

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 exgovernment 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 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 Mr. Veenema 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.

In the matter at hand, there was no question that if Mr. Veenema were to return to DTI as a contractor, performing his former job duties, he would be violating the two-year post-employment restriction. The Commission then considered whether the agency qualified for a waiver of the post-employment restriction.

B. 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."

You stated that no other employees could properly teach the use of the PPMS, including yourself. Because the PPMS provides a comprehensive overview of all the technology projects in the state, it was reasonable for the Commission to assume that it served a critical purpose in the administration, maintenance and development of the State's technology infrastructure. As a consequence, the Commission agreed that the lack of on-the-job training for Mr. Veenema's replacement would create an undue hardship on the agency.

(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. However, the public also expects services from the State to be provided quickly, accurately and responsibly. In order to accomplish those goals, it was necessary for the Commission to grant a waiver to allow Mr. Veenema to return to DTI as a contractor for 5-8 hours a week, for a period of three months from the date of the first training. To receive the full benefit of this waiver, the Commission recommends that you train at least two other employees in the use of the PPMS. Factors considered in favor of the waiver included: limited work hours; duration of the waiver was relatively short; extreme need.

The Commission would like to point out that this situation was completely preventable. A sole employee should not be the only source of institutional knowledge. "Organizations spend a lot of time and resources developing knowledge and capability. While some of it gets translated into procedures and policies, most of it resides in the heads, hands, and hearts of individual managers and functional experts. Over time, much of this institutional knowledge moves away as people take on new jobs, relocate, or retire." Such is the case here. Mr. Veenema provided the requisite two-week notice. However, the length of the hiring process prevented you from hiring his replacement before he was able to provide on-the-job training to the person who will serve in his place.

III. CONCLUSION

The Commission GRANTS a limited waiver to allow DTI to contract with Mr. Veenema. The waiver is limited to 5-8 hours of training per week for a period of three months from the date of the first training. The number of employees receiving the training is for you to decide. Because a waiver was granted, this opinion will be printed in its entirety on our website. Please contact us if you have any questions.

Sincerely,

Isl Andrew 7. Manus



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VIA EMAIL

September 14, 2022

22-20 Cathy Thompson—Personal or Private Interest

Hearing and Decision By: Andrew T. Manus, (Chair); Michele Whetzel (Vice-Chair); Rourke Moore (Vice-Chair); Commissioners: Sen. (Ret.) F. Gary Simpson; Ronald Chaney, Judge (Ret.) Alex Smalls

Dear Ms. Thompson,

Thank you for participating in the August 16, 2022, Commission meeting, which you attended via Zoom videoconference. After consideration of the relevant facts and circumstances, the Commission decided that you may vote, despite a conflict-of-interest, on the Red Clay Consolidated School District's issue regarding '27th pay'. The Commission's reasoning is set forth below.

I. FACTS

You are one of seven elected members of the Red Clay Consolidated School District Board ("District" or "Board"). The Board meets monthly to discuss and vote on the District's policies, curriculum, rules and regulations which are then implemented by the District's Superintendent. You previously appeared before the Commission in 2018 seeking advice on how you should handle votes regarding the District's collective bargaining agreements, given the fact that your daughter was a teacher in the District. You were advised to recuse yourself from such votes to avoid a conflict of interest or the appearance of such.

In the Red Clay School District, employees get paid every other week, a total of 26 paychecks per year. The paychecks are funded by both the State (State share) and the District (local funds). At the June 18, 2022, Board meeting, teachers in the District asked the Board to vote on the issue of '27th pay'. This issue arises approximately every 14 years and 2022 is a year in which there are 27 pay periods. Ordinarily, the District divides the employee's annual salary by 27 (rather than 26). However, the State has agreed to fund an additional 'State share' for all State employees. Consequently, Red Clay teachers are lobbying the Board to fund the 'local share' of the 27th pay so that they may receive an extra paycheck in 2022. The cost of the additional pay period to the District is \$3 million.

The Board has thus far declined to address the issue because four of the seven Board members have a conflict of interest that requires their recusal from voting on the '27th pay'. The remaining three members of the Board do not (to the best of our knowledge) have a conflict of interest, but they are also unable to vote on the issue because three people do not constitute a quorum of the Board.

Ms. Thompson requested an advisory opinion asking how the Board can move forward when a majority of the members are required to recuse themselves from the matter.

II. APPLICATION OF THE FACTS TO THE LAW

A. Personal Jurisdiction

Members of Boards of Education fall within the definition of "State employee" and are subject to the State Code of Conduct. As a result, you are within the Commission's jurisdiction.

B. 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.

"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." 'Matter' is defined as "any application, petition, request, business dealing or transaction of any sort." 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. 'Close relative' is defined as "a person's parents, spouse, children (natural or adopted) and siblings of the whole and half-blood." When there is a personal or private interest, the official is to recuse from the outset and even neutral and unbiased statements are prohibited.

Obviously, your daughter is a "close relative" under the State Code of Conduct. As a result, you have a personal interest as a matter of law. Ordinarily, you would be required to recuse yourself from the discussion and subsequent vote because your daughter is a teacher that would benefit from the additional pay period.

C. In any case where a person has a statutory responsibility with respect to action or nonaction on any matter where the person has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided, that promptly after becoming aware of such conflict of interest, the person files a written statement with the Commission fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

As stated above, the Board has seven members. Four of those members have a close relative that works for the District and have recused themselves from voting on the '27th pay'. That leaves the Board without a quorum to take action on the issue. In circumstances under which a person cannot delegate their responsibility to anyone else, the law provides a limited exception to the conflict-of-interest laws. The person with the conflict may vote after filing a written statement with the Commission disclosing the conflict and explaining why delegation of the responsibility is not possible. You submitted such a letter.

In your letter, you provided the salaries earned by the relatives of the conflicted Board members so that the Commission could evaluate the financial interest attendant to each vote.

Board Member	Family Member	Relationship	\$
Cathy Thompson	Kimberly Thompson	Daughter	\$55,500
Jason Casper	Peter Casper	Son	\$32,000
Jose Matthews	Mike Matthews	Spouse	\$67,102
Victor Leonard, Sr.	Victor Leonard, Jr.	Son	\$72,797

Although the financial aspect was important, the Commission decided that the qualifying factor which would allow you to vote, despite the conflict, is that you were the only Board member who submitted the required letter stating why you had a conflict and why you were unable to delegate your authority to another person. In addition, the Commission appreciated your ability to maintain your recusal from the matter in the face of repeated requests for comment and public pressure. The Commission will address public comments made by other Board members in a separate letter.

III. CONCLUSION

Because you fulfilled the requirements of 29 *Del. C.* § 5805(a)(3) and because the Board lacked the necessary quorum to move forward on the matter, the Commission is granting you permission to vote on the issue of the '27th pay'. Hopefully, your participation will allow the Board to reach a quorum so a decision can be reached on this important issue. Please contact us if you have any further questions.

Sincerely,

Isl Andrew 7. Manus



STATE OF DELAWARE

DELAWARE STATE PUBLIC INTEGRITY COMMISSION

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

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VIA EMAIL

January 12, 2023

22-30—Post-Employment (WAIVER EXTENSION GRANTED)

Hearing and Decision By: Andrew T. Manus, Chair; Michele Whetzel, Vice-Chair (virtual); Hon. Rourke Moore, Vice-Chair (virtual). Commissioners: Sen. (Ret.) F. Gary Simpson; Marjorie Biles (virtual); Ronald Chaney (virtual), Judge (Ret.) Alex Smalls (virtual)

Dear Dr. Hong,

Thank you for participating in the December 20, 2022, Commission meeting, which you attended via Zoom videoconference along with Cabinet Secretary Molly Magarik. After considering the extent of Secretary Magarik's efforts to hire a candidate to fill the role of Director of the Division of Public Health, the Commission decided to extend the waiver you were previously granted on October 18, 2022, until March 31, 2023. The Commission's reasoning remains the same and is copied in its entirety below.

I. FACTS

Since March of 2022, you have worked as the casual/seasonal Medical Director of Emergency Management Services and Preparedness Section ("EMSPS") for the Division of Public Health ("DPH") within the Department for Health and Social Services. You served in the same role from 2005 through November of 2018. Between November 2018 and March 2022, you were DPH's Medical Director. You are now looking to leave State employment.

Your EMSPS Medical Director responsibilities included creating policies, plans and review protocols for: staging and storage of medical and pharmaceutical supplies; strategic national stockpile; mass care; shelter nurse protocols; alternate care sites; vaccine issues related to pandemic; ethics board; crisis standards of care.

As DPH's Medical Director, your primary job responsibility was oversight of the "clinical, medical and scientific expertise needed to support DPH activities and to represent DPH within the medical and scientific communities." Your duties included: supporting clinical quality assurance;

monitoring activities within the DPH Laboratory; infectious disease prevention and control; public health clinical nursing leadership; public health veterinary medicine.

While the State is attempting to hire your replacement, you want to accept a position with the University of Delaware ("U of D") as the Executive Director of Student Health Services ("SHS"). "SHS is the primary undergraduate and graduate student health unit on the University of Delaware campus. Comprised of approximately 45 full-time and numerous part-time staff members, SHS provides essential in-person and telehealth medical and wellness services to students. With a focus on primary care, SHS averages 46,000 patient visits per academic year." "The Executive Director coordinates on-campus patient care issues with the off-campus medical community, medical centers, and Departments of Public Health, and serves as the medical liaison with other University departments, including Emergency Preparedness." Listed as a major responsibility, is the need for the applicant to "[f]oster a strong collaborative relationship with Public Health agencies...."

You asked the Commission whether your proposed employment at the U of D would create a conflict of interest with your State job duties.

II. APPLICATION OF THE FACTS TO THE LAW

(A) Under 29 *Del. C.* § 5806(b), State employees may not accept other employment if acceptance may result in:

(1) impaired judgment in performing official duties:

To avoid impaired judgment in performing official duties, State employees may not review or dispose of matters if they have a personal or private interest. It is unlikely that you will be required to review decisions made by the SHS Executive Director while performing your State job duties. However, because DPH has the authority to regulate the public health aspect of medical care across the entire State, the possibility of such a circumstance occurring could not be ruled out. Furthermore, the SHS Executive Director job description would *require* you to "[f]oster a strong collaborative relationship with Public Health agencies." In essence, the job duties of the SHS Executive Director will require you to work with some of your current DPH colleagues and co-workers. Obviously, it would be a conflict of interest for you to interact with your DPH staff while performing the Executive Director's job duties.

(2) preferential treatment to any person:

The next concern addressed by the statute is to ensure co-workers and colleagues are not placed in a position to make decisions that may result in preferential treatment to any person. The fact that you plan to accept the position with the U of D prior to leaving State employment may create a circumstance under which your State co-workers are reluctant to make decisions about the U of D's SHS for fear of offending their State supervisor, you.

(3) official decisions outside official channels:

Confusion over the role of a State employee, who also works for a private entity under the regulatory power of the employing State agency, may lead to official decisions outside official channels. That is not to say you would purposely engage in such conduct. You are entitled to a strong presumption of honesty and integrity. However, employees under your supervision may be confused over the proper procedures to follow when the decision-maker is serving in dual and conflicting roles.

(4) any adverse effect on the public's confidence in the integrity of its government:

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 this provision as an appearance of impropriety standard. The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the State duties could not be performed with honesty, integrity and impartiality.

As stated earlier, performing the job duties associated with your dual roles would be a conflict of interest. Therefore, it is logical to assume that your dual employment will have an adverse effect on the public's confidence in their government.

In deciding if the conduct would raise the appearance of impropriety, the Commission also considers whether the Code would be contrary to the restrictions on misuse of public office. One prohibition considered by the Commission under that provision is the State employee may not use State time or State resources (i.e., computer, fax, phone, etc.) to work on the private interest. During the time you are working for both DPH and U of D, you may not use State work hours to work for the U of D.

CONCLUSION

The Commission granted a waiver to allow you to serve in both roles for a limited period of time. Because a waiver was issued, it becomes a matter of public record so that the public may understand why you are engaging in conduct that violates the State Code of Conduct. It is the Commission's hope that the waiver will allow DPH additional time to fill their Director position while also providing you with a strict timeline to facilitate your transition to non-State employment.

Sincerely,

Isl Andrew 7. Manus