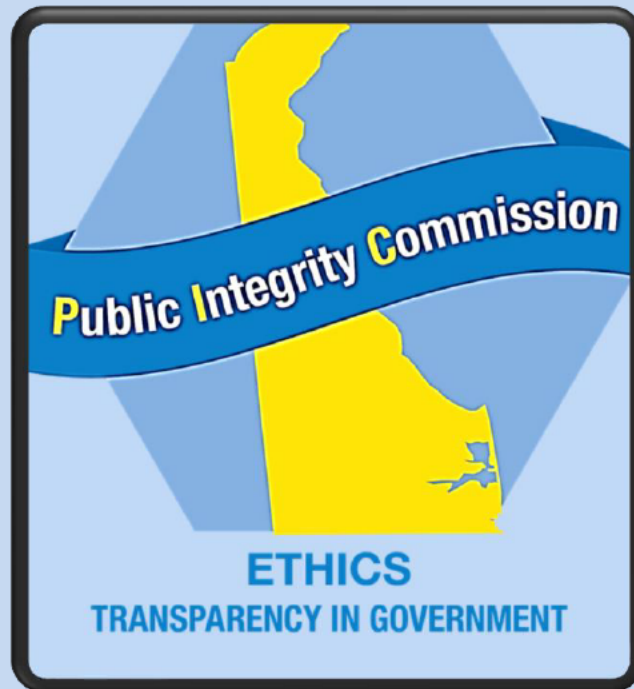


State of Delaware Public Integrity Commission



ANNUAL REPORT 2023

Hon. F. Gary Simpson, Chair

Hon. Rourke Moore & Ronald Chaney, Vice-Chairs

Commissioners

Andrew Manus Judge (Ret.) Alex Smalls* Dr. Melissa Harrington*

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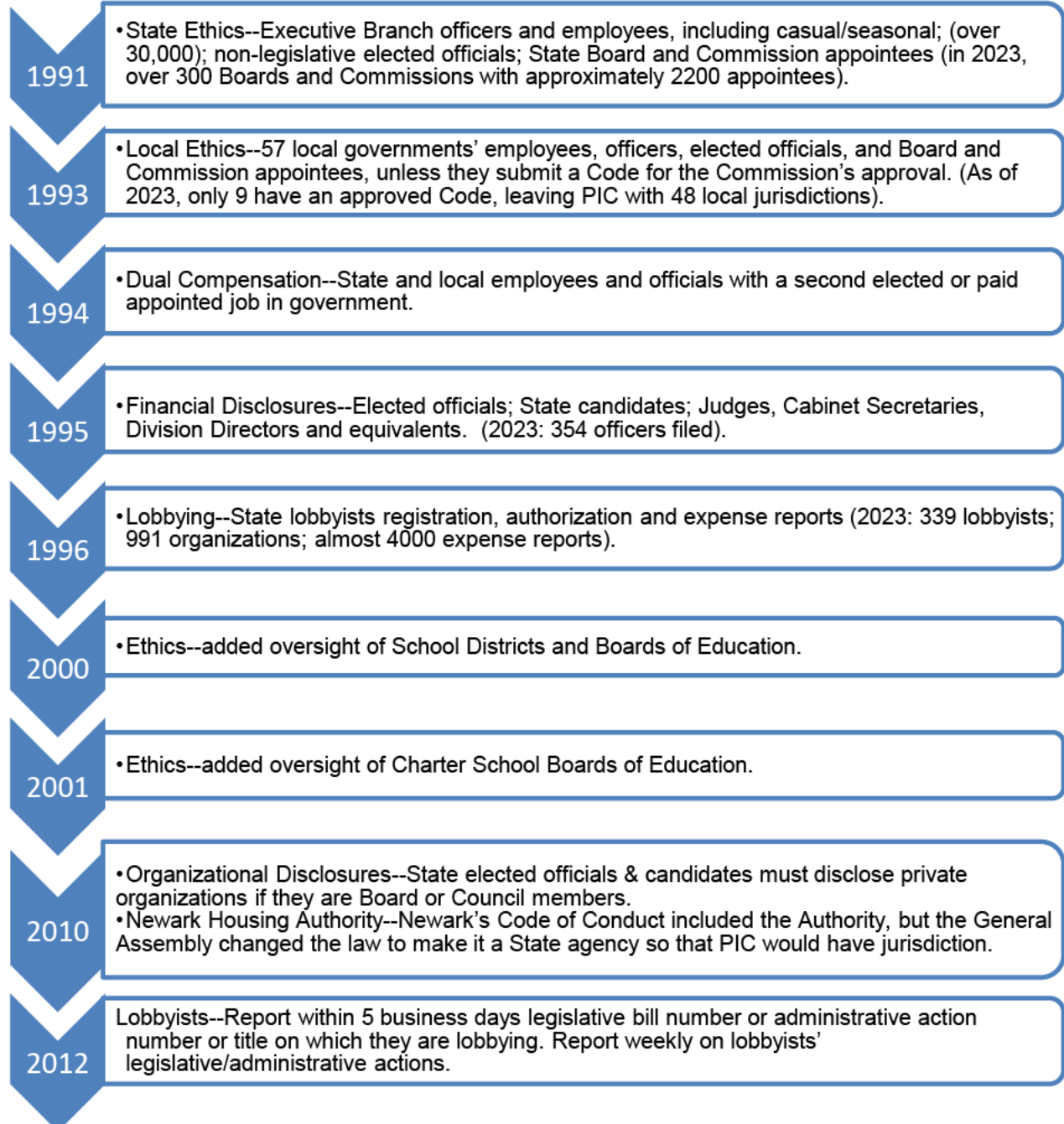
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I. Mission:

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

Jurisdictional History



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 **2023**, we said goodbye to Commissioners Michele Whetzel and Marjorie Biles and we welcomed Dr. Melissa Harrington to the Commission. The Commission has one vacancy.

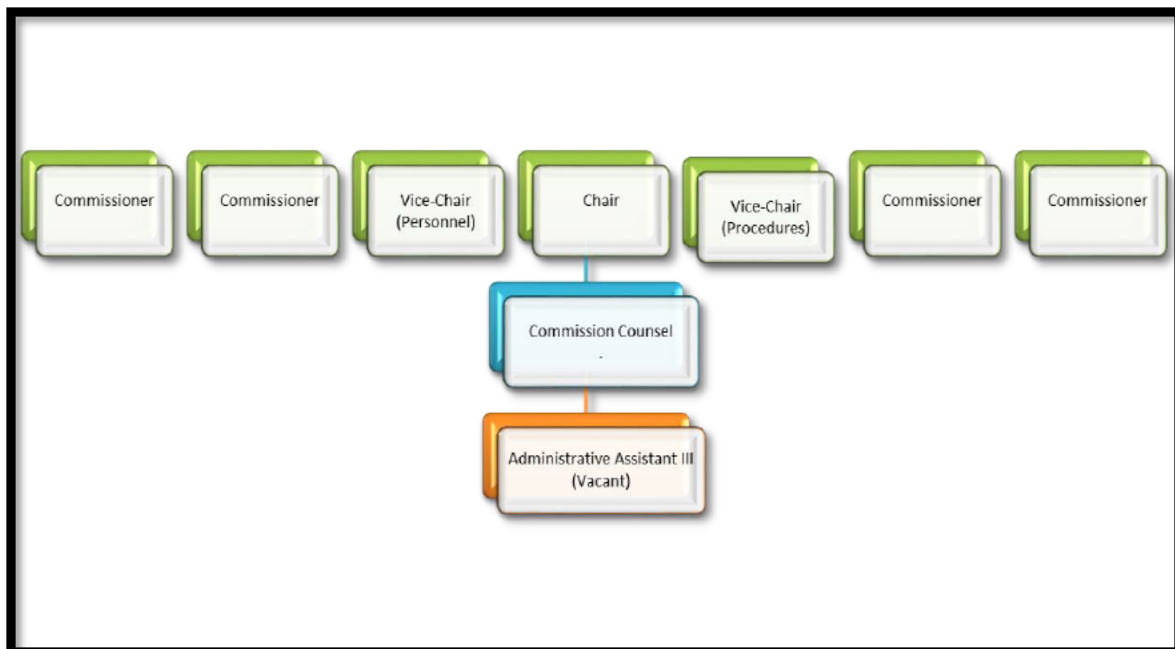
Of the Commission's seven members, three members represent New Castle County, two members represents Kent County and one member represents Sussex County.

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 eleven years.

C. Organizational Chart



D. Biographies of Commissioners

(Hon.) F. Gary Simpson Chair

Senator Simpson was appointed to the Commission on June 19, 2019, for a seven-year term, ending in 2026. He was elected chairperson in 2023.

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.



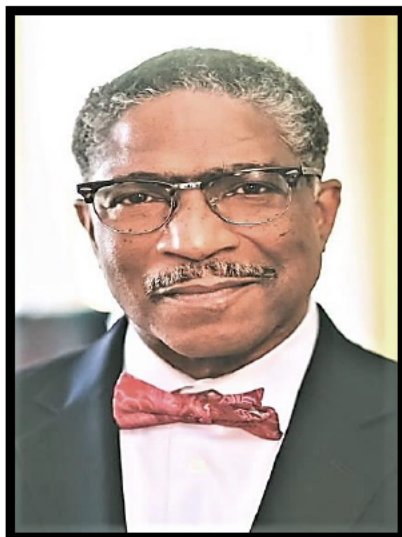
Senator Simpson is a past board member of the Milford Housing Development Council; the Cape Henlopen Senior Center; March of Dimes; and a council member of the U of D Sea Grant Advisory Council. He has also served as a board and Executive Committee member for BayHealth Medical Center, Milford Memorial 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.

(Hon.) Rourke A. Moore
Vice-Chair



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

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

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

Mr. Moore completed extensive graduate coursework in Human Resources at the University of Delaware. He is a former Delaware State Representative, a former President of the Board of Read Aloud/Delaware and Secretary to the Board of the Walnut Street Y. In addition, Mr. Moore is past Chair of the Grants Committee of the African-American Empowerment Fund/Delaware, a Life Member of Kappa Alpha Psi, Fraternity, Inc. and a member of Star in the East Lodge #1 F & A.M. PHA.

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

Ronald Chaney **Vice-Chair**

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 SY Coleman, 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.

Andrew T. Manus
Commissioner



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.

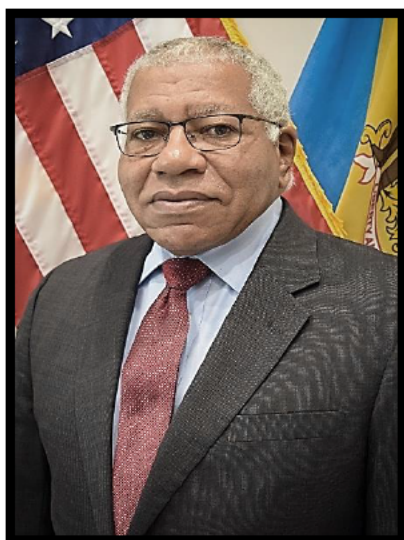
Between 1980 and 1989, Mr. Manus was Assistant Director and Executive Director of the University of Delaware Sea Grant College Program. He managed the Program through multidisciplinary activities in research, education and technical assistance. Mr. Manus oversaw a budget totaled \$2.5 million for a staff 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).

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.

Dr. Melissa A. Harrington
Commissioner

Dr. Harrington was confirmed as a Commissioner on September 12, 2023, for a seven- year term to end on September 8, 2030. Dr. Harrington earned her undergraduate degree in Molecular Biology from Purdue University in West Lafayette, Indiana, and her doctoral degree in Neuroscience from Stanford University in Stanford, California.

After completing her education, Dr. Harrington worked for the University of California, Santa Cruz and Morehouse College in Atlanta, Georgia. For the past 23 years, Dr. Harrington has worked at Delaware State University. She began her employment with the University in 2001, as an Assistant Professor of Biotechnology and is currently the Associate Vice President for Research. Dr. Harrington has served as a grant administrator (or co-administrator) over numerous federal grant programs with funding totaling over \$69 million. Sharing her grant-writing expertise with others, Dr. Harrington has been a grant writing coach for the Science & Technology Policy Institute, the National Research Mentoring Network and the Neuroscience Scholars Program of the Society for Neuroscience.

In addition to the foregoing, Dr. Harrington has received numerous professional honors including: Faculty Awards for Excellence in Research and Excellence in Mentoring from Delaware State University; the Distinguished Alumna award, School of Science, Purdue University; and the Faculty Award for Excellence in Service from Delaware State University. Over the course of her career, Dr. Harrington has authored 48 peer-reviewed articles.

Outside of her professional accomplishments, Dr. Harrington enjoys horseback riding. Dr. Harrington resides in Camden, Delaware (Kent County) with her husband, Colin Bonini.



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 **31,000** 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 **2023**, local governments who had adopted their own Codes of Conduct included:

New Castle County
Dover
Lewes

Millsboro
Newark
Smyrna

Delaware City
Georgetown
City of Wilmington

As these municipalities have their own Code, the Commission no longer has jurisdiction over their employees, officers, and appointed officials. The remaining 48 local governments are under the PIC's jurisdiction. In 2013, PIC approved a proposed Code of Conduct for the Town of Dewey Beach which has not yet been formally adopted by the town council.

Subject Matter Jurisdiction:



The Code of Conduct restricts participating in an official government capacity if there is a personal or private interest in a matter before them; bars all employees, officers and officials from representing or assisting a private enterprise before their own agency in their private capacity; bars officers (senior level officials) from representing or assisting a private enterprise before any agency; limits public servants in obtaining contracts with the government entity with which they serve; restricts their activities for 2 years after terminating State employment. 29 Del. C. § 5805. The law also restricts acceptance of gifts, outside employment or anything of monetary

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

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

Penalties:

Both criminal and administrative penalties may be imposed.

(1) Criminal Prosecution:

The General Assembly, in passing the law, found that some standards of conduct are so “vital” that the violator should be subject to criminal penalties. 29 Del. C. § 5802(2). Four (4) rules carry criminal penalties of up to a year in prison

and/or a \$10,000 fine. 29 Del. C. § 5805(f). Those rules are that employees, officers, and honorary officials may not: (1) participate in State matters if a personal or private interest would tend to impair judgment in performing official duties; (2) represent or assist a private enterprise before their own agency and/or other State agencies; (3) contract with the State absent public notice and bidding/arm’s length negotiations; and (4) represent or assist a private enterprise on certain State matters for 2 years after leaving State employment. 29 Del. C. § 5805(a)(2). Beyond referring suspected Code violations for criminal prosecution (see more information below), if a majority of Commissioners finds reasonable grounds to believe a violation of other State or Federal laws was violated, they may refer those matters to the appropriate agency. 29 Del. C. § 5807(b)(3) and(d)(3); § 5808(A)(a)(4); and § 5809(4).

In 2015, the PIC’s criminal enforcement power was enhanced by the Attorney General’s creation of the Office of Civil Rights and Public Trust (now the Division of Civil Rights and Public Trust “DCRPT”). Now, when the PIC uncovers a Code of Conduct violation for which there are criminal penalties, the matter may be referred to DCRPT for further investigation and possible criminal prosecution. In **2023**, the PIC referred **0** matters to the Attorney General’s office.

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

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



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

Case Law Regarding Jurisdiction:

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





B. Subchapter II, Financial and Organizational Disclosure Requirements



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

FINANCIAL DISCLOSURE:

Purpose:

Subchapter II is meant to instill the public's confidence that its officials will not act on matters if they have a direct or indirect personal financial interest that may impair objectivity or independent judgment. 29 *Del. C.* § 5811. Compliance, in part, is ensured when they report financial interests shortly after becoming a public officer, (14 days), and each year thereafter on March 15, while a public officer. 29 *Del. C.* § 5813(c). Identifying the interests helps the public officer recognize a potential conflict between official duties and personal interests that may require recusal or ethical guidance.

Personal Jurisdiction:

More than 350 "public officers" in the Executive, Legislative, and Judicial branches must file financial disclosure reports within 14 days of becoming a public officer and on March 15 each year thereafter. 29 *Del. C.* § 5813(c). Filers include: all Executive and Legislative Branch elected officials; all cabinet secretaries, division directors, and their equivalents; all members of the judiciary; and candidates for State office. 29 *Del. C.* § 5812(n)(1). PIC received **374** Financial Disclosure filings between January 1st and March 15th in **2023**. As State candidates must also file, the number of filers per year varies depending on the number of statewide elections in a given year. **2023** was not an election year, consequently, the Commission did not collect 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 **2023**, 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 **2023**, **638** lobbyists (**337** lobbyists were ‘active’), representing **603** different organizations, were registered. However, because some employers have multiple lobbyists, the total number of reportable registrations was **1135**.

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 **4540** (1135 x 4 quarters) expense reports annually. If the expenses exceed \$50, the lobbyist must identify the public officer who accepted the expenditure, and notify the official of the value. *Id.* In **2023**, lobbyists reported expenditures totaling

\$112,020.87, more than double the amount of CY 2022. Some of the extra expenses may be due to a 'rebound' effect from the COVID pandemic in 2021, when lobbyist's activities and spending were significantly curtailed. The number of lobbyists and employers registered in the State has remained stable over time.

Lobbyist Expenses

Year	Food & Refreshments	Entertainment	Lodging	Travel	Recreation	Gifts	Total
2023	\$75,348.65	\$25,182.64	\$5,938.34	\$3,171.98	\$0.00	\$2,379.26	\$112,020.87
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

In addition to reporting expenditures, lobbyists are also required to report their lobbying activity. Lobbyists must report legislation by bill number or administrative action by number or title, within 5 business days of lobbying a State official. 29 Del. C. § 5836. “Lobbying” consists of direct communication with a State employee or official, including General Assembly members, for the purpose of advocating, promoting, opposing, or influencing legislation or administrative action. 29 Del. C. § 5831(5). The law also required that all registration, expense reports, and the new “Lobbying Activity Report” be filed online. 29 Del. C. § 5832(a).



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

In 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. There were only **8** delinquent lobbyists in the 4th quarter of **2023**.

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 **CY2023**, the PIC collected **\$5440** in late fees, which was about 20% more than the amount collected in 2022.



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 **1200+ page** opinion synopsis 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 2023. 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 **2023**, Commission Counsel presented **9** training classes to a total of **223** 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 in 2022, 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 **2023**, the PIC recognized that its online training module had reached 'market saturation' within the State training pool. The PIC sought, and was granted, a one-time allocation of \$100,000 to update the training module. Consequently, the online training module was inactive for

most of the calendar year while a new module was developed. In September 2023, the PIC's new module went live. Between September and December **1540** State employees completed the new training module.

(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, if the individual follows the advice, the law protects them from complaints or disciplinary actions. 29 Del. C. § 5807(c). Synopses of those opinions later become learning tools at training classes and are available on our website.

*The PIC's offices, Margaret O'Neill Building,
410 Federal Street, 2nd Floor, Dover, Delaware 19901*



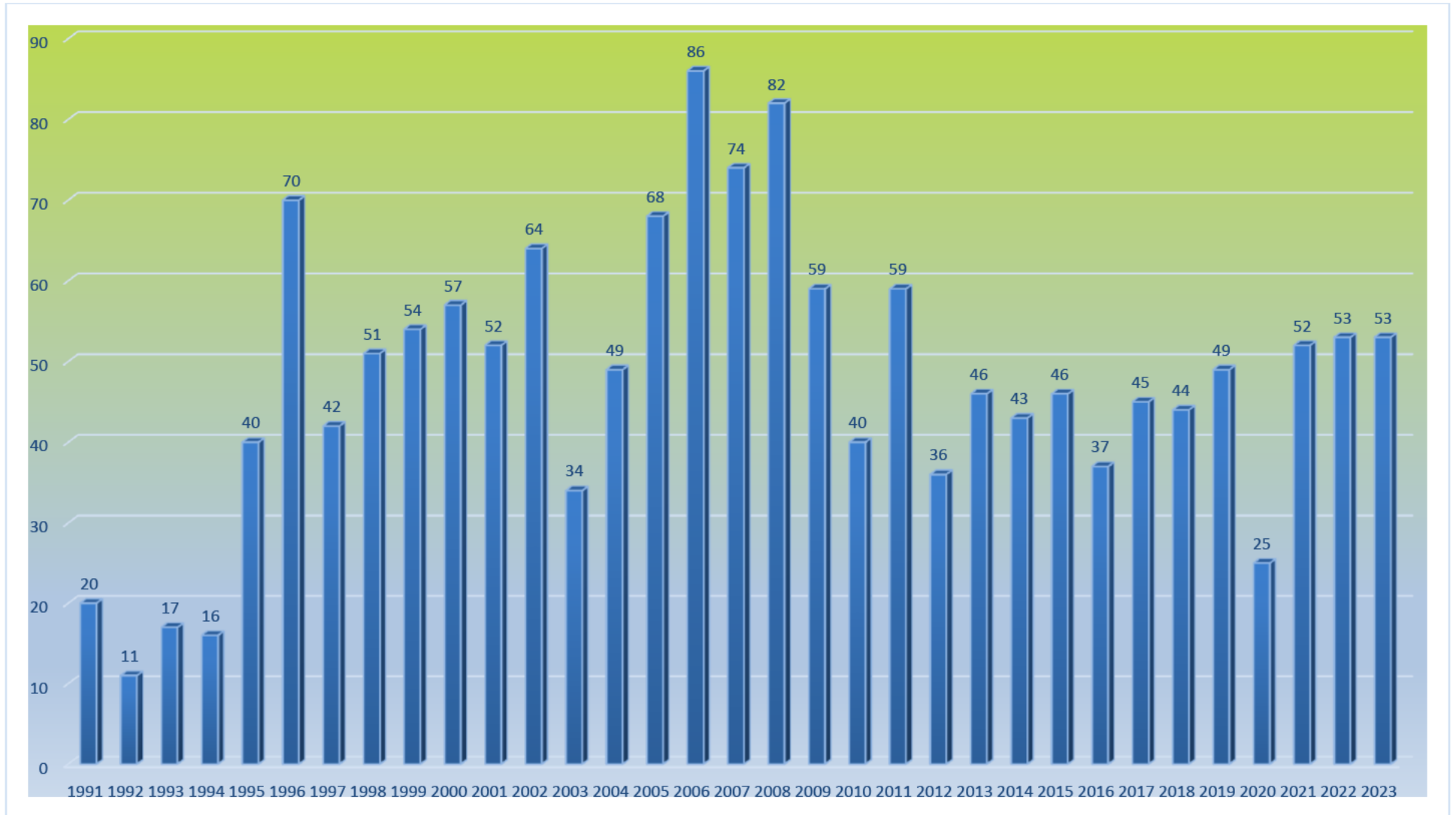
In **2023**, the PIC acted on **53** requests for written advice. (See chart below).
The number of requests for opinions is the same number of requests the Commission processed last year.

The most commonly sought-after advice topics included:



Gifts
Meals
Post-retirement employment

Number of Opinions Issued 1991-2023



(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 **2023**, **0** waivers were granted. 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 impose administrative discipline. 29 Del. C. § 5810(d). It may refer substantial evidence of criminal law violations to appropriate federal or State authorities. 29 Del. C. § 5810(h)(2). Frivolous or non-merit complaints, or those not in the Commission’s jurisdiction, may be dismissed. 29 Del. C. § 5809(3).



In **2023**, the Commission acted on **9** Complaints. Two were dismissed after additional information was provided. Seven Complaints proceeded to a formal administrative hearing. After the hearings, three Complaints resulted in a Notice of Violation (see Appendix A, B & C), three were dismissed and one was pending resolution.



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

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

State of.....

County of.....

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

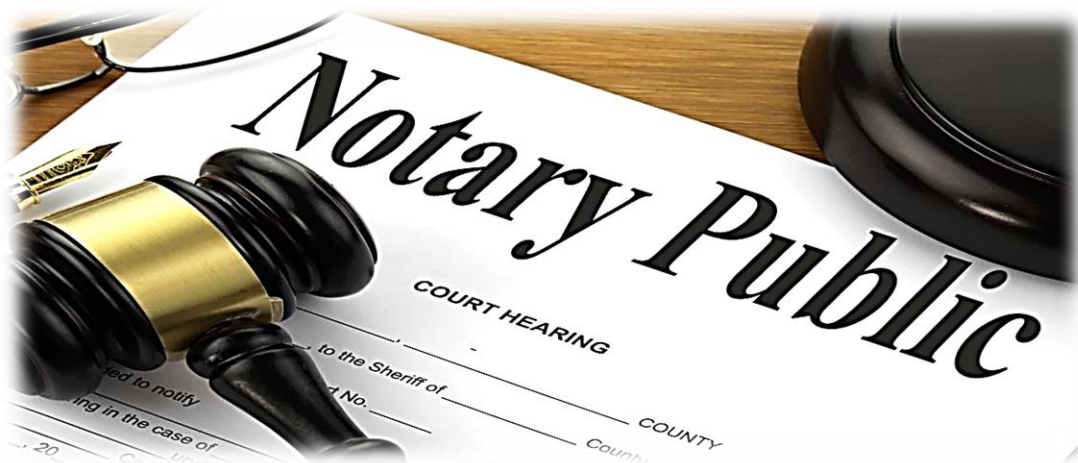
(signature of notarial officer)

(Seal)

(title and rank)

(my commission expires:.....)

(Not an actual image)





VI. Funding

In **FY 2023**, which includes the last half of the 2022 calendar year, the General Assembly appropriated **\$190,600** for the PIC, with an **operating budget of \$18,500**. That amount is the tied for 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 **2023**, the PIC was notified that it will be reviewed by the Joint Legislative Oversight and Sunset Committee (“JLOSC”) in 2024. “JLOSC performs periodic legislative review of entities, commissions, or boards. The purpose of the review is to determine whether or not there is a genuine public need for the entity and, if so, determine if the entity is effectively performing to meet that need. The purpose of this chapter is not to terminate entities which are sufficiently meeting a recognized State need and which are accountable to and responsive to the public interests. Rather, the purpose is to use the review mechanism to strengthen and support these entities.” legis.delaware.gov/Committee/Sunset.

The Joint Legislative Oversight and Sunset Committee is responsible for guiding the review process. JLOSC is a 10-member legislative body composed of 5 members of the Senate appointed by the President Pro Tempore; and 5 members of the House of Representatives appointed by the Speaker of the House. Staff support for JLOSC is provided by the Division of Research. *Id.*

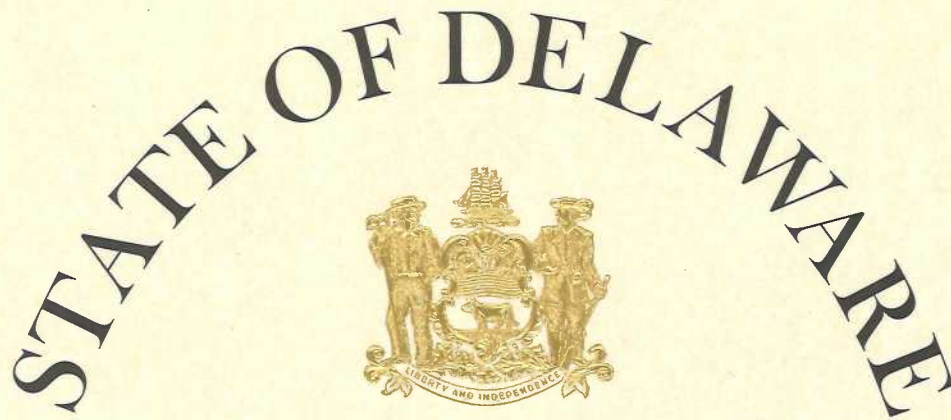
Because of the impending review, the PIC did not introduce or support any legislation during the 2023 General Assembly.



VIII. Future Goals

For the second consecutive year, the PIC participated in Global Ethics Day, held on October 19, 2023, 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 2024.

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

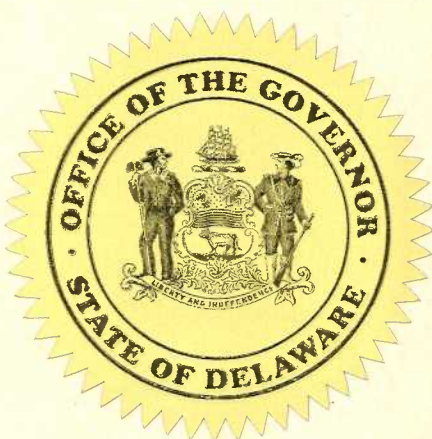
Whereas, established by the Carnegie Council for Ethics in International Affairs, Global Ethics Day is an annual event and since 2014, citizens; businesses; professional organizations; schools; governments; and nonprofits from over 75 countries have participated; and

Whereas, this year's theme is Ethics Empowered and in support of this theme, the Public Integrity Commission announces the creation of an online ethics training module available to all State employees.

*Now, Therefore, We, John C. Carney, Governor,
and Bethany A. Hall-Long, Lieutenant Governor,
do hereby declare October 18th, 2023*

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.



John C. Carney

John C. Carney
Governor

Bethany A. Hall-Long

Bethany A. Hall-Long
Lieutenant Governor

18-0456
Number

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION
IN AND FOR THE STATE OF DELAWARE**

In Re: MICHAEL SCUSE

Respondent

COMPLAINT 23-28

*Hearing and Decision By: Hon. Rourke Moore (Acting Chair); Ron Chaney (Vice-Chair).
Commissioners: Andrew T. Manus, Hon. Alex Smalls, Dr. Melissa Harrington.*

I. PROCEDURAL POSTURE

Any person may file a sworn Complaint alleging violations of Title 29, Delaware Code, Ch. 58., including the Public Integrity Commission (“PIC”). The Commission’s Counsel generated a Complaint against Michael Scuse after receiving information about improper fiscal conduct at the Delaware Department of Agriculture (“DDA”). At a Preliminary Hearing on July 24, 2023, the Commission found that it had both personal and subject matter jurisdiction over Mr. Scuse, Secretary of the DDA. The Commission also made a preliminary finding that the Complaint alleged sufficient facts that, if true, would support a finding of a violation of the State Code of Conduct. The Commission then issued a Notice of Hearing for October 11, 2023, at 10 a.m. On Sept. 21, 2023, Mr. Scuse, by and through his attorney Mr. Chambers, submitted a formal Response to the Preliminary Hearing Decision denying the Complaint’s allegations

and relying upon the Secretary of DDA's emergency powers set forth in 29 *Del. C.* § 6907. Mr. Scuse appeared for his hearing on the appointed day and time. The Hearing was held in the second-floor conference room at 410 Federal Street, Dover, DE 19901 on October 11, 2023. In addition to members of the Commission and Commission Counsel (Deborah J. Moreau, Esq.), the following individuals were present: Michael Scuse (Respondent); Scott E. Chambers, Esq. (Atty. for Respondent); Joseph Stanley, Esq. (Atty. for Complainant); John P. Donnelly (Stenographer); Liam Gallagher (Mr. Chambers' law clerk); Andrea Brzoska (Mr. Stanley's law clerk); Matt Weber (Mr. Chambers' assistant).

II. THE COMPLAINT

The Complaint alleged that on May 12, 2023, Michael Scuse violated 29 *Del. C.* § 5805(b)(1) by approving a contract (MOU # [REDACTED]) benefitting a private enterprise, [REDACTED], before the state agency, the DDA, by which Michael Scuse and [REDACTED] were both associated by employment or appointment, a violation of the State Code of Conduct. The next allegation was that on May 16, 2023, Michael Scuse violated 29 *Del. C.* § 5805(b)(1) by entering into a contract (MOU # [REDACTED]) benefitting a private enterprise, [REDACTED], the spouse of [REDACTED] before the state agency, the DDA, by which [REDACTED] and Michael Scuse are associated by employment or appointment, a violation of the State Code of Conduct. Third, the Complaint alleged on February 13, 2023, Michael Scuse violated 29 *Del. C.* § 5805(b)(1) by allowing his employees, Jimmy Kroon and [REDACTED], to enter into a contract (MOU# [REDACTED]) benefitting a private enterprise, [REDACTED], before the state agency, the DDA, by which they were both associated by employment or appointment, a violation of the State Code of Conduct. It was also alleged that

APPENDIX A

on May 12, 2023, Michael Scuse did violate 29 *Del. C.* § 5805(c) by entering into a contract (MOU # [REDACTED]), in excess of \$2000, on behalf of the State without public notice and competitive bidding, a violation of the Code of Conduct. Similarly, the Complaint alleged that on May 16, 2023, Mr. Scuse did violate 29 *Del. C.* § 5805(c) by entering into a contract (MOU # 0 [REDACTED]), in excess of \$2000, on behalf of the State without public notice and competitive bidding, a violation of the State Code of Conduct. The next allegation stated that on February 13, 2023, Michael Scuse did violate 29 *Del. C.* § 5805(c) by permitting Jimmy Kroon and [REDACTED], DDA employees, to engage in a contract (MOU # [REDACTED]), in excess of \$2000, on behalf of the State without public notice and competitive bidding, a violation of the State Code of Conduct. On May 12th and 16th 2023, Michael Scuse did violate 29 *Del. C.* § 5806(a) by engaging in conduct which was in violation of the public trust and which will reflect unfavorably upon the State and its government. Mr. Scuse authorized over \$100,000 in contractual payments to DDA employees. Lastly, the Complaint alleged that on May 12th and 16th 2023, Michael Scuse violated 29 *Del. C.* § 5806(e) by using his public office to benefit select agency employees, a violation of the State Code of Conduct. Appended to the Complaint, and incorporated by reference, were Attachments A-N.

III. COMPLAINANT'S CASE

A. Michael Scuse

Michael Scuse has been the Secretary of DDA since January 2017. Tr. 17:5-7. One of DDA's primary responsibilities is to ensure that domestic agricultural animals are not subjected to cruelty or mistreatment. Consequently, DDA has the ability to seize and impound animals pursuant to a court order. According to Mr. Scuse, the DDA's animal seizures are coordinated

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with the Office of Animal Welfare and the State Veterinarian. Tr. 22:11-20, Tr. 26:21-24. Mr. Scuse was then asked about a February 2023 animal seizure, the first seizure at issue in this matter. Tr. 22.

The OAW notified DDA in February 2023 that there were hogs being mistreated on a local farm. Tr. 26:21-24. After seizing the animals and placing them at [REDACTED] (a DDA vendor), the State Veterinarian contacted Mr. Scuse with concerns about the treatment the hogs were receiving in their new placement. Tr. 34:7-13. Mr. Scuse stated that after traveling to the site and viewing the conditions, he declared an emergency and waived the procurement rules to allow the DDA to contract with anyone who could care for the hogs. Tr. 39:2-8.

In regards to the May 2023 seizure, Mr. Scuse testified that while responding to a citizen complaint regarding a horse, OAW staff had an opportunity to observe multiple animals on the property that evidenced signs of abuse. Tr. 42:15-21. In preparation for the seizure, Mr. Scuse testified that the DDA hired cattle wranglers to round up the livestock to be seized and coordinated with the Office of Management and Budget to obtain additional funds. Tr. 44:19-24, Tr. 65: 1-8. Mr. Scuse also confirmed that the DDA paid [REDACTED] and [REDACTED] (the spouse of DDA employee, [REDACTED]) to take care of the livestock seized at this location. Tr. 46:1-2. He cited the difficulty of finding locations to place sick animals as the primary reason why DDA contracted with their own employees. Tr. 47:11-13, Tr. . When asked about DDA's response to emails from PIC Counsel advising that issuing and/or accepting payments from DDA to their own employees would violate the State Code of Conduct, Mr. Scuse denied knowing that paying the employees would violate the State Code of Conduct. Tr. 49:9-17. Mr. Scuse acknowledged that he was aware of, and usually abides by, the State's competitive

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bidding process. Tr. 57:15-19.

IV. RESPONDENT’S CASE

In his Response, and at the hearing, Mr. Scuse claimed that the Secretary’s emergency powers, pursuant to 29 *Del. C.* § 6907, gave him (and the DDA) the power to waive Title 29, Chap. 58., the State Code of Conduct, and award the contract(s) to DDA employees. Tr. 60:1-10. Mr. Scuse stated that “every time there is a seizure we have an issue with the lack of facilities.” Tr. 61:5-7. In explaining the lack of vendors, Mr. Scuse noted that the seized animals are required to be quarantined. Tr. 63:17-23, 67:9-13. Consequently, most active farms in Delaware are not interested in housing seized animals.

In anticipation of the May 2023 seizure, “knowing it would be large,” Mr. Scuse stated that DDA contacted OMB and obtained additional monies to pay for the animal’s care. Tr. 65:4-8. They also reached out to some of the DDA’s vendors to determine if they would be willing to accept the seized animals, but were unsuccessful. Tr. 64:22-24, 65:1-6. Mr. Scuse’s attorney then asked Mr. Scuse about any advice he received from the agency’s Deputy Attorney General (“DAG”). Mr. Scuse stated that the DDA’s DAG told him that to avoid any issues with the PIC, he should not pay his employees for their contractual work. Tr. 70:14-22, 80:6-11. Despite receiving this advice from his DAG, Mr. Scuse decided to pay the employees anyway. *Id.* Mr. Scuse stated that he continues to believe he has the authority to waive provisions of the Code of Conduct pursuant to his emergency powers contained in 29 *Del. C.* § 6907. Tr. 71:6-7. However, he expressed remorse that his employees were caught up in the matter. “And I don’t think that my staff should be hauled before the commission to answer questions for doing their jobs.” Tr. 71:10-12. After stating that he acted in the best interest of DDA, Mr. Scuse stepped

down from the witness stand. No further witnesses were called.

V. APPLICABLE LAW

The Complaint alleged that Mr. Scuse violated the following provisions of the State Code of Conduct:

29 Del. C. § 5805(b)(1). *Restrictions on representing another's interest before the State.* — (1) No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment. (3 counts).

29 Del. C. § 5805(c). For all contracts in excess of \$2000, public notice and bidding are required in order for a contract to be awarded to a State employee. The standard applies even if the State employee did not work for the department offering the contract. Delaware Courts have held that in judging the fairness of a government contract when a government employee seeks the contract, that the price "is not the exclusive test by which a vendor is chosen" because when government employees seek contracts with their governmental entity, the concern is that the award of such contracts "has been suspect, often because of alleged favoritism, undue influence, conflict and the like." (3 counts).

29 Del. C. § 5806(a). Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government. (1 count).

29 Del. C. § 5806(e). No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain. (1 count).

VI. DISCUSSION

After the parties were excused, the Commission began reviewing and discussing the evidence presented at the hearing, as well as Mr. Scuse's formal Response. The Commission dismissed two (2) violations of 29 Del. C. § 5805(b)(1) (the allegations regarding [REDACTED] [REDACTED]); all three (3) violations of § 5805(c) and the single violation of 29 Del. C. § 5806(e) for insufficient evidence on the record. When considering Mr. Scuse's

role in executing the MOUs, the Commission decided that Mr. Scuse's relationship with the spouse of [REDACTED] was too attenuated to sustain that allegation. The Commission also dismissed the allegation regarding the MOU with [REDACTED] because the MOU was signed by DDA employee Jimmy Kroon at the recommendation of the State Veterinarian. The Commission decided that there was ample evidence on the record to support the dismissal of the three (3) counts of failure to publicly notice and bid a contract for over \$2000, when the recipient is a State employee. The nature of the seizure work performed by the DDA staff does not always afford the agency the opportunity to publicly notice and bid contracts at all, regardless of value. Lastly, no evidence was presented that indicated Mr. Scuse benefitted from the MOUs between the DDA and its employees.

The Commission then turned to consideration of the two remaining allegations. As to the MOU with the DDA's employee, [REDACTED], the Commission decided that Mr. Scuse violated 29 *Del. C.* § 5805(b)(1) by entering into MOU# # 0 [REDACTED], worth more than \$100,000, with [REDACTED], a DDA employee.

The Commission found Mr. Scuse's comments regarding the DDA's efforts to locate livestock facilities to be unconvincing. Mr. Scuse stated that "every time there is a seizure we have an issue with the lack of facilities." Tr. 61:5-7. Yet, he later justified the May contract with [REDACTED] by stating that "the [seizure] we had in February was the first one of its kind that we had had in, what, 12 years. So, who was going to think that we were going to have another one that soon?" Tr. 51:17-21. Mr. Scuse also repeatedly emphasized the fact that he found it difficult to locate people willing to care for diseased animals. And yet, when the need arose on two separate occasions, the DDA had not one, not two, but *three* employees who

would be willing to do so. While it is likely not Mr. Scuse's job to search for livestock facilities, he is the Secretary of the Department and he is ultimately responsible for the situation in which the DDA found itself. He cannot claim to lack livestock facilities when neither he, nor his staff, has properly searched for suitable locations. Furthermore, the first instance of contracting with DDA employee [REDACTED] set a bad precedent for the seizures that followed.

Turning to the MOU between the DDA and [REDACTED], [REDACTED] was paid over \$100,000 to care for seized chickens for 30 days. Mr. Scuse knew [REDACTED] because she worked at DDA [REDACTED]. Despite the existing acquaintance between them, and Mr. Scuse's clear knowledge that [REDACTED] was a DDA employee, he nonetheless engaged in an agreement with her to care for the seized animals. As such he represented her private interest (as a vendor) before the agency by which she was employed, a violation of 29 *Del. C.* § 5805(b)(1).

The Commission then focused on the appearance of impropriety standard in the Code of Conduct. To determine if an appearance of impropriety has occurred, the Commission considers whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality. In weighing appearance of impropriety issues, the Commission examines the totality of the circumstances. Those circumstances are 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.

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The Commission first considered the following mitigating factors. Mr. Scuse had a statutory duty pursuant to 16 *Del. C.* § 3031F to provide care to the animals the DDA had previously seized from their owners. A concern and obligation the Commission does not take lightly. Additionally, Mr. Scuse did not benefit monetarily from the transaction(s).

The Commission then turned to consideration of the aggravating factors. It appeared that the DDA had a long history of being unable to find suitable locations for seized livestock. Yet, despite the difficulties they encountered in the past, the DDA, and Mr. Scuse, did nothing to remedy the situation. Nor was the Commission swayed by Mr. Scuse's assertion that the 'emergency' waiver of the procurement rules allowed the DDA to waive the entire State Code of Conduct, set forth in Title 29, Chapter 58. The emergency exception to the statute specifically states:

An agency head may waive any or all provisions of *this chapter* to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against.

Following Mr. Scuse's logic, the statute empowered the DDA to cast aside ALL provisions of the Delaware Code, or at a minimum all provisions of Title 29, which is at odds with the plain reading of the statute. When a court is tasked with interpreting statutory language, it must first determine that the statute is actually ambiguous. However, a statute is not ambiguous merely because the parties disagree about the meaning of the statutory language. A statute is only ambiguous if it is *reasonably* susceptible to different interpretations. It is the Commission's position that Mr. Scuse's belief that he had the power to waive an entire *Title* of law is unreasonable. Title 29 not only includes the procurement law, it includes statutes setting forth

the establishment and operation of the entire state government. Consequently, the Commission decided that the Secretary's waiver powers do not waive the State Code of Conduct.

VI. CONCLUSION

Based upon the above facts, evidence and law, the Commission unanimously voted to find that: (1) Mr. Scuse violated 29 Del. C. § 5805(b)(1), by allowing [REDACTED], a DDA employee, to engage in a vendor agreement with her employing agency; and (2) created an appearance of impropriety by contracting with a DDA employee for work unrelated to their State job duties, a violation of 29 *Del. C.* § 5806(a). Pursuant to statute, 29 *Del. C.* § 5810(d), “[w]ith respect to any violation with which a person has been charged and which the Commission has determined as proved, the Commission may...[i]ssue a written reprimand or censure of that person's conduct. Consequently, a copy of this opinion letter will be made available to the public.

It is so ordered, this 6th day of November 2023.
FOR THE PUBLIC INTEGRITY COMMISSION

/s/ *Rourke A. Moore*

Rourke A. Moore
Vice-Chair (Acting Chair)

cc: Governor John Carney

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION
IN AND FOR THE STATE OF DELAWARE**

In Re: JIMMY KROON

Respondent

COMPLAINT 23-29

*Hearing and Decision By: Hon. Rourke Moore (Acting Chair); Ron Chaney (Vice-Chair).
Commissioners: Andrew T. Manus, Hon. Alex Smalls, Dr. Melissa Harrington.*

I. PROCEDURAL POSTURE

Any person may file a sworn Complaint alleging violations of Title 29, Delaware Code, Ch. 58., including the Public Integrity Commission (“PIC”). The Commission’s Counsel generated a Complaint against Jimmy Kroon after receiving information about improper fiscal conduct at the Delaware Department of Agriculture (“DDA”). At a Preliminary Hearing on July 24, 2023, the Commission found that it had both personal and subject matter jurisdiction over Mr. Kroon, a DDA employee. The Commission also made a preliminary finding that the Complaint alleged sufficient facts that, if true, would support a finding of a violation of the State Code of Conduct. The Commission then issued a Notice of Hearing for October 11, 2023, at 2 p.m. On Sept. 27, 2023, Mr. Kroon submitted a formal Answer to the Preliminary Hearing Letter Opinion denying the Complaint’s allegations and relying upon the Secretary of DDA’s emergency powers set forth in 29 *Del. C.* § 6907 and the fact that the State procurement manual omitted part of the State Code of Conduct. Mr. Kroon appeared for his hearing on the appointed day and time. However, due to the PIC’s scheduling error, Mr. Kroon graciously

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agreed to be rescheduled for October 12, 2023, at 11:00 a.m. The Hearing was held in the second-floor conference room at 410 Federal Street, Dover, DE 19901 on October 12, 2023. In addition to members of the Commission and Commission Counsel (Deborah J. Moreau, Esq.), the following individuals were present: Jimmy Kroon (Respondent); Joseph Stanley, Esq. (Attorney for Complainant); Carrie Gold (Stenographer); Andrea Brzoska (Mr. Stanley's law clerk).

II. THE COMPLAINT

The Complaint alleged that on February 13, 2023, Mr. Kroon violated the State Code of Conduct when he approved a Memorandum of Understanding ("MOU") #0 [REDACTED] between DDA and [REDACTED], a DDA employee at the time. Specifically, the Complaint alleged: Mr. Kroon violated 29 *Del. C.* § 5805(b)(1) by assisting a private enterprise ([REDACTED]) before the state agency by which they both were associated by employment; Jimmy Kroon violated 29 *Del. C.* § 5805(c) by entering into a contract (MOU # [REDACTED]) with [REDACTED] for more than \$2000 without public notice and competitive bidding; the Complaint further alleged that Mr. Kroon violated 29 *Del. C.* § 5806(a) which requires "[e]ach state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government; lastly, the Complaint alleged that Mr. Kroon violated 29 *Del. C.* § 5806(e) by using his public position to secure \$10, 535.00 for [REDACTED], for services unrelated to her State job duties at DDA. Appended to the Complaint, and incorporated by reference, were Attachments A, B and C.

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Attachment A to the Complaint is a copy of disbursements by the Division of Animal Health to [REDACTED], documenting the \$10,535.00 payment on March 3, 2023. Attachment B to the Complaint is a copy of an invoice for animal care in the same amount. Attachment C to the Complaint is a copy of the MOU between [REDACTED] and DDA.

III. COMPLAINANT'S CASE

A. Jimmy Kroon

Mr. Kroon was unrepresented at the hearing. As a consequence, Commissioner Smalls carefully read the allegations in the Complaint to Mr. Kroon and Mr. Kroon affirmed his understanding of the allegations. Mr. Stanley called Mr. Kroon as his first witness.

Mr. Kroon's job title is Administrator of the DDA's Department of Management, and he reports to Michael Scuse (Secretary of DDA). He has worked for DDA since 2003. Mr. Kroon is also a "back-up" approver for financial transactions if the DDA's Comptroller's position is vacant (Tr. 7:1-20) and he signs Memorandums of Understanding ("MOU") if Mr. Scuse is not available. Tr. 54:7-9.

One of DDA's responsibilities is to ensure that domestic agricultural animals are not subjected to cruelty or mistreatment. Consequently, DDA has the ability to seize and impound animals pursuant to a court order. According to Mr. Kroon, DDA's animal seizures are coordinated with the Office of Animal Welfare and the State Veterinarian. Tr. 8:10-14. Mr. Kroon's testimony then turned to the March 2023 animal seizure at issue in this matter.

DDA had been working for "a while" on obtaining a court order to seize the animals in question from the owner's property. Tr. 8:15-16. Generally speaking, DDA prefers to work with animal owners to bring their care into compliance with the law, rather than impounding the

animals. Tr. 8:16-24. In this instance, DDA was unable to work with the owner of the animals while they were pending seizure. Consequently, the DDA made arrangements with a new vendor, [REDACTED], to place approximately 20 pigs. Tr. 9:1-6. The seizure took place on February 3, 2023. Tr. 9:7-8. During the seizure it became clear that there were approximately 50 pigs, more than originally estimated. Tr. 9:7-14. [REDACTED] did not have the facilities or training to care for 50 pigs, so after ten days, DDA decided that the pigs would have to be moved to another location. Tr. 10:1-23.

Mr. Kroon stated that there are not “many places that can take livestock at all...during these animal seizures.” Tr. 11:16-18. Mr. Kroon then went on to say that “after trying to find another location” DDA turned to a casual/seasonal employee, [REDACTED] because she had the appropriate facilities at her residence to care for the pigs. Tr. 11:20-24, 12:4-7.

Mr. Kroon’s testimony then shifted to the use of the Secretary of DDA’s “emergency powers” related to the procurement of goods or services for the State during an avian flu outbreak in 2022. Tr. 18: 7-17, 19: 10-17. When asked how prior procurement issues affected the pig seizure, Mr. Kroon stated “[w]e’ve had problems for years finding places that were willing to take livestock during an animal seizure.” Tr. 21: 20-24. Yet, despite the problems identifying an appropriate vendor, Mr. Kroon stated “it’s a bad idea to mix employee and vendor relationships. It could get very messy.” Tr. 23: 15-16. When queried as to why he engaged in the MOU despite his statement that employees should not be vendors, he stated that he thought the DDA had the ability to “waive procurement law so that [REDACTED] could be our vendor,” while also stating that the circumstance was one that neither he nor Mr. Scuse could have foreseen. Tr. 23: 17-22. Mr. Kroon then admitted he was not aware of other

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state agencies engaging in similar conduct. Tr. 23: 8.

At the conclusion of Mr. Stanley's questioning, the Commissioners asked for clarification on several issues. In discussing the length of time that DDA usually has investigatory contact with animal owners, Mr. Kroon stated DDA works with owners over the course of months and during that time there are visits from various department personnel at the site. Tr. 39: 17-24. Referring again to the seizure of the pigs, Mr. Kroon stated that he signed the MOU with [REDACTED] because Mr. Scuse was either on vacation or out of the office. Tr. 56: 12-24. Lastly, Mr. Kroon verified that DDA (or one of their partner agencies) had requested and obtained a search warrant for the seizure of the animals. Tr. 58: 16; 59: 1-20.

IV. RESPONDENT'S CASE

In his Answer, and at the hearing, Mr. Kroon claimed that the Secretary's emergency powers, pursuant to 29 *Del. C.* § 6907, gave DDA the power to award the contract to one of their employees. Tr. 23: 17-22. Appended to Mr. Kroon's Answer was a copy of the Office of Management and Budget Government Support Services Procurement Manual. Mr. Kroon pointed out that while a portion of the Code of Conduct is printed in the manual, the provisions regarding conflicts of interest set forth in 29 *Del. C.* § 5805, were not. As a consequence, he argues that he was not on notice about the provisions of § 5805 while performing his state job duties. He further argues that he was acting on the direction of the Secretary of the DDA. Mr. Kroon did not call any witnesses to offer testimony during his hearing.

V. APPLICABLE LAW

The Complaint alleged that Mr. Kroon violated the following provisions of the State Code of Conduct:

29 Del. C. § 5805(b)(1). State employees may not represent or otherwise assist a private enterprise on matters before the agency with which they are associated by employment.

29 Del. C. § 5805(c). For all contracts in excess of \$2000, public notice and bidding are required in order for a contract to be awarded to a State employee. The standard applies even if the State employee did not work for the department offering the contract. Delaware Courts have held that in judging the fairness of a government contract when a government employee seeks the contract, that the price "is not the exclusive test by which a vendor is chosen" because when government employees seek contracts with their governmental entity, the concern is that the award of such contracts "has been suspect, often because of alleged favoritism, undue influence, conflict and the like."

29 Del. C. § 5806(a). Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

29 Del. C. § 5806(e). No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.

VI. DISCUSSION

After the parties were excused, the Commission began reviewing and discussing the evidence presented at the hearing, Mr. Kroon's Answer and the OMB Procurement Manual.

The Commission dismissed the violations of 29 Del. C. § 5805(b)(1); § 5805(c) and 29 Del. C. § 5806(e) for insufficient evidence on the record. Mr. Kroon did not represent the private business before DDA. During testimony it was revealed that the idea to move the pigs to the home of a DDA employee was made by the State Veterinarian. Tr. 11:18-24. Nor was there evidence that Mr. Kroon benefitted from signing the MOU. Lastly, the Commission decided to give Mr. Kroon the benefit of the doubt regarding his belief that he was able to contract with a DDA employee because § 5805 was not included in the OMB Procurement Manual. While ignorance of the law is no excuse, the Commission decided that Mr. Kroon's

status as a layperson weighed in favor of dismissal of those specific allegations given that they were not included in the official manual regarding procurement practices.

The Commission then turned to consideration of the remaining allegation, a violation of the appearance of impropriety standard in the State Code of Conduct. This statute is set forth in its entirety in OMB's Procurement Manual. Consequently, Mr. Kroon cannot argue that he was not aware of the provision. The statute is basically an appearance of impropriety test. The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality. In deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances. Those circumstances are 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.

The Commission first considered the following mitigating factors. Mr. Kroon had a statutory duty pursuant to 16 *Del. C.* § 3031F to provide care to the animals DDA had previously seized from their owners. Therefore, his concerns that the public would likely be upset at the poor condition of the pigs left at [REDACTED] were valid. In addition, Mr. Kroon had either implicit or explicit permission to engage in the MOU on behalf of the DDA. Although Mr. Scuse was either on vacation or out of the office at the time the pigs were moved from [REDACTED], the MOU signed by Mr. Kroon was not rescinded upon Mr. Scuse's return, and the payment was subsequently processed. Lastly, Mr. Kroon did not benefit monetarily from the transaction.

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The Commission then turned to consideration of the aggravating factors. It appeared that the DDA had a long history of being unable to find suitable locations for seized livestock. Tr. 11:16-18. Yet, despite the difficulties they encountered in the past, the DDA, and Mr. Kroon as Administrator, did nothing to remedy the situation. Even when the DDA monitored the pigs for “a while” and obtained a search warrant, the decision of where to place them was clearly made in haste and with little forethought regarding the suitability of such placement. Tr. 8:13-27. Then, after having placed the pigs in an unsuitable environment, Mr. Kroon claimed the pig’s relocation constituted an emergency situation which necessitated a suspension of the procurement rules. Mr. Kroon acknowledged during his testimony that the public perception regarding department contracts with department employees was likely to arouse the suspicions of the public. “It’s a bad idea to mix employee and vendor relationships. It could get very messy.” Tr. 23: 15-16.

Nor was the Commission swayed by Mr. Kroon’s assertion that the ‘emergency’ waiver of the procurement rules allowed the DDA to waive the entire State Code of Conduct, set forth in Title 29, Chapter 58. The emergency exception to the procurement statute specifically states:

An agency head may waive any or all provisions of *this chapter* to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against.

Following Mr. Kroon’s logic, the statute empowered the DDA to cast aside ALL provisions of the Delaware Code, or at a minimum, all provisions of Title 29, which is at odds with the plain reading of the statute. When a court is tasked with interpreting statutory language, it must first determine that the statute is actually ambiguous. However, a statute is not ambiguous merely

because the parties disagree about the meaning of the statutory language. A statute is only ambiguous if it is *reasonably* susceptible to different interpretations. It is the Commission's position that Mr. Kroon's belief that the cabinet secretary had the power to waive an entire *Title* of law is unreasonable. Title 29 not only includes the procurement law, it includes statutes setting forth the establishment and operation of the entire state government. Consequently, the Commission decided that Mr. Kroon's reliance on the Secretary's waiver powers was mistaken. As a result, Mr. Kroon engaged in conduct that created an appearance of impropriety and violated the State Code of Conduct.

VI. CONCLUSION

Based upon the above facts, evidence and law, the Commission unanimously voted to find that Mr. Kroon created an appearance of impropriety by contracting with a DDA employee for work unrelated to their State job duties, a violation of 29 *Del. C.* § 5806(a). Pursuant to statute, 29 *Del. C.* § 5810(d), "[w]ith respect to any violation with which a person has been charged and which the Commission has determined as proved, the Commission may...[i]ssue a written reprimand or censure of that person's conduct. Consequently, a copy of this opinion letter will be made available to the public.

It is so ordered, this 6th day of November 2023.
FOR THE PUBLIC INTEGRITY COMMISSION

/s/ *Rourke A. Moore*

Rourke A. Moore
Vice-Chair (Acting Chair)

cc: Governor John Carney

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION
IN AND FOR THE STATE OF DELAWARE**

In Re: ELIZABETH WARREN

Respondent

COMPLAINT 23-22

*Hearing and Decision By: Hon. Rourke Moore (Acting Chair); Ron Chaney (Vice-Chair).
Commissioners: Andrew T. Manus, Hon. Alex Smalls, Dr. Melissa Harrington.*

I. PROCEDURAL POSTURE

Any person may file a sworn Complaint alleging violations of Title 29, Delaware Code, Ch. 58., including the Public Integrity Commission (“PIC”). The Commission’s Counsel initiated a Complaint against Elizabeth Warren after receiving information about improper fiscal conduct at the Delaware Department of Agriculture (“DDA”). At a Preliminary Hearing on July 24, 2023, the Commission found that it had both personal and subject matter jurisdiction over Ms. Warren, a DDA employee. The Commission also made a preliminary finding that the Complaint alleged sufficient facts that, if true, would support a finding of a violation of the State Code of Conduct. The Commission then issued a Notice of Hearing for October 11, 2023, at 12 p.m. On September 21, 2023, Ms. Warren, by and through her attorney, Timothy Willard, Esq., submitted an Answer to the Commission’s Preliminary Hearing Decision denying the Complaint’s allegations, pointing to Ms. Warren’s subordinate role as well as criminal seizure and/or public bidding law. On October 8, 2023, Mr. Joseph

Stanley, Esq., attorney for the Complainant, requested a continuance of the October hearing in order to provide State records subpoenaed at the Respondent's request. During the intervening time, Mr. Willard requested that the Commission subpoena Michael Scuse, [REDACTED], DAG, Dr. Karen Lopez, Capt. Rebecca Stratton and Lt. Jessica Kramer. The Hearing was rescheduled to December 19, 2023, at 12 p.m. and was held in the second-floor conference room at 410 Federal Street, Dover, DE 19901. In addition to members of the Commission and Commission Counsel (Deborah J. Moreau, Esq.), the following individuals were present: Elizabeth Warren (Respondent); Timothy Willard, Esq., (Attorney for Respondent); Joseph Stanley, Esq. (Attorney for Complainant); John P. Donnelly (Stenographer); Andrea Brzoska (Mr. Stanley's law clerk).

II. THE COMPLAINT

The Complaint alleged that in May 2023, Ms. Warren violated the State Code of Conduct as a consequence of her husband's Memorandum of Understanding ("MOU"), #0000642542, with the DDA, her employing agency. Specifically, the Complaint alleged: Ms. Warren violated 29 *Del. C.* § 5805(a) by participating in the review and disposition of purchase order # 0000642542 and an MOU with the same reference number, both matters related to her spouse, Thomas Warren, while performing her state job duties; Ms. Warren violated 29 *Del. C.* § 5805(b)(1) by assisting a private enterprise owned by her spouse (Thomas Warren, an Animal Boarding Facility Provider, as set forth in MOU # 0000642542) before the state agency, the DDA, by which she was associated by employment or appointment; Ms. Warren, did violate 29 *Del. C.* 5805(c) by allowing her spouse to enter into a contract, in excess of \$2000, (MOU #

0000642542) with the State, without public notice and competitive bidding; Elizabeth Warren did violate 29 *Del. C.* § 5806(a) by pursuing a course of conduct (accepting payment of over \$30,000.00 from her employing agency) that will raise suspicion amongst the public and reflect unfavorably on State government; Ms. Warren did violate 29 *Del. C.* § 5806(b) by having an interest in a private enterprise (Thomas Warren, an Animal Boarding Facility Provider, as set forth in MOU # 0000642542) which created a substantial conflict with the proper performance of her job duties in the public interest, a violation of the State Code of Conduct; and lastly, Ms. Warren did violate 29 *Del. C.* § 5806(e) by using her public office to secure over \$30,000 in State monies.

Appended to the Complaint, and incorporated by reference, were Attachments A through F. Attachment A to the Complaint was a copy of an email sent to Ms. Warren by Commission Counsel on May 22, 2023; Attachment B was a copy of Ms. Warren's response to Commission Counsel's email on the same date; Attachment C was a copy of purchase order #0000642542; Attachment D was a copy of MOU #0000642542; Attachment E was a copy of a referral letter to the Office of the Auditor of Accounts; Attachment F was a copy of the State Open Checkbook documenting the payment transaction to Mr. Warren on June 22, 2023.

III. COMPLAINANT'S CASE

A. Karen Lopez, DVM

Mr. Stanley called Karen Lopez, State Veterinarian, as his first witness. Dr. Lopez has worked for the DDA since 2016. Tr. 10:20-24. She reports to Jimmy Kroon, Director of the DDA's Department of Management. Tr. 11:1:6. She described her job as "the Head of Poultry and Animal Health Section" at DDA. Tr. 11:20-21. That Section is responsible for detecting,

suppressing and eradicating infectious diseases of animals. Tr. 11:22-24.

One of DDA's responsibilities is to ensure that domestic agricultural animals are not subjected to cruelty or mistreatment. Consequently, DDA has the ability to seize and impound animals pursuant to a court order. According to Dr. Lopez, DDA's animal seizures are coordinated with the Office of Animal Welfare. Tr. 18:9-10, 19:13-21.

Dr. Lopez's testimony then turned to the animal seizure at issue in this matter. In early May 2023, Dr. Lopez, along with OAW, coordinated the seizure of animals that were suspected of being mistreated. The animals included numerous cattle, sheep, goats, horses, donkeys and poultry. Tr. 25:7-19. Approximately one week before the seizure, OAW and the DDA began making plans for placement of the to-be-seized animals. Tr. 25:20-24. After not finding suitable placements for all of the animals, Ms. Warren and her husband approached Dr. Lopez and proposed that they keep the sheep at Mr. Warren's mother's property. Tr. 26:17-23, 30:12-24, 63:11-20. From Dr. Lopez's perspective, Ms. Warren's idea solved all her problems because the proposed location had no other animals that might be put at risk and the caregivers were experienced sheep farmers. Tr. 31:8-15. Dr. Lopez testified that Mr. Warren was compensated \$10 per day per sheep, which is the standard rate for that type of animal. Tr. 37:21-24. Under questioning, Dr. Lopez acknowledged her belief that the owner of the property where the sheep were located was owned by Mr. Warren's mother, not Mr. Warren himself. Tr. 40:10-24.

2. Elizabeth Warren

After being advised of her 5th Amendment right against self-incrimination, Ms. Warren waived that right and testified at the hearing. Tr. 66:12-17. Ms. Warren had been employed by the

DDA for eight years and left State employment at the end of May 2023 for reasons unrelated to the hearing. Tr. 67:21. Ms. Warren tendered her notice of resignation to the DDA on April 26, 2023. Tr. 67:15-18. When asked about her knowledge of the State's contract bidding process, she acknowledged having previously used the procedure when procuring an incinerator. Tr. 69:12-24.

When asked about the \$30,000 payment received for the care of the sheep, Ms. Warren admitted that it was deposited in the checking account she shares with her husband. Tr. 75:11-14. In defense of her spouse entering into the MOU with the DDA, Ms. Warren stated that she didn't determine where the animals went, that their operating procedures demanded that the animals be seized and that it was not her job to know the contracting rules. Tr. 80:12-17.

IV. RESPONDENT'S CASE

In her Answer, Ms. Warren deferred to Secretary Scuse's authority over the agency as justification for her conduct.

1. Lt. Jessica Kramer—OAW

Lt. Kramer has worked for the OAW for the past four years. The DDA contacted her regarding an anonymous complaint about a donkey with overgrown hooves. After going to the location and observing the donkey, Lt. Kramer also observed what appeared to be numerous malnourished sheep on the property. Tr. 102:7-15. After confirming the presence of animals that were possibly being mistreated, the OAW and the DDA began planning for the seizure of the animals one week before the planned seizure. Tr. 104:20-24.

V. APPLICABLE LAW

The Complaint alleged that Ms. Warren violated the following provisions of the State Code of Conduct:

29 Del. C. § 5804(1). “Close relative” means a person’s parents, spouse, children (natural or adopted) and siblings of the whole and half-blood.

29 Del. C. § 5805(a)(1). No state employee, state officer or honorary state official may participate on behalf of the State in the review or disposition of any matter pending before the State in which the state employee, state officer or honorary state official has a personal or private interest... . 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. (2) A person has an interest which tends to impair the person’s independence of judgment in the performance of the person’s duties with respect to any matter when:

a. Any action or inaction 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 such benefit or detriment would accrue to others who are members of the same class or group of persons... .

29 Del. C. § 5805(b)(1). No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.

29 Del. C. § 5806(a). Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

29 Del. C. § 5806(b). No state employee, state officer or honorary state official shall have any interest in any private enterprise nor shall such state employee, state officer or honorary state official incur any obligation of any nature which is in substantial conflict with the proper performance of such duties in the public interest.

29 Del. C. § 5806(e). No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.

VI. DISCUSSION

After the parties were excused, the Commission began reviewing and discussing the evidence presented at the hearing, as well as Ms. Warren's written Answer.

The Commission dismissed the alleged violations of 29 *Del. C.* § 5805(a)(1); 29 *Del. C.* § 5805 (b)(1); 29 *Del. C.* § 5806(b); and 29 *Del. C.* § 5806(e) for insufficient evidence on the record or due to other mitigating factors. Ms. Warren testified that she does not process purchase orders or MOUs for the DDA. Consequently, the Commission decided that Ms. Warren did not review and dispose of matters related to Mr. Warren's MOU while performing her State job duties. Tr. 69:1-11. Those duties were undertaken by other staff at the DDA.

In deciding whether Ms. Warren represented a private interest before her employing agency, the Commission considered the fact that Ms. Warren first approached Dr. Lopez with the idea of caring for the sheep. Tr. 46:14-21. However, it was noted by the Commission that Ms. Warren did not make the offer until after the DDA had contacted other local providers and were unable to find a suitable location. Tr. 45:14-24, 46:1-4. Once the decision was made to move the sheep to the Warren's farm, Mr. Warren took over as the contact person for the DDA, thus reducing Ms. Warren's involvement in the private interest. Tr. 40: 17-24. As a consequence of Ms. Warren's very limited representation of Mr. Warren's private interest before the DDA and the fact that Ms. Warren had already submitted a resignation letter to the DDA (Tr. 67:17-18, 93:4-8) at the time of the seizure, the Commission declined to find Ms. Warren in violation of representing a private interest before her employing agency.

Ms. Warren's impending departure also mitigated the Commission's concerns that she owned a private enterprise which was in substantial conflict with the proper performance of her

job duties and that she was using her position at the DDA to obtain unwarranted private advancement and gain. Obviously, if she was no longer employed at the DDA, those two things would not be possible and accordingly those allegations were dismissed.

The Commission then turned to consideration of the remaining allegation, a violation of the appearance of impropriety standard in the State Code of Conduct. The statute is basically an appearance of impropriety test. The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality. In deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances. Those circumstances are 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.

The Commission first considered the following mitigating factor. Ms. Warren's job duties were unrelated to purchase orders, MOUs or finances. Tr. 69:1-11. Consequently, Ms. Warren erroneously relied upon the fact that Mr. Warren's paperwork was successfully processed in First State Financial ("FSF") as a basis to assume that the transaction was problem-free. At the hearing, Ms. Warren stated "[s]o there was always that—those checks and balances that when things went through finance and even through the FSF system, there is checks and balances. Things go to OMB so that, in theory, there is multiple hands on things." Tr. 70:3-7. While the Commission does not agree with that reasoning, there is some logic to Ms. Warren's point of view. The State (specifically the Division of Accounting) was aware that

APPENDIX C

there were issues regarding the MOU before the payment was issued. Actual receipt of the payment may have caused Ms. Warren to incorrectly assume that if there was a problem with the MOU, her spouse would not have been paid.

The Commission then turned to consideration of the aggravating factors. Ms. Warren was the first person who suggested to the DDA that she and her husband take care of the sheep. Tr. 26:17-23; 30:12-24; 63:11-20. She was able to make that suggestion because she was in unique position to know the DDA's success, or lack thereof, in locating caregivers for the sheep. In other words, Ms. Warren was aware of the DDA's need only because of her State position and she used the information to secure an MOU for her spouse.

Despite both Warrens offering to take responsibility for the sheep, the MOU was in the name of Thomas Warren. The Commission is of the opinion that the decision to include only Mr. Warren's name on the MOU was a conscious one, designed to avoid identifying a DDA employee as the recipient of the funds.

Ms. Warren ignored an opportunity to correct her mistake(s). Ms. Warren ignored the advice of Commission Counsel which was offered in advance of accepting payment from the DDA. Had Ms. Warren heeded that advice, she would not be in the situation in which she finds herself.

Not forgetting that this matter was originally reported by anonymous members of the public, the Commission decided that Ms. Warren created an appearance of impropriety amongst the public by facilitating her husband's MOU with the DDA.

VI. CONCLUSION

Based upon the above facts, evidence and law, the Commission unanimously voted to find that Ms. Warren created an appearance of impropriety by facilitating her spouse's MOU with the DDA, a violation of 29 *Del. C.* § 5806(a). Pursuant to statute, 29 *Del. C.* § 5810(d), "[w]ith respect to any violation with which a person has been charged and which the Commission has determined as proved, the Commission may...[i]ssue a written reprimand or censure of that person's conduct. Consequently, a copy of this opinion letter will be made available to the public.

It is so ordered, this 9th day of January 2024.
FOR THE PUBLIC INTEGRITY COMMISSION

/s/ *Rourke A. Moore*

Rourke A. Moore
Vice-Chair (Acting Chair)