

# Staff Findings and Recommendations Report Public Integrity Commission

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*153<sup>rd</sup> General Assembly, 1<sup>st</sup> session*

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*Respectfully submitted to the  
Joint Legislative Oversight and Sunset Committee  
April 2025*

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Sunset Members:

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Special thanks: We appreciate the aid provided by Public Integrity Commission staff in conducting this review.

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# ABOUT THIS REPORT

This is a staff findings and recommendations report (“staff report”) drafted by Division of Legislative Services staff on the sunset and oversight review (“review”) of the Public Integrity Commission (“PIC” or “Commission”).

The Joint Legislative Oversight and Sunset Committee (“JLOSC” or “Committee”) is a bipartisan 10-member legislative body which performs periodic legislative review of state entities. The purpose of the oversight and sunset review is to assess genuine public need and entity performance. JLOSC performs its duties with support provided by the dedicated and nonpartisan staff of Division of Legislative Services. The Division of Legislative Services is an independent and confidential reference bureau for the General Assembly and supplies many services, including staff support for JLOSC.

JLOSC staff completes a performance evaluation of the entity under review and provides a staff report to JLOSC which includes research, analysis, key findings, and recommendations. During the review process, the following is not assumed:

- That there is a genuine public need for the entity under review.
- That the entity is satisfactorily and effectively meeting a public need.

Rather, the entity under review has the burden of showing, through the statutory criteria for review included in its self-report and analyst requested supplemental documentation, that there is a genuine public need, and that the entity is meeting that need.

JLOSC selected PIC for review on March 2, 2023. During the review process PIC supplied information by completing a self-report which included a performance review questionnaire.<sup>1</sup>

JLOSC staff compiled the following findings and recommendations after completing a performance evaluation. Staff used national evaluation standards while conducting the performance evaluation. These standards require planning and performing the evaluation to obtain sufficient evidence to provide a reasonable basis for the findings and conclusions based on the review criteria. Staff believe the evidence obtained provides a reasonable basis for their findings and conclusions. Additionally, the Objectives, Scope, and Methodology section discusses the fieldwork procedures used while conducting the research and developing the findings and recommendations presented in this report.

The staff report includes recommendations for JLOSC review and discussion. JLOSC does not follow staff’s recommendations by obligation. They convene publicly to review and discuss the staff report and finalize recommendations only after discussing and adopting with an affirmative vote from 7 members.

The JLOSC statute authorizes the Committee to recommend 1 or more of the following:

- Continuation of the entity as is.
- Termination of the entity.
- Termination of any program within the entity.

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<sup>1</sup> Self-reports available on the Committee’s website, <https://legis.delaware.gov/Committee/Sunset>.

- Consolidation, merger, or transfer of the entity or the entity's functions to another entity.
- Termination of the entity unless certain conditions are met or modifications are made, by legislation or otherwise within a specified period.
- Budget appropriation limits for the entity.
- Legislation which the Committee considers necessary to carry out its decision to continue or terminate the entity.

The information contained in this report, along with the previously published self-report which includes background information from the entity under review, helps JLOSC in conducting a review of the entity.<sup>2</sup> The "JLOSC Staff Observations and Analysis" section of this report has information to support the staff's findings and recommendations.

### **Next Steps**

JLOSC will hold a public hearing for each entity under full review to present to the Committee and accept public comment on the scope of the review.<sup>3</sup>

The Committee will review all information received, including the findings and recommendations presented in this staff report. Recommendations are adopted after review, discussion, and an affirmative vote of 7 JLOSC members. Committee members are not bound by recommendations presented by staff and are free to change, reject, or create new recommendations. Once JLOSC adopts recommendations, the review moves to the implementation phase which may include drafting legislation.

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<sup>2</sup> Self-report accessible on the Committee's website, <https://legis.delaware.gov/Committee/Sunset>.

<sup>3</sup> Public meeting notices found on the Committee's website and the State of Delaware's Public Meeting Calendar.

# OBJECTIVE, SCOPE, AND METHODOLOGY

## Objective

A performance evaluation conducted as required under JLOSC statute and based on the following review criteria:

1. If the entity is a licensing entity, the extent to which the entity has permitted qualified applicants to be licensed.
2. The extent to which the entity has served the public interests.
3. The extent to which the entity has recommended statutory changes, and whether those changes directly benefit the public or whether those changes primarily benefit the entity or other entities and are of only indirect benefit to the public.
4. Review the implementation of recommendations contained in the final reports presented to the General Assembly and the Governor during previous legislative sessions.

## Scope

This review covers a 3-year performance period except where noted.

## Review Criteria #1<sup>4</sup>

If the entity is a licensing entity, the extent to which the entity has allowed qualified applicants to be licensed.

## Methodology for Review Criteria #1

The Public Integrity Commission is not a licensing entity; statutory criteria number 1 is not applicable to this review.

## Review Criteria #2

The extent to which the entity serves public need.

## Methodology for Review Criteria #2

As described in the fieldwork section of this report, this review explored the main duties and responsibilities listed in statute, [Chapter 58, Title 29 \("Chapter 58"\)](#), except where noted. This report includes findings and recommendations pertaining to the main statutory duties.

## Review Criteria #3

The extent to which the entity has recommended statutory changes, and whether those changes directly benefit the public or primarily benefit the entity or other entities and are of only indirect benefit to the public.

## Methodology for Review Criteria #3

PIC submitted its self-report in May 2023 and recommended mandatory ethics training for all state employees and proposed identification badges for lobbyists. PIC also stated that the penalties for Chapter 58 violations lack impact, failing to deter misconduct and that growing noncompliance with annual financial disclosures for public officers places an increasing burden on PIC to track down candidates and public officers.

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<sup>4</sup> Review Criteria in this staff report is an aggregation of the criteria established in [§ 12011\(b\), Title 29](#).

## **Review Criteria #4**

Review the implementation of recommendations contained in the final reports presented to the General Assembly and the Governor during earlier legislative sessions.

## **Methodology for Review Criteria #4**

This is the first JLOSC review of the Public Integrity Commission; statutory criteria number 4 is not applicable to this review.

## **Fieldwork completed**

During this review, JLOSC staff completed review of the following:

- Reviewed all information supplied by Public Integrity Commission staff, including:
  - Self-report.
  - Meeting minutes.
  - Current Commission membership.
  - Commission staffing.
  - Operating budget and performance measures for fiscal years 2018 – 2024.
  - Annual reports for 2019 – 2024.
  - Code of conduct opinions 1991-2022 (redacted).
  - Training information covering attendance and evaluations, January 2022 – November 2023, instructor led and online courses (redacted).
  - End user instructions for login and filing.
  - Financial disclosure frequently asked questions.
- Current regulations.
- All available public documents such as websites, available news articles.
- Current Commission statute Chapter 58, Title 29 (Laws Regulating the Conduct of Officers and Employees of the State).
- Related legislation.
- Commission's overall performance as it relates to current statute.
- Commission meeting minutes available on the public meeting calendar January 2020 – December 2024.
- Attended various Commission meetings.
- Similar processes and commissions in other states.

# REVIEW BACKGROUND

The Public Integrity Act of 1994 established the Public Integrity Commission, which succeeded the State Ethics Commission, created in 1990.<sup>5</sup> The State Ethics Commission had previously replaced the State Personnel Commission, established in 1974.

The Public Integrity Commission currently oversees executive branch officers and employees, elected officials, approximately 300 boards and commissions with around 2,200 appointees, and over 57 local governments along with their employees, officers, and elected officials. The Commission enforces the code of conduct, financial and organizational disclosures, dual compensation, and lobbyist activity. However, it has struggled to effectively enforce the dual compensation law due to its lack of authority to collect information from individuals employed by towns, municipalities, or counties within the state who may receive dual government income. The Commission consists of 7 commissioners and 1 staff attorney. For budgetary purposes the Public Integrity Commission is located under the Department of State.

The Joint Legislative Oversight and Sunset Committee is conducting its first review of the Public Integrity Commission. This review began in March 2023. The Public Integrity Commission submitted a self-report in May 2023, and JLOSC staff subsequently conducted research and prepared this findings and recommendations report.

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<sup>5</sup> Senate Substitute No. 1 to Senate Bill No. 198, as amended by House Amendments Nos. 1 and 2, 137<sup>th</sup> General Assembly, enacted July 1994. House Bill No. 762, as amended by House Amendment No. 1, 135<sup>th</sup> General Assembly, enacted July 1990.



# REVIEW CRITERIA OBSERVATIONS

## Criteria #1 Observations:

Criteria #1 evaluates the extent to which an entity fulfills its licensing responsibilities by enabling qualified applicants to obtain licensure. The Public Integrity Commission ("PIC") is not a licensing entity statutory; criteria #1 is not applicable to this review.

## Criteria #2 Observations:

Criteria #2 assesses how effectively an entity has served the public interest. This review explored the main duties and responsibilities listed in statute, Chapter 58, Title 29, and made observations regarding PIC composition and staff support, and its main statutory duties: code of conduct, financial and organizational disclosures, compensation policy (dual compensation), lobbying activities, and financial disclosure reporting of lobbyists and public officials.<sup>6</sup>

## PIC Composition, Duties, and Function

The Commission consists of 7 members appointed by the Governor with Senate approval. To ensure balance, no more than 4 members may belong to the same political party, and members cannot hold or run for political office or participate in campaigns. Members serve a single 7-year term and cannot be reappointed for additional terms but can hold over their term until a replacement is appointed. The Commission elects a chairperson from within its membership and requires a quorum of 4 members to take official actions, including disciplinary hearings. Based in Dover, the Commission holds meetings as needed and may convene elsewhere in the state. Members receive compensation for their service of \$100 per meeting and each day dedicated to performing official duties. Members can receive reimbursement for related expenses such as mileage.<sup>7</sup>

Each year, commissioners can participate in voluntary training opportunities. PIC reported that commissioners currently rotate attendance at the annual Council on Governmental Ethics Laws ("COGEL") training due to its high cost, approximately \$2,600 per person. Typically, 2 or 3 Commissioners, along with Commission Counsel, participate in this training. Additionally, Commissioners can attend the *Ethical Conduct in Government* training, conducted by Commission Counsel for state, county, and municipal employees and officials.

The Commission holds regular meetings, and their primary responsibilities include enforcing ethics laws, issuing advisory opinions, investigating ethical violations, recommending or imposing disciplinary actions, and preparing an annual report summarizing its activities. The PIC statute lists their power and duties<sup>8</sup>:

- (1) To recommend to the General Assembly from time to time such rules of conduct for public employees and officials as it shall deem appropriate.
- (2) To issue written advisory opinions upon the request of any state employee, state officer, honorary state official or state agency as to the applicability of this chapter to any particular fact situation.

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<sup>6</sup> Chapter 58, Title 29 is divided into 4 subchapters: Subchapter I. State Employees', Officers and Officials' Code of Conduct; Subchapter II. Financial Disclosures; Subchapter III. Compensation Policy; and Subchapter IV. Registration of Lobbyists.

<sup>7</sup> [29 Del. C. § 5808.](#)

<sup>8</sup> [29 Del. C. § 5809.](#)

- (3) To refer to Commission Counsel to investigate any alleged violation of this chapter and, after notice and hearing, to recommend by resolution, such disciplinary action as it may deem appropriate to such appropriate official or agency as the Commission shall determine or to take such other disciplinary action as is authorized by § 5810(d) of this title or other provisions of this Code. The Commission may also dismiss any complaint that it determines is frivolous or fails to state a violation.
- (4) To report to the appropriate federal or state authorities any substantial evidence of a violation of any criminal law which may come to its attention in connection with any proceeding whether advisory or disciplinary.
- (5) To maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of § 5807(b) and (d), and § 5810(h).
- (6) To follow the procedural rules specified in § 5810 of this title and to establish such other procedural rules as shall not be inconsistent with the rules prescribed therein.
- (7) To subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Commission's duties or exercise of its powers.
- (8) To prescribe forms for reports, statements, notices and other documents required by law. The Commission may permit the filing of reports, statements, notices, and other documents by electronic means and may specify the form and content of such filings.
- (9) To prepare and publish manuals and guides explaining the duties of individuals covered by this chapter; and giving instructions and public information materials to facilitate compliance with, and enforcement hereof.
- (10) To provide assistance to state agencies, employees and officials in administering the provisions of this law.
- (11) To prepare an annual report by March 1st of each year describing its activities for the previous year and to prepare such other reports and studies as may advance the purposes of this chapter.
- (12) To appoint a lawyer admitted to practice in the State to serve as Commission Counsel.
- (13) To request appropriate state agencies to provide such professional assistance as it may require in the discharge of its duties.
- (14) To contract for any services which cannot satisfactorily be performed by the Commission Counsel or other Commission staff.
- (15) Commencing January 15, 1995, to administer and implement the financial disclosure provisions of subchapter II of this chapter and to maintain the records filed pursuant thereto.
- (16) Commencing January 15, 1996, to administer and implement the lobbyist registration provisions of this Code and to maintain the records filed pursuant thereto.
- (17) To perform such other responsibilities as may be assigned to it by law.

PIC explained in their self-report that they work closely with the Delaware Department of Justice (“DOJ”) Office of Civil Rights and Public Trust (“OCRPT”) to handle violations of conflict-of-interest laws, with each entity taking cases based on whether a case involves civil or criminal issues. When necessary, the PIC refers matters to the Attorney General for criminal prosecution, as the DOJ has exclusive authority over criminal offenses. Additionally, PIC reported that it measures its performance for budgetary purposes against the following data: the number of employees and officials participating in ethics training, and the number of advisory opinions issued, with the percentage of those opinions issued within 45 days of the request. PIC supplied the following chart:

<i>20-01-08</i>	<i>Public Integrity Commission</i>	<i>FY 2022 Actual</i>	<i>FY 2023 Actual</i>	<i>FY 2024 Rec.</i>
	# of advisory opinions, waivers and complaints	42	60	60
	# of people receiving training	764	1100	1200
	% of opinions issued within 45 days	88	98	98

### **PIC Staff Support**

For budgetary purposes, PIC is placed under the Department of State. The current staff support for PIC is 1 attorney who serves as Commission Counsel and is PIC’s legal representative. The primary responsibilities involve providing legal advice, preparing educational materials, and assisting with compliance and enforcement. If the Commission Counsel deems it necessary or appropriate, they may recuse themselves from a matter before the Commission, in which case their duties may be carried out by the Attorney General or by outside counsel selected by the Commission.<sup>9</sup> Specifically, the PIC statute lists the Commission Counsel’s powers and duties as<sup>10</sup>:

- (1) To assist the Commission in preparing and publishing manuals and guides explaining the duties of individuals covered by this chapter and in other activities, such as seminars and workshops, educating individuals covered by this chapter about its requirements and purposes, and giving instructions and public information materials to facilitate compliance with, and enforcement hereof.
- (2) To provide legal counsel to the Commission concerning any matter arising in connection with the exercise of its official powers or duties.
- (3) To review information coming to the attention of the Commission relating to potential violations of this chapter.
- (4) To investigate information coming to the attention of the Commission that, if true, would constitute a violation of any provision of this chapter and/or to recommend that possible violations of these, or other state and federal laws, be referred by the Commission to the Attorney General or the United States Attorney for investigation and prosecution. Matters may be so referred to the Attorney General or the United States Attorney only upon a determination by at least a majority of the Commission that there are reasonable grounds to believe that a violation may have occurred.
- (5) To prosecute disciplinary proceedings, if a determination has been made by at least a majority of the Commission that there are reasonable grounds to believe that a violation may have occurred, before the Commission and to assist the

<sup>9</sup> [29 Del. C. § 5808A\(b\).](#)

<sup>10</sup> [29 Del. C. § 5808A.](#)

Commission in drafting educational materials, waiver decisions and advisory opinions.

- (6) To employ and supervise staff necessary to perform investigatory and prosecutorial functions.
- (7) To maintain permanent records of all advisory, waiver, investigatory and prosecutorial matters.
- (8) To perform any other tasks requested by the Commission concerning any matter arising in connection with the exercise of its official powers or duties.
- (9) Under circumstances in which the Commission has not convened for 60 or more consecutive days, and after notice to the Commission, Commission Counsel may issue written advisory opinions upon the request of any state employee, state officer, honorary state official or state agency as to the applicability of this chapter to any particular fact situation if the request concerns an issue that does not require a waiver and that has previously been determined by:
  - a. Written opinion of the Commission; or
  - b. Court opinion interpreting the State Code of Ethics.

PIC noted that, in addition to their Commission Counsel, there is an additional full-time budgeted support position for an administrative assistant III. After the administrative assistant retired in 2017, Commission Counsel absorbed the duties and determined that the position did not need to be filled, stating that, essentially, “PIC was paying an employee \$30k+ per year to answer the phone” and that since electronic files took over, the office no longer needed an assistant to maintain paper files. In the current PIC rules, the duties of an administrative assistant are listed as:

The administrative assistant shall attend Commission meetings and hearings, shall take minutes of meetings and transcribe testimony at hearings in the absence of a court reporter. The administrative assistant shall maintain the books, records, and files of the Commission in the Commission’s principal office, or at such other location as the Commission shall so designate. The administrative assistant shall carry out the duties and responsibilities required by the job description as assigned by the Commission and/or Legal Counsel.<sup>11</sup>

In 2020, another office under the Department of State, Office of Unclaimed Property, contacted Commission Counsel and requested to “borrow” the position with the agreement that PIC could later reclaim the position if needed. The position has not been reclaimed or requested. Further, PIC reported that support staff functions were not hindered by lack of assistance or support staff, stating that the administrative assistant’s role was limited to direct phone calls and that the Commission Counsel absorbed those duties, returning voicemails when unavailable due to other PIC duties.

### **Code of Conduct – Enforcement, Administration, and Training Regarding Ethics Laws**

PIC is tasked with the enforcement, administration, and training related to ethics laws applicable to the executive branch of state government, as well as most county and municipal governments in Delaware. Part of these duties include waivers and advisory opinions.

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<sup>11</sup> PIC rules last updated December 2011, available [online](#) and in Appendix A.

The Commission can grant a written waiver for certain rules if a state agency or individual who is or was a state employee, officer, or official requests it in writing. This can happen if the Commission decides that strictly following the rule is not needed to meet the public's goals or would cause unfair hardship. If the employee, officer, or official acts based on the waiver and fully shares all important facts, they do not face penalties for the issues covered by the waiver.

If a state employee, officer, honorary official, or agency requests it in writing, the Commission or its Counsel can provide an advisory opinion about how code of conduct applies to a specific situation. If the person fully discloses all important facts and follows the opinion in good faith, they won't face penalties for the issues covered by the opinion.

The Commission's proceedings for waivers and advisory opinions are statutorily confidential and held in executive session. Written decisions are not published on PIC's website.<sup>12</sup> This confidentiality limits public access to PIC's ethical guidance. The PIC website has links to 7 documents covering 32 years of "code of conduct opinion synopses".<sup>13</sup> It is cumbersome to find case numbers from meeting minutes or find synopses in these large files. Even more challenging, all the cases are separated into 7 category types which do not match the language used for the case in meeting minutes. The 7 categories are:

- Things of monetary value 1991-2023, 71 pages.
- Personal or private interest 1991-2023, 418 pages.
- Post-employment 1991-2023, 273 pages.
- Outside employment 1991-2023, 221 pages.
- Local codes of conduct 1991-2023, 8 pages, municipality names not redacted.
- Jurisdiction and procedure 1991-2022, 52 pages.
- Contacting with the state 1991-2023, pages unknown, unavailable document.<sup>14</sup>

This practice contrasts with many state ethics commissions that provide full access to advisory opinions online, including complaints. For example, the Oregon Government Ethics Commission offers searchable databases of all records and reports.<sup>15</sup> Some states like the Georgia Ethics Commission do not routinely meet in executive session. They broadcast their entire meetings live via YouTube and store recordings for public access on their website.<sup>16</sup>

In addition to waiver and advisory opinions, PIC provides ethics training.<sup>17</sup> PIC offers 2 training courses. One course is available to agencies upon request and is taught by the Commission's Counsel, held in person or virtually.<sup>18</sup> The other course is for state

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<sup>12</sup> [29 Del. C. § 5807](#).

<sup>13</sup> Code of conduct opinion synopses documents available at <https://depic.delaware.gov/code-of-conduct/opinion-synopsis>.

<sup>14</sup> Website link retrieves the jurisdiction and procedure document.

<sup>15</sup> Website available at <https://www.oregon.gov/ogec/Pages/default.aspx>.

<sup>16</sup> YouTube recording links available under commission meeting information available at: <https://ethics.ga.gov/category/commission-meetings>. Commission recordings began with the meeting held on January 7, 2021, and have continued since then.

<sup>17</sup> PIC does not publish all training materials or provide easily accessible video tutorials on their website for the public. There is an available ethics brochure, called an "ethics disclosure worksheet," available in Appendix B and online at <https://depic.delaware.gov/wp-content/uploads/sites/48/2023/03/The-Rules-of-Ethical-Conduct.pdf>.

<sup>18</sup> Course title is Ethical Conduct in Government.

employees and available through the Department of Human Resources (“DHR”) Learning Center.<sup>19</sup> PIC developed the training, which is a 45-minute webinar and available on-demand in the DHR Learning Center for all state employees.<sup>20</sup> The course is part of the new hire curriculum, but statute does not mandate ethics training for state employees, and an annual refresher course is not available.<sup>21</sup>

PIC provided training data during this review. Evaluation reports covered January 2022 through August 2023 for the instructor-led course. Evaluations were positive and respondents preferred the class to be taught in person so they could benefit from more interaction. Attendance data provided for the instructor-led and online course reported the following:

- In-person course:
  - April 2022 – July 2022, 26 agencies received training.<sup>22</sup>
  - January 2023 – October 2023, 9 agencies received training, total of 446 attendees.
- Online course:
  - January 2022 – December 2022, 498 attendees completed course.<sup>23</sup>
  - August 2023 – November 2023, 1,340 attendees completed course.

### **Public Officer Financial Disclosure Reporting**

Financial disclosure reporting applies to public officers across the executive, legislative, and judicial branches of state government and candidates for state office. The statutory definition of “public officer” includes candidates that file for state office but excludes PIC members and elected and appointed officials of state political subdivisions, public school districts, and institutions of higher learning.<sup>24</sup>

Financial disclosure reports must detail a public officer’s financial interests, including assets, creditors, income, and gifts. Additionally, public officers must disclose any nonprofit organizations where they serve as a board or council member. This excludes religious organizations, civic associations, community associations, foundations, maintenance organizations, or trade groups incorporated or conducting activity in the state.<sup>25</sup> This list exempts a large portion of nonprofit organizations, and it is unknown if the intent was to exempt only religious organizations, a common exemption found throughout other states.

Newly elected or appointed public officers are required to submit their first report to PIC within 14 days of becoming a public officer. After the first report, the annual reporting deadline is March 15. The statute is silent on when reports are due for candidates who filed for state office.

The Commission’s approach to financial and organizational disclosures requires a Freedom of Information Act (“FOIA”) request to access a public official’s financial disclosure report. This procedure makes it difficult for the public to easily access financial

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<sup>19</sup> Course title is Ethics Orientation for State Employees.

<sup>20</sup> PIC contracted with [Triliant](#) and updated the webinar in 2023.

<sup>21</sup> State employees can request to retake the course.

<sup>22</sup> Number of attendees not provided.

<sup>23</sup> PIC reported that the course was “under construction” from October 2022 – June 2023 which resulted in fewer trainees.

<sup>24</sup> [29 Del. C. § 5812\(n\).](#)

<sup>25</sup> [29 Del. C. § 5813A\(a\).](#)



records. The financial disclosure statute states that all reports filed will “be made available at reasonable hours for public inspection and copying” under FOIA.<sup>26</sup> PIC also collects registration, employer, and activity reports from lobbyists and provides this information on PIC’s website.<sup>27</sup> The statute provides that that lobbyists-related reports and files are “made available at reasonable hours for public inspection and copying” under FOIA.<sup>28</sup>

In contrast to PIC practices, the Delaware Department of Elections allows the public to search an online database to review all campaign finance reports without a FOIA request. The public disclosure statute for campaign finance reports is like PIC’s financial disclosure and lobbyists registration statutes in stating:

All reports made to the Commissioner and all rulings made by the Commissioner under this chapter shall be public and shall, immediately upon their filing, be made available by the office of the Commissioner for inspection and copying at reasonable cost by the public, except that the identity of the candidate or committee which requested a ruling shall not be disclosed without the candidate’s or committee’s consent.<sup>29</sup>

### **Compensation Policy – Monitoring Government Employees Holding Dual Government Jobs**

PIC explained that the Commission oversees the compensation policy under Subchapter III of [Chapter 58, Title 29](#), also known as the dual compensation law, and that PIC believes its role is outdated and ineffective. PIC expressed frustration with the required annual audit of time records by the Office of Auditor of Accounts, and stated that the office has not provided a dual employment audit report since February 2020 and earlier audits found a lack of rules and procedures for proper oversight and audit of the time records.<sup>30</sup> PIC stated that it cannot determine who receives dual state income due to limited data, and the Commission lacks authority to collect financial information from municipal and county employees. PIC concluded that prior legislative attempts to update the law were unsuccessful and, without updates or added resources, PIC cannot fulfill its responsibilities regarding dual employment oversight.

The State Auditor must report any discrepancies that it finds either to PIC for investigation per § 5810 or to the DOJ for possible criminal charges, but the statute is vague as to the Commission’s responsibilities regarding reported discrepancies and their associated penalties.<sup>31</sup> House Bill No. 9 and House Bill No. 38 were introduced in early 2025 to bring updates to this statute.<sup>32</sup>

### **Lobbying – Registration, Employer Authorization, Expense and Activity Reports**

PIC oversees lobbying activities, including the registration, employer authorization, expense reports, and legislative or administrative actions on which lobbyists are working. The PIC website provides access to lobbying data, including employers, registered lobbyists, employer authorization, and lobbying activity through the Public Integrity

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<sup>26</sup> [29 Del. C. § 5814\(b\)](#).

<sup>27</sup> Available online at <https://pirs.delaware.gov>.

<sup>28</sup> [29 Del. C. § 5838\(b\)](#).

<sup>29</sup> [15 Del. C. § 8032](#).

<sup>30</sup> Since PIC provided its self-report, the Office of Auditor of Accounts completed a dual employment performance audit for fiscal years 2020 – 2022, available at <https://auditor.delaware.gov/2024/09/17/dual-employment-performance-audit-fy20-fy22>, findings were forwarded to PIC

<sup>31</sup> [29 Del. C. § 5823\(b\)](#).

<sup>32</sup> [House Bill No. 9](#), released January 23, 2025; [House Bill No. 38](#), released January 30, 2025.

Reporting System (“PIRS”).<sup>33</sup> This data is publicly available to view, download, and print directly from the PIC website. Statute specifically states that activity reports filed by lobbyists be posted online.<sup>34</sup> Lobbyist registration can also be obtained upon request by the Governor, Secretary of the Senate, Chief Clerk of the House of Representatives, and the head of any state agency.<sup>35</sup>

Lobbying expenditure information is not available on the PIC website and access to these records is not covered by statute. Rather, statute provides that access to all lobbyist records and reports will “be made available at reasonable hours for public inspection and copying” under FOIA.<sup>36</sup> Lobbyists are required to submit to PIC quarterly financial reports that include all expenditures and provided gifts over \$50 in value.<sup>37</sup> PIC is required to maintain these files for 4 years. There is no limit for lobbying expenditures or gifts.

Delaware is 1 of 8 states that does not charge a lobbyist registration fee.<sup>38</sup> PIC does collect late fees from lobbyists for required authorizations and reports.<sup>39</sup> If a lobbyist fails to file the required authorization or report, their registration as a lobbyist is considered voluntarily canceled.<sup>40</sup> They cannot register or work as a lobbyist again until they submit all overdue forms. If a report is late, a \$25 fee is charged for the first day and \$10 for each additional day, up to \$100 total. The Commission can waive this fee at its discretion. Late fees are paid through the Commission's online system and go into a special fund to cover administrative costs. PIC supplied the following chart regarding fees collected:

Description of Fine or Fee	Current Fine or Fee \$\$	Number of Persons or Entities Paying Fine or Fee	Fine or Fee Revenue \$\$	Where is the Fine or Fee Revenue Deposited? (i.e., general fund, special fund)
Lobbyist late fees	\$25-\$100	Varies greatly-around 20	Est. \$6k per year	Special fund
CY 2023	2760.00			Special fund
CY 2022	4610.00			Special fund
CY 2021	1265.00			Special fund

### Criteria #3 Observations:

Criteria #3 evaluates whether an entity has proposed statutory changes that directly benefit the public or primarily serve the entity or other entities with only indirect public benefit. In its self-report, PIC recommended mandatory ethics training for all state employees. PIC also stated that the penalties for Chapter 58 violations lack impact, failing to deter misconduct and growing noncompliance with annual financial disclosures for public officers, placing an increasing burden on PIC to track down candidates and public officers who are out of compliance.

<sup>33</sup> Available online at <https://pirs.delaware.gov> where PIRS is described as “a database through which lobbyists, and the organizations they represent, report expenses, gifts and legislative activity.

<sup>34</sup> [29 Del. C. § 5836\(d\).](#)

<sup>35</sup> [29 Del. C. § 5832\(d\).](#)

<sup>36</sup> [29 Del. C. § 5838\(b\).](#)

<sup>37</sup> [29 Del. C. § 5835.](#)

<sup>38</sup> Lobbyist registration requirements chart available at <https://www.ncsl.org/ethics/lobbyist-registration-requirements>.

<sup>39</sup> [29 Del. C. § 5839\(c\).](#)

<sup>40</sup> [29 Del. C. § 5839\(c\).](#)



## **Mandatory Ethics Training for State Employees**

Delaware has no statewide requirement for ethics training for public employees or officers. PIC recommended mandatory ethics training for all branches of state employees and advocated that requiring the training would establish a baseline of knowledge that could raise awareness and reduce violations.

JLOSC staff reviewed state websites and compiled data concluding that 30 states mandate some form of annual ethics training, while 20 states do not. Among the states that do not require annual ethics training, 4 states still require ethics training for certain groups, such as public school or university employees. Utah requires all state agencies to provide training every 2 years, and Washington State encourages training every 3 years, with agencies required to have an ethics advisor. At the federal level, Washington, D.C., and federal employees are required to complete ethics training.

In Delaware, the City of Wilmington implemented ethics training in October 2021, requiring all elected officials and city employees to complete annual ethics training, with a public list posted online of the elected officials who are complying. All elected officials completed the training in early 2021, met compliance through April 30, 2022, and were required to attend refresher training by April 30, 2023, the last date provided on the city's website.<sup>41</sup>

## **Proposed Identification Badges for Lobbyists**

PIC proposed in its self-report identification badges for lobbyists. It appears there was an attempt to provide lobbyists with badges in 2018, but the genesis and conclusion of the project is not clear, and it unknown why the process started without statutory authority. In a December 2011 article on State & Federal Communications, only 13 states were listed with identification badge requirements for lobbyists<sup>42</sup>:

- Connecticut
- Georgia
- Kansas
- Maine
- Missouri
- North Dakota
- New Hampshire
- New Jersey
- Nevada
- Pennsylvania
- Rhode Island
- South Dakota
- Wyoming

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<sup>41</sup> City of Wilmington annual ethics training information available online <https://www.wilmingtonde.gov/government/boards-commissions-and-committees/wilmington-ethics-commission/annual-ethics-training>.

<sup>42</sup> Article available at <https://stateandfed.com/ask-the-experts/experts-required-wear-badge>.

## **Chapter 58 – Violations and Annual Financial Disclosure Deadlines and Penalties**

PIC reported that the penalties for Chapter 58 violations are not sufficiently severe to match the seriousness of the offenses or deter misconduct. Additionally, as the number of candidates and public officers required to file annual financial disclosures increases, compliance continues to decline, forcing PIC to dedicate more time and resources to tracking down those who fail to submit the required forms.

Lobbyists who fail to file authorizations or reports are considered to have voluntarily canceled their registration and are assessed fees if they untimely submit authorizations or reports.<sup>43</sup> Failure to file a financial disclosure as a public officer is a misdemeanor, but there are no fees for reports that are filed untimely.<sup>44</sup>

With code of conduct violations<sup>45</sup>, by statute PIC can take only the following actions<sup>46</sup>:

- (1) Issue a written reprimand or censure of that person's conduct.
- (2) With respect to a state employee or state officer, other than an elected official, remove, suspend, demote or take other appropriate disciplinary action with respect to that person, without regard to any limits imposed by Chapter 59 of this title but within the limits of the Constitution and other laws of the State.
- (3) With respect to an honorary state official, recommend that appropriate action be taken to remove the official from office.

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<sup>43</sup> [29 Del. C. § 5839\(c\).](#)

<sup>44</sup> [29 Del. C. § 5815.](#)

<sup>45</sup> Includes violations identified through completed investigations based on findings from the annual audit of time records conducted by the State Auditor. If the State Auditor finds a violation, the State Auditor notifies PIC, which then investigates the case under Chapter 58. PIC may take only the same actions that are listed in [29 Del. C. § 5810\(d\).](#)

<sup>46</sup> [29 Del. C. § 5810\(d\).](#)

# JLOSC STAFF OBSERVATIONS AND ANALYSIS

Staff reviewed current statute, structure, and processes that PIC uses and noted the following:

1. From this review, PIC and its Commission Counsel are found to be completing their statutory duties. Based on a review of materials, it is recommended that PIC and the Department of State review current staffing needs.
2. Public transparency in information, reports, waivers and advisory opinions is essential. This information should be made publicly accessible, and proceedings should occur in open public meetings.
  - The importance of transparency is illustrated through PIC determining conflicts of interest in private. The press recently reported a case involving a requesting individual who faced retaliation from their employer, resulting in termination, a lawsuit, and public costs of over \$350K.<sup>47</sup> These challenges stem from private advisory opinions and proceedings.
  - Additionally, public proceedings and written decisions are part of educating the public, but only if the public gets to observe the process. By making PIC's processes public, state employees, officers, and officials subject to Chapter 58 can better understand its implementation, which in turn promotes awareness, compliance, and adherence to the law.
  - JLOSC staff review of other state data and websites determine that at least 43 states and territories provide full access to advisory opinions online.
3. PIC stated that timely filing of public officer financial disclosure reporting is not occurring. As discussed in criteria #2, there is a requirement for those running for office to also submit financial disclosure reporting. But there is no mechanism to enforce disclosure from a candidate who does not win an election. Additionally, there is no financial penalty for anyone not filing or filing late. Adding a late fee like the Commission's procedure with late lobbyist forms could be explored.
  - Additionally, in criteria #2, the topic of disclosing council or board membership was addressed. It remains unclear whether Chapter 58 was intended to exclude nonprofit organizations such as civic associations, community associations, foundations, maintenance organizations, trade groups operating within the State, or only religious organizations.<sup>48</sup>
4. Public disclosure of received lobbyist expenditure reports and public officer financial disclosure reporting discussed in criteria #2. Chapter 58 does not require these records be kept private, and they should be available to the public.<sup>49</sup>

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<sup>47</sup> January 2025 article from Spotlight Delaware available at <https://spotlightdelaware.org/2025/01/14/kent-county-decker-settlement>.

<sup>48</sup> [29 Del. C. § 5813A\(a\)](#).

<sup>49</sup> [29 Del. C. § 5838\(b\)](#). [29 Del. C. § 5814\(b\)](#). [29 Del. C. § 5816](#).

5. In its annual email reminders to legislators regarding public officer financial disclosure reporting, PIC provides instructions for reporting any expenditures over \$250 that a lobbyist may have reported in connection with them during the previous year.<sup>50</sup> However, this review found no evidence that PIC reviews the submitted public officer financial disclosure forms or compares them with financial data reported by lobbyists.
  - In one instance, the News Journal obtained legislator disclosures and alerted legislators prior to publication, prompting several legislators to submit corrections.<sup>51</sup>
  - PIC should compare lobbyist expenditure data with public officer financial disclosure reporting.
6. The Office of Auditor of Accounts completed a dual employment performance [audit](#) for fiscal years 2020 – 2022 relating to compensation policy, and corresponded with PIC regarding their findings.<sup>52</sup> The Office of Auditor of Accounts is authorized to conduct performance audits on dual employment, and PIC's duty to review and investigate findings as notified by the State Auditor is not outdated, however duties and penalties should be reviewed.
7. Ethics training is not required for public employees or officers, while 30 other states and the City of Wilmington do. A minimum requirement for ethics training should be explored to assist with awareness and decrease in violations.
8. PIC does not publish training manuals and should determine if this is a feasible requirement or if this is an outdated statutory mandate that should be replaced with other efforts such as additional webinars.<sup>53</sup> Additionally, training materials such as fact sheets should be more accessible to the public from the Commission's website.
9. Lobbyists are required to register and file reports.<sup>54</sup> Communication could be strengthened among PIC, Chief Clerk of the House of Representatives, and Secretary of the Senate regarding the registry and status of lobbyist reports.
10. Penalties for Chapter 58 violations are considered insufficient to deter misconduct, with enforcement limited by statute to issuing reprimands, taking disciplinary actions against state employees, or recommending removal of honorary officials.

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<sup>50</sup> Email example in Appendix C.

<sup>51</sup> News Journal publication, Financial Disclosure Explorer, available at: <https://content-static.delawareonline.com/projects/de-financial-disclosures/index.html>.

<sup>52</sup> [29 Del. C. § 5823](#).

<sup>53</sup> [29 Del. C. § 5809\(9\)](#).

<sup>54</sup> [29 Del. C. § 5832](#).

# JLOSC STAFF FINDINGS AND RECOMMENDATIONS

## **Finding #1**

The Public Integrity Commission (“PIC”) was created to ensure state employees, officers, and officials, maintain public trust by following standards of conduct, supported by disciplinary measures and criminal penalties for serious violations.

## **Recommendation #1 – Continue.**

Continue PIC, subject to further recommendations that JLOSC adopts.

## **Finding #2**

Public transparency is important for any entity regulating ethics. This includes open meetings, accessible reports, and advisory opinions, as seen in 43 other states that provide online access. Challenges like private conflict-of-interest decisions, late or missing financial disclosures, unclear rules on nonprofit reporting, and the absence of penalties for noncompliance highlight the need for reforms. Enhanced training materials and efforts, such as webinars or improved public access to resources, could further address these issues.

## **Recommendation #2 – Statute Revisions.**

JLOSC should consider sponsoring a bill to apply technical corrections to PIC’s governing statute, Chapter 58, Title 29, and, using this review as a guide, revise sections covering topics such as:

- Update duties regarding publication of training manuals.
- Update confidentiality requirements of proceedings and written opinions of waivers and advisory opinions.
- Update public officer financial disclosure reporting requirements and enforcement mechanisms, such as fines for late reports.
- Update penalties for Chapter 58 violations.

JLOSC and PIC staff will work together to develop statutory revisions. JLOSC staff will engage stakeholders as appropriate.

## **Finding #3**

Ethics training is not required for public employees, officers, or officials, while 30 other states and the City of Wilmington do. A minimum requirement for ethics training should be explored to assist with awareness and decrease violations.

## **Recommendation #3 – Statute Revisions.**

JLOSC should consider sponsoring a bill to establish a minimum ethics training requirement for all state employees, officers, and officials.

JLOSC and PIC staff will work together to develop statutory revisions. JLOSC staff will engage stakeholders as appropriate.

#### **Finding #4**

The Public Integrity Commission was found to consistently hold public meetings and staff have maintained communication with JLOSC staff throughout the review. Staff do not believe that monitoring beyond the statutorily required monitoring of post-review activities is necessary. Additionally, staff do not identify the need for progress reports to comply with any JLOSC adopted recommendations.

#### **Recommendation #4 – Release from Review.**

Release PIC from review upon enactment of legislation under Recommendation #2 or further action of JLOSC.

## RULES OF THE DELAWARE STATE PUBLIC INTEGRITY COMMISSION

Rules adopted by the Delaware State Public Integrity Commission pursuant to 29 Del. C. §5809(6), State Employees, Officers and Officials Code of Conduct.

### **I. STRUCTURE OF COMMISSION**

- (A) **Chairperson.** Pursuant to 29 Del. C. §5808(c) of the Code of Conduct, the Commission shall elect from among its membership, a Chairperson to serve at the pleasure of the membership. The Chairperson shall preside at meetings of the Commission.
- (B) **Vice-Chairpersons.** The Commission shall elect from among its membership two Vice-Chairpersons to serve at the pleasure of the membership. A Vice-Chairperson shall preside at meetings of the Commission in the absence of the Chairperson.
- (C) The **Administrative Assistant** shall attend Commission meetings and hearings, shall take minutes of meetings and transcribe testimony at hearings in the absence of a court reporter. The Administrative Assistant shall maintain the books, records, and files of the Commission in the Commission's principal office, or at such other location as the Commission shall so designate. The Administrative Assistant shall carry out the duties and responsibilities required by the job description as assigned by the Commission and/or Legal Counsel.
- (D) The **Commission Counsel**, legal representative, shall perform the duties delegated by 29 Del. C. §5808A and shall supervise the daily operations of the Commission Office.
- (E) **Principal Office** of the Commission shall be located at the Margaret O'Neill Bldg., Dover, and all complaints, responses, correspondence, and other documents relating to the Commission business shall be filed at or mailed to the principal office whose address is:

Delaware State Public Integrity Commission  
Margaret O'Neill Bldg., Suite 3, Rm. 211  
410 Federal Street  
Dover, DE 19901

## II. **ADMINISTRATIVE MATTERS**

### (A). **Commission Meetings**

- (1) **Place of Meetings** - The Commission shall meet to conduct its business at its principal office in Dover, but may meet, hold hearings, and exercise its powers and duties, at any other place in the state.
- (2) **Notice** - The Chairperson, or in the Chairperson's absence, the Vice-Chairperson, shall fix the time and place for all meetings and hearings of the Commission by directing the Administrative Assistant to send written notice thereof together with the agenda by first class mail to each Commission member at the address listed with the Administrative Assistant.
- (3) **Quorum** - Four (4) members of the Commission shall constitute quorum at meetings and hearings and a majority vote of Commission members present shall be required to take action on matters before the Commission; provided, however, at least four (4) members of the Commission shall be required to vote "affirmative" on all disciplinary hearings and orders that would impose sanctions.
- (4) **Executive Session** - Commission meetings may be held in executive session when permitted by law.

### (B). **Examination of Commission Files - Records** - Subject to the confidentiality requirements of the Code of Conduct, the files and records of the Commission may be examined by any member of the public in the following manner.

- (1) A request must be made in writing, to the Administrative Assistant, or FOIA Coordinator. A form need not be used, but the requestor may use the Statewide FOIA form at: <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>
- (2) The Administrative Assistant first shall determine whether the material in the requested file or record is subject to the confidentiality provisions of the Code of Conduct. If the Administrative Assistant is unable to make this determination, the request will be referred to the Commission's Legal



Counsel. If the material in the requested file or record is found not to be subject to the confidentiality provisions of the Code of Conduct, the person requesting such examination will do so only in the Office of the Public Integrity Commission during regular business hours. No file material or records subject to the confidentiality provisions of the Code of Conduct shall be given to or examined by anyone not authorized to do so.

- (3) If a request exceeds 20 pages, a fee may be charged pursuant to [Executive Order No. 31](#).
- (C) **Subpoenas** shall be on forms similar to subpoenas used by the Delaware Superior Court and shall bear the signature or facsimile signature of the Chairperson. Such forms will be available in the Commission's principal office. Subpoenas shall be served by U.S. Mail or in the same manner as subpoenas are served in the Delaware Superior Court to all parties involved in the matter before the Public Integrity Commission.
- (D) **Sub-Committees** consisting of no more than three (3) Commission members may be designated by the Chairperson, or a Vice-Chairperson in the Chairperson's absence, to perform non-binding general administrative matters of the Commission, including, but not limited to, the drafting of reports to the State Legislature as required by the Code of Conduct.

### III. **INVESTIGATIONS**

If there is filed with the Commission a sworn complaint by any person alleging violation of the Code of Conduct, the following rules shall apply:

- (A) The **Commission** shall meet and review the Complaint to determine whether the Complaint is frivolous or fails to state a violation. If the Commission determines that the Complaint states a violation, then the Commission shall:
  - (1) Set the matter down for hearing; or
  - (2) Refer the matter to the Commission's Legal Counsel for investigation; or
  - (3) Retain the Attorney General or Special Counsel to investigate the matter if

the investigation cannot be performed by the Commission's Legal Counsel where recusal is deemed necessary.

- (B) **Referred Matters** - When the Commission refers matters for investigation to the Attorney General or Special Counsel, as the case may be, it shall be by letter requesting that the matter be thoroughly investigated and concluded as promptly as practicable.
- (C) **Report of Investigation** - Commission's Legal Counsel, the Attorney General, or the Special Counsel, as the case may be, shall report the results of such investigation to the Commission by:
  - (1) Filing a Complaint with the Commission if there is reason to believe that a violation has occurred; or
  - (2) Filing a report with the Commission if there is reason to believe that no violation has occurred stating the reasons for such conclusion.
- (D) **Commission Action Following Investigation** - If, following such investigation, a Complaint is filed by Commission Counsel, the Attorney General, or Special Counsel, as the case may be, the Commission will, after notice, set the matter down for hearing and the Complaint shall be prosecuted by Commission Counsel, the Attorney General, or Special Counsel, as the case may be. If following such investigation, no Complaint is filed, the Commission may dismiss the matter or take such other action as it deems necessary and as provided by the Code of Conduct.
- (E) The Commission, upon receiving information that violations of the Code of Conduct may have occurred, may upon its own initiative, if it finds good cause therefore, refer the matter for investigation in accordance with the provisions set forth in this section relating to investigations.

#### **IV. HEARINGS AND DECISIONS**

If a sworn, written complaint is filed with the Commission and the Commission determines that it should be scheduled for a hearing, the following Rules shall apply:

- (A) **Prosecuting Attorney** - The Commission Counsel shall be the Prosecutor, except

where the Attorney General or Special Counsel has been retained under 29 Del. C. §5808A (5), in which case the Attorney General or Special Counsel may be the Prosecutor. It shall be the duty of the Prosecutor to ensure that all pertinent evidence is placed in the record for the Commission's consideration. The prosecutorial functions shall be performed by personnel who are not serving as Legal Counsel to the Commission.

(B)( **Respondent** - The person charged in the Complaint with violating the Code of Conduct shall be referred to herein as Respondent. Respondent is entitled to retain legal counsel.

(C) **The Complaint:**

- (1) shall be served on Respondent; and
- (2) shall specifically identify each portion of the Code of Conduct Respondent is alleged to have violated and facts upon which each alleged violation is based.

(D) **Service-Response to Complaint** - Service upon Respondent shall be made by personal service by any person authorized by the Commission or by registered or certified mail sent to the last known dwelling place and/or work place of Respondent. Within twenty (20) days after service of the Complaint on Respondent, Respondent shall serve on the Prosecutor and file with the State Public Integrity Commission a written Response.

- (E) **Scheduling Hearing - Transcript** - After the Response is served and filed, the Commission shall schedule a hearing. A transcript of the hearing shall be made and retained subject to the confidentiality requirements of the Code of Conduct.
- (F) **Inspection and Copying** - The Respondent shall be permitted to inspect and copy documents or other tangible objects which will be used as evidence against Respondent.
- (G) **Exculpatory Information** - If the Commission Counsel or the Commission at any time receives any exculpatory information respecting an alleged violation, such information shall promptly be made available to the Respondent.
- (H) **Subpoenas** - The Prosecutor and Respondent may apply to the Commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents. The subpoenas will be issued if the testimony or documents are relative, not cumulative, and if the applications have been made with reasonable promptness.
- (I) **Pre-Hearing Conference** - A pre-hearing conference may be held with the Chairperson or the Chairperson's designee and the parties to discuss ways of expediting the hearing and ensuring the fairness of the hearing. Among the items that may be covered at such a pre-hearing conference are:
  - (1) the identity of the witnesses each party intends to call at the hearing and the subject matter of their expected testimony;
  - (2) the identification of documents and other tangible evidence each party intends to introduce at the hearing and whether or not there will be objection to the introduction; and
  - (3) stipulations of facts and the avoidance of unnecessary proof and cumulative evidence.
- (J) **Evidence** offered by the parties shall be admitted if it has probative value unless the Commission determines that the evidence is privileged or inadmissible for some other reason. The Commission may exclude evidence which is not relevant or which is cumulative.
- (K). **Burden of Proof** - The burden of proving violations of the Code of Conduct is on the

Prosecutor and such violations must be proven by clear and convincing evidence.

(L) **Order of Proceedings** at the hearing shall be as follows:

- (1) The Chairperson or the Chairperson's designee shall open and preside at the hearing.
- (2) An opening statement by the Prosecutor.
- (3) An opening statement by the Respondent.
- (4) Witnesses and other evidence by the Prosecutor.
- (5) Witnesses and other evidence by Respondent.
- (6) Rebuttal witnesses and other evidence by the Prosecutor, if appropriate.
- (7) Witnesses may be cross-examined by the opposing party. Redirect examination and recross-examination may be permitted in the Commission's discretion. Commission members may also question witnesses.
- (8) Closing argument by the Prosecutor.
- (9) Closing argument by Respondent.
- (10) Rebuttal closing argument by the Prosecutor, if appropriate.

M. **Post Hearing Briefs and Oral Argument** may be required in the discretion of the Commission.

N. **Quorum - Number Required to Sanction** - Four (4) members of the Commission constitute a quorum and sanctions may be imposed only by the affirmative action of at least four (4) members. 29 Del. C. §5808(d).

O. **Decisions** after hearing by the Commission shall be rendered in writing as promptly as reasonably possible. Decisions shall set forth (a) findings of fact based on the evidence, (b) conclusions of law as to whether Respondent has violated the Code of Conduct and (c) what sanctions the Commission is imposing if violations of the Code of Conduct are found. Commission members, if any, who disagree with the Decision of the Commission may file dissenting opinions.

P. **Motion for Reconsideration** may be served and filed by either party within ten (10) days after the filing of the Commission's Decision. The motion shall briefly and succinctly state the ground on which the motion is based. Within ten (10) days after service of the motion, the opposing party may serve and file a brief and succinct

response to each ground asserted in the motion. The Commission will determine from the motion and response whether reconsideration will be granted and, if so, what procedure will be followed for reconsideration.

- Q. **Confidentiality** - Complaints, Hearings, and Decisions of the Commission shall be confidential to the extent required by 29 Del. C. §5810(h).
- R. **Time Limitations** set forth in these Rules may for good cause shown, be extended or shortened in the discretion of the Commission.
- S. **Disqualification** -Members of the Commission may disqualify themselves from participating in any hearing upon submission in writing and under oath of an affidavit by the Commission member or by the Prosecutor, or by Respondent setting forth the reason for the disqualification. The decision by the member of the Commission concerning disqualification can be overturned by a vote of at least four (4) members of the Commission.

## VI. **REQUESTS FOR WAIVERS AND ADVISORY OPINIONS**

- (A) 29 Del. C. §5805 deals with “Prohibitions relating to conflicts of interest” and 29 Del. C. §5806 deals with “Code of Conduct.” The State Public Integrity Commission may, pursuant to 29 Del. C. §5807, grant Waivers and Advisory Opinions concerning the prohibitions of §§5805 and 5806 pursuant to the following procedures:
  - (1) **Applications to be in Writing** - The individuals or State agency seeking a Waiver or Advisory Opinion shall apply in writing to the Commission setting forth in detail the applicable parts of §§5805 and/or 5806 involved and the specific reasons a Waiver or Advisory Opinion is warranted or required.
  - (2) **Quorum - Majority Vote** - Four (4) members of the Commission constitute a quorum under 29 Del. C. §5808(c). A vote of a majority of the Commission members present at a meeting is required for a Waiver or an Advisory Opinion.
  - (3) **Standards for Waiver** - A Waiver may be granted only if the Commission determines in writing that the prohibitions in the parts of §§5805 and/or 5806

in issue are not necessary under the circumstances to achieve the public purposes of the Code of Conduct or if enforcing the prohibitions under the circumstances would result in undue hardship to the employee, state official, or honorary state official and state agency. 29 Del. C. §5807(a).

- (4) **Advisory Opinions** are also to be in writing.
- (5) **Attendance at Meeting - Decisions Without Attendance** - Prior to reaching its decision on the Application for a Waiver or an Advisory Opinion, the Commission may require the applicant and others with pertinent knowledge of the facts necessary for the Commission to reach a decision to attend a meeting of the Commission and testify. The Commission may in its discretion require that the testimony be under oath. The Commission may in a clear case grant or deny a Waiver or issue an Advisory Opinion based on the written application without requiring the attendance at a meeting of the applicant or others.
- (6) **Reliance** - Any person who acts in good faith reliance upon any Waiver Decision or Advisory Opinion of the Commission shall not be subject to discipline or other sanction under the Code of Conduct with respect to the matters covered by the Waiver Decision or Advisory Opinion, provided there was a full disclosure to the Commission of all material facts necessary for the Decision.
- (7) **Confidentiality** - Any application for a Waiver or Advisory Opinion, any proceedings and any decisions with respect thereto shall be maintained confidential by the Commission provided that:
  - (a) Public disclosure shall be made by the Commission upon the written request of the applicant.
  - (b) The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of the Code of Conduct.
  - (c) The Commission shall report to appropriate federal and state authorities substantial evidence of any criminal violation which may

come to its attention.

- (d) In the event that a Waiver is issued, the decision of the Commission and the record of all proceedings relating thereto shall be open to public inspection.

Adopted by the State Public Integrity Commission: April 6, 1993

Effective Date: May 7, 1993

Revised: December 8, 1995 to comport with the law by the State Public Integrity Commission.

Revised August 19, 2004 to comport with the law by the State Public Integrity Commission.

Revised December 20, 2011 to comport with Executive Order 31 regarding the Freedom of Information Act.



The Rules of Ethical Conduct

(1) Do not review or dispose of State matters if you have a “personal or private interest” that tends to impair judgment in performing official duties. (Includes ‘nepotism’).  
29 Del. C. § 5805(a).

Ex. State appointee’s “neutral” & “unbiased” remarks on an application were improper when the applicant before his Board had a business agreement with the official’s private employer.  
Beebe Med. Ctr. v. Cert. of Need Appeals Board.

Ex. State employee’s “unsubstantial” & “indirect” participation in a State contract that his wife’s employer was seeking, was “undoubtedly improper” although he was not on the contract committee & she was a “low- level employee” in the company.  
Prison Health Services, Inc. v. State.

Ex. Uncle wrote test for State job & sat on hiring panel. His nephew was selected. The Court said it was “the most blatant discrimination based on nepotism & favoritism.”  
Brice v. State.

(2) Do not represent or assist a private enterprise before your own agency. Executive Branch “officers” may not represent or assist a private enterprise before any agency.  
29 Del. C. § 5805(b).

Ex. State appointee wanted private contract with his agency. Court upheld agency’s decision to deny him the contract, as the award of State contracts “has been suspect, often because of alleged favoritism, undue influence, conflict and the like.”  
W. Paynter Sharp & Son v. Heller.

(3) Do not contract with the State for more than \$2,000 unless there is public notice & bidding. If less than \$2,000, there must be “arms’ length negotiations.”  
29 Del. C. § 5805(c).

(4) For 2 years after leaving a State job, you may not represent or assist a private enterprise on State matters where you: (a) gave an opinion; (b) conducted an investigation; or (c) were otherwise directly and materially responsible.  
29 Del. C. § 5805(d).

Ex. Former State appointee represented client before his former Board. He was not “directly & materially responsible” for the matter before the Board, as it was not considered by him before he left the State.  
Beebe Med. Ctr. v. Cert. of Need Appeals Board.

(5) Do not incur any obligation or interest that substantially conflicts with public duties.  
29 Del. C. § 5806(b).

Ex. Where a State officer placed his personal interest first, “it necessarily follows that...he violated the duty that he owed to the public.”  
In re Ridgely.

(6) Do not accept other employment, compensation, gifts, or anything of monetary value if it may result in: (a) impaired judgment; (b) preferential treatment; (c) official decisions outside official channels; or (d) an adverse effect on the public’s confidence in its government.  
29 Del. C. § 5805(b).

If “other employment” is in another State agency or local government, your pay may be prorated. 29 Del. C. § 5822. Also, Merit Rules 4.3 & 4.3.1 may apply.

If “other employment” is in the private sector, Merit Rules 15.2.1 & 15.2.2 may apply. They also restrict accepting gifts, compensation, payment of expenses & anything of monetary value.

(7) To commence & continue State employment or appointment, you must file a full disclosure with PIC if you have a financial interest in a private enterprise that does business with, or is regulated by, the State.  
29 Del. C. § 5806(d).

“Financial Interest” includes:  
• ownership or investment interest;  
• receiving \$5,000 or more as an employee, officer, director, trustee or independent contractor;  
• creditor of private enterprise.  
29 Del. C. § 5804(5).

“Private Enterprise” is any activity by any person, for profit or not for profit.  
29 Del. C. § 5804(9).

(8) Do not acquire financial interests in a private enterprise that may be directly involved in your State decisions.  
29 Del. C. § 5806(c).

Also see Merit Rule 15.2.2.

(9) Do not use public office for unwarranted privileges, private advantage or gain.  
29 Del. C. § 5806(e).

Ex. State official had a duty not to personally profit from the State’s services & property by using school materials & employees during State work hours at his home. His action was more than an ethics violation. It violated the criminal law on “Misconduct in Office.”  
Howell v. State.

(10) Do not improperly disclose or use confidential information.  
29 Del. C. § 5805(d); 5806(f) & (g).

Ex. “Indeed, common decency and the most modest norms of privacy command that the State not permit its files to be used in the manner here alleged”—that confidential information on State clients was made public.  
Pajewski v. Perry.

(11) Do not use sex as a condition for an individual’s favorable treatment by you or a State agency.  
29 Del. C. § 5806(h).

(12) Your conduct must not “raise suspicion” you are violating the public trust.  
29 Del. C. § 5806(a).

Ex. Close relatives had no financial interest in government decision, but it would “be prudent” for officials to recuse themselves.  
Harvey v. Zoning Board of Adjustment of Odessa.

“Actual misconduct is not required; only the appearance thereof.”  
Commission Op. No.92- 11.

***To Whom Does the Law Apply?***

The Code of Conduct applies to all Executive Branch employees (rank & file), officers (Division Directors & above), and honorary officials (appointees to State Boards and Commissions); & local government officers & employees unless they adopt a Code at least as stringent as the State's. The Judicial & Legislative Branches have their own Code of Conduct or Conflict of Interests laws.

***Why Ethics?***

In our democratic form of government, the conduct of State officers & employees must hold the respect & confidence of the people. Thus, State officers & employees must avoid conduct that violates the public trust or creates a justifiable impression by the public that such trust is being violated.

***How Can I Promote Ethics?***

By following the Code of Conduct rules.

***How Can I Comply with the Rules?***

Know the Rules  
Follow the Rules  
Get Advice When Unsure

***Where are the Rules?***

Delaware Code, Title 29, Chapter 58. The law and opinions are on the Public Integrity Commission's (PIC's) web site at [www.depik.delaware.gov](http://www.depik.delaware.gov) under the heading, "Code of Conduct." Opinions are grouped by topic to narrow your search.

***How Can I Understand the Rules?***

Read the Statute --- Read Commission Opinions --- Go to "Ethics in Government" classes offered by PIC through your agency or through DHR's training website- -- Call the

Public Integrity Commission with questions -- Seek an Advisory Opinion from the Commission

***What is an Advisory Opinion?***

An interpretation of the rules by the Public Integrity Commission based on the proposed particular conduct of a State employee, officer or official. It gives guidance on whether the conduct will or will not violate the public trust.

***Why Would I Seek an Opinion?***

It will clarify if you should or should not engage in such conduct. It also can protect you against complaints. If you fully disclose your situation to the Commission and follow its advice, the law provides protection against disciplinary action.

***How Can I Seek an Opinion?***

Your request must be in writing; there is no formal format. Before you start to write, contact the Commission's office, at 302-739-2399, to obtain help in writing your request.

***Should I E-Mail My Request?***

By law, you are entitled to confidentiality concerning your requests. If you are confident in your system's security, the Commission accepts email submissions.

***When Will I Know if the Conduct is Permitted?***

If the situation has been clearly addressed by the Commission, the Commission's staff will provide you with that information. If there is no clear ruling, your written request will be sent to the Commissioners one week prior to the monthly meeting. On the meeting day, the Commission likes to have the requestor present so that if there are questions not answered by the written request, it can obtain the answers at the meeting and issue an oral opinion that same day with a written opinion to follow.

***What If a Complaint is Filed Against Me?***

You will be formally notified of the allegations against you, and of the rights you have, such as a right to legal counsel, right to a hearing, right to cross-examine, right to examine evidence, etc. If a violation is found, you have the right to appeal to the Superior Court.

***What are the Penalties?***

Criminal Violations: Up to a year in prison and/or a \$10,000 fine.

Administrative Discipline includes:  
Letter of reprimand  
Suspension, demotion, removal  
Other appropriate disciplinary action.

***How Can I Reach the Commission?***

**Public Integrity Commission**  
**410 Federal St., Suite 3**  
**Margaret O'Neill Bldg.**  
**Dover, DE 19901**  
**Phone: 302- 739-2399**  
**Email: [pic@delaware.gov](mailto:pic@delaware.gov)**  
**[www.depik.delaware.gov](http://www.depik.delaware.gov)**



[www.depik.delaware.gov](http://www.depik.delaware.gov)

**From:** <[PIC@delaware.gov](mailto:PIC@delaware.gov)>

**Subject:** Public Integrity Commission - Filing Reminder with reported data

**Date:** February 1, 2024

**To:** XXXXX

## Public Integrity Commission - Filing Reminder with reported data

Dear XXXXXXXXXXXX,

As a reminder you are a "Public Officer" and must file a Financial Disclosure report. 29 Del. C. § 5812(n). Reports are due on March 15. 29 Del. C. § 5813(c).

The instructions for filing online are provided below. If a lobbyist reported any expenditure exceeding \$250 related to you in the past year, those also follow below.

### **Please closely review Section 1D.**

This section requires disclosure of assets belonging to, or controlled by, a spouse or child, if the asset is worth over \$5000 (fair market value). If your spouse or child has a financial interest in an asset or a business, it should be disclosed here. Examples include: college funds; retirement accounts; businesses. If this clarification prompts modification of your previously filed financial disclosures, you may amend them at any time by clicking on the "Revise" link next to the appropriate year.

Filing instructions can be downloaded at:

<https://pirs.delaware.gov/assets/files/PublicOfficerFilingInstructions.pdf>

You can access your account by going to: <https://pirs.delaware.gov/>

No gifts reported.

If you need assistance navigating the database or if you have questions about the information you should include in your report, check our FAQs at <http://www.deplic.delaware.gov/faq-fin-disclosure.shtml>. If you have additional questions, please contact Deborah Moreau, Esq. by phone during regular business hours or by email (address below) 24/7.

Sincerely,

Deborah J. Moreau, Esq.  
Public Integrity Commission  
Commission Counsel  
410 Federal St., Suite 3 (Rm 213)  
Dover, DE 19901  
Phone: 302-739-2399  
[deborah.moreau@delaware.gov](mailto:deborah.moreau@delaware.gov)  
[www.deplic.delaware.gov](http://www.deplic.delaware.gov)



STATE OF DELAWARE  
**DELAWARE STATE PUBLIC INTEGRITY COMMISSION**

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

TELEPHONE: (302) 739-2399

Dear Members of the Joint Legislative Oversight Sunset Committee,

The Public Integrity Commission ("PIC" or "Commission") welcomes this opportunity to discuss the PIC's crucial role in enforcing Delaware's ethics laws. The PIC is grateful for the time and attention that went into the Staff Findings and Recommendations Report ("Staff Report"). The purpose of this letter is to address issues raised in the Staff Report as well as communicate the ways the Commission feels it can better serve the people of Delaware.

### **Financial Disclosure by Public Officers**

The Staff Report highlights a lack of enforcement with regards to financial disclosures by public officers. The PIC agrees that a lack of consequences for filing late leads to many reports being filed well past the statutory deadline. This is particularly the case for candidates who lose their elections, for whom the disclosure requirement is, in practice, voluntary. Whether or not a fine system, or instead some kind of public notice of late filers, should be implemented is less important to the PIC than the importance of having some kind of enforcement mechanism with teeth.

The Staff Report also points out a discrepancy in how available certain records are to the public. Any member of the public can look up and download lobbying reports – including lobbying activity and which lobbyists are authorized to lobby for what organizations. However, public officer financial disclosures are only available through a FOIA request.<sup>1</sup> The process is free, and the records are usually provided within one business day. Should legislation change this process to make the reports available to inspect online, the only change necessary would be a technical change to the Public Integrity Reporting System ("PIRS") website.

With a change in administrations there has been a good deal of turnover amongst those who must file financial disclosures. This process must be done manually by Commission Counsel, which is time consuming and inefficient. For example, there is no

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<sup>1</sup> 29 Del. C. § 5814(b) requires the financial disclosure reports "be made available at reasonable hours for public inspections and copying". In practice, requests come in via email and the requested records are then provided electronically for free.

notification if a division director leaves until the beginning of the next year when a disclosure isn't filed and a reminder email is sent. Then the lobbyist's exit must be confirmed and the replacement identified. Because the reports are for information from the previous year, it can be difficult to track down the former employee requiring them to submit a disclosure report. This problem is exacerbated by the fact that while the statute lists certain specific positions that require disclosure, it also includes "[a]ll division directors and persons of equivalent rank"<sup>2</sup>. This language does not provide much guidance to Cabinet Secretaries or the PIC when determining if an employee must file a disclosure. Having a more specific list of those who must disclose would make it easier for both the PIC and state employees to determine if a certain position requires filing a disclosure.

Finally, the PIC does concur with the Staff Report's determination that the language of 29 Del. C. § 5813A(a) regarding disclosing council or board membership by elected officials and candidates is unclear. That part of the statute requires disclosure of any nonprofit organization for which an elected official or candidate is a council member or board member. The statutory language appears to exclude not just religious organizations but also civic and community associations among other kinds of groups. The Commission has interpreted it to only exclude religious organizations, but the plain text of the statute could be clarified.

### **Lobbyist Registration, Financial Reporting & Activity Reporting**

The Staff Report correctly states that the Commission does not compare lobbyist expenditure data with public officer financial disclosures to find discrepancies between the two. While the Commission is not opposed to remedying this, the administrative burden would be substantial. In 2024, 1,434 expense reports were filed by lobbyists. We expect the final number of public official financial disclosures to be around 360 in 2025. The Commission will work with the Delaware Department of Technology & Information to see if there is a way to automatically cross-reference the submitted data but cannot promise that a solution can be found. However, if the PIC is ordered to compare the data for discrepancies, we will of course do so.

### **Dual Compensation**

Currently the State Auditor collects information regarding dual compensation.<sup>34</sup> This law applies to any state employee (including county, city and municipal employees) who also serves in any elected or paid appointed position in state government (or any political subdivision government).<sup>5</sup> If the employee falls within this statute, his or her pay must be reduced on a prorated basis for any hours or days missed due to performing duties

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<sup>2</sup> 29 Del. C. § 5812(n)(1)(n).

<sup>3</sup> 29 Del. C. § 5823(a).

<sup>4</sup> Technically this information must be kept by supervisors or school boards and the State Auditor conducts an annual audit of that information.

<sup>5</sup> 29 Del. C. § 5822(a).

connected to the elected or appointed position.<sup>6</sup> The State Auditor then reports any discrepancies to the PIC.<sup>7</sup>

However, as noted in the Staff Report, this system has not worked as intended. Presumably this led to the introduction of House Bill 9, which passed the House on March 18 of this year and is currently awaiting consideration in the Elections & Government Affairs Committee in the Senate. HB9 would require disclosure of dual employment to the Commission within 15 days of the commencement of dual employment.<sup>8</sup> This will require updates to the PIRS website, but the proposed legislation would make it easier to keep track of the information and discover any discrepancies.

## **Transparency**

The Commission's written output falls into three groups: advisory opinions, waivers and complaints. The PIC's governing statute treats these three categories differently. Each is integral to the PIC's ability to fulfill its duty to enforce the Code of Conduct and ensure that Delawareans can feel confident that their government and its employees are acting to further the public interest in an ethical manner.

### **Advisory Opinions**

The majority of Commission matters are advisory opinions. This is a good thing as it means State employees are asking for the Commission's guidance before taking an action in order to make sure that action aligns with the Code of Conduct. For example, a current employee may reach out to the Commission asking if a prospective job in the private sector would violate the Code of Conduct. The Commission can then gather the relevant information and provide guidance to the employee.

The statute requires these opinions be kept confidential absent one of three exceptions.<sup>9</sup> The statute instead demands that the PIC "prepare a summary of its advisory opinions for public distribution without disclosing the identity of the applicants".<sup>10</sup> Therefore, all Commission opinions are redacted to remove information that could disclose the identity of applicant. These redacted opinions are then posted publicly on the PIC's website. This process balances two competing interests: the ability for the applicant to ask a question without fear that it could become public and the need for the public to use past Commission opinions as guidance in complying with the Code of Conduct. The PIC's

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<sup>6</sup> *Id.*

<sup>7</sup> 29 Del. C. § 5823(b).

<sup>8</sup> H.B. 9, House of Representatives (153<sup>rd</sup> General Assembly), An Act to Amend Title 29 of the Delaware Code Relating to Governmental Compensation Policy.

<sup>9</sup> Those three exceptions are: 1) upon written request of the applicant; 2) if disclosure is required in connection to the prosecution of a violation of the Code; and 3) substantial evidence of any criminal violation shall be reported to the appropriate federal and/or state authority. 29 Del. C. § 5807(d)(1-3).

<sup>10</sup> 29 Del. C. § 5807(d)(4).

website has hundreds of pages of PIC opinions dating back to 1991 and are broken down into categories such as “Things of Monetary Value” and “Outside Employment”. For example, a State employee, who is wondering if they can accept a free meal from a vendor can click on “Things of Monetary Value” and search for the term “meal”, where they can find several past PIC opinions regarding different circumstances under which a meal can or cannot be accepted. As noted, these opinions do not disclose identifying information while still allowing an employee to obtain guidance.

The PIC’s concern with making unredacted advisory opinions public is that it may have a chilling effect on an employee’s willingness to obtain advice before taking an action. To take the example stated above, if an employee has a job offer with a private company, he or she may be hesitant to obtain advice from the PIC if that information were to become public.

The Staff Report makes comparisons between the PIC and other state ethics commissions or their equivalents. An overview of other ethics commissions show that many states have similar statutory schemes as Delaware’s. For example, Pennsylvania law allows someone to request advice or an opinion be confidential. If they do so, that opinion is posted with redactions in the same matter as an opinion from the PIC.<sup>11</sup> In other words, while Pennsylvania requires someone seeking advice to opt-in to confidentiality as opposed to Delaware’s method of opting out of confidentiality, both systems balance the need to encourage people to get advice before taking action while providing future guidance for other employees who may run into similar issues. Similarly, Maryland law mandates that advisory opinions be redacted of personal identifying information before being posted.<sup>12</sup>

Relatedly, the Staff Report makes reference to the Georgia Ethics Commission, which does not meet in executive session and broadcasts their meetings live via YouTube. First, the Georgia Ethics Commission appears to be focused on financial disclosures from elected officials, electoral candidates and lobbyists. This is illustrated in part by the fact the Commission was established by the Georgia Government Transparency and Campaign Finance Act of 2010.<sup>13</sup> Additionally, the Act includes three articles besides general provisions: Campaign Contributions, Financial Disclosure Statements and Public Officials Conduct and Lobbyist Disclosure. Regardless of the differences between that commission and the PIC, recently introduced legislation would require the PIC to post video of its meetings on a publicly available site within 7 business days of the meeting.<sup>14</sup> However, the PIC goes into executive session to discuss requests for advisory opinions. Publishing video of those discussions would be akin to publishing unredacted advisory opinions.

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<sup>11</sup> <https://www.pa.gov/agencies/ethics/laws-acts-and-regulations/ethics-regulations/chapter-13-opinions-and-advice-of-counsel.html>.

<sup>12</sup> Md. Code Ann., General Provisions, § 5-301, 303.

<sup>13</sup> O.C.G.A § 25-5-1 (2010).

<sup>14</sup> Synopsis, H. B. 78, House of Representatives (153<sup>rd</sup> General Assembly), An Act to Amend Title 14 and Title 29 of the Delaware Code Relating to Recordings of Meetings of Public Bodies.



## **Waivers**

When the Commission issues a waiver, the statute requires it be published.<sup>15</sup> The PIC does not take issue with that directive. A waiver is issued only if the Commission has determined the proposed action would violate the Code of Conduct but that the application of the prohibition would result in undue hardship, or if the prohibition in that scenario is not necessary to achieve the purpose of the Code of Conduct.<sup>16</sup> In this context, publishing the unredacted waiver is necessary so the public can fully understand why the Commission is allowing a violation of the Code of Conduct to occur.

## **Complaints**

When the PIC receives information that the Code of Conduct may have been violated that allegation is investigated. The result of that finding is presented to the Commission in the form of a Complaint. If the Commission substantiates the Complaint then a hearing is held in front of the Commission. The person alleged to have violated the Code of Conduct has several rights in connection with the hearing including the right to counsel, cross-examine witnesses and present his or her own witnesses. Finally, if the Commission finds the law was violated, the finding and all evidence is posted publicly on the PIC website. The statute mandates confidentiality of all proceedings unless the person charged requests in writing for publication, or the Commission determines after a hearing that a violation has occurred.<sup>17</sup> This means that only substantiated complaints are made public.

Not every state does things the same way. For example, when the New Jersey State Ethics Commission finds there has been no violation, it releases a short statement stating so with the name of the alleged violator and a one sentence description of the alleged violation.<sup>18</sup> The concern with this method is it opens the process up to bad faith actors who may make spurious allegations. A letter stating that the allegations are unfounded would not assuage the concerns arising from false allegations. The current statutory language allows the Commission to fully investigate allegations of wrongdoing without having to worry that the PIC is being used as a tool to damage the reputation of others.

## **Ethics Training**

The PIC trains state employees on the Code of Conduct in two ways: in-person trainings lead by Commission Counsel and the Commission's online module. The number

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<sup>15</sup> 29 Del. C. § 5807(b)(4).

<sup>16</sup> 29 Del. C. § 5807(a).

<sup>17</sup> 29 Del. C. § 5810(h).

<sup>18</sup> See e.g. [https://nj.gov/ethics/docs/final/decision\\_schachter\\_032-13a\\_01.pdf](https://nj.gov/ethics/docs/final/decision_schachter_032-13a_01.pdf)



of State employees who attended in-person trainings fell from 223 employees in 2023 to 196 employees in 2024, mainly due to the change in Counsel. The Commission expects in-person training numbers to be closer to 2023 numbers by the end of 2025. Far more employees are assigned the online module with more than 2100 employees participating in 2024, up from 1540 in 2023. We expect that number to continue to climb given Governor Meyer's proposed Executive Order #30 which, if announced in its current form, would mandate all new employees to complete the Commission's online module and all current employees to complete biennial ethics training through the module. The only impediment to this plan would be the increased cost of buying more course licenses.<sup>19</sup>

The Commission has found the trainings, both in-person and online, to be very successful. First, they familiarize State employees with the Code of Conduct, letting them know what the law states, what is expected of them, scenarios where ethical issues are most likely to arise, and how to bring issues to the Commission's attention. Second, the trainings are by far the most effective means of publicizing the Commission among employees. We are unable to effectively carry out our mission if employees don't know that we are available to provide guidance or how to file complaints to report unethical behavior.

The Staff Report mentions a minimum requirement for ethics training. The Commission fully agrees. While we believe the Governor's Executive Order would satisfy this requirement, a legislative solution would also be welcome. The Staff Report also discusses the need for additional training materials such as fact sheets. While the Commission does make available on its website an ethics brochure, we are more than willing to create something new if the JLOSC deems that appropriate.

## **Future Legislation and Considerations**

While the Commission is pleased to see the Staff Report recommends continuing the PIC, we wish to highlight several areas where legislation would help the Commission better carry out its mission. We also wish to discuss the Commission's future more generally.

### **Anti-Retaliation Legislation**

As noted in the Staff Report, a Kent County Levy Court employee successfully sued for over \$350,000 after being fired for filing complaints with the PIC. While the Staff Report views this as an outcome of the confidential advisory opinion process we view it as an indictment of the lack of anti-retaliation legislation in Delaware. While Delaware does have the Whistleblowers' Protection Act<sup>20</sup>, this Act only protects employees from retaliation for reporting "serious deviation from financial management or accounting standards".<sup>21</sup> Anti-

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<sup>19</sup> Currently the Commission is charged \$28,000 for 5,000 licenses, or \$5.60 a license.

<sup>20</sup> 19 Del. C. § 1707-1708.

<sup>21</sup> 19 Del. C. §1702(6)(b).

retaliation legislation would protect those who we rely upon to report misconduct. We believe that it would be beneficial for our work if we could state with confidence that it is illegal for any employee to be retaliated against for reporting misconduct. Unfortunately, at this time we cannot make that promise to state employees. While the employee mentioned above was able to recover a significant amount of money for his termination, it may not be so easy for other state employees.

An example from a neighboring state is the Maryland Whistleblower Law, which protects Executive Branch employees from reprisals for disclosing information that evidences “an abuse of authority”<sup>22</sup> or “a violation of law”<sup>23</sup>. Should the Legislature be interested in drafting anti-retaliation legislation, the Commission would be more than willing to assist.

### **Increased Scope of Oversight**

Currently the Commission’s governing statute does not include jurisdiction over members of the General Assembly.<sup>24</sup> Should that change, the PIC is ready to take on that responsibility. We have always worked with city councilmembers and county commissioners to resolve ethical dilemmas and are confident we could, if asked, do the same for legislators.

### **Potential Inspector General Legislation**

Several times over the last few years legislation has been introduced to establish an Office of the Inspector General. The current iteration of the legislation states that the Inspector General shall “work collaboratively” and “avoid duplication of work” with the PIC.<sup>25</sup> While we do not take a position on this legislation, we do believe that the Commission is already performing the work the Inspector General would perform. The Commission would be able to take on any additional work for far less money than it would cost to establish an Office of the Inspector General.<sup>26</sup> If the bill does pass, we will, of course, work with the new Inspector General to avoid duplication of work and ensure Delaware’s ethics laws are enforced.

### **Legislation**

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<sup>22</sup> M.D. Code Ann., State Personnel and Pensions, § 5-305(1)(i).

<sup>23</sup> M.D. Code Ann., State Personnel and Pensions, § 5-305(1)(iii).

<sup>24</sup> 29 *Del. C.* § 5804(12)(b).

<sup>25</sup> § 9005E, S. B. 4, Senate (153<sup>rd</sup> General Assembly), An Act to Amend Title 29 of the Delaware Code Relating to the Office of Inspector General.

<sup>26</sup> The fiscal note attached to SB4 estimates an Office of the Inspector General would cost \$3,492,798 total in Fiscal Years 2026-2028. Compare that to the PIC’s FY 2024 budget of \$194,672.

To summarize, several times in this letter we have suggested possible legislation that would enhance the Commission's ability to perform its duties. For the sake of ease, they are:

1. Penalties for failing to timely file a financial disclosure
2. Clarification of the language in 29 *Del. C.* § 5813A(a) regarding disclosing council or board membership by elected officials and candidates
3. Make ethics training mandatory for all state employees
4. Anti-retaliation or whistleblower protection legislation
5. Increased PIC funding to allow an increase in investigative capacity and/or to obviate the need for an Inspector General

## **Conclusion**

The PIC has operated efficiently and effectively for over 30 years. It has taken its responsibilities to implement the requirements of its governing statutes seriously and professionally. For the PIC to continue and improve upon its mission there are several immediate actionable items that the Legislature could undertake at this time. They are:

- Work with the Governor's Office to fill the vacant and two expired terms that currently exist on the PIC.
- Ensure that funds will be allocated in the PIC's budget to continue online training. Without this funding it will impossible/difficult to meet the pending demand for mandatory ethics training.
- Given that the state is grappling with budget constraints this year, investigate the merits and cost savings that could be achieved by having the PIC assume the increased investigative functions noted in pending legislation to create an Inspector General.
- Draft and introduce this session anti-retaliation or whistleblower protection legislation.

The PIC as currently constituted is in position to fully carry out its statutory duties. With a small increase in budget the Commission would use those resources to perform more extensive investigations, present more in-person trainings for State employees and be able to take on more responsibilities if future legislation expands our mission.

It is essential that Delawareans have confidence that their state government and its employees are acting ethically, as this trust forms the foundation of a healthy democracy. When citizens believe that public officials are upholding integrity, transparency, and accountability, they are more likely to engage in civic processes, follow laws, and support public initiatives. Ethical behavior in government not only deters corruption and misuse of resources but also ensures that decisions are made in the best interest of the people. In a small state like Delaware, where personal and professional networks often overlap,

maintaining high ethical standards is especially important to avoid conflicts of interest and promote public trust.

The Public Integrity Commission thanks the JLOSC for this opportunity to discuss the important work that we do. We look forward to working together to further the interests of Delawareans and continue to promote an ethical government that works for the people.

Sincerely,

Delaware State Public Integrity Commission

*/s/ Ron Chaney*

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Ronald Chaney  
Chair

*/s/ Susan Bunting*

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Dr. Susan Bunting  
Vice-Chair

*/s/ Melissa Harrington*

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Dr. Melissa Harrington  
Vice-Chair

*/s/ Andrew T. Manus*

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Andrew T. Manus  
Commissioner

*/s/ F. Gary Simpson*

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Hon. F. Gary Simpson  
Commissioner

*/s/ Alex Smalls*

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Hon. Alex J. Smalls  
Commissioner

## ***Administer & Enforce The Code of Conduct***

The Code of Conduct regulates ethical conduct of **State employees, officers, and honorary officials** in the Executive Branch plus **public/charter school employees** and **regulates the conduct of local government officials** unless they adopt a code at least as stringent as the State.

- Candidates / nominees for public office are subject to certain provisions.
- About 30,000 people are in above categories.
- PIC's responsibilities include:
  - Rendering advisory opinions regarding the Code.
  - Enforcing the Code as it relates to the filing of Statements of Financial Interests forms.
  - Investigating alleged violations of the Code.
  - Issuing decisions in relation to such investigations

### Responsibilities:

- Recommend to the General Assembly rules of conduct for public employees and officials as it shall deem appropriate.
- Issue written advisory as to the applicability of the Code of Conduct to any particular fact situation.
- Refer to Commission Counsel to investigate any alleged violation and, to recommend by resolution, such disciplinary action as it may deem . The Commission may also dismiss any complaint that it determines is frivolous or fails to state a violation.
- Report to the appropriate federal or state authorities any substantial evidence of a violation of any criminal law.
- Maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of § 5807(b) and (d), and § 5810(h).
- Subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, and take evidence.

- Public officers in the Executive, Legislative, & Judicial branches are required to file a financial disclosure statement within 14 days of assumption and annually thereafter.
- Public officers must disclose certain assets, debts, income, capital gains, reimbursement of expenses, honoraria and gifts.
- Approximately 400 reports were filed with the Commission annually. The Commission has administered this law since January 15, 1995. The PIC received 398 Financial Disclosure filings between January 1st and March 15th in 2024.
- PIC administers Executive Orders No. 5 and 19, which impose additional disclosure requirements within the Executive Branch.
- PIC issues advisory opinions interpreting both the statute and the Executive Orders as guidance to those required to file.
- It offers training in which the Commission's decisions are reviewed together with information on proper completion of the reports to avoid technical errors.

- Courts have held that financial disclosure reporting laws are broad and do not guarantee the absence of conflicts of interest. The Courts noted that trying to tailor financial disclosure reporting laws to the many offices affected is impractical, so the issue of whether a conflict exists should be approached on a case-by-case basis. The means by which this Commission decides if accepting gifts, payment of expenses, etc., raises an ethical issue is by applying the Code of Conduct restriction on accepting things of monetary value.
- The legal standard which governs whether accepting a gift, payment of expenses, or anything of monetary value raises an ethical issue, is whether acceptance may result in: (1) impaired independence of judgment; (2) preferential treatment; (3) official decisions outside official channels; or (4) adverse effect in the public's confidence in the integrity of its government

- Lobbyists are required to submit individual registration forms, employer authorization forms, and quarterly reports of expenditures on General Assembly members and employees or members of any State agency.
  - Registration is required if an individual will be acting to promote, advocate, influence or oppose any matter pending before the General Assembly or a State agency by direct communication.
  - Registration informs the public and government officials of the identity of persons seeking access to government officials and the issues the lobbyist represents.
  - 684 lobbyists file these reports.
  - 8260 quarterly reports were filed with PIC in 2024.
  - 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 Commission has administered this law since January 15, 1996.
- 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. 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."
  - Jurisdiction: When PIC began administering the lobbying registration law in 1996, there were approximately 200 organizations represented by lobbyists. At the end of 2024, 648 lobbyists (344 lobbyists were 'active'), representing 1049 different organizations, were registered. However, because some employers have multiple lobbyists, the total number of reportable registrations was 2065.
  - 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.

- 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.
- Training and publications provide a broad, general view about the State Code of Conduct. Training is conducted in on-site sessions and virtually.
- Last year, the PIC developed and brought on-line a new training module.
- In 2024 twelve training sessions were held; 196 personnel were trained. In 2023 nine sessions were held for 223 personnel.
- 2100+ employees participated in the on-line training module, up from 1540 in 2023.
- DHR made ethics training mandatory for new employees in 2024.
- Governor Myer called for mandatory training for all employees but has no executive or legislative action has been initiated.

- 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.
- 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.



## Advisory Opinions and Waivers

- Any employee, officer, honorary official, agency, or lobbyist may request the Commission's advice on the provisions applying to him/her or seek a waiver from its applicability.
- Training and publications provide a broad, general view about the State Code of Conduct. The Commission's advisory opinions and waivers provide applicants with personal attention on potential conflicts, helping prevent crossing the ethics line.
- In 2024, the PIC acted on 63 requests for written advice.
- The most commonly sought-after advice topics include:
  - Gifts
  - Meals
  - Post-retirement employment

- In rare cases, an individual may need to deviate from the law. The PIC 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. In 2024, three waivers were granted.
- While opinions are non-binding, if the individual follows the advice, the law protects them from complaints or disciplinary actions. 29 Del. C. § 5807(c).
- In 2024, three 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.
- Synopses of opinions later become learning tools at training classes available on our website.

- The Delaware Public Integrity Commission can ramp up quickly, expand its scope and satisfy the call for an Inspector general.
- A more robust PIC, with expanded capabilities and authorizations, could quickly, efficiently and effectively improve both the incidents of violation, and the public's perception of government integrity.
- The Commission, in place today, has experienced, dedicated public servants who have demonstrated high integrity and ethics, and have been vetted by voters, and background investigations.
- Our staff attorney is experienced in ethics enforcement.
- We can assist with writing the appropriate language to change the Delaware Code.
- The Public Integrity Commission, can, with minimal staffing increase, provide a more robust investigative and enforcement capability.

- Part time / on call / per diem / outsourced investigator(s) could enable enhanced ability to seek facts and information pertinent to improving ethical oversight.
- Actual requirements are TDB, but (1) we can identify them quickly and (2) initiate expanded responsibilities as soon as instructed to do so
- What it would take:
  - Changes to Delaware Code, Title 29
  - Legislative will
  - Additional funding/staffing

Budget	FY 2023	FY 2024	FY 2025
IG <sup>1</sup>	\$457,038	\$1,095,175	\$1,152,107
PIC <sup>2</sup>	\$188,700	\$188,700	\$188,700
		83% more than PIC	84% more than PIC

# Public Integrity Commission

## Letter to Senate Leadership re: IG



### STATE OF DELAWARE DELAWARE STATE PUBLIC INTEGRITY COMMISSION

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

TELEPHONE: (302) 739-2399

VIA EMAIL

January 25, 2023

Senator David P. Sokola, President Pro Tempore  
Senator Laura Sturgeon  
Delaware Senate  
411 Legislative Avenue  
Dover, DE 19901

**RE: Delaware ethics**

Dear Senators,

Our Commission is responsible for administering and enforcing the State Code of Conduct (ethics laws) for over 30,000 state, municipal and county employees/appointees.<sup>1</sup> We have held that role for almost 30 years. During the legislature's last session, there were numerous media reports regarding the feasibility/need for an Office of the Inspector General.<sup>2</sup> According to those news reports, the Inspector General's authority could potentially have included areas over which we already have statutory jurisdiction. While the proposed legislation did not move forward during the last session, we anticipate that it may be raised again during the current session, or in future legislative sessions. Of particular concern to us was the fact that the debate surrounding the issue did not appear to acknowledge, or consider, the PIC's existing role as the State's independent ethics body.

As the new session of the General Assembly begins, we would like to share some information with you regarding the Commission and its duties. The Commission's budget for FY2023 is \$190,600, a much lower cost than the proposed \$1,152,717 for the Inspector General in FY2025.<sup>3</sup> On our website, members of the public can review a 1074-page compendium of the Commission's advisory opinions issued over the past 30 years. We also provide online and in-person Code of Conduct training to state agencies, municipalities and counties.

In addition to our ethics duties, the Commission is responsible for oversight of lobbyist registration and expense reports, as well as public officer financial disclosures. Our most recent Annual Report shows that during CY2021 the Commission processed 366 financial disclosures and 3564 lobbyist expense reports.

Our Commission is able to administer the Code of Conduct, along with other statutory duties, at a significant cost savings over that of an Inspector General. The Commission does not have an opinion as to whether the State should adopt legislation creating an Office of the Inspector General, we are not a political body. However, we do believe it is our duty to point out the fact that many of the Inspector General's proposed job duties are already being performed by our Commission, at a significantly lower cost to the Delaware taxpayer. For those proposed duties that are not already performed by our Commission, it may be possible for the State to leverage already existing resources at a substantial cost savings.

Our Commission is an existing resource through which you may compare the services already being provided against the proposed services. We respectfully request that if the Inspector General legislation is introduced again this year, or in the future, that we be included in those discussions since any decision may have an immediate impact on our existing statutory duties.

Sincerely,

State Public Integrity Commission

*/s/ F. Gary Simpson*

Hon. F. Gary Simpson  
Chair

*/s/ Michele Whetzel*

Michele Whetzel  
Vice-Chair

*/s/ Rourke Moore*

Hon. Rourke Moore  
Vice-Chair

*/s/ Andrew T. Manus*

Andrew T. Manus  
Commissioner

*/s/ Marjorie Biles*

Marjorie Biles  
Commissioner

*/s/ Ron Chaney*

Ronald Chaney  
Commissioner

*/s/ Alex J. Smalls*

Hon. Alex J. Smalls  
Commissioner

cc: Sen. Bryan Townsend