

PUBLIC INTEGRITY COMMISSION
Statutory Authority: 29 Delaware Code, Section 5809(6) (29 Del.C. §5809(6))

FINAL

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 a two Vice-Chairpersons to serve at the pleasure of the membership. ~~The~~ 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, during regular business hours, to the Administrative Assistant on a form provided for that purpose.

(2) The Administrative Assistant first shall determine whether or not 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) Pursuant to 29 Del.C. §10003, a copying cost of fifty cents (\$.50) per page shall be levied as a charge

for copying such records.

(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 therefor, 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

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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.

8 DE Reg. 710 (11/01/04)