

PRESCRIPTION OPIOID SETTLEMENT DISTRIBUTION COMMISSION

POLICY ESTABLISHING ETHICS STANDARDS AND PROCEDURES TO IDENTIFY AND ADDRESS CONFLICTS OF INTEREST

I. INTRODUCTION

This policy addresses the ethics standards applicable to the members of the Prescription Opioid Settlement Distribution Commission (the “**Commission**”) and its committees and contains both procedures for dealing with conflicts of interests that may arise in connection with a member’s vote on a particular matter and procedures for identifying and addressing conflicts of interest that may arise in connection with the implementation of a program or initiative approved by the Commission.

This policy should be liberally construed so as to achieve the broadest coverage and most inclusive application possible. When in doubt, to avoid even the appearance of a conflict of interest, individuals and entities subject to this policy should err on the side of disclosure and recusal.

II. BACKGROUND

In October 2021, pursuant to S.B. 166, the Delaware General Assembly created the Commission as a subcommittee of the Behavioral Health Consortium (the “**BHC**”). The Commission is vested with responsibility for (a) establishing a coordinated and consensus driven effort to repair the harm done to communities in this State by the opioid crisis, and (b) making recommendations to the BHC regarding the distribution of money in the Prescription Opioid Impact Fund (the “**Impact Fund**”) established under 16 *Del. C.* § 4803B and the Prescription Opioid Settlement Fund (the “**Settlement Fund**,” and together with the Impact Fund, the “**Opioid Funds**”) established under 16 *Del. C.* § 4808B. The Commission is required to adopt ethics standards and procedures to identify and address conflicts of interest. *See* 16 *Del. C.* § 5196A(d)(3).

Pursuant to 16 *Del. C.* § 5196A(e), the General Assembly required the Commission to create a Local Government Committee (the “**LGC**”), which committee has statutory authority to make recommendations to the Commission regarding the distribution of money from the Impact Fund and the Settlement Fund. On April 25, 2022, a quorum of Commission members duly convened and conducted a public meeting, at which the Commission unanimously voted to officially establish the LGC.

The Commission co-chairs, pursuant to 16 *Del. C.* § 5196A(f), have determined it necessary and appropriate to create four additional standing committees (the “**Standing Committees**,” and together with the LGC, the “**Committees**”) to assist the Commission in discharging its duties.

III. STANDARDS AND PROCEDURES

Members of the Commission, the LGC and the Standing Committees serve as “honorary state officials” within the meaning of the State Employees’, Officers’ and Officials’ Code of Conduct, 29 *Del. C.* §§ 5801-5810A (the “**Code of Conduct**”). *See* 29 *Del. C.* § 5804(6).

Members are subject to the Code of Conduct and are personally responsible for complying with its provisions. A copy of the Code of Conduct is attached hereto as **Appendix 1**.

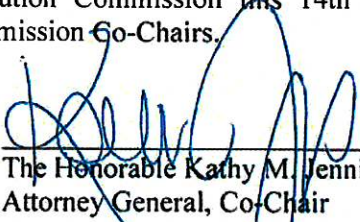
The Code of Conduct prohibits certain conduct involving conflicts of interest, including participating in a vote on a matter in which the honorary state official has a personal or private interest that may impair the person's independence of judgment. *See 29 Del. C. § 5805(a)*. Further, under the Code of Conduct, honorary state officials must pursue a course of conduct that will not raise suspicion among the public that such official is engaging in acts which are in violation of the public trust, or which could reflect unfavorably upon the State and its government. *See 29 Del. C. § 5806(a)*.


Violations of the Code of Conduct may be investigated by Counsel for the Public Integrity Commission (the "PIC") and may be referred for disciplinary proceedings before the PIC. The PIC may, upon finding a violation, issue a written reprimand or issue a recommendation of removal. *See 29 Del. C. § 5810(d)*. Violations involving knowing or willful participation in certain prohibited conduct may be referred for criminal prosecution. *See 29 Del. C. § 5805(f)*.

Commission and Committee members must participate in periodic training on the Code of Conduct, as prescribed by the Commission.

A member, if in doubt about the propriety of a potential course of action, may seek an advisory opinion from the PIC or PIC Counsel as to the applicability of the Code of Conduct to any particular situation. *See 29 Del. C. § 5807(c)*. A member may also request from the PIC a waiver of a specific prohibition of the Code of Conduct if the literal application of such prohibition in a particular case is not necessary to achieve the purposes of the Code of Conduct or would result in an undue hardship, including an undue hardship on the Commission. *See 29 Del. C. § 5807(a)*. Any person who acts in good faith reliance upon an advisory or waiver decision is not subject to discipline or other sanction under the Code of Conduct with respect to the matters covered by the decision, provided there was a full disclosure of all material facts. *See 29 Del. C. §§ 5807(a), (c)*.

Adopted by the Prescription Opioid Settlement Distribution Commission this 14th day of November, 2022, as evidenced by the signature of the Commission Co-Chairs.


The Honorable Kathy M. Jennings,
Attorney General, Co-Chair


The Honorable Bethany Hall-Long,
Lieutenant Governor, Co-Chair

The Delaware Code Online (/)



[TITLE 29 \(../INDEX.HTML\)](#) > [CHAPTER 58 \(../INDEX.HTML\)](#)

[Authenticated PDF \(../Title29.pdf\)](#)

[§ 5801](#) [§ 5802](#) [§ 5803](#) [§ 5804](#) [§ 5805](#) [§ 5806](#) [§ 5807](#) [§ 5808](#) [§ 5808A](#) [§ 5808B](#) [§ 5809](#) [§ 5810](#) [§ 5810A](#)

TITLE 29

State Government

Public Officers and Employees

CHAPTER 58. Laws Regulating the Conduct of Officers and Employees of the State

Subchapter I. State Employees', Officers' and Officials' Code of Conduct

§ 5801. Short title.

This subchapter shall be known and may be cited as the "State Employees', Officers' and Officials' Code of Conduct."

[67 Del. Laws, c. 417, § 1 \(https://legis.delaware.gov/SessionLaws?volume=67&chapter=417\);](#)

§ 5802. Legislative findings and statement of policy.

The General Assembly finds and declares:

- (1) In our democratic form of government, the conduct of officers and employees of the State must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
- (2) To ensure propriety and to preserve public confidence, officers and employees of the State must have the benefit of specific standards to guide their conduct and of some disciplinary mechanisms to guarantee uniform maintenance of those standards. Some standards of this type are so vital to government that violation thereof should subject the violator to criminal penalties.
- (3) In our democratic form of government, it is both necessary and desirable that all citizens should be encouraged to assume public office and employment, and that, therefore, the activities of officers and employees of the State should not be unduly circumscribed.
- (4) It is the desire of the General Assembly that all counties, municipalities and towns adopt code of conduct legislation at least as stringent as this act to apply to their employees and elected and appointed officials. This subchapter shall apply to any county, municipality or town and the employees and elected and appointed officials thereof which has not enacted such legislation by January 23, 1993. No code of conduct legislation shall be deemed sufficient to exempt any county, municipality or town from the purview of this subchapter unless the code of conduct has been submitted to the State Ethics Commission and determined by a majority vote thereof to be at least as stringent as this subchapter. Any change to an approved code of conduct must similarly be approved by the State Ethics Commission to continue the exemption from this subchapter.

[67 Del. Laws, c. 417, §§ 1, 2 \(https://legis.delaware.gov/SessionLaws?volume=67&chapter=417\);](#) [68 Del. Laws, c.](#)

[433, § 1 \(https://legis.delaware.gov/SessionLaws?volume=68&chapter=433\);](https://legis.delaware.gov/SessionLaws?volume=68&chapter=433)

§ 5803. Construction.

This subchapter shall be construed to promote high standards of ethical conduct in state government.

[59 Del. Laws, c. 575, § 1 \(https://legis.delaware.gov/SessionLaws?volume=59&chapter=575\);](https://legis.delaware.gov/SessionLaws?volume=59&chapter=575) [67 Del. Laws, c. 417, § 1 \(https://legis.delaware.gov/SessionLaws?volume=67&chapter=417\);](https://legis.delaware.gov/SessionLaws?volume=67&chapter=417)

§ 5804. Definitions.

For the purposes of this subchapter:

- (1) "Close relative" means a person's parents, spouse, children (natural or adopted) and siblings of the whole and half-blood.
- (2) "Commission" means the State Public Integrity Commission established by this chapter.
- (3) "Commission Counsel" means the legal counsel appointed by the Commission pursuant to this chapter.
- (4) "Compensation" means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by oneself or another.
- (5) A person has a "financial interest" in a private enterprise if:
 - a. The person has a legal or equitable ownership interest in the enterprise of more than 10% (1% or more in the case of a corporation whose stock is regularly traded on an established securities market);
 - b. The person is associated with the enterprise and received from the enterprise during the last calendar year or might reasonably be expected to receive from the enterprise during the current or the next calendar year income in excess of \$5,000 for services as an employee, officer, director, trustee or independent contractor; or
 - c. The person is a creditor of a private enterprise in an amount equal to 10% or more of the debt of that enterprise (1% or more in the case of a corporation whose securities are regularly traded on an established securities market).
- (6) "Honorary state official" means a person who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive not more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses).
- (7) "Matter" means any application, petition, request, business dealing or transaction of any sort.
- (8) "Person" means an individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.
- (9) "Private enterprise" means any activity conducted by any person, whether conducted for profit or not for profit and includes the ownership of real or personal property. Private enterprise does not include any activity of the State or of any political subdivision or of any agency, authority or instrumentality thereof.
- (10) "State" means the State of Delaware and includes any state agency.
- (11) "State agency" means any office, department, board, commission, committee, court, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition which exist by virtue of state law, and whose jurisdiction:

- a. Is limited to a political subdivision of the State or to a portion thereof; or
- b. Extends beyond the boundaries of the State.

(12) a. "State employee" means any person:

1. Who receives compensation as an employee of a state agency;
2. Who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses); or
3. Who is an elected or appointed school board member.

b. "State employee" does not include:

1. Members of the General Assembly;
2. The Chief Justice and Justices of the Supreme Court;
3. The Chancellor and Vice-Chancellors of the Court of Chancery;
4. The President Judge and Judges of Superior Court;
5. The Chief Judge and Judges of Family Court;
6. The Chief Judge and Resident Judges of the Court of Common Pleas;
7. The Chief Magistrate and Justices of the Peace;
8. State officers; or
9. Honorary state officials.

(13) "State officer" means any person who is required by subchapter II of this chapter to file a financial disclosure statement but does not include:

- a. Members of the General Assembly;
- b. The Chief Justice and Justices of the Supreme Court;
- c. The Chancellor and Vice-Chancellors of the Court of Chancery;
- d. The President Judge and Judges of Superior Court;
- e. The Chief Judge and Judges of Family Court;
- f. The Chief Judge and Judges of the Court of Common Pleas; or
- g. The Chief Magistrate and Justices of the Peace.

59 Del. Laws, c. 575, § 1 (<https://legis.delaware.gov/SessionLaws?volume=59&chapter=575>); 61 Del. Laws, c. 132, § 23 (<https://legis.delaware.gov/SessionLaws?volume=61&chapter=132>); 62 Del. Laws, c. 48, § 1 (<https://legis.delaware.gov/SessionLaws?volume=62&chapter=48>); 67 Del. Laws, c. 417, § 1 (<https://legis.delaware.gov/SessionLaws?volume=67&chapter=417>); 69 Del. Laws, c. 467, §§ 2, 3 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=467>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 71 Del. Laws, c. 176, §§ 33, 34 (<https://legis.delaware.gov/SessionLaws?volume=71&chapter=176>); 73 Del. Laws, c. 19, § 1 (<https://legis.delaware.gov/SessionLaws?volume=73&chapter=19>); 76 Del. Laws, c. 213, §§ 44-51 (<https://legis.delaware.gov/SessionLaws?volume=76&chapter=213>);

§ 5805. Prohibitions relating to conflicts of interest.

(a) *Restrictions on exercise of official authority.* — (1) No state employee, state officer or honorary state official may participate on behalf of the State in the review or disposition of any matter pending before the State in which the state employee, state officer or honorary state official has a personal or private interest, provided, that upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter.

(2) A person has an interest which tends to impair the person's independence of judgment in the performance of the person's duties with respect to any matter when:

a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or

b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.

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

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

(2) No state officer may represent or otherwise assist any private enterprise with respect to any matter before the State.

(3) This subsection shall not preclude any state employee, state officer or honorary state official from appearing before the State or otherwise assisting any private enterprise with respect to any matter in the exercise of such person's official duties.

(c) *Restrictions on contracting with the State.* — No state employee, no state officer and no private enterprise in which a state employee or state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations. For the period of July 1, 1990, through June 30, 1991, nothing in this subsection shall prohibit a state employee, a state officer, or a private enterprise in which a state employee or a state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) from contracting with a public school district and/or the State Board of Education for the transportation of school children without public notice and competitive bidding as is permitted under § 6904(c) of this title.

(d) *Post-employment restrictions.* — No person who has served as a state employee, state officer or honorary state official shall represent or otherwise assist any private enterprise on any matter involving the State, for a period of 2 years after termination of employment or appointed status with the State, if the person gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of official duties as a state employee, officer or official. Nor shall any former state employee, state officer or honorary state official

disclose confidential information gained by reason of public position nor shall the person otherwise use such information for personal gain or benefit.

(e) *Unauthorized disclosure of confidential information.* — No person shall disclose any information required to be maintained confidential by the Commission under § 5806(d), § 5807(b) or (d), or § 5810(h) of this title.

(f) *Criminal sanctions.* — (1) Any person who knowingly or wilfully violates any provision of this section shall be guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than 1 year and by a fine not to exceed \$10,000.

(2) A prosecution for a violation of this section shall be subject to the time limitations of § 205 of Title 11.

(3) The Superior Court shall have exclusive jurisdiction over prosecution for all criminal violations of this section.

(g) *Contracts voidable by court action.* — In addition to any other penalty provided by law, any contract entered into by any state agency in violation of this subchapter shall be voidable by the state agency; provided, that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the state agency shall consider the interests of innocent 3rd parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the state agency involved has, or should have, knowledge of such violation.

(h) *Exceptions for transportation contracts with school districts.* — Except for transportation supervisors for any school district within this State, nothing in this section shall prohibit an employee or the employee's spouse or children (natural or adopted) from contracting for the transportation of school children. Such transportation contracts may be entered into by an employee or the employee's spouse or children without public notice and competitive bidding as is provided in § 6904(c) of this title.

(i) [Deleted.]

[59 Del. Laws, c. 575, § 1](https://legis.delaware.gov/SessionLaws?volume=59&chapter=575) (<https://legis.delaware.gov/SessionLaws?volume=59&chapter=575>); [63 Del. Laws, c. 1, § 1](https://legis.delaware.gov/SessionLaws?volume=63&chapter=1) (<https://legis.delaware.gov/SessionLaws?volume=63&chapter=1>); [64 Del. Laws, c. 423, § 1](https://legis.delaware.gov/SessionLaws?volume=64&chapter=423) (<https://legis.delaware.gov/SessionLaws?volume=64&chapter=423>); [67 Del. Laws, c. 314, § 1](https://legis.delaware.gov/SessionLaws?volume=67&chapter=314) (<https://legis.delaware.gov/SessionLaws?volume=67&chapter=314>); [67 Del. Laws, c. 417, § 1](https://legis.delaware.gov/SessionLaws?volume=67&chapter=417) (<https://legis.delaware.gov/SessionLaws?volume=67&chapter=417>); [68 Del. Laws, c. 198, § 1](https://legis.delaware.gov/SessionLaws?volume=68&chapter=198) (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=198>); [69 Del. Laws, c. 467, §§ 4, 27](https://legis.delaware.gov/SessionLaws?volume=69&chapter=467) (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=467>); [70 Del. Laws, c. 186, § 1](https://legis.delaware.gov/SessionLaws?volume=70&chapter=186) (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); [71 Del. Laws, c. 150, § 86](https://legis.delaware.gov/SessionLaws?volume=71&chapter=150) (<https://legis.delaware.gov/SessionLaws?volume=71&chapter=150>); [71 Del. Laws, c. 227, § 2](https://legis.delaware.gov/SessionLaws?volume=71&chapter=227) (<https://legis.delaware.gov/SessionLaws?volume=71&chapter=227>);

§ 5806. Code of conduct.

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

(b) No state employee, state officer or honorary state official shall have any interest in any private enterprise nor shall such state employee, state officer or honorary state official incur any obligation of any nature which is in substantial conflict with the proper performance of such duties in the public interest. No state employee, state officer or honorary state official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

(1) Impairment of independence of judgment in the exercise of official duties;

(2) An undertaking to give preferential treatment to any person;

(3) The making of a governmental decision outside official channels; or

(4) Any adverse effect on the confidence of the public in the integrity of the government of the State.

Provided however, that a minimal gratuity provided on occasion to blind or disabled state employees or other blind or disabled persons supervised by the Division of Visually Impaired, shall not be considered to be a violation of this section.

(c) No state employee, state officer, or honorary state official shall acquire a financial interest in any private enterprise which such official has reason to believe may be directly involved in decisions to be made by such official in an official capacity on behalf of the State.

(d) Any state employee or state officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any state agency (and any honorary state official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the state agency on which the official serves as an appointee) shall file with the Commission a written statement fully disclosing the same. Such disclosure shall be confidential and the Commission shall not release such disclosed information, except as may be necessary for the enforcement of this chapter. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the State.

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

(f) No state employee, state officer or honorary state official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such state employee, state officer or honorary state official to disclose confidential information acquired by such official by reason of such public position.

(g) No state employee, state officer or honorary state official shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall such official otherwise use such information for personal gain or benefit.

(h) No state employee, state officer or honorary state official, in the course of public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a state agency.

(i) Notwithstanding the provisions of Chapters 58, 59, and 69 of this title and the State Merit Rules of Personnel Administration, state employees may contract to provide foster care or respite care for individuals with fees paid for by the State provided further that the employee does so at other than assigned work hours. Additionally, these individuals are not permitted to participate in the review or disposition of any matter related to foster and/or respite care in which they have or may have a personal or private interest and may not be monitored or reviewed by other state employees who are more junior or related to them.

59 Del. Laws, c. 575, § 1 (<https://legis.delaware.gov/SessionLaws?volume=59&chapter=575>); 63 Del. Laws, c. 1, § 2 (<https://legis.delaware.gov/SessionLaws?volume=63&chapter=1>); 65 Del. Laws, c. 349, § 1 (<https://legis.delaware.gov/SessionLaws?volume=65&chapter=349>); 67 Del. Laws, c. 417, § 1 (<https://legis.delaware.gov/SessionLaws?volume=67&chapter=417>); 69 Del. Laws, c. 467, §§ 5, 27 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=467>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 567, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=567>); 76 Del. Laws, c. 80, § 33 (<https://legis.delaware.gov/SessionLaws?volume=76&chapter=80>);

§ 5807. Waivers of restrictions and advisory opinions.

(a) Notwithstanding the provisions of §§ 5805 and 5806 of this title, upon the written request of any state agency or of any individual who is or was a state employee, state officer or honorary state official, the Commission may grant a waiver to the specific prohibitions contained therein if the Commission determines that the literal application of such

prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee, officer, official or state agency. Any such waiver may be granted only by written decision of the Commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision provided there was a full disclosure to the Commission of all material facts necessary for the waiver decision.

(b) Any application for a waiver, any proceedings and any decision with respect thereto shall be maintained confidential by the Commission provided that:

- (1) Public disclosure shall be made by the Commission upon the written request of the applicant;
- (2) The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this subchapter;
- (3) The Commission shall report to appropriate federal and state authorities substantial evidence of any criminal violation which may come to its attention; and
- (4) In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.

(c) Upon the written request of any state employee, state officer, honorary state official or state agency or a public officer as defined in § 5812 of this title, the Commission, or Commission Counsel subject to § 5808A(a) of this title may issue an advisory opinion as to the applicability of this chapter to any particular fact situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion provided there was a full disclosure to the Commission or Commission Counsel of all material facts necessary for the advisory opinion.

(d) Any application for an advisory opinion, any proceedings and any decision with respect thereto shall be maintained confidential by the Commission provided that:

- (1) Public disclosure shall be made by the Commission upon the written request of the applicant;
- (2) The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this chapter;
- (3) The Commission shall report to appropriate federal and state authorities substantial evidence of any criminal violation which may come to its attention; and
- (4) The Commission shall prepare a summary of its advisory opinions for public distribution without disclosing the identity of the applicants.

59 Del. Laws, c. 575, § 1 (<https://legis.delaware.gov/SessionLaws?volume=59&chapter=575>); 67 Del. Laws, c. 417, § 1 (<https://legis.delaware.gov/SessionLaws?volume=67&chapter=417>); 69 Del. Laws, c. 467, §§ 6, 7, 27 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=467>); 80 Del. Laws, c. 204, § 1 (<https://legis.delaware.gov/SessionLaws?volume=80&chapter=204>);

§ 5808. State Public Integrity Commission; establishment, membership, offices.

(a) The State Ethics Commission is hereby renamed and reestablished as the State Public Integrity Commission to assume the functions of the State Ethics Commission and to administer and implement this chapter, and to perform such other responsibilities as may be entrusted to it by law.

(b) The Commission shall consist of 7 members appointed by the Governor with the concurrence of the Senate. Not more than 4 members shall be registered with the same political party. No member shall hold any elected or appointed office under the government of the United States or the State or be a candidate for any such office. No member shall hold any political party office or an office in any political campaign. Members of the Commission may be removed by the Governor, with the concurrence of the Senate, for substantial neglect of duty, gross misconduct

in office or violation of this chapter.

(c) A member of the Commission shall be appointed for a term of office of 7 years and until a successor has been appointed and has qualified, except that initially the Commission shall consist of the members of the former State Ethics Commission as of July 15, 1994, and said members shall serve the remaining portion of their terms and until their successors have been appointed and have qualified. No member shall serve for more than 1 full 7-year term. When a vacancy occurs in the membership of the Commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as original appointments.

(d) The Commission shall elect a chairperson from among its membership. Four members of the Commission shall constitute a quorum and, if a quorum is present, a vacancy on the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission. Disciplinary hearings may be conducted and sanctions may be imposed only by the affirmative action of at least 4 members. Otherwise the Commission may delegate authority to the chairperson to act for the Commission between meetings.

(e) Each member of the Commission shall be compensated at the rate of \$100 for each day devoted to the performance of official duties. Each member of the Commission shall be reimbursed for reasonable and necessary expenses incurred in the performance of official duties.

(f) The principal office of the Commission shall be in Dover but it may meet, and exercise its power, at any other place in the State.

67 Del. Laws, c. 417, § 1 (<https://legis.delaware.gov/SessionLaws?volume=67&chapter=417>); 69 Del. Laws, c. 467, § 8 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=467>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

§ 5808A. Commission Counsel; powers and duties.

(a) There shall be a Commission Counsel who shall be the legal representative of the Commission and have the following powers and duties:

(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 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.

(b) The Commission Counsel may recuse from a matter before the Commission when, in the view of Commission Counsel or of the Commission, such recusal is deemed necessary or appropriate. In situations where Commission Counsel recuses, the duties of the Commission Counsel may be exercised by the Attorney General or by outside counsel chosen by the Commission.

69 Del. Laws, c. 467, § 9 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=467>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 80 Del. Laws, c. 204, § 1 (<https://legis.delaware.gov/SessionLaws?volume=80&chapter=204>);

§ 5808B. Commission Counsel's appointment contingent upon appropriations.

The Commission Counsel established by § 5808A of this title shall not be appointed by the Commission until adequate funds have been appropriated for such purpose. In the absence of such appointment, the Attorney General shall provide legal assistance to the Commission and shall exercise any duties assigned to the Commission Counsel by this chapter. Such duties may also be exercised by outside counsel chosen by the Commission, if adequate funds are appropriated for such purpose.

69 Del. Laws, c. 467, § 9 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=467>);

§ 5809. State Public Integrity Commission — Power and duties.

The powers and duties of the Commission shall be as follows:

- (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.
- (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.

59 Del. Laws, c. 575, § 1 (<https://legis.delaware.gov/SessionLaws?volume=59&chapter=575>); 67 Del. Laws, c. 417, § 1 (<https://legis.delaware.gov/SessionLaws?volume=67&chapter=417>); 69 Del. Laws, c. 467, §§ 10-13, 27 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=467>); 75 Del. Laws, c. 57, § 6 (<https://legis.delaware.gov/SessionLaws?volume=75&chapter=57>);

§ 5810. State Public Integrity Commission — Complaints; hearings; dispositions.

- (a) Upon the sworn complaint of any person or on its own initiative, the Commission may refer to the Commission Counsel for investigation any alleged violations of this chapter. The Commission Counsel shall be the prosecuting attorney in disciplinary proceedings before the Commission. In any such investigation or proceeding, a defendant shall be given an opportunity to be heard after notice, to be advised and assisted by legal counsel, to produce witnesses and offer evidence, and to cross-examine witnesses. A transcript of any such proceeding shall be made and retained, subject to the confidentiality requirements of subsection (h) of this section.
- (b) A member of the Commission shall be ineligible to participate, as a member of the Commission, in any commission proceeding relating to such member's conduct. A member of the Commission who has been found by the Commission to have violated this chapter shall be ineligible to serve again as a member of the Commission.
- (c) A member of the Commission may disqualify himself or herself from participating in any investigation of the conduct of any person upon submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to disqualify himself or herself.
- (d) With respect to any violation with which a person has been charged and which the Commission has determined as proved, the Commission may take any 1 or more of the following actions:

(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.

(e) In any proceeding before the Commission, upon the request of any person charged with a violation of this chapter, such person shall be permitted to inspect, copy or photograph books, papers, documents, photographs or other tangible objects which will be used as evidence against that person in a disciplinary hearing and which are material to the preparation of a defense.

(f) In any proceeding before the Commission, if the Commission Counsel or the Commission at any time receives any exculpatory information respecting an alleged violation against any person, it shall forthwith make such information available to such person.

(g) Any person charged with a violation of this chapter may apply to the Commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents on the person's behalf. The application shall be granted upon a concise showing by such person that the proposed testimony or evidence is relevant (or is reasonably calculated to lead to the discovery of relevant evidence) and is not otherwise available. The application shall be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.

(h) (1) All proceedings relating to a charged violation of this chapter shall be maintained confidential by the Commission unless:

- a. Public disclosure is requested in writing by the person charged; or
- b. the Commission determines after a hearing that a violation has occurred.

(2) Notwithstanding the confidentiality requirements of paragraph (h)(1) of this section, the Commission shall make available for public inspection the record of all proceedings relating to any decision of the Commission which is appealed to Superior Court and the Commission shall report to appropriate federal or state authorities any substantial evidence of a violation of any criminal law which comes to its attention in connection with any proceeding under this chapter.

(3) The chairperson of the Commission shall, with the approval of the Commission, establish such procedures as in the chairperson's judgment may be necessary to prevent the disclosure of any record of any proceedings or other information received by the Commission or its staff except as permitted by this chapter.

67 Del. Laws, c. 417, § 1 (<https://legis.delaware.gov/SessionLaws?volume=67&chapter=417>); 69 Del. Laws, c. 467, §§ 14-18 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=467>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

§ 5810A. Judicial review.

In the event that the Commission finds that any person has violated any provision of this chapter, said person shall have a right of appeal to Superior Court of any such finding and of any sanctions imposed with respect thereto by filing a notice of appeal with the Superior Court within 30 days of the final action by the Commission in a particular case. The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the Commission for further proceedings on the record. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Commission's decision was supported by substantial evidence on the record. The burden of proof in any such appeal shall be on the appellant.

67 Del. Laws, c. 417, § 1 (<https://legis.delaware.gov/SessionLaws?volume=67&chapter=417>); 69 Del. Laws, c. 467, § 19 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=467>);

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