

# **New Castle County Ethics Commission Regulations**

(last update 6/13/2012)

## Regulation 2.03.102

The members of the following boards and commission shall not be excluded from the definition of "county official" for purposes of Sections 2.03.103(B)(2), 2.03.103(C), and 2.03.104(C): Planning Board, Human Resource Advisory Board, Fire and Ambulance Advisory Board, Pension Board, Board of Adjustment, Board of Assessment Review, Ethics Commission, License, Inspection and Review Board, the Historic Review Board and the Council's Audit Committee. All members of boards and commissions, not listed above, are excluded from the definition of "County official" for purposes of Sections 2.03(B)(2), 2.03.103(C), and 2.03.104(C).

Adopted 11/7/01. Amended 5/14/08. Amended 6/10/11.

#### Regulation 2.03.106(A)

The deadline for filing a statement of financial interest set forth in Section 2.03.106(A) may be extended for good cause by the Ethics Commission for a reasonable time. Good cause includes, but is not limited to, the pendency of approval or enactments by the State Public Integrity Commission affecting the New Castle County Ethics Code.

On or before January 31 of each year, the general manager of the Department of Human Resources, or person of equivalent rank, shall provide the Commission with the names of individuals required to file a Statement of Financial Interests for the preceding calendar year. Nothing in this regulation shall excuse any former or current County official or County employee from filing a Statement of Financial Interests as required by Section 2.03.106(A).

Adopted 10/6/94. Amended 6/12/97, 7/11/97. Numbering amended 6/12/01. Amended 5/14/08.

## **Regulation 2.03.106(C)**

Within five days of the nomination of a person to County office, the office or body making the nomination shall notify the Ethics Commission of the nomination and the nominee's name and address. Upon such notification, if requested, the Ethics Commission shall promptly forward to the nominee a Statement of Financial Interests for completion in accordance with Section 2.03.106(C) of the Ethics Code, together with instructions stating that the nominee must file a completed Statement of Financial Interests with the Commission and with the official or body

vested with the power of confirmation at least ten days before that official or body is scheduled to act on the nomination.

Adopted 2/14/93. Numbering amended 6/12/01. Amended 5/14/08.

#### **Regulation 2.03.106(D)**

The Commission shall not initiate litigation to collect the financial penalty for failing to file or deficient filing of a Statement of Financial Interests until at least 30 days after the penalty was imposed on a designated County official, County employee, or candidate for County office.

Adopted 1/13/10. Amended 6/10/11

The Commission shall entertain and resolve appeals from the imposition of the financial penalty for failing to file a Statement of Financial Interests or for a deficient filing if the appellant first pays the penalty imposed and files a written appeal within 30 days following payment on a form promulgated by the Commission. The appeal will be decided within 60 days after the notice of appeal is received by review of written communications between the Commission staff and the appellant or an in-person hearing before the Commission, at the Commission's discretion. The 60 day period may be extended for good cause shown. If the appeal is decided in favor of the appellant, in whole or in part, the appropriate amount of the penalty imposed shall be promptly refunded, without interest or any other costs. *Prepayment provision temporarily suspended effective 4/11/12*.

Adopted 1/09/08. Amended 4/11/12.

#### Regulation 2.04.101

To ensure prompt filling of vacancies on the New Castle County Ethics Commission, the following procedure shall be followed:

- (1) No later than ninety days before the expiration of the term of a member of the Commission, the Commission shall give written notification to the official or body which originally nominated that member of the future vacancy. The Commission may suggest the reappointment of the member if eligible or may suggest the names of other possible nominees who have demonstrated an interest in promoting public confidence in government, as required by Section 2.03.101 [formerly Sec. 2-171], and are not disqualified under Section 2.04.101(D) [formerly Sec. 2-401(D)] of the Ethics Code.
- (2) Thereafter, as deemed appropriate, the Commission may give additional written notification to the official or body which originally nominated that member of the fact that the vacancy will occur or has occurred.
- (3) In order to facilitate a timely confirmation, once a nomination has been made, the Commission shall give written notification to the official or body vested with the power of confirmation of the fact that the vacancy will occur or has occurred.

(4) The official or body vested with the power of confirmation shall promptly notify the Commission of any action taken with respect to the nomination.

Adopted 2/4/93. Numbering amended 6/12/01. Amended 5/14/08.

#### Regulation 2.04.101(D)(1)

Any member of the Ethics Commission who makes a political contribution to any candidate or campaign for New Castle County office shall orally, or in writing, disclose to the Ethics Commission, at the beginning of the next Ethics Commission meeting that he or she attends after making the contribution, the amount of the contribution and the name of the candidate or campaign to whom the contribution was made.

Adopted 5/11/99. Numbering amended 6/12/01.

## Regulation 2.04.101(D)(3)

Section 2.04.101(D)(3) should be read in conjunction with Section 2.03.101(B) of the Ethics Code. Section 2.04.101(D)(3) provides a limitation on actions of Commission members on matters within the jurisdiction of the Ethics Commission. That is, for matters within the jurisdiction of the Ethics Commission, members may only act as a representative of the Commission. For such matters within the Commission's jurisdiction, members can not attempt to influence any decision of a County official or County employee other than in his or her capacity as a representative of the Commission.

Adopted 3/30/98. Numbering amended 6/12/01. Amended 5/14/08.

## **Regulation 2.04.101(E)**

Four members of the Commission by resolution may declare vacant the position on the Commission of any member who has attended no more than four of the Commission's preceding twelve meetings. The resulting vacancy shall be filled in the manner set forth in Section 2.04.101(E).

Adopted 10/6/94. Numbering amended 6/12/01.

## Regulation 2.04.101(F)

In March of each year, the Commission shall elect a chairperson and vice-chairperson to serve for a one-year term. The chairperson and vice-chairperson may be re-elected to additional terms without limitation.

Adopted 12/2/93. Numbering amended 6/12/01.

If the chair of the Ethics Commission is absent or unable to preside at a meeting, or on a particular matter at a meeting, then the vice-chair shall preside as acting chair at the meeting, or on the matter. If both the chair and vice-chair of the Ethics Commission are absent or unable to preside at a meeting, or on a particular matter at a meeting, then the member in attendance having the longest

service on the Commission shall preside as acting chair at the meeting or on the matter.

Adopted 9/19/00. Numbering amended 6/12/01.

## (Duplicate Regulation number eliminated)

The chairperson of the Commission shall have the authority to certify that records maintained by the Commission are from its file, and, if applicable, are kept in the regular course of its business. The chairperson may also certify that copies made from these records are true and accurate.

Adopted 8/3/99. Numbering amended 6/12/01. Title amended 6/10/11.

## Regulation 2.04.102(A)

The Ethics Commission may hold an Executive Session, pursuant to 29 <u>Del.C</u>, Section 10004(a), via teleconference, provided that the requirements of 29 <u>Del.C</u>, Section 10004 are met.

Adopted 3/30/98. Title numbering amended 6/10/11.

For all matters, including minor procedural matters, a quorum of four is necessary. For all matters, other than minor procedural matters, there must be at least four affirmative votes for the Commission to take any action or make any recommendation. Thus, if there are only four members present at a meeting who are eligible to vote on a given matter, then there must be unanimity among the four voting members for the Commission to take any action or make any recommendation. For minor procedural matters, a quorum of four is still required, but only three affirmative votes are necessary to approve minor procedural business or matters.

The Ethics Commission may hold its meeting via teleconference, provided that prior notice is given that the meeting will occur via teleconference and accommodations are made for the public to simultaneously hear and participate in the teleconference. That is, Commission members may conduct their meeting, even if the members are at different locations, provided that the requisite quorum participate via a teleconference. Accommodations must be made for the public to participate in the teleconference by designating a place where, during the teleconference, the public may convene, and be provided with a speaker phone which is also connected to the teleconference. Nothing in this regulation shall be construed to abrogate the requirements of 29 <u>Del.C</u>, Section 10001 et. seq. *Adopted 4/7/98. Numbering amended 6/12/01*.

#### Voting Procedures

If, due to a personal or private interest, and/or an interest which may create an appearance of impropriety or a conflict of interest, one or more members of the Ethics Commission needs to abstain and/or recuse from a particular matter, resulting in less than four members left to hear and decide a matter, the Ethics Commission shall reschedule the matter until such time that at least four members are available who do not have such interest or conflict. In rescheduling the matter, the Commission shall take into account the exigency of the particular

circumstances and, if warranted, may conduct the matter via teleconference, and/or video conference, pursuant to Regulation 2.04.101(G). Adopted 11/28/00. Numbering amended 12/11/00. Numbering amended 6/12/01. Amended 5/14/08.

## **Regulation 2.04.102(B)**

The Ethics Commission may waive the applicability of its regulations, if, in its sole discretion, it determines that justice so requires.

Adopted 11/07/01. Title numbering Amended 6/10/11

Unless otherwise indicated, when determining any period of time set forth in these regulations, the day of the act, event or default, after which the designated period of time begins to run, shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, other legal holiday, or other day, on which New Castle County Offices are closed, in which event, the period of time shall run until the end of the next day on which the Office is open.

Adopted 10/21/98. Numbering amended 6/12/01. Amended 5/14/08. [Formerly Reg. 2.04.102(I) 26]

The Ethics Commission, for cause shown, may, at any time, enlarge the time period set forth in these regulations, if a request to do so is made before the expiration of the period of time originally set forth or extended by the Commission. If a request is not timely made, the Commission may still enlarge the time periods set forth in these regulations, if the failure to act was the result of excusable neglect, or, if failing to enlarge the time would result in substantial injustice.

Adopted 10/21/98. Numbering amended 6/12/01. Amended 5/14/08. [Formerly Reg. 2.04.102(I)27]

#### Regulation 2.04.102(I)

Amended 6/10/11

#### Initiating a Request for an Advisory Opinion

1. The Request for Advisory Opinion form must be utilized by the requesting party when initiating a request for an Advisory Opinion. The Request for Advisory Opinion form shall include: (1) the name, position, home and work address and the home and work telephone number of the requesting party; (2) whether you will attend a hearing, if requested; and (3) whether the requesting party understands that a waiver of confidentiality may be required as to the proceedings, if the Commission so required; (4) the issue presented and relevant facts and document. The Request for Advisory Opinion form must be signed by the requesting party.

Adopted 10/21/98. Amended 1/5/99. Numbering amended 6/12/01. Amended 5/14/08.

(See no. 18 below for expedited hearing procedure.)

- 2. Subject to Section 2.04.102(I) of the Ethics Code, the Commission shall not disclose the identity of the requesting party, unless disclosure is necessary to the import of the Opinion.
- Adopted 10/21/98. Numbering amended 6/12/01. Amended 5/14/08.
- 3. \*The requesting party should include with his or her request all documentary evidence which may be relevant to the Commission's issuing of the Advisory Opinion. Examples of such documentation include, but are in no way limited to: job specifications, budget information, and relevant business or organization documents. minutes, and by-laws. The Commission may request that the requesting party provide additional documents, if it believes it would be helpful in its determination.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

4. \*The Commission may issue an Advisory Opinion to the supervisor of any County employee, upon the supervisor's written request, concerning the County employee's duties under the Ethics Code.

Note: Section 2.04.102(I) of the Ethics Code provides that an Advisory Opinion may be issued to the appointing authority or "employer" of a County official or employee upon the written request of such appointing authority or employer. This regulation simply clarifies that for purposes of this section, "employer" is broadly construed and includes all County officials or employees who are in a supervisory role to the person whose conduct the request concerns.

Adopted 10/4/94. Numbering amended 6/12/01, 5/14/08.

## Hearing before the Commission

5. \*The Commission may schedule a hearing for a request for an Advisory Opinion, if the Commission, in its sole discretion, believes it would be helpful to its determination. The Commission, in its discretion, may determine that a waiver of confidentiality is necessary to proceed, and may, in its discretion, require such a waiver before proceeding to hearing. The hearing shall be scheduled at the next regularly scheduled Ethics commission meeting, provided, however, that the written request for the Advisory Opinion is received at least five business days in advance of the Commission meeting date. If the request is received less that five business days prior to the next regularly scheduled meeting date, or if the Commission determines good cause exists to have the hearing at another date, the hearing may be scheduled for the next regularly scheduled meeting date or at another time determined by the Commission.

Adopted 10/21/98. Numbering amended 6/12/01. Amended 5/14/08.

6. \*The requesting party has the right to have an attorney or other representative represent him or her at the hearing. The requesting party should notify the Commission the name of his or her attorney or representative at least five business days prior to the hearing. No person, other than the requesting party, his or her attorney or representative, and any witness(es) who may be called, may be present during the hearing, at the request of the requesting party, unless the Commission believes, in its sole discretion, that such attendance would be helpful to the Commission.

Adopted 10/21/98. Amended 4/10/01. Numbering amended 6/12/01. Amended 5/14/08.

\*The requesting party should provide the Commission with copies of all exhibits he or she intends to rely upon at the hearing or which the Commission has requested at least five business days prior to hearing. It is within the discretion of the Commission whether to consider documents at the hearing which have not been timely provided.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

8. \*The requesting party should provide, at least five business days prior to the hearing, the names of any persons or witnesses who will appear upon his or her behalf at the hearing. It is within the discretion of the Commission whether to hear the testimony of witnesses whose names have not been timely provided.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

\*Any hearing for an Advisory Opinion shall be tape recorded by the Commission. If requested, the tape shall be made available for the requesting party and/or his or her representative to hear at a time and place determined by the Commission. Copies made available at the requesting party's request.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

\*Testimony of the requesting party and all witnesses shall be under oath or affirmation administered either by the chair of the Commission or his or her designee.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

11. \*The requesting party, or his or her representative or attorney, shall have the right to present a short opening statement outlining his or her request, and the facts, testimony and documents he or she considers relevant to the request. The Commission has the right to limit the amount of time allocated for the opening statement.

Adopted 10/21/98. Number amended 6/12/01, 5/14/08.

12. \*After hearing the opening statement, the Commission may either present questions to the requesting party or hear testimony from the witnesses. The Commission may present questions to the requesting party and any witness either during or after their testimony. The Commission may request that a witness testify again, if issues or questions need to be answered or clarified. At the end of all the testimony of the witnesses, the Commission may again present questions to the requesting party. The requesting

party, or his or her attorney or representative, may present a short closing statement. The Commission has the right to limit the amount of time allocated for the witnesses and the closing argument.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

13. \*Formal rules of evidence need not be strictly followed at the hearing.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

14. \*Subject to a contrary direction by a majority of members present, the Commission's chair shall have full authority to control the hearing proceedings, including, but not limited to the authority to call, examine, and sequester witnesses, to admit or exclude evidence and to time limitations.

Adopted 10/21/98. Amended 4/10/01. Numbering amended 6/12/01, 5/14/08.

### **Deliberations**

15. \*The Commission shall deliberate after hearing all of the evidence. The deliberations may occur immediately after the hearing or may occur at a subsequent date and time. Once started, deliberations can be continued until a later meeting.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

16. \*All deliberations concerning requests for Advisory Opinions shall be held in Executive Session. Any vote, however, should occur in open session, protecting the identity of the requesting party. No decision on the merits of a request is deemed final, unless and until the Commission approves a written draft Opinion.

Adopted 10/21/98. Amended 4/10/01. Numbering amended 6/12/01. Amended 5/14/08.

17. \*If, during deliberations, the Commission determines it would be helpful to have additional documentary evidence or hear additional testimony, then the Commission can suspend deliberations until a later date to enable it to obtain additional documentary evidence and/or to reconvene the hearing to hear additional testimony.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

Given that the Commission accepts facts as presented by a requesting party of an Advisory Opinion, a Commission member who misses any part of a hearing or meeting for a request for an Advisory Opinion may vote on the request for the Advisory Opinion, provided the member reviews the tape and any additional documentary evidence provided by the requesting party at the hearing prior to the final vote being taken.

Adopted 4/10/01, Numbering amended 5/14/08.

#### The Opinion

18. Upon deliberating, the Ethics Commission may instruct their Counsel to prepare a draft Opinion for the Commission to review at the next regularly scheduled Commission meeting or at another meeting.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

A written Opinion, pursuant to Section 2.04.102(I) of the Ethics Code, shall be provided to a requesting party within 21 working days of the Commission's receipt of the request, provided that the time may be extended for good cause. A requesting party may request that his or her request for an Advisory Opinion be given expedited consideration by the Commission. The request for an Advisory Opinion to be given expedited consideration shall be in writing and shall contain the reason(s) why the requesting party believes the matter should be given expedited consideration and any reason(s) why the requesting party could not have filed the request for an Advisory Opinion with the Commission earlier. The Commission shall make reasonable, good faith attempts to accommodate all time limitations, as set forth by the requesting party, however, the decision whether to grant a request for expedited consideration shall be within the discretion of the chair. In making his or her decision, the factors the chair shall consider, include, but are not limited to: (1) the reasons expressed by the requesting party why he or she seeks expedited consideration of the matter, including but not limited to, any financial harm to the requesting party, any harm to the requesting party's professional reputation, and/or any detrimental effect to the requesting party's official duties, which would result, if the request is not given expedited consideration; (2) any reason(s) why the requesting party could not have filed the request for an Advisory Opinion with the Commission earlier; (3) the ability of the Commission to abide by the notice provisions of the Freedom of Information Act, and (4) the ability of a quorum of the Commission to be present to consider the request. If the chair does grant a request for expedited consideration, the time upon which a requesting party may receive a defense, or evidence of good faith, for any failure by the Commission to timely issue a written Opinion, i.e., within 21 working days from receipt by the Commission of the request, remains 21 working days from receipt by the Commission of the request for the Advisory Opinion, unless good cause exists for the Commission to issue it more than 21 working days after the request is filed.

Adopted 6/12/01.

19. Prior to the issuing of any Opinion, the Commission shall provide, either by mail, facsimile, email or other acceptable means, the requesting party with a draft Opinion to ensure that the requesting

party believes that his or her identity is adequately protected from disclosure. If the requesting party does not believe his or her identity is adequately protected, then the requesting party shall notify the Commission, in writing, within five business days of receipt of the draft of the areas which he or she believes needs to be remedied to prevent disclosure. It shall be the decision of the Commission whether such changes should be made. A final copy of the decision shall be promptly sent to the requesting party by mail, facsimile, email or other acceptable means.

Adopted 10/21/98. Amended 1/5/99, Numbering amended 6/12/01. Amended 5/14/08.

20. Any request to withdraw an Advisory Opinion must be in writing, signed by the person originally filing the request for an Advisory Opinion. A requesting party may withdraw a request for an Advisory Opinion, if it is received prior to the Commission's consideration of the request for the Advisory Opinion at a Commission meeting. It is within the Commission's discretion as to whether to allow a withdrawal of an Advisory Opinion, if said withdrawal is received after the Commission considers the request for an Advisory Opinion, but before the Commission sends a draft copy of the Opinion to the requesting party, or, if no draft copy is to be sent to the requesting party, before the Commission sends the final copy of the Opinion to the requesting party. A request to withdraw an Advisory Opinion, received by the Commission after a draft copy of the Opinion is sent to the requesting party, should only be allowed in exceptional circumstances to avoid substantial injustice.

Adopted 3/3/98. Numbering amended 6/12/01, 5/14/08.

21. Good cause to extend the 21 day time limitation the Commission has to issue an Opinion, set forth in Section 2.04.102(I) of the Ethics Code, includes but is not limited to, the Commission not having sufficient time to consider at separate meetings the hearing and a written draft of its opinion.

Adopted 10/21/98. Numbering amended 6/12/01. Amended 5/14/08.

22. The affirmative votes of at least four members of the Commission are necessary to issue an Opinion. Any member of the Commission disagreeing with the decision may have the opportunity to write a dissenting Opinion.

Adopted 10/21/98. Numbering amended 6/12/01, 5/14/08.

23. No Advisory Opinion issued by the Ethics Commission shall in any way modify, alter, amend or overrule any rule, regulation, personnel policy procedure, contract or collective bargaining agreement issued by or applying to any department of the County with which the person Requesting the Advisory Opinion is employed, appointed or elected.

The Commission reiterates that the purpose of the Advisory Opinions is to cover ethical issues arising exclusively under the Code.

Adopted 1/16/92. Numbering amended 6/12/01, 5/14/08.

#### Reconsideration

24. The requesting party may, within five business days after receipt of the Advisory Opinion, apply to the Commission, in writing, for reconsideration, briefly and succinctly stating the grounds therefore. The Commission shall consider the request at its next scheduled meeting, or at another time, as determined by the Commission, and notify the requesting party of its decision in writing, sent certified mail. facsimile or other acceptable means.

Adopted 10/21/98. Numbering amended 6/12/01.

If there are not four affirmative votes made in favor of a motion for Reconsideration of an Advisory Opinion, the Ethics Commission's original decision on the matter remains in effect and the motion is deemed denied.

Adopted 9/19/00. Numbering amended 6/12/01, 5/14/08.

## Regulation 2.04.103 regarding investigations/hearings.

(unless otherwise indicated, nos. 1 through 3 and 5 through 46, below, were adopted 1/16/01, numbering amended 6/12/01)

#### Filed complaints:

- 1. A complaint, alleging a violation of the Ethics Code, must be signed under penalty of perjury by the complainant.
- 2. The identity of the complainant will remain confidential, unless there is a wrongful use of the Ethics Code.
- 3. The Commission will review Complaints and proceed only if the Complaint: (1) contains sufficient information; (2) is signed under penalty of perjury; (3) is within the Commission's jurisdiction. A Complaint not meeting these requirements will be dismissed without prejudice to refile. The complainant will be notified of any decision not to proceed.
- 4. Upon receipt of a complaint which satisfies (3) above, the Commission shall provide notice of the complaint to the subject and permit a 14 day period for his or her response before proceeding to investigation, unless such notice shall jeopardize the investigation process.

Adopted 6/10/11.

5. Upon receipt of a Complaint which satisfies the criteria of no. 3 above, the Commission, through its Ethics Counsel will conduct a preliminary inquiry. If the Commission determines that the preliminary Inquiry establishes there is a reasonable belief that a violation of the Ethics Code may exist, the Commission, through its Ethics Counsel may initiate a full investigation.

Amended 1/12/01. Numbering Amended 6/10/11

## <u>Initiation of Investigation by Commission</u>

6. The Commission, on its own motion, shall initiate a preliminary Inquiry where a Complaint had not been filed, but where there is a reasonable belief that a violation of the Ethics Code may exist. The Commission, through its Ethics Counsel, shall conduct the preliminary Inquiry.

Numbering Amended 6/10/11

## Preliminary Inquiry

7. A preliminary Inquiry shall be completed within 60 days. The Commission has 30 days thereafter, or longer, if good cause exists, to decide whether the matter should be terminated or whether to open an Investigation. A preliminary Inquiry is considered initiated at the time when the Commission decides the Complaint meets the criteria of no.3, above, or when the Commission decides, sua sponte, to initiate a preliminary Inquiry.

Amended 5/14/08. Numbering Amended 6/10/11. Amended 6/13/12.

8. The Commission shall keep information, records and proceedings relating to a preliminary Inquiry confidential. The Commission will, however, have the authority to refer the case to law enforcement officials during a preliminary Inquiry or any time thereafter without providing notice to the subject of the Inquiry.

Amended 5/14/08. Numbering Amended 6/10/11

9. If, after preliminary Inquiry, the Commission determines there is a reasonable belief that a violation of the Ethics Code exists, an investigation may be initiated.

Amended 2/12/01. Amended 5/14/08. Numbering Amended 6/10/11. Amended 6/13/12.

10. The Commission shall terminate the preliminary Inquiry if it determines: (1) the occurrence giving rise to the Complaint is clearly not within the purview of the act; (2) the respondent is not a person subject to the act; or (3) there is not a reasonable belief that a violation of the Ethics Code exists.

Amended 1/12/01. Numbering Amended 6/10/11

11. If a Complaint is terminated at the conclusion of the preliminary Inquiry, the Commission shall notify the complainant and the

# respondent. If relevant, it also shall state when it finds that a Complaint is frivolous.

Amended 5/14/08. Numbering Amended 6/10/11

#### Investigations

12. An Investigation shall be considered commenced when the subject of the Investigation, the respondent, is notified pursuant to Section 2.104.103(C). The respondent shall be provided with a statement of the alleged violation of the act and other applicable statutes under Investigation.

Amended 5/14/08. Amended 6/10/11. Numbering Amended 6/10/11.

- 13. The respondent and the Commission may enter into a consent agreement at any time after notification has occurred.

  Numbering Amended 6/10/11
- 14. The complainant and the respondent shall be notified of the status of the Investigation every 90 days until it is complete.

  Amended 5/14/08. Numbering Amended 6/10/11
- 15. The counsel assisting the Commission with investigating and/or prosecuting shall not be the same counsel who advises the Commission in the adjudicatory stages. The Commission may employ or be assigned staff, including attorneys, investigators and hearing officers, as may be required to properly investigate and prosecute such matters, in lieu of, or in addition to, the Ethics Counsel. All such individuals, including the Ethics Counsel, shall have the authority to conduct interviews, take statements, receive and inspect documents and records and otherwise obtain evidence and gather information by lawful means, including subpoena. Such individuals are designated to administer oaths or affirmations for the purpose of obtaining voluntary sworn statements with regard to matters which may properly come before the Commission.

Amended 2/12/01. Numbering Amended 6/10/11

16. A person having possession or control of documents or records deemed relevant to an Investigation that the Commission is authorized to conduct may be required to produce the materials for inspection by subpoena served by the individuals designated in no. 15, by a person empowered to do so, or as designated by the chair or vice-chair. These individuals have the right to retain or have access to subpoenaed documents and records for a reasonable period, and to make copies thereof.

Amended 6/10/11; Numbering Amended 6/10/11.

17. The Commission may authorize one or more of the individuals designated in no. 15 to obtain by subpoena the sworn statement of

a person deemed to have information relevant to an Investigation that the Commission is authorized to conduct.

Amended 6/10/11. Numbering Amended 6/10/11

- 18. The Commission may authorize one or more members of the individuals designated in no. 15 to obtain by subpoena the sworn statement of a person deemed to have information relevant to an Investigation that the Commission is authorized to conduct.
  - (a) Sworn statements may be conducted by and before one or more of the individuals in no. 15.
  - (b) Testimony received in the preparation of a sworn statement will be under oath or affirmation administered and may be recorded by a stenographer.
  - (c) The authority to question a witness appearing for a sworn statement will be limited to counsel for the witness, a hearing officer, and individuals designated in no. 15.
  - (d) Persons permitted to be in attendance at the preparation of a sworn statement will be limited to the individuals listed in (c), above.
  - (e) A witness giving a sworn statement may object to a question if it is irrelevant or privileged.
  - (f) A witness subpoenaed by the Commission shall not be entitled to compensation, except as permitted by to Delaware Law.

Amended 2/12/01. Amended 6/10/11 Numbering Amended 6/10/11

- 19. Subpoenas issued under no. 17 or 18, above, will be authorized by the Commission and signed by the Chairperson or Vice-Chairperson. Subpoenas may be served by a person empowered to do so or as designated by the Chairperson or Vice-Chairperson.

  Numbering Amended 6/10/11
- 20. Within 180 days of commencing the Investigation, the Commission shall do one of the following:
  - (1) Terminate the investigation and notify the complainant and respondent.
  - (2) Rule upon a request for an extension by the individual in charge of the Investigation, upon a showing of need, not to exceed 90 days.
    - (a) the granting of or denial of a request for an extension requires a majority vote of members present;
    - (b) a maximum of one extension may be granted;
    - (c) a Probable Cause Report shall be issued within 180 days after the commencement of an Investigation or within the time period of a granted extension.
  - (3) Issue a Probable Cause Report which sets forth the pertinent findings of fact and, if a probable violation of the

Ethics code is found, affords the subject of the Investigation an opportunity to respond to the findings and to request an evidentiary hearing.

Amended 5/14/08. Amended 6/10/11.

21. Within 180 days of commencing an Investigation or within the extended time period, the individuals charged with the responsibility of investigating shall prepare an investigatory report and present same to the: (1) Commission; (2) a hearing panel; or (3) a hearing officer. The Commission, hearing panel or hearing officer shall either: (1) Terminate the Investigation if the Investigation reveals no violation of the Ethics Code has been committed and send written notice of the determination to the complainant and the person who was the subject of the Investigation; or (2) issue a Probable Cause Report, if there is a reasonable belief that a violation of the Ethics Code may have occurred.

Amended 2/12/01. Numbering Amended 6/10/11

- 22. Within 180 days of commencing an Investigation or within the extended time period, the Commission may: (1) hear the investigative report and issue a Probable Cause Report; (2) designate, upon a duly approved motion of the Commission, one or more members of the Commission to act as a hearing panel, who shall receive the investigative report presentation and issue a preliminary Probable Cause Report, said panel member(s) being precluded from participation in any further hearing in the case which may be requested by the respondent; or (3) utilize the services of a hearing officer to receive the investigative report presentation and issue a Probable Cause Report, said individual being chosen, upon a duly approved motion, by the Commission.
  Amended 2/12/01. Amended 6/10/11. Numbering Amended 6/10/11. Amended 6/13/12.
- 23. The Commission shall keep information, records, and proceeding relating to an Investigation confidential, except as provided in Section 2.04.103(L).

Amended 5/14/08. Amended 6/10/11.

24. The respondent shall file a response to the Probable Cause Report from the Commission within 30 days, unless an application for an extension is made to the Commission and granted for good cause shown. The respondent shall specifically admit or deny the allegations in the Probable Cause Report by number or letter. Anything not specifically denied, or anything in the manner of a general denial, will be deemed an admission of the individual factual finding. New matter raised by a respondent in the answer does not require a reply by the Commission.

Amended 2/12/01. Amended 6/10/11. Numbering Amended 6/10/11

#### Hearings

25. The Commission shall conduct hearings upon the request of a respondent. An attorney, other than the Commission's regular Ethics Counsel, will present the case developed through the Investigation, followed by the case of the respondent. Each party may make a short opening statement.

Numbering Amended 6/10/11

26. Parties to the proceeding shall be afforded a full and fair opportunity to be heard and may be represented by counsel and may be accompanied by a union representative in accordance with any applicable collective bargaining agreement.

Amended 5/14/0. Amended 6/10/11. Numbering Amended 6/10/11

27. The hearing shall be closed to the public unless the respondent requests an open hearing.

Amended 5/14/08. Numbering Amended 6/10/11

28. A respondent shall request a hearing in his answer to the Probable Cause Report or separately within 30 days of the issuance of the Probable Cause Report. All timely requests for a hearing will be granted. Failure to timely request a hearing will be deemed a waiver, unless the Commission, upon its own motion, and in its discretion, believes it would aid the Commission in its determination.

Amended 6/10/11. Numbering Amended 6/10/11.

29. The respondent may be granted an extension for filing an answer upon application to the Commission for good cause shown. An extension of up to 30 days may be granted. Further requests shall be made to the Commission two weeks prior to the extended deadline. The Commission may grant a second extension if extraordinary circumstances are demonstrated in writing. Extensions granted will correspondingly advance other deadlines provided in the Code.

Numbering Amended 6/10/11

30. A hearing will be held within 45 days after the respondent's answer to the Probable Cause Report unless the time is extended for good cause.

Amended 6/10/11. Numbering Amended 6/10/11

31. A notice of hearing will be issued to the respondent, unless represented by an attorney, in which case, to Counsel, within a reasonable period of time prior thereto. The notice will advise of the date, time and location of the hearing, that the respondent has all of the due process rights, privileges and responsibilities of a party appearing before an administrative agency of the State under 29 Del.C. ch. 101, and that the respondent may be accompanied by a

union representative in accordance with any applicable collective bargaining agreement.

Numbering Amended 6/10/11

32. The respondent has the right to a full hearing, if so requested. Otherwise hearings may be conducted as follows based upon the express agreement of the parties: (a) full evidentiary hearing; (b) oral argument based on stipulated findings; (c) submission on briefs; (d) limited hearing based on partially stipulated facts.

Numbering Amended 6/10/11

33. The respondent shall be given access to evidence intended to be used by the Commission at the hearing, as well as exculpatory evidence developed during the Investigation. Access to evidence does not include the original Complaint or the name of the complainant, information which is otherwise privileged or information not within no. 33.

Amended 8/9/01. Amended 5/14/08. Amended 6/10/11 Numbering Amended 6/10/11

- 34. The formal rules of evidence will not apply to hearings. Relevant probative evidence will be admitted.

  Numbering Amended 6/10/11
- 35. Testimony shall be given under oath or affirmation and witnesses shall be subject to cross-examination. If one or more of the participants in a hearing become disrespectful, disorderly or disruptive, the Commission may rule on the proper limitation or sanctions for the person whose behavior does not conform to minimum standards required for an orderly proceeding.

  Numbering Amended 6/10/11
- 36. Subpoenas may be issued at the request of the parties to the hearing on the approval of the Commission or hearing officer. *Numbering Amended 6/10/11*
- 37. The Commission may request that briefs, proposed findings of fact and conclusions of law be presented. The Commission will establish a schedule for the presentations of this material. Failure to comply with this schedule without reasonable excuse, as determined by the Commission, shall operate as a waiver of the opportunity to present this material.

Numbering Amended 6/10/11

38. At the conclusion of a hearing concerning an alleged violation and in a timely manner, the Commission shall deliberate on the evidence to determine whether there has been a violation of the Ethics Code. At least four members of the Commission present at a meeting must find a violation of the Ethics Code by clear and convincing proof. The names of the members finding a violation

and the names of those dissenting and abstaining will be listed in the Order.

Amended 5/14/08. Numbering Amended 6/10/11

No Commission member shall vote at a hearing, held pursuant to Section 2.04.103(H) of the Ethics Code, unless he or she attended the entire hearing held pursuant to Section 2.04.103(H). No Commission member shall vote upon a motion for reconsideration, pursuant to Regulation 2.04.103(44), unless he or she has attended the entire hearing, pursuant to Section 2.04.103(H) and Regulation 2.04.103(44).

Adopted 4/10/01. Amended 5/14/08. Amended 6/10/11

39. The files and records of the Commission relating to the case shall remain confidential, with the exception of the determination of the Commission, in the form of a Final Order and findings of fact which shall be a matter of public record; provided, however, that the Commission may make such deletions and changes as shall be necessary to protect the identity of the persons involved when the sanction imposed or recommended by the Commission involves a letter of notification or letter of admonition, as provided under the Code.

Amended 5/14/08. Numbering Amended 6/10/11

40. Within 30 days of the hearing or within 30 days after the Commission receives a timely response to the Probable Cause Report declining a hearing, the Commission shall issue an Order to the subject which shall be final.

Numbering Amended 6/10/11

#### Reconsideration

41. Within 30 days upon receipt of service of a Final Order, the subject of the hearing or a person who timely declined a hearing shall have the right to file a petition for reconsideration in accordance with these rules. Following two attempts by the Commission to serve a Final Order by certified mailings which remain unclaimed by the subject, a Final Order shall be deemed served and the 30 day period will begin to run. If a request for reconsideration is not received within 35 days of service of the Final Order, the Commission shall make the Final Order public in accord with these rules.

Amended 5/14/08. Numbering Amended 6/10/11

42. A Petition for reconsideration may be made by personal service upon the Commission's Counsel or by regular U.S. mail. In either case the petition for reconsideration must be received by the Commission or postmarked within 30 days of the date the Final Order was served on the subject.

Adopted 10/06/94. Amended 5/14/08. Numbering Amended 6/10/11

43. The petition shall present a detailed explanation which sets forth the reason why the Order should be reconsidered. A timely request for reconsideration filed with the Commission may delay the public release of an Order, but will not stay a Final Order unless the Commission otherwise provides or grants reconsideration. A request for reconsideration may include a request for a hearing before the Commission. A hearing on reconsideration may be held at the Commission's discretion, whether requested by the Commission or the respondent.

Amended 5/14/08. Numbering Amended 6/10/11

- 44. Reconsideration may be granted at the discretion of the Commission if:
  - (a) a material error of law has been made:
  - (b) a material error of fact has been made;
  - (c) new facts or evidence are provided which would lead to reversal or modification of the Order or Opinion and if these could not be or were not discovered by the exercise of due diligence; or
  - (d) if, in the sole discretion of the Commission, justice so requires.

Amended 2/12/01. Numbering Amended 6/10/11

45. If the Commission grants reconsideration, the Commission may do one or more of the following: (a) order new hearings; (b) schedule and conduct oral argument; (c) entertain written memorandum; or (d) take other action or issue an Order or Opinion in final disposition of the case.

Amended 2/12/01. Numbering Amended 6/10/11

- 46. In addition to deciding the case before it, the Commission may take one or more of the following actions, if appropriate:
  - (a) Impose any of the sanctions delineated in the Ethics Code, including Sections 2.03.103(I) and 2.04.104;
  - (b) Order the respondent to make restitution or impose a monetary penalty in accordance with the Code;
  - (c) Order the respondent to cease and desist from engaging in a particular activity deemed to be in contravention of the Code;
  - (d) Order the respondent to take specified action to bring himself in compliance with the Code;
  - (e) Institute restitution order enforcement proceedings;
  - (f) Institute proceedings, pursuant to Section 1.01.009 of the New Castle County Code.

Amended 2/12/01. Amended 5/14/08. Amended 6/10/11. Numbering Amended 6/10/11

#### **Regulation 2.04.103(G)**

[Amended and eliminated by transfer to Reg. 2.04.103 (41)] 5/14/08.

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## Sec. 2.03.106. - Financial disclosure: statements required.

A. Each designated County official and County employee shall file a statement of financial interests for the preceding calendar year with the Commission no later than May 1<sup>st</sup> of each year that he or she holds such a position and of the year after he or she leaves such a position. The General Manager or individual of equivalent rank of the Department of Human Resources shall provide the Commission with the names of the individuals required to file statements of financial interest by January 31 st each year such statements are required to be filed. For purposes of this Section, the phrase "designated County official and County employee" shall mean:

- 1. All elected County officials;
- 2. All County officials who perform work that is nonministerial in nature;
- Members of the Board of Adjustment, Planning Board, Historic Review Board, Pension Board, License, Inspection and Review Board, Board of Assessment Review, New Castle County Financial Advisory Council, New Castle County Audit Committee, and the Ethics Commission. Members of any County Board or Commission not listed in this paragraph are not required to file statements of financial interest.
- 4. The Chief of Police:
- 5. All Department General Managers and personnel of equivalent rank;
- 6. All Department Division Heads and persons of equivalent rank;
- 7. All Code Enforcement Officers, all Public Works inspectors and personnel of equivalent rank;
- 8. All purchasing agents and personnel of equivalent rank;
- 9. All housing rehabilitation specialists and personnel of equivalent rank;
- 10. All land use planners and personnel of equivalent rank within the Department of Land Use:
- 11. With the exception of the Chief of Police, no police officer shall be required to file a statement of financial interests within the meaning of this Division.
- B. Each candidate for County office shall file a statement of financial interests for the preceding calendar year with the Commission not later than seven (7) days after the last day for giving notice of candidacy pursuant to 15 *Del. C.* § 3106 (Filing of candidacy for nomination at a primary election).
- C. Each nominee for County office who is subject to confirmation shall file a statement of financial interests for the preceding calendar year with the Commission and with the official or body that is vested with the power of confirmation at least ten (10) days before the official or body shall approve or reject the nomination.
- D. No County official, candidate for County office, or employee shall be allowed to take the oath of office or enter or continue upon his or her duties, nor shall he or she receive compensation from County funds, unless he or she has filed a statement of financial interests as required by this division.
  - 1. If the Commission determines that a filing has not been made or that a filing is deficient, the Commission shall provide a written notice to the individual required to file, identifying the deficiency or delinquency and reciting the penalties for failure to file.
  - 2. The individual notified in accord with Subsection D.1. has ten (10) calendar days from the mailing date of the notice to correct the delinquency or deficiencies.
  - 3. If the individual fails to file or correct the noted deficiencies by the conclusion of the ten (10) day period, the Commission may issue a notice by certified mail to the individual that a civil penalty of ten dollars (\$10.00) per day is being imposed for each calendar day the statement of financial interests remains delinquent or deficient beyond the ten-day period. The individual shall pay any such penalty before the Commission may accept a filing from the individual.
  - 4. The penalty described in Subsection D.3. is in addition to other penalties provided by law and the filing of a statement of financial interests in compliance with this section does not otherwise obviate the failure to comply with Subsections 2.03.106.A, B, or C.

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An individual who receives the notice described in Subsection 2.03.106.D.3 and who knowingly or willfully fails to pay the penalty imposed by the Commission shall be subject to the sanctions contained in <u>Section 1.01.009</u>

- 6. An individual against whom a financial penalty has been imposed pursuant to Subsection D.3. may contest the imposition of the penalty in whole or in part by filing an appeal in writing with the Commission within thirty (30) days after payment of the assessed penalty. If the penalty amount is overturned in whole or in part, the Commission shall refund the appropriate amount of the penalty to the appellant. The successful appellant shall not be entitled to interest or any other costs.
- E. All statements of financial interests by a County official, candidate for County office or nominee for County office pursuant to this Division shall be made available for public inspection and copying during regular office hours. All statements of financial interests by a county employee containing financial information of a privileged or confidential nature shall not be deemed a public record for purposes of 29 *Del. C.* Ch. 100 (Freedom of Information Act). Nothing in this subsection shall be construed as prohibiting access by the Commission to all statements of financial interests filed in accordance with this Division. Nothing in this subsection shall be construed as prohibiting access by any general manager or individual of equivalent rank to all statements of financial interests filed by a County employee in accordance with this Division.

(Ord. No. 98-050, § 2(2-84), 5-26-1998; Ord. No. 00-060, § 1, 7-11-2000; Ord. No. 05-022, § 2, 4-12-2005; Ord. No. 07-119, § 1, 9 -25-2007; Ord. No. 10-113, § 1(Exh. A), 1-18-2011; Ord. No. 10-125, § 1, 2-8-2011; Ord. No. 11-041, § 1, 4-26-2011)

#### Sec. 2.03.107. - Financial disclosure: form of statement.

- A. The statement of financial interests filed pursuant to this Division shall be on a form prescribed by the Commission. All information requested on the statement shall be provided to the best of the knowledge, information and belief of the person required to file and shall be signed under oath or equivalent affirmation.
- B. The statement of financial interest shall be filed by electronic means provided by the Commission. In such filings an electronic signature shall substitute for the requirement of a handwritten signature. Electronic filing and electronic signatures as provided by the Commission shall be interpreted and enforced in accord with the Delaware Uniform Electronic Transactions Act. 72 Del. Laws, c. 457, § 1; 73 Del. Laws, c. 329, § 8, which is hereby adopted by reference with the exception of the definition of the term "transaction" which shall be as defined in <a href="Section 2.03.102">Section 2.03.102</a> of this Division. Upon request for good cause shown, the Commission may permit a filer to submit a signed paper version of the statement of financial interests for filing.
- C. The statement shall include the following information for the prior calendar year with regard to the person required to file the statement:
  - 1. Name, address and public position.
  - 2. Occupation or profession.
  - 3. Any direct or indirect interest in real estate.
  - 4. Any direct or indirect interest in any real estate which was sold or leased to the County or purchased or leased from the County.
  - 5. The name and address of each creditor to whom a debt is or was owed by the designated County official or employee or business with which he or she is associated and the category, annual interest rate, and term of such debt. The interest rate and term of the debt do not have to be disclosed if the loan was extended in the ordinary course of business by a financial institution which makes the rate and term information for its loan available to the public or which provides the loan on a revolving basis at published rates. Categories of debt shall be: (a) greater than five thousand dollars (\$5,000.00) but not more than one hundred thousand dollars (\$100,000.00); (b) greater than one hundred thousand dollars (\$100,000.00). However, loans or credit extended between members of the immediate family and mortgages securing real property extended by a financial institution in the ordinary course of business which is the principal or secondary residence of the person filing need not be included. Additionally, the person need not disclose debts which are the responsibility of a business which employs the filing employee.

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The name and address of the source of any income totaling in the aggregate one thousand dollars (\$1,000.00) or more received by the person filing the Statement of Financial Interests form, and/or his or her spouse or child, from a person, business, or other entity which has been regulated by or has done business with New Castle County in the filing year and in the preceding three (3) calendar years.

- 7. The name and address of the source and the amount of any gift(s) valued at two hundred dollars (\$200.00) or more in the course of a single occasion, including payment for or reimbursement of actual expenses for transportation, lodging or hospitality received in connection with County office or employment from a non-governmental source.
- 8. The name, address, and description of any office, directorship or employment of any nature whatsoever in any business entity.
- 9. Any financial interest in any legal entity engaged in business.
- 10. The identity of any financial interest in a business with which the reporting person is or has been associated in the preceding calendar year which has been transferred in the preceding calendar year to a member of the reporting person's immediate family.
- 11. Reserved.

 $(Ord.\ No.\ 98-050,\ \S\ 2(2-85),\ 5-26-1998;\ Ord.\ No.\ 00-060,\ \S\ 1,\ 7-11-2000;\ Ord.\ No.\ 04-086,\ \S\ 3,\ 8-24-2004;\ Ord.\ No.\ 04-108,\ \S\ 1,\ 9-14-2004;\ Ord.\ No.\ 04-170,\ \S\ 1,\ 12-21-2004;\ Ord.\ No.\ 06-022,\ \S\ 1,\ 3-28-2006;\ Ord.\ No.\ 07-003,\ \S\ 2,\ 1-23-2007;\ Ord.\ No.\ 10-113,\ \S\ 1(Exh.\ A),\ 1-18-2011;\ Ord.\ No.\ 10-125,\ \S\ 2,\ 2-8-2011)$ 



## **NEW CASTLE COUNTY ETHICS COMMISSION**

P.O. BOX 7327 Wilmington, Delaware 19803 (302) 395-5127

ncc.ethics@comcast.net

## **2011 STATEMENT OF FINANCIAL INTERESTS**

CHECK HERE IF AMENDED 2011 FORM

<u>ANNUAL FILING</u> – Both sides of this form must be filed with the Ethics Commission.

<u>CANDIDATE FILING</u> – Filed within 7 days after the date for filing candidacy notice under State law.

<u>NOMINEE FILING</u> – Filing must be completed 10 days prior to date of confirmation vote.

IF ADDITIONAL ROOM IS NEEDED, ATTACH A SEPARATE SHEET. If you have questions, please contact the Commission. Please make a copy of this form for your own records and retain for three (3) years.

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