

New Castle County Ethics Commission



GOVERNMENT ETHICS IN NEW CASTLE COUNTY

A GUIDE FOR NEW CASTLE COUNTY
OFFICIALS AND EMPLOYEES

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INTRODUCTION

The New Castle County Code of Ethics is found in Division 2.03.100 and 2.04.100 et seq. of the New Castle County Code and is grounded upon the concepts that public office is a public trust and that clear ethical guidelines assure the public of the impartiality and honesty of public officials and employees.

The Ethics Code is administered by an independent Commission which emphasizes guidance and training to public officials and employees regarding the ethical requirements established by New Castle County Council. This brochure is meant to summarize the provisions of the Code of Ethics in order to help County officials and employees understand what kind of conduct the public expects from them. County officials and employees are reminded that assistance from the Ethics Commission is only a phone call, an e-mail, or a letter away.

WHO IS COVERED BY THE CODE OF ETHICS **(NCC Code Division 2.03.103)**

The Ethics Code applies to all County Officials and County Employees, candidates for County office and nominees for County boards and commissions.

* A "County Official" is a person elected to a County office or appointed to a County office, board, or commission.

* A "County Employee" is any person who receives compensation as an employee of a County Department or County row office.

* A "Candidate" is a person who seeks nomination or election to County Office by vote.

* A "Nominee" is an individual whose name has been submitted by the County Executive or County Council for approval.

THE ETHICS COMMISSIONERS

(NCC Code Divisions 2.04.100, 2.03.103B)

The Ethics Commission consists of seven Commissioners, three of whom are appointed by the County Executive and four by the New Castle County Council. No more than two (2) members of the same political party may be appointed by the County Executive and no more than two (2) members of the same political party may be appointed by the Council. The Commissioners are New Castle County residents who are committed to public service and serve without pay and hold regular public meetings.

A Commissioner may not be employed by the County, may not hold other County office, may not campaign for any other County office, and may not hold office in a political party. A Commissioner may not attempt to influence any County governmental decision except as a representative of the Commission and, like other County officials, the Commissioners may not represent or otherwise assist any private enterprise with respect to any matter before the County, may not enter into a contract with the County for amounts in excess of \$500.00 without public bidding, and, for two (2) years after leaving office, a Commissioner may not assist a private enterprise in a matter where the Commissioner had given an opinion, conducted an investigation, or was otherwise directly and materially responsible for the same matter.

The Commissioners hold monthly meetings at various advertised locations in New Castle County at which public business is transacted and to which

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the public is invited. A schedule and location for those meetings can be obtained from the Commission Office or found on the Ethics Commission link at ***www.nccde.org***.

THE POWERS AND DUTIES OF THE COMMISSION (NCC Code Division 2.04.102)

The powers and duties of the Commission are derived from the New Castle County Code of Ethics. The Commission:

- * provides prospective Advisory Opinions to County officials, employees, or supervisors regarding an individual's duties and responsibilities under the Code;
- * transmits published Advisory Opinions to designated County libraries and facilities;
- * provides an electronic filing site for Statements of Financial Interests with instructions for completion by those individuals required to file;
- * receives and inspects Statements of Financial Interests and Disclosure of Financial Interests for compliance with the Code; maintains and preserves statements for a five year period; enforces reporting requirements regarding Statements of Financial Interests;
- * makes designated Statements of Financial Interests available to the public for inspection and copying;
- * investigates alleged violations of the Ethics Code and issues findings, reports and orders;
- * holds hearings on complaints, takes testimony, issues subpoenas, and compels the attendance of witnesses;

- * issues and enforces restitution orders;
- * makes appropriate referrals to law enforcement;
- * participates in training County officials and employees to further the purposes of the Ethics Code;
- * prescribes rules and regulations to implement the Ethics Code;
- * holds at least one annual meeting to seek public input;
- * issues an Annual Report.

THE CODE OF ETHICS PROHIBITS

CONFLICTS OF INTEREST

(NCC Code Divisions 2.03.103; 2.03.105)

*** The Ethics Code prohibits a County Employee or Official from using the authority of his or her office or employment, or any confidential information received through his or her holding County office or employment, for the personal or private benefit of himself or herself, a member of his or her immediate family or a business with which he or she or the immediate family member is associated. This prohibition does not include an action having a de minimis economic impact or which affects the official or employee to the same degree as a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the County official or employee, the member of his or her immediate family, or the associated business. "Immediate family" means a spouse, child whether by blood or operation of law, parent, step-parent, spouse's parent or child, or sibling of the whole or half blood of a County official or employee.

*** If a County official or employee has a personal or private conflict of interest and there is no provision for delegation of legal or statutory authority related to action or non action on the matter, the official or employee must file a written statement with the Ethics Commission fully disclosing the personal or private conflict and explaining why it is not possible to delegate responsibility. If the law requires the official or employee to vote on the matter, the letter to the Commission will be read into the public record before the vote is cast. A person choosing to abstain from vote because of personal

or private conflict of interest must disclose the reason for abstention on the public record before the abstention but does not have to file a written record with the Commission.

*** The Code also prohibits a County official or employee from representing or otherwise assisting any private enterprise with respect to any matter before the County Department with which the employee or official is associated by employment or appointment. A County official may not represent or otherwise assist any private enterprise with respect to any matter before the County. However, the Code does not prevent any County employee or official from appearing before the County or otherwise assisting any private enterprise with respect to any matter in the exercise of his or her official duties.

*** No County official or employee, his or her spouse, child, parent, step-parent or sibling of the whole or half-blood or any business with which the official or employee, the spouse, child, parent, step-parent, or sibling of the whole or half blood is associated or any business in which those persons have more than a five percent legal or equitable ownership (or one with more than one percent ownership in the case of a regularly traded corporation) shall enter into a contract of \$500.00 or more with the County or a County contractor or subcontractor without public notice and competitive bidding. Any contract under \$500.00 shall reflect arms' length negotiation.

*** No County official or employee may represent or otherwise assist any private enterprise on

any matter involving the County for a period of two (2) years after termination of employment or official status ***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 County employee or official. The Commission has the discretion to waive this restriction upon written request.

******* No County official or employee shall disclose confidential information gained by reason of public position or use such information for personal gain or benefit.

******* No person shall disclose any information required to be maintained confidential by the Ethics Commission.

******* Knowing and willful violations of the conflict of interest provisions are punishable as criminal misdemeanors and contracts procured in violation of the Code of Ethics are voidable by court action initiated by the County Department involved.

THE CODE OF ETHICS PROHIBITS CONDUCT WHICH CREATES AN APPEARANCE OF IMPROPRIETY (NCC Code Division 2.03.104)

Even if the conduct of a County official or employee does not violate the Conflict of Interest provisions, conduct may still violate the Ethics Code when it undermines public confidence in the impartiality of a governmental body by creating an appearance that the decisions or actions of a County employee, County official or governmental body have been or are being influenced by factors other than the merits.

Such conduct includes but is not limited to:

*** Failing to recuse from action or abstain from vote when the public may reasonably conclude that a matter impairs the competence or challenges the integrity of an official or employee.

*** Acquiring a financial interest in any private enterprise which the employee or official has reason to believe may become directly involved in a decision to be made by the official or employee in his or her official capacity.

*** Failing to file a written statement with the Ethics Commission disclosing any financial interest in any private enterprise which is subject to the regulatory jurisdiction of any County department or which does business with any County Department.

*** Using public office to secure unwarranted privileges, private gain, or advancement or using confidential information gained from holding pub

lic office or employment for personal gain or benefit.

*** Disclosing, outside the scope of public office, confidential information gained from holding public office.

*** Engaging in activity outside the scope of the public position which might reasonably be expected to require or induce the County employee or official to disclose confidential information acquired by such employee or official in his or her public position.

*** Using the granting of sexual favors as a condition for the favorable treatment of any person or County Department.

**THE CODE OF ETHICS REQUIRES CERTAIN
EMPLOYEES AND OFFICIALS TO FILE A
STATEMENT OF FINANCIAL INTERESTS WITH
THE COMMISSION**

(NCC Code Divisions 2.03.106, 2.03.107)

The Ethics Code requires designated County Officials and Employees to file a Statement of Financial Interests with the Ethics Commission by May 1 of each year following employment in or appointment to a specified County position in the prior year, whether or not the person remains employed in that position on the filing date. The Department of Human Resources supplies the Commission with the names of filers.

Candidates for office must file a Statement of Financial Interests with the Commission for the preceding calendar year within seven days following the last day for giving notice of candidacy under State law.

Nominees subject to confirmation must file a Statement of Financial Interests for the preceding calendar year with the Commission as well as with the confirming body ten (10) days before that body is scheduled to approve or reject the nomination.

The Statement of Financial Interests requires disclosure of the filer's financial information concerning the prior calendar year. No specific dollar amounts are required to be disclosed except for gifts .

Statements of Financial Interests filed by elected officials, candidates, nominees, certain appointed

officials, and persons appointed to the Boards of Adjustment, Planning, Historic Review, Pension, License Inspection and Review, Assessment Review, the Ethics Commission, the Audit Committee, and the Financial Advisory Council are available for public inspection and copying by appointment at the Ethics Commission Office. All other Statements of Financial Interests are confidential and may be reviewed only by the Commission or the Department head of the individual filer.

No County official or employee who is designated to file a Statement of Financial Interests shall be permitted to take the oath of office, enter or continue upon his or her duties, or receive compensation from County funds unless he or she has timely filed with the Commission. After notice, the Commission may impose financial penalties on late or deficient filers.

Statement of Financial Interests forms and instructions may be accessed at [**www.nccethics.org**](http://www.nccethics.org).

THE CODE REQUIRES OFFICIALS OR EMPLOYEES TO DISCLOSE ANY FINANCIAL INTEREST IN A PRIVATE ENTERPRISE THAT IS REGULATED BY OR DOES BUSINESS WITH NEW CASTLE COUNTY
(NCC Code Division 2.03.104(C))

The Ethics Code requires any County employee or County official who has a financial interest in a private enterprise which is subject to the regulatory jurisdiction of, or does business with, any County Department to file a written statement with the Commission fully disclosing that information. The disclosure is confidential and the Commission shall not release the information, except as may be necessary for the enforcement of the Ethics Code.

The Commission has created a form to assist the officials and employees in making the required disclosure. The disclosure statement must be filed in order to begin or continue employment or appointed status with the County if a person has such a financial interest. The form may be obtained from the Commission or downloaded from the Ethics website at www.nccethics.org.

**THE COMMISSION ISSUES CONFIDENTIAL
ADVISORY OPINIONS (NCC Code Division
2.04.102(I))**

If a County official or employee or that person's supervisor or appointing authority is not sure whether the official's or employee's proposed conduct will comply with the Code of Ethics, that person may submit a written request for advice to the Commission. The Commission has authority to issue advisory opinions regarding the duties and responsibilities of persons covered by the Code as well as to their supervisor or appointing authority. The Commission may not issue opinions in response to requests from the public.

A request is made on a form provided by the Commission and available in its office or downloaded from the Ethics link at www.nccde.org. The form must be signed by the person making the request. The form must contain all the known relevant and material facts necessary to the Opinion. The Commission will attempt to issue an Opinion within 21 working days of its receipt of the request. The Opinion will become available to the public but the identity of the requestor will be concealed. The Commission, in its discretion, may schedule a hearing on the request.

A person who relies on an Opinion issued in response to his or her request shall not be subject to penalties for violating the Ethics Code as long as the request truthfully disclosed all known material facts. If the request for an Opinion was made 21 working days or more prior to taking the action and the material facts were fully disclosed but the Commission

had not responded with an Opinion, the submission of the request is a complete defense in any subsequent enforcement proceeding and is evidence of good faith in any subsequent civil proceeding.

THE COMMISSION INVESTIGATES
COMPLAINTS OF ETHICAL VIOLATIONS
(NCC Code Divisions 2.04.103; 2.04.104)

The Ethics Commission provides a complaint form on which any County official, employee, or member of the public may file a sworn allegation that the Ethics Code has been violated. The form may be obtained from the Ethics Office or downloaded from the Ethics link at www.nccde.org. The complainant's name is confidential, as are proceedings and hearings. The final order concluding an investigation or hearing is a public record but the identity of the subject is concealed unless the Commission recommends a sanction of reprimand or greater. The Commission may initiate an inquiry or investigation on its own volition if it determines that circumstances so warrant.

Even though complaint proceedings are confidential, a complainant's name may be revealed if the Commission determines that the complainant wrongfully used the complaint process. Wrongful use includes making a frivolous complaint (filing in a grossly negligent manner without basis in law or fact), or without probable cause to believe in the existence of the alleged facts and made primarily for a purpose other than that of reporting a violation of the Code.

If a public official or employee has reason to believe a complaint is frivolous or without probable cause and made for a purpose other than that of reporting a violation of the Code, the subject of the complainant's conduct if that person is a County official or employee.

After receiving a complaint the Ethics Commission will notify both the complainant and the subject and subsequently take one or more of the following actions:

Notify the complainant that the Commission lacks jurisdiction to process the complaint;

Notify the complainant that the matter occurred outside the 5 year limitation period on Commission investigations;

Notify the complainant that the complaint lacks sufficient information;

Initiate a preliminary inquiry by Commission Counsel to be completed in 60 days;

If the inquiry is terminated without subsequent investigation, both the complainant and subject will be notified. If the inquiry revealed that the complaint was frivolous, the notification shall so state;

Initiate a full investigation after notifying the subject of the complaint of the allegations;

Issue a confidential Probable Cause Report at the conclusion of the investigation or no later than 270 days after the initiation of the investigation if there are grounds for a violation;

Consider any answer to a Probable Cause Report received within 30 days after issuance;

Provide a full opportunity, including a hearing, to the subject of a Probable Cause Report to challenge the allegations and findings;

Issue a public Final Order after the opportunity to challenge the Probable Cause Report has been exhausted;

Enforce sanctions and orders by recommendation or referral to the appropriate authority.

COMPLAINTS ARE CONFIDENTIAL
(NCC Code Division 2.04.103)

The name of a person who complains is not disclosed.

No person may disclose confidential matters learned in the complaint process unless the disclosure pertains to or involves:

- * Final Orders when the identity of the persons involved are disclosed in the Order;
- * Commission hearings in which confidentiality has been waived;
- * Seeking legal advice;
- * Communicating with the Commission or its staff;
- * Consulting with law enforcement in the course of initiating, participating in or responding to an official investigation or prosecution;
- * Testifying under oath before a governmental body;
- * Legally obtained information by the news media;
- * Information, records, or proceedings pertaining to a complaint, inquiry, investigation, hearing or reconsideration petition disclosed by the subject;
- * Information, records, or proceedings necessary for processing a grievance in accord with any collective bargaining agreement;
- * Such other exceptions as the Commission by rule directs.

**PROTECTION FOR COMPLAINANTS (NCC
Code Division 2.04.103, 2.03.300)**

No County official or employee shall discharge an official or employee or change his or her official rank, grade or compensation or deny him or her a promotion or threaten to do so for filing a complaint with or providing truthful information to the Commission or testifying at any Commission proceeding.

No County official or employee shall be subjected to an adverse personnel action because the individual refused to execute a directive which the official or employee reasonably believed to violate any law, rule or regulation adopted by the County, the State or the United States, or which violates a court order.

Officials and employees who orally or in writing communicate to an elected official (federal, state, County, or municipal) suspected violations of law, rule, or regulation, the misuse or waste of public funds, or a reasonably believed specific and substantial danger to the public health, safety or welfare are protected from adverse personnel action, discharge, threats, reassignment or adverse effect on compensation or terms, conditions, locations or privileges of employment.

An official or employee who reports such events in writing to the County Auditor, the County Attorney, the Department General Managers, and/or the Ethics Commission are similarly protected from adverse personnel action.

An official or employee who truthfully participates

in a court action or in the investigation of a court or a public body (within the meaning of State law) on a matter of public concern is similarly protected from adverse personnel action.

An official or employee who has suffered an adverse personnel action for making a report of suspected violation of law or regulation to an elected official may bring a civil action for injunctive relief and/or damages within ninety (90) days following the adverse action.

An official or employee who makes reports of violations to the elected officials or who makes written reports to the other persons and offices described above may, within 120 days after the adverse personnel action, bring a civil action for relief and/or damages, so long as that official or employee has, within the first 60 days following the adverse personnel action, provided written notice to the County Attorney and the Clerk of Council of the adverse action and the relief requested.

OTHER SOURCES OF INFORMATION ABOUT THE CODE OF ETHICS AND THE COMMISSION

The Ethics Commission welcomes general inquiries about the Code of Ethics and the Ethics Commission at its Office in the Gilliam Building, 77 Reads Way, New Castle, DE, (302) 395-5127, or at its monthly meetings. General information is also available on the Commission's link at [**www.nccde.org**](http://www.nccde.org) or at [**www.nccethics.org**](http://www.nccethics.org). The Annual Report and the Commission's Advisory Opinions and Orders are available through the Office and through the link on the County website, [**www.nccde.org/ethics**](http://www.nccde.org/ethics). Public Statements of Financial Interests can be viewed at [**www.nccethics.org**](http://www.nccethics.org).

Confidential communications and confidential appointments at locations both inside and outside County government facilities can be made through the Commission's post office box and e-mail address, [**ncc.ethics@comcast.net**](mailto:ncc.ethics@comcast.net), and by direct contact with the Commission's legal counsel.



New Castle County Ethics Commission

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