**MINUTES**

**June 18, 2013 MEETING**

1. **Call to Order:** 10 a.m. Present: Wilma Mishoe, Chair; William Tobin; Vice Chair; Commissioners: Mark Dunkle, Esq., Lisa Lessner, Jeremy Anderson, Esq.; Commission Counsel: Janet A. Wright and Deborah J. Weaver; and Administrative Assistant Jeanette Longshore.
2. **Minutes:** Approval of minutes from April 16, 2013 meeting with grammatical changes. Moved by Commissioner Dunkle; Commissioner Lessner 2nd; approved.
3. **Administrative Items**
4. **Training:**  DelDOT cancelled its July and October trainings to allow new Commission Counsel to become familiar with the position. Two DelDOT trainings were already conducted this year: one consisting of 17 attendees; the other consisting of 10 attendees. The State Training office has set up training for Ms. Weaver to provide on October 8, 2013. The Developmental Disabilities Council has requested training, but no date has been set.
5. **FOIA requests:** The Lobbyists and financial disclosure database was provided to the *News Journal* pursuant to its request. User Names and passwords were redacted, as permitted by an [Attorney General’s opinion](http://www.depic.delaware.gov/sections/lobbying/current/FOIA_Filing_CBarrish2006.pdf). Associated Press (AP) Reporter, Randall Chase, requested the lobbyist registration and authorization of Mike Harkins, which was provided.
6. **Legislation:** [SB 104](http://legis.delaware.gov/LIS/LIS147.nsf/vwLegislation/SB+104?Opendocument) to be voted upon on 6/18/13. This legislation requires that the Public Advocate be added to the list of State officers required to file a financial disclosure. UPDATE: the bill passed the Senate on 6/19/13.

[HB 184](http://legis.delaware.gov/LIS/LIS147.nsf/vwLegislation/HB+184?Opendocument) Would require a 2 year post-employment prohibition against lobbying by heads of State agencies, Cabinet Officials, and the Executive Staff of the Governor from lobbying after their term of office ends or State employment ends. **Note:** Such officials and employees already have a 2-year post-employment restriction that bars them from privately working on State matters where they: (1) gave an opinion; (2) conducted an investigation; or (3) were otherwise directly and materially responsible. [29 Del. C. § 5805(d).](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5805)

[SB 55](http://legis.delaware.gov/LIS/LIS147.nsf/vwLegislation/SB+55?Opendocument) : Would require the members of the Public Service Commission to file financial disclosures.

1. **11-19 - Case update**—The Chair recused. Deborah Wicks, the Smyrna School District Superintendent, has not filed her yearly notification, due May 24, 2013, with the Commission regarding employment by the district of her son. The Commission previously granted Ms. Wicks a waiver, but one condition was that she provide notice once a year to the Smyrna School Board members and all School District employees stating that she is not to review or dispose of any matters related to her son. A copy of that notice is also to be sent to the Commission. By consensus, it was decided to send her a reminder that PIC had not received any notice that she complied with the directive.
2. **Executive Session to hear confidential requests for advisory opinions and waiver requests**[**.** 29 Del. C. §5807(a) and (c)](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5807). Commissioner Tobin moved; Commissioner Dunkle 2nd; approved.
3. **13-21 Outside Employment –** Applicant was not present due to a death in his family. However, the Commission may provide advice based on a written statement. [29 Del. C. § 5807(a)](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5807).

An employee of the Department of Corrections (DOC) filed the required disclosure of his plan to work a part-time job with New Behavioral Network (NBN), as it contracts with the Department of Services for Children, Youth and Their Families. [29 Del. C. § 5806(d).](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5806) NBN is considering the employee for employment as a Behavioral Interventionist or a Bilingual Parent Aide.

In his DOC job, he is not assigned juvenile clients. He is not involved in any matters related to NBN. Thus, he would not review or dispose of matters where he has a financial interest as a result of the part-time employment. [29 Del. C. § 5805(a)(1).](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5805) At NBN, as a Behavioral Interventionist he would be working with children. If he is selected as a Bilingual Parent Aide, he would translate parenting skill information for parents of the NBN child clients. The employee stated that if there were any overlap between his assigned clients and his NBN clients, he would recuse as needed. He would not have any NBN duties that would require him to represent them before the DOC. [29 Del. C. § 5805(b)(1)](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5805).

Commissioner Dunkle moved that there was no actual conflict as long as he recused as necessary and recommended the employee be reminded of his obligation not to use State working hours or State resources to do work for his private employer. [29 Del. C. § 5806(a) and (e).](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5806) Commissioner Tobin 2nd; approved.

1. **13-19 Personal or Private Interest – Unpaid Consultant Work—State Officer**

Commissioner Tobin indicated that he knows the State Officer as an acquaintance and they attended some of the same functions; but they do not socialize, etc. When asked by Commissioner Dunkle if he felt that he could still be fair and impartial, Commissioner Tobin indicated that he could. No motion for recusal.

The applicant is a State Officer. He has a friend that is starting his own business, which would create training programs for corporations and government agencies on leadership, management, employee development and crisis management. The Officer has been asked to write some of the curriculum, which he would do without pay. However, the new business wants to credit the Officer in the marketing materials and include his current position. He said his initial reaction was to say “no.” The Officer emphasized that the marketing materials would list all of his prior employment and not just his current position. He stated he would not be part of any merchandising of the product and he would not be using State hours to do the consultant work. He also mentioned that the unpaid position may lead to employment with this company when he retires.

The Officer did not know if the product would be sold to any Delaware agencies, but it may be. He is aware that he could not be involved in decisions to buy the product if it were offered to State agencies because of the personal interest arising from his private association with the company owner and the potential for a future paying job. [29 Del. C. § 5805(a)(1).](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5805) He also said that he would not solicit business from the State for the company, which is consistent with the restriction on State officers not representing or otherwise assisting a private enterprise before any State agency. [29 Del. C. § 5805(b)(1) and (b)(2)](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5805). He did acknowledge that his validation of the training program was his “gift” to his friend’s new business. Commissioner Dunkle asked if he had considered only attributing the materials by name and omitting the Officer’s position. The Officer stated that he had, but was concerned that it would appear he was trying to hide something.

Commissioner Dunkle moved the use of the Officer’s name and State position would create an appearance of impropriety as it may appear to the public as an official endorsement of the company/product. [29 Del. C. § 5806(a)](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5806); *Commission Op. Nos. 95-36; 96-62; and 98-30*. He moved that it would be permissible for the Officer to author the curriculum for the private company as long as his name and position was not used. Commissioner Anderson 2nd; approved.

1. **13-04 Reconsideration of Denial of Waiver**

A State employee asked for reconsideration of the Commission’s denial of his waiver request to work with clients referred to Crossroads by Youth Rehabilitative Services (YRS). Previously, the employee had asked for a financial hardship waiver to allow him to work for Crossroads. Crossroads contracts with the Department of Services for Children, Youth and Their Families (DSCYF), and the applicant works for a Division within the Department. His State duties include making referrals to Crossroads. A limited waiver was granted to the provision that provides that he may not review or dispose of matters where he has a personal or private interest. [29 Del. C. § 5805(a)(1)](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5805). The waiver recognized that it would be impossible for him to know upon intake of a client in his Division if it would require that the child be referred to Crossroads or another provider. He would have to review the case to make that decision. The employee recognized that if a referral is required, he is to then recuse and have his Supervisor make the decision. At that time, he also asked about taking YRS clients. YRS is a Division of his State agency, DSCYF. The law bars State employees from representing or otherwise assisting a private enterprise before the “State agency” by which they are employed. [29 Del. C. § 5805(b)(1)](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5805). “State agency” means “Department[.” 29 Del. C. § 5804(11).](http://delcode.delaware.gov/title29/c058/sc01/index.shtml#5804)

He sought reconsideration of that denial so that he could accept YRS clients. According to the Deputy Director of his Division, in his State job, he works with YRS employees on cases assigned to both Divisions. At Crossroads, if a YRS client’s private insurance does not cover the cost of the Crossroads treatment, the applicant would have to refer the client to his own Division. Thus, he would be representing or otherwise assisting the private enterprise not only before another Division in his Department, but before his own Division. He stated that in an instance where YRS may refer a client to him in his position at his State job, he would refer that case to his supervisor. However, under the first decision, his cases are already subject to referral, and this would just add to more recusal from his State duties.

Commissioner Anderson moved that his request for reconsideration be denied because there is too much overlap between his State job and his private position. Commissioner Dunkle 2nd. Commissioner Lessner abstained from the vote. 4-0-1 vote. Approved.

1. **13-20 Outside Employment**

The State employee works for the Department of Corrections (DOC). She filed a disclosure of her intention to work part-time for New Behavioral Network (NBN), as it contracts with the Department of Services for Children, Youth and Their Families (DSCYF). [29 Del. C. § 5806(d)](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5806). This situation is very similar to the advisory opinion request in 13-21.

The employee stated that her employment with the State consists of supervising construction workers on the grounds of a correctional facility. Occasionally, she works inside the building with adult inmates. Her duties do not include any review or disposal of matters related to NBN. [29 Del. C. § 5805(a)(1)](http://delcode.delaware.gov/title29/c058/sc01/index.shtml5805). Her job at NBN would require her to work with adults as a Parent Aide. Logically, if the employee was working with an adult at NBN, they would not be an inmate that she would be supervising at the correctional facility. However, she stated it is possible that she may be assigned to work with an adult who has a relative that is incarcerated. Should that situation arise, she would be unable to recuse herself from her State position, but she would be able to recuse at NBN. Efforts would be made by NBN to determine if the client she would be assigned to work with has an incarcerated family member so that the issue could be addressed prior to case assignment.

Commissioner Anderson moved to approve her part-time job at NBN. Commissioner Tobin 2nd. Approved.

1. **Out of Executive Session:** Commissioner Dunkle moved; Commissioner Lessner 2nd; approved.
2. Next meeting – July 16, 2013.
3. Adjourned