



## NEW CASTLE COUNTY ETHICS COMMISSION

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### **FINAL ORDER**

Filing Number: C15-01, C15-02, and C15-03

Subjects: Final Order; Commission jurisdiction

Search terms: Appearance of impropriety; appointed official; bias; candidate; communication; complaint; conflict; constituents; Council member; County official; County policy; County resources; disclosure; elected official; employee; Executive office; impropriety; investigation; official business; private advantage or gain; probable cause; procedural error; public policy; public purpose; supervisor; undue influence; unwarranted privilege

Decision by: Paula Jenkins-Massie; Robert Ralston; Johanna Bishop; Robert Hicks; Sally Jensen; Kellie Tetrick; Charles Toliver

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Status: Resolved

### **INTRODUCTION**

This Final Order is being issued to resolve three companion complaints which were filed on the same day in May 2015. These complaints involve important issues which are fundamental to the conduct of an ethical County government. All three complaints were filed against a high-ranking, elected County official. One of the three complaints (C15-02) named a high-ranking, appointed County official as a second respondent.

All three complaints include allegations of abuses of power and the independence of the legislative branch of County government from the administrative and executive branch. The New Castle County Ethics Commission ("Commission") believes very strongly and hereby emphasizes that the ability of each branch of government to perform its duties as prescribed by law and without interference by officials or employees of the other branch of government is critical to a well-functioning County government. It is in the best interest of the public for all County officials and employees of all branches to perform their duties ethically and according to all applicable laws, including the County Ethics Code.

After a preliminary review of the three filed complaints, the Commission, pursuant to the County Ethics Code, concluded that each of the complaints should be formally and fully investigated by the

Commission's independent investigator. Following the completion of each of those investigations, the Commission issued a Probable Cause Report ("PCR") to the named respondent in C15-01, C15-02, and C15-03, and a PCR to the second named respondent in C15-02. Both respondents requested evidentiary hearings, asserted certain denials and defenses, and requested that each of the complaints be dismissed. In addition, at various times during the pendency of the three complaints, the respondents and other Delaware agencies requested stays of the proceedings. Those requests for stay, when requested, were granted by the Commission for good cause.

### **COMMISSION JURISDICTION AND PROCEDURES**

The Commission has jurisdiction over these matters pursuant to Code Sections 2.04.102.K and 2.04.103.D. County Code Section 2.03.102 defines "County official" as "any person elected or appointed to any County office, board, commission or the New Castle County Council Audit Committee provided, however, that for purposes of Sections 2.03.103.B.2, 2.03.103.C, and 2.03.104.C, 'County official' does not include any member of a board or commission which operates solely in an advisory capacity, and whose members are not compensated, other than reimbursement for expenses. "County employee" is defined in the Code as "any person who receives compensation as an employee of a County Department or County row office."

New Castle County Code Section 2.03.103.A.1, Restrictions on exercise of official authority, states:

No County employee or official knowingly or willfully shall use 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 is associated. This prohibition does not include an action having a de minimis economic impact or which affects to the same degree 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, a member of his or her immediate family or a business with which he or she or a member of his or her immediate family is associated. There will be a rebuttable presumption of a knowing or willful violation of this section if the action benefits the County official or employee, his or her spouse, or his or her dependent children (whether by blood or by law).

New Castle County Code Section 2.03.104.A states:

No County employee or County official shall engage in conduct which, while not constituting a [financial conflict of interest], undermines the public confidence in the impartiality of a governmental body with which the County employee or County official is or has been associated by creating an appearance that the decisions or actions of the County employee, County official or governmental body are influenced by factors other than the merits.

New Castle County Code Section 2.03.104.D states: “No County employee or County official shall use such public office to secure unwarranted privileges, private advancement or gain.”

New Castle County Code Section 2.03.104.E states: “No County employee or County official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such County employee or County official to disclose confidential information acquired by such employee or official by reason of such public position.”

New Castle County Code Section 2.03.104.F states: “No County employee or County official shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall such employee or official otherwise use such information for personal gain or benefit.”

New Castle County Code Section 2.04.103.D states:

Investigation after inquiry. After a preliminary inquiry, the Commission may, through its Ethics Counsel, initiate an investigation to determine if there is probable cause to believe a violation has occurred. No investigation may be commenced until the person who is the subject of the investigation has been notified by the Commission and provided a statement of the alleged violation of this Division, and Division 2.03.100, and/or other applicable statutes with respect to such investigation. Service of notice is complete upon mailing, which shall be by certified mail. The Commission shall advise the complainant and the person who is the subject of the investigation of the status of the investigation at least every ninety (90) days until the investigation is terminated. The Commission shall, within one hundred eighty (180) days of the initiation of an investigation, either terminate the investigation pursuant to Subsection F or issue a Probable Cause Report pursuant to Subsection G. The Commission may extend an investigation for up to two (2) forty-five (45) day periods, provided that each forty-five (45) day extension shall be approved by a majority vote of the Commission members present. A Probable Cause report shall not be issued later than two hundred seventy (270) days after initiation of an investigation. The Commission shall keep information, records and proceedings relating to an investigation confidential until a final determination is made, except as otherwise provided in Subsection I.

New Castle County Code Section 2.04.103.G, Probable Cause Report, states:

The Commission, or one (1) or more of its members appointed by the Chair when the Commission is at its full complement without vacancies, upon completion of the inquiry described in Subsection E or investigation described in Subsection D, shall issue a confidential Probable Cause Report to the subject of the inquiry or investigation setting forth the pertinent findings of fact supporting a conclusion of violation. The subject

in receipt of a probable cause report shall have the right to respond to the report and to request an evidentiary hearing on the matter. Any response to the Probable Cause Report must either admit or deny by corresponding number and letter the pertinent facts set forth. Matters not specifically denied in the response shall be deemed admitted. The response and the request for a hearing must be filed within thirty (30) days of the issuance of the Probable Cause Report unless the time period is extended by the Commission for good cause shown. The Commission shall grant a request for a hearing.

### **PROBABLE CAUSE REPORTS**

Due to the important public issues involved in each of these complaints, the Commission believes that it is important to the full understanding of these matters to set out in detail the particular allegations and matters in each of these complaints in this Order.

#### **A. FIRST PROBABLE CAUSE REPORT**

In the first complaint, based upon the information gathered in the formal investigation, the Commission concluded that it was more likely than not that the Respondent committed the improper actions alleged in the complaint. The Commission issued a PCR to the Respondent in the matter, which included, in pertinent part, the following:

1. On or about March 31, 2015, County Council held a technology subcommittee meeting during which there was a discussion about authorizing the performance of a forensic audit of the County computer system. The goal of the forensic audit was to determine if respondents and/or the respondents' staff had been using the technical abilities of the County's computer system to access and/or monitor computer usage by County Council members and/or its staff and, if so, by whom.

2. In the Technology subcommittee meeting, a member of Council ("The Council Member") voiced support for the forensic audit.

3. The respondents were not in favor of the performance of the forensic audit.

4. In an article published on April 9, 2015, entitled, "Council Concerns of Executive Email Monitoring Continue," the News Journal reported, "In addition to separating the [administration and council email] services, the council is considering hiring an outside vendor to conduct a forensic audit of searches through the email system. The News Journal has filed a Freedom of Information Request to view a search history of the county's email system."<sup>1</sup>

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<sup>1</sup> The Commission takes notice of information published for public consumption regarding County government officials and employees, and that the News Journal is a widely-circulated newspaper in New Castle County which has an online format. The online format can be easily and forever searched for articles which include names of County officials and employees by anyone with internet access. The publication of articles in the News Journal as referenced in this order underscores the probability that knowledge of the reported issues by the citizens of New Castle County. It supports the conclusion reached by the Commission that it is more likely than not that the actions complained of and discussed in this Order may have undermined the public's confidence in its County government due to actions taken by persons as recounted in the reported articles, especially if the reporting was accurate.

5. Sometime after the aforementioned Technology subcommittee meeting, the respondent(s) had a meeting with The Council Member, and another County official (The "Other County Official"), and a discussion took place regarding the proposed forensic audit (the "Meeting").

6. During the Meeting, the respondent(s) informed The Council Member that they were in possession of computer-generated documents that they retrieved from computers assigned to Council members and/or staff which allegedly showed that certain Council members or other County computer users had used County resources for non-County business, to wit, for campaign purposes.

7. Further during the Meeting, the respondent(s) told The Council Member that if Council went forward with the forensic audit, the respondent(s) would use the alleged evidence in their possession or control against The Council Member and/or against other Council members by releasing such information to the public.

8. The respondent(s) were threatening and intimidating toward The Council Member during the Meeting.

9. The Commission decided that the information gathered in the formal investigation was sufficient to support a preliminary conclusion for the purposes of the issuance of a Probable Cause Report that the Respondent probably violated the Ethics Code as described in the complaint and that the act of the Respondent threatening and/or intimidating The Council Member, or any other County official or employee, with disclosure of County computer-generated documents, whether inculpatory or otherwise, which they surreptitiously obtained from the County computer system, and using such information to secure or prevent certain behavior on the part of The Council Member, including the exercise of casting votes on valid concerns of County Council, if true, violates the New Castle County Ethics Code, as follows:

a. New Castle County Code Section 2.03.104.A states: "No County employee or County official shall engage in conduct which, while not constituting a [financial conflict of interest], undermines the public confidence in the impartiality of a governmental body with which the County employee or County official is or has been associated by creating an appearance that the decisions or actions of the County employee, County official or governmental body are influenced by factors other than the merits." The Commission decided that the information gathered in the formal investigation was sufficient to support a preliminary conclusion that the Respondent created an appearance of impropriety in violation of Section 2.03.104.A when they used information obtained through their position as a County official with access to the County computer system which included County Council emails and documents, and by threatening to expose these documents to the public;

b. The information gathered in the formal investigation is sufficient to conclude that the Respondent probably violated New Castle County Code Section 2.03.104.A. when they engaged in the above-described conduct as it undermined the public confidence in their ability to be in their decision making and that their actions were influenced by factors related to their own private interests and not to the interests of the public;

c. Application of New Castle County Code Section 2.03.104.A to the information gathered in the formal investigation of this matter would result in a reasonable member of the public "with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, [to hold] a

perception that the [Respondent's] ability to carry out [official duties] with integrity, impartiality and competence [was] impaired.”<sup>2</sup>

d. The Respondent allegedly violated New Castle County Code Section 2.03.104.D, which states: “No County employee or County official shall use such public office to secure unwarranted privileges, private advancement or gain;”

e. The Respondent allegedly violated New Castle County Code Section 2.03.104.E, which states: “No County employee or County official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such County employee or County official to disclose confidential information acquired by such employee or official by reason of such public position;” and

f. The Respondent allegedly violated New Castle County Code Section 2.03.104.F, which states: “No County employee or County official shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall such employee or official otherwise use such information for personal gain or benefit.”

In response to the Commission's PCR, Respondent denied all allegations, requested a hearing, and moved to dismiss the complaint.

## **B. SECOND PROBABLE CAUSE REPORT**

In the second complaint, based upon the information gathered in the formal investigation, the Commission concluded that it was more likely than not that the named respondents committed the improper actions alleged in the complaint. The Commission issued PCRs to each of the respondents in the matter, which included, in pertinent part, the following:

1. In advance of a 2014 Councilmanic District election, the respondents, through their own efforts or through others at their direction, retrieved computer-generated information from computers assigned to Council members and Council staff.

2. The respondents have no labor law-related management authority over Council members and Council staff and had no valid labor law basis upon which to monitor the computers which were assigned to Council members and Council staff.

3. The respondents did not want The Council Member, an incumbent, to win the bid for re-election in 2014.

4. The respondents, through their individual or joint efforts or through others at the direction of one or both of the respondents, assisted the 2014 primary election opponent of The Council Member (the “Council Member Opponent”) by providing the Council Member Opponent with information obtained by the respondents or by others at the direction of one or both of the respondents, through the nonpublic search of computers used by County Council members and/or staff.

5. The respondents, through their individual or joint efforts or by others at the direction of one or both of the respondents, provided information to the Council Member Opponent regarding the wording

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<sup>2</sup> See Ethics Commission Advisory Opinion AO13-07.

of the FOIA requests which the Council Member Opponent was instructed to file with County Council, by the respondents, or by others at the direction of one or both of the respondents, so that the Council Member Opponent could create the façade of legally obtaining information which may prove helpful in the campaign against The Council Member, some of which, or all of which, had already been provided to the Council Member Opponent privately by one or both of the respondents or by others at the direction of one or both of the respondents.

6. These actions by the respondents, individually or jointly, or by others at the direction of one or both of the respondents, were performed to assist the Council Member Opponent in the campaign to beat The Council Member in the 2014 primary.

7. The Council Member Opponent, at the suggestion of the respondents or by others at the direction of one or both of the respondents, filed Freedom of Information Act ("FOIA") requests with County Council for The Council Member emails regarding the certain land use projects.

8. The Commission decided that the information gathered in the formal investigation was sufficient to support a preliminary conclusion for the purposes of the issuance of Probable Cause Report to both respondents that each one probably violated the Ethics Code as described in the complaint and that the acts of the respondents providing information which they obtained surreptitiously, through their individual or joint efforts, by virtue of their technical ability to search all County computers, retrieved by themselves or by others at their joint or individual direction, to someone running against any Council member, and in this instance, The Council Member, with whom at least one of the respondents had a long-standing battle, to manipulate the outcome of the election to suit the respondents' personal interests, if true, constitutes acts in violation of the New Castle County Ethics Code, as follows:

a. The respondents allegedly violated Code Section 2.03.104.A by creating an appearance of impropriety when they used information obtained through their position(s) as County officials/employees with access to all County computers to retrieve County Council emails and documents and by providing those emails and documents and/or information contained in those documents to the Council Member Opponent in an effort to defeat The Council Member in the primary;

b. The respondents allegedly violated New Castle County Code Section 2.03.104.A. when they engaged in conduct as set forth above which undermined the public confidence or belief in their ability to be impartial by creating an appearance that their decisions and actions were influenced by personal interests;

c. The information gathered in the formal investigation of this matter would result in a reasonable member of the public "with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, [would hold] a perception that the [Respondents'] ability to carry out [official duties] with integrity, impartiality and competence is impaired."<sup>3</sup>

d. The respondents, through their actions as described above, allegedly violated New Castle County Code Section 2.03.104.D, which states: "No County employee or County official shall use such public office to secure unwarranted privileges, private advancement or gain."

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<sup>3</sup> See footnote 2, above.

e. The respondents, through their actions described above, allegedly violated New Castle County Code Section 2.03.104.E, which states: “No County employee or County official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such County employee or County official to disclose confidential information acquired by such employee or official by reason of such public position;” and

f. The respondents, through their actions as described above, allegedly violated New Castle County Code Section 2.03.104.F, which states: “No County employee or County official shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall such employee or official otherwise use such information for personal gain or benefit.”

In response to the Commission’s PCR, respondents denied all allegations, requested hearings, and moved to dismiss the complaint.

### **C. THIRD PROBABLE CAUSE REPORT**

In the third complaint, based upon the information gathered in the formal investigation, the Commission concluded that it was more likely than not that the Respondent committed the improper actions alleged in the complaint. The Commission issued a PCR to the Respondent in the matter, which included, in pertinent part, the following:

1. All County computers include this statement upon logon:

All electronic mail, communication, work products, software, data, or communications thereof are the property of NCC and may be accessed, used, or removed by authorized personnel. By logging in you acknowledge and accept these terms and conditions. This notice is required to be displayed pursuant to State law 19 *Del.C.* Sec. 705.

2. The County computer system is administered by the Administrative branch of County government. Certain County officials and employees who are employed by the Administrative branch of County government have the technical ability to search all County computers, including those computers which are assigned to members of the legislative branch.

3. The State Code, in 9 *Del.C.* Section 1116, in pertinent part, grants the Administrative branch of County government the following:

(1) See that the duties and responsibilities of the executive and administrative agencies of the County are properly performed and that the work of the county offices, departments, and agencies is properly coordinated;

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(6) Have full authority to examine the books, papers, records, accounts, moneys, securities and property of the County in the possession of all offices, departments, or boards which the County Executive supervises, and may in the County Executive's discretion delegate such authority to 1 or more competent persons;

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8) Require of officers, departments, or agencies under the County Executive's supervision the submission of any reports the County Executive deems appropriate.

4. No person who works for or in the Administrative branch supervises Council members or the County employees who work for County Council.

5. County Council does not have the technical ability to search its own computers, or other County computers. Nor does County Council have the technical ability to block any County official or employee from searching its computers.

6. While it may be legal for County officials and/or employees of the Administrative branch to research and/or monitor the computer-generated documents and emails of Council computers used by County officials or employees who are not supervised by the Administrative branch under certain conditions, such as after express permission has been granted, a search of County computers performed surreptitiously and for personal interests and/or political gain does not comport with the Ethics Code.

7. The information gathered in the formal investigation in this complaint was sufficient to support a preliminary conclusion that it is more probable than not that the Respondent was directly involved in the email and/or document searches of County Council computers for reasons which were not supervisory in nature. Further, the information gathered in the formal investigation in this complaint was sufficient to support a preliminary conclusion that it is more probable than not that the Respondent directed persons employed by them in the Administrative branch to perform email and/or document searches of County Council computers for reasons which were not supervisory in nature. Rather, the investigation showed that these searches were performed for the personal interests and/or political gain of the Respondent.

8. In an article dated March 6, 2015, the News Journal reported that certain Administrative branch departments "have access to portals on their computers that allow such searches. At a previous county [council] committee meeting, council members suggested [the Administrative branch] sign an order similar to one signed by previous [Administrative branches] which ensured council emails would not be monitored." The News Journal article stated further that the Administrative branch was "open to signing such a document but hesitated when it was presented for his signature earlier this week. [The Administrative branch] said he remained open to the concept but wanted to consider the content of the agreement further before signing."<sup>4</sup>

9. In an article dated, April 9, 2015, the News Journal quoted a Council member as stating: "The problem as I see it, there are members of the [Administrative branch] that fail to understand while we are one government we do not work for them,' said [the Council member.] 'The perception is put forward that we are God's children and [the Administrative branch] is God and that dog doesn't hunt."<sup>5</sup>

10. In an article dated May 16, 2015, the News Journal quoted a Council member as stating: "People are afraid to report things like problems with their neighbors,' [the Council member] said. 'They

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<sup>4</sup> See footnote 1, above.

<sup>5</sup> See footnote 1, above.

are afraid that if people other than the council member has read the information, then who knows where it can go.”<sup>6</sup>

11. In an article dated July 14, 2015, the News Journal reported: “While government emails are accessible through Freedom of Information Act requests, some on the council have argued the county administration’s ability to read their emails without such a request can be abused. They pointed to instances where those in the administration would be able to see information, like attorney-client communication, that would be exempt from FOIA.”<sup>7</sup>

12. The Respondent allegedly violated New Castle County Code Sections 2.03.104.A, 2.03.104.D, 2.03.104.E, and 2.03.104.F by using County time and County resources to research and monitor the computer usage of County Council computer users in an effort to garner information that may place the Respondent in a position of political advantage over Council members. These acts, if true, undermine the confidence of the public that their County officials are getting paid by the County to do work on behalf of the public, for the business of County government; that they are not being paid by the taxpayer to pursue their own personal interests; and that computer and other resources purchased by County funds are being used only for the valid and appropriate purposes of County government on behalf of the public.

In response to the Commission’s PCR, Respondent denied all allegations, requested a hearing, and moved to dismiss the complaint.

### **DISCUSSION**

The procedural history of these companion complaints is long, complicated, and unusual. Moreover, the investigations of these complaints were extensive and comprehensive because the issues and allegations involved encompassed a large number of people with knowledge of the underlying facts or alleged facts including County officials, County employees, members of other governmental agencies in Delaware, and members of the public. Some of the issues involved in these complaints became directly or tangentially related to matters which, at a certain point, were or are being handled and/or investigated by other Delaware governmental entities. Moreover, these complaints became the subject of more than one request for stay, which requests were granted by the Commission for good cause shown in each instance.

The Commission is tasked with both the honor and duty of enforcing the Ethics Code on behalf of the citizens of New Castle County. It applies the Ethics Code as it deems best under the circumstances presented in each case. The Commission has long recognized that a resolution of a complaint by agreement of the parties is sometimes the best result for all involved. Such a resolution was diligently explored here, but, for many reasons, no agreement was reached. Recent developments and asserted positions have prompted the Commission to further consider these matters in the best interest of the County and its taxpayers so as to avoid protracted and expensive litigation over these matters.

In performing its statutory duties, the Commission firmly believes and hereby concludes that it has the duty to balance fair and equitable results of investigated complaints with the cost to the taxpayers of this County. The Commission is charged with the responsibility to make sure that all of its efforts are always in the best interest of the public and take into consideration those factors. As a result, faced with

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<sup>6</sup> See footnote 1, above.

<sup>7</sup> See footnote 1, above.

the ongoing effort by Respondent to dismiss each of these complaints on procedural grounds, the Commission has further reviewed and considered certain critical procedural aspects in each of these matters and reached a final disposition of each of these matters on that basis, as set forth in this Final Order. Ultimately, the procedural issues can be reduced to the following relevant dates and sections of the County Code.

These three complaints were filed on the same day, on May 21, 2015. An initial notice to the Respondent regarding the filing of the three complaints which named them as a Respondent in each one was sent to them by the Commission on May 27, 2015. In matter C15-02, the second named respondent was sent notice, also, of the Commission's receipt of the complaint by letter dated May 27, 2015. New Castle County Code Section 2.04.103.D states, in pertinent part:

No investigation may be commenced until the person who is the subject of the investigation has been notified by the Commission and provided a statement of the alleged violation of this Division, and Division 2.03.100, and/or other applicable statutes with respect to such investigation. Service of notice is complete upon mailing, which shall be by certified mail.

Per Code Section 2.04.103.D, the Commission sent letters by certified mail to each respondent dated August 18, 2015 to inform each of them that the Commission had voted to open formal investigations into these three complaints. The Commission asked its independent investigator to begin these formal investigations into these three complaints on August 27, 2015.

New Castle County Code Section 2.04.103.D states, in pertinent part: "A Probable Cause report shall not be issued later than two hundred seventy (270) days after initiation of an investigation." Two hundred seventy (270) days after August 27, 2015, the date that the formal investigation was "initiated," is May 23, 2016. Two hundred seventy (270) days after August 18, 2015, the date of the letters to the respondents informing them of the decision of the Commission to open formal investigations into these three complaints, however, is May 14, 2016. The four PCRs issued to the respondents in these complaints were mailed to the respondents by letters dated May 19, 2016. While the Code requires the Commission to send a respondent notice of its decision to "initiate" a formal investigation before the investigation begins, the Code does not, however, thereafter require the Commission to provide written notice to a respondent of the date on which that formal investigation actually began.

Thus, as asserted by counsel for respondents in these complaints, a colorable legal question exists in these three matters as to whether the two hundred seventy (270) day deadline to issue the PCRs was met. If the critical date is determined to be the date of the Commission's written notices to the respondents on August 18, 2015, the two hundred seventy (270) day deadline for the issuance of the PCRs was not met. If the critical date is determined to be August 27, 2015, the date that the investigation was "initiated" and actually began, then the PCRs were sent before the expiration of the two hundred seventy (270) day deadline.

An argument can be made that the relevant wording in the Ethics Code should be interpreted in favor of the respondents which, if successful after extensive and expensive litigation, would result in the removal of jurisdiction over these complaints from the Commission and which would result in the dismissal of each of the complaints without a determination by the Commission on the merits of each of

the complaints. Litigation over this statutory interpretation issue, at this juncture, which would consume a considerable amount of taxpayer funds, is not justified by the many competing interests which the Commission must take into consideration in making its decision, here.

Accordingly, the Commission has determined that it is in the best interests of the public that these complaints against the respondents be dismissed for the reasons stated herein. In reaching this conclusion, the Commission wishes to make expressly clear that it is not rendering any final determination on the merits as to whether the respondents violated the Ethics Code as alleged in the three complaints, as discussed above. Additionally, this decision is limited to the three complaints discussed in this Order.

Although the Commission has not made a determination on the merits of the alleged Ethics Code violations in these three complaints, the Commission takes this opportunity to remind all County officials and County employees that the Ethics Code contains the minimum standard for ethical conduct of County officials and County employees. All County officials and employees should perform their respective government duties in a manner which is above and beyond the requirements of the Ethics Code. There should be no 'close calls.' Public office is a public trust, and County officials must take care to exercise ethical decision making so that they do not violate that trust by placing their own personal or political objectives over the interests of the public at large. Absent express legal authority to the contrary, under no circumstances should any County official or employee threaten someone with the use of information properly or improperly obtained, whether in connection with a political campaign or otherwise. Political or other differences which arise in County government must be resolved in an ethical manner and in keeping with the Ethics Code. Good government can be achieved only when all government officials and employees make decisions and conduct themselves in ways which easily withstand public scrutiny.

#### **DISPOSITION**

A subcommittee of the Commission, the Ethics Code Review Committee ("ECRC"), is currently reviewing the Ethics Code for revision and amendment. The Commission is hereby charging the ECRC to review with a critical eye any Code section which covers the above discussion or other deadlines, and provide the Commission with revised language to be substituted for the current version, so that revised Code states in very plain language and without potential confusion, which might result from ordinary processing, the timing of notices to the necessary parties and other deadlines.

The Commission further charges the ECRC to study and consider recommending potential statutory changes that would deal with certain of the alleged actions in these matters, including a prohibition for all County officials and employees from engaging in any surreptitious inspection of the computer usage, computer files, or electronic communications of any County officials or employees absent a valid supervisory basis as contemplated in 9 *Del.C.* Section 1116 and 19 *Del.C.* Section 705, considering whether the administrative branch is deemed to have no supervisory role over any person employed in the legislative branch of County government, and whether the existence of the technical ability of the administrative branch officials or employees to monitor or inspect computers used by legislative branch officials and employees does not, by itself, justify the usage of that technical ability, and, if so, whether it should not be used for any purpose which may be perceived by the public as improper, such as those alleged in three complaints discussed herein.

The complaints filed in C15-01, C15-02, and C15-03 are hereby DISMISSED.

ISSUED BY AND FOR THE NEW CASTLE COUNTY ETHICS COMMISSION THIS 22<sup>nd</sup> DAY OF JULY 2020.

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Paula Jenkins-Massie, Chairperson  
New Castle County Ethics Commission

Commission decision: 6-0-1.

Yea: Commissioners Jenkins-Massie, Ralston, Bishop, Jensen, Tetrick, and Toliver.

Abstain: Commissioner Hicks.