



NEW CASTLE COUNTY ETHICS COMMISSION

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FINAL ORDER

C17-02, C17-03, and C17-04

INTRODUCTION

The New Castle County Ethics Commission (“Commission”) received three (3) complaints, all of which named a County department division manager as the Respondent (“Respondent”). All three of these complaints were formally investigated by the Commission. Consequently, the Respondent admits to his commission of violations of the New Castle County Ethics Code (“Ethics Code” or “Code”) as further described herein. Therefore, in the service of stewardship of New Castle County resources and for procedural efficiency, this Final Order encompasses all three of the complaints filed against the Respondent.

COMMISSION JURISDICTION AND PROCEDURES

The Commission has jurisdiction over this matter pursuant to Code Sections 2.04.102.K and 2.04.103.D. Further, 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; and “County employee” 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. states: “A. Restrictions on exercise of official authority. 1. 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.”

The burden of proof regarding a determination of whether a violation of the Ethics Code occurred is the “clear and convincing” standard. New Castle County Code Section 2.04.101H requires that the “At least four (4) members present at a hearing must find a violation by clear and convincing proof.”

1. FIRST COMPLAINT (C17-02)

The First Complaint alleged that the Respondent, who was, at all times relevant, the manager of a division of a County department, violated the New Castle County Ethics Code (“Ethics Code” or “Code”), Section 2.03.104.A., when he engaged in actions which undermined the public confidence in the County government by creating an improper appearance as a certain pattern of his actions were performed for purposes other than those for which he was paid by the County government, and which are improper under any context as a County employee, to wit, the displaying of pornographic and/or visually explicit photographs, or facsimiles of photographs, while in the County workplace to County employees and possibly persons who do not work for the County; and the telling of sexually explicit stories and/or “dirty jokes” to persons in the workplace. The Commission opened a formal investigation in the matter, and it notified the Respondent of this decision by certified letter. In the course of the formal investigation, at least eighteen (18) persons were interviewed by the Investigator, including the Respondent. Additionally, the Investigator reviewed numerous documents and records, electronic and hard copy, public and non-public, related to the allegations in this complaint. Initially, the Respondent denied performing the acts alleged in the complaint.

FORMAL INVESTIGATION AND COMMISSION FINDINGS OF FIRST COMPLAINT

The Commission finds that the Respondent engaged in unacceptable and inappropriate behavior, which was sexual in nature, in the County workplace by openly displaying pornographic photographs, reproductions of photographs, or other potentially offensive images on his cell phone to New Castle County employees and/or County citizens, all of which were offensive and improper for the County workplace, from a manager or any County employee. Some, if not most, of the people in the County workplace to whom the Respondent showed the pornographic pictures were his subordinates, but he took great pleasure in “sharing” these images with persons he selected. These exchanges were often overheard by persons not directly communicating with the Respondent.

The independent formal investigation in this matter also showed, from many witnesses interviewed, separately and in confidence, and the Commission finds that the Respondent also engaged in unacceptable and inappropriate behavior in the County workplace by the telling of sexually explicit and/or “dirty” jokes to New Castle County employees and/or County citizens, all of which were offensive and improper for the County workplace, from a manager or any County employee. This behavior by the Respondent occurred repeatedly, over a span of years. Some of this offensive behavior by the Respondent was reported by witnesses to higher level management and/or to the Department of Human Resources. Such reporting, however, did not stop the Respondent from continuing to engage in

this offensive behavior. Witnesses reported, and the Commission finds, that these actions by the Respondent created an environment in the workplace that interfered with productivity, efficiency, and general work performance.

The Commission finds, and the Respondent admits, that the Respondent's repeated offensive behavior violated the Ethics Code including, but is not limited to:

1. telling generally sexually explicit jokes and some specifically about male body parts or female body parts;
2. showing cell phone photos of topless women or naked women partially covered in body paint;
3. sending "dirty jokes" and/or pictures of naked or partially naked persons to other County employees on the County computer system;
4. bragging about having been the subject of work-related sexual harassment claims; and
5. remarking about the looks of, and/or attractiveness of clothing worn by, female co-workers.

Despite initial denials, the Respondent admits that these allegations in this complaint are true and correct.

2. SECOND COMPLAINT (C17-03)

The Second Complaint alleged that the Respondent violated the Ethics Code when he engaged in actions which undermined the public confidence in the County government by creating an appearance of a conflict of interest and an improper appearance when he manipulated, or attempted to manipulate, subordinate employees in his Division to create a Merit Code disciplinary process against one of his subordinates, in an effort to effect the termination of the employment by the County of the targeted subordinate (hereafter referred to as the "Target".) This manipulation of the Merit system against the Target by the Respondent included the willing participation, and/or the co-opting, of his subordinates, including a subordinate who holds a supervisory position in the Division (hereinafter referred to as the "Supervisor".) The complaint alleged that the Respondent and the Supervisor, through coordinated efforts, arranged for the Target to be falsely accused by another subordinate of actions which led to disciplinary actions taken by County management against the Target. The Commission opened a formal investigation in this matter, and it notified the Respondent of this decision by certified letter. In the course of the formal investigation, at least seventeen (17) persons were interviewed by the Investigator, including the Respondent. Additionally, the Investigator reviewed numerous documents and records, electronic and hard copy, public and non-public, related to the allegations in this complaint. Initially, the Respondent denied the allegations in this complaint.

FORMAL INVESTIGATION AND COMMISSION FINDINGS OF SECOND COMPLAINT

The Commission finds, and the independent formal investigation in this matter showed, from many witnesses interviewed, separately and in confidence, that the Respondent violated the Ethics Code by using his official County position for personal benefit through the manipulation, or through his attempt of manipulation, of subordinates, the Merit Code, and County policies to try to remove one or

more subordinates, including the Target, from County employment through the use of deceit and manipulation of other employees and/or his subordinates, including the Supervisor and then-newly-hired employees in the Division. This behavior by the Respondent occurred repeatedly, over a span of years. Some of this offensive behavior by the Respondent was reported by witnesses to higher level management and/or to the Department of Human Resources. Such reporting, however, did not stop the Respondent, in concert with the Supervisor, from continuing to engage in this offensive behavior and attempting to have the Target terminated. Indeed, even after the Respondent was separated from employment with the County, the Target continued to be harassed and mistreated by persons loyal to the Respondent, including the Supervisor, to carry out the plan to have the Target removed from County service.

Witnesses reported that these actions by the Respondent created an environment in the workplace that interfered with productivity, efficiency, and general work performance, as well as promoted hostility among County employees exposed to the Respondent's offensive conduct.

Behavior by the Respondent which the Commission finds in violation of the Ethics Code include:

1. The Respondent was informed of, engaged in, and/or directed a subordinate, including the Supervisor, to change records in the County computer system to reflect less productivity or inefficiency of targeted subordinates;
2. The Respondent required subordinates to watch and/or spy on co-workers, including the Target, and report back to him;
3. The Respondent threatened negative treatment to subordinates who wanted to speak, or spoke, with employees in the Human Resources Department about his improper conduct;
4. The Respondent charged, and/or threatened to charge, a subordinate or subordinates, including the Target, with disciplinary action through the use of false and deceitful allegations;
5. The Respondent lied and/or misrepresented material facts during disciplinary proceedings involving one or more of his subordinates, including the Target;
6. The Respondent encouraged one or more subordinates to file false complaints with the Human Resources Office against another of his subordinates, including but not limited to the Target, and the Respondent supported the false statements made in the false complaints;
7. The Respondent, in concert with others including the Supervisor, created situations or "set-ups" for his subordinates, including the Target, in an attempt to trap a subordinate in no-win situations which could lead to disciplinary actions or which led to disciplinary actions against the Target and/or other subordinates, which were thereafter documented and/or witnessed by other subordinates;
8. According to witnesses, the Respondent clearly enjoyed engaging in harassing and vindictive behavior toward his subordinates, including the Target, which resulted in the lack of productivity in the Division and much hostility among co-workers.

In addition, the vindictive, manipulative, and deceitful behavior of the Respondent caused one or more of his subordinates to receive disciplinary reprimands or measures, which could have resulted in the termination of one or more them if the Human Resources Office had not eventually intervened

and prevented the Respondent from fulfilling his plan to cause the termination of one or more of his subordinates, including the Target, by summarily discharging the Respondent from employment with New Castle County.

Despite initial denials, the Respondent admits that these allegations in this complaint, as set forth above, are true and correct.

This Respondent is one of two respondents named. The complaint included virtually identical allegations against the other named respondent. The Commission issued Probable Cause Reports in this complaint to both named respondents. This is noteworthy because the actions complained of in this matter are comprised of actions which both named respondents performed in concert.

3. THIRD COMPLAINT (C17-04)

The Third Complaint alleged that the Respondent violated the New Castle County Ethics Code when he engaged in actions which undermined the public confidence in the County government, and created an appearance of a conflict of interest and an improper appearance, in violation of the Ethics Code, by submitting, or causing to be submitted, falsified timekeeping records for which he improperly received compensation in some form from the County. The Commission opened a formal investigation in this matter, and it notified the Respondent of this decision by certified letter. In the course of the formal investigation, at least eighteen (18) persons were interviewed by the Investigator, including the Respondent. Additionally, the Investigator reviewed numerous documents and records, electronic and hard copy, related to the allegations in this complaint. The Respondent has denied the allegations in this complaint.

FORMAL INVESTIGATION AND COMMISSION FINDINGS OF THIRD COMPLAINT

The Commission finds that the Respondent violated the Ethics Code by submitting, or causing to be submitted, falsified timekeeping records for the purpose of receiving unearned compensation from the County in some form. This behavior by the Respondent occurred repeatedly, over a span of years. The Commission has been advised that the normal or regular working hours for the office in which the Respondent worked are from 8 am to 4 pm, Monday through Friday. The Commission has further been advised that it is policy for County employees to affirm or swear to the veracity of timekeeping records as they submit such records for compensation from the County.

The allegations of falsification of records by the Respondent are supported and/or confirmed by County records, including but not necessarily limited to, records of the dates and times which the Respondent's security access card was used to enter a County building. Many witnesses further support, through eye-witness testimony and, in some cases, through documentation, the allegations that the Respondent submitted, or caused the submission, of falsified timekeeping records for himself. The Commission finds that the Respondent committed this theft of time from the County in clear violation of the Ethics Code. Indeed, the Respondent's deliberate and calculated theft of time from the County may comprise criminal acts.

The Commission finds that the Respondent's denial of these allegations is without merit and is not supported by the weight of the evidence. While it is clear, and the Commission finds, that the Respondent violated the Ethics Code by the theft of time from the County, the total cost to the County, and, therefore, to the taxpayer, of the Respondent's improper and/or illegal conduct is not clear. This

illegal conduct on the part of the Respondent, over the span of years during which he worked for the County, and at the comparatively high rate of management level compensation which he received, could total a cost to the County, and to the taxpayer, in excess of \$100,000. The Commission finds that the Respondent has violated the New Castle County Ethics Code by submitting, or causing to be submitted, falsified timekeeping records for which he illegally received compensation in some form from New Castle County.

This complaint also included a second named respondent and alleged allegations that this Respondent was aided and abetted in his repeated theft of time by the County by the other named respondent. The Commission did not issue a Probable Cause Report as to the other respondent because the serious nature of this violation, that is, theft, requires a level of proof which was not made available through the Commission's investigative process. Logic dictates, however, that the Respondent's ability to commit a repeated violation of this nature is highly unlikely to have taken place without the deliberate and knowing assistance of at least one other County employee, if not more.

CONCLUSION

By virtue of these three complaints, the Commission was informed of behaviors and acts on the part of the Respondent which shocks the conscience of the Commission. The Respondent's repeated and numerous violations of the Ethics Code, and his callous, vindictive, and cruel treatment of County co-workers, should never be allowed or tolerated. Every County employee, even when the employee has a management role, must bear in mind that their workplace exists first for the benefit of its citizenry, and it is not the employee's personal territory for gamesmanship and/or the creation of misguided personal legacies. And especially when the County employee is in a supervisory role, that employee is never being paid to take pleasure in making the lives of their subordinates miserable. The trust of the public in its government, which is essential in a democracy, is seriously harmed by any County employee who behaves in a manner which undeniably shows that they have forgotten the very basic tenet of a public servant: that they are public servants who work for the public, are compensated by public dollars, and must be good stewards of the public funds and resources. County employees are some of those resources whose jobs are made possible through public funds. When a County employee uses, abuses, and mistreats other County employees, as the Respondent did, the trust of the public in that government is not only undermined, it may be irretrievably shattered. It is unfortunate, indeed, that the Respondent, as a County employee in a position of trust, was permitted to commit improper acts and violations of the Ethics Code for so long.

New Castle County Ethics Code Section 2.04.104.D states, in pertinent part, that "a recommendation for prohibition on future appointment or employment, as well as a recommendation for length of suspension, shall be the appropriate sanction when the Commission finds a serious or repeated violation of this Division...by a non-elected official or County employee." Additionally, New Castle County Ethics Code Section 2.04.104.E states, in pertinent part, that "any non-elected person determined by the Commission to (1) have committed an intentional or knowing serious or repeated violation of this Division...and for whom a recommendation of prohibition on future appointment or employment has been made; ...shall not be appointed or employed in New Castle County government for a period of ten (10) years subsequent to that recommendation... After the expiration of such ten (10) year period, the County shall take such recommendation...into account in determining whether or not to hire the person." In consideration of the seriousness of the Ethics Code violations committed by the

Respondent, and the knowing and deliberate repetition of the violations, the Commission recommends that the Respondent is never re-appointed or re-employed by the County.

The Commission is authorized by Section 2.04.103.F as follows: "An order imposing the costs of investigation against a person found in violation of this Chapter if a recommendation of removal from office or employment or a recommendation of prohibition on future appointment or employment is made, or an order against the complainant if, after investigation, a complaint is found to be frivolous. The Commission or the County shall have standing to apply to a court of competent jurisdiction to seek enforcement of an order requiring such restitution. This restitution requirement shall be in addition to other penalties provided for in this Chapter." In this Final Order, the Commission has recommended that the Respondent not ever be rehired by the County. The Commission finds notable that the Respondent has cooperated with the Commission in connection with matters before the Commission notwithstanding the fact that the Respondent was separated from service with the County. The Commission is also aware that the Respondent continued to cooperate with the Commission despite serious difficult events in his life. The Commission finds, therefore, that in consideration of the continued cooperation of the Respondent and the equities and circumstances presented, the Commission refrains from ordering the imposition against the Respondent of financial penalties.

BY AND FOR THE NEW CASTLE COUNTY ETHICS COMMISSION

ON THIS 21st DAY OF MAY 2019

Paula Jenkins-Massie, Chairperson
New Castle County Ethics Commission

Commission decision: Unanimous. (Paula Jenkins-Massie; Robert Ralston; Sally Jensen; and Charles Toliver.)