



STATE ETHICS COMMISSION

Meeting Minutes

Executive Conference Room, UNM Science and Technology Park
851 University Dr. SE, Albuquerque, NM 87106
February 7, 2020, 9:00 A.M. to 12:00 P.M

1. CALL TO ORDER AND ROLL CALL 9:00 AM

The meeting was called to order by Chair Lang. The roll was called. The following Commissioners were present:

Hon. William Lang
Stuart Bluestone
Hon. Garrey Carruthers
Dr. Judy Villanueva
Frances Williams
Jeffrey Baker

Commissioners not Present:

Ron Solimon

No Commissioners arrived after roll call.

2. APPROVAL OF AGENDA – 9:00 AM

Chair Lang sought a motion to approve the agenda.

Commissioner Villanueva moved to approve the agenda.

Commissioner Bluestone seconded.

Seeing no objections, the motion passed unanimously.

3. APPROVAL OF DECEMBER 4th, 2019 MEETING MINUTES – 9:03 AM

Chair Lang sought a motion to approve the Dec 4th minutes.

Commissioner Villanueva moved to approve the minutes following one correction to the date.

Commissioner Bluestone seconded.

Seeing no objections, the motion passed unanimously.

1. OPERATIONS UPDATE – 9:05 AM

The Commission's Executive Director Jeremy Farris provided an update on the Commission's operations.

- **Number of complaints submitted to the Commission:**
 - While no notarized complaints on Commission's official complaint form had been filed, the Commission had received several documented allegations of misconduct for which the Commission lacks jurisdiction.
 - The paucity of official complaints is likely the result of jurisdictional constraints, the Commission having jurisdiction for fewer than six weeks, and the statutory requirement that complaints be notarized.
 - Commission staff expects to receive referred complaints from the Attorney General's office and the Secretary of State soon.
- **Progress on website and search engine optimization:**
 - The website currently ranks at the top of search results on the first page of Google when searched using the eight most-likely phrases.
- **Work on the Commission's online docketing system:**
 - The Commission has a contract with an IT contractor, Real Time Solutions.
 - The first phase of a docketing system is built and is in the testing phase.
 - Commission staff are engaged in discussions for a second contract for a filing and docketing system that includes necessary features, including filing notifications, administrative review, and docket management functionality.
 - The Commission needs supplemental FY20 funding to continue development.
- **Progress on retention of hearing officers:**
 - Justice Chavez is on contract with the Commission (\$15K contract with funds set aside within agency budget but not dispersed).
 - Judge Torgerson has an agreement with the Commission to provide hearing officer services on a pro bono basis, and supplemental funding is required for a contract.
 - Commission staff have executed a Memorandum of Understanding (MOU) with the New Mexico Administrative Hearings Office to provide hearing officers for Commission proceedings at the rate of \$100/hour.
- **Appointment of Judge Jim T. Martin as the designated judge for Commission subpoena petitions.**
 - Judge Martin was appointed by Justice Nakamura to be the Commission's designated subpoena judge on January 3, 2020.
 - Director Farris and General Counsel Walker Boyd traveled to Las Cruces and met with Judge Martin to discuss the procedure for opening sealed cases and petitioning for subpoenas. The Third Judicial District Court will work with the Judicial Information Division to establish a process for opening sealed cases for the Commission's subpoena requests.

- Mr. Boyd has sent a draft petition to Judge Martin which would serve as the foundation for requesting future petitions and Judge Martin has indicated he is satisfied with the proposed template.
- **Partnership with the Office of the Attorney General (OAG) regarding ethics training and complaint referrals:**
 - OAG reached out to the Commission to partner on providing training regarding the Governmental Conduct Act.
 - OAG is revising its Governmental Conduct Act (“GCA”) training materials.
 - OAG is developing a process for sorting and referring complaints to the Commission.
- **Recruiting and hiring new staff:**
 - Director Farris explained requirements for recruiting and hiring classified employees.
 - Director Farris is attempting to hire an Administrative/Operations Manager I position (AO I).
 - Director Farris is working with the State Personnel Office and the Department of Finance and Administration to move this process forward.
 - Director Farris intends to hire for an administrative and finance director staff position by the next Commission meeting.
- **Other ethics organizations seeking advice from Commission:**
 - An organization called Reform for Illinois is in the process of developing legislation to reform the Illinois Legislative Ethics Commission and reached out to Commission staff to learn about the best practices and structure of the Commission.

Commissioner Baker asked whether Justice Chavez has been paid a 15k retainer.

Director Farris said that Justice Chavez is on contract and that the money is set aside within our budget but has not yet been disbursed. Instead, Justice Chavez will bill against that contracted amount at an hourly rate of \$200 when he is called upon to serve as a hearing officer in a higher profile Commission proceeding.

Commissioner Baker asked whether the Administrative Hearings Office requires that its hearing officers be licensed attorneys.

Director Farris said that he is uncertain as a matter of law but noted that several AHO hearing officers are attorneys. Director Farris also noted that other agencies have entered MOUs with the AHO for hearing officers for cases arising under statutes for which the Commission currently has jurisdiction.

Commissioner Bluestone asked how the funding request for FY20 was calculated and whether it accounted for costs such as hearing officer contracts.

Director Farris said that the FY20 supplemental amount was calculated by reviewing all projected costs from now until the end of June 2020, including costs associated with hearing officers and other types of contracts.

Commissioner Bluestone asked whether Commission staff has considered entering into a Joint Powers Agreement (JPA) with OAG regarding the referral of complaints.

Director Farris said that, since the autumn of 2019, a JPA has not been discussed with the OAG's staff, and that in their first meeting, OAG staff was not inclined to enter a JPA with the Commission. Further, Director Farris said that the kinds of complaints the OAG would be forwarding are not likely to be complaints with a complainant and a respondent, but rather allegations of misconduct that would require investigation.

Director Farris noted that he met with John Boller from the Legislative Council Service and that the Legislative Council has discretion whether to engage the Commission for investigations related to ethics complaints filed with the Legislative Council or Legislative Ethics Committee.

Commissioner Williams asked about local jurisdiction, specifically how the Commission staff are handling inquiries concerning local public bodies.

Director Farris said that when the Commission staff receive inquiries about local issues, the staff clarify that the Commission lacks jurisdiction for local public bodies. If a local ethics body exists in the jurisdiction of the person inquiring, then the staff provide that information.

Commissioner Williams asked about the contract with Justice Chavez, specifically whether the Commission needs additional funds for hearing-officer contracts.

Director Farris said that the Commission needs additional funding for administrative cases, and that the budget requests for FY20 and FY21 reflect this need.

Commissioner Carruthers asked about the notarization constraint on complaints and requested that the Commission research other ethics commissions to determine how restrictive they are in comparison, then use that research to inform the Commission's annual report to the legislature. Additionally, he stated that the Commission should consider including public officials at public universities and county-level officials to the Commission's jurisdiction.

Commissioner Carruthers requested that the staff recruit the help of individuals removed from the immediate development team when testing the docket application to ensure that it is user-friendly to individuals who are less tech-savvy.

Commissioner Villanueva commended progress on the website and suggested the Commission staff direct energies to compete for additional search terms: NM corruption, NM anti-corruption, voter fraud, election fraud, and campaign finance violations.

Commissioner Villanueva asked whether the agency is currently short-staffed.

Director Farris said that the agency is currently short-staffed and that the Commission's goal is to expand to six employees by the end of FY20.

Commissioner Villanueva asked about compensation and benefits for the AO I position.

Director Farris said that the position is currently projected at pay-band 80 in the classified service compensation table and noted that he would follow up regarding the details.

Commissioner Villanueva requested a job description for the AO I position.

Director Farris noted the job description is provided by the State Personnel Office.

Chair Lang echoed Commissioner Carruthers's comments regarding the reasons to omit the notarization requirement. Further, regarding local jurisdiction, Chair Lang argued that it would require a substantial increase in staff size to expand the Commission's jurisdiction to include local public bodies. Chair Lang also noted that several counties already have free-standing ethics commissions, which should inform the Commission's recommendations regarding jurisdiction.

Commissioner Carruthers indicated that many small counties do not have ethics commissions and said that the Commission should review localities to determine where there is a need for ethics oversight. Further, he insisted that the Commission should research the expansion of jurisdiction to local public bodies this year.

Commissioner Williams noted that many counties do not have any enforcement powers and that it might be beneficial for the Commission to take on jurisdiction for those counties which do not have institutions to address ethics issues.

2. LEGISLATIVE UPDATE – 9:39

Director Farris provided an update on legislation relevant to the Commission's operations.

- Under HB2, which was recently passed by the house, the Commission receives a \$985,000 budget for FY21 and a \$200,000 supplemental appropriation for FY20.
- The Legislative Finance Committee ("LFC") budget recommendation diverges from the Commission's request.
- Recent House Appropriations and Finance Committee ("HAFC") developments:
 - HAFC adopted the LFC FY21 budget and FY20 supplemental recommendations in subcommittee hearings and working group on special and supplemental appropriations.
 - Commission staff worked with the Department of Finance and Administration (DFA) and the HAFC to achieve a supplemental appropriation.
 - Commission staff have continued to advocate for the agency's request for its FY21 operating budget and FY20 supplemental appropriation.
 - Currently, the appropriations to the Commission in HB2 are at \$200,000 in FY20 supplemental funds (section 6) and \$985,600 for the FY21 operation budget (section 4).
 - House Bill 2 is currently with the Senate Finance Committee, where there is an opportunity to adjust the appropriations amounts.
 - The Commission received substantial support from advocacy organizations throughout these developments and continues to receive media coverage regarding the Commission's funding.
- HB2 is currently in the Senate Finance Committee.

- The Commission has prepared a letter in support of the Commission's budget requests to be signed by Commissioners.

Commissioner Williams noted that the draft letter does not seem passionate enough and argued that it should mention the 25+ year effort behind the creation of the Ethics Commission and the 75% approval on the ballot to enact the constitutional amendment creating the Commission.

Director Farris said that the Commission's letter was written to represent the entire Commission as one body, and that individual Commissioners may write additional letters of support for the Commission's budget requests.

Commissioner Bluestone asked that the letter be sent to the Governor, Senator Papen and Senator Wirth.

Director Farris agreed and said that Commission staff would ensure the Governor and Senators Papen and Wirth received a copy of the letter.

Commissioner Villanueva inquired about why Director Farris was surprised at the LFC's recommendation for the Commission's FY20 supplemental appropriation and FY21 operating budget.

Director Farris responded that his surprise was simply a matter of recognizing the inconsistency between the reactions to his and Commissioner Carruthers's presentation to the LFC and the low recommendation.

- **Senate Joint Resolution 7**

Director Farris provided an update on the status of SJR 7. County officials would likely be removed from the bill via friendly amendment in committee.

Commissioner Bluestone asked about a provision in SJR 7 that would repeal the prohibition of legislator compensation in the New Mexico Constitution. Commissioner Bluestone noted that Article 4, Section 10 should be amended rather than repealing section 10 entirely. Further, he noted that the Commission should not take a position on the merits of the bill.

Commissioner Williams opined that the Commission would need to hire additional staff in order to review and set the salaries of elected state officials and judges. Commissioner Williams additionally inquired about the reasons behind the proposed friendly amendment to SJR 7 that would remove the Commission's jurisdiction to review and set the salary of county officials.

Commissioner Carruthers noted his longstanding views that legislators should be paid and that the pay for the Governor is inadequate. He stated that he would not oppose SJR 7, as it would provide an avenue for legislators to be compensated. Further, he noted that it would not be difficult for the Commission and its staff to implement the legislation if enacted.

Commissioner Bluestone concurred and reiterated that the Commission should stay neutral on the matter of the bill's merits.

Commissioner Williams opined that the lack of pay for legislators could cause some legislators to misuse the public trust.

Chair Lang expressed concern that SJR 7, should it pass, would create a potential conflict of interest in that the Commission would rely on the legislature for funding and be responsible for setting legislators' salaries.

Director Farris responded that the Commission's authority to set legislative salaries might deter legislative attempts to defund the Commission.

- **Additional Bills**

The staff has provided Fiscal Impact Reports on seven bills that relate to the Commission's jurisdiction.

- HB97
- HB430
- SB53
- SB107
- SB267
- SJR6
- SJR7

- **Report from State Auditor Colón**

- Director Farris informed the Commission that State Auditor Colón sent Director Farris a report which the Office of the State Auditor conducted on the "secret settlements" executed and paid during FY 15, FY 18, and FY 19.
- In a February 7, 2020 letter, Director Farris informed State Auditor Colón that the Commission does not have jurisdiction over any of the conduct described in the report.

Commissioner Baker asked if the State Auditor's report is public and requested that a copy be sent to the Commissioners.

Commissioner Williams inquired about the settlements covered in the State Auditor's report, specifically why these settlements were allowed to have confidentiality provisions.

Director Farris responded that the settlements in question had confidentiality provisions that exceeded the statutory limits for confidentiality provisions.

3. ADVISORY OPINION 2020-01 – 10:14 AM

Director Farris presented Advisory Opinion 2020-01, the Commission's first advisory opinion, to the Commission for approval. He reviewed the question presented, the answer provided, and the opinion's analysis supporting the answer.

Commissioner Baker asked about the potential for requestors to repeatedly file requests for increasingly specific advisory opinions.

Director Farris replied that individuals might request multiple advisory opinions and, with respect to repeat requests, the Commission has the discretion to decline to provide advisory opinions.

Commissioner Williams asked about the opinion's analysis, asking why there was a section that noted the question was not specific enough to provide an answer. Commissioner Williams also asked why the opinion did not refer to the Hatch Act.

Director Farris explained that the advisory opinion did provide answers to all but one part of the request, which related to whether the conduct described would violate any code of conduct adopted pursuant to the provisions of any of the statutes within the Commission's jurisdiction. This request was too broad, and the staff would have had to review every agency code of conduct in order to provide an answer. Further, Director Farris, Commissioner Carruthers, and Chair Lang responded that the request for an advisory opinion did not ask the Commission to opine on the Hatch Act, which is not in the Commission's jurisdiction.

Commissioner Carruthers asked Director Farris to deliver the advisory opinion to the requestor in-person and explain how the Commission reached its conclusions.

Commissioner Villanueva asked about the structure of the advisory opinion and whether requestors may use the process to craft additional subsequent requests for advisory opinions, which may change the outcome of the Commission's conclusions.

Director Farris responded that the Commission will always review the question according to the specificity presented in the request.

Mr. Boyd followed up on Director Farris's statement, noting that there may be individuals who use the advisory opinion process to bolster a subsequent complaint, so the Commission needs to be careful about making generalized statements that something does or does not violate the law in all circumstances.

Chair Lang sought a motion to approve the resolution.

Commissioner Carruthers moved to approve the resolution.

Commissioner Villanueva seconded.

Seeing no objections, the motion passed unanimously.

4. RESOLUTION No. 2. – 10:43 AM

Director Farris presented Resolution No. 2, which authorizes the Commission to hire special counsel in the event that a complainant files a complaint against a Commissioner, the Executive Director, or the General Counsel. In that event, the special counsel would take on the responsibilities normally assigned to the Executive Director and the General Counsel for that case.

Chair Lang sought a motion to approve the resolution.

Commissioner Villanueva moved to approve the resolution.

Commissioner Carruthers Seconded.

Seeing no objections, the motion passed unanimously.

BREAK 10:45

RECONVENE 10:56

5. RESOLUTION No. 3 COMMISSIONER FINANCIAL DISCLOSURES – 10:57 AM

Director Farris presented Resolution No. 3, which provides that the Commissioners will voluntarily file financial disclosure statements with the Secretary of State. Commissioners are currently not required to file financial disclosures as they are not subject to confirmation by the State Senate. Resolution No. 3 is needful because the Commission will oversee complaints regarding alleged violations of the Financial Disclosure Act.

Commissioner Carruthers asked about the Financial Disclosure form.

Director Farris said that the Secretary of State provides the form.

Commissioner Baker asked to look at the SOS financial disclosure form before voting on the resolution.

Commissioner Williams mentioned that she had already filed a financial disclosure.

Chair Lang sought a motion to approve the resolution.

Commissioner Bluestone moved to approve the resolution.

Commissioner Villanueva seconded.

Seeing no objections, the motion passed unanimously.

6. PROPOSED CODE OF ETHICS FOR STATE AGENCIES – 11:05 AM

The State Ethics Commission Act mandates the Commission to draft and issue a proposed code of ethics to state agencies and institutions. Director Farris reviewed two proposed timelines for the project to draft and disseminate a model code of ethics and recommended the second, later-occurring timeline.

Commissioner Bluestone inquired about the potential costs of the project.

Director Farris responded that the staff anticipates at least one professional services contract for an attorney to research and draft the proposed code of ethics. There would also be costs associated with promulgating the code of ethics through administrative rulemaking. Director Farris estimated the project would cost \$30,000 to \$40,000.

Commissioner Williams asked whether a request for proposal (RFP) would be required for the project.

Director Farris responded that the Commission would not require an RFP for the project as professional service contract costs will not exceed \$60,000.

Commissioner Williams inquired about the nature of how the model code of ethics would be adopted by the various state agencies.

Director Farris said that state agencies must file their codes with the State Ethics Commission but that the Commission does not have approval power. Further, Director Farris described how the rulemaking process could be used to encourage state agencies to adopt the Commission's proposed code.

Chair Lang sought a motion to approve the second timeline.

Commissioner Bluestone motioned in favor of timeline two for the project.

Commissioner Carruthers seconded the motion,
Seeing no objections, the motion passed unanimously.

7. MOTION TO ENTER EXECUTIVE SESSION – 11:28 AM

Chair Lang sought a motion to move into executive session in order to discuss the next agenda item.

Commissioner Bluestone moved to go into executive session.

Commissioner Baker seconded the motion.

Seeing no objections, the motion passed unanimously.

EXECUTIVE SESSION

11:30 AM

8. COMMISSION INITIATED COMPLAINTS – 11:30 AM

The Commission and its attorneys discussed Commission-initiated complaints.

9. AMICUS CURIAE BRIEF IN *STATE V. PADILLA* – 12:00 PM

The Commission and its attorneys discussed the filing of an amicus curiae brief in *State v. Padilla*.

COMMISSION RETURNS TO OPEN SESSION

12:05 PM

9. (A) VOTE ON AMICUS BRIEF – 12:07 AM (Action taken based on agenda item 9 discussed during executive session).

Chair Lang sought a motion to approve the filing of an *amicus curiae* brief in *State v. Padilla*.

Commissioner Baker moved to approve the filing of an amicus brief.

Commissioner Villanueva seconded.

Seeing no objections, the motion passed unanimously.

10. COMMISSION CALENDAR – 12:10

Commissioner Bluestone discussed the Commission’s tentative meeting schedule and noted he would be unable to attend the meeting tentatively scheduled for August 7, 2020.

Chair Lang noted that it may be difficult to project availability past two months in advance and suggested that the Commissioners should approve the next meeting only.

Commissioner Williams commented that the Commission ought to meet more often, such as once a month.

Director Farris noted that absent FY20 supplemental funding, the current budget only accounted for costs of the Commission meetings every other month.

Commissioner Baker noted that the Commission’s current meeting schedule is sufficient for its current workload and voiced his general preference for shorter, less frequent, but more productive meetings.

Chair Lang concluded the Commissioners will continue meeting every other month until decided otherwise.

The Commissioners agreed to meet next on Friday, April 3rd.

11. PUBLIC COMMENT

Comments from Pete Dinelli:

- Updated the Commission on two articles he wrote about the Commission on his blog. Mr. Dinelli shared those articles with the Commission.
- Argued that the Commission should oppose SJR 7

Comments from Kathleen Sabo from NM Ethics Watch:

- Thanked the Commission for its work
- Updated that NM Ethics Watch has been forwarding inquiries from the public to the Commission.
- Noted that most tips and complaints they hear about occur at the local level.
- Noted advocacy work for the Commission’s FY20 and FY21 appropriations requests.
- Stated that SJR 7 might create the impression of impropriety if the Commission, which oversees complaints against legislators, is given the authority to review and set salaries for legislators.

Comments from Heather Ferguson from Common Cause NM:

- Noted that there is merit to the Commission having a role in setting salaries.
- Argued that an independent funding mechanism for the Commission, such as formulaic distributions from the Tobacco Settlement Fund, could remedy the Commission’s dependence on yearly legislative appropriations, thereby assuaging any appearance of

impropriety that might be created by the Commission's setting salaries, should SJR 7 become law.

NO FURTHER PUBLIC COMMENTS

Chair Lang sought a motion to adjourn

Commissioner Carruthers motioned to adjourn

Commissioner Baker seconded.

Seeing no objections, the motion passed unanimously.

12. ADJOURNED – 12:40 PM