



STATE ETHICS COMMISSION

Minutes of the State Ethics Commission's April 3, 2020 Meeting Conducted Virtually View Recording [Here](#)

The meeting began with introductions from public attendees.

CALL TO ORDER AND ROLL CALL:

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

Jeffrey Baker, Commissioner
Stuart Bluestone, Commissioner
Garrey Carruthers, Commissioner
Ronald Solimon, Commissioner
Judy Villanueva, Commissioner
Frances Williams, Commissioner
William Lang, Chair

APPROVAL OF AGENDA:

Chair Lang sought a motion to approve the agenda. Commissioner Williams moved to approve the agenda. Commissioner Baker seconded. Chair Lang conducted the vote by roll call. All Commissioners voted in the affirmative, and the agenda was approved unanimously.

APPROVAL OF FEBRUARY 7, 2020 COMMISSION MEETING MINUTES:

Chair Lang sought a motion to approve the meeting minutes. Commissioner Carruthers moved to approve the minutes. Commissioner Baker seconded. Chair Lang conducted the vote by roll call. Commissioner Solimon abstained based on his absence from the previous meeting. All other Commissioners voted in the affirmative, and the minutes were approved unanimously.

1. OPERATIONAL UPDATES:

Director Jeremy Farris provided updates on the following matters:

- **Operational changes made by the staff in response to the COVID-19 pandemic.**
 - o All staff have transitioned to teleworking.
 - o All Commission duties and obligations continue to be met as usual.

- **New memorandum on the legal basis for virtual Commission meetings consistent with the Open Meetings Act.**
 - o The memorandum provides a legal basis for the Commission to conduct meetings via Zoom and has been posted on the Commission website.
- **New Standing Orders.**

Director Farris noted he had issued two standing orders under 1.8.3.8 NMAC-N, 1/1/2020.

- Standing order 1 directs parties to administrative cases to appear before the Commission virtually through a telecommunications platform.
 - Standing order 2 allows parties to administrative cases up to 21-day extensions for procedural deadlines upon request.
- ***State v. Padilla***
 - o The Commission filed the motion for leave to participate as amicus curiae with the Court of Appeals in *State v. Padilla*, and the Court of Appeals granted the Commission's motion and accepted the Commission's amicus brief.
- **First Quarterly Report Published.**
 - o The staff published the Commission's first quarterly report (January-March 2020) on the Commission's website.
 - Six complaints were filed with the Commission. Two have been referred, four are currently under review for jurisdiction.
 - Three complaints present complaints under the Governmental Conduct Act. One complaint raises an Anti-Donation clause claim. The remaining complaints raise claims under laws that are not within the Commission's jurisdiction.
- **Rulemakings and the Next Commission Meeting.**
 - o The Commission staff are drafting rules to be issued for public comment at the next Commission meeting.
 - The first rulemaking effort involves the proposed code of ethics.
 - Paul Biderman, a contractor with the Commission, provided an update on the work related to the proposed code of ethics.
 - Based on the approved timeline, the Commission will receive from staff a complete draft of a proposed code in middle May, issue the code for notice and public comment at the next Commission meeting, and conduct a rulemaking hearing in August.
 - The second rulemaking amends the Commission's administrative rule, NMAC 1.8.1, regarding Commission meetings.

- The third rulemaking amends NMAC 1.8.1 to address advisory opinions and to create a process for Commission staff to issue informal expedited advisory opinions. The Commission addressed this item later in the meeting.
- **Commission Budget and Hiring.**
 - The State Budget Division allotted the Commission's FY20 \$200,000 supplemental appropriation, and the Commission now has the authority to spend those funds.
 - The staff are working to secure several professional services contracts and purchase additional furniture and IT infrastructure.
 - The State Personnel Office has created the Finance and Administration Director job posting and the application is accessible in several locations and websites.
 - The Commission will engage Annie Swift and Lane Towery as contractors for their summer internships, rather than as exempt hires.
 - The Commission is taking steps to move into a larger adjacent office, Suite 215, to accommodate new staff members in FY21.

2. **ADVISORY OPINION 2020-002.**

Prior to the overview of Advisory Opinion 2020-002, Commissioner Bluestone publicly noted his recusal for the purposes of avoiding a potential conflict of interest given his association with the matter. General Counsel Walker Boyd provided an overview of Advisory Opinion 2020-002.

- Advisory Opinion 2020-002 responds to a question regarding whether, under the Governmental Conduct Act and the Rules of Professional Conduct, a former state agency attorney is prohibited by the Governmental Conduct Act or the Rules of Professional Conduct for Attorneys from representing Nuclear Watch New Mexico on a matter that is the subject of litigation that the attorney previously worked on while at the state agency.
- The advisory opinion concludes that the conduct would violate section 10-16-8(B) of the Governmental Conduct Act, which prohibits the attorney from representing Nuclear Watch in the federal district court litigation. The advisory opinion did not address whether the Rules of Professional Conduct were violated, because the Commission lacks jurisdiction for those rules.
- Chair Lang sought a motion to approve Advisory Opinion 2020-002 as written. Commissioner Baker moved to approve the advisory opinion as written. Commissioner Williams seconded. Chair Lang conducted the vote by roll call. All Commissioners voted in the affirmative, and the advisory opinion was approved unanimously.

3. **RESOLUTION NO. 4.**

Director Farris provided an overview of Resolution No. 4.

- Resolution No. 4 outlines the Commission's framework and procedures for Commission-initiated state court actions that result from any source other than a formal administrative complaint.
- The resolution clarifies the Commission's legal authority to initiate civil litigation actions; the framework for the Commission to conduct assessments and investigations of potential violations

of ethics laws; and how the Commission will use assessments and investigations to collect evidence necessary to support a civil action in state court.

- Chair Lang sought a motion to approve Resolution No. 4 as written. Commissioner Carruthers moved to approve resolution as written. Commissioner Solimon seconded. Chair Lang conducted the vote by roll call. All Commissioners voted in the affirmative, and the resolution was approved unanimously.

4. RULEMAKING ON EXPEDITED INFORMAL ADVISORY OPINIONS

Mr. Boyd provided a review of the effort to create an administrative rule for expedited informal advice.

- The rulemaking would amend the Commission's rule in NMAC 1.8.1 and allow the General Counsel to provide expedited informal advice to requestors within a shorter time frame than the formal advisory opinion process, which is based on Commission meetings and has a 60-day stator limit.
 - o The rule would allow the General Counsel to provide advice to requestors within a few days, thereby being more useful on time-sensitive issues.
 - o Commissioner Bluestone requested that the final draft of the rule specify a distinction between the formal advisory opinion process and the proposed expedited advice process and that the nomenclature reflect the distinction.
 - o Staff will present another draft of the rule to the Commission at the next scheduled meeting.

5. RESEARCH ON COMPLAINT REQUIREMENTS OF OTHER ETHICS COMMISSIONS

Director of Communications Sonny Haquani provided a review of the research he conducted and compiled at the request of Commissioner Carruthers.

- The research listed the complaint-initiation requirements of all other state ethics commissions and gave insight on which commissions require notarization of administrative complaints as well as how other commissions address bad-faith complaints.

6. EXECUTIVE SESSION

Chair Lang sought a motion to enter executive session. Commissioner Williams moved to enter into executive session to discuss complaints filed with the Commission. Commissioner Baker seconded. Chair Lang conducted the vote by roll call. All Commissioners voted in the affirmative and the Commission entered into executive session.

- The Commission entered executive session at 11:30 AM. The Commission resumed public session at 11:58 AM. The matters discussed in the closed executive session were limited to those specified in the motion for closure.

7. ACTIONS ON ADMINISTRATIVE COMPLAINTS

- The Commission resumed action on Administrative Complaint 2020-001.

- Chair Lang sought a motion to approve the order of dismissal for complaint 2020-001. Commissioner Carruthers moved to approve the order to dismiss complaint 2020-001. Commissioner Bluestone seconded. Chair Lang conducted the vote by roll call. All Commissioners voted in the affirmative, and the order was approved.

8. SCHEDULING THE NEXT COMMISSION MEETING

- The Commissioners agreed to continue meeting bi-monthly and meet next on June 5th.

9. PUBLIC COMMENT

- State Auditor Brian Colón thanked the Commission for its work.
- Tony Ortiz echoed the sentiment of Auditor Colón and requested that NM Ethics Watch present its recent findings and recommendations for statutory changes to ethics laws at a future meeting.

ADJOURNMENT

- Commissioner Carruthers moved to adjourn.
- The Commission adjourned at 12:15 PM