



STATE ETHICS COMMISSION

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Fiscal Year 2021 & 2022 STRATEGIC PLAN

STATE OF NEW MEXICO



EXECUTIVE DIRECTOR
Jeremy D. Farris

A Message From the Executive Director

I am pleased to present the Strategic Plan for the State Ethics Commission for fiscal years 2021 and 2022. Pursuant to the state Constitution and several statutes, the State Ethics Commission promotes the integrity of government through the interpretation, enforcement, and improvement of New Mexico's governmental conduct, procurement, and disclosure laws. Having come into existence on July 1, 2019, this is the Commission's first Strategic Plan. The newly-created Commission remains in its initial phase: establishing the Commissioners; hiring an initial staff; and developing and implementing the processes by which the Commission will adjudicate ethics complaints, investigate and enforce New Mexico's ethics laws, and provide guidance and training to government officials and employees. In this Strategic Plan, the Commission clarifies and develops those goals, striving to allocate its limited resources in ways that will best promote and ensure the public's trust.



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Mission Statement

The State Ethics Commission is an independent agency committed to preventing and remedying public corruption and building trust in state government. The Commission promotes the integrity of government through the interpretation, enforcement, and improvement of New Mexico's governmental conduct, procurement, and disclosure laws.

Agency Overview

Legal foundation and creation

The State Ethics Commission is an independent agency created by Article V, Section 17 of the New Mexico Constitution and enabled by the State Ethics Commission Act. The Commission's jurisdiction and enforcement authority began on January 1, 2020.

Structure

The Commission is bipartisan, comprised of seven Commissioners, and chaired by a retired judge. The State Ethics Commission Act sets forth both the qualifications to serve as a Commissioner and a procedure for appointing commissioners that ensures an independent commission: The Governor appoints the Chair, who must be a retired judge. The Speaker of the House, the House Minority Floor Leader, the President Pro Tempore of the Senate, and the Senate Minority leader each appoint a Commissioner. The legislatively-appointed Commissioners appoint two other Commissioners.

No more than three Commissioners may be members of the same political party. Except for the initial Commissioners, the Commissioners are appointed for staggered terms of four years. No Commissioner may serve more than two consecutive four-year terms. Commissioners are removable for cause only, through a removal proceeding before the New Mexico Supreme Court. The current Commissioners are listed at Appendix I, *infra*.

The Commission hires an Executive Director, who in turn hires a General Counsel. Both are statutorily-created and term-limited positions. The current Executive Director is Jeremy Farris. The current General Counsel is Walker Boyd.

Agency powers

The Commission has three core responsibilities:

- (1) to adjudicate administrative complaints alleging violations of the ethics laws;
- (2) investigate and prosecute violations of the ethics laws in state court; and
- (3) educate public officers, public employees, and the public about government ethics laws.

First, under its adjudicatory power, the Commission may adjudicate complaints against state government officials, employees, candidates, lobbyists and contractors. These administrative complaints must allege violations of the Campaign Reporting Act, the Financial Disclosure Act, the Gift Act, the Lobbyist Regulation Act, the Voter Action Act, the Governmental Conduct Act, the Procurement Code, the State Ethics Commission Act, or Article IX, Section 14 of the New Mexico Constitution, commonly known as the “Anti-Donation Clause.” The Commission may also issue advisory opinions upon appropriate request and provide a public database for those opinions.

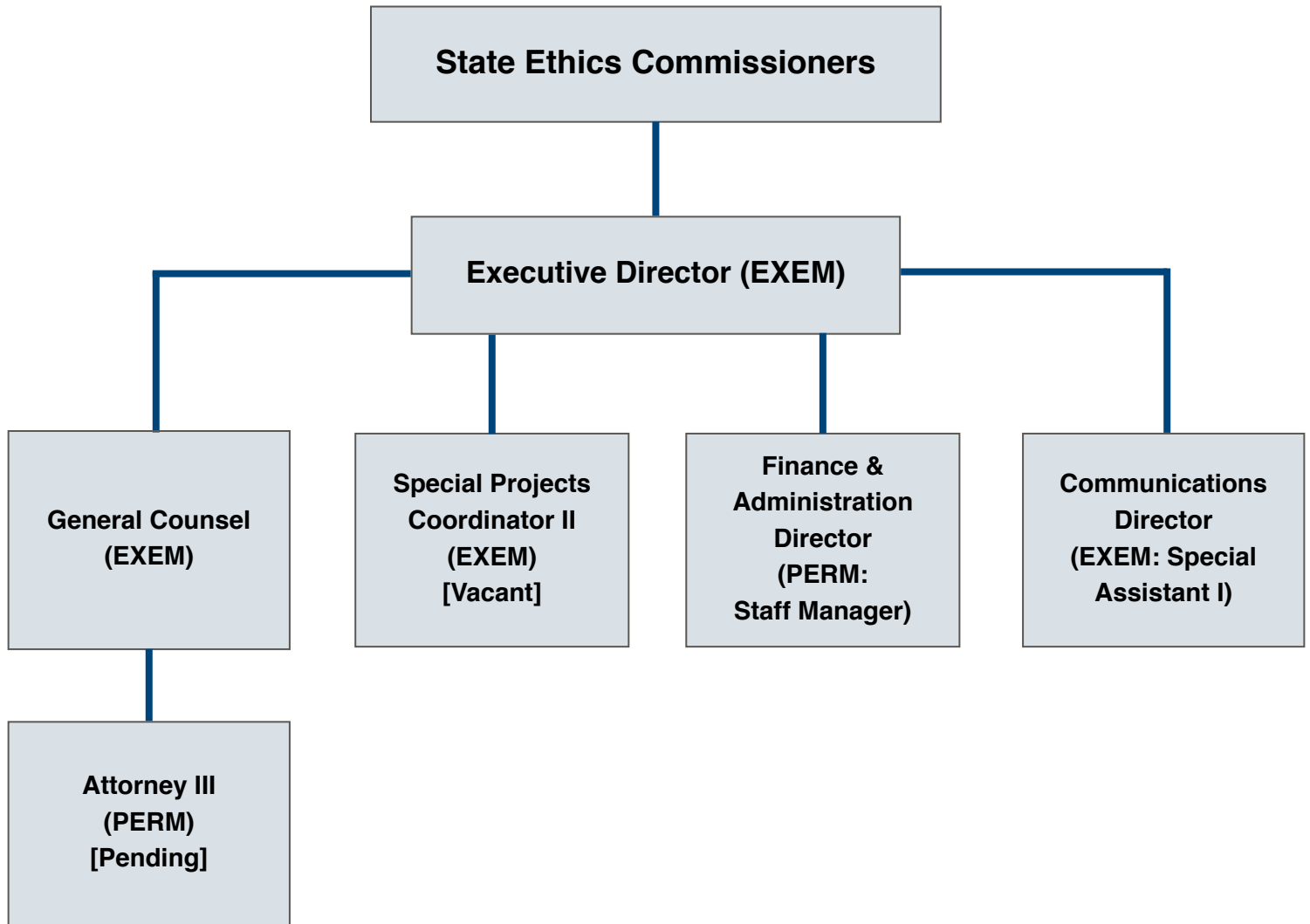
Second, under its executive power, the Commission may investigate and initiate civil enforcement actions in state court to remedy violations of the Governmental Conduct Act, the Procurement Code, and the Financial Disclosure Act. The Commission may also initiate administrative proceedings and petition state district courts to issue subpoenas.

Third, the Commission educates public officials, employees, and members of the public about ethical government. The Commission fulfills this responsibility by answering requests for advice through either formal or informal advisory opinions; and by offering trainings and guidance materials for public officials and employees about their obligations under state ethics laws.

The Commission also has several responsibilities that flow from the core functions described above. The Commission periodically issues and amends rules governing administrative hearing procedures as well as a code of ethics for state employees. The Commission also provides the Legislature and the Governor with annual reports on its activities and potential amendments to the laws under the Commission’s jurisdiction.

Organizational Structure

Agency Organizational Chart:



FY21 Objectives and Strategic Actions

The first five Commissioners were appointed on July 1, 2019, immediately after the State Ethics Commission Act became effective. Consequently, the Commission did not have the opportunity to present its strategic plan for Fiscal Year 2021. After the budget reductions accompanying the 2020 Special Session, the Legislature has appropriated \$946,200 to the Commission for expenditure in FY21. With that amount, the Commission has budget for six full time employees, a contracts budget of \$175,00 (to fund hearing officers, audit services, IT contractor services, attorney services etc.), and an other operating costs of \$102,100 (e.g., lease, equipment, interagency fees, commissioner per diem and mileage reimbursements). The Commission now provides an overview of its FY21 goals and priorities.

ADMINISTRATIVE ADJUDICATION

Objectives

Fair and efficient resolution of ethics complaints is essential to the Commission's mission. The Commission investigates and adjudicates administrative complaints alleging violations of New Mexico's governmental conduct, procurement, and disclosure laws. This power involves reviewing complaints for filing requirements, jurisdiction, and probable cause; conducting hearings and appeals; and issuing remedies. To these ends, the Commission will in FY21:

Strategic Actions (FY21)

- Complete and make available to the public a web-based case filing and docketing system by August 30, 2020 (<http://proceedings.sec.state.nm.us>).
- Develop and publish on the Commission's website (<http://sec.state.nm.us>) step-by-step video tutorials that explain how to use the Commission's web-based case filing and docketing system.
- Contract for hearing-officer services with a retired Supreme Court Justice or retired federal magistrate judge, as well as with the Administrative Hearings Office.
- Improve and further streamline the adjudication of administrative complaints by amending 1.8.3 NMAC via rulemaking.
- Adjudicate administrative complaints filed with or referred to the Commission, such that all complaints will be disposed, set for a hearing, or referred within 90 days of the date of filing.

ENFORCEMENT

Objectives

An effective and responsive enforcement regime is essential to deterring public corruption. The Commission investigates and, when necessary and proper, initiates civil enforcement actions in state district court to remedy violations of the Governmental Conduct Act, the Procurement Code, and the Financial Disclosure Act. To this end, the Commission will in FY21:

Strategic Actions (FY21)

- Contract with investigators to ensure informed assessment of whistleblower allegations, informal complaints, and tips.
- Build trust with community partners to facilitate communication about potential ethics violations through educational offerings and trainings for state agencies and local governments throughout New Mexico.
- Participate as *amicus curiae* in appellate matters that implicate the statutes within the Commission's jurisdiction and enforcement authority. For example, the Commission plans to participate as *amicus curiae* in *State v. Gutierrez*, No. S-1-SC-38368 (N.M. Sup. Ct.), to clarify the enforceability of the Governmental Conduct Act.
- Investigate and initiate civil enforcement actions as necessary.

GUIDANCE AND EDUCATION

Objectives

Trainings and education about the ethics laws are critical to preventing public corruption. The Commission issues advisory opinions on ethics issues to state officers, employees, and others subject to the Commission's jurisdiction. The Commission may also provide ethics and Governmental Conduct Act trainings and guides to state and local governmental agents, candidates, and lobbyists. To these ends, the Commission will in FY21:

Strategic Actions (FY21)

- Promulgate a regulation that allows for the issuance of expedited informal advisory opinions.
- Promulgate proposed code of ethics.
- Develop and offer trainings and continuing legal education courses on the Governmental Conduct Act; provide those trainings to both state agencies and local public bodies.
- Develop and provide educational materials on ethics laws and best practices to members of the public and those under the Commission's personal jurisdiction.
- Publish materials, ideally in conjunction with the Secretary of State, regarding the Campaign Reporting Act in anticipation of the November election.

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- Issue formal and informal advisory opinions upon proper request.

BUILDING AGENCY CAPACITY AND VISIBILITY

Objectives

Newly created state agencies typically inherit employees and a portfolio of responsibilities from other state agencies. The Commission does not have this luxury; as the first effort by state government to police the ethics of its officers and employees, the Commission must build its capacity from the ground up. As a result, the Commission's first strategic plan must prioritize basic capacity-building: hiring the right employees, drafting sensible procedures, and cementing the Commission's long-term fiscal and administrative standing.

Furthermore, visibility of the Commission's work is essential to the Commission's legitimacy, as well as to public confidence in government throughout New Mexico. To meet these objectives, the Commission must (i) expand its staff; (ii) develop a pipeline for future staff members; (iii) work with other state agencies with which the Commission shares jurisdiction to clarify responsibilities; (iv) increase the visibility of the Commission's work; and (v) establish and solidify the Commission's operating policies and procedures.

Strategic Actions (FY21)

- Recruit and hire Attorney III position to support the adjudication of administrative complaints, investigation and litigation efforts, and the drafting and issuance of formal and informal advisory opinions.
- Recruit and hire Special Projects Coordinator II to support the Commission's investigations, administer the Commission's web-based case filing and docketing system, and otherwise support the Commission's attorneys.
- Conduct a summer internship program for UNM law students to develop a pipeline of New Mexico lawyers familiar with and concerned about the Commission's work.
- Develop, with the Secretary of State, joint recommendations for the Legislature regarding the efficient administration and enforcement of the Campaign Reporting Act, Voter Action Act, and Lobbyist Regulation Act by December 15, 2020.

FY22 Objectives and Strategic Actions

Through FY22, the Commission will retain the same objectives as in FY21: administrative adjudication, enforcement, guidance and education, and building agency capacity and visibility. Looking forward into FY22, the strategic actions in furtherance of these ends are as follows:

ADMINISTRATIVE ADJUDICATION

Strategic Actions (FY22)

- Contract for hearing-officer services with a retired Supreme Court Justice or retired federal magistrate judge and with the Administrative Hearings Office.
- Improve and further streamline the adjudication of administrative complaints by amending 1.8.3 NMAC via rulemaking as necessary.
- Adjudicate administrative complaints filed with or referred to the Commission.

ENFORCEMENT

Strategic Actions (FY22)

- Contract with investigators to ensure informed assessment of whistleblower allegations, informal complaints, and tips.
- Build trust with community partners to facilitate communication about potential ethics violations through educational offerings and trainings for state agencies and local governments throughout New Mexico.
- Participate as *amicus curiae* in appellate cases implicating the statutes over which the State Ethics Commission has jurisdiction.
- File and litigate enforcement actions in state court as necessary and proper.

GUIDANCE AND EDUCATION

Strategic Actions (FY22)

- Develop and offer both live trainings and online, interactive trainings (and related materials) on the Governmental Conduct Act and other laws within the Commission's jurisdiction; provide those trainings to both state agencies and local public bodies.
- Issue formal and informal advisory opinions upon proper request.
- Request and work with the Compilation Commission to include State Ethics Commission advisory opinions on NMOneSource.com

CAPACITY BUILDING & VISIBILITY

Strategic Actions (FY22)

- In accordance with Laws 2019, Chapter 86, Section 37, prepare and deliver a report to the Legislature and the Governor regarding the expansion of the Commission's subject-matter jurisdiction (e.g., additional laws, such as the Emoluments Clause) and personal jurisdiction (e.g., officials and employees of local public bodies) by October 1, 2021.
- Prepare and deliver a report on potential amendments to the Governmental Conduct Act in advance of the 2022 legislative session
- Request additional funding and, if appropriated, recruit and hire for an additional two FTE (for a total of 8 FTE) to enable and support the Commission's increase in adjudicatory, enforcement, and guidance functions, particularly with respect to any plans regarding expanded jurisdiction.
- Conduct a summer internship program for UNM law students to develop a pipeline of New Mexico lawyers familiar with and concerned about the Commission's work.

Performance Measures

Existing Measure	FY20 Actual	FY21 Target
Percent of advisory opinions issued within sixty days of receipt of request.	100%	90%
Percent of complaints either disposed, referred to other state agency, or set for public hearing within ninety days after a complaint is either received or referred from other state agency with shared jurisdiction.	100%	90%

Considerations

It is a challenging moment to construct, from the ground up, a state agency devoted to preventing and remedying corruption. The State's revenue projections have collapsed. The pandemic requires the Commission to build its operations on a virtual and remote platform. In the federal executive government, the norms and institutions devoted to government ethics and anti-corruption are being dismantled. *See generally* Walter M. Shaub, Jr., "[*Ransacking the Republic*](#)" *New York Review of Books*, 55-58 (LXVII: 11, July 2, 2020). This dismantling has spillover effects in the larger culture. At the same time, the United States Supreme Court has narrowed the ability of federal prosecutors to bring federal public corruption cases against state and local actors. *See Kelly v. United States*, No. 18-1059, slip op., (U.S., May 7, 2020). As such, state agencies have a correspondingly larger role to play in remedying public corruption at the state and local levels.

Even absent these challenges, the Legislature gave the Commission an immense task. In its quasi-judicial power, the Commission has jurisdiction for nine laws and personal jurisdiction for all state officials and employees, all state contractors, all candidates, lobbyists, and lobbyists' employers, about 60,000 individuals and entities. In its executive power, the Commission can enforce in state court the civil provisions of the Governmental Conduct Act, the Procurement Code, and the Financial Disclosure Act; the former two statutes apply to all public officials and employees (whether state or local) and all governmental contractors. In its educational mandate, the Commission must seek to educate all persons subject to the Governmental Conduct Act as to the duties that statute imposes. In contrast to these responsibilities, the Commission has an FY21 budget for six full time employees. The Commission has hired four employees, and swimming against the current of the present hiring freeze, the Commission will attempt to hire two additional staff members during FY21.

Further, the Commission's delegated powers and jurisdiction will likely be in flux over its initial years. Under statute, the Commission must make yearly reports and recommendations on its delegated authority. And, by October 2021, the Commission must present a special report on the expansion of its administrative jurisdiction. Additionally, during the 2020 Regular Session, Senate Joint Resolution 7, which passed both the Senate Rules Committee and the Senate Judiciary Committee, proposed to empower the Commission to establish the salaries for state elected officials. Debates concerning the compensation and resources of the legislators are unlikely to abate, just as debates over amendments to the state's election and campaign finance laws are unlikely to end. Given its constitutionally fixed, independent, and bi-partisan structure, the Commission will remain an option to problems that prove intractable for normal politics. Over the years to come, debates and proposals about legislative compensation, elections, and districting are likely to draw in the Commission as part of the institutional solution.

Despite its expansive portfolio, from the outset, the Commission has received uneven attention from budgeting authorities. For example, Legislative Finance Committee (LFC) staff recommended a FY20 \$0 supplemental increase over and above the Legislature's initial \$500,000 appropriation to the Commission in the General Appropriations Act of 2019. The LFC recommended a \$0 supplemental increase despite the avowed support from the LFC membership and despite the LFC staff's own acknowledgment that the Commission would need approximately twice that amount during the subsequent fiscal year (FY21). Notwithstanding this challenge to the Commission's fiscal solvency, the governor supported an FY20 supplemental appropriation for the Commission, and a bipartisan coalition of house and senate finance committee members stepped in to ensure that the Commission received a sufficient FY20 supplemental appropriation.

This example shows that, even though it is constitutionally independent, the Commission necessarily relies on other state entities for its success. The Commission is funded by appropriations from the legislature, and executive-branch agencies oversee key Commission functions, such as hiring employees and approving contracts. These dependencies are features, not bugs: a key part of the Commission's work is building relationships with other state agencies. Just as the Commission needs the legislature and the governor to provide it with the funds it needs to fulfill its constitutional mandate, the Commission relies on state officials and employees who are willing to blow the whistle when they see wrongdoing.

New Mexicans voted to create a Commission that would give teeth to New Mexico's well-intended but seldom-enforced ethics laws. Despite the challenges discussed above, the Commission's commissioners and its small but growing staff are committed to the Commission's long-term viability. The Commission is well-positioned to give New Mexicans what they deserve: ethical and effective state government.

Appendix I: Current Commissioners

The current Commissioners are:

Hon. William F. Lang, Chair

Appointing authority: Governor Michelle Lujan Grisham

Initial term expires: June 30, 2022

Jeffrey Baker, Member

Appointing authority: Legislatively-Appointed Commissioners

Term expires: June 18, 2024

Stuart M. Bluestone, Member

Appointing authority: Speaker of the House, Brian Egolf

Initial term expires: June 30, 2023

Hon. Garrey Carruthers, Member

Appointing authority: Minority Floor Leader of the Senate, Stuart Ingle

Initial term expires: June 30, 2023

Ronald Solimon, Member

Appointing authority: Legislatively-Appointed Commissioners

Term expires: June 18, 2024

Dr. Judy Villanueva, Member

Appointing authority: Minority Floor Leader of the House, James Townsend

Initial term expires: June 30, 2021

Frances F. Williams, Member

Appointing authority: President Pro Tempore of the Senate, Mary Kay Papen

Initial term expires: June 30, 2021

Appendix II: Commission Legal Authority

Article V, Section 17 of the New Mexico Constitution

A. The "state ethics commission" is established as an independent state agency under the direction of seven commissioners, no more than three of whom may be members of the same political party, whose terms and qualifications shall be as provided by law. The governor shall appoint one commissioner. One commissioner each shall be appointed by the president pro tempore of the senate, the minority floor leader of the senate, the speaker of the house of representatives and the minority floor leader of the house of representatives, all as certified by the chief clerks of the respective chambers. Two commissioners, who shall not be members of the same political party, shall be appointed by the four legislatively appointed commissioners.

B. The state ethics commission may initiate, receive, investigate and adjudicate complaints alleging violations of, and issue advisory opinions concerning, standards of ethical conduct and other standards of conduct and reporting requirements, as may be provided by law, for state officers and employees of the executive and legislative branches of government, candidates or other participants in elections, lobbyists or government contractors or seekers of government contracts and have such other jurisdiction as provided by law.

C. The state ethics commission may require the attendance of witnesses or the production of records and other evidence relevant to an investigation by subpoena as provided by law and shall have such other powers and duties and administer or enforce such other acts as further provided by law. (As added November 6, 2018.)

NMSA 1978, § 1-19-34.8 (Campaign Reporting Act)

A. On and after January 1, 2020:

(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision

of the Campaign Reporting Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as formalized through an agreement. The secretary of state shall forward complaints it receives alleging violations of the Campaign Reporting Act to the state ethics commission in accordance with the agreement.

B. The state ethics commission and the secretary of state shall make recommendations to the first session of the fifty-fifth legislature on any changes to the Campaign Reporting Act necessary for the efficient administration and enforcement of the provisions of that act.

NMSA 1978, § 1-19A-15.1 (Voter Action Act)

A. On and after January 1, 2020:

(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Voter Action Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as formalized through an agreement. The secretary of state shall forward complaints it receives alleging violations of the Voter Action Act to the state ethics commission in accordance with the agreement.

B. The state ethics commission and the secretary of state shall make recommendations to the first session of the fifty-fifth legislature on any changes to the Voter Action Act necessary for the efficient administration and enforcement of the provisions of that act.

NMSA 1978, § 2-11-8.3 (Lobbyist Regulation Act)

A. On and after January 1, 2020:

(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Lobbyist Regulation Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as formalized through an agreement. The secretary of state shall forward complaints it receives alleging violations of the Lobbyist Regulation Act to the state ethics commission in accordance with the agreement.

B. The state ethics commission and the secretary of state shall make recommendations to the first session of the fifty-fifth legislature on any changes to the Lobbyist Regulation Act necessary for the efficient administration and enforcement of the provisions of that act.

NMSA 1978, §§ 10-16-11(C) & (E), -18 (Governmental Conduct Act)

§§ 10-16-11

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the state ethics commission and are open to public inspection.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training developed and provided, in consultation with the director of the legislative council service, by the state ethics commission or a national state legislative

organization of which the state is a member, approved by the director, biennially.

§§ 10-16-18

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the state ethics commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

NMSA 1978, § 10-16A-8 (Financial Disclosure Act)

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

NMSA 1978, § 10-16B-5 (Gift Act)

A. The state ethics commission may initiate investigations to determine whether the provisions of the Gift Act have been violated. A person who believes that a violation of the Gift Act has occurred may file a complaint with the state ethics commission.

B. If the state ethics commission determines that a violation has occurred, the commission shall refer the matter to the attorney general for criminal prosecution.

NMSA 1978, §§ 13-1-196 & 13-1-196.1 (Procurement Code)

§§ 13-1-196

Any person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the Procurement Code. The district attorney in the jurisdiction in which the violation occurs or **the state ethics commission is empowered to bring a civil action for the enforcement of any provision of the Procurement Code; provided that the commission may refer a matter for enforcement to the attorney general or the district attorney in the jurisdiction in which the violation occurred.** Any penalty collected under the provisions of this section shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the suit was brought.

§§ 13-1-196.1

The state ethics commission may investigate complaints against a contractor who has a contract with a state agency or a person who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a state agency. The state ethics commission may impose the civil penalties authorized in Sections 13-1-196 through 13-1-198 NMSA 1978 pursuant to the provisions of those sections.

NMSA 1978, § 10-16G-1 to -16 (State Ethics Commission Act)

§ 10-16G-1. Short Title

Sections 1 through 16 of this act may be cited as the "State Ethics Commission Act".

§ 10-16G-2. Definitions

As used in the State Ethics Commission Act:

- A. "commission" means the state ethics commission;
- B. "commissioner" means a member of the commission;
- C. "complainant" means a person who files a verified complaint with the commission;
- D. "complaint" means a complaint that has been signed by the complainant and the complainant attests under oath and subject to penalty of perjury before a notary public that the information in the complaint, and any attachments provided with the complaint, are true and accurate;
- E. "director" means the executive director of the commission;
- F. "government contractor" means a person who has a contract with a public agency or who has submitted a competitive sealed

proposal or competitive sealed bid for a contract with a public agency;

G. "legislative body" means the house of representatives or the senate;

H. "lobbyist" means a person who is required to register as a lobbyist pursuant to the provisions of the Lobbyist Regulation Act;

I. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code;

J. "public agency" means any department, commission, council, board, committee, agency or institution of the executive or legislative branch of government of the state or any instrumentality of the state, including the New Mexico mortgage finance authority, the New Mexico finance authority, the New Mexico exposition center authority, the New Mexico hospital equipment loan council and the New Mexico renewable energy transmission authority;

K. "public employee" means an employee of a public agency;

L. "public official" means a person elected to an office of the executive or legislative branch of the state or a person appointed to a public agency; and

M. "respondent" means a person against whom a complaint has been filed with or by the commission.

§ 10-16G-3. State Ethics Commission Created; Membership; Terms; Removal

A. The "state ethics commission", as created in Article 5, Section 17 of the constitution of New Mexico, is composed of seven commissioners, appointed as follows:

- (1) one commissioner appointed by the speaker of the house of representatives;
- (2) one commissioner appointed by the minority floor leader of the house of representatives;
- (3) one commissioner appointed by the president pro tempore of the senate;
- (4) one commissioner appointed by the minority floor leader of the senate;
- (5) two commissioners appointed by the four legislatively appointed commissioners; and
- (6) one commissioner appointed by the governor, who shall be a retired judge and who shall chair the commission.

B. No more than three members of the commission may be members of the same political party.

C. The appointing authorities shall give due regard to the cultural diversity of the state and to achieving geographical representation from across the state. Each appointing authority shall file letters of appointment with the secretary of state.

D. Commissioners shall be appointed for staggered terms of four years beginning July 1, 2019. The initial commissioners appointed by the speaker of the house of representatives and

senate minority floor leader shall serve an initial term of four years; members appointed by the president pro tempore of the senate and house minority floor leader shall serve an initial term of two years; members appointed by the legislatively appointed members shall serve an initial term of one year; and the member appointed by the governor shall serve an initial term of three years. Members shall serve until their successors are appointed and qualified.

E. A person shall not serve as a commissioner for more than two consecutive four-year terms.

F. When any member of the commission dies, resigns or no longer has the qualifications required for the commissioner's original selection, the commissioner's position on the commission becomes vacant. The director shall notify the original appointing authority of the vacant position. The original appointing authority shall select a successor in the same manner as the original selection was made. A vacancy shall be filled by appointment by the original appointing authority no later than sixty days following notification of a vacancy for the remainder of the unexpired term. A vacancy on the commission shall be filled by appointment by the original appointing authority for the remainder of the unexpired term.

G. The commission shall meet as necessary to carry out its duties pursuant to the State Ethics Commission Act. Commissioners are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

H. Four commissioners consisting of two members of the largest political party in the state and two members of the second largest political party in the state constitute a quorum for the transaction of business. No action shall be taken by the commission unless at least four members, including at least two members of the largest political party in the state and two members of the second largest political party in the state, concur.

I. A commissioner may be removed only for incompetence, neglect of duty or malfeasance in office. A proceeding for the removal of a commissioner may be commenced by the commission or by the attorney general upon the request of the commission. A commissioner shall be given notice of hearing and an opportunity to be heard before the commissioner is removed. The supreme court has original jurisdiction over proceedings to remove commissioners, and its decision shall be final. A commissioner is also liable to impeachment pursuant to Article 4, Section 36 of the constitution of New Mexico.

§ 10-16G-4. Commissioners; Qualifications; Limitations

A. To qualify for appointment to the commission, a person shall:

- (1) be a qualified elector of New Mexico;

- (2) not have changed party registration in the five years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the commission;

- (3) not continue to serve as a commissioner if the member changes party registration after the date of appointment in such a manner as to make the member ineligible to serve on the commission; and

- (4) not be, or within the two years prior to appointment shall not have been, in New Mexico, any of the following:

- (a) a public official;
- (b) a public employee;
- (c) a candidate;
- (d) a lobbyist;
- (e) a government contractor; or
- (f) an office holder in a political party at the state or federal level.

B. Before entering upon the duties of the office of commissioner, each commissioner shall review the State Ethics Commission Act and other laws and rules pertaining to the commission's responsibilities and to ethics and governmental conduct in New Mexico. Each commissioner shall take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico.

C. For a period of one calendar year following a commissioner's tenure or following the resignation or removal of a commissioner, the commissioner shall not:

- (1) represent a respondent, unless appearing on the commissioner's own behalf; or
- (2) accept employment or otherwise provide services to a respondent unless the commissioner accepted employment or provided services prior to the filing of a complaint against the respondent.

D. During a commissioner's tenure, a commissioner shall not hold another public office or be:

- (1) a public employee;
- (2) a candidate;
- (3) a lobbyist;
- (4) a government contractor; or
- (5) an office holder in a political party at the state or federal level.

E. A commissioner who changes political party affiliation in violation of the provisions of Subsection A of this section or who chooses to seek or hold an office in violation of Subsection D of this section shall resign from the commission or be deemed to have resigned.

§ 10-16G-5. Commission; Duties and Powers

A. The commission shall:

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- (1) employ an executive director, who shall be an attorney, upon approval of at least five commissioners;
 - (2) develop, adopt and promulgate the rules necessary for it to implement and administer the provisions of the State Ethics Commission Act; and
 - (3) establish qualifications for hearing officers and rules for hearing procedures and appeals.

B. Beginning January 1, 2020, the commission shall:

- (1) receive and investigate complaints alleging ethics violations against public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers;
- (2) hold hearings in appropriate cases to determine whether there has been an ethics violation;
- (3) compile, index, maintain and provide public access to all advisory opinions and reports required to be made public pursuant to the State Ethics Commission Act;
- (4) draft a proposed code of ethics for public officials and public employees and submit the proposed code to each elected public official and public agency for adoption; and
- (5) submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers and duties, in December of each year to the legislature and the governor.

C. Beginning January 1, 2020, the commission may:

- (1) by approval of at least five commissioners, initiate complaints alleging ethics violations against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer;
- (2) petition a district court to issue subpoenas under seal requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to an investigation;
- (3) issue advisory opinions in accordance with the provisions of the State Ethics Commission Act;
- (4) compile, adopt, publish and make available to all public officials, public employees, government contractors and lobbyists an ethics guide that clearly and plainly explains the ethics requirements set forth in state law, including those that relate to conducting business with the state and public agencies; and
- (5) offer annual ethics training to public officials, public employees, government contractors, lobbyists and other interested persons.

§ 10-16G-6. Executive director; appointment; duties and powers

A. The commission shall appoint an executive director who shall be knowledgeable about state ethics laws and who shall be appointed without reference to party affiliation and solely on the grounds of fitness to perform the duties of the office. The director shall hold office from the date of appointment until such time as the director is removed by the commission.

B. The director shall:

- (1) take the oath of office required by Article 20, Section 1 of the constitution of New Mexico;
- (2) hire a general counsel who may serve for no more than five years, unless rehired for up to an additional five years;
- (3) hire additional personnel as may be necessary to carry out the duties of the commission;
- (4) prepare an annual budget for the commission and submit it to the commission for approval;
- (5) make recommendations to the commission of proposed rules or legislative changes needed to provide better administration of the State Ethics Commission Act;
- (6) perform other duties as assigned by the commission; and
- (7) be required to reapply for the position after six years of service and may serve as director for no more than twelve years.

C. The director may:

- (1) enter into contracts and agreements on behalf of the commission; and
- (2) have the general counsel administer oaths and take depositions subject to the Rules of Civil Procedure for the District Courts.

D. For a period of one calendar year immediately following termination of the director's employment with the commission, the director shall not:

- (1) represent a respondent, unless appearing on the director's own behalf; or
- (2) accept employment or otherwise provide services to a respondent, unless the director accepted employment or provided services prior to the filing of a complaint against the respondent.

§ 10-16G-7. Recusal and Disqualification of a Commissioner

A. A commissioner may recuse from a particular matter.

B. A commissioner shall recuse from any matter in which the commissioner is unable to make a fair and impartial decision or in which there is a reasonable doubt about whether the commissioner can make a fair and impartial decision, including:

(1) when the commissioner has a personal bias or prejudice concerning a party to the proceeding or has prejudged a disputed evidentiary fact involved in a proceeding prior to a hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner's functions impartially;

(2) when the commissioner has a pecuniary interest in the outcome of the matter; or

(3) when in previous employment the commissioner served as an attorney, adviser, consultant or witness in the matter in controversy.

C. A party to the proceeding may request the recusal of a commissioner and shall provide the commission with the grounds for the request. If the commissioner declines to recuse upon request of a party to the proceeding, the commissioner shall provide a full explanation in support of the refusal to recuse.

D. A party may appeal a commissioner's refusal to recuse, or if the propriety of a commissioner's participation in a particular matter is otherwise questioned, the issue shall be decided by a majority of the other commissioners present and voting.

E. A disqualified commissioner shall not participate in any proceedings with reference to the matter from which the commissioner is disqualified or recused, and the commissioner shall be excused from that portion of any meeting at which the matter is discussed.

F. Minutes of commission meetings shall record the name of any commissioner not voting on a matter by reason of disqualification or recusal.

G. If two or more commissioners have recused themselves or are disqualified from participating in a proceeding, the remaining commissioners shall appoint temporary commissioners to participate in that proceeding. Appointments of temporary commissioners shall be made by a majority vote of the remaining commissioners in accordance with the political affiliation and geographical representation requirements and the qualifications set forth in the State Ethics Commission Act.

H. The commission shall promulgate rules for the recusal and disqualification of commissioners, for an appeal of a recusal decision and for the appointment of temporary commissioners.

§ 10–16G–8. Advisory Opinions

A. The commission may issue advisory opinions on matters related to ethics. Advisory opinions shall:

(1) be requested in writing by a public official, public employee, candidate, person subject to the Campaign

Reporting Act, government contractor, lobbyist or lobbyist's employer;

(2) identify a specific set of circumstances involving an ethics issue;

(3) be issued within sixty days of receipt of the request unless the commission notifies the requester of a delay in issuance and continues to notify the requester every thirty days until the advisory opinion is issued; and

(4) be published after omitting the requester's name and identifying information.

B. A request for an advisory opinion shall be confidential and not subject to the provisions of the Inspection of Public Records Act.

C. Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

§ 10–16G–9. Commission Jurisdiction; Compliance Provisions

A. The commission has jurisdiction to enforce the applicable civil compliance provisions for public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers of:

(1) the Campaign Reporting Act;

(2) the Financial Disclosure Act;

(3) the Gift Act;

(4) the Lobbyist Regulation Act;

(5) the Voter Action Act;

(6) the Governmental Conduct Act;

(7) the Procurement Code;

(8) the State Ethics Commission Act; and

(9) Article 9, Section 14 of the constitution of New Mexico.

B. All complaints filed with a public agency regarding the statutes listed in Subsection A of this section shall be forwarded to the commission.

C. The commission may choose to act on some or all aspects of a complaint and forward other aspects of a complaint to another state or federal agency with jurisdiction over the matter in accordance with Subsection E of this section.

D. If the commission decides not to act on a complaint, whether the complaint was filed with the commission or forwarded from another public agency, or decides only to act on part of a complaint, the commission shall promptly forward the complaint, or any part of a complaint on which it does not wish to act, to the public agency that has appropriate jurisdiction within ten days of the decision. The complainant and respondent shall be notified in writing when the complainant's request has been forwarded to

another agency unless otherwise provided pursuant to Subsection H of Section 10 of the State Ethics Commission Act.

E. The commission may share jurisdiction with other public agencies having authority to act on a complaint or any aspect of a complaint. Such shared jurisdiction shall be formalized through an agreement entered into by all participating agencies involved with the complaint and the director. The commission may also investigate a complaint referred to the commission by the legislature, or a legislative committee, in accordance with an agreement entered into pursuant to policies of the New Mexico legislative council or rules of the house of representatives or senate.

F. The commission may file a court action to enforce the civil compliance provisions of an act listed in Subsection A of this section. The court action shall be filed in the district court in the county where the respondent resides.

§ 10-16G-10. Complaints; Investigations; Subpoenas

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer or a restricted donor subject to the Gift Act may be filed with the commission by a person who has actual knowledge of the alleged ethics violation.

B. The complainant shall set forth in detail the specific charges against the respondent and the factual allegations that support the charges and shall sign the complaint under penalty of false statement. The complainant shall submit any evidence the complainant has that supports the complaint. Evidence may include documents, records and names of witnesses. The commission shall prescribe the forms on which complaints are to be filed. The complaint form shall be signed and sworn by the complainant and notarized.

C. Except as provided in Subsection H of this section, the respondent shall be notified within seven days of the filing of the complaint and offered an opportunity to file a response on the merits of the complaint.

D. The director shall determine if the complaint is subject to referral to another state agency pursuant to an agreement or outside the jurisdiction of the commission, and if so, promptly refer the complaint to the appropriate agency. If the director determines that the complaint is within the commission's jurisdiction, the director shall have the general counsel initiate an investigation.

E. The general counsel shall conduct an investigation to determine whether the complaint is frivolous or unsubstantiated. If the general counsel determines that the complaint is frivolous or unsubstantiated, the complaint shall be dismissed, and the complainant and respondent shall be notified in writing of the decision and reasons for the dismissal. The commission shall

not make public a complaint that has been dismissed pursuant to this subsection or the reasons for the dismissal.

F. If the general counsel and the respondent reach a settlement on the matters of the complaint, the settlement shall be submitted to the commission for its approval, and if the matter has been resolved to the satisfaction of the commission, the complaint and terms of the settlement shall be subject to public disclosure.

G. If the general counsel determines that there is probable cause, the director shall promptly notify the respondent of the finding of probable cause and of the specific allegations in the complaint that are being investigated and that a public hearing will be set. If the finding of probable cause involves a discriminatory practice or actions by the respondent against the complainant, no settlement agreement shall be reached without prior consultation with the complainant. In any case, the notification, complaint, specific allegations being investigated and any response to the complaint shall be made public thirty days following notice to the respondent.

H. Notwithstanding the provisions of Subsections C and G of this section, the director may delay notifying a respondent and complainant and releasing to the public the complaint and related information required by Subsection G of this section if it is deemed necessary to protect the integrity of a criminal investigation. A decision whether to delay notifying a respondent shall be taken by a majority vote of the commission and shall be documented in writing with reasonable specificity.

I. As part of an investigation, the general counsel may administer oaths, interview witnesses and examine books, records, documents and other evidence reasonably related to the complaint. All testimony in an investigation shall be under oath, and the respondent may be represented by legal counsel. If the general counsel determines that a subpoena is necessary to obtain the testimony of a person or the production of books, records, documents or other evidence, the director shall request that the commission petition a district court to issue a subpoena.

J. The commission may petition the court for a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation. If a person neglects or refuses to comply with a subpoena, the commission may apply to a district court for an order enforcing the subpoena and compelling compliance. All proceedings in the district court prior to the complaint being made public pursuant to Subsection G of this section, or upon entry of a settlement agreement, shall be sealed. A case is automatically unsealed upon notice by the commission to the court that the commission has made the complaint public. No later than July 1 of each even-numbered year, the chief justice of the supreme court shall appoint an

active or pro tempore district judge to consider the issuance and enforcement of subpoenas provided for in this section. The appointment shall end on June 30 of the next even-numbered year after appointment.

K. A public official or state public employee who is a respondent who is subject to a complaint alleging a violation made in the performance of the respondent's duties shall be entitled to representation by the risk management division of the general services department.

§ 10-16G-11. Status of Investigation; Reports to Commission

A. If a hearing has not been scheduled concerning the disposition of a complaint within ninety days after the complaint is received, the director shall report to the commission on the status of the investigation. The commission may dismiss the complaint or instruct the director to continue the investigation of the complaint. Unless the commission dismisses the complaint, the director shall report to the commission every ninety days thereafter on the status of the investigation.

B. Upon dismissal of a complaint or a decision to continue an investigation of a complaint, the commission shall notify the complainant and respondent in writing of its action. If the commission has not notified a respondent pursuant to the provisions of Subsection G of Section 10 of the State Ethics Commission Act, the commission shall vote on whether to notify the respondent. A decision whether to continue to delay notifying the respondent shall be taken by a majority vote of a quorum of the commission and shall be documented in writing with reasonable specificity.

§ 10-16G-12. Investigation Report; Commission Hearings; Decisions and Reasons Given; Disclosure of an Ethics Violation

A. Upon receipt of the general counsel's recommendation, the commission or hearing officer shall:

- (1) dismiss a complaint and notify the complainant and the respondent of the dismissal; or
- (2) set a public hearing, as soon as practicable.

B. At any time before or during a hearing provided for in Subsection A of this section, the hearing officer may, at a public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, as approved by the commission.

C. The hearing provided for in Subsection A of this section shall be pursuant to the rules of evidence that govern proceedings in the state's courts and procedures established by the commission. An audio recording shall be made of the hearing. The respondent may be represented by counsel. The parties may present evidence and testimony, request the director to

compel the presence of witnesses and examine and cross-examine witnesses.

D. The hearing officer shall issue a written decision that shall include the reasons for the decision. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct constituted a violation, the decision may include recommendations for disciplinary action against the respondent, and the hearing officer may impose any fines provided for by law. A finding of fraudulent or willful misconduct shall require clear and convincing evidence.

E. The complainant or respondent may appeal a decision of the hearing officer within thirty days of the decision to the full commission, which shall hear the matter within sixty days of notice of the appeal and issue its decision within 180 days.

F. The commission shall publicly disclose a decision, including a dismissal following a finding of probable cause or the terms of a settlement, issued pursuant to this section. The commission shall provide the decision to the complainant, the respondent and the:

- (1) house of representatives if the respondent is a public official who is subject to impeachment;
- (2) appropriate legislative body if the respondent is a member of the legislature;
- (3) respondent's appointing authority if the respondent is an appointed public official;
- (4) appropriate public agency if the respondent is a public employee;
- (5) public agency with which the respondent has a government contract if the respondent is a government contractor; and
- (6) secretary of state and the respondent's employer, if any, if the respondent is a lobbyist.

G. The commission shall produce a quarterly report subject to public inspection containing the following information:

- (1) the number of complaints filed with and referred to the commission;
- (2) the disposition of the complaints; and
- (3) the type of violation alleged in the complaints.

§ 10-16G-13. Confidentiality of Records; Penalty

A. A decision that a respondent's conduct constituted a violation, and the terms of a settlement approved by the commission, are public records. Pleadings, motions, briefs and other documents or information related to the decision are public records, except for information that is confidential or protected pursuant to attorney-client privilege, provider-patient privilege or state or federal law.

B. If a complaint is determined to be frivolous, unsubstantiated or outside the jurisdiction of the commission, the complaint shall not be made public by the commission; provided that the

commission shall not prohibit the complainant or respondent from releasing the commission's decision or other information concerning the complaint.

C. Except as otherwise provided in the acts listed in Section 9 of the State Ethics Commission Act, all complaints, reports, files, records and communications collected or generated by the commission, hearing officer, general counsel or director that pertain to alleged violations shall not be disclosed by the commission or any commissioner, agent or employee of the commission, unless:

- (1) disclosure is necessary to pursue an investigation by the commission;
- (2) disclosure is required pursuant to the provisions of the State Ethics Commission Act; or
- (3) they are offered into evidence by the commission, respondent or another party at a judicial, legislative or administrative proceeding, including a hearing before a hearing officer.

D. Information and reports containing information made confidential by law shall not be disclosed by the commission or its director, staff or contractors.

E. A commissioner, director, staff or contractor who knowingly discloses any confidential complaint, report, file, record or communication in violation of the State Ethics Commission Act is guilty of a petty misdemeanor.

§ 10–16G–14. Criminal Violations; Referral

If the commission finds at any time that a respondent's conduct amounts to a criminal violation, the director shall consult with the attorney general or an appropriate district attorney, and the commission may refer the matter to the attorney general or an appropriate district attorney. The commission may provide the attorney general or district attorney with all evidence collected during the commission's investigation. Nothing in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

§ 10–16G–15. Time Limitations on Jurisdiction

A. The commission shall not accept or consider a complaint unless the complaint is filed with the commission within the later of two years from the date:

- (1) on which the alleged conduct occurred; or
- (2) the alleged conduct could reasonably have been discovered.

B. The commission shall not adjudicate a complaint filed against a candidate, except pursuant to the Campaign Reporting Act or Voter Action Act, less than sixty days before a primary or general election. During that time period, the commission may

dismiss complaints that are frivolous or unsubstantiated or refer complaints that are outside the jurisdiction of the commission.

C. A complainant shall be notified in writing of the provisions of this section and shall also be notified in writing that the complainant may refer allegations of criminal conduct to the attorney general or the appropriate district attorney.

D. When commission action on a complaint is suspended pursuant to the provisions of this section, the respondent shall promptly be notified that a complaint has been filed and of the specific allegations in the complaint and the specific violations charged in the complaint.

§ 10–16G–16. Prohibited Actions

A. A person shall not take or threaten to take any retaliatory, disciplinary or other adverse action against another person who in good faith:

- (1) files a verified complaint with the commission that alleges a violation; or
- (2) provides testimony, records, documents or other information to the commission during an investigation or at a hearing.

B. A complainant and a respondent shall not communicate ex parte with any hearing officer, commissioner or other person involved in a determination of the complaint.

C. Nothing in the State Ethics Commission Act precludes civil or criminal actions for libel or slander or other civil or criminal actions against a person who files a false claim.

