

# New Mexico Register

The official publication for all official notices of rulemaking  
and filing of proposed, adopted and emergency rules.

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## **The New Mexico Register**

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of public hearing on the proposed rules are listed above.

### 1.8.1.1 NMAC (“General Provisions”); proposed amendments:

This rule currently ensures that the state ethics commission is administered so that it works effectively, efficiently and fairly to achieve its constitutional and statutory mission. That mission is to ensure compliance with all applicable public ethics laws by all public officials, employees, candidates, contractors, lobbyists and others subject to the commission’s jurisdiction throughout their employment or dealings with New Mexico state government; and to ensure that the public ethics laws are clear, comprehensive and effective.

The first amendments to this rule proposed in this proceeding, 1.8.1.9 and 1.8.1.10 NMAC, will add two new sections describing the procedure for people to request, and for the commission to issue, advisory opinions, either official or informal. The second amendment to this rule, 1.8.1.16 NMAC, creates rules for convening and managing meetings of the commission. These include rules governing executive sessions, virtual meetings, and maintaining order during meetings.

**The proposed amendments to 1.8.1 NMAC are as follows: amendments to Sections 1, 3, and renumbered 14, adding new Sections 9, 10 and 16 and renumbering subsequent existing sections, effective xx/xx/2020.**

### 1.8.1.1 ISSUING

**AGENCY:** State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 21[7]5, Albuquerque, NM 87106.

[1.8.1.1 NMAC-N, 1/1/2020; A, xx/xx/2020]

### 1.8.1.3 STATUTORY

**AUTHORITY:** Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978; Subsection

(C) of Section 10-15-1, Open Meetings Act, Section 10-15-1 NMSA 1978.

[1.8.1.3 NMAC-N, 1/1/2020; A, xx/xx/2020]

### 1.8.1.9 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.

[1.8.1.9 NMAC-N, xx/xx/2020]

### 1.8.1.10 INFORMAL ADVISORY OPINIONS:

**A.** A person authorized to request an advisory opinion who desires a response in fewer than 60 days for the purpose of deliberation and decision making may submit the request for an informal advisory opinion to the director or general counsel, who may answer the request. An informal advisory opinion is specific to the person who requests the advice and the facts presented in

the request. The commission shall treat as confidential the request and the informal advisory opinion issued in response.

**B.** Any informal advisory opinion issued pursuant to this rule is not binding on the commission unless and until the commission votes to adopt the informal advisory opinion as an advisory opinion. If the commission determines that a person committed a violation after reasonably relying on an informal advisory opinion and the violation is directly related to the informal advisory opinion, the commission may consider that the person acted in good faith.

**C.** Before each regular meeting of the commission, the director shall review any informal advisory opinions issued since the last meeting. The director, based on any informal advisory opinion issued, may draft an advisory opinion for the commission to consider for issuance as an advisory opinion.

[1.8.1.10 NMAC-N, xx/xx/2020]

### 1.8.1.[42] 14 ADDRESS FOR FILING DOCUMENTS:

**A.** By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. [217] 215, Albuquerque, NM 87106.

**B.** In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. [217] 215, Albuquerque, NM 87106.

**C.** By email: ethics.commission@state.nm.us.  
[1.8.14 NMAC-N, 1/1/2020; Rn & A, xx/xx/2020]

### 1.8.1.16 COMMISSION

**MEETINGS:** The commission chair, in consultation with the director, shall determine the time, place, and duration of commission meetings necessary to conduct the commission’s business.

**A. Executive Session.** Upon motion and vote of a quorum, the commission may enter into a closed, executive session to discuss matters that are confidential under the State Ethics Commission Act,

Section 10-16G-1 NMSA 1978, and as otherwise permitted by the Open Meetings Act, Section 10-15-1 NMSA 1978.

**B. Virtual meetings.**

With the consent of the commission chair, the commission may meet virtually via web or teleconference. In the event the commission meets virtually, commission staff shall ensure that the meeting occurs on a platform that allows members of the public to observe and participate. At a virtual or telephonic meeting, each commissioner participating must be identified when speaking and all meeting participants and members of the public attending must be able to hear every person who speaks during the meeting. The commission staff shall record virtual meetings and make the recordings (except for recordings of closed executive sessions) available for public inspection.

**C. Virtual attendance by individual commissioners.** An individual commissioner may attend a physical commission meeting virtually, through telephone phone or web conference, when it is difficult or impossible for the commissioner to attend the meeting in person, provided that each commissioner participating by conference telephone can be identified when speaking, and all meeting participants and members of the public attending can hear every person who speaks during the meeting.

**D. Maintaining order.** The commission chair may take reasonable steps to ensure the commission is able to fairly and efficiently conduct its business, including adopting parliamentary procedure, imposing reasonable limitations on public comment, and excluding members of the public who disrupt commission meetings. [1.8.1.16 NMAC-N, xx/xx/2020]

**1.8.4.1 NMAC (“Proposed Code of Ethics”):** This new proposed rule will create proposed code of ethics for public officials and public employees, to be submitted to each elected public official and public agency for

adoption, pursuant to Paragraph (4) of Subsection B of Section 10-16G-5 NMSA 1978. The proposed code of ethics will compile in a single rule the ethics provisions of state laws and rules governing the conduct of state officers and employees. Topics to be addressed in the proposed code include the definition of and restrictions on: conflicts of interest, acceptance of gifts, business relations with employees or regulated entities, procurement issues, limitations on former employees, public access to records and meetings of state bodies, allowable political activity and ethical conduct in the workplace, among other subjects.

**The proposed 1.8.4 NMAC is as follows:**

**TITLE 1            GENERAL  
GOVERNMENT  
ADMINISTRATION  
CHAPTER 8       STATE ETHICS  
COMMISSION  
PART 4            CODE OF  
ETHICS**

**1.8.4.1            ISSUING**  
**AGENCY:** State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, New Mexico 87106. [1.8.4.1 NMAC-N, xx/xx/2020]

**1.8.4.2            SCOPE:** This part contains a proposed code of ethics for officers and employees of executive and legislative state agencies and other institutions and instrumentalities of the state. Elected statewide executive branch officers and other state agencies must consider this proposed code when adopting either a code of conduct under Subsection C of Section 11 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, or a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, for employees subject to the adopting agencies’ control. If adopted, this code will apply to all officers and employees of the adopting agency, as well as other persons working for the agency, such

as contractors.  
[1.8.4.2 NMAC-N, xx/xx/2020]

**1.8.4.3            STATUTORY  
AUTHORITY:** Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978; and Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.  
[1.8.4.3 NMAC-N, xx/xx/2020]

**1.8.4.4            DURATION:**  
Permanent.  
[1.8.4.4 NMAC-N, xx/xx/2020]

**1.8.4.5            EFFECTIVE  
DATE:** January 1, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[1.8.4.5 NMAC-N, xx/xx/2020]

**1.8.4.6            OBJECTIVE:** The objective of this part is to provide the executive and legislative branch agencies of state government and other institutions and instrumentalities of the state with a proposed code of ethics to consider when agencies adopt either a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, or a code of conduct under Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978. If adopted, this Code will furnish standards of conduct for the adopting agency’s officer’s and employees, the violation of which could form the basis for discipline by the adopting agency.  
[1.8.4.6 NMAC-N, xx/xx/2020]

**1.8.4.7            DEFINITIONS:**  
The following terms apply to this part unless their context clearly indicates otherwise:

**A.            “Agency”** or “this Agency” means the agency that has adopted this proposed code of ethics.

**B.            “Business”** means an entity other than this agency.

**C.            “Code”** means this proposed code of ethics.

**D.            “Commission”** means the State Ethics Commission.

**E. “Financial interest”** means an ownership interest in a business or property; or employment or prospective employment for which negotiations have already begun.

**F. “Gift”** has the same meaning as defined by Subsection B of Section 2 of the Gift Act, Section 10-16B-1 NMSA 1978, namely, any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act or the Federal Election Campaign Act of 1971, as amended;

(2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient’s position as a state officer or employee or candidate for state office;

(3) compensation for services rendered or capital invested that is:

(a) normal and reasonable in amount;

(b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;

(c) in no way increased or enhanced by reason of the recipient’s position as a state officer or employee or candidate for state office; and

(d) not otherwise prohibited by law;

(4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient’s position as a state officer or employee or candidate for state office;

(5) a commercially reasonable loan made in the ordinary course of the lender’s business on terms that are available to all similarly qualified borrowers;

(6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;

(7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer’s or employee’s official duties that take place away from the state official’s or employee’s station of duty;

(8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program that is directly related to the state officer’s or employee’s official duties; or

(10) a retirement gift.

**G. “Indirectly”** means in a roundabout manner; coming about or resulting otherwise than directly or immediately, as effects or consequences.

**H. “Market value”** means the amount for which a good or service can be sold on the relevant market.

**I. “Official act”** means any act or omission to act that would not be possible but for the actor’s official position or state employment.

**J. “Public officer or employee”** means any elected or appointed official or employee of a state agency who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators.

**K. “Restricted donor”** has the same meaning as defined by Subsection D of Section 2 of the Gift Act, Section 10-16B-1 NMSA 1978, namely, a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee’s official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee’s official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee’s jurisdiction.

**L. “Shall”** means must, and “must” means shall.

**M.** Any other terms shall be defined for purposes of this rule as they are defined in Section 2 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978. [1.8.4.7 NMAC-N, xx/xx/2020]

**1.8.4.8 STRUCTURE OF THIS CODE AND CORRESPONDING COMMENTARY:**

**A.** This Code is organized by subject area rather than by the statutes that concern the various subject matters of this code.

**B.** The Commission publishes and updates extensive commentary and examples corresponding to this Code on the Commission’s website. An official or employee of this agency dealing with an ethical issue should identify and consult the relevant sections of this Code. If this Code does not resolve the issue, further guidance might be found in the Commission’s separately



published commentary.

[1.8.4.8 NMAC-N, xx/xx/2020]

**1.8.4.9 PRINCIPLES OF PUBLIC ETHICS:** This Code is based on, and should be interpreted to advance, the following principles of public ethics:

**A. Honest services.**

An officer or employee shall conduct government functions in accordance with the law and free from conflicts of interest. Public office is a public trust; as such, an official or employee must take care to ensure that every official act and decision affecting the rights or interests of individuals is based in law and the public interest.

**B. Proportionality.**

When committing an official act or making a decision, an officer or employee shall ensure that the action taken is proportional to the goal being pursued. The officer or employee shall avoid restricting the rights of New Mexicans or imposing burdens on them when those restrictions or burdens are not justified by a public interest.

**C. Impartiality and fairness.** The conduct of an officer or employee shall never be guided by:

(1) personal, family or financial interests;

(2) a motivation to benefit or empower an elected official, a candidate for office, or a political party or its members; or

(3) a motivation to disadvantage or disempower an elected official, a candidate for office, or a political party or its members.

**D. Consistency.** Like cases shall be treated alike. An officer or employee shall behave consistently with the agency's normal practices, unless there is a legitimate basis for departing from those practices in an individual case and that basis is documented in writing. An officer or employee shall respect the reasonable expectations of the public that the agency will continue to act as it has acted in similar circumstances unless there is a rational basis for the change.

**E. Diligence.** An officer or employee shall ensure that

every decision on a matter is made with care and adequate understanding of the issue, within a reasonable time, and without unnecessary delay.

**F. Respect.** An officer or employee shall be courteous and accessible to members of the public, co-workers, and their colleagues.

**G. Transparency.** The official acts and decisions of officers and employees shall be made openly and with adequate opportunity for public review and comment.

**H. Fallibility and reversibility.** Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, an officer or employee shall endeavor to take official acts and make decisions in ways that are deliberative, open to review and, where appropriate, reversible.

[1.8.4.9 NMAC-N, xx/xx/2020]

**1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST**

**A. Outside employment.**

(1) **Duty** to avoid conflicts from outside employment. An officer or employee of this agency engaged in paid employment for a business shall ensure that the employment does not conflict with the duties of state employment.

(2) **Disclosure** of outside employment. An officer or employee having permissible outside employment shall:

(a) file with the employee's supervisor, or other officer or employee that this agency designates, a signed statement explaining the outside employment and why it does not create a conflict;

(b) the disclosure statement shall include the name of the officer or employee, the name and general nature of the business, the hours that the officer or employee will work, and the reasons why the work does not create a conflict of interest with the officer's or employee's public duties;

(c) in the disclosure statement, the officer or employee shall additionally commit to disclose any potential conflict of interest that may arise during the officer or employee's work with the business.

**B. Disclosure of potential conflicts of interest and disqualification.**

(1) **Disclosure of financial interests.**

(a) Mandatory financial disclosure by officers and agency heads. An officer or head of this agency must disclose financial interests to the Secretary of State on the form provided by the Secretary of State.

(b) Disclosure of financial interests: contents; when filed. The disclosure required by 1.8.4.10.B(1)(a) NMAC shall be filed within thirty days of taking office and each January thereafter and shall disclose the following financial interests of the filing individual and the filing individual's spouse, for the prior calendar year:

(i) current employer and the nature of the business or occupation;

(ii) all sources of gross income over \$5,000, identified by category;

(iii) real estate owned in the state other than the personal residence;

(iv) other business interests of \$10,000 or greater value;

(v) memberships on for-profit boards;

(vi) New Mexico professional licenses held;

(vii) sales to state agencies exceeding \$5,000 for the prior year; and

(viii) state agencies before which clients were represented or assisted during the prior year.

(c) Officers and employees required to disclose potentially conflicting financial interests; when filed. An

officer or employee of this agency must file a disclosure of financial interests when the officer or employee believes, or has reason to believe, that their financial interest may be affected by their official acts or actions of the state agency that employs them. The disclosure must be filed before entering state employment or within ten days of the date when the officer or employee knows, or should know, that a potential conflict has arisen and thereafter each subsequent January, so long as the conflict or potential conflict continues to exist.

**(d)**

Financial disclosure statements are public records. All disclosures required under this subsection are public records.

**(2)**

Disqualification from acts affecting financial interests.

**(a)**

An officer or employee of this agency may not take official acts for the purpose of enhancing their financial interests. An officer or employee must be disqualified from any matters that could directly enhance or diminish the officer's or employee's financial interest. If disqualified, then the officer or employee shall refrain from acting on a matter involving the disqualifying financial interest.

**(b)**

An officer or employee of this agency is not disqualified from taking an official action under 1.8.4.10(B)(2)(a) NMAC if the benefit of the official act to the officer's or employee's financial interest is proportionately equal to or less than the benefit to the general public.

**C. Business with**

regulated entities.

**(1) Sales**

to regulated persons. An officer or employee of this agency may not directly or indirectly sell goods or services to, or profit from a transaction with, a business or individual over whom this agency has regulatory authority.

**(2) No**

acceptance of job or contract offers from regulated entities. An officer or employee of this agency may not

accept an offer of employment from, or a contract to provide goods or services to any entity that this agency regulates. An officer or employee shall disqualify themselves from any official act or decision involving a business in which an immediate family member is employed or in which the officer or employee seeks employment.

**(3) Ordinary**

transactions at market rates allowed. Nothing in this rule prevents an officer or employee from purchasing or contracting for services or goods from a regulated entity on the same bases that are available to other members of the public.

**D. Accepting or Giving Gifts.**

**(1) Gifts**

from restricted donors. An officer or employee of this agency may not, directly or indirectly, solicit a gift from, and shall decline any gift offered by, a restricted donor or by any person who gives a gift because of the donee's status as an officer or employee of this agency.

**(2) Gifts and**

business from subordinates. An officer or employee of this agency may not, directly or indirectly:

**(a)**

accept a gift from an employee having a lower rank or receiving less pay, unless the donor and donee are not in a subordinate-superior relationship and there is a personal relationship between the donor and recipient that would justify the gift.

**(b)**

solicit business from a supervised employee where the business redounds to the financial interest of the officer or employee or an immediate family member.

**(3) Soliciting**

gifts for charities. An officer or employee of this agency may not solicit or require a charitable donation from any business, or an agent of any business, regulated by or contracting with this agency; nor from any employees that the officer or employee supervises.

**(4) Declining**

permissible gifts. An officer or

employee of this agency shall consider declining an otherwise permissible gift, if they believe that a reasonable person with knowledge of the relevant facts would question the officer or employee's integrity or impartiality as a result of accepting the gift. Among other relevant factors, the officer or employee shall take into account whether:

**(a)**

the gift has a high market value;

**(b)**

the timing of the gift creates the appearance that the donor is seeking to influence an official action;

**(c)**

the gift offered by a person or business entity who has interests may substantially affect the performance or nonperformance of the officer or employee's duties; and

**(d)**

acceptance of the gift would provide the donor with significantly disproportionate access.

**(5) Disclosure**

of offers of gifts from restricted donors. If a restricted donor offers a gift of any value to an officer or employee of this agency, or if an officer or employee of this agency unintentionally receives a gift from a restricted donor, the officer or employee shall report to their supervisor: the date the offer or gift was made or received, the name of the donor and the donor's relationship to the agency, the nature and value of the gift, and whether the officer or employee accepted or refused the gift.

**(6) Certain**

donations of private funds prohibited. No officer or employee of this agency may give:

**(a)**

a gift from their own funds to any person with whom their agency is doing business, or considering doing business, under circumstances which may appear to favor the recipient over other similarly situated persons; or

**(b)**

a gift to any other state officer or employee when the gift may be, or may appear to be, intended to influence any official decision by the recipient.



(7) Certain donations of public funds prohibited. No officer or employee of this agency may give to any person any gift from public funds, unless the gift:

(a) is a service appreciation award of de minimis value; or

(b) does not violate the Anti-Donation Clause, N.M. Const., Article IX, Section 14.

**E.** Honoraria; no solicitation or acceptance of honoraria permitted for speaking or writing.

(1) An officer or employee of this agency may not request or receive honoraria for a speech or service that relates to the performance of public duties; provided that an officer or employee of this agency may accept reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service.

(2) An officer or employee of this agency may accept payment for services rendered in the normal course of a private business pursuit.

**F.** Timekeeping, reimbursement, and use of state property.

(1) An officer or employee of this agency must work during the hours required and report time accurately.

(2) An officer or employee of this agency shall not claim reimbursement in excess of what is necessary and incidental to an official duty or action.

(3) An officer or employee of this agency shall limit personal use of state office supplies and assigned equipment, such as computers and telephones, and otherwise shall not use state property or expend state funds for private purposes.

**G.** Procurement.

(1) Fair and equitable treatment of persons involved in public procurement. An officer or employee of this agency shall treat persons involved in public procurement fairly and equitably.

(2) Maximizing the value of public funds. An officer or employee of this agency involved in procurement shall endeavor to maximize the purchasing value of public funds.

(3) Conflicts of interest prohibited; Intra-agency waiver.

(a) An officer or employee of this agency shall not participate directly or indirectly in a procurement when the officer or employee, or their immediate family member, has a financial interest in a business participating in the procurement.

(b) An officer or employee of this agency who is participating directly or indirectly in procuring goods or services for this agency shall not be concurrently employed by any person or business contracting with this agency.

(c) A conflict of interest under subparagraphs (a) or (b) this Paragraph may be waived by this agency, if the contemporaneous employment or financial interest has been publicly disclosed, the officer or employee is able to perform procurement functions without actual or apparent bias or favoritism, and the officer or employee's participation is in the best interests of this agency.

(4) Due diligence by agency.

(a) Participation by person submitting bid or proposal. An officer or employee of this agency, having responsibilities for evaluating or overseeing a bid or proposal shall exercise due diligence in ensuring that any person or parties submitting bids or proposals do not participate or contribute any knowledge, guidance or explanation in the preparation or receive any advance notice of specifications, qualifications or evaluation criteria on which the specific bid or proposal will be based.

(b) Campaign contribution disclosure and prohibition. An officer or employee of this agency who participates, directly

or indirectly, in procuring goods or services for this agency shall exercise due diligence to ensure that the prospective contractor:

(i) does not give a campaign contribution or other thing of value to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter; and

(ii) disclose all campaign contributions, where such contributions in the aggregate exceed over \$250 in the two years before the beginning of the procurement process, given by the prospective contractor or a family member or representative of the prospective contractor to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter.

**H.** Former officers and employees.

(1) Contracting. This agency may not contract with or take any other favorable action toward a person or business that is:

(a) represented by a person who was an officer or employee of this agency within the preceding year, if the contract or action has a value of \$1,000 or more and is the direct result of the officer or employee's official act; or

(b) assisted by a former officer or employee of this agency whose official act while in state employment directly resulted in the contract or action. This subparagraph applies regardless of the value of the contract or action, or the length of time since the officer or employee left the agency.

(2) Restrictions on former officers or employees representing a person in the person's dealings with this agency.