

**1.8.4.1 NMAC (“Proposed Code of Ethics”):** This proposed rule will create a 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, 12/29/2020]

**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, 12/29/2020]

**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, 12/29/2020]

**1.8.4.4            DURATION:** Permanent.  
[1.8.4.4 NMAC-N, 12/29/2020]

**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, 12/29/2020]

**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 officers and employees, the violation of which could form the basis for discipline by the adopting agency, including dismissal, demotion or suspension, in accordance with state law.  
[1.8.4.6 NMAC-N, 12/29/2020]

**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 any person, company or other organization that buys, sells or provides goods or services, including non-governmental or not-for-profit organizations.
- C.            “Code”** means this proposed code of ethics.
- D.            “Commission”** means the State Ethics Commission.

**E. “Confidential information”** has the same meaning as defined by Subsection B of Section 2 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, namely, information that by law or practice is not available to the public.

**F. “Family member”** means a first-degree, second-degree or third-degree relative, as those terms are defined at Subsection B of 1.8.4.14 NMAC.

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

**H. “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.

**I. “Immediate family member”** means a first-degree or second-degree relative, as those terms are defined at Subsection B of 1.8.4.14 NMAC.

**J. “Indirectly”** means to perform an act, achieve a result or obtain a benefit through another person, by use of implication, suggestion or passive acceptance.

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

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

**M. “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.

**N. “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.

**O. "Sensitive personal information"** means confidential identifying information such as: social security numbers or individual tax identification numbers, a person's place and date of birth, a person's status as a recipient of public assistance or as a crime victim, and a person's sexual orientation, physical or mental disability, immigration status, religion, or national origin.

**P. "Shall"** means must, and **"must"** means shall.

**Q. Substantial financial interest** means an ownership interest that is greater than twenty percent.

**R.** 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, 12/29/2020]

#### **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, 12/29/2020]

**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 be impartial and fair, and 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 openness to change.** Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, officers and employees should be open to and invite

review, correction and reversal of their actions when they are mistaken, have failed to take relevant information into account, or are otherwise in violation of the principles of this code or the law.  
[1.8.4.9 NMAC-N, 12/29/2020]

#### **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 30 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, including self-employment information;

(ii) all sources of gross income over \$5,000, identified by one of the following general category descriptions that disclose the nature of the income: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as a payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other," with a general description of the other income source;

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

(iv) other business interests of \$10,000 or greater value in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(v) memberships on boards of for-profit businesses in New Mexico;

(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.** 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.

(3) **Disclosure of non-profit board memberships.** An officer or employee of this agency shall disclose within 30 days of taking office and each January thereafter all memberships on non-profit boards.

**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.**

(a) An officer or employee of this agency may not, directly or indirectly, solicit a gift from a restricted donor.

(b) An officer or employee of this agency may not, directly or indirectly accept, and must decline, an unsolicited gift with a market value in excess of \$250 from a restricted donor or any other person who offers the gift because of the donee's status as an officer or employee of this agency. No more than one such gift or gifts having a total value of \$250 may be accepted by the same officer or employee within a single calendar year, and any such gift must be disclosed as required by paragraph 5 of this subsection.

(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 grade 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 is offered by a person or business entity who has interests that may be substantially affected by 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 to an officer or employee.

(5) **Disclosure of offers or 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 receives a gift of any value 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, Section 14 of Article 9 of the New Mexico Constitution.

**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.

(d) This agency may not contract with a business in which any officer or employee of the agency, or a family member, has a substantial financial interest; however, the agency may enter such a contract if the officer or employee publicly discloses the substantial financial interest and the contract is awarded through a competitive process.

(e) The requirement to make public disclosure pursuant to subparagraphs (c) and (d) of paragraph (3) of this subsection shall be satisfied by correspondence to the state purchasing agent and by posting the required disclosure in a prominent place on the webpage of the state 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) discloses all campaign contributions, where such contributions in the aggregate exceed \$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 two years of the date of the officer's or employee's separation from this agency, 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 length of time since the officer or employee left the agency.

(c) Nothing in this paragraph shall prevent an agency from contracting with a former employee on terms that otherwise comply with state law and the provisions of this code.

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

(a) A former officer or employee of this agency is prohibited from representing anyone in dealings with this agency on any matter in which the officer or employee participated personally and substantially during their employment with this agency.

(b) A former officer or employee of this agency may not, for two years after the termination of their employment with this agency, represent for pay a person on any matter before this agency, regardless of whether they were involved in that matter personally.

[1.8.4.10 NMAC-N, 12/29/2020]

**1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION**

**A.** An officer or employee of this agency should welcome and encourage the public to attend and participate in public meetings.

**B.** An officer or employee of this agency must permit members of the public to inspect this agency's records, unless the records are confidential under the law.

[1.8.4.11 NMAC-N, 12/29/2020]

**1.8.4.12 POLITICAL ACTIVITY**

**A.** An officer or employee of this agency may not use their official position to pressure others to participate in political activities.

**B.** An officer or employee of this agency may not use their official position to influence an election or nomination, or otherwise engage in any partisan political activity while on duty.

**C.** An officer or employee of this agency may not serve as an officer of a political organization.

**D.** An officer or employee of this agency may not use or allow others to use state money or property to promote a political campaign, candidate for elected office, political party, or other partisan political organization.

**E.** An officer or employee of this agency who becomes a candidate in a partisan election must take a leave of absence upon filing for or accepting the candidacy.

**F.** An employee whose salary is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency is covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] and, therefore, may not be a candidate for a partisan political elective office.

**G.** An officer or employee of this agency may participate in political activities while off duty, including:

(1) donating to political candidates;

(2) volunteering or working for a political campaign or political organization, so long as the officer's or employee's work does not violate any applicable conflict-of-interest provision of this rule or statute; and

(3) being a candidate in an election for or holding non-partisan political office, such as non-partisan county or municipal office or a seat on a local school board.

[1.8.4.12 NMAC-N, 12/29/2020]

#### **1.8.4.13 NON-DISCLOSURE OF CONFIDENTIAL OR SENSITIVE PERSONAL INFORMATION**

**A.** An officer or employee of this agency shall not use or disclose confidential information acquired by virtue of the officer's or employee's position with the agency for the officer's or employee's or another person's private gain.

**B.** An officer or employee of this agency shall not disclose to anyone outside the agency sensitive personal information acquired by virtue of the officer's or employee's position with the agency unless disclosure is required by law, necessary to carry out the functions of the agency or expressly authorized by the person whose information would be disclosed.

[1.8.4.13 NMAC-N, 12/29/2020]

#### **1.8.4.14 NEPOTISM**

**A.** This agency shall not permit the hiring, promotion, or direct supervision of an employee by an individual who is related by blood, adoption or marriage within the first, second or third degree to the employee.

**B.** For the purposes of Subsection A of this Section:

(1) First-degree relatives include an individual's parents, siblings, and children.

(2) Second-degree relatives include an individual's grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings.

(3) Third-degree relatives include an individual's great-grandparents, great grandchildren, great uncles, great aunts, and first cousins.

[1.8.4.14 NMAC-N, 12/29/2020]

#### **1.8.4.15 SEXUAL HARASSMENT**

**A.** Officers and employees of this agency shall refrain from sexual harassment of any other employee or any other person having business with this agency.

**B.** Examples of sexual harassment include, but are not limited to:

(1) sexual innuendo or sexually oriented verbal abuse;

(2) sexual jokes, sexist jokes, vulgar jokes or abusive sexual teasing;

(3) unwanted physical contact such as hugging, patting, stroking or grabbing body parts;

(4) statements or acts of a sexual nature about a person's physical attributes or sexual activity;

(5) displaying sexually suggestive pictures, objects or materials;

(6) using disparaging, demeaning or sexist terms to refer to any person; making obscene gestures or suggestive/insulting sounds;

(7) indecent exposure; and

(8) suggesting or demanding sexual favors or activity in relation to any condition of employment.

**C.** Officers and employees of this agency shall investigate all instances of alleged sexual harassment and sexual assault and take prompt and appropriate action, and make every effort to remove sexual harassment and sexual assault from the workplace.

[1.8.4.15 NMAC-N, 12/29/2020]

#### **1.8.4.16 SUBSTANCE ABUSE**

**A.** This agency shall appoint a substance abuse coordinator as required by Subsection A of 1.7.8.10 NMAC, who shall be responsible for the agency's drug and alcohol abuse program under 1.7.8 NMAC.

**B.** The substance abuse coordinator shall provide drug and alcohol abuse awareness information to employees including but not limited to the:

(1) dangers of drug and alcohol abuse;

(2) availability of counseling, rehabilitation, and employee assistance programs; and

(3) sanctions that may be imposed upon employees as provided in 1.7.8.19 NMAC.

**C.** The drug abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the drug and alcohol testing duties required by 1.7.8 NMAC.

[1.8.4.16 NMAC-N, 12/29/2020]

#### **1.8.4.17 ENFORCEMENT AND INTERPRETATION**



**A.** Violations of the provisions of this code of conduct shall constitute cause for dismissal, demotion or suspension as provided by Subsection C of Section 11 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978.

**B.** This agency shall circulate this code of conduct to all agency officers and employees, require signed acknowledgements that all the agency officers and employees have read this code, and establish a written internal complaint procedure by which employees can seek to remedy violations of the provisions of this agency's code of conduct.

**C.** Agency complaint procedures shall:  
(1) provide the respondent to a complaint notice of the complaint and an opportunity to be heard;

(2) be made available to all officers and employees of the agency;

(3) ensure that officers and employees have the right to present or make known their complaints, free from interference, restraint, discrimination, coercion, or reprisal;

(4) ensure that adjudication of internal agency complaints accord with due process; and

(5) utilize alternative methods of dispute resolution, including mediation, wherever appropriate to resolve conflicts in the workplace and encourage positive working relationships among officers and employees.

**D.** If an agency adopts a code of conduct that mirrors provisions set forth in 1.8.4 NMAC, then any officer or employee of the adopting agency may request an advisory opinion from the state ethics commission regarding the interpretation or application of any adopted code provision pursuant to Subsection A of Section 8 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

**E.** Any remedy or discipline available through internal agency complaint procedures established under this provision does not preclude other remedies or sanctions available at law.  
[1.8.4.17 NMAC-N, 12/29/2020]

**History of 1.8.4 NMAC: [RESERVED]**