



STATE ETHICS COMMISSION

800 BRADBURY DR SE
SUITE 215
ALBUQUERQUE,
NM 87106
(505) 827 7800

www.sec.state.nm.us

FY Fiscal Year 2023 STRATEGIC 23 PLAN

STATE of NEW MEXICO

A Message from the Executive Director

I am pleased to present the *Strategic Plan* for the State Ethics Commission for fiscal year 2023—the Commission’s fourth year. Having grown past its infancy, the Commission is focused on hiring key personnel who can help sustain and grow what its initial staff built.

The Commission urgently needs resources and personnel to fulfill its responsibilities now and in the coming years. The Commission has no staff vacancies. Its budget was cut by 5% in FY22. But at the same time, the legislature expanded the Commission’s responsibilities. The Commission needs more personnel to meet its constitutional and statutory mandates.

This strategic plan is targeted to that need. In FY23, the Commission hopes to hire three additional, classified positions—an Attorney IV, a Paralegal-A, and a Database Administrator I—as well as to restore funding for the Commission’s Special Projects Coordinator, for which the Commission lost funding with the FY22 budget cut.

Sincerely,

Jeremy Farris
Executive Director
State Ethics Commission



TABLE OF CONTENTS

<u>A MESSAGE FROM THE EXECUTIVE DIRECTOR</u>	<u>2</u>
<u>MISSION STATEMENT</u>	<u>4</u>
<u>AGENCY OVERVIEW</u>	<u>4</u>
<u>MAJOR ACCOMPLISHMENTS</u>	<u>6</u>
<u>ORGANIZATIONAL STRUCTURE</u>	<u>8</u>
<u>FY23 OBJECTIVES AND STRATEGIC ACTIONS</u>	<u>9</u>
<u>PERFORMANCE MEASURES</u>	<u>11</u>
<u>CONSIDERATIONS</u>	<u>112</u>
<u>APPENDIX I: CURRENT COMMISSIONERS</u>	<u>13</u>
<u>APPENDIX II: THE COMMISSION'S LEGAL AUTHORITY</u>	<u>14</u>

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 financial 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 initial Commissioners were appointed on July 1, 2019. 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 Tem 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 seven current Commissioners are listed at Appendix I, *infra*.

The Commission hires an Executive Director, who in turn hires the staff, including the Commission's General Counsel. Both the Commission's Executive Director and General Counsel are term-limited positions created by statute. The current and founding Executive Director is Jeremy Farris. The current and founding General Counsel is Walker Boyd.

Agency powers

The Commission has three core responsibilities: (1) to adjudicate administrative complaints alleging violations of New Mexico's ethics laws; (2) to investigate and prosecute violations of the ethics laws through civil enforcement actions in state court; and (3) to educate public officers, employees, and the public about New Mexico's governmental conduct, procurement and disclosure laws.

First, the Commission may adjudicate administrative 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, opinions which bind the Commission’s decisions in future administrative adjudications.

Second, under its executive power, the Commission may investigate and initiate enforcement actions in state court to remedy violations of New Mexico’s ethics laws, including the Governmental Conduct Act, the Procurement Code, and the Financial Disclosure Act. For example, in *State Ethics Commission v. Council for a Competitive New Mexico*, D-202-CV-06718 (2nd Jud. Dist. Ct.), the Commission filed suit against the Council for a Competitive New Mexico (“CCNM”), forcing CCNM to disclose \$470,000 in previously hidden contributions that PNM gave to CCNM to support candidates in the 2020 Senate primary election. The Commission may also initiate administrative proceedings and petition state district courts to issue subpoenas.

Third, the Commission educates government officers and 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 provides trainings and presentations to associations that support public officials and employees, including the Municipal League, New Mexico Counties, the New Mexico Public Procurement Association, the New Mexico Society of Certified Public Accountants, and members of the New Mexico State Bar. The Commission’s formal advisory opinions are published by the New Mexico Compilation Commission and are publicly available on www.NMOneSource.com. The Commission has also issued a model code of ethics at 1.8.4 NMAC, which is available for state agencies to adopt in whole or in part.

The Commission also has several responsibilities that flow from the core functions described above. The Commission periodically issues and amends administrative rules governing the issuance of advisory opinions (1.8.1 NMAC), commissioner recusals (1.8.2 NMAC), and administrative hearing procedures (1.8.3 NMAC). 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. Additionally, to foster a community of attorneys in New Mexico that are familiar with the Commission and the state’s ethics laws, the Commission hosts a summer internship program for students at the University of New Mexico School of Law.

Major Accomplishments

Major Accomplishments Over Past Year (Sept. 1 2020 to Sept. 1 2021):

Investigation and Adjudication of Administrative Complaints:

- Launched the State Ethics Commission's Proceedings Portal, the Commission's web-based case management and docketing system, which allows for the filing of complaints online, the ability for parties to file papers into the docket, notifications, calendaring, docket text-entry, and archival functions.
- Prevailed in the district court, achieving the denial of a subpoenaed entity's motion to quash the Commission's subpoena in *In re State Ethics Commission Petition*, D-307-ET-2020-01 (3d Jud. Dist. Ct.). The case is pending on appeal in the Court of Appeals.
- Prevailed in the district court, achieving the denial of a subpoenaed party's motion to quash the Commission's subpoena in *In re State Ethics Commission Petition*, D-307-ET-2021-01 (3d Jud. Dist. Ct.). The case is pending on appeal in the Court of Appeals, and related proceedings are pending before the Supreme Court on a petition for extraordinary writs.
- Adjudicated 40 administrative cases in 2020 and 18 cases in 2021 to date. Of those 58 cases, 13 remain pending in the State Ethics Commission, either in pre-hearings motions practice or in investigation.
- Entered hearing officer agreements with the Honorable Edward L. Chávez (retired Chief Justice of the New Mexico Supreme Court); the Honorable Alan Torgerson (retired federal Magistrate Judge for the United State District Court for the District of New Mexico); the Honorable James Starzynski (retied Chief Bankruptcy Judge for the United States District Court for the District of New Mexico); and the New Mexico Administrative Hearings Office.
- Promulgated amendments to 1.8.3 NMAC, the Commission's rules of procedure for administrative cases.

Civil Enforcement Actions:

- Filed a civil action against Council for Competitive New Mexico ("CCNM") and litigated that case to a successful settlement, forcing CCNM to disclose that CCNM received \$470,000 from PNM Resources, which CCNM used to fund independent expenditures related to the Democratic Party primary elections for Senate Districts 5, 28, 30, 31, and 35. See *State Ethics Comm'n v. Council for a Competitive New Mexico* (2d Jud. Dist. Ct., Dec. 11, 2020).
- Entered pre-litigation settlement with the Committee to Protect New Mexico Consumers ("CPNMC"), forcing CPNMC to disclose that it expended \$264,193.14 on independent expenditures related to the ballot question to change the composition and appointments of the Public Regulation Commission.

Advisory Opinions, Education and Trainings:

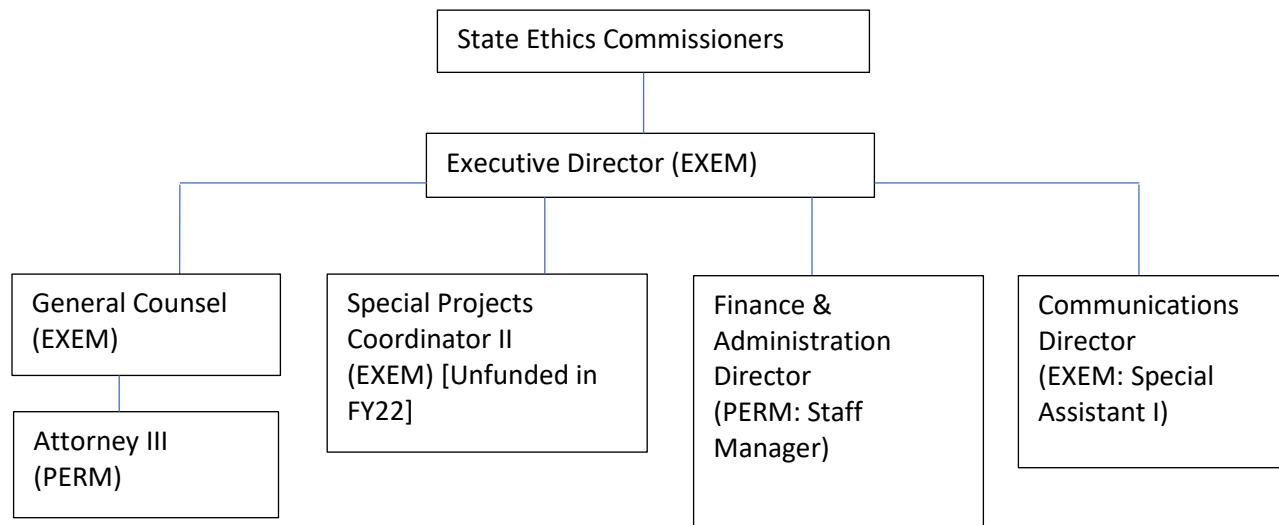
- Issued 12 formal advisory opinions and 15 informal advisory letters.
- Achieved publication of the Commission's formal advisory opinions and annotations of New Mexico's ethics laws by the Commission's advisory opinions on www.NMOneSource.com, the New Mexico Compilation Commission's official research tool of the New Mexico courts and legislature.
- Promulgated model code of ethics at 1.8.4 NMAC for state agencies to adopt as appropriate.
- Delivered ethics trainings to legislators, state agencies, state boards and commissions staff, county commissions, boards of regents, and affiliate organizations around the state.

Other Accomplishments:

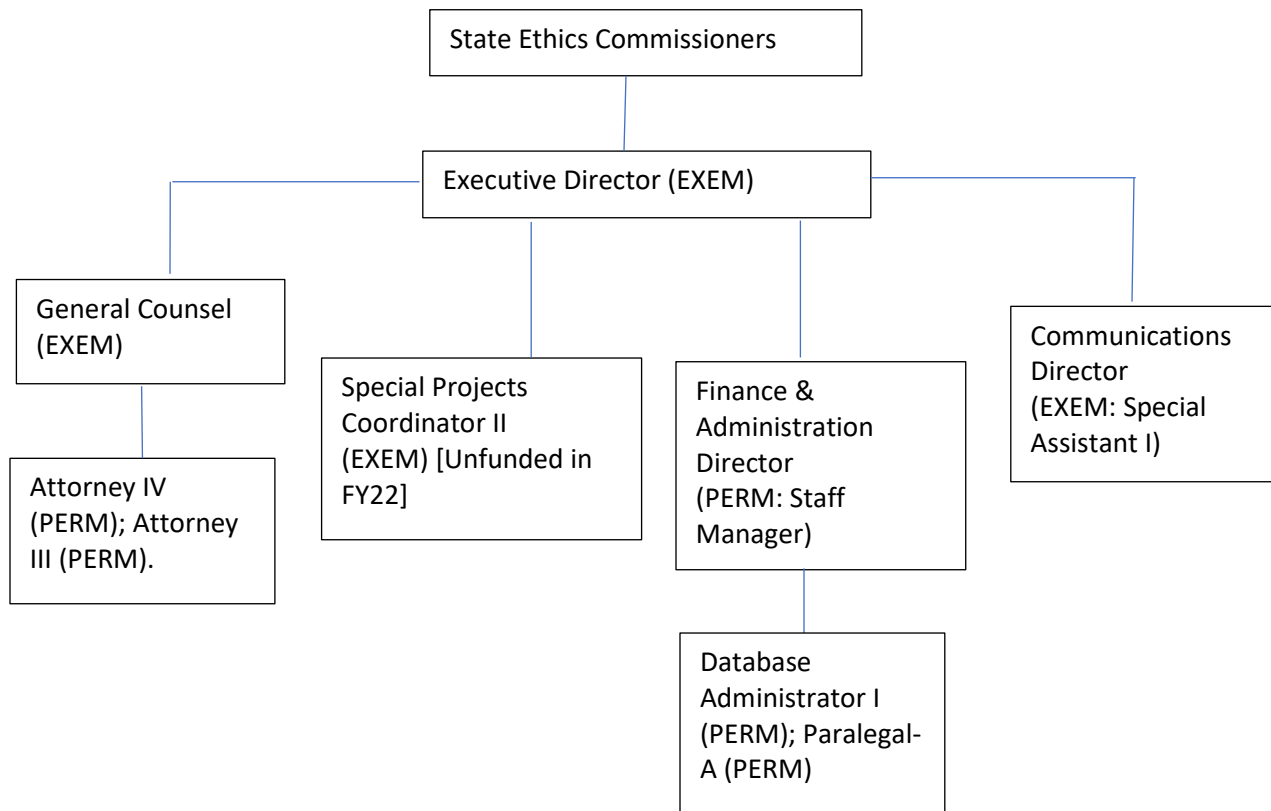
- Conducted competitive application and interview process to select three members of the Citizen Redistricting Committee, including that committee's Chair. Provide limited staff support to the Citizen Redistrict Committee during that committee's abbreviated tenure through an interagency memorandum of understanding.
- Conducted outreach to all county and municipal governments to gather perspectives and concerns regarding the potential expansion of the Commission's jurisdiction for administrative complaints and the Commission's authority to provide advisory opinions.

Organizational Structure

Agency Organizational Chart (as of September 1, 2021):



Agency Organizational Chart (corresponding to the FY23 request):



FY23 Objectives and Strategic Actions

Through FY23, the Commission will retain the same basic objectives as in previous fiscal years: administrative adjudication; enforcement of the state's governmental conduct, procurement, and disclosure laws; guidance and education; and building agency capacity and visibility. Further, FY23 is a fiscal year that includes both a general election and a 60-day legislative session; consequently, the Commission and its staff will confront a comparatively more demanding year. Looking forward to FY23, the Commission proposes the following strategic actions:

ADMINISTRATIVE ADJUDICATION

The Commission's primary function is the adjudication of administrative complaints filed either by members of the public or referred by other state agencies. In FY22, the Commission made significant amendments to 1.8.3 NMAC, its rules of procedure for administrative cases, which streamline the administration of the Commission's administrative case docket. In FY23, the Commission intends to take the following strategic actions to improve its administrative adjudications:

Strategic Actions (FY23)

- Subject to requested appropriations, hire three additional positions to assist the administration, investigation, and adjudication of administrative complaints:
 1. Attorney IV to assist in the litigation that is related to the Commission's subpoenas, including motion practice in the district courts, appeals, and extraordinary writ petitions in the Supreme Court;
 2. Database Administrator I to manage the Commission's Proceedings Portal, the Commission's web-based case management and docketing system, among other information database and IT related functions; and
 3. Paralegal-A to assist the Commission's attorney staff in the management of administrative case files, administrative case investigations, and subpoena proceedings in district court arising out of administrative cases.
- Contract for hearing-officer services with a retired Supreme Court Justice or retired federal magistrate or bankruptcy judge and with the Administrative Hearings Office.
- Consider a rule change that will allow the Commissioner who is not a member of either the largest or second-largest political party in the state to serve as a hearing officer where the contracted hearing officers must recuse on conflicts of interest grounds.
- Provide public guidance on Subsection 10-16G-15(B) (also known as the "blackout period"), which limits the Commission's ability to adjudicate complaints during the 60 days before the primary and general elections in 2022.

ENFORCEMENT

The Commission can pursue civil enforcement actions in state court to remedy violations of the Governmental Conduct Act, the Procurement Code, the Campaign Reporting Act, and other ethics laws. This discretionary authority is the Commission's greatest tool to directly vindicate New Mexico's ethics laws. In FY23, the Commission intends to take the following strategic actions to enable and effectuate its enforcement authority:

Strategic Actions (FY23)

- Subject to requested appropriations, hire an Attorney IV and a Paralegal-A, so that the Commission has a greater capacity to consider and pursue direct civil enforcement actions.
- Contract with investigators to ensure informed assessment of whistleblower allegations, informal complaints, and tips and to develop evidence that may be introduced in litigation.
- Implement Financial Disclosure Act compliance project in conjunction with the Office of the Secretary of State
- File and litigate enforcement actions in state court as necessary and proper and participate as amicus curiae on appellate cases implicating New Mexico's ethics laws.

GUIDANCE AND EDUCATION

The Commission has the responsibility to provide trainings on the Governmental Conduct Act, the Procurement Code and other of the state's ethics and disclosure laws to officials and employees across New Mexico's state and local governments. In FY23, the Commission intends to take the following strategic actions to continue and increase its trainings:

Strategic Actions (FY23)

- Subject to requested appropriations, hire an Attorney IV and a Paralegal-A, so that the Commission has a greater ability to timely issue formal advisory opinions and informal advisory letters that are correct and responsive to any requester.
- Research and prepare recommended amendments to the state ethics laws for consideration by members of the legislature during the 2023 legislative session.
- Develop and offer trainings and continuing legal education courses (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.
- Work with the Compilation Commission to ensure that State Ethics Commission advisory opinions are published on NMOneSource.com and New Mexico's statutes are annotated with the growing body of Ethics Commission advisory opinions
- Prepare and deliver ethics training for legislators in December 2022 or January 2023, before the 60-day session

CAPACITY BUILDING & VISIBILITY

FY23 will be the Commission's fourth year; as such, the Commission remains a young state agency staffed by its initial staff members. To build its capacity to perform its basic constitutional and statutory mandates to adjudicate administrative complaints, issue advisory opinions, and provide trainings on New Mexico's governmental conduct and disclosure laws, in FY23, the Commission intends to take the following strategic actions:

Strategic Actions (FY23)

- Subject to requested appropriations, recruit and hire for three additional FTE (for a total of 9 FTE) to enable and support the Commission's increase in adjudicatory, enforcement, and guidance functions
- Subject to the Supreme Court's decision in *State v. Gutierrez, et al.*, prepare and deliver report on potential amendments to the Governmental Conduct Act in advance of the 2023 legislative session

- Conduct a summer internship program for UNM law students to develop a pipeline of New Mexico lawyers familiar with and concerned about New Mexico's ethics and good government laws and the Commission's work enforcing those laws.
- In the 2023 legislative session, advocate for any expansion of the Commission's jurisdiction for administrative complaints that the Commission recommends in its October 1, 2021 special report required by Laws 2019, Chapter 86, Section 37.

Performance Measures

Under the Accountability in Government Act, NMSA 1978, §§ 6-3A-1 to -10 (1999, as amended 2019), each state agency submits performance measures and outcomes under those measures to the State Budget Division of the Department of Finance and Administration and the Legislative Finance Committee. The Commission's current performance measures and outcomes are:

Existing Measure	FY21 Actual	FY23 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.	70%*	90%

*There are several reasons why the Commission often requires more than 90 days to resolve an administrative complaint. First, under applicable regulations (1.8.3 NMAC), the parties to administrative cases may request extensions to deadlines. After the onset of the COVID-19 pandemic, these requests are routinely made and granted. Second, the Risk Management Division of the General Services Department is required to hire and pay attorneys to represent respondents who are officers or employees of the state. Risk Management Division counsel often request extensions of time to become familiar with the case, and often elect to challenge Commission subpoenas. Litigating novel and complex issues in front of district courts and the courts of appeal is common, and these proceedings take far longer than 90 days to resolve. Third, motions to dismiss for failure to state a claim—which are currently available under the Commission's rules of procedure—are ultimately decided by a Commission hearing officer, who might take several weeks to draft an order and memorandum opinion resolving the motion.

Considerations

Three considerations are relevant to the Commission's strategic plan for FY23:

1. The Commission received a 5% budget cut in FY22, the consequence of which is that the Commission loses funding for, and must separate, its Special Projects Coordinator II on October 30, 2021. In FY23, the Commission hopes not only to restore funding for its Special Projects Coordinator II position (bringing the Commission back to FY21 appropriations), but also to receive a budget increase over FY21 appropriations to hire for three additional, classified staff members: an Attorney IV, a Paralegal-A, and a Database Administrator I.
2. Because the Commission is comprised of bipartisan, trusted New Mexican leaders, each of whom have long experience in public service to this State, the Legislature has tasked the Commission with responsibilities that exceed the Commission's initial mandate. For example, in FY21, the Legislature required the Commission to appoint three members of the independent, Citizens Redistricting Committee ("CRC"), including the CRC's Chair—a responsibility that required the Commission's staff to create and organize a competitive, statewide application process, followed by public interviews. The Commission has entered an interagency, reimbursement-based memorandum of understanding with the CRC to provide limited staff support to the CRC through October 30, 2021. These reimbursement funds have enabled the Commission to fund its Special Projects Coordinator II position (effectively on loan to the CRC) through October 2021. As noted, after that date, the Commission will be forced to separate that employee from state service.
3. Relatedly, the Commission's delegated powers and jurisdiction are still in flux. In the 2021 regular session, the Legislature expanded the Commission's jurisdiction to investigate and adjudicate violations of the Revised Uniform Law on Notarial Acts, NMSA 1978, §§ 14-14A-1 to 14-14A-32 (2021)—additional jurisdiction which commences in January of 2022. Also, for the past two sessions, legislators have introduced joint resolutions that would authorize and mandate the Commission to set the salaries for the elected officials in the state: legislators, elected executive officers, and judges. The Commission simply cannot perform additional constitutional and statutory mandates without a commensurate increase in funding.

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

Hon. Celia Foy Castillo, Member

Appointing authority: President Pro Tem of the Senate, Mimi Stuart
Term expires: June 30, 2025

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
Term expires: June 30, 2025

Appendix II: The Commission's 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, § 1-19-34.6 (2021) (Campaign Reporting Act)

A. If the secretary of state exhausts efforts in seeking voluntary compliance and reasonably believes that a person committed, or is about

to commit, a violation of the Campaign Reporting Act, the secretary of state shall refer the matter to the state ethics commission for enforcement; provided, however, that if the secretary of state waives the imposition of a fine pursuant to Subsection D of Section 1-19-35 NMSA 1978, the matter shall not be referred.

B. With or without a referral from the secretary of state, the state ethics commission may institute a civil action in district court for any violation of the Campaign Reporting Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of up to one thousand dollars (\$1,000) for each violation not to exceed a total of twenty thousand dollars (\$20,000), and forfeiture of any contribution received as a result of an unlawful solicitation or unlawful contribution. Each unlawful solicitation and each unlawful contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act.

C. With or without a referral from the secretary of state, the state ethics commission may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Campaign Reporting Act other than that specified in Subsection B of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of up to one thousand dollars (\$1,000) for each violation not to exceed a total of twenty thousand dollars (\$20,000).

NMSA 1978, § 1-19-34.8 (2021) (Campaign Reporting Act)

A. 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.

B. 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 provisions of the Campaign Reporting Act and a formalized agreement.

NMSA 1978, § 1-19A-15.1 (2021) (Voter Action Act)

A. 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 the State Ethics Commission Act [10-16G-1 to 10-16G-16 NMSA 1978].

B. The secretary of state shall forward complaints it receives alleging violations of the Voter Action Act to the state ethics commission in accordance with a formalized agreement.

NMSA 1978, § 2-11-8.2 (2021) (Lobbyist Regulation Act)

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act of those duties. This includes advising all registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The state ethics commission, in consultation with the secretary of state, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act.

B. The secretary of state may conduct examinations of reports and the state ethics commission may initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Any person who believes that a provision of the Lobbyist Regulation Act has been violated may file a written complaint with the state ethics commission pursuant to the terms of the State Ethics Commission Act [10-16G-1 to 10-16G-16 NMSA 1978]. If the commission has jurisdiction for the complaint,

the state ethics commission shall refer the complaint to the secretary of state. Upon referral, the secretary of state shall attempt to achieve voluntary compliance with the Lobbyist Regulation Act. Within twenty days after receiving the complaint from the state ethics commission, the secretary of state shall return the complaint to the state ethics commission and certify to the state ethics commission whether voluntary compliance was achieved. If the secretary of state certifies voluntary compliance, the state ethics commission shall dismiss the complaint or that part of the complaint alleging a violation of the Lobbyist Regulation Act. If the secretary of state does not certify voluntary compliance, the state ethics commission shall proceed with the complaint pursuant to the terms of the State Ethics Commission Act.

C. The secretary of state and the state ethics commission shall at all times seek to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. Additionally, the state ethics commission shall give a person who violates that act unintentionally or for good cause ten days' notice to come into compliance before the commission takes any action on a complaint filed with or referred to the commission against that person.

D. Any person who fails to file or files a report after the deadline imposed by the Lobbyist Regulation Act shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

E. If the secretary of state determines that a reporting entity subject to the reporting provisions of the Lobbyist Regulation Act has failed to file or has filed a report after the deadline, the secretary of state shall by written notice set forth the violation and the fine that may be imposed and inform the reporting individual that the individual has ten working days from the date of the letter to come into voluntary compliance and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a

timely explanation is filed and the secretary of state determines that good cause exists to waive the imposition of a fine, the secretary of state may by a written notice of final action partially or fully waive the imposition of a fine for any late report or statement of no activity. A written notice of final action shall be sent by certified mail. The secretary of state may file an appropriate court action to remit outstanding fines for good cause or refer unpaid fines for enforcement pursuant to Subsection F of this section.

F. The secretary of state may refer a matter to the state ethics commission for a civil injunctive or other appropriate order or enforcement.

NMSA 1978, § 2-11-8.3 (2021) (Lobbyist Regulation Act)

A. 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.

B. 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 Lobbyist Regulation Act and a formalized agreement.

NMSA 1978, § 10-16-11 (2021) (Governmental Conduct Act)

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.

NMSA 1978, § 10-16-18 (2021) (Governmental Conduct Act)

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 (2021) (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 (2019) (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 (2019)
(Procurement Code)**

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.

**NMSA 1978, § 13-1-196.1 (2019)
(Procurement Code)**

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 (2019, as amended 2021) (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 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 [Chapter 2, Article 11 NMSA 1978];
- I. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code [Chapter 1 NMSA 1978];

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 and, pursuant to the Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978], file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that the commissioner serves on the commission.

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:

- (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 [~~1-19-25~~ to ~~1-19-36~~ NMSA 1978], government contractors, lobbyists and lobbyists' employers of:

(1) the Campaign Reporting Act;

(2) the Financial Disclosure Act

[Chapter 10, Article 16A NMSA 1978];

(3) the Gift Act [~~10-16B-1~~ to ~~10-16B-4~~ NMSA 1978];

(4) the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];

(5) the Voter Action Act [~~1-19A-1~~ to ~~1-19A-17~~ NMSA 1978];

(6) the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978];

(7) the Procurement Code [13-1-28 to 13-1-199 NMSA 1978];

(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 10-16G-10 NMSA 1978.

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 defendant resides.

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], government contractor, lobbyist, lobbyist's employer or a restricted donor subject to the Gift Act [Chapter 10, Article 16B NMSA 1978] 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 under oath by the complainant.

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

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

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.

