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STATE ETHICS COMMISSION

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For Immediate Release:

04/28/2022

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PRESS RELEASE

Albuquerque, NM, April 28, 2022 – The State Ethics Commission announces that in response to a demand letter, Representative Georgene Louis paid the Commission \$250—the amount of the statutorily available fine for violation of Section 10-16-3(A) of the Governmental Conduct Act—in exchange for the Commission’s agreement not to file a civil enforcement action against her.

On the night of February 13, 2022, a Santa Fe Police Department Sergeant stopped Representative Louis on Saint Francis Drive and subsequently arrested her. After reviewing the lapel footage taken by the SFPD Sergeant, the State Ethics Commission concluded that Representative Louis violated the Governmental Conduct Act by referencing her legislative office and displaying her legislative license plate in an attempt to obtain favorable treatment from the SFPD Sergeant—either through a direct appeal for favorable treatment or by persuading the Sergeant that the cause of her behavior and appearance was fatigue from legislative service, not the effects of alcohol. On April 5, 2022, the Commission’s Executive Director made a settlement demand, offering Representative Louis the opportunity to pay the amount equivalent to the statutory fine

(\$250), in exchange for the Commission refraining from filing a civil enforcement action in state court. On April 27, 2022, Representative Louis paid the Commission's demand.

Section 10-16-3(A) of the Governmental Conduct Act provides:

A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

“In recent years, New Mexico has witnessed elected officials refer to their elected office to pursue a private interest during a law enforcement investigation into their conduct,” said Jeremy Farris, Executive Director of the State Ethics Commission. “The Governmental Conduct Act prohibits such use of the powers and resources of public office. The State Ethics Commission will make every effort to enforce that prohibition.”

The State Ethics Commission is a constitutionally independent state agency that promotes the integrity of state government through the interpretation, enforcement and improvement of New Mexico's campaign finance, procurement, and governmental conduct laws.

Related materials to this matter are attached. For more information about the State Ethics Commission visit www.sec.state.nm.us.



STATE ETHICS COMMISSION

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Jeremy D. Farris, Executive Director

April 5, 2022

Via Electronic Mail & U.S. Mail

Hon. Georgene Louis
State Representative, District 26
10104 Round Up Place SW
Albuquerque, NM 87121
(505) 250-7932
georgene.louis@nmlegis.gov

Re: Demand for \$250 civil penalty for violation of Section 10-16-3(A) of the Governmental Conduct Act

Dear Representative Louis,

My name is Jeremy Farris. I am the Executive Director of the State Ethics Commission, an independent state agency authorized to enforce the civil compliance provisions of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18 (1967, as amended 2019). On April 1, 2022, the State Ethics Commission authorized and instructed me to contact you in regard to your reference to your legislative office and display of your legislative license plate to an investigating police officer during a traffic stop on the night of February 13, 2022.

1. Demand for civil penalty

Having reviewed the lapel footage taken by Santa Fe Police Department Sergeant Heinz De Luca on the night of February 13, 2022, the Commission believes that you violated Subsection 10-16-3(A) of the Governmental Conduct Act by referencing your legislative office and displaying your legislative license plate in an attempt to obtain favorable treatment—either directly or by persuading Sergeant De Luca that the cause of your behavior and appearance was fatigue from legislative service, and not the effects of alcohol. *See* § 10-16-3(A). On April 1, 2022, at an open meeting, the Commission authorized and instructed me to make a settlement demand of \$250, the civil penalty for a single violation of the Governmental Conduct Act. *See* § 10-16-18(B). In exchange for a payment of \$250, addressed to the State Ethics Commission and made payable to the State of New Mexico by May 1, 2022, the Commission will refrain from filing a civil enforcement action. For your consideration, I attach a copy of a draft complaint that the Commission has authorized. *See* Attach. 1, Draft Compl., *State Ethics Comm'n v. Louis*, D-202-CV-_____ (2d Jud. Dist. Ct.).

a. The facts underlying this demand

On the night of February 13, 2022, you were pulled over by Sergeant De Luca for driving your car 17 miles per hour over the speed limit on St. Francis Drive in Santa Fe. *See* Dan Boyd and Andy Stiny, *State Rep. Louis' arrest on drunken driving charges rattles Roundhouse*,

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Albuquerque Journal (Feb. 14, 2022), <https://www.abqjournal.com/2469979/state-rep-georgene-louis-arrested-on-drunken-driving-charges.html>. Lapel camera footage of the stop can be viewed at the following link: <https://www.youtube.com/watch?v=H-sOFGdRd4Y>.

The lapel footage shows that after Sergeant De Luca informed you that he suspected you were intoxicated, you invoked your status as a member of the legislature. I have transcribed the relevant portions of the dialog between you and Sergeant De Luca as follows:

OFFICER: . . . Let me ask you something else. I smelled something similar to alcoholic beverages. How much did you drink tonight?

LOUIS: I had like two glasses of beers [sic].

OFFICER: Two glasses of beer? How long ago?

LOUIS: Uhm, half-time party.

OFFICER: Okay.

LOUIS: Six-ish, maybe?

OFFICER: So, all together, throughout the day, how many drinks did you have altogether today?

LOUIS: Two-ish.

OFFICER: Two-ish? Meaning, could be two, could be three?

LOUIS: Yeah. Yes.

OFFICER: Okay. What kind of drinks were you having?

LOUIS: Uh, Tito's, soda.

OFFICER: What is it?

LOUIS: Tito's, soda. Vodka soda.

OFFICER: Vodka and soda?

LOUIS: Yeah.

OFFICER: Okay. Alright. Let me look at your eyes, Ma'am. [Officer shines a flashlight in Louis's eyes]. Your eyes look a little bit watery, like glassy. Okay---

LOUIS: So, I haven't had much sleep because, um, I'm not trying to, like, say anything, but, like, I'm a legislator, so, we haven't had much sleep.

OFFICER Oh-kay. Alright, well---

LOUIS: Yeah. So these are my plates. Even though they're not on my car. [Louis shows Officer her official House of Representatives license plate].



OFFICER: Okay. Alright Ma'am. Okay.

LOUIS: Yeah. We haven't had, we haven't had a lot of sleep.

OFFICER: So, to me, you're just another citizen. Another driver on the road.

LOUIS: Yeah. Totally, totally cool. I just, haven't had a lot of sleep.

OFFICER: Okay, alright. I understand that. So, this is what I'd like to do. I'd like to make sure you're safe to drive. Okay?

LOUIS: Okay.

OFFICER: I would like to administer some sobriety tests. If at the end of my evaluation I think that you're okay to drive, you'll be on your way home.

LOUIS: Okay.

In the video above, you reference your legislative position twice. First, you say "I'm a legislator," but notably preface your reference to your legislative office by saying "I'm not trying to, like, say anything, but . . ."—suggesting you were aware that referring to your legislative office during a traffic stop could be perceived as an effort to obtain favorable treatment and/or to influence Sergeant De Luca and his investigation. Second, you displayed your red House of Representatives license plate to obtain favorable treatment and/or to induce Sergeant De Luca to believe that the cause of your appearance and behavior was insufficient rest given your performance of your legislative office, and not the effects of alcohol.

b. The applicable law related to this demand

Your reference to your legislative office and display of your legislative license plate implicates Subsection 10-16-3(A) of the Governmental Conduct Act. That statute provides:

A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

§ 10-16-3(A). A legislator violates Subsection 10-16-3(A) when the legislator uses "the powers and resources of public office . . . to obtain personal benefits or pursue private interests." § 10-16-3(A); *see also State v. Gutierrez et al.*, 2020-NMCA-045, ¶ 33, *cert. granted*, S-1-SC-38367 (Sep. 8, 2020) ("[Subsection 10-16-3(A)] (1) mandates the use of the powers and resources of a legislator's, public officer's, or public employee's public office only for the benefit of the people of New Mexico, and (2) prohibits legislators, public officers, and public employees from exploiting their powers and resources for private gain.").

c. The law as applied to your conduct

During the traffic stop, your reference to your legislative position and the display of your legislative license plate to the investigating officer amounts to a "use [of] the powers and resources of public office . . . to obtain personal benefits[.]"

When Sergeant De Luca first asked you why you were speeding, you stated that you were rushing to get home and were "just tired," making no reference to your legislative office as to the reason for your fatigue. After Sergeant De Luca informed you that he smelled alcohol and that your eyes appeared to be watery and glassy, however, you referenced your office as a legislator.

The timing and context of these statements support an inference that you invoked your legislative office to obtain preferential treatment from a police officer.

You then displayed your legislative license plate to the officer seemingly to convince the officer that the cause of your watery and glassy eyes was fatigue due to the performance of your legislative office, and not the effects of alcohol. You used the resources of your legislative office—i.e., your legislative license plates—to influence Sergeant De Luca’s investigation of the facts related to the traffic stop. Even if your display of your license plates was not meant to directly obtain preferential treatment but rather was meant to support your proffered explanation of Sergeant De Luca’s observations and, thereby, influence his investigation, the display of the license plate to the officer is nevertheless a use of the resources of legislative office to obtain a personal benefit.¹

The Commission is aware that federal administrative law judges have affirmed disciplinary actions against federal executive branch employees applying analogous federal law to similar facts. At 5 C.F.R. § 2635.702(a), the federal Office of Government Ethics promulgated a federal regulation that is analogous to Subsection 10-16-3(A). This rule applies to employees of federal executive agencies, with few exceptions. The rule provides: “An employee shall not use . . . his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself[.]” 5 C.F.R. § 2635.702(a).

This federal rule describes an equivalent public trust duty that Subsection 10-16-3(A) articulates. *Compare* 5 C.F.R. § 2635.702(a), *with* § 10-16-3(A). Federal executive agencies have disciplined employees under § 2635.702(a) where executive employees have attempted to use their title or authority to obtain personal benefits in circumstances related to an investigatory stop by a law enforcement officer. And federal administrative law judges have affirmed such instances of discipline in several instances. For your consideration, the Commission highlights three relevant federal cases:

First, in *Garcia v. DOJ*, No. DE-0752-08-0216-I-2, 2008 WL 4501194 (M.S.P.B. Aug. 21, 2008), Mario Garcia, a Language Specialist with the FBI, was stopped by two Las Cruces Police Department officers. The LCPD officers stopped Garcia because they believed that Garcia “had yelled something out of his car window as he drove past” the officers while the officers were engaged in a prior arrest. When the LCPD officers reached the appellant’s vehicle, he “displayed his FBI credentials, but did not identify himself as a Special Agent or otherwise verbally reference his FBI employment.” An LCPD sergeant asked why Garcia had “badged” the officers. The LCPD officers cited Garcia for violating a Las Cruces traffic ordinance. The LCPD sergeant made a complaint to the FBI that Garcia had displayed his FBI badge during the traffic stop. After an investigation, the FBI’s Office of Professional Responsibility terminated

¹ Moreover, after you informed Sergeant De Luca that you were a member of the House of Representatives and showed him your official license plate, Sergeant De Luca responded that “to me, you’re just another citizen. Another driver on the road.” The officer’s response indicates that he perceived your comments as an overture to obtain special treatment.

Garcia's employment based on misuse of office in violation of § 2635.702(a), among other charges. An Administrative Law Judge (ALJ) for the Merit Systems Protection Board upheld the FBI's discipline, rejecting Garcia's explanation that he had displayed his credentials because he felt afraid, and instead concluded that the appellant displayed his credentials "in the hopes that *he would be afforded some advantage as an employee of the FBI that a member of the general public might not be afforded.*" (emphasis added). This, the ALJ concluded, violated 5 C.F.R. § 2635.702(a). The ALJ emphasized Garcia's own statements that he "displayed his credentials to show that he posed no threat as opposed to somebody else that [the police officers] might see as unfriendly and that he was one of the good guys," which the ALJ found established that the appellant "was seeking to be treated differently than he otherwise might have been had he not displayed his credentials."

Second, in *Poteat v. Dep't of the Treasury*, No. DC-0752-16-0134-I-2, 2017 WL 6757620 (M.S.P.B. Dec. 26, 2017), Ebonique Poteat, a Special Agent with the Department of Treasury, Office of Inspector General, was detained in the Miami International Airport by U.S. Customs and Border Patrol ("CBP") officers when a bottle of oxycodone pills was discovered in her luggage. During the time of her detention, Poteat identified herself to three separate CBP officers as a Special Agent with the Department of Treasury. The Treasury disciplined her for a violation of § 2635.702(a), charging that "by advising the CBP Officers that you were a Special Agent for the Department of Treasury without being prompted, you attempted to influence the outcome of the situation you had placed yourself in." The ALJ for the Merits Systems Protection Board affirmed the discipline in part because Poteat falsely told one of the CBP officers that her travel was work-related, which was "an attempt in [the ALJ's] view to suggest to [the CBP agent] that the appellant ought to be allowed to proceed on her way owing to her position and on-duty status."

Third, in *AFGE, NBPC, Local 3725 v. CBP*, 2015 WL 10530074 (Fed. Mediation and Conciliation Service Sept. 14, 2015), Border Patrol Agent Tony Fiorita was pulled over by local police for speeding late at night while returning to Tampa from overnight surveillance duty. Fiorita initially did not pull over when police officers began pursuing him with their emergency lights flashing, and he even briefly activated his own emergency lights during the pursuit. After Fiorita pulled over and was approached by the officers, Fiorita told the police officers that he knew their Chief of Police. Based on this conduct, CBP disciplined Fiorita. Although the discipline was overturned because the agency failed to timely proceed in its investigation of the alleged misconduct, the arbitrator concluded that the misuse of position charge was substantiated because

[T]he Agency has met its burden of proof regarding Charge 2, 'Misuse of Position.' While it may be that the grievant was just trying to make small talk about how he was familiar with Lt. Dowd's police department, as he testified, Agent Fiorita should have known better than to talk about his familiarity with the police department in general, or its Police Chief specifically, during a traffic stop. It was reasonable for Lt. Dowd to conclude from this that the grievant was trying to persuade Lt. Dowd to drop the matter or take it easy on him, especially since this

conversation had occurred just minutes after the grievant had flashed his emergency lights at Lt. Dowd without pulling over, indicating to Lt. Dowd that the grievant was hoping that he would just go away.

Each of these federal administrative cases involves an investigatory detention of a federal employee by a law enforcement officer, and each case concludes that it is an abuse of office for a detained government employee to invoke the powers or credentials of their government office to influence the investigating law enforcement officer to act in their favor—and even if the effort is ultimately fruitless.² Because of the similarity in language and public trust duties contained in the federal regulation misuse-of-office regulation and Subsection 10-16-3(A), the above-described federal administrative cases interpreting 5 C.F.R. § 2635.702(a) are persuasive authority for how a New Mexico court would interpret Section 10-16-3(A) as applied to your conduct. Like the federal government employees in *Poteat, Garcia*, and *Local 3725*, you invoked your official position (twice) to obtain favorable treatment from a police officer, either (i) directly or (ii) by attempting to persuade the officer of your proffered explanation for your appearance. These facts—established by video evidence—support a finding that you violated Subsection 10-16-3(A) of the Governmental Conduct Act.

d. Demand

The Governmental Conduct Act authorizes a \$250 civil penalty for each violation of the Act. *See* NMSA 1978, § 10-16-18 (2019) (“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 and fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).”). In exchange for a payment of \$250, addressed to the State Ethics Commission and made payable to the State of New Mexico, the Commission will refrain from filing a civil enforcement action. Unless you pay that amount on or before May 1, 2022, the Commission will file suit to recover all available relief, expenses, fees, and court costs. The Commission’s attorneys are prepared to file a version of the attached complaint in state district court without further notice if you do not satisfy the demand and resolve this matter by May 1, 2022. You or your attorney may direct future communications in this matter to me.

Please be aware that any settlement reached in this matter will be a public record, as will any civil enforcement action that this letter contemplates.

2. Demand for preservation of evidence

New Mexico law recognizes a duty not to destroy, mutilate, or alter potential evidence for the purpose of defeating recovery in a civil action. Accordingly, please take immediate action to preserve all electronically stored information (“ESI”), copies and backup, along with any paper

² Relatedly, the federal Office of Government Ethics has advised that even “if an employee were to use his title in a letter to a local police department challenging a traffic ticket, it might well appear that the employee was using his public office for private gain.” U.S. Office of Gov’t Ethics, Letter to a Designated Agency Ethics Official, 2002 WL 32100966, at *1 (Oct. 30, 2002).

State Ethics Commission
To: Hon. Georgene Louis
April 5, 2022
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files which you maintain, that might contain evidence related to this matter. Accordingly, I request the following actions:

- a. You immediately stop any destruction or alteration of documents or ESI in your possession, custody or control, including e-mail, instant messages, text messages, voice mail, electronic calendars, telephone logs, photographs, word processing documents, spreadsheets, and databases, including all underlying metadata, that might be relevant to this matter;
- b. You immediately take steps to secure and preserve any ESI, backup tapes, hard drives, CDs, paper and other archival storage media in your possession, custody or control, including those provided by third-party vendors, that might be relevant to this matter.

Please do not hesitate to contact me with any questions.

Very truly yours,

/s/ Jeremy Farris
Jeremy Farris
Executive Director
State Ethics Commission

cc: Hon. William Lang, Chair, State Ethics Commission (via electronic mail)

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT**

STATE ETHICS COMMISSION,

Plaintiff,

v.

GEORGENE LOUIS,

Defendant.

No. D-202-CV-_____

COMPLAINT

1. A core tenet of legislative service in New Mexico is that “[a] legislator . . . shall treat the legislator’s . . . government position as a public trust. The legislator . . . shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.” NMSA 1978, § 10-16-3(A) (2011).

2. On the night of February 13, 2022, Georgene Louis violated the public trust, misusing her position as a member of the House of Representatives to obtain personal benefits.

3. For its complaint against Defendant Louis for a single violation of the Governmental Conduct Act, the Commission alleges:

PARTIES

4. Plaintiff State Ethics Commission is an independent state agency established by Article V, Section 17(A) of the New Mexico Constitution with constitutional and statutory authority to enforce New Mexico’s ethics laws, including the Governmental Conduct Act. Plaintiff State Ethics Commission’s principal place of business is in Bernalillo County.

5. On April 1, 2022, the Commission authorized Commission staff to bring this lawsuit.

6. Defendant Georgene Louis is a member of the House of Representatives, serving House District 26, and resides in the County of Bernalillo.

JURISDICTION AND VENUE

7. The Court has jurisdiction under N.M. Const., Art. VI, § 13.

8. Venue is proper in this Court under NMSA 1978, § 10-16G-9(F) (2021).

FACTUAL ALLEGATIONS

9. On the night of February 13, 2022, Defendant was pulled over by a Santa Fe Police Department officer for speeding on St. Francis Drive in Santa Fe.

10. When asked to explain why she was speeding, Defendant said she was “just tired” and on her way home.

11. The police officer told Defendant that he detected the smell of alcohol and asked whether she had been drinking. Defendant admitted to drinking “two-ish” alcoholic beverages that day.

12. When the police officer informed Defendant that her eyes “look a little bit watery, like glassy,” Defendant interrupted the police officer and said: “So, I haven’t had much sleep because, um, I’m not trying to, like, say anything, but, like, I’m a legislator, so, we haven’t had much sleep.”

13. Before the police officer could respond, Defendant displayed her official House of Representatives license plate to the police officer. Defendant then said “Yeah. We [legislators] haven’t had a lot of sleep.”

14. In response to Defendant’s reference to her legislative office and display of her legislative license plates, the police officer responded, “So, to me, you’re just another citizen. Another driver on the road.”

Count I: Subsection 10-16-3(A)

15. Subsection 10-16-3(A) of the Governmental Conduct Act prohibits a member of the legislature from “us[ing] the powers and resources of public office . . . to obtain personal benefits or pursue private interests.”

16. Defendant used the powers and resources of her public office to obtain personal benefits or pursue private interests by referencing her legislative office and displaying her legislative license plate to a police officer to obtain special treatment by that officer during a traffic stop.

17. In the alternative to paragraph 16, Defendant used the resources of her public office to obtain personal benefits or pursue private interests by displaying her legislative license plate to the police officer to influence the officer’s investigation and to persuade the officer that her driving and behavior was the result of fatigue from the exercise of her legislative office, and not the effects of consuming alcohol.

REQUEST FOR RELIEF

WHEREFORE, the State Ethics Commission requests the Court to enter relief as follows:

- a. A civil penalty of \$250 for the above-described violation of the Governmental Conduct Act;
- b. Assessment of costs under NMSA 1978, § 34-6-40.1 (1981, as amended 1989); and
- c. Such other relief as the Court deems just and proper.

Respectfully submitted: May ___, 2022,

STATE ETHICS COMMISSION

By: /s/ Jeremy Farris
Jeremy Farris
Walker Boyd
Caroline “KC” Manierre

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