



# STATE ETHICS COMMISSION

<https://sec.state.nm.us>

800 Bradbury Dr. SE  
Suite 215  
Albuquerque, NM 87106  
(505) 827-7800

# STRATEGIC PLAN

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# FISCAL YEAR 2024

# 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 2024—the Commission’s fifth year. The Commission has no staff vacancies and is experiencing increasing levels of work to meet its constitutional and statutory mandates to oversee New Mexico’s governmental conduct, procurement, and disclosure laws. Furthermore, the Legislature has recently expanded the Commission’s responsibilities to oversee notary publics under the Revised Uniform Law on Notarial Acts.

The Commission remains focused on hiring and achieving full funding for key personnel that are necessary for the Commission to meet its significant constitutional and statutory mandates. This strategic plan is targeted to those needs.

Sincerely,

Jeremy Farris  
Executive Director  
State Ethics Commission



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## Mission Statement

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

## Agency Overview

### **Legal Foundation and Creation**

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

No more than three Commissioners may be members of the same political party. Except for the initial Commissioners, the Commissioners are appointed for staggered terms of four years. No Commissioner may serve more than two consecutive four-year terms. Commissioners are removable for cause only, through a removal proceeding before the New Mexico Supreme Court. The 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 five core responsibilities:

- (1) to investigate and 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;
- (3) to provide guidance to public officers, employees, and the public about New Mexico's governmental conduct, procurement and disclosure laws;
- (4) to investigate and prosecute in administrative proceedings violations of New Mexico's Revised Uniform Law on Notarial Acts; and
- (5) to make annual recommendations to the Governor and the Legislature regarding amendments to New Mexico's ethics laws.

*First*, the Commission may investigate and 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. Vargas et al.*, D-202-CV-2021-06201, the Commission filed suit to enforce the revolving door provisions of the Governmental Conduct Act against a former commercial assessor in the Sandoval County Assessor's office and the tax consultancy company that currently employs him. The Commission may also initiate administrative proceedings and petition state district courts to issue subpoenas.

*Third*, the Commission provides guidance to government officers and employees and members of the public about New Mexico's ethics and disclosure laws. The Commission fulfills this responsibility by answering requests for advice through either advisory opinions or letters and by offering trainings and guidance materials for public officials and employees. 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 advisory opinions are published by

the New Mexico Compilation Commission and are publicly available on [www.NMOneSource.com](http://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.

*Fourth*, under the Revised Uniform Law on Notarial Acts (“RULONA”), NMSA 1978, §§ 14-14A-1 to -32 (2021), the State Ethics Commission has authority to “deny, refuse to renew, revoke, suspend or impose a condition on a commission as a notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public . . . .” NMSA 1978, § 14-14A-22(A) (2021). Under this authority, the Commission investigates and adjudicates complaints against notaries public. These administrative cases are handled separately from the Commission’s ethics docket, and they reflect a growing and significant part of the Commission’s work.

*Fifth*, the Commission is tasked to make an annual report to the Governor and the Legislature for amendments to statutes relating to the Commission’s jurisdiction and New Mexico’s ethics laws, including New Mexico’s governmental conduct, procurement, and disclosure statutes.

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 an internship program for students at the University of New Mexico School of Law.

# Major Accomplishments

## **Significant Accomplishments During FY22:**

### ***Investigation and Adjudication of Administrative Complaints:***

- In FY22, the Commission received, investigated and adjudicated 44 administrative complaints alleging violations of New Mexico's ethics and disclosure laws. At present, 9 of the 44 administrative matters filed during FY22 are still pending.

### ***Subpoena Litigation, Civil Enforcement Actions, and Pre-Litigation Settlements:***

- In August and September 2021, the Commission prevailed in a motion seeking civil contempt sanctions against Representative Rebecca Dow for refusing to make herself available for a deposition related to administrative matter No. 2020-031. The Court imposed a \$50 daily fine until Dow attended a deposition. Dow paid over \$4,100 in sanctions before she sat for a deposition related to the general counsel's investigation in the administrative matter. The Commission prevailed in both New Mexico district court and in the New Mexico Supreme Court in relation to Dow's challenges to the Commission's subpoena power.
- On October 27, 2021, the Commission filed a civil action against a former commercial assessor at the Sandoval County Assessor's Office, and Double Eagle Property Tax Consultants, to enforce the revolving-door provisions of the Governmental Conduct Act. This is the first instance in which the Commission commenced a civil action to enforce the Governmental Conduct Act.
- On January 21, 2022, in response to an inquiry from the Commission's Executive Director, the candidate committee New Mexicans for Michelle ("NMFM"), paid a \$4,200 excess contribution to the public election fund. NMFM had received contributions from Intrepid Potash that exceeded the lawful limit on contribution amounts by \$4,200.
- On April 28, 2022, in response to a demand letter, Representative Georgene Louis paid the Commission a civil fine of \$250, the amount of the statutorily available fine for a violation of Section 10-16-3(A) of the Governmental Conduct Act. The Commission concluded that Representative Louis had violated Section 10-16-3(A) by referencing her legislative office and displaying her legislative license plate to a law enforcement officer during a traffic stop in an attempt to obtain favorable treatment from the officer.

***Advisory Opinions, Education and Trainings:***

- Issued 10 advisory opinions, available on [www.NMOneSource.com](http://www.NMOneSource.com), and 14 advisory letters
- Delivered over twenty separate trainings to state agencies, state boards and commissions, legislative committees, affiliate and professional organizations, and bar associations around New Mexico.

***Other Accomplishments:***

- On December 7, 2021, the Commission received national recognition as a model agency among state and local ethics agencies in the Campaign Legal Center's [Top 10 Transparency Upgrades for Ethics Commissions](#). The CLC report featured both the Commission's Proceedings Portal and posting of publicly available and searchable advisory opinions on [www.NMOneSource.com](http://www.NMOneSource.com).
- During FY22, the Commission's staff also staffed the Citizen Redistricting Committee ("CRC"), providing ample support to the CRC Chair, the Honorable Edward L. Chávez and assisting in the drafting of the [CRC's final report](#), issued on November 2, 2021. In taking on these uncompensated, extra duties, several members of the Commission's staff stepped up for New Mexico's democracy, when other state agencies were unable to do so.
- Since January 1, 2022, the Commission has received, investigated, or prosecuted over 17 separate administrative matters involving a potential remedial action against a notary public's commission.
- In 2022, the Commission, working with the Office of the Secretary of State, achieved financial disclosure filings from all individuals who are required to file annual financial disclosure statements.
- In July 2022, the Commission reclassified its Finance and Administration Director position from a Staff Manager to an Administration and Operations Manager (A/O 1), with a corresponding increase in the salary band. This institutional change helps to ensure that the Commission will be better able to recruit for a talented, experienced person to handle this vital position, as the Commission transitions away from its initial staff.

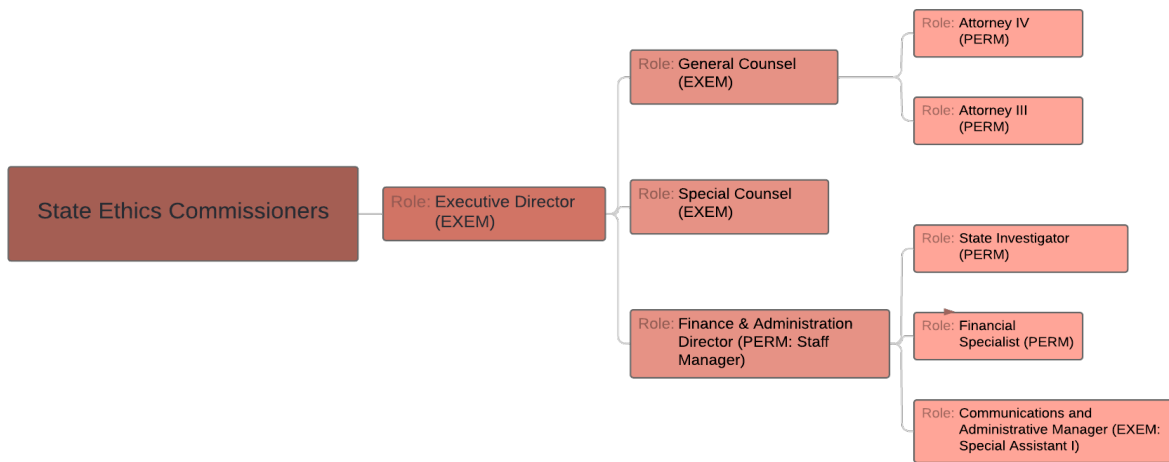


# Organizational Structure

## Agency Organization (Corresponding to FY24 Request):

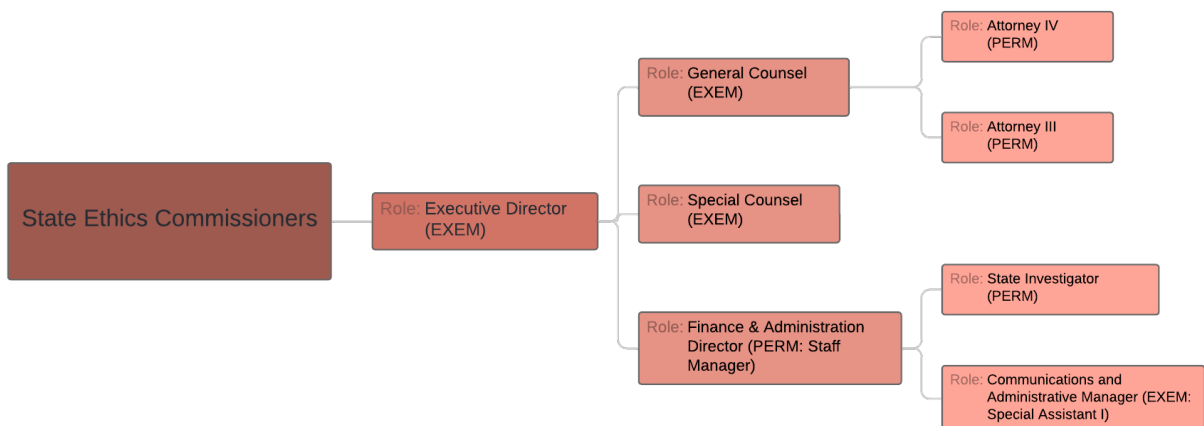
PROPOSED STATE ETHICS COMMISSION ORGANIZATIONAL CHART

FY 2024



## Agency Organizational Chart (FY23):

STATE ETHICS COMMISSION ORGANIZATIONAL CHART



# FY24 Objectives and Strategic Actions

Through FY24, the Commission will retain the same basic objectives as in previous fiscal years: investigation and adjudication of administrative complaints; enforcement of New Mexico's governmental conduct, procurement and disclosure laws; guidance and education; and building the agency's capacity and visibility. Looking forward to FY24, the Commission proposes the following strategic actions.

## **ADMINISTRATIVE ADJUDICATION**

The Commission's primary function is the investigation and adjudication of administrative complaints filed either by members of the public or referred by other state agencies. In FY23, the Commission will hire an Attorney IV and a State Investigator position to assist in the investigation and adjudication of administrative cases. In FY24, the Commission intends to take the following strategic actions to improve its administrative adjudications:

### ***Strategic Actions (FY24)***

- Subject to requested appropriations, fully fund the Attorney IV and State Investigator positions.
- Contract for hearing-officer services with a retired state judge or retired federal magistrate or bankruptcy judge and with the Administrative Hearings Office.

## **ENFORCEMENT**

The Commission may pursue civil enforcement actions in state court to remedy violations of the laws provided for in Section 10-16G-9(A) of the State Ethics Commission Act, including the Governmental Conduct Act, the Procurement Code, and the Campaign Reporting Act. This discretionary authority is the Commission's greatest tool to directly vindicate New Mexico's ethics laws. In FY24, the Commission intends to take the following strategic actions to enable and effectuate its enforcement authority:

### ***Strategic Actions (FY24)***

- Subject to requested appropriations, fully fund the Attorney IV and State Investigator positions.
- Contract for paralegal services to support the Commission's attorneys in the investigation and prosecution of civil enforcement actions and special statutory proceedings.
- Undertake 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 participate as amicus curiae on appellate cases implicating New Mexico's ethics laws.

## **GUIDANCE AND EDUCATION**

The Commission has the responsibility to provide guidance 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 guidance function:

### ***Strategic Actions (FY24)***

- Subject to requested appropriations, fully fund the Attorney IV position, so that the Commission has a greater ability to timely issue formal advisory opinions and advisory letters that are legally 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, local public bodies, and affiliate organizations.
- Issue advisory opinions and advisory letters upon proper request.
- Work with the New Mexico Compilation Commission to ensure that State Ethics Commission advisory opinions are published on [www.NMOneSource.com](http://www.NMOneSource.com) and New Mexico's statutes are annotated with the growing body of State Ethics Commission advisory opinions.

## **CAPACITY BUILDING AND VISIBILITY**

FY24 will be the Commission's fifth year. The Commission remains a young state agency, mostly staffed by its initial staff members. To build capacity to perform its basic constitutional and statutory mandates, in FY24, the Commission intends to take the following strategic actions:

### ***Strategic Actions (FY24)***

- Subject to requested appropriations, fully fund the Attorney IV and State Investigator positions.
- Subject to requested appropriations, recruit and hire for a Financial Specialist to assist the Finance and Administration Director (AO/1) in carrying out all of the agency's financial and human resource related tasks and obligations. The agency has grown to a point at which a single employee cannot handle or sensibly be made responsible for all of the Commission's financial and human resource duties. The onboarding of a Financial Specialist would increase the Commission's staff to a total of 9 FTE.
- 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 disclosure laws and the Commission's work enforcing those laws.

## **IMPROVED ENGAGEMENT WITH LOCAL GOVERNMENTS**

In the Commission's October 1, 2021 [special report](#) to the Governor and the Legislature, the Commission did not recommend expansion of its personal jurisdiction for administrative matters to officials and employees of local governments. The Commission argued that such an expansion would exceed the limited capacity of its staff to investigate and adjudicate administrative complaints, considering all of the other responsibilities the Commission is tasked to handle. Further, the Commission is able to efficiently enforce New Mexico's ethics and disclosure laws as they apply to local governments through the Commission's authority to investigate and initiate civil enforcement actions. Separate from its enforcement duties and its responsibilities to provide advisory services and trainings, the Commission can more deeply engage with local governments to better ensure compliance with New Mexico's ethics and disclosure laws. To that end, in FY24, the Commission intends to take the following strategic actions:

### ***Strategic Actions (FY24)***

- Develop a toolkit of resources that local governments can consult to enact local ethics and disclosure ordinances and local ordinances creating local ethics boards to adjudicate local ethics complaints.
- Host a conference for local ethics bodies to discuss best practices and to publicize the Commission's work and resources available to local governments.

## **Revised Uniform Law on Notarial Acts (RULONA)**

The Commission may "deny, refuse to renew, revoke, suspend or impose a condition on a commission as a notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public . . . ." § 14-14A-22(A). Under this authority, the Commission investigates and adjudicates complaints against notaries public. These RULONA administrative cases are handled separately from the Commission's ethics docket, and they reflect a growing and significant part of the Commission's work.

### ***Strategic Actions (FY24)***

- Subject to requested appropriations, fully fund the State Investigator position, which can assist in the investigation of complaints against notaries public that implicate the Commission's remedial power under RULONA.
- Create a separate department within the Commission to separately budget for and track expenses that relate to the Commission's investigation and adjudication of administrative proceedings arising under RULONA.
- Contract for paralegal services to assist the Attorney III in the management of the RULONA administrative docket.
- Continue to work with the Business Services Division of the Office of the Secretary of State to ensure that Commission adverse actions on notary public commissions are reflected and made available to the public.

# Performance Measures

## **Current 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	FY22 Actual	FY24 Target
Percent of advisory opinions issued within sixty days of receipt of request.	80%*	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.	57%†	90%

## **Recommended Performance Measures**

The Commission recommends a revision to the second performance measure above. In lieu of the current measure, the Commission recommends the following metric:

Percent of ethics complaints within the agency's jurisdiction that are either disposed or set for public hearing within one-hundred-and-eighty (180) days after a complaint is received.

\* From July 1, 2021, to June 30, 2022, the Commission issued 10 advisory opinions. Eight of these opinions were issued by the Commission within 60 days of the receipt of the request for an advisory opinion. For the two opinions that were issued in excess of 60 days, one was issued 63 days after the request was received; the other was issued 73 days after the request was received. During FY22, on average, the Commission issued advisory opinions 33 days after the Commission staff received a proper request. Because the Commission regularly meets every other month, the Commission often will not issue an advisory opinion within 60 days of a request when the request is received shortly before the Commission meeting, particularly when the agenda is already set.

† There are several reasons why the Commission often requires more than 90 days to resolve an administrative complaint. There are substantial delays that occur before a probable cause determination and a hearing. Under applicable regulations (1.8.3 NMAC), the parties to administrative cases may request extensions to deadlines. These requests are routinely made and granted. Further, 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. Also, it can take substantial time for the Commission's general counsel to schedule interviews and depositions, working with the schedules of parties and witnesses.

**First**, the performance measure should focus on "ethics complaints," as opposed to "complaints" to focus on those administrative matters arising under New Mexico's governmental conduct, procurement, and disclosure laws, and excluding the Revised Uniform Law on Notarial Acts. RULONA matters are not administered according to the procedure set forth in the State Ethics Commission Act and 1.8.3 NMAC.

**Second**, the performance measure should focus on complaints within the Commission's jurisdiction. The Commission receives administrative complaints for which it lacks personal jurisdiction (e.g., where the respondent is a local government employee), or subject matter jurisdiction (e.g., where the alleged violation arises under a statute the Commission does not oversee - the Inspection of Public Records Act, for example). The Commission readily and swiftly disposes of administrative complaints outside of its jurisdiction. Accordingly, the current performance measure incorporates and reflects the percentage of complaints that are outside of the agency jurisdiction, which is not a real measure of agency performance. Performance should rather be measured as to those administrative matters for which the agency has jurisdiction.

**Third**, the clauses "referred to another agency" and "or referred from other state agency with shared jurisdiction" should be deleted as redundant and unnecessary. At the conclusion of a Commission administrative adjudication, if the Commission refers a claim to another agency, then that is one form of a disposition, before the administrative matter is closed. Thus, "referred to another agency" is already captured by the language "disposed" in the current and proposed performance measure. Similarly, "referred from other state agency with shared jurisdiction" is simply one method by which the Commission receives administrative complaints; accordingly, the language "received" in the current and proposed performance measure already captures the circumstances when a complaint is referred to the Commission by another state agency.

**Fourth**, 180 (rather than 90) days is a much fairer measure of the agency's performance in investigating and adjudicating administrative complaints within the agency's jurisdiction. There are several potential delays built into the adjudication of an administrative complaint, including (1) assignation of defense counsel by the Risk Management Division to a respondent; (2) a respondent's (or their counsel's) filing of a response to the complaint; (3) the process required for the Commission to seek and obtain leave from a state district court judge before issuing a subpoena; (4) any litigation before the state district court on a motion to quash filed in response to the Commission's issuance of a subpoena; and (5) the built-in statutory delays for complaints alleging violations of the disclosure laws, during which the Office of the Secretary of State has the opportunity to attempt to seek voluntary compliance. In light of these delays, the Commission's staff can rarely complete an investigation into an administrative ethics matter for which it has jurisdiction within 90 days. These delays should not be fairly attributed to agency staff when assessing their

performance in conducting and completing timely investigations in administrative matters. 180 days is a fairer measure of agency performance.

## Considerations

Two considerations are relevant to the Commission's strategic plan for FY24:

1. 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. Also, 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 commenced in January 2022. 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.
2. Under Section 10-16G-10(K) of the State Ethics Commission Act, a public official or state employee who is a respondent to an administrative complaint alleging an ethics 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. After consulting with other state ethics commissions, this provision stands as an aberration among other state ethics regimes. As a result of this Section 10-16G-10(K) and considering the incentives of private attorneys providing legal defenses to their clients, administrative matters where respondents are represented by risk counsel tend to generate significant expense for the State and significant work for the Commission's attorney staff. So long as Section 10-16G-10(K) remains the law, the Commission is concerned that it has adequate attorney staff to investigate and adjudicate administrative ethics cases.

## Appendix I: Current Commissioners

**The current Commissioners are:**

**Hon. William F. Lang, Chair**

Appointing authority: Governor Michelle Lujan Grisham

Term expires: June 30, 2026

**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 Stewart

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.

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

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act [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 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.

**NMSA 1978, § 14-14A-22 (2022) (Revised Uniform Law on Notarial Acts)**

A. The state ethics commission may deny, refuse to renew, revoke, suspend or impose a condition on a commission as notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public, including:

(1) failure to comply with the Revised Uniform Law on Notarial Acts;

(2) a fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the state ethics commission;

(3) a conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty or deceit during the term of the notary public's commission or during the five years immediately preceding such term;

(4) a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty or deceit;

(5) failure by the notary public to discharge any duty required of a notary public, whether by the provisions of the Revised Uniform Law on Notarial Acts, rules of the secretary of state or any federal or state law;

(6) use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;

(7) violation by the notary public of a rule of the secretary of state regarding a notary public;

(8) denial, refusal to renew, revocation, suspension or conditioning of a notary public commission in another state;

(9) failure of the notary public to maintain an assurance as provided in Subsection D of Section 20 [14-14A-20 NMSA 1978] of the Revised Uniform Law on Notarial Acts; or

(10) if the individual ceases to be a resident of this state or ceases to be employed in this state.

**§ 14-14A-24. Prohibited acts.**

I. An individual who performs a purported notarial act with knowledge that the individual's commission as a notary public has expired or that the individual is otherwise disqualified from the office of notary public or as a notarial officer is guilty of a misdemeanor and upon conviction shall be punished by a fine of five hundred dollars (\$500) and shall be removed from office by the state ethics commission.

