

STATE ETHICS  
COMMISSION MEETING

November 3, 2023

**PUBLIC MATERIALS**

**PUBLIC MATERIALS**  
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**STATE ETHICS COMMISSION**

Hon. William F. Lang, Chair  
Jeffrey L. Baker, Member  
Stuart M. Bluestone, Member  
Hon. Celia Castillo, Member  
Hon. Dr. Terry McMillan, Member  
Ronald Solimon, Member  
Dr. Judy Villanueva, Member

November 3, 2023, 9:00 a.m. to 12:00 p.m. (Mountain Time)

Meeting Link: [Here](#)

Meeting ID: 849 2853 2309

Passcode: Ethics123

**Commission Meeting**

Chair Lang Calls the Meeting to Order

1. Roll Call
2. Welcome Dr. Terry McMillan to Commission  
(Lang)
3. Approval of Agenda
4. Approval of Minutes of August 4, 2023 Commission Meeting

**Commission Meeting Items**

**Action Required**

- |   |     |
|---|-----|
| 5. Resolution 2023-05: Commissioner Media Policy<br>(Lang, Tom Garrity) | Yes |
| 6. Letter to the editor regarding the Procurement Code<br>(Bluestone)   | Yes |
| 7. Commissioner Recusal Procedure<br>(Baker)                            | Yes |

- |  |     |
|--|-----|
| 8. FY25 Budget Request and Strategic Plan<br>( <i>Farris</i> ) | Yes |
| 9. Advisory Opinion 2023-07<br>( <i>Farris</i> )               | Yes |
| 10. Public Comment (pre-closed session)                        | No  |

**Upon applicable motion, Commission goes into executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings) and 10-15-1(H)(7) (attorney client privilege pertaining to litigation).**

11. Discussion regarding current and potential litigation:  
(*Randall, Farris*)

- a. Request for authorization to file a civil enforcement action against local elected official for violations of the Governmental Conduct Act

12. Administrative Matters under Revised Uniform Law on Notarial Acts:  
(*Branch*)

- a. 2022-NP-19 *In re commission of Valdez* (Default Order)
- b. 2023-NP-01 *In re commission of Acosta* (Order of Dismissal)

13. Discussion regarding administrative matters subject to settlement approval :  
(*Boyd*)

- a. Administrative Complaint No. 2022-045
- b. Administrative Complaint No. 2023-031
- c. Administrative Complaint No. 2023-038

14. Discussion regarding administrative matters under State Ethics Commission Act:  
(*Manierre, Farris*)

- a. Administrative Complaint No. 2022-027
- b. Administrative Complaint No. 2023-018
- c. Administrative Complaint No. 2023-025
- d. Administrative Complaint No. 2023-026
- e. Administrative Complaint No. 2023-027
- f. Administrative Complaint No. 2023-028
- g. Administrative Complaint No. 2023-033
- h. Administrative Complaint No. 2023-034
- i. Administrative Complaint No. 2023-036
- j. Administrative Complaint No. 2023-037
- k. Administrative Complaint No. 2023-040
- l. Administrative Complaint No. 2023-041
- m. Administrative Complaint No. 2023-042



- n. Administrative Complaint No. 2023-043
- o. Administrative Complaint No. 2023-044
- p. Administrative Complaint No. 2023-045
- q. Administrative Complaint No. 2023-046

**Upon applicable motion, Commission returns from executive session**

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15. Authorization of Civil Action: Yes  
*(Farris)*
- a. Request for authorization to file a civil enforcement action against local elected official for violations of the Governmental Conduct Act
16. Administrative matters under the Revised Uniform Law on Notarial Acts: Yes  
*(Branch)*
- a. 2022-NP-19, *In re commission of Valdez* (Default Order)
  - b. 2023-NP-01, *In re commission of Acosta* (Order of Dismissal)
17. Settlements in Administrative Matters under the State Ethics Commission Act: Yes  
*(Boyd)*
- a. Administrative Complaint No. 2022-045
  - b. Administrative Complaint No. 2023-031
  - c. Administrative Complaint No. 2023-038
18. Administrative Matters under State Ethics Commission Act: Yes  
*(Farris)*
- Ninety-day extensions under NMSA 1978, § 10-16G-11(A):
- a. Administrative Complaint No. 2022-027
  - b. Administrative Complaint No. 2023-018
  - c. Administrative Complaint No. 2023-025
- Dismissals of claims in administrative matters that are outside of the Commission’s jurisdiction:
- a. Administrative Complaint No. 2023-027
  - b. Administrative Complaint No. 2023-034
  - c. Administrative Complaint No. 2023-036
  - d. Administrative Complaint. No. 2023-037
- Dismissals of administrative complaints:
- a. Administrative Complaint No. 2023-026
  - b. Administrative Complaint No. 2023-028
  - c. Administrative Complaint No. 2023-033
  - d. Administrative Complaint No. 2023-040

- e. Administrative Complaint No. 2023-041
- f. Administrative Complaint No. 2023-042
- g. Administrative Complaint No. 2023-043
- h. Administrative Complaint No. 2023-044
- i. Administrative Complaint No. 2023-045
- j. Administrative Complaint No. 2023-046

19. Discussion of next meeting: No  
(Lang)

20. Public Comment No

21. Adjournment

*For inquiries or special assistance, please contact [Ethics.Commission@sec.nm.gov](mailto:Ethics.Commission@sec.nm.gov)*

SEC Office  
800 Bradbury Dr. SE,  
Suite 215  
Albuquerque, NM 87106



Hon. William F. Lang  
Jeffrey L. Baker  
Stuart M. Bluestone  
Terry McMillan  
Hon. Celia Foy Castillo  
Ronald Solimon  
Judy Villanueva

## STATE ETHICS COMMISSION

### **Commission Meeting Minutes of August 4, 2023 | 9:00AM-12:00PM [Subject to Ratification by Commission]**

#### **1. Call to Order**

Chairman Lang called the meeting to Order at 9:01 AM.

#### **2. Roll Call**

The roll was called; the following Commissioners were present:

Jeffrey L. Baker, Commissioner  
Stuart M. Bluestone, Commissioner  
Hon. Celia Foy Castillo, Commissioner  
Ronald Solimon, Commissioner  
Judy Villanueva, Commissioner  
Hon. William Lang, Chair

The following Commissioners were absent:

Terry McMillan, Commissioner

#### **3. Approval of Agenda**

Chair Lang sought a motion to approve the agenda. Director Farris sought an amendment to strike from the agenda items 8, 11, 9D, 9E, 12D, and 12E. Director Farris requested to move administrative complaints first in executive session and requested item 9A be last in the executive session. Director Farris requested to add an item before the advisory opinions to provide a legislative update. Commissioner Bluestone requested to amend the agenda to add an update on the Financial Disclosure Act before the executive session. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the agenda unanimously.

#### **4. Approval of June 2nd Commission Meeting Minutes**

Chair Lang sought a motion to approve the minutes of the June 2nd Commission meeting. Commissioner Soliman moved to approve the minutes; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the minutes unanimously.

## **Commission Meeting Items**

### **5. Legislative update**

Director Farris discusses the increases to FY25 appropriation requests. Director Farris briefly discusses the strengths of hiring attorneys out of the summer associates class, a proposal that could be achieved through the increase to the FY25 appropriation request. Commissioner Bluestone commended director Farris for reaching out to Senator Baca and recommended the Director continue connecting with the Speaker of the House, Minority leader of the House, and their staff.

### **6. Financial Disclosure Act Update**

Director Farris and Special Council Caroline Manierre reported updates on demand letters that were sent out. They reported that about half of the financial disclosure forms had been filed and cited issues with the CIFS system as a potential barrier.

### **7. Advisory opinion 2023-05**

Director Jeremy Farris provided an overview of the opinion which addressed the question:

*A Village has a recreational vehicle (“RV”) park located within it. Adjacent to the RV park is a small triangular piece of property which is owned by the Village. For many years, the RV park used that parcel of Village property as an extension of the RV park, accommodating three to four recreational vehicles. Consequently, at some point, the Village lost institutional memory of its ownership of the parcel.*

*In 2019, an individual acquired the RV park, but did not purchase the small triangular piece of Village property. In 2020, that same individual was elected as a Village Trustee. In 2022, the Village discovered that the RV park was using the Village’s property. The Trustee has conceded the Village’s ownership of the parcel, requested that the Village vacate the parcel, and has expressed interest in purchasing the parcel, which has been appraised at \$5,250.00.*

*Based on these facts: (1) What obligations does the Village have in any transaction between the Village and the Trustee regarding the parcel, including whether the Village has an obligation to recoup funds from the Trustee for her use of the parcel since 2019, such that the Village should seek compensation beyond the appraised value? (2) Does the use of the RV park violate the Anti-Donation Clause, and if so, how should the Village address it?*

Chair Lang sought a motion to adopt Advisory Opinion 2023-05. Commissioner Bluestone moved to adopt the opinion; Commissioner Villanueva seconded. Hearing no discussion, Chair Long conducted a roll-call vote. All Commissioners voted in the affirmative and approved Advisory Opinion 2023-05.

**8. Advisory Opinion 2023-06**

Director Farris provided an overview of the opinion which addressed the question:

*In October 2021, the City entered into a collective bargaining agreement with the Police Officers Association (“the POA”). On March 3, 2023, the POA requested to reopen collective bargaining negotiations per its October 2021 agreement. A former mayor of the City is currently serving as a negotiator on behalf of the POA in its negotiations with the City. As mayor, he was briefed on negotiations regarding the collective bargaining agreement with the POA, “gave direction to the negotiation team, along with the City Council, about acceptable concessions and changes[,]” was “the presiding officer of the City’s governing body” when the City entered into the October 2021 collective bargaining agreement, and appointed the manager and interim city manager who also had a role in entering the agreement on the City’s behalf. Considering these facts and Section 10-16-8(C)(2) of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023), may the City enter into a new collective bargaining agreement with the POA?*

Chair Long sought a motion to adopt advisory opinion 2023-06. Commissioner Solimon moved to adopt the opinion; Commissioner Bluestone seconded. Hearing no discussion, Chair Long conducted a roll-call vote. All commissioners voted in the affirmative and approved Advisory Opinion 2023-06.

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**---Beginning of Executive Session---**

Chair Lang sought a motion to enter executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings), and 10-15-1(H)(7) (attorney-client privilege pertaining to litigation). Commissioner Castillo moved to enter executive session; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and entered the executive session.

1. Discussion regarding current and potential litigation:  
(Boyd, Branch, Manierre)
  - a. Request for authorization to file a civil enforcement action against a local public official for violations of the Governmental Conduct Act

2. Discussion of administrative matters under the State Ethics Commission Act subject to settlement approval:  
(Randall)
  - a. Administrative Complaint No. 2022-015
  
3. Discussion regarding administrative matters under the Revised Uniform Law on Notarial Acts:  
(Branch)
  - a. 2022-NP-18 (*In re commission James*)
  - b. 2022-NP-20 (*In re commission Burnett*)
  - c. 2022-NP-21 (*In re commission Gardner*)
  - d. 2022-NP-22 (*In re commission Lopez*)

At this point, Deputy General Counsel Branch left the executive session.

4. Discussion regarding administrative matters under State Ethics Commission Act:  
(Manierre)
  - a. Administrative Complaint No. 2023-002
  - b. Administrative Complaint No. 2023-003
  - c. Administrative Complaint No. 2023-004
  - d. Administrative Complaint No. 2023-006
  - e. Administrative Complaint No. 2023-008
  - f. Administrative Complaint No. 2023-009
  - g. Administrative Complaint No. 2023-010
  - h. Administrative Complaint No. 2023-011
  - i. Administrative Complaint No. 2023-012
  - j. Administrative Complaint No. 2023-013
  - k. Administrative Complaint No. 2023-016
  - l. Administrative Complaint No. 2023-017

At this point, Special Counsel Manierre left the executive session.

- (Farris)
- m. Administrative Complaint No. 2022-006
  - n. Administrative Complaint No. 2022-045

*The matters discussed in the closed meeting were limited to those specified in the motion to enter executive session. After concluding its discussion of these matters, the Commission resumed public session upon an appropriate motion.*

**---End of Executive Session---**

9. **Actions on Civil Litigation**
  - a. **Commission authorization of civil action regarding violations of the Governmental Conduct Act by a local public official:** Commissioner Jeff Baker moved as stated above; Commissioner Castillo seconded as stated above. Chair Lang

conducted a roll-call vote. Commissioner Blackstone recused. All other present commissioners voted in the affirmative and approved the motion unanimously.

10. **Action on Administrative Complaints Nos. 2023-006, 2023-019, 2023-021, 2023-024**

Special Counsel Caroline Manierre asked the Commission for the following motions on the following administrative cases:

- **Commission sought a motion to dismiss Administrative complaint No. 2023-006 for lack of jurisdiction:** Chair Lang moved as stated above; Commissioner Soliman seconded. Chair Lang conducted a roll-call vote. Commissioner Blackstone recused. All other present commissioners voted in the affirmative and approved the motion unanimously.
- **Commission sought a motion to dismiss Administrative Complaint No. 2023-019 for lack of jurisdiction:** Commissioner Castillo moved as stated above; commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously
- **Commission sought a motion to dismiss Administrative Complaint No. 2023-021 for lack of jurisdiction:** Commissioner Jeff Baker moved as stated above; Commissioner Solimon seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.
- **Commission sought a motion to dismiss Administrative complaint No. 2023-024 for lack of jurisdiction:** Commissioner Castillo moved as stated; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All commissioners voted affirmative and approved the motion unanimously.

11. **Request to represent pro bono good government amici in D-506-CV-2022-00041**

Director Farris requested from the commission permission to work on a pro bono amicus brief team regarding redistricting congressional maps. This permission includes allotment to join the team in district court and pending appeal, to the Supreme Court. A motion for approval was unnecessary.

12. **Selection of Next Meeting**

Chair Lang confirmed that the next meeting would take place on November 3rd, 2023. The meeting will be held tentatively via Zoom.

13. **Public Comments**

No public comments were made.

14. **Adjournment**

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting was adjourned at 11:02 AM.

**[Subject to Ratification by Commission]**





## NEW MEXICO STATE ETHICS COMMISSION

Hon. William F. Lang, Chair  
Jeffrey L. Baker, Member  
Stuart M. Bluestone, Member  
Hon. Celia Castillo, Member  
Hon. Dr. Terry McMillan, Member  
Ronald Solimon, Member  
Dr. Judy Villanueva, Member

### **[DRAFT] RESOLUTION NO. 2023-05 Authorizing Media Engagement Guidelines for State Ethics Commissioners**

WHEREAS, THE NEW MEXICO STATE ETHICS COMMISSION (“Commission”) met virtually November 3, 2023, at 9:00 A.M.

WHEREAS, the Commission encourages media relations that serve as a tool for fostering community understanding, involvement, and awareness, because, properly conducted, media relations align with the Commission’s mission of promoting the integrity of state government through the interpretation, enforcement, and improvement of New Mexico’s campaign finance, lobbying, procurement, and governmental conduct laws; and

WHEREAS, the Commission recognizes the relevance of Commissioners’ media engagement to keep the public well-informed about ethical matters across New Mexico; and

WHEREAS, in Commission administrative proceedings, the Commissioners are authorized to sit in a quasi-judicial capacity to consider and decide appeals from hearing officer final decisions;

WHEREAS, the Commission and Commissioners must abide by the confidentiality requirements provided by NMSA 1978, § 10-16G-13 (2019); and

WHEREAS, the purpose of the Commission’s Media Engagement Guidelines is to set forth the Commission’s goals and procedures relating to the Commission’s media presence, considering the applicable confidentiality requirements, the Commissioners’ quasi-judicial function in administrative proceedings, and the Commission’s bi-partisan and diverse membership;

NOW, THEREFORE, BE IT RESOLVED that the Commission hereby establishes the following Media Engagement Guidelines, for Commissioners when engaging in various forms of media communications. *See* Exhibit 1.

Adopted by the New Mexico State Ethics Commission this 3rd day of November 2023.

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The Hon. William F. Lang  
New Mexico State Ethics Commission  
Chair



## **Introduction**

The State Ethics Commission (Commission) is often contacted by members of the community wanting information about the Commission's work; this includes members of the news media. The Commission provides updates on its work through its website: <https://www.sec.nm.gov>.

At times, members representing news media will contact the Commission to seek direct comment and/or ask specific questions. The Commission receives these inquiries via email and phone, sometimes via text message. When possible, the Commission responds to these inquiries via email (which provides better tracking of comments and cases).

The Executive Director and/or Communications Manager facilitates news media inquiries and speaks on behalf of the State Ethics Commission. The Chair speaks on behalf of the Commissioners. Members of the staff may be asked to provide comment to news media as directed by the Executive Director. Members of the commission may be asked to provide comment to news media as requested by the Chair.

As a State Ethics Commissioner, it is important to actively engage respective constituents and communities either directly or through news media. Providing proactive outreach or reactive comment helps to inform the public about the Commission's work and purpose in the democratic process. The news media provides a pathway to inform many of our respective constituencies, fostering community understanding, engagement, and awareness. Thoughtful and informative engagement can help educate constituents and proliferate the agency's mission of promoting integrity in state government for the people of New Mexico.

If members of the news media are seeking comments from a Commissioner, the Commissioner should operate within appropriate guidelines, as provided below, particularly when expressing personal beliefs. These communications include but are not limited to opinion editorials, letters to the editor, blogs, podcasts, and social media posts or comments. These guidelines are established to protect the Commission from unforeseen circumstances where unchecked media communications could lead to conflicting interpretations of the Commission's stance on certain issues and could compromise the Commission's commitment to bipartisanship or the Commission's impartiality in its quasi-judicial appellate role in administrative proceedings. These guidelines also safeguard the Commission's

ability to decide appeals from hearing officer decisions in administrative proceedings.

These guidelines will also serve to protect Commissioners from violating the confidentiality provisions set forth in NMSA 1978, § 10-16G-13. Given the criminal penalties attached to violations of Section 10-16G-13, protecting the individual Commissioners from potentially violating this statute is paramount.

Well-informed and positive engagement with news media is relevant to the continued success of our agency. The following guidelines aim to balance Commissioners' engagement with the media while serving to protect both the Commission's quasi-judicial function and individual Commissioners from inadvertently violating duties of confidentiality.

### **Guidelines for Commissioners when Engaging with the Media:**

1. **Clearly Identify Personal Capacity:** Commissioners must clarify that they are communicating as individuals and not as official spokespersons for the Commission. In their media communication, the Commissioner should include a disclaimer that any opinions expressed are their own and do not represent any official stance of the Commission.
2. **Avoid Official Title:** Commissioners should refrain from using their title as "State Ethics Commissioner" to identify themselves in opinion editorials or related media communications. Such avoidance protects against an interpretation that an individual Commissioner is speaking as an agent for the Commission.
3. **Conflict of Interest Disclosure:** Commissioners should disclose during the open part of a Commission meeting any potential conflicts of interest related to the topics they intend to address in media communications.
4. **Maintain Impartiality and Bipartisanship:** Commissioners should avoid using controversial language or making any leading or forward-looking statements that could in any way compromise the Commission's commitment to bipartisanship or the Commission's impartiality in its quasi-judicial appellate role in administrative proceedings. Communications should aim to promote constructive dialogue and public awareness and avoid any language that could be construed as partial and directed toward a specific matter that has or could come before the Commission for decision.

5. **Avoid Direct Inquiries:** Commissioners should not directly respond to inquiries from news media outlets. Instead, they should redirect such inquiries to the Commission's Executive Director, who will work with the Commission's staff to respond to the news media inquiry.
6. **Review by Executive Director or Communications Manager:** All communications between Commissioners and media outlets that may be construed with their position as a Commissioner should be reviewed by the Executive Director and the General Counsel before publication to ensure the communication does not violate confidentiality provisions.
7. **Avoid Commentary on Ongoing Matters:** Commissioners should strictly refrain from making comments or disclosures concerning or alluding to administrative matters, including complaints, General Counsel investigations, or settlement negotiations, particularly when these administrative cases have not been publicly disclosed pursuant to the State Ethics Commission Act. Commissioners should also refrain from making comments or disclosures concerning or alluding to authorized or ongoing litigated matters, informal advisory letters, or the identity of requesters of formal advisory opinions.
8. **Confidentiality of Executive Sessions:** Commissioners should not allude to disagreements, votes, or personal opinions related to matters discussed during executive sessions. Such sessions are confidential and must be treated as such even when conducting personal communications. This policy safeguards Commissioners from any claims, whether substantiated or not, regarding violations of the confidentiality provisions. This policy also protects the Commission's attorney client privilege, deliberative process privilege, and work product protections to their fullest extent.
9. **Staff Media Communications and Commission Approval:** There may be infrequent and exigent times when the Commission staff wishes to draft a letter to the editor, an op-ed, or other long-form communication, as a statement of the Commission as a body. Before submission to any news media outlet, the staff will present the communication to the Commission for discussion and approval.

**Effect.** These guidelines are an internal Commission policy. It creates no enforceable rights, duties or immunities for any individual person or entity. The Commission may from time to time amend this policy by way of resolution at a properly noticed Commission meeting.

## **Procurement Code Ethics An Important Protection Against Public Corruption in New Mexico**

[By Stuart M. Bluestone, New Mexico State Ethics Commissioner]

Public procurement ethics is an important but often little understood aspect of governmental ethics in New Mexico. Government officials have estimated that about \$13 Billion of all public money spent in our State each year is devoted to procuring goods and services. (See Program Evaluation: Obtaining Value in State Procurement and Issues with Non-Competitive Methods, LFC Program Evaluation Report #16-09, October 27, 2016.) Maintaining the highest ethical standards in public procurement is necessary to guard against public corruption.

The New Mexico Procurement Code, and contract-related provisions of the New Mexico Governmental Conduct Act, provide important protections against public corruption and the misuse of taxpayer dollars. The public and all government officials and employees should be well aware of the Code and honor both the letter and the spirit of the law to ensure ethical and fair dealings when contracting for the expenditure of public funds to provide goods and services to New Mexicans.

The key purposes of the Code are stated in the law's own words, right at the beginning of the statute: "The purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity." Section 13-1-29 NMSA 1978.

In the nuts and bolts of the law, what this means is that once a decision is made to use either the competitive sealed bid or proposal process for public funds to be spent on goods or services, there has to be fair dealing by the government at each and every step of the way. The integrity of the public process has to be strictly adhered to; the public's money should never be spent in a way a public official or employee wants simply to benefit a friend, colleague, relative, campaign contributor or anyone for any reason other than through a fair, competitive sealed bid or proposal evaluation process that picks winners based solely on the merits of their bid or proposal and track record of performance, with limited exceptions for small purchases, emergencies, sole source and contracts between public agencies.

The Procurement Code sets up a process to ensure that bids and proposals to win the right to provide goods or services to the public are determined in a fair, merit-based system. It is unlawful for a public official or employee to arrange for a bid or proposal to

go to a certain person or entity without regard to the objective, fair decision-making process the Code directs. And this applies up-and-down at every level of government in our State. As a general rule it applies to all state agencies, local school boards and municipalities; all County Commissioners; and all State elected and appointed public officials and employees, including the Governor, Lt. Governor, Attorney General, State Land Commissioner, State Auditor, State Treasurer and every Cabinet Secretary and Agency head throughout New Mexico.

Even before an announcement is made that public funds are available to be spent on a certain project, there can be no shenanigans or “inside games” played. No public official can tell his or her employees before a bid or proposal is put out to spend certain public money that he or she wants to see the winner be person or company X, Y or Z. They cannot allow the public competitive bidding or proposal processes to be a sham.

And they cannot short-circuit the Procurement Code’s requirements. For example, consider public employees who are chosen pursuant to the Procurement Code to decide on which person or entity should win a bid or proposal and their boss who believes he or she is ultimately responsible for all agency decisions. If the public employees go through the whole fair and objective evaluation process and choose company X, but their boss then tells them, directly or indirectly, and even in good faith, to reverse their decision and give the contract instead to Y, then that would violate the Code. Every public official and employee should understand that.

As the New Mexico Supreme Court has stated, “The Procurement Code protects against the evils of favoritism, nepotism, patronage, collusion, fraud, and corruption in the award of public contracts.” Planning & Design Solutions v. City of Santa Fe (1994). All public officials and employees, and the public, should know and follow that directive to ensure there is always fair dealing when it comes to the expenditure of public funds.

Our New Mexico Procurement Code stands as a bulwark against corruption. It is true at our local and state level, and our federal government leaders have confirmed that the fight against corruption is also a core United States National Security interest. See, for example, the United States Strategy on Countering Corruption, pursuant to the National Security Study Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest, December 2021, which states: “When government officials abuse public power for private gain, they do more than simply appropriate illicit wealth. Corruption robs citizens of equal access to vital services, denying the right to quality healthcare, public safety, and education. It degrades the business environment, subverts economic opportunity, and exacerbates inequality. . . . As a fundamental threat to the rule of law, corruption hollows out institutions, corrodes public trust, and fuels popular cynicism toward effective, accountable governance.”

The New Mexico Procurement Code is an important tool to fight corruption in our State.



[Mr. Bluestone is a retired public sector attorney who has written this as an expression of his personal views. It does not necessarily reflect the views of the State Ethics Commission on which he serves.]



# STATE ETHICS COMMISSION

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

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

## BUDGET REQUEST Fiscal Year 2025 July 1, 2024 - June 30, 2025

# STATE OF NEW MEXICO

Prepared By:  
Jeremy D. Farris, Executive Director and  
Wendy George, Finance & Administration Director

**SEC 20**

**APPROPRIATION REQUEST  
CERTIFICATION  
FORM S-1**

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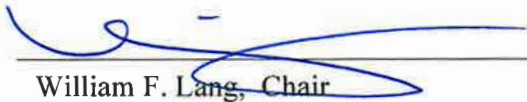
Agency Name: State Ethics Commission

Business Unit: 41000

*I hereby certify that the accompanying summary and detailed statements are true and correct to the best of my knowledge and belief and that the arithmetic accuracy of all numeric information has been verified.*



Jeremy Farris, Executive Director



William F. Lang, Chair



Wendy George, Director of Finance and Administration

800 Bradbury Dr SE #215  
Albuquerque NM 87106

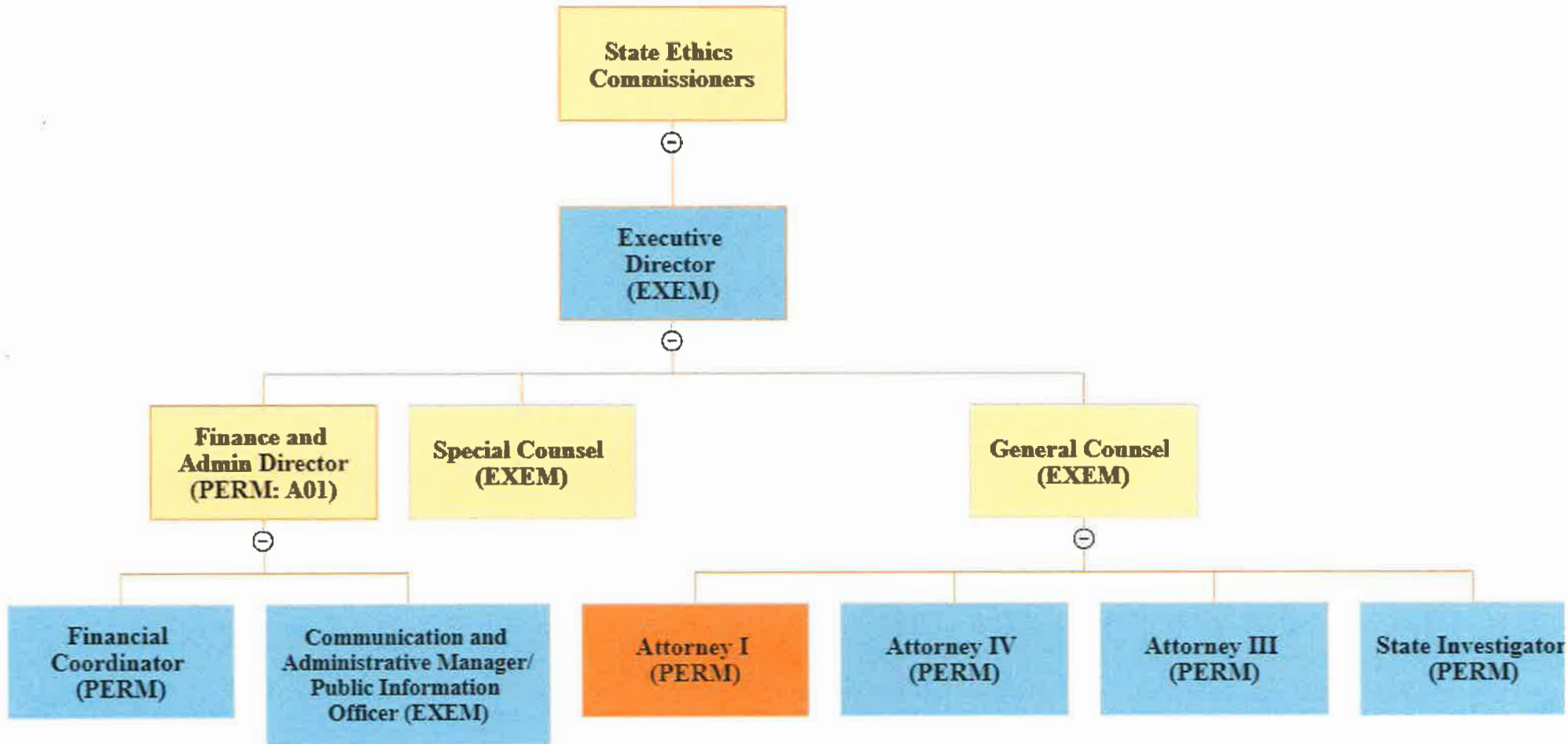
505-554-7608

wendyj.george@sec.nm.gov

*Note: Appropriation Requests for agencies headed by a board or commission must be approved by the board or commission by official action and signed by the chairperson. Operating Budgets of other agencies must be signed by the director or secretary. Appropriation Requests not properly signed will be returned.*

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# Proposed State Ethics Commission Organizational Chart FY25



**Program Description:**

The State Ethics Commission is an independent state agency created by Article V, Section 17 of the New Mexico Constitution. The Commission has five core responsibilities:

First, the Commission investigates and adjudicates administrative complaints alleging violations of New Mexico's ethics laws—namely, New Mexico's governmental conduct, procurement, and disclosure laws, including laws requiring financial disclosure, campaign finance disclosure, and lobbyist disclosure.

Second, the Commission investigates and prosecutes violations of the ethics laws through civil enforcement actions in state court.

Third, the Commission educates public officers, public employees, and the public about New Mexico's ethics laws by issuing advisory opinions, offering trainings to legislators, state agencies, local governments, and affiliate organizations, and promulgating a model code of ethics.

Fourth, the Commission investigates and prosecutes in administrative proceedings violations of New Mexico's Revised Uniform Law on Notarial Acts, which governs notaries public.

Fifth, the Commission makes annual recommendations to the Governor and the Legislature regarding amendments to New Mexico's ethics laws.

**Major Issues and Accomplishments:**

Major Accomplishments Over Past Year

[1] Investigation and Adjudication of Administrative Complaints

In FY23, the Commission received, investigated and adjudicated 47 administrative complaints alleging violations of New Mexico's ethics and disclosure laws. At present, 14 of the 47 administrative matters filed during FY23 are still pending.

[2] Civil Enforcement

On August 10, 2023, the Commission, New Mexico Governor Michelle Lujan Grisham, and the Human Services Department (HSD) reached a settlement agreement stemming from the Commission's authorization of a civil action related to the cancellation of the Request for Proposals (RFP) for Managed Care Organizations for Turquoise Care, New Mexico's Medicaid plan. HSD issued the RFP on September 30, 2022; evaluated and scored proposals; prepared contract notice of award letters; and, on January 30, 2023, following instructions communicated by Governor's office employees, canceled the RFP. Pursuant to a mediation conducted by the Honorable Judith K. Nakamura (Ret.), the settlement required HSD to: (i) rescind the cancellation of the RFP; (ii) issue four notices of intent to award contracts to the four Managed Care Organization (MCO) contractors that HSD had originally selected, including Blue Cross and Blue Shield of New Mexico, UnitedHealthcare of New Mexico, Molina Healthcare of New Mexico, Inc., and Presbyterian Health Plan; and (iii) issue the notice that HSD originally prepared to Western Sky Community Care that it was not selected for a contract award. Last, when negotiating contract awards with the four offerors selected for contract awards, the settlement agreement requires HSD to adhere to the RFP and procurement law.

On February 9, 2023, the Commission filed a civil action against Yvonne Otero, the former Torrance County Clerk, to enforce the Governmental Conduct Act's main public trust provisions. The Commission's complaint alleges that Otero, during her tenure as Torrance County Clerk, violated the Governmental Conduct Act by using her elected position and public assets for personal gain and pursuits. The allegations include the deletion of electronically cast absentee ballots under federal Uniformed and Overseas Citizens Absentee Voting Act, mishandling of ballots,

attempting to pre-certify ballot tabulators for vacation purposes, engaging in inappropriate behavior during work hours, openly discussing illicit drug use, and subjecting subordinates to danger and threats for both amusement and coercion. The case, State Ethics Commission v. Otero, D-722-CV-2023-00028, is currently pending before the Honorable Mercedes C. Murphy.

On November 2, 2022, the Commission entered into a settlement with Working Families Organization, Inc. (WFO). The Commission had filed suit in State Ethics Commission v. Working Families Organization, Inc., D-506-CV-2022-00942, to enforce the Campaign Reporting Act. Alleging violations of Sections 1-19-26.4, 1-19-27.3 and 1-19-34.3, the Commission's complaint focused on WFO's "Unemployed Workers United" text-message campaign advocating for approval of a ballot question concerning increased expenditures from the permanent fund. Under the settlement, WFO submitted independent expenditure reports through the Secretary of State's Campaign Finance System, paid an \$11,000 civil penalty, and committed to adhering to registration and reporting requirements in all future election cycles.

On December 7, 2022, the Commission entered into a settlement agreement with Mary Lou Kern, the former Colfax County manager. Ms. Kern agreed to pay a \$500 civil penalty, and the Commission, in exchange, released Governmental Conduct Act claims involving her involvement in Colfax County 2022 inmate medical services Request for Proposals and subsequent employment at Roadrunner Health Services, LLC, within a year of leaving her public position. \$500 is the maximum civil penalty available for two violations of the Governmental Conduct Act.

On February 3, 2023, the Commission entered into a settlement agreement with the Eleventh Judicial District Attorney Bernadine Martin and the office's chief procurement officer, Christina Esquibel. In a letter before claim, the Commission had alleged that the office violated the Procurement Code by entering into multiple contracts for legal services without using either a competitive proposal process or an applicable exception. Under the settlement agreement, the District Attorney agreed to issue a request for proposals for the legal services and that staff of the District Attorney's office underwent procurement training authorized by the State Purchasing Division.

On February 3, 2023, the Commission entered into a pre-litigation settlement with Stephanie Stringer, the former Chair and Commissioner of the Water Quality Control Commission (WQCC) and a former employee of the New Mexico Environment Department. Stringer applied for, interviewed for, and ultimately accepted employment with a federal agency. During that time, the Commission alleged that Stringer also took actions as Chair of the WQCC related to that federal agency. The Commission alleged that Stringer violated Section 10-16-4(C) of the Governmental Conduct Act by acquiring a financial interest when she reasonable should have believed that her official acts as a commissioner and a Chair of the WQCC would directly affect that interest. In the settlement, Stinger agreed to pay the maximum \$250 civil penalty without admitting any liability or wrongdoing.

On November 17, 2022, the Commission achieved a settlement with a former commercial assessor at the Sandoval County Assessor's Office, and Double Eagle Property Tax Consultants. The Commission had filed suit in State Ethics Commission v. Vargas, et al., D-202-CV-2021-06201, to enforce the revolving-door provisions of the Governmental Conduct Act. The lawsuit alleged that Mr. Gabriel Vargas and his employer, Double Eagle, had violated those provisions, particularly considering their representation of Presbyterian Healthcare Services on Presbyterian's protest of the 2020 valuation of Rust Medical Center. Under the settlement, the defendants paid the State of New Mexico \$13,000, an amount that exceeds the maximum \$5,000 civil fine currently available under the Governmental Conduct Act and is approximately equal to the fee that Double Eagle received from Presbyterian Healthcare Services for Double Eagle's representation of the 2020 valuation of Rust Medical Center.

[3] Advisory Opinions, Education and Trainings

In FY23, the Commission issued eight advisory opinions, available on [www.NMOneSource.com](http://www.NMOneSource.com), and 34 advisory letters.



In FY23, SEC delivered over twenty separate trainings to legislators, legislative committees and staff, state agencies, state boards and commissions, local governments, universities, affiliate and professional organizations, and bar associations around New Mexico.

#### [4] Other Accomplishments

Since January 1, 2022, when the Commission was assigned jurisdiction for notaries public the Commission has received, investigated, or prosecuted over 27 separate administrative matters involving a potential remedial action against a notary public's commission.

In FY23, the Commission hosted a its fourth class of law student summer associates—two students from the University of New Mexico School of Law and one student from the University of Illinois Urbana-Champaign College of Law.

#### [II] Major Issues

In comparison to its constitutional and statutory responsibilities, the Commission has a small and very lean staff: an executive director, three staff attorneys, a finance and administration director, and a communications manager, who also handles sundry paralegal and front office duties. In addition to this staff of six, during FY23, the Commission will hire for two additional positions, as funding allows: an Attorney IV and a State Investigator, which are necessary for the Commission to minima

#### Overview of Request:

The Commission seeks an FY25 appropriation for \$1,675,600. By category, this request amounts to \$1,313,700 for personnel; \$211,900 for contracts; and \$150,00 for other operating costs.

This request is commensurate with inflationary increases that the Commission has seen across its contracts and operating expenses. Also, in FY25, the Commission seeks additional funding for an Attorney I position. Currently, the Commission does not have an entry-level attorney position. An additional Attorney I position would assist the Commission perform its various mandates related to: (i) providing legal guidance upon request in the form of advisory letters, advisory opinions, and trainings; (ii) assisting with jurisdictional determinations and in the investigation of administrative complaints; and (iii) assisting in the litigation of civil enforcement actions. Furthermore, while the Commission has conducted a summer internship program for law students for the past four years, the Commission lacks the ability to recruit and hire an entry-level attorney. The ability for the Commission to recruit from its classes of summer law student interns will help to sustain a strong and durable office culture devoted to the Commission's constitutional and statutory mandates.

#### Programmatic Changes:

The Commission does not anticipate or seek any programmatic changes. Nor does the Commission seek any changes to its current performance measures.

#### Base Budget Justification:

The Commission's FY25 base budget request contemplates sufficient funding for the Attorney IV position that the Legislature approved in FY23 and the Financial Coordinator and State Investigator positions that the Legislature approved in FY24. The base budget request also covers inflationary and cost increases that the Commission is experiencing in its contracts and other operating expense categories, including increases in the contract for the agency's audit and financial statement and contract for third-party IT services, increases in the workmen's compensation premiums, increases for costs associated with legal subscriptions and dues, and increases in the rates that DoIT assess, among other operating expense increases.

BU PCode Department  
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**S-8 Financial Summary**

(Dollars in Thousands)

	2022-23 Opbud	2022-23 Actuals	2023-24 Opbud	2024-25 PCF Proj	Base	----- FY 2025 Agency Request ----- Expansion	Total
<b>REVENUE</b>							
111 General Fund Transfers	1,236.3	1,193.5	1,510.2	0.0	1,563.7	112.7	1,676.4
112 Other Transfers	0.0	42.8	0.0	0.0	0.0	0.0	0.0
130 Other Revenues	0.0	24.8	0.0	0.0	0.0	0.0	0.0
<b>REVENUE, TRANSFERS</b>	<b>1,236.3</b>	<b>1,261.1</b>	<b>1,510.2</b>	<b>0.0</b>	<b>1,563.7</b>	<b>112.7</b>	<b>1,676.4</b>
<b>REVENUE</b>	<b>1,236.3</b>	<b>1,261.1</b>	<b>1,510.2</b>	<b>0.0</b>	<b>1,563.7</b>	<b>112.7</b>	<b>1,676.4</b>
<b>EXPENSE</b>							
200 Personal Services and Employee Benefits	924.5	911.6	1,172.7	1,186.7	1,201.8	112.7	1,314.5
300 Contractual services	200.0	118.5	200.0	0.0	211.9	0.0	211.9
400 Other	111.8	133.8	137.5	0.0	150.0	0.0	150.0
<b>EXPENDITURES</b>	<b>1,236.3</b>	<b>1,163.9</b>	<b>1,510.2</b>	<b>1,186.73</b>	<b>1,563.7</b>	<b>112.7</b>	<b>1,676.4</b>
<b>EXPENSE</b>	<b>1,236.3</b>	<b>1,163.9</b>	<b>1,510.2</b>	<b>1,186.73</b>	<b>1,563.7</b>	<b>112.7</b>	<b>1,676.4</b>
<b>FTE POSITIONS</b>							
810 Permanent	8.00	0.00	9.00	9.00	9.00	1.00	10.00
<b>FTEs</b>	<b>8.00</b>	<b>0.00</b>	<b>9.00</b>	<b>9.00</b>	<b>9.00</b>	<b>1.00</b>	<b>10.00</b>
<b>FTE POSITIONS</b>	<b>8.00</b>	<b>0.00</b>	<b>9.00</b>	<b>9.00</b>	<b>9.00</b>	<b>1.00</b>	<b>10.00</b>



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**S-9 Account Code Expenditure Summary**  
(Dollars in Thousands)

		2022-23	2022-23	2023-24	2024-25	----- FY 2025 Agency Request -----		
		Opbud	Actuals	Opbud	PCF Proj	Base	Expansion	Total
520100	Exempt Perm Positions P/T&F/T	412.4	445.4	472.5	471.6	472.0	0.0	472.0
520300	Classified Perm Positions F/T	271.4	247.8	409.8	419.6	419.7	83.1	502.8
521100	Group Insurance Premium	31.6	17.9	41.1	37.1	35.0	5.2	40.2
521200	Retirement Contributions	137.2	130.1	166.2	171.5	171.5	16.0	187.5
521300	F I C A	53.1	52.2	61.0	68.2	68.2	6.3	74.5
521400	Workers' Comp Assessment Fee	0.1	0.1	0.3	0.0	0.1	0.0	0.1
521410	GSD Work Comp Insur Premium	1.2	1.2	1.3	0.0	1.7	0.0	1.7
521500	Unemployment Comp Premium	0.0	0.0	0.0	0.0	13.2	0.0	13.2
521600	Employee Liability Ins Premium	1.9	1.7	2.2	0.0	1.6	0.0	1.6
521700	RHC Act Contributions	15.6	13.9	18.3	18.7	18.8	2.1	20.9
523200	COVID Related Time Worked	0.0	1.4	0.0	0.0	0.0	0.0	0.0
<b>200</b>	<b>Personal Services and Employee</b>	<b>924.5</b>	<b>911.6</b>	<b>1,172.7</b>	<b>1,186.7</b>	<b>1,201.8</b>	<b>112.7</b>	<b>1,314.5</b>
535200	Professional Services	143.0	70.0	143.0	0.0	143.0	0.0	143.0
535209	Professional Svcs - Interagenc	5.0	7.0	6.0	0.0	6.0	0.0	6.0
535400	Audit Services	11.8	11.9	12.3	0.0	24.2	0.0	24.2
535500	Attorney Services	5.2	8.2	5.2	0.0	8.2	0.0	8.2
535600	IT Services	35.0	21.5	33.5	0.0	30.5	0.0	30.5
<b>300</b>	<b>Contractual services</b>	<b>200.0</b>	<b>118.5</b>	<b>200.0</b>	<b>0.0</b>	<b>211.9</b>	<b>0.0</b>	<b>211.9</b>
542100	Employee I/S Mileage & Fares	2.0	3.0	2.0	0.0	3.1	0.0	3.1
542200	Employee I/S Meals & Lodging	1.5	0.9	1.5	0.0	1.5	0.0	1.5
542300	Brd & Comm Mbr Meals & Lodgin	8.0	0.8	8.0	0.0	1.2	0.0	1.2
542310	Brd & Comm Mbr Mileage & Fares	0.0	1.2	0.0	0.0	1.5	0.0	1.5
543400	Maint - Property Insurance	0.0	0.0	0.1	0.0	0.2	0.0	0.2
544000	Supply Inventory IT	5.2	8.6	5.2	0.0	4.0	0.0	4.0
544100	Supplies-Office Supplies	2.3	1.0	2.3	0.0	2.0	0.0	2.0
544400	Supplies-Field Supplies	0.1	0.0	0.0	0.0	0.0	0.0	0.0
544900	Supplies-Inventory Exempt	1.5	0.2	1.5	0.0	1.5	0.0	1.5
545600	Reporting & Recording	1.0	0.0	1.0	0.0	1.0	0.0	1.0
545700	ISD Services	8.2	7.4	6.3	0.0	7.9	0.0	7.9
545710	DOIT HCM Assessment Fees	2.9	2.9	3.3	0.0	3.2	0.0	3.2
545900	Printing & Photo Services	2.0	0.9	1.0	0.0	1.0	0.0	1.0
546100	Postage & Mail Services	1.0	0.0	1.0	0.0	1.0	0.0	1.0
546400	Rent Of Land & Buildings	40.0	60.5	61.8	0.0	63.0	0.0	63.0

BU PCode Department  
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**S-9 Account Code Revenue/Expenditure Summary**  
(Dollars in Thousands)

		2022-23	2022-23	2023-24	2024-25	----- FY 2025 Agency Request -----		
		Opbud	Actuals	Opbud	PCF Proj	Base	Expansion	Total
499105	General Fd. Appropriation	1,236.3	1,193.5	1,510.2	0.0	1,563.7	112.7	1,676.4
<b>111</b>	<b>General Fund Transfers</b>	<b>1,236.3</b>	<b>1,193.5</b>	<b>1,510.2</b>	<b>0.0</b>	<b>1,563.7</b>	<b>112.7</b>	<b>1,676.4</b>
499905	Other Financing Sources	0.0	42.8	0.0	0.0	0.0	0.0	0.0
<b>112</b>	<b>Other Transfers</b>	<b>0.0</b>	<b>42.8</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
462000	Legal Settlements	0.0	24.8	0.0	0.0	0.0	0.0	0.0
<b>130</b>	<b>Other Revenues</b>	<b>0.0</b>	<b>24.8</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>TOTAL REVENUE</b>		<b>1,236.3</b>	<b>1,261.1</b>	<b>1,510.2</b>	<b>0.0</b>	<b>1,563.7</b>	<b>112.7</b>	<b>1,676.4</b>
520100	Exempt Perm Positions P/T&F/T	412.4	445.4	472.5	471.6	472.0	0.0	472.0
520300	Classified Perm Positions F/T	271.4	247.8	409.8	419.6	419.7	33.1	502.8
521100	Group Insurance Premium	31.6	17.9	41.1	37.1	35.0	5.2	40.2
521200	Retirement Contributions	137.2	130.1	166.2	171.5	171.5	16.0	187.5
521300	F I C A	53.1	52.2	61.0	68.2	68.2	6.3	74.5
521400	Workers' Comp Assessment Fee	0.1	0.1	0.3	0.0	0.1	0.0	0.1
521410	GSD Work Comp Insur Premium	1.2	1.2	1.3	0.0	1.7	0.0	1.7
521500	Unemployment Comp Premium	0.0	0.0	0.0	0.0	13.2	0.0	13.2
521600	Employee Liability Ins Premium	1.9	1.7	2.2	0.0	1.6	0.0	1.6
521700	RHC Act Contributions	15.6	13.9	18.3	18.7	18.8	2.1	20.9
523200	COVID Related Time Worked	0.0	1.4	0.0	0.0	0.0	0.0	0.0
<b>200</b>	<b>Personal Services and Employee Bene</b>	<b>924.5</b>	<b>911.6</b>	<b>1,172.7</b>	<b>1,186.7</b>	<b>1,201.8</b>	<b>112.7</b>	<b>1,314.5</b>
535200	Professional Services	143.0	70.0	143.0	0.0	143.0	0.0	143.0
535209	Professional Svcs - Interagenc	5.0	7.0	6.0	0.0	6.0	0.0	6.0
535400	Audit Services	11.8	11.9	12.3	0.0	24.2	0.0	24.2
535500	Attorney Services	5.2	8.2	5.2	0.0	8.2	0.0	8.2
535600	IT Services	35.0	21.5	33.5	0.0	30.5	0.0	30.5
<b>300</b>	<b>Contractual services</b>	<b>200.0</b>	<b>118.5</b>	<b>200.0</b>	<b>0.0</b>	<b>211.9</b>	<b>0.0</b>	<b>211.9</b>
542100	Employee I/S Mileage & Fares	2.0	3.0	2.0	0.0	3.1	0.0	3.1
542200	Employee I/S Meals & Lodging	1.5	0.9	1.5	0.0	1.5	0.0	1.5
542300	Brd & Comm Mbr Meals & Lodging	8.0	0.8	8.0	0.0	1.2	0.0	1.2
542310	Brd & Comm Mbr Mileage & Fares	0.0	1.2	0.0	0.0	1.5	0.0	1.5
543400	Maint - Property Insurance	0.0	0.0	0.1	0.0	0.2	0.0	0.2
544000	Supply Inventory IT	5.2	8.6	5.2	0.0	4.0	0.0	4.0
544100	Supplies-Office Supplies	2.3	1.0	2.3	0.0	2.0	0.0	2.0
544400	Supplies-Field Supplies	0.1	0.0	0.0	0.0	0.0	0.0	0.0

State Ethics Commission

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**S-9 Account Code Revenue/Expenditure Summary**  
(Dollars in Thousands)

		2022-23	2022-23	2023-24	2024-25	FY 2025 Agency Request		
		Opbud	Actuals	Opbud	PCF Proj	Base	Expansion	Total
544900	Supplies-Inventory Exempt	1.5	0.2	1.5	0.0	1.5	0.0	1.5
545600	Reporting & Recording	1.0	0.0	1.0	0.0	1.0	0.0	1.0
545700	ISD Services	8.2	7.4	6.3	0.0	7.9	0.0	7.9
545710	DOIT HCM Assessment Fees	2.9	2.9	3.3	0.0	3.2	0.0	3.2
545900	Printing & Photo Services	2.0	0.9	1.0	0.0	1.0	0.0	1.0
546100	Postage & Mail Services	1.0	0.0	1.0	0.0	1.0	0.0	1.0
546400	Rent Of Land & Buildings	40.0	60.5	61.8	0.0	63.0	0.0	63.0
546500	Rent Of Equipment	3.5	3.7	4.1	0.0	4.1	0.0	4.1
546610	DOIT Telecommunications	14.3	14.1	13.9	0.0	13.8	0.0	13.8
546700	Subscriptions/Dues/License Fee	9.8	18.7	15.0	0.0	25.5	0.0	25.5
546800	Employee Training & Education	2.5	2.5	3.5	0.0	3.5	0.0	3.5
546900	Advertising	3.0	1.2	3.0	0.0	3.0	0.0	3.0
547900	Miscellaneous Expense	0.0	0.1	0.0	0.0	0.0	0.0	0.0
547999	Request to Pay Prior Year	0.0	0.1	0.0	0.0	0.0	0.0	0.0
548900	Buildings & Structures	0.0	5.9	0.0	0.0	5.0	0.0	5.0
549600	Employee O/S Mileage & Fares	1.5	0.0	1.5	0.0	1.5	0.0	1.5
549700	Employee O/S Meals & Lodging	1.5	0.0	1.5	0.0	1.5	0.0	1.5
<b>400</b>	<b>Other</b>	<b>111.8</b>	<b>133.8</b>	<b>137.5</b>	<b>0.0</b>	<b>150.0</b>	<b>0.0</b>	<b>150.0</b>
<b>TOTAL EXPENSE</b>		<b>1,236.3</b>	<b>1,163.9</b>	<b>1,510.2</b>	<b>1,186.7</b>	<b>1,563.7</b>	<b>112.7</b>	<b>1,676.4</b>
810	Permanent	8.00	0.00	8.00	9.00	9.00	1.00	10.00
810	Permanent	8.00	0.00	8.00	9.00	9.00	1.00	10.00
<b>TOTAL FTE POSITIONS</b>		<b>8.00</b>	<b>0.00</b>	<b>8.00</b>	<b>9.00</b>	<b>9.00</b>	<b>1.00</b>	<b>10.00</b>

State Ethics Commission

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**S-9 Account Code Revenue Summary**  
 (Dollars in Thousands)

	Provider PCode	2022-23 Opbud	2022-23 Actuals	2023-24 Opbud	2024-25 PCF Proj	----- FY 2025 Agency Request -----		
						Base	Expansion	Total
499105	General Fd. Appropriation	1,236.3	1,193.5	1,510.2	0.0	1,563.7	112.7	1,676.4
<b>111</b>	<b>General Fund Transfers</b>	<b>1,236.3</b>	<b>1,193.5</b>	<b>1,510.2</b>	<b>0.0</b>	<b>1,563.7</b>	<b>112.7</b>	<b>1,676.4</b>
499905	Other Financing Sources	0.0	42.8	0.0	0.0	0.0	0.0	0.0
<b>112</b>	<b>Other Transfers</b>	<b>0.0</b>	<b>42.8</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
462000	Legal Settlements	0.0	24.8	0.0	0.0	0.0	0.0	0.0
<b>130</b>	<b>Other Revenues</b>	<b>0.0</b>	<b>24.8</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>TOTAL REVENUE</b>		<b>1,236.3</b>	<b>1,261.1</b>	<b>1,510.2</b>	<b>0.0</b>	<b>1,563.7</b>	<b>112.7</b>	<b>1,676.4</b>

State of New Mexico

**S-13 Line Items by Business Unit Expenditures**

(Dollars in Thousands)

BusUnit	Line Item	2022-23 Actuals	2023-24 Opbud	Request		Recommendation		Opbud	
				Base	Expansion	Base	Expansion		
<b>41000</b>	<b>P410-R</b>	<b>State Ethics Commission</b>							
	520100	Exempt Perm Positions P/T&F/T	445.37	472.5	472	0	0	0	0.0
	520300	Classified Perm Positions F/T	247.76	409.8	419.7	83.1	0	0	0.0
	521100	Group Insurance Premium	17.93	41.1	35	5.2	0	0	0.0
	521200	Retirement Contributions	130.09	166.2	171.5	16	0	0	0.0
	521300	F I C A	52.19	61	68.2	6.3	0	0	0.0
	521400	Workers' Comp Assessment Fee	0.06	0.3	0.1	0	0	0	0.0
	521410	GSD Work Comp Insur Premium	1.19	1.3	1.7	0	0	0	0.0
	521500	Unemployment Comp Premium	0	0	13.2	0	0	0	0.0
	521600	Employee Liability Ins Premium	1.75	2.2	1.6	0	0	0	0.0
	521700	RHC Act Contributions	13.89	18.3	18.8	2.1	0	0	0.0
	523200	COVID Related Time Worked	1.41	0	0	0	0	0	0.0
	535200	Professional Services	69.95	143	143	0	0	0	0.0
	535209	Professional Svcs - Interagenc	7.02	6	6	0	0	0	0.0
	535400	Audit Services	11.85	12.3	24.2	0	0	0	0.0
	535500	Attorney Services	8.17	5.2	8.2	0	0	0	0.0
	535600	IT Services	21.47	33.5	30.5	0	0	0	0.0
	542100	Employee I/S Mileage & Fares	3.05	2	3.1	0	0	0	0.0
	542200	Employee I/S Meals & Lodging	0.94	1.5	1.5	0	0	0	0.0
	542300	Brd & Comm Mbr Meals & Lodgin	0.8	8	1.2	0	0	0	0.0
	542310	Brd & Comm Mbr Mileage & Fares	1.24	0	1.5	0	0	0	0.0
	543400	Maint - Property Insurance	0	0.1	0.2	0	0	0	0.0
	544000	Supply Inventory IT	8.61	5.2	4	0	0	0	0.0
	544100	Supplies-Office Supplies	0.99	2.3	2	0	0	0	0.0
	544900	Supplies-Inventory Exempt	0.24	1.5	1.5	0	0	0	0.0
	545600	Reporting & Recording	0	1	1	0	0	0	0.0
	545700	ISD Services	7.36	6.3	7.9	0	0	0	0.0
	545710	DOIT HCM Assessment Fees	2.88	3.3	3.2	0	0	0	0.0
	545900	Printing & Photo Services	0.87	1	1	0	0	0	0.0
	546100	Postage & Mail Services	0	1	1	0	0	0	0.0
	546400	Rent Of Land & Buildings	60.53	61.8	63	0	0	0	0.0
	546500	Rent Of Equipment	3.69	4.1	4.1	0	0	0	0.0
	546610	DOIT Telecommunications	14.05	13.9	13.8	0	0	0	0.0

State of New Mexico

**S-13 Line Items by Business Unit Expenditures**

(Dollars in Thousands)

	546700	Subscriptions/Dues/License Fee	18.72	15	25.5	0	0	0	0.0
	546800	Employee Training & Education	2.54	3.5	3.5	0	0	0	0.0
	546900	Advertising	1.24	3	3	0	0	0	0.0
	547900	Miscellaneous Expense	0.07	0	0	0	0	0	0.0
	547999	Request to Pay Prior Year	0.11	0	0	0	0	0	0.0
	548900	Buildings & Structures	5.88	0	5	0	0	0	0.0
	549600	Employee O/S Mileage & Fares	0	1.5	1.5	0	0	0	0.0
	549700	Employee O/S Meals & Lodging	0	1.5	1.5	0	0	0	0.0
<b>Subtotal for:</b>	<b>41000</b>	<b>P410-R State Ethics Commission</b>	<b>1,163.92</b>	<b>1,510.2</b>	<b>1,563.7</b>	<b>112.7</b>	<b>0</b>	<b>0</b>	<b>0.0</b>
<b>41000</b>			<b>1,163.92</b>	<b>1,510.2</b>	<b>1,563.7</b>	<b>112.7</b>	<b>0</b>	<b>0</b>	<b>0.0</b>

**Totals by Line Item**

BusUnit	Line Item	2022-23	2023-24	Request		Recommendation		Opbud	
		Actuals	Opbud	Base	Expansion	Base	Expansion		
41000	520100	Exempt Perm Positions P/T&F/T	445.37	472.5	472	0	0	0	0.0
	520300	Classified Perm Positions F/T	247.76	409.8	419.7	83.1	0	0	0.0
	521100	Group Insurance Premium	17.93	41.1	35	5.2	0	0	0.0
	521200	Retirement Contributions	130.09	166.2	171.5	16	0	0	0.0
	521300	F I C A	52.19	61	68.2	6.3	0	0	0.0
	521400	Workers' Comp Assessment Fee	0.06	0.3	0.1	0	0	0	0.0
	521410	GSD Work Comp Insur Premium	1.19	1.3	1.7	0	0	0	0.0
	521500	Unemployment Comp Premium	0	0	13.2	0	0	0	0.0
	521600	Employee Liability Ins Premium	1.75	2.2	1.6	0	0	0	0.0
	521700	RHC Act Contributions	13.89	18.3	18.8	2.1	0	0	0.0
	523200	COVID Related Time Worked	1.41	0	0	0	0	0	0.0
	535200	Professional Services	69.95	143	143	0	0	0	0.0
	535209	Professional Svcs - Interagenc	7.02	6	6	0	0	0	0.0
	535400	Audit Services	11.85	12.3	24.2	0	0	0	0.0
	535500	Attorney Services	8.17	5.2	8.2	0	0	0	0.0
	535600	IT Services	21.47	33.5	30.5	0	0	0	0.0

State of New Mexico

**S-13 Line Items by Business Unit Expenditures**

(Dollars in Thousands)

542100	Employee I/S Mileage & Fares	3.05	2	3.1	0	0	0	0.0
542200	Employee I/S Meals & Lodging	0.94	1.5	1.5	0	0	0	0.0
542300	Brd & Comm Mbr Meals & Lodging	0.8	8	1.2	0	0	0	0.0
542310	Brd & Comm Mbr Mileage & Fares	1.24	0	1.5	0	0	0	0.0
543400	Maint - Property Insurance	0	0.1	0.2	0	0	0	0.0
544000	Supply Inventory IT	8.61	5.2	4	0	0	0	0.0
544100	Supplies-Office Supplies	0.99	2.3	2	0	0	0	0.0
544900	Supplies-Inventory Exempt	0.24	1.5	1.5	0	0	0	0.0
545600	Reporting & Recording	0	1	1	0	0	0	0.0
545700	ISD Services	7.36	6.3	7.9	0	0	0	0.0
545710	DOIT HCM Assessment Fees	2.88	3.3	3.2	0	0	0	0.0
545900	Printing & Photo Services	0.87	1	1	0	0	0	0.0
546100	Postage & Mail Services	0	1	1	0	0	0	0.0
546400	Rent Of Land & Buildings	60.53	61.8	63	0	0	0	0.0
546500	Rent Of Equipment	3.69	4.1	4.1	0	0	0	0.0
546610	DOIT Telecommunications	14.05	13.9	13.8	0	0	0	0.0
546700	Subscriptions/Dues/License Fee	18.72	15	25.5	0	0	0	0.0
546800	Employee Training & Education	2.54	3.5	3.5	0	0	0	0.0
546900	Advertising	1.24	3	3	0	0	0	0.0
547900	Miscellaneous Expense	0.07	0	0	0	0	0	0.0
547999	Request to Pay Prior Year	0.11	0	0	0	0	0	0.0
548900	Buildings & Structures	5.88	0	5	0	0	0	0.0
549600	Employee O/S Mileage & Fares	0	1.5	1.5	0	0	0	0.0
549700	Employee O/S Meals & Lodging	0	1.5	1.5	0	0	0	0.0
<b>Grand Total</b>		<b>1,163.92</b>	<b>1,510.2</b>	<b>1,563.7</b>	<b>112.7</b>	<b>0</b>	<b>0</b>	<b>0.0</b>

**P410 - State Ethics Commission**

	<b>General Fund</b>	<b>Other Funds</b>	<b>Internal Funds</b>	<b>Federal Funds</b>	<b>Total</b>
<b>SOURCES Totals</b>	<b>1,676.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>1,676.4</b>
Personal Services and Employee Benefits	1,314.5	0.0	0.0	0.0	1,314.5
Contractual services	211.9	0.0	0.0	0.0	211.9
Other	150.0	0.0	0.0	0.0	150
<b>USES Total:</b>	<b>1,676.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>1,676.4</b>
<b>Net:</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>



**EB-1 Expansion Justifications**  
 (Dollars in Thousands)

Attorney I

Rank: 1

New Initiative	2024-25 GF Sources	2024-25 OSF Sources	2024-25 ISF/ IAT Sources	2024-25 FF Sources	2024-25 Total Request	2024-25 Exec Recommendation
General Fund Transfers	112.7	0	0	0	112.7	0
<b>REVENUE, TRANSFERS</b>	<b>112.7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>112.7</b>	<b>0</b>
Personal Services and Employee	112.7	0	0	0	112.7	0
<b>EXPENDITURES</b>	<b>112.7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>112.7</b>	<b>0</b>
Permanent	0	0	0	0	1	0
<b>FTEs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>

**Quantitative Outcome:**

**Brief Description:**

Add 1 FTE, an entry level attorney position to assist the Commission in performing its various mandates related to: providing legal guidance upon request in the form of advisory letters, advisory opinions, and trainings; assisting with jurisdictional determinations and in the investigation of administrative complaints; and assisting in the litigation of civil enforcement actions.

**Problem being addressed:**

The Commission's expansion request contemplates the addition of 1 FTE, an Attorney I, which is an entry-level classified attorney position. Currently, all of the Commission's few attorney positions are mid-career or senior attorney positions, which, in the Commission's initial years, was necessary given the large breadth of statutes that the Commission is tasked to oversee and enforce.

Even though the Commission has conducted a summer internship program for law students for the past four years, the Commission lacks the ability to recruit and hire an entry-level attorney. The ability for the Commission to recruit from its classes of summer law student interns will help to sustain a strong and durable office culture devoted to the Commission's constitutional and statutory mandates.

**Description of how performance will be improved:**

An additional Attorney I position would assist the Commission in performing its various mandates related to: (i) providing legal guidance upon request in the form of advisory letters, advisory opinions, and trainings; (ii) assisting with jurisdictional determinations and in the investigation of administrative complaints; and (iii) assisting in the litigation of civil enforcement actions.

The ability to hire an entry-level attorney, who can then progress in the agency, will lead to stability and institutional competence in the agency.

**Consequences of not funding this expansion:**

The consequences of not funding an Attorney I position will deprive the agency of a needed tool to build an institution that is stable over time.

**Assumptions and methodology:**

Attorney I salary and benefits calculation completed using the BFM position tab calculation. Results spreadsheet attached.

**Performance Measures:**

No change to our current performance measure targets.

**Analyst recommendations and comments:**

State Ethics Commission  
 BU PCode Department  
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State of New Mexico  
**EB-2 Expansion Fiscal Summary**  
 (Dollars in Thousands)

Attorney I

Rank: 1

		2024-25 GF Sources	2024-25 OSF Sources	2024-25 ISF/ IAT Sources	2024-25 FF Sources	2024-25 Total Request	2024-25 Exec Recommendation
111	General Fund Transfers	112.7	0	0	0	112.7	0
<b>REVENUE, TRANSFERS</b>		<b>112.7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>112.7</b>	<b>0</b>
200	Personal Services and Employee Benefits	112.7	0	0	0	112.7	0
<b>EXPENDITURES</b>		<b>112.7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>112.7</b>	<b>0</b>
810	Permanent	0	0	0	0	1	
<b>FTEs</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>

**EB-3 Expansion Line Item Detail**  
(Dollars in Thousands)

Attorney I

Rank: 1

		2024-25 GF Sources	2024-25 OSF Sources	2024-25 ISF/IAT Sources	2024-25 FF Sources	2024-25 Total Request	2024-25 Exec Recommendation
520300	Classified Perm Positions F/T	83.1	0	0	0	83.1	0
521100	Group Insurance Premium	5.2	0	0	0	5.2	0
521200	Retirement Contributions	16	0	0	0	16	0
521300	F I C A	6.3	0	0	0	6.3	0
521700	RHC Act Contributions	2.1	0	0	0	2.1	0
<b>200</b>	<b>Personal Services and Employee Benefit</b>	<b>112.7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>112.7</b>	<b>0</b>
<b>Total for Attorney I</b>		<b>112.7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>112.7</b>	<b>0</b>

# DFA Performance Based Budgeting Data System

## Annual Performance Report

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### Agency: 41000 State Ethics Commission

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#### Program: P410 State Ethics Commission

The purpose of the state ethics commission program is to receive, investigate and adjudicate complaints against public officials, public employees, candidates, those subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers and to ensure that public ethics laws are clear, comprehensive and effective.

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Performance Measures:		2022-23 Target	2022-23 Result	Met Target	Year End Result Narrative
Explanatory	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.	N/A	76%	N/A	
Output	Percent of advisory opinions issued within sixty days of receipt	90%	88%	No	If informal opinions are included, the percentage is 97%

Performance Measures Summary

<b>P410</b>		<b>State Ethics Commission</b>				
<b>Purpose:</b>		The purpose of the state ethics commission program is to receive, investigate and adjudicate complaints against public officials, public employees, candidates, those subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers and to ensure that public ethics laws are clear, comprehensive and effective.				
<b>Performance Measures:</b>		<b>2021-22 Actual</b>	<b>2022-23 Actual</b>	<b>2023-24 Budget</b>	<b>2024-25 Request</b>	<b>2024-25 Recomm</b>
Output	Percent of advisory opinions issued within sixty days of receipt	80%	88%	90%	90%	
Explanatory	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.	57%	76%	N/A	N/A	



# State Ethics Commission

<http://sec.nm.gov>

800 Bradbury  
Suite 215  
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# FY 25

## Strategic Plan

### Fiscal Year 2025

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## State of New Mexico

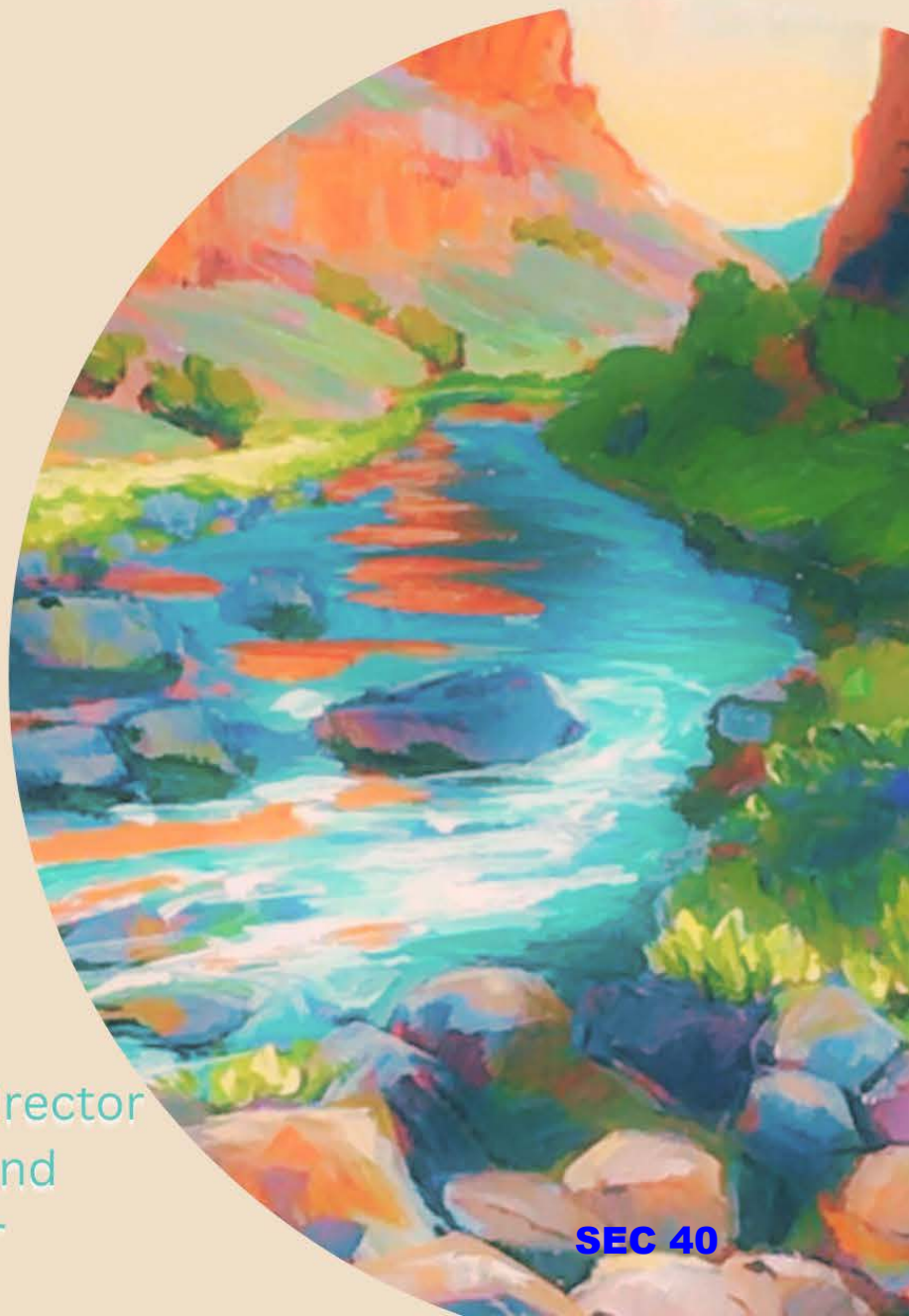
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Prepared by:

Jeremy D. Farris, Executive Director

Wendy George, Finance and

Administration Director



**SEC 40**

# A Message from the Executive Director

I am pleased to present the *Strategic Plan* for the State Ethics Commission for fiscal year 2025—the Commission’s sixth year. The Commission has no staff vacancies and continues to experience increase levels of work to meet its constitutional and statutory mandates to oversee New Mexico’s governmental conduct, procurement, and disclosure laws. 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, constitutional 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, campaign finance reporting, 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 may 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. The Commission may also initiate administrative proceedings and petition state district courts to issue subpoenas related to investigations.

*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 informal advisory 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, campaign finance reporting, and financial 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 annually hosts a paid internship program for law students at both the University of New Mexico School of Law and out-of-state law schools.

# Major Accomplishments (FY23)

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

- On August 10, 2023, the Commission, New Mexico Governor Michelle Lujan Grisham, and the Human Services Department (HSD) reached a settlement agreement stemming from the Commission's authorization of a civil action related to the cancellation of the Request for Proposals (RFP) for Managed Care Organizations for Turquoise Care, New Mexico's Medicaid plan. HSD issued the RFP on September 30, 2022; evaluated and scored proposals; prepared contract notice of award letters; and, on January 30, 2023, following instructions communicated by Governor's office employees, canceled the RFP. Pursuant to a mediation conducted by the Honorable Judith K. Nakamura (Ret.), the settlement required HSD to: (i) rescind the cancellation of the RFP; (ii) issue four notices of intent to award contracts to the four Managed Care Organization (MCO) contractors that HSD had originally selected, including Blue Cross and Blue Shield of New Mexico, UnitedHealthcare of New Mexico, Molina Healthcare of New Mexico, Inc., and Presbyterian Health Plan; and (iii) issue the notice that HSD originally prepared to Western Sky Community Care that it was not selected for a contract award. Last, when negotiating contract awards with the four offerors selected for contract awards, the settlement agreement requires HSD to adhere to the RFP and procurement law.
- On February 9, 2023, the Commission filed a civil action against Yvonne Otero, the former Torrance County Clerk, to enforce the Governmental Conduct Act's main public trust provisions. The Commission's complaint alleges that Otero, during her tenure as Torrance County Clerk, violated the Governmental Conduct Act by using her elected position and public assets for personal gain and pursuits. The allegations include the deletion of electronically cast absentee ballots under federal Uniformed and Overseas Citizens Absentee Voting Act, mishandling of ballots, attempting to pre-certify ballot tabulators for vacation purposes, engaging in inappropriate behavior during work hours, openly discussing illicit drug use, and subjecting subordinates to danger and threats for both amusement and coercion. The case, *State Ethics Commission v. Otero*, D-722-CV-2023-00028, is currently pending before the Honorable Mercedes C. Murphy.
- On November 2, 2022, the Commission entered into a settlement with Working Families Organization, Inc. (WFO). The Commission had filed suit in *State Ethics Commission v. Working Families Organization, Inc.*, D-506-CV-2022-00942, to enforce the Campaign Reporting Act. Alleging violations of Sections 1-19-26.4, 1-19-27.3 and 1-19-34.3, the Commission's complaint

focused on WFO's "Unemployed Workers United" text-message campaign advocating for approval of a ballot question concerning increased expenditures from the permanent fund. Under the settlement, WFO submitted independent expenditure reports through the Secretary of State's Campaign Finance System, paid an \$11,000 civil penalty, and committed to adhering to registration and reporting requirements in all future election cycles.

- On December 7, 2022, the Commission entered into a settlement agreement with Mary Lou Kern, the former Colfax County manager. Ms. Kern agreed to pay a \$500 civil penalty, and the Commission, in exchange, released Governmental Conduct Act claims involving her involvement in Colfax County 2022 inmate medical services Request for Proposals and subsequent employment at Roadrunner Health Services, LLC, within a year of leaving her public position. \$500 is the maximum civil penalty available for two violations of the Governmental Conduct Act.
- On February 3, 2023, the Commission entered into a settlement agreement with the Eleventh Judicial District Attorney Bernadine Martin and the office's chief procurement officer, Christina Esquibel. In a letter before claim, the Commission had alleged that the office violated the Procurement Code by entering into multiple contracts for legal services without using either a competitive proposal process or an applicable exception. Under the settlement agreement, the District Attorney agreed to issue a request for proposals for the legal services and that staff of the District Attorney's office underwent procurement training authorized by the State Purchasing Division.
- On February 3, 2023, the Commission entered into a pre-litigation settlement with Stephanie Stringer, the former Chair and Commissioner of the Water Quality Control Commission (WQCC) and a former employee of the New Mexico Environment Department. Stringer applied for, interviewed for, and ultimately accepted employment with a federal agency. During that time, the Commission alleged that Stringer also took actions as Chair of the WQCC related to that federal agency. The Commission alleged that Stringer violated Section 10-16-4(C) of the Government Conduct Act by acquiring a financial interest when she reasonable should have believed that her official acts as a commissioner and a Chair of the WQCC would directly affect that interest. In the settlement, Stinger agreed to pay the maximum \$250 civil penalty without admitting any liability or wrongdoing.
- On November 17, 2022, the Commission achieved a settlement with a former commercial assessor at the Sandoval County Assessor's Office, and Double Eagle Property Tax Consultants. The Commission had filed suit in *State Ethics Commission v. Vargas, et al.*, D-202-CV-2021-06201, to enforce the revolving-

door provisions of the Governmental Conduct Act. The lawsuit alleged that Mr. Gabriel Vargas and his employer, Double Eagle, had violated those provisions, particularly considering their representation of Presbyterian Healthcare Services on Presbyterian's protest of the 2020 valuation of Rust Medical Center. Under the settlement, the defendants paid the State of New Mexico \$13,000, an amount that exceeds the maximum \$5,000 civil fine currently available under the Governmental Conduct Act and is approximately equal to the fee that Double Eagle received from Presbyterian Healthcare Services for Double Eagle's representation of the 2020 valuation of Rust Medical Center.

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

- In FY23, the Commission received, investigated and adjudicated 47 administrative complaints alleging violations of New Mexico's ethics and disclosure laws. At present, 14 of the 47 administrative matters filed during FY23 are still pending.
- On August 21, 2023, the Commission hearing officer Hon. Alan Torgerson (Ret.) held the Commission's first hearing in an administrative matter, *Eichenberg v. Montoya*, SEC No. 2022-006. The case is still pending.

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

- In FY23, the Commission issued eight advisory opinions, available on [www.NMOneSource.com](http://www.NMOneSource.com), and 34 advisory letters.
- In FY23, delivered over twenty separate trainings to legislators, legislative committees and staff, state agencies, state boards and commissions, local governments, universities, affiliate and professional organizations, and bar associations around New Mexico.

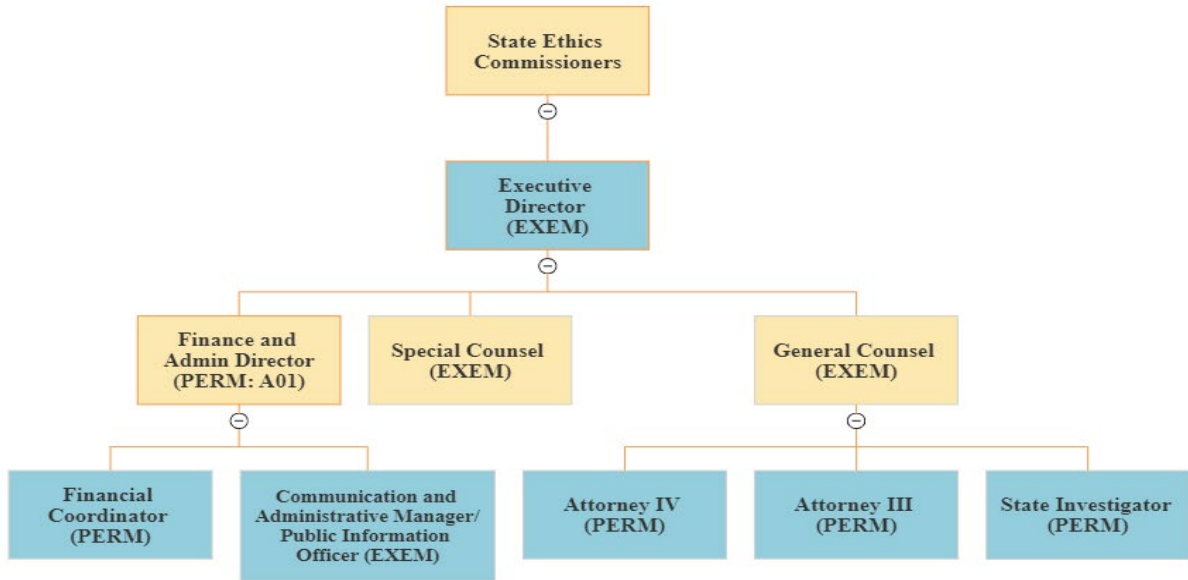
***Other Accomplishments:***

- Since January 1, 2022, when the Commission was assigned jurisdiction for notaries public the Commission has received, investigated, or prosecuted over 27 separate administrative matters involving a potential remedial action against a notary public's commission.
- In FY23, the Commission hosted a its fourth class of law student summer associates—two students from the University of New Mexico School of Law and one student from the University of Illinois Urbana-Champaign College of Law.

# Organizational Structure

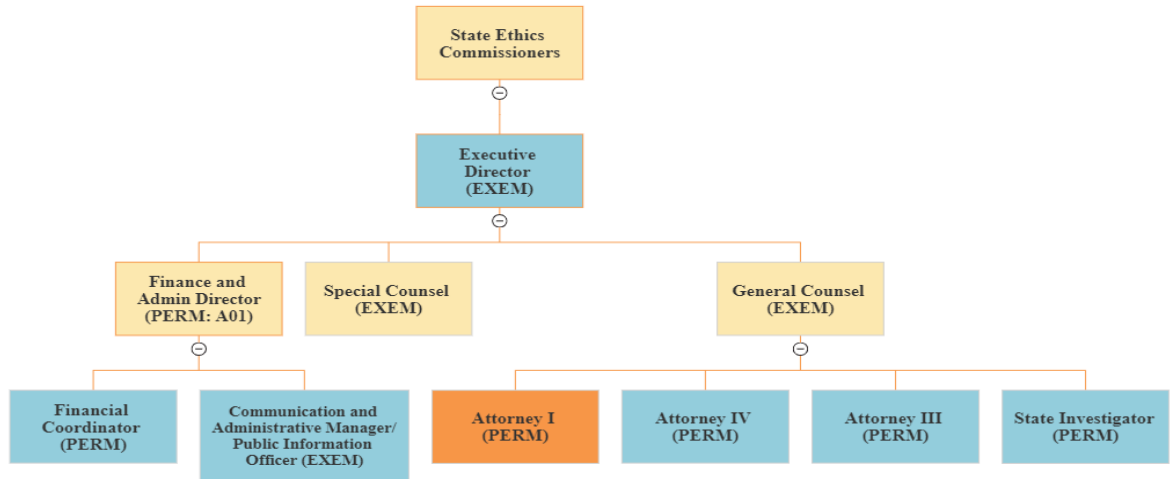
## State Agency Organizational Chart (FY24):

State Ethics Commission Organizational Chart FY24



**State Agency Organizational Chart (FY25):**

Proposed State Ethics Commission Organizational Chart FY25



\*The Attorney I (PERM), in orange in the above table, is the additional position that the Commission seeks as part of its FY25 budget request.



# FY25 Objectives and Strategic Actions

Through FY25, 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 FY25, 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 FY24, the Commission will recruit for and hire a State Investigator who will conduct investigations into administrative cases. In FY25, the Commission intends to take the following strategic actions to improve its administrative adjudications:

### **Strategic Actions**

- Subject to requested appropriations, fully fund an additional Attorney I position.
- 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 FY25, the Commission intends to take the following strategic actions to enable and effectuate its enforcement authority:

### **Strategic Actions**

- Subject to requested appropriations, fully fund an additional Attorney I position.
- Enter into and operate under an interagency agreement with the Office of the Attorney General regarding referrals, information sharing, parallel enforcement, and training.
- Improve and streamline the Commission's intake processes so that every allegation is given appropriate consideration and review.
- Contract for paralegal services to support the Commission's attorneys in the investigation and prosecution of civil enforcement actions and special statutory proceedings.
- 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 FY25, the Commission intends to take the following strategic actions to continue and increase its guidance function:

### ***Strategic Actions***

- Subject to requested appropriations, fully fund an additional Attorney I 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 2025 legislative session.
- Develop and offer trainings, opinion and editorial pieces, and continuing legal education courses (and related materials) on the Governmental Conduct Act, the Procurement Code, and other laws within the Commission's jurisdiction; provide those trainings to both state agencies, local public bodies, and affiliate organizations.
- Jointly issue a new Governmental Conduct Act compliance guide with the Office of the Attorney General
- 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**

FY25 will be the Commission's sixth year. The Commission remains a young state agency, mostly staffed by its initial staff members. During FY24, the Commission will add to its staff by recruiting for and hiring a State Investigator to assist with administrative and civil enforcement matters and a Financial Coordinator to assist with financial transactions, human resources, and other administrative services. To further build capacity to perform its basic constitutional and statutory mandates, in FY25, the Commission intends to take the following strategic actions:

### ***Strategic Actions***

- Conduct a summer internship program for 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.
- Relatedly, so that the Commission has the ability to recruit out of its summer law school program, and thereby build a strong and tight-knit office culture, the Commission seeks to add an additional Attorney I position, pending approval of the Commission's FY25 request.

## **IMPROVED ENGAGEMENT WITH LOCAL GOVERNMENTS**

While the Commission lacks jurisdiction for administrative complaints filed against local government officials and employees, the Commission nevertheless interacts with New Mexico local governments in two main ways: First, the Commission provides advisory letters and trainings to local government officials and employees. Second, the Commission has the discretionary authority to commence civil actions in district court to enforce violations of those ethics laws that apply to local government officials and employees. Beyond 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**

- 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.
- Participate in conferences hosted by the Municipal League, NM Counties, and the New Mexico Public Procurement Association 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**

- 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

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 performance measures were recently amended to better reflect agency performance. These amendments were made in consultation with staff of the Legislative Finance Committee and the Department of Finance and Administration. The Commission’s current performance measures and outcomes are:

Existing Measure	FY23 Actual	FY25 Target
Percent of advisory opinions issued within sixty days of receipt of request.	87.5%*	90%
Percent of ethics complaints within the agency's jurisdiction that are either disposed or set for public hearing within 180 days after a complaint is received.	76%†	90%

\* From July 1, 2022, to June 30, 2023, the Commission issued eight advisory opinions. Seven of these opinions were issued by the Commission within 60 days of the receipt of the request for an advisory opinion. For the sole opinion that was issued in excess of 60 days, the opinion was issued 63 days after the request was received. During FY22, on average, the Commission issued advisory opinions 41 days after the Commission staff received a proper request. Because the Commissioners regularly meet 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 a scheduled Commission meeting, particularly when the agenda is already set.

† There are several reasons why the Commission sometimes requires more than 180 days to resolve an administrative complaint. There are substantial delays that can 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. Further, parties 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 can take longer than 180 days to resolve. Last, it can also take time for the Commission’s general counsel and other Commission attorneys to schedule interviews and depositions, working with the schedules of parties and witnesses.

## Considerations

Two considerations are relevant to the Commission's strategic plan for FY25:

1. Because the Commission is comprised of bipartisan, trusted New Mexican leaders, each of whom has 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. In recent legislative sessions, legislators have also introduced joint resolutions that (i) would authorize and mandate the Commission to set the salaries for the elected officials in the state: legislators, elected executive officers, and judges; (ii) and would require the Commission to select the members of an Independent Redistricting Commission. While the Legislature may increase the Commission's responsibilities, 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 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 will maintain a concern whether 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  
Term expires: June 30, 2027

**Hon. Celia Castillo, Member**

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

**Dr. Terry MacMillan**

Appointing authority: Minority Floor Leader of the Senate, Gregory Baca  
Term expires: June 30, 2027

**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 2023) (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] 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 an independent hearing officer 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. The hearing officer chosen to consider probable cause shall not participate in the adjudication of the complaint.

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.



## FY25 Appropriation Request Checklist

Agency Name: State Ethics Commission

Business Unit: 41000

### Reports to Include in PDF Submission

	Form #	Title	
<input checked="" type="checkbox"/>	Cvr Ltr	Cover Letter	<i>Agency Level</i>
<input checked="" type="checkbox"/>	S-1	Certification	<i>Agency Level</i>
<input checked="" type="checkbox"/>	S-2	Organizational Chart	<i>Agency/Program Level</i>
<input checked="" type="checkbox"/>	S-8	Financial Summary (BFM)	<i>Agency/Program Level</i>
<input checked="" type="checkbox"/>	S-9	Account Code Revenue / Expenditure Report	<i>Agency/Program Level</i>
<input type="checkbox"/>	S-10	Fund Balance Projection	<i>Fund Level</i>
<input checked="" type="checkbox"/>	S-13	Detail of Rate Line Items (see instructions)	<i>Agency Level</i>
<input checked="" type="checkbox"/>	P-1	Program Narrative	<i>Program Level</i>
<input type="checkbox"/>	R-2	Transfer Report	<i>Agency Level</i>
<input checked="" type="checkbox"/>	REV/EXP	Revenue-Expenditure Comparison Report	<i>Agency/Program Level</i>
<input checked="" type="checkbox"/>	EB-1	Expansion Justifications	<i>Program Level</i>
<input checked="" type="checkbox"/>	EB-2	Expansion Fiscal Summary	<i>Program Level</i>
<input checked="" type="checkbox"/>	EB-3	Expansion Line Item Detail	<i>Program Level</i>
<input checked="" type="checkbox"/>	APR	Annual Performance Report	<i>Program Level</i>
<input checked="" type="checkbox"/>	Table 2	Table 2 Performance Measure Summary	<i>Program Level</i>
<input checked="" type="checkbox"/>	SP	Strategic Plan	<i>Agency Level</i>
<input type="checkbox"/>	ITP	Information Technology Plan	<i>Agency Level</i>
<input type="checkbox"/>	C-1	Base Operating Budget	<i>Agency Level</i>
<input type="checkbox"/>	C-2	IT Request Plan	<i>Agency Level</i>
<input type="checkbox"/>	Perf Audit	Update to LFC Performance Audits (within last 2 years)	<i>Agency Level</i>

### Documents to Attach in BFM (PDF Optional)

### Where to Attach

<input checked="" type="checkbox"/>	Board Cert	Board or Commission Budget Certification	<i>Form 9900</i>
<input type="checkbox"/>	E-6B	Leased Passenger-Related Vehicles	<i>Form 3300/4300</i>



## STATE ETHICS COMMISSION

### **[DRAFT] ADVISORY OPINION NO. 2023-07**

November 3, 2023<sup>1</sup>

### **QUESTION PRESENTED<sup>2</sup>**

“Several public bodies, including state agencies and state institutions, have adopted the practice of merely issuing a contract for legal services without compliance with the provisions of the Procurement Code when the legal firm is to be paid through contingency fees only in the event there is recovery of funds by the public body for the issue giving rise to the contract. The philosophy appears to be that since no money is being paid out by the public body and since there is no compensation unless the attorney succeeds in recovering funds for the public body for which the attorney is paid on a contingency basis only, that the Procurement Code does not apply.

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<sup>1</sup> This is an official advisory opinion of the New Mexico State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C) (2019).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On October 5, 2023, the Commission received a request for an advisory opinion that detailed the issues as presented herein.

Does the Procurement Code apply to [the procurement of contracts for] legal services provided to a public body when the attorney is not guaranteed any payment and is paid exclusively through contingency fees?”

## ANSWER

Yes.

## ANALYSIS

We are asked to opine on whether the Procurement Code, NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2023), applies to a state agency’s or local public body’s procurement of contingent-fee contracts for legal services. The request indicates that “state agencies and state institutions” have entered into contingent-fee contracts with law firms.<sup>3</sup> Whether the agencies and political subdivisions of the State of New Mexico have either constitutional or statutory authority to enter into contingent-fee agreements for legal services is a question that the State Ethics Commission cannot opine on.<sup>4</sup> We observe, however, that the highest courts of other jurisdictions, when interpreting their respective state

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<sup>3</sup> See, e.g., Daniel Fisher, *New Mexico pays its opioid lawyers \$150 million, almost triple national rate*, LEGAL NEWSLINE (June 19, 2023), <https://legalnewsline.com/stories/644287456-new-mexico-pays-its-opioid-lawyers-150-million-almost-triple-national-rate> (noting that from the State’s \$453 million settlement with Walgreens, the Office of the Attorney General paid a “\$148 million contingency fee charged by law firms Baron & Budd, Robles Rael Anaya and Levin Papantino” and that “[f]ees in the New Mexico [case] represent a far higher percentage than lawyers typically earn in settlements over \$100 million”).

<sup>4</sup> See NMSA 1978, § 10-16G-8(A) (2019) (providing that “[t]he commission may issue advisory opinions on matters related to ethics”); NMSA 1978, § 10-16G-9(A)(1)–(10) (2021) (enumerating the laws for which the Commission has subject matter jurisdiction). We note in passing that state agencies and local public bodies may not enter into contingent-fee agreements with law firms for *lobbying* services. See NMSA 1978, § 2-11-8 (1977) (“No person shall accept employment as a lobbyist and no lobbyist’s employer shall employ a lobbyist for compensation contingent in whole or in part upon the outcome of the lobbying activities before the legislative branch of state government or the approval or veto of any legislation by the governor.”). Under the Lobbyist Regulation Act, NMSA 1978, §§ 2-11-1 to -10 (1993, as amended through 2023), “lobbying” does not include a lawyer’s advocacy to influence a decision of a court. See NMSA 1978, § 2-11-2(D), (G) (1994).



constitutions, have issued conflicting opinions regarding whether a state agency can enter into a contingent-fee contract for legal representation.<sup>5</sup> Aware of these opinions, for the purposes of this advisory opinion we assume *arguendo* that at least some New Mexico state agencies and local public bodies have (or could be granted) the authority to enter into contingent-fee agreements for legal services. With that assumption in mind, we consider whether the Procurement Code constrains *how* state agencies and local public bodies select the attorneys with whom they enter contingent-fee contracts.

## I.

“A ‘contingent fee’ arrangement occurs when a law firm does not bill or expect payment until and unless the contingency is achieved.”<sup>6</sup> Contingent-fee agreements typically have two components: first, a client’s obligation to pay a lawyer is contingent on the outcome of the representation; second, the lawyer’s fee is a percentage of the client’s recovery.<sup>7</sup> Contingent-fee contracts between a

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<sup>5</sup> Compare *Meredith v. Ieyoub*, 700 So.2d 479, 481 (La. 1997) (holding that because Louisiana’s legislature had exclusive control over state finances, the Attorney General had no authority “to pay outside counsel contingency fees from state funds” unless the Attorney General had been expressly granted the power in the constitution “or the Legislature has enacted such a statute”), with *State v. Hagerty*, 580 N.W.2d 139, 148 (N.D. 1998) (holding that North Dakota’s Attorney General has inherent authority “to employ special assistant attorneys general on a contingent fee agreement unless such agreements are specifically prohibited by statute”), and *Landrum v. Commonwealth ex rel. Beshear*, 599 S.W.3d 781, 785–787 (Ky. 2019) (holding that the Kentucky Attorney General’s authority to enter into a contingency-fee contract with outside counsel is subject to the overriding authority of the Kentucky General Assembly); cf. also *In re Paschal*, 77 U.S. 483, 486 (1870) (observing a Texas statute empowering Texas’s Governor to enter into a contingent-fee agreement with an attorney to recover federal bonds for Texas’s school fund); *Button’s Estate v. Anderson*, 28 A.2d 404, 405 (Vt. 1942) (observing a Vermont statute empowering Vermont’s Governor to enter into a contingent-fee contract with attorneys to recover from the United States Vermont’s expenditures for military purposes in the war of 1812 with Great Britain).

<sup>6</sup> 7 Am. Jur. 2d Attorneys at Law § 249.

<sup>7</sup> See *id.*; see also Restatement (Third) of the Law Governing Lawyers § 35 cmt. A (Am. Law Inst. 2000) (“A contingent-fee contract is one providing for a fee the size or payment of which is conditioned on some measure of the client’s success.”).



lawyer and his or her client are generally valid.<sup>8</sup> In New Mexico, Rule 16-105(D) of New Mexico’s Rules of Professional Conduct expressly allows contingent-fee contracts, so long as they are in writing; signed by the client; and state the method by which the fee is to be determined, that litigation and other expenses will be deducted from the client’s recovery, and whether such expenses will be deducted before or after the contingent fee is calculated.<sup>9</sup>

Contingency-fee contracts are agreements “to measure an attorney’s fee by the value of what is recovered[.]”<sup>10</sup> Yet, they can be more than that; depending on the contract language, a contingency-fee agreement can create an equitable lien—often called a “charging lien”—on the proceeds of the representation, such that the attorney can look directly to the fund that the attorney recovers for the client for payment of the attorney’s fees.<sup>11</sup> The attorney’s lien does not attach until the client has recovered the fund, including when the lawyer receives the fund and holds it,

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<sup>8</sup> See 7 Am. Jur. 2d Attorneys at Law § 249 n.1 (citations omitted); Restatement (Third) of the Law Governing Lawyers § 35.

<sup>9</sup> See Rule 16-105(D) NMRA.

<sup>10</sup> *Landrum*, 599 S.W.3d at 789 (quoting *First Nat. Bank of Louisville v. Progressive Cas. Ins. Co.*, 517 S.W.2d 226, 230 (Ky. 1974)) (internal quotation marks omitted).

<sup>11</sup> See *Thompson v. Montgomery & Andrews, P.A.*, 1991-NMCA-086, ¶ 10, 112 N.M. 463 (citing *Prichard v. Fulmer*, 22 N.M. 134, 140 (N.M. 1916)) (explaining that a charging lien, which attaches upon recovery, “recognizes the right of an attorney to recover his fees and costs on behalf of his client from a fund recovered as a result of his efforts, and also the right to have the court interfere to prevent payment by the judgment debtor to the creditor in fraud of that right, and also to prevent or set aside assignments or settlements made in fraud of that right”); see also generally, e.g., *McKee-Berger-Mansueto, Inc. v. Board of Educ. of City of Chicago*, 691 F.2d 828, 836 (7th Cir. 1982) (observing that contingent fee agreements can create an equitable lien “if phrased so that the attorney can look directly to the fund for payment of his or her fees”); Restatement (Third) of the Law Governing Lawyers § 43(2) & cmts. a, e–h (permitting contractual charging liens on the proceeds of a matter to secure a lawyer’s compensation for services rendered in that matter); W.W. Allen, *Terms of attorney’s contingent-fee contract as creating an equitable lien in his favor*, 143 A.L.R. 204 (originally published in 1943, updated weekly) (“The majority of the cases dealing with the effect of an agreement ‘to pay’ a lawyer’s contingent fee ‘from,’ or ‘out of,’ the proceeds of the litigation support the proposition that a stipulation in that form is at least some indication of an intent which will give rise to an equitable lien, if not to an equitable assignment.”) (citations omitted).

as the client’s agent, in trust for the client.<sup>12</sup> When handling a matter on a contingent-fee basis, so long as the client agrees, a lawyer may receive the payment of a judgment or settlement, calculate the lawyer’s fee under the contingent-fee agreement, withdraw the fee and costs from the recovered fund, and remit the balance to the client.<sup>13</sup> This practice is not only permissible, but also ordinary and well-established in American legal practice.<sup>14</sup>

Yet, it is important to be precise about the respective rights of the client and the attorney in contingency-fee agreements. The client, not the attorney, is the owner of the right being enforced.<sup>15</sup> Any money paid to satisfy a judgment of the client’s claim and any money paid to settle the client’s claim also belong to the client.<sup>16</sup> The client has the legal title to the judgment or settlement proceeds, even if a third party pays those proceeds to the client’s lawyer.<sup>17</sup> In contingent-fee

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<sup>12</sup> See *id.*; see also *Thompson*, 1991-NMCA-086, ¶ 10 (citing *Prichard*, 22 N.M. at 140).

<sup>13</sup> See Rule 16-105(D) NMRA (“Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.”).

<sup>14</sup> See, e.g., 143 A.L.R. 204; Rule 16-115 NMRA cmt. [3] (“Lawyers often received funds from which the lawyer’s fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed.”); see also, e.g., *Novinger v. E.I. DuPont de Nemours & Co., Inc.*, 809 F.2d 212, 218 (3d Cir. 1987) (explaining Pennsylvania law of contingent-fee contracts, including charging liens that give an attorney the right to be paid from a fund which resulted from their services and is in their possession); *Hagerty*, 580 N.W.2d at 144 (quoting the Attorney General’s argument that “[u]nder a traditional contingent fee arrangement, only the net proceeds of the recovery remaining after payment of the attorneys’ fees are paid to the client—in this case the client State Agencies”).

<sup>15</sup> See *Goldman v. Home Mut. Ins. Co.*, 126 N.W.2d 1, 5 (Wis. 1964) (“[I]t is not against public policy for a client to settle his claim with the tortfeasor or his insurer without participation and consent of the attorney before action is commenced even though the client has retained counsel. We agree with this portion of the opinion for obvious reasons. *The claim belongs to the client and not the attorney*; the client has the right to compromise or even abandon his claim if he sees fit to do so.”) (emphasis added); see also Rule 1-017(A) NMRA (“Every action shall be prosecuted in the name of the real party in interest[.]”).

<sup>16</sup> See Rule 16-115 NMRA.

<sup>17</sup> See *Landrum*, 599 S.W.3d at 789 (emphasis and alterations in original) (quoting *First Nat. Bank of Louisville*, 517 S.W.2d at 230) (“It is customary for insurance companies, as well as others against whom claims for money are asserted, to make a settlement draft payable to the claimant and his attorney. That is for the protection of the lawyer and for the protection of the

agreements where an attorney and client have agreed that the attorney has a charging lien against any recovered fund, the attorney's charging lien, like any lien, is an interest in *another's* (i.e., the client's) property.<sup>18</sup>

The question presented here contemplates a contingency-fee arrangement in which “no money is being paid out by the public body” to compensate the attorney for the services rendered.<sup>19</sup> In other words, we are asked to consider a contingency-fee arrangement in which the attorney and the government body agree that the attorney may take his or fee from the recovered fund. In view of our above observations about the respective rights of the client and the attorney in contingency-fee arrangements, we are uncertain that a state agency could legally enter into such an agreement, without an express authorization from the Legislature creating a suspense fund and authorization disbursements therefrom.<sup>20</sup>

Again, when a fund is recovered to pay a judgment or a settlement, the fund belongs to the client. Where the client is a state agency, the recovered fund would be public money. As such, it would appear that any monies the lawyer recovers for a state agency should be “paid into the state treasury[,]” and any payments of the

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payor against a claim by the lawyer that he was dealt around and divested of his lien. *It gives him no real ownership interest, since he is not entitled to a fee for money collected until he delivers it over to his client. Only then does the client owe him anything.* And it is no answer to say that [the attorney] had a lien on the proceeds of the draft. The bank had no more of a right to pay him off separately than would [the losing party] . . . . The stubborn fact is that [*the attorney*] *did not have any ownership or other interest in these drafts that would entitle him to collect upon them independently of his clients, who were the owners.*”).

<sup>18</sup> LIEN, *Black's Law Dictionary* (11th ed. 2019) (“A legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied.”).

<sup>19</sup> *See supra*, at Question Presented.

<sup>20</sup> We are aware of at least two instances in which the Legislature has specifically authorized state agencies to enter contingent-fee agreements for legal services under which the lawyers are paid from the recovered fund—namely, the State Investment Council and the Educational Retirement Board. *See* NMSA 1978, § 6-8-23 (2011) (creating a “state investment council suspense fund” in the state treasury and authorizing disbursements of “contingent attorney fees due to the legal services contractor”); NMSA 1978, § 22-11-6(B)(2) (2011) (authorizing the educational retirement board to enter into contracts for legal services on a contingent-fee basis, “subject to the provisions of the Procurement Code”); NMSA 1978, § 22-11-11 (2011) (creating an “educational retirement suspense fund” and authorizing disbursements for attorneys' fees)

lawyers' fees from public money should be made pursuant to legislative appropriation and further "made upon warrants drawn by the secretary [of the Department of Finance and Administration] upon the [state] treasury[.]"<sup>21</sup> Absent an express grant of statutory authority that supersedes the provisions of Chapter 6, Article 10, we therefore are uncertain whether state agencies may enter into a contingency-fee agreement in which the lawyer could take his or her fee from (or otherwise exercise a charging lien against) the recovered fund.<sup>22</sup> Given the Legislature knows how to make this authorization, and because the question presented contemplates contingent-fee contracts that provide for an attorney to be paid from the recovered fund, we consider whether the Procurement Code would apply to the award of such contracts.

## II.

The Procurement Code applies "to every expenditure by state agencies and local public bodies for the procurement of tangible personal property, services and construction." NMSA 1978, § 13-1-30(A) (2005). The answer to the question presented, that is, whether the Procurement Code applies to contingent-fee agreements for the provision of legal services, depends on whether a state agency or local public body makes an "expenditure" upon the conclusion of a contingent-

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<sup>21</sup> See NMSA 1978, § 6-10-3 (2011) ("All public money in the custody or under the control of any state official or agency obtained or received by any official or agency from any source, except as in Section 6-10-54 NMSA 1978 provided, shall be paid into the state treasury. It is the duty of every official or person in charge of any state agency receiving any money in cash or by check, draft or otherwise for or on behalf of the state or any agency thereof from any source, except as in Section 6-10-54 NMSA 1978 provided, to forthwith and before the close of the next succeeding business day after the receipt of the money to deliver or remit it to the state treasurer[.]"); NMSA 1978, § 6-10-46 (2003) ("All payments and disbursements of public funds of the state shall be made upon warrants drawn by the secretary upon the treasury of the state based upon itemized vouchers in a form approved by the secretary."); see also N.M. Const. art. IV, § 30 ("Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature.").

<sup>22</sup> This is not to suggest that contingency-fee agreements between state agencies and law firms are necessarily of dubious validity. A state agency may agree that the *measure* of the lawyer's fee is based on the amount that the lawyer recovers. Rather, what seems uncertain is whether, absent an express grant of authority, a state agency may enter into a contingent-fee contract in which, pursuant to that agreement, the lawyer receives a charging lien on the recovered fund and thus could withdraw attorneys' fees and costs before remitting the recovered fund to the State.

fee matter. *See id.* In other words, at the conclusion of a contingent-fee matter, when a lawyer withdraws their fee (and any costs) from the fund that the lawyer recovers for a state agency or a local public body, does the government body make an “expenditure” under Subsection 13-1-30(A)?

We believe the answer is yes. Upon the conclusion of a contingent-fee matter in which a lawyer represents a state agency or a local public body, the lawyer’s fee is paid from funds belonging to the government-entity client. Where the lawyer’s fee is simply measured by the amount of the recovery, the fee would be paid from some source of public funds, either the recovered fund or another. Where the contingent-fee arrangement not only measures the fee by the amount of the recovery but also provides the lawyer with a charging lien, the lawyer’s fee would be paid specifically from the funds recovered to pay the judgment or settlement—funds which, we explained above, belong to the government-entity client. In either case, the lawyer’s fee is paid through an expenditure from a fund belonging to the state agency or the local public body; accordingly, the lawyer’s fee is an “expenditure” of that state agency or local public body.<sup>23</sup>

Our opinion that “expenditure” in Subsection 13-1-30(A) includes the fees that attorneys assess at the conclusion of contingent-fee matters follows the Legislature’s instruction to construe the Procurement Code “liberally.”<sup>24</sup> Our opinion also follows the Legislature’s instruction to apply the Code “to promote its purposes and policies,” which are “to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.”<sup>25</sup>

We see no reason why certain traditional aspects of a contingent-fee contract—*i.e.*, the existence of a charging lien, an attorney’s corresponding ability to withdraw their fee before remitting the balance of the recovery to the client, and the possibility that the attorney recovers no fee—should operate to exempt the Procurement Code from controlling how the government agency can select the

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<sup>23</sup> § 13-1-30(A).

<sup>24</sup> NMSA 1978, § 13-1-29(A), (C) (1984).

<sup>25</sup> *Id.*

attorney with whom it enters into a contingent-fee agreement for the provision of legal services.<sup>26</sup> To the contrary, considering both the significant representations that attorneys take under contingent-fee agreements (*e.g.*, pursuing New Mexico’s recovery from the opioid-abuse epidemic in this state) and the large sums that contract attorneys may recover in these representations (*e.g.*, a \$148 million fee in one opioids-related case alone), the Procurement Code should apply to constrain how state agencies select law firms both to “to maximize the purchasing value of public funds” and to “maintain a procurement system of quality and integrity.”<sup>27</sup> The Code’s constraints on agency discretion in the award of legal service contracts matter, and we turn to the most significant in the context of the award of a contingent-fee agreement.

First, the application of the Procurement Code to a state agency or local public body’s selection of a contractor entails the potential application of the Code’s default rule that government contracts be awarded following a competitive, sealed process.<sup>28</sup> For legal services, that process involves the use of a request for proposals, which “permits [an] agency to accept the offer that is ‘most advantageous . . . [after] taking into consideration the evaluation factors set forth in the request for proposals.’”<sup>29</sup> “This requirement gives a measure of predictability to proposal-based procurements, ensuring that the agency does not introduce additional evaluation factors mid-procurement to tip the scales in favor of an offer

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<sup>26</sup> See *Landrum*, 599 S.W.3d at 790 (“It would seem absurd to think that the General Assembly intended for contracts entered into on a contingency basis that could be worth millions of dollars of public money to be exempted from government oversight simply because of the possibility that they could be worth nothing.”).

<sup>27</sup> § 13-1-29(C); see also *Landrum*, 599 S.W.3d at 790 (“Considering the potential multi-million-dollar recovery at stake, coupled with the pervasiveness of the opioid-abuse epidemic in Kentucky, forcing a competition among law firms for this contract would seem to further many of the General Assembly’s purposes in enacting the MPC [Model Procurement Code]. It would seem at odds with the purposes of the MPC to exempt contingency-fee contracts from the government-review mechanism.”).

<sup>28</sup> See State Ethics Comm’n Adv. Op. No. 2020-04, at 3 (June 5, 2020), available at <https://nmonesource.com/nmos/secap/en/item/18166/index.do> (discussing the general requirements of the Procurement Code and its underlying public policy).

<sup>29</sup> *Id.* at 4 (alterations in original) (quoting NMSA 1978, § 13-1-117 (1987)).



that is otherwise less advantageous.”<sup>30</sup> It also creates a fair playing field and an opportunity for firms to compete to demonstrate that their services are the most advantageous to the State.

Second, the Procurement Code not only includes its central rule that government contracts be awarded following a competitive, sealed process.<sup>31</sup> The Code also includes several specific provisions that are designed to deter conflicts of interest and undue influence.<sup>32</sup> For example, the Code: (i) requires that prospective contractors disclose campaign contributions;<sup>33</sup> (ii) provides that a proposed contract award may be cancelled if a prospective contractor gives a campaign contribution or other thing of value to an applicable public official or employee during the pendency of the procurement process;<sup>34</sup> (iii) prohibits a prospective contractor from retaining another person on a contingency basis to secure a contract from a public body;<sup>35</sup> (iv) prohibits contemporaneous employment between a public body and a contractor to that public body;<sup>36</sup> and (v) prohibits government officials and employees from using of confidential information to benefit a private entity.<sup>37</sup> When a state agency or local public body is selecting law firms to pursue claims on a contingent-fee basis, and especially where the fee could easily reach millions of dollars, these safeguards are all the more important to combat undue influence, *quid pro quo* conduct, and the appearance thereof.

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<sup>30</sup> *Id.* (citing *Planning & Design Sols. v. City of Santa Fe*, 1994-NMSC-112, ¶ 14, 118 N.M. 707 (“The [Procurement] Code indicates that, in evaluating [responsive] proposals, [an agency is] required to apply the factors listed in the [r]equest [for proposals]—and no others.” (alterations in original))).

<sup>31</sup> *See* NMSA 1978, § 13-1-102 (2022).

<sup>32</sup> *See* NMSA 1978, § 13-1-191.1 to -195 (2007).

<sup>33</sup> *See* NMSA 1978, § 13-1-191.1 (2007).

<sup>34</sup> *See* NMSA 1978, § 13-1-191.1(F) (2007).

<sup>35</sup> *See* NMSA 1978, § 13-1-192 (1984).

<sup>36</sup> *See* NMSA 1978, § 13-1-193 (1984).

<sup>37</sup> *See* NMSA 1978, § 13-1-195 (1984).

Last, while the Code allows government agencies to select attorneys for legal services contracts without the use of a request for proposals so long as the value of the contracts does not exceed \$60,000.00 (excluding applicable state and local gross receipt taxes),<sup>38</sup> Subsection 13-1-125(D) forbids government agencies from artificially dividing contracts to circumvent the \$60,000 limit.<sup>39</sup> In the context of the foregoing analysis, Subsection 13-1-125(D) applies to constrain a government agency from entering a legal services contract where part of the attorney's fee is determined either by a flat fee or by hourly rate, and the remainder of the fee is on a contingent-fee basis, as a measure of the agency's recovery. Considering the contingent-fee part of the contract, if there is a reasonable basis to believe that the attorney's total compensation from a single, discrete representation would exceed \$60,000.00 (again, excluding applicable state and local gross receipt taxes), the agency should use a request for proposals to award the contract, provided, of course, that no other exemption applies.

## CONCLUSION

For the foregoing reasons, the Procurement Code applies to a state agency's or local public body's procurement of contingent-fee contracts for legal services, assuming that the state agency or local public body has the constitutional or statutory authority to enter such contracts.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**  
**JEFFREY L. BAKER, Commissioner**  
**STUART M. BLUESTONE, Commissioner**  
**HON. CELIA CASTILLO, Commissioner**  
**HON. DR. TERRY MCMILLAN, Commissioner**  
**RONALD SOLIMON, Commissioner**  
**DR. JUDY VILLANUEVA, Commissioner**

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<sup>38</sup> See NMSA 1978, § 13-1-125(B) (2019); State Ethics Comm'n Adv. Op. No. 2020-08 (discussing the applicability of the small-purchase exception).

<sup>39</sup> See NMSA 1978, § 13-1-125(D) (2019) ("Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.").