

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



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

## **STATE ETHICS COMMISSION**

### **Commission Meeting Minutes of November 3, 2023 | 9:00AM-2:00PM [Subject to Ratification by Commission]**

#### **Call to Order**

Chairman Lang called the meeting to Order at 9:06 AM.

#### **1. Roll Call**

The roll was called; the following Commissioners were present:

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

#### **2. Welcome Dr. Terry McMillan to Commission**

Dr. Terry McMillan introduced himself to the Commission.

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

Director Farris asked for a motion to amend the agenda as follows: Remove item 13b and its corresponding item 17b. Remove item 15b and its corresponding item 19b. Add item 18d (Administrative Complaint No. 2023-035) to action on administrative complaints subject to settlement approval and include Ms. Randall's name for presentation of the settlement. Commissioner Bluestone moved to approve the agenda. Commissioner Villanueva seconded. Hearing no discussion Chair Lang conducted a roll call vote, the Chair and all Commissioners voted affirmative, and the agenda was approved unanimously.

#### **4. Approval of August 4, 2023, Commission Meeting Minutes**

Chair Lang moved to approve the August 4, 2023 Commission Meeting Minutes. Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted affirmative, and the August 4<sup>th</sup> meeting minutes were approved unanimously.

## **Commission Meeting Items**

### **5. Advisory Opinion 2023-07**

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

*“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.*

*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?”*

Chair Lang sought a motion to adopt Advisory Opinion 2023-07. Commissioner Baker moved to adopt the opinion; Commissioner Villanueva seconded. The Commissioners discussed Advisory Opinion 2023-07. Hearing no further discussion, Chair Lang conducted a roll call vote. All Commissioners voted affirmative and issued Advisory Opinion 2023-07 unanimously.

### **6. Resolution 2023-05: Commissioner Media Policy**

Tom Garrity presented the Commissioner Media Policy. Chair Lang sought a motion to adopt. Commissioner Baker moved to adopt the policy. Commissioner Villanueva seconded. Commissioners discussed the Media Policy. Commissioner Bluestone recommended amending the Media Policy to clarify certain items and language. Commissioner Castillo also recommended clarifying the language, especially in relation to the conflict-of-interest disclosure.

Chair Lang recommended creating a sub-committee to work on the media policy for the next meeting. The resolution was tabled for the next meeting pending further edits, clarifications, and creation of sub-committee as discussed.

### **7. Letter to the editor regarding the Procurement Code**

Commissioner Bluestone discussed his letter to the editor and reasons for delaying submission to the Commission until the development and adoption of the Commissioner Media Policy.

#### **8. Commissioner Recusal Procedure**

Commissioner Baker discussed the need to develop a more exigent recusal process, requesting that the recusing Commissioner be required to specify their reason for recusal to the public. Commissioner Bluestone asked Director Farris to provide insight and discussion on the recusal procedure as it stands, and Director Farris provided the Commission with a review of 1.8.2.8 NMAC.

Commissioner Baker sought a motion to adopt. Commissioner Solimon seconded.

Hearing no further discussion, Chair Lang conducted a roll call vote. Commissioner Baker and Commissioner Bluestone voted affirmative. Commissioner Castillo, Commissioner McMillan, Commissioner Solimon, Commissioner Villanueva, and Chair Lang voted negative. The motion failed on a vote of 2 in favor, 5 against.

#### **9. Update on 2023 Financial Disclosure Act Compliance**

Special Counsel Caroline Manierre presented an update on the staff's work to enforce compliance with the Financial Disclosure Act. The Secretary of State referred 118 individuals to the Commission who had not yet filed. On June 2, 2023, the Commission authorized staff to enter into prelitigation discussions with these individuals and, if necessary, to file civil enforcement action in state court. The Commission targeted all state agency heads and members of boards and commissions who were deemed the most significant as it relates to financial disclosures. The Commission achieved compliance for all state agency heads, and members of the State Investment Council, Office of the State Engineer, State Board of Finance, the Military Base Planning Commission and State Racing Commission. Director Farris noted the Commission's press release regarding the results of this project.

#### **10. FY25 Budget Request and Strategic Plan**

Director Farris presented the FY25 Budget Request and submitted it for the Commission's approval. The bulk of requested expansion will allow for the hiring of an entry level attorney position. Director Farris also explained that the request includes an appropriation for other state funds to budget revenue received from NMEDGE, pursuant to an agreement with NMEDGE to provide ethics trainings. As part of the FY25 Budget Request, Director Farris also presented the Strategic Plan and submitted it for the Commission's approval. He highlighted the staff's ongoing development of an informal complaint process and the creation of model ethics ordinances for local governments. Commissioner Bluestone noted his preference that the Strategic Plan include a minimum number of op-eds per year or per quarter. Director Farris did

not commit the staff to a minimum target of op-eds in FY25, expressing a continuing preference that the Commission focus on its legal work and earned media based on that work.

Commissioner Castillo moved to approve FY25 Budget Request and Strategic plan; Commissioner Bluestone seconded. Hearing no further discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the FY25 Budget Request and corresponding Strategic Plan unanimously.

#### 11. **Public Comment (pre-closed session)**

**Commissioner Bluestone** read a public comment that Melanie Majors, Executive Director of New Mexico Foundation for Open Government sent to Commissioner Bluestone personally about the proposed Commissioner's Media Policy.

Ms. Majors commented as follows:

Regarding number 2, most newspapers may require the title be included in the byline. The Commissioner could still make it clear that they are speaking as an individual. Regarding number 5, FOG understands the reasoning behind number 5, but does not endorse this. Reporters are under tight deadlines and many agencies use this as a way to delay responses. It also restricts Commissioners' freedom of speech; they believe this already covered in number 4. Regarding number 6, it makes sense for op-eds or letters to the media be looked at but requiring that every communication be vetted hinders the news gathering process and the public's right to information as well as limiting commissioners' free speech.

#### **---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 Bluestone moved to enter executive session; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and entered executive session.

#### 12. 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.

#### 13. Administrative Matters under Revised Uniform Law on Notarial Acts:

*(Branch)*

- a. 2022-NP-19 *In re commission of Valdez* (Default Order)

14. Discussion regarding administrative matter subject to settlement approval:

*(Boyd, Randall)*

- a. Administrative Complaint No. 2022-045
- b. Administrative Complaint No. 2023-031
- c. Administrative Complaint No. 2023-038
- d. Administrative Complaint No. 2023-035

15. Discussion regarding administrative matter under State Ethics Commission Act:

*(Manierre, Farris)*

- a. Administrative Complaint No. 2022-027
- 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

*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---**

16. **Authorization of Civil Actions:**

*(Farris)*

- a. **Commission authorization of civil action regarding violations of the Governmental Conduct Act by a local public official:** Chair Lang moved as stated above. Commissioner Baker seconded. Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion unanimously.

17. **Action on Administrative matters under the Revised Uniform Law on Notarial Acts:**

- a. **Commission sought motion to issue a default order in 2022-NP-19 *in re commission of Valdez*:** Chair Lang moved as stated above; Commissioner Castillo seconded. Commissioner Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion unanimously.

18. **Action on Administrative matters subject to settlement approval Nos. 2022-045, 2023-031, 2023-038, and 2023-035:**

General Counsel, Walker Boyd, asked the commission for the following motions regarding actions on administrative matters subject to settlement approval:

- a. **Commission sought motion to approve settlement agreement in administrative complaint No. 2022-045:** Commissioner Baker moved as stated above; Commissioner Bluestone seconded. Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the settlement agreement unanimously.
- b. **Commission sought motion to approve settlement agreement in administrative complaint No. 2023-031:** Commissioner Castillo moved as stated above; Commissioner Villanueva seconded. Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the settlement agreement unanimously.
- c. **Commission sought motion to approve settlement agreement administrative complaint No. 2023-038:** Commissioner Castillo moved as stated above; Commissioner Bluestone seconded. Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the settlement agreement unanimously.
- d. **Commission sought motion to approve settlement administrative complaint No. 2023-035:** Commissioner Bluestone moved as stated above; Commissioner Baker seconded. Chair Lang conducted a roll call vote. Commissioner Solimon recused. All other Commissioners and the Chair voted affirmative and approved the settlement agreement.

19. **Action on Administrative Complaints Nos. 2022-027, 2023-025, 2023-026, 2023-027, 2023-028, 2023-033, 2023-034, 2023-036, 2023-037, 2023-040, 2023-041, 2023-042, 2023-043, 2023-044, 2023-045, 2023-046**

Director Farris asked the Commission for the following motions regarding actions on Administrative Complaints:

- a. **Commission sought a motion for 90-day extension on Administrative Complaint No. 2022-027.** Commissioner Baker moved as stated above; Commissioner Bluestone seconded. Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the 90-day extension unanimously.
- c. **Commission sought a motion for 90-day extension Administrative Complaint No. 2023-025:** Commissioner Baker moved as stated above; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion unanimously.
- d. **Commission sought a motion to dismiss Administrative Complaint No. 2023-026 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- e. **Commission sought a motion for partial dismissal of Administrative Complaint No. 2023-027:** Chair Lang moved as stated; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion for partial dismissal unanimously.
- f. **Commission sought a motion to dismiss Administrative Complaint No. 2023-028 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- g. **Commission sought a motion to dismiss Administrative Complaint No. 2023-033 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- h. **Commission sought a motion for partial dismissal of Administrative Complaint No. 2023-034 for lack of jurisdiction:** Chair Lang moved as stated; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion for partial dismissal unanimously.
- i. **Commission sought a motion for partial dismissal of Administrative Complaint No. 2023-036 for lack of jurisdiction:** Chair Lang moved as stated; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion for partial dismissal unanimously.

- j. Commission sought a motion for partial dismissal of Administrative Complaint No. 2023-037 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll call vote. Chair Lang recused himself. All Commissioners voted affirmative and approved the motion for partial dismissal 6-0.
- k. Commission sought a motion to dismiss Administrative Complaint No. 2023-040 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- l. Commission sought a motion to dismiss Administrative Complaint No. 2023-041 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- m. Commission sought a motion to dismiss Administrative Complaint No. 2023-042 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- n. Commission sought a motion to dismiss Administrative Complaint No. 2023-043 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- o. Commission sought a motion to dismiss Administrative Complaint No. 2023-044 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- p. Commission sought a motion to dismiss Administrative Complaint No. 2023-045 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.
- q. Commission sought a motion to dismiss Administrative Complaint No. 2023-046 for lack of jurisdiction:** Commissioner Bluestone moved as stated; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll call vote. All



Commissioners and the Chair voted affirmative and approved the motion to dismiss unanimously.

20. **Discussion of Next Meeting**

Chair Lang confirmed that the next meeting would take place on December 15, 2023 to approve the annual report and handle other items and to hear oral arguments in the administrative case of *Eichenberg v. Montoya*. The next regularly scheduled meeting will be February 2, 2023.

21. **Public Comments**

No public comments were made.

22. **Adjournment**

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting was adjourned at 2:00 PM.

**[Subject to Ratification by Commission]**