

STATE OF NEW MEXICO
COUNTY OF TORRANCE
SEVENTH JUDICIAL DISTRICT

STATE ETHICS COMMISSION,

Plaintiff,

v.

YVONNE OTERO,

Defendant.

Murdock, Shannon

No. D-722-CV-2023-00028

COMPLAINT

1. The Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2019), requires public officials generally to treat their government office as a public trust and not to abuse the powers and resources of their office.

2. Defendant Yvonne Otero dramatically failed in this regard by using her elected office as Torrance County Clerk and the public property of that office for her own personal benefit and to pursue personal interests: by deleting absentee ballots; by failing to correctly process ballots she did not delete; by attempting to pre-certify ballot tabulators so she could go on vacation to Las Vegas, Nevada; by engaging in intimate encounters in her office during work hours; by making open references to illicit drug use; and by subjecting subordinate employees to danger and threats for both amusement and coercion.

3. To enforce New Mexico's Governmental Conduct Act and to deter public corruption, the abuse of office, and unlawful quid pro quo activities by elected officials, Plaintiff State Ethics Commission brings this civil enforcement action to remedy violations of Sections 10-16-3 and 10-16-3.1 of the Governmental Conduct Act.

PARTIES

4. Plaintiff State Ethics Commission is an independent state agency established by Article V, Section 17(A) of the New Mexico Constitution with constitutional and statutory authority to enforce New Mexico's ethics laws, including the Governmental Conduct Act. *See* NMSA 1978, § 10-16G-9 (2021); NMSA 1978, § 10-16-18(B) (2019). The Commission's principal place of business is in Bernalillo County. On December 9, 2022, the Commission authorized Commission staff to bring this civil enforcement action. State Ethics Comm'n Res. 2022-08 (Dec. 9, 2022), attached hereto as Exhibit 1.

5. At all times material to this complaint, Defendant Yvonne Otero served as the elected County Clerk and the chief election officer for Torrance County, New Mexico. Upon information and belief, Defendant is a resident of Torrance County.

JURISDICTION AND VENUE

6. The Court has jurisdiction under Article VI, Section 13 of the New Mexico Constitution.

7. Venue is proper in this Court.

FACTUAL ALLEGATIONS

8. Defendant was elected as Torrance County Clerk, starting in that position on January 1, 2021.

9. In her role as Torrance County Clerk, Defendant was tasked with specific legal duties as the chief election officer for Torrance County.

10. In her role as Torrance County Clerk, Defendant was the supervisor for the Torrance County Clerk's Office.

11. Upon information and belief, during approximately December 2021, Defendant solicited and obtained unprescribed narcotic drugs from a subordinate employee and threatened their “mutual destruction” if the employee refused to comply. Defendant sent text messages to that employee with pictures of drug paraphernalia, images of unprescribed narcotic drugs, with messages about her intent to ingest those drugs.

12. Starting in at least April 2022, Defendant made references to her cocaine use to her subordinate employees, including telling them she needed a “small bump” to get through the day. Defendant has admitted to using cocaine for the last six (6) years.

13. On multiple occasions during 2022, Defendant used her office to hold personal and sometimes intimate engagements with a member of the public. Other staff members (Defendant’s subordinate employees) would observe the two intimately touching one another during work hours and then retreat to Defendant’s office. Defendant made comments to staff after the pair emerged from her office such as “that’s how you break in the probate judge’s desk,” and “I needed that stress relief,” implying Defendant engaged in intimate relations in her office during work hours.

14. On or between April and May 2022, Defendant brought her TASER personal defense weapon into the office and discharged it beside the head of a subordinate employee, in Defendant’s words as a “joke.”

15. In May 2022, Defendant removed a Torrance County laptop computer, which was assigned to a subordinate employee, and provided the laptop to her brother for several months, from approximately May 2022 through August 2022, so that he could look for employment opportunities, attend interviews, and conduct other personal research.

16. On or about May or June 2022, Defendant's mother served as a presiding judge for absentee ballots for Torrance County, working in the early vote room. A subordinate employee was required to approve the timesheets prepared by Defendant's mother. The subordinate employee questioned at least one timesheet, which showed work in excess of thirteen hours a day, to which Defendant told the employee to remember that Defendant was responsible for signing the employee's timesheet. The subordinate understood this to be a threat not to question the timesheets Defendant's mother submitted.

17. On or about September 28, 2022, Defendant pre-signed certifications for all twenty-two (22) ballot tabulators for use by the voters of Torrance County for the upcoming election, prior to and without completion of any inspection, calibration, or testing of the equipment. Defendant indicated she was going to be on vacation during the inspection and so pre-signed the ballot tabulator certifications in anticipation of being on vacation. Defendant further instructed qualified staff in the Torrance County Clerk's Office not to sign the ballot tabulator certifications upon inspection of the ballot tabulation machines.

18. On or about September 29, 2022, Defendant stopped coming into the County Clerk's Office.

19. In October 2022, Defendant remotely deleted significant numbers of unopened and unread emails, including e-mail correspondence from the New Mexico Secretary of State concerning timelines and procedures for the operation of the 2022 general election, and information concerning absentee ballots and applications.

20. Among the e-mail correspondence deleted by Defendant were two ballots cast electronically under the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA), 52 U.S.C. §§ 20301–20311, and sent to her by the New Mexico Secretary of State's Office.

21. In October 2022, Defendant stopped fulfilling her legal requirements as chief election officer and County Clerk, including correctly processing or handling e-mails sent to her concerning the 2022 general election.

22. Among the e-mail correspondence that Defendant failed to properly review and process were at least two e-mails sent to her containing absentee ballots.

Count I: Violations of Subsection 10-16-3(A) of the Governmental Conduct Act

23. The Commission incorporates by reference the foregoing paragraphs of this complaint, as though fully set forth herein.

24. Subsection 10-16-3(A) of the Governmental Conduct Act requires that a public officer “shall treat the . . . public officer or employee’s government position as a public trust,” and prohibits a local elected public official from “us[ing] the powers and resources of public office . . . to obtain personal benefits or pursue private interests.”

25. Defendant used the powers and resources of her office, including her authority as a supervisor and the physical Clerk’s office, in order to, at a minimum:

- a. obtain unprescribed narcotics from a subordinate employee;
- b. amuse herself by discharging a TASER personal defense weapon beside the head of a subordinate employee;
- c. threaten a subordinate employee to ensure processing of Defendant’s mother’s timesheet with Torrance County;
- d. engage in intimate conduct with a member of the public;
- e. provide a laptop computer belonging to Torrance County for her brother’s personal use; and

f. attempt to pre-certify ballot equipment prior to the inspection of the machines so she could go on vacation.

26. Defendant's conduct violates Subsection 10-16-3(A) because she used the powers and resources of her office to obtain personal benefits and pursue private interests.

Count II: Violations of Subsection 10-16-3(C) of the Governmental Conduct Act

27. The Commission incorporates by reference the foregoing paragraphs of this complaint, as though fully set forth herein.

28. Subsection 10-16-3(C) of the Governmental Conduct Act requires "[a]t all times reasonable efforts shall be made to avoid undue influence and abuse of office in public service."

29. Defendant failed to make reasonable efforts to avoid the abuse of office and, further, abused her office by engaging in conduct that breached numerous legal duties of her elected office, imposed by federal and state law, including, at a minimum:

- a. pre-signing blank certification forms of ballot equipment before the date of inspection, and outside the presence of the inspection;
- b. deleting absentee ballots;
- c. by failing to correctly process ballots sent to her as County Clerk; and
- d. by failing to perform any other duties imposed on her as County Clerk and the County's chief election officer.

30. Defendant knowingly breached the clear legal duties imposed on her by virtue of her office and, therefore, engaged in multiple prohibited abuses of office under Section 10-16-3(C).

Count III: Violations of Subsection 10-16-3(D) of the Governmental Conduct Act

31. The Commission incorporates by reference the foregoing paragraphs of this complaint, as though fully set forth herein.

32. Subsection 10-16-3(D) of the Governmental Conduct Act states “No . . . public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act.” An official act under the Governmental Conduct Act is defined as “an official decision, recommendation, approval, disapproval, or other action that involves the use of discretionary authority [.]” § 10-16-2(H).

33. Upon information and belief, Defendant used her position as a public official and supervisor to demand and receive unprescribed narcotic drugs from a subordinate employee under threat of adverse employment action.

34. Defendant therefore violated Subsection 10-16-3(D) by demanding something of value from her subordinate employee, conditioned upon performance of an official act.

Count IV: Violations of Subsection 10-16-3.1(C) of the Governmental Conduct Act

35. The Commission incorporates by reference the foregoing paragraphs of this complaint, as though fully set forth herein.

36. Subsection 10-16-3.1(C) of the Governmental Conduct Act states: “A public officer or employee is prohibited from . . . violating the officer’s or employee’s duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.”

37. Defendant breached her duty not to use Torrance County property for unauthorized purposes by, at a minimum:

- a. using her office for personal, intimate encounters during the workday; and
- b. removing a Torrance County laptop computer (assigned to a subordinate employee) from the Torrance County Municipal Complex and giving it to her brother for his own personal use.

38. Defendant violated Section 10-16-3.1(C) of the Governmental Conduct Act by using property belonging to Torrance County for unauthorized purposes.

REQUEST FOR RELIEF

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

- i. Civil penalties in the amount of two-hundred-fifty dollars (\$250.00) for each of Defendant's violations of the Governmental Conduct Act, not to exceed five-thousand dollars (\$5,000), pursuant to NMSA 1978, § 10-16-18(B);
- ii. Assessment of costs under NMSA 1978, § 34-6-40.1(1989);
- iii. Any other appropriate order under the Governmental Conduct Act, as authorized by NMSA 1978, § 10-16-18(B); and
- iv. Such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jeremy Farris

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STATE ETHICS COMMISSION

Hon. William F. Lang, Chair
Jeffrey L. Baker, Member
Stuart M. Bluestone, Member
Hon. Garrey Carruthers, Member
Hon. Celia Foy Castillo, Member
Ronald Solimon, Member
Judy Villanueva, Member

RESOLUTION NO. 2022-08 Authorizing a demand and civil action to enforce the Governmental Conduct Act

WHEREAS, THE NEW MEXICO STATE ETHICS COMMISSION (“Commission”) met virtually on December 9, 2022, at 9:00 a.m.;

WHEREAS, the Commission has the power to investigate violations and bring a civil action to enforce the Governmental Conduct Act;

WHEREAS, the Commission has reason to believe that Yvonne Otero, the Torrance County Clerk, violated NMSA 1978, Subsections 10-16-3(A) 10-16-3(C), 10-16-3(D) and 10-16-3.1(C) of the Governmental Conduct Act;

WHEREAS, the Executive Director has sought the approval of the Commission to initiate a civil action under NMSA 1978, Sections 10-16-14(E), 10-16-18(B), and 10-16G-9(F) against Otero, and has explained the proposed civil action and remedies to be sought;

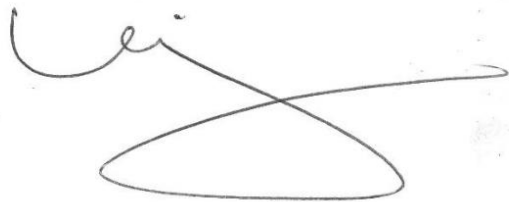
NOW, THEREFORE, BE IT RESOLVED by the New Mexico State Ethics Commission:

1. The Commission’s staff are authorized to demand that Otero comply with the Governmental Conduct Act and to prepare and file a civil action in a court of competent jurisdiction seeking to enforce the civil compliance provisions of the Governmental Conduct Act and any other relief that court deems just and proper.

EXHIBIT 1

2. The Commission's staff are further authorized to "seek[] civil injunctive or other appropriate orders" under Section 10-16-14(E) and Section 10-16-18(B) by making a referral to the Seventh Judicial District Attorney's Office to initiate removal proceedings against Otero, including the presentation of sworn evidence to the Seventh Judicial District Attorney under NMSA 1978, Section 10-4-18, and an offer to assist in removal proceedings based upon conduct that violates the Governmental Conduct Act.
3. If Commission staff file a lawsuit against Otero, the Executive Director is instructed to provide regular updates on the status of the suit at the Commission's meetings during closed session. Commission staff shall communicate with the Chair as necessary between Commission meetings.
4. The Executive Director is authorized to enter an agreement to settle or dismiss claims brought against Otero or any other person, upon having conferred with the Chair or his designee.

Adopted by the New Mexico State Ethics Commission this 9th day of December 2022.

A handwritten signature in black ink, appearing to read 'W. Lang', with a large, stylized flourish underneath.

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