



NEW MEXICO STATE ETHICS COMMISSION

February 7, 2020

Via Electronic Mail (Brian.Colon@osa.state.nm.us)

Brian S. Colón
State Auditor
Office of the State Auditor
2540 Camino Edward Ortiz, Ste. A
Santa Fe, NM 87507

Re: Referral of the Special Audit of the General Services Department's Risk Management Division

Dear Auditor Colón,

Thank you for the February 3, 2020 referral of the public report arising from the special audit, conducted by your office and Kubiak, Melton & Associates, of the settlement processes and payouts of the General Services Department's Risk Management Division ("RMD") for fiscal years 2015, 2018, and 2019. The report details shortcomings in RMD's internal controls and processes for settling claims against state agencies. The report also notes confidentiality terms in some of the corresponding settlement agreements are inconsistent with Section 15-7-9(A)(2) NMSA 1978.

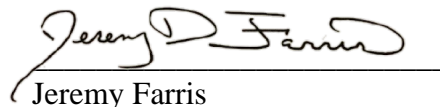
The report's findings raise several concerning issues of interest to the Commission. In particular, the December 12, 2018 and January 4, 2019 settlement payments highlighted in the public report appear to have no justification and purported to impose an excessive confidentiality period of four-and-a-half years.

Misconduct in relation to the settlement of claims asserted against state agencies might implicate the provisions of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18. For example, the Act prohibits not only undue influence and abuse of office in public service but also the use of the powers of public office to obtain personal benefits or to pursue private interests. *See* § 10-16-3(A) & (C). The State Ethics Commission has jurisdiction to enforce the provisions of the Governmental Conduct Act and will not hesitate to investigate and, where appropriate, initiate civil actions to remedy or halt violations. *See* NMSA 1978, §§ 10-16-18(B) and 10-16G-9(F).

The Commission, however, will not initiate an investigation for potential enforcement action in this matter, because the Commission lacks jurisdiction over the conduct discussed in the report. For each reported settlement, both the settlement date and the check-invoice date occurred before July 1, 2019. The provisions of the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16, apply only to conduct occurring on or after July 1, 2019. *See* Laws 2019, ch. 86, § 40. The Commission therefore lacks authority to investigate conduct relating to the settlements that are the subject of the referred report.

On behalf of the Commission, I applaud the efforts of the Office of the State Auditor and the General Services Department to review and reform the processes by which the State decides to settle claims against state agencies and employees. The Commission and the Office of the State Auditor share a mission of encouraging ethical conduct and accountability in state government. I look forward to working with you to achieve these goals.

Respectfully,

A handwritten signature in black ink, reading "Jeremy D. Farris", written over a horizontal line.

Jeremy Farris
Executive Director
State Ethics Commission

cc: Secretary Ken Ortiz, General Services Department (kenneth.ortiz@state.nm.us)
Daniel O. Trujillo, Kubiak, Melton & Associates, LLC (DTrujillo@kubiakcpa.com)