



# NEW MEXICO STATE ETHICS COMMISSION

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## Minutes of Public Rule Hearing and Meeting December 4, 2019, 9:00am-12:00pm

Executive Conference Room, UNM Science and Technology Park  
800 Bradbury Dr. SE, Albuquerque, NM 87106

### 1. **CALL TO ORDER AND ROLL CALL:**

The meeting was called to order by Chair Lang. The roll was called. The following Commissioners were present:

William Lang, Chair  
Stuart Bluestone, Commissioner  
Dr. Judy Villanueva, Commissioner  
Frances Williams, Commissioner  
Jeffrey Baker, Commissioner  
Ronald Solimon, Commissioner

No Commissioner arrived after roll call.

### 2. **APPROVAL OF AGENDA:**

Chair Lang moved to approve the agenda, Commissioner Baker seconded. Seeing no objections, the motion was approved unanimously.

### 3. **APPROVAL OF OCTOBER 30, 2019 COMMISSION MEETING MINUTES:**

Commissioner Solimon moved to approve the minutes, Commissioner Baker seconded. Seeing no objections, the motion was passed unanimously.

Before moving to the next agenda item, Director Jeremy Farris made the following housekeeping remarks:

- Thanked Matt Baca for his work in supporting the commission during its initial startup phase.
- Introduced the NMSEC's new staff members: Walker Boyd, the NMSEC's first General Counsel; and Sonny Haquani, the NMSEC's first Director of Communications. Mr. Farris thanked them for their work in this early stage of the Commission's existence and their help with refining the administrative rules and noted his enthusiasm to have them on the NMSEC staff.

- Updated the Commissioners on the status of the website, specifying that the contract for the website has been reviewed and approved by two of the three entities required for its full execution and that the staff has been developing a document with all the content for the website.

## **BEGINNING OF PUBLIC RULE HEARING**

### **4. PUBLIC COMMENT ON RULES 1.8.1 THROUGH 1.8.3 NMAC**

Director Farris submitted two pre-filed, written comments on the proposed rules into the record. The two pre-filed written comments were submitted by:

Kenneth Resnick, a member of the public.  
Maggie Toulouse Oliver, Secretary of State.

Director Farris noted that Mr. Resnick attended the meeting and was welcome to submit further public comment during the public comment period. Further, Chair Lang asked for clarification that the rulemaking record would be compiled by the NMSEC staff following the conclusion of the process. Director Farris confirmed that following conclusion of the rulemaking hearing and the adoption of the rules, the NMSEC staff would provide State Records and Archives with the Complete Rulemaking Record for the three proposed rules.

#### **4.1 Staff Comment**

Director Farris presented for public comment to the Commission the staff's recommendations for amendments to the initially proposed rules.

##### **A. 1.8.1 NMAC, General Rules**

- Director Farris provided the staff's comment, noting one small suggested change for the General Rules: to add clarifying language for advisory opinions, as the initial proposed rule was ambiguous as to which individuals may request advisory opinions. The change clarifies that only individuals subject to the laws under the Commission's jurisdiction may request advisory opinions.
  - Chair Lang asked if there was any public comment on the matter. There was none.
  - Commissioner Williams asked whether the General Rules and its provisions would be clarified in some other public facing document. Director Farris noted this will be addressed in another section of the meeting after the rule hearing section, but also, that it is the intention of the commission staff to clarify all Commission work, materials, duties, and otherwise.
  - Commissioner Williams also raised a question about section 8, subsection D, regarding the Director's power to enter into contracts on behalf of the Commission, questioning whether the Director can enter into contracts without the direct consultation of the commission. Director Farris noted that this power is derived from the statute and that the statute is silent on

the matter of the Director consulting the Commission, clarifying that the Director has the authority to enter into contracts on behalf of and without consulting the Commissioners.

- Commissioner Williams raised a question about job descriptions. Director Farris clarified that the issue would be discussed once the Commission had moved to agenda item 8.

- Commissioner Bluestone asked Director Farris to explain the staff's recommendations that the Commission refuse to adopt certain proposals suggested in the pre-filed, written comments. Director Farris responded that the public rule hearing was not the appropriate time to address the merits of public comments, per the rule making rule promulgated by the Attorney General. Director Farris noted that the issue would be addressed when the Commission acts upon the rules.

### **B. 1.8.2: Recusal and Disqualification of Commissioners:**

- Director Farris explained that the staff had two minor comments on the proposed rule. The principal comment concerned section C subsection 4, regarding publishing the reasons for commissioner recusal. Director Farris clarified that Commissioners must provide the reasons for their refusal to recuse if they do.

- Commissioner Williams raised a question about the change in 1.8.2.10.A, asking if Commissioners had to recuse themselves on appeal if they acted as a hearing officer or a mediator. Director Farris clarified that Commissioners will have to recuse and provide the reasons for their recusal, if they serve as either a Hearing Officer or a Mediator.

- Chair Lang moved to invite any public comments on the rule. None being offered, the rule hearing proceeded to the next proposed rule.

### **C. 1.8.3: Administrative Procedure:**

- In providing the staff's comments, Director Farris gave an overview of the rule, noting that many changes have been made for style and concision and that consequently, he would highlight the most important proposed changes.

- Beginning with Section 1.8.3.7, Director Farris explained that the staff recommended draft suggested two important changes to the rule: (1) The definition of "party" should be consolidated and clarified that it includes both individual persons and associated non-natural persons like a corporation. (2) The definition of "Records" should be added so as to clarify what all the use of the word "records" refers to in the scope of the Commission's work.

- Chair Lang asked if there were any questions on 1.8.3.7. There were none.

- Commissioner Williams asked for clarification about the "Blackout period" in section 1.8.3.9.B. Director Farris clarified that the staff draft of the rule simply adds the term, "blackout period" for concision, as it refers to a time-based jurisdictional constraint on the Commission's business which is provided for in the statute. Furthermore, Director Farris clarified that complaints are always kept confidential by the Commission and its staff prior to a finding of probable cause or settlement.

- Regarding 1.8.3.9.A(3), Director Farris explained that the staff draft suggested the added language requiring that the complainant must provide the mailing address or email information of the respondent. Director Farris explained that, because the burden is on the

Commission to notify the respondent, it is critical that the complainant provide the Commission with the means to contact the respondent.

- Regarding 1.8.3.9.A(4)(a), Director Farris noted the change made it clear that a person can represent themselves without an attorney and that any non-natural party, e.g. a corporation, must be represented by a licensed attorney.
- Commissioner Solimon asked if the staff considered adding NM License requirements for attorneys representing parties before the commission. Director Farris answered that yes, it was considered, however, it was rejected because many attorneys in New Mexico are licensed by the bars of other states.
- Commissioner Baker asked for clarification on whether the Commission would allow a non-lawyer to represent a party, and if the rule allowing out-of-state attorneys would open the door to non-licensed individuals representing parties before the Commission. Director Farris explained that it is reasonable to delineate who can represent a party before the Commission with attorneys (excluding, e.g., non-attorney union representatives), because the threshold for proper representation is competency with general administrative legal proceedings and civil legal procedures, as opposed to familiarity with particular New Mexico laws.
- Commissioner Villanueva asked if she could propose a language change. Director Farris explained that the Commission was hearing comment and that actions on the rules, such as language changes, should occur in the next agenda item.
- Regarding 1.8.3.9.A(4)(b), Risk Management Division representation: Director Farris clarified that the staff draft suggested adding language that clarifies that the Risk Management Division should not provide representation for claims relating to a public official's re-election campaign. Director Farris further explained that this is ultimately a call made by Risk Management, but that the Commission should support this reading of the law.
- Commissioner Williams asked for clarification on whether a public official of the state accused of corruption is entitled to representation by Risk Management. Director Farris clarified that all state employees are entitled to representation by Risk Management, even in cases of alleged corruption, noting that the staff draft of the proposed rule suggests that Risk Management should make an exception for this in cases where the conduct of the public official is related to a campaign for re-election.
- Regarding 1.8.3.9.C, Commissioner Bluestone asked for clarification on the July 1, 2019 date limitation. Director Farris explained that the date is found in the session laws, as enacted by the Legislature.
- Commissioner Williams asked for clarification on the two-year statute of limitations provision, specifically on the language that provides "when the conduct could have been reasonably discovered." Director Farris clarified the provision as an exception on the statute of limitations, noting that whether the Commission would have jurisdiction over a complaint filed two years after the alleged misconduct would depend on facts relating to whether the complainant could have reasonably discovered the misconduct.
- Commissioner Baker asked whether a person could still appeal that decision. Director Farris confirmed that a dismissal for lack of jurisdiction could be appealed to the full Commission.

- Regarding 1.8.3.9.B, Commissioner Villanueva asked for clarification on how the rules define days. Director Farris explained that there is a computation of time provision in the general rules which detail that days means business days and excludes public holidays, weekends and so on. He noted that this is one of the sections which implements the preference for specific time periods as opposed to general time periods expressed in the pre-filed written comments by the public and Secretary of State's office.

- Regarding 1.8.3.10, Director Farris explained that this section makes explicit what happens if a respondent does not respond to any of the inquiries by the Commission, noting that the Commission would simply move forward with the complaint and the General Counsel's investigation, eventually petitioning a district court for a subpoena to compel the respondent's testimony.

- Regarding 1.8.3.10.F, Director Farris recommended that the separate treatment for Anti-Donation Clause claims be excised, based on a further legal research. Director Farris explained that the Commission should treat Anti-Donation Clause claims like any other claim within its jurisdiction.

- Regarding 1.8.3.10(C), Director Farris explained the recommended additions that provide the specific discovery powers of the General Counsel.

- Commissioner Williams asked whether the General Counsel determines probable cause, and whether this determination is made when the complaint is filed. Director Farris clarified the process of jurisdictional review, investigation, and determination of probable cause, noting that the General Counsel is the individual who makes the determination of probable cause, and that the Hearing Officer is the individual who does the ministerial action of dismissing the case.

- Commissioner Williams raised a concern about the General Counsel's power to reject complaints that lack probable cause and asked if that were a process the Commissioners ought to have discretion over. Director Farris moved the discussion to 1.8.3.10(F), in order to fully answer the question. The staff recommended a rule change that makes clear that the General Counsel's probable cause determination is not subject to review by the Commission. After noting that this proposed change reflects the best reading of the statute, Director Farris explained the rule change through an analogy of how a court operates in relation to a district attorney's office. A judge could not both force a district attorney to perform an investigation and initiate a prosecution and then be the judge of the same case. Director Farris explained that the Commission should not attempt to be both the prosecutor and judge in matters brought before it.

- Commissioner Williams asked why the Hearing Officer does the ministerial work of the dismissal and whether a dismissal for lack of probable cause can be appealed. Director Farris clarified that the statute specifies who may dismiss a complaint.

- Commissioner Villanueva asked what the process is if a complaint is filed against the General Counsel. Director Farris explained that he and the General Counsel would recuse themselves and expect the Commission to temporarily appoint two other attorneys to serve their functions for that case. Chair Lang added that the recusal of the Director and General Counsel would not be unlike the recusal of a district attorney in the case of the prosecution of a police officer with whom they worked with regularly. General Counsel Boyd added, regarding the

determination of probable cause, that the reasons for dismissal are provided to both parties, and that neither party is prohibited from taking that information to the press.

- Commissioner Williams asked why dismissed complaints can't be publicized by the Commission and what the legal test is for determining probable cause. Director Farris clarified that, under statute, the Commission cannot publicize information about dismissed complaints and that, without committing to the controlling New Mexico case, in most case law on probable cause, a determination is made after considering the totality of the circumstances.

- Commissioner Williams asked how the Commission will address claims arising under the Governmental Conduct Act, citing the case currently pending in the Court of Appeals. Director Farris explained that any opinion issued as a result of that case would be binding on a Hearing Officer and on the Commission in cases involving Governmental Conduct Act claims.

- Regarding 1.8.3.10.H (Voluntary Dismissal of Complaints), Director Farris explained that the new suggested rule makes clear that the Complainant may dismiss the complaint and withdraw voluntarily at any time, but that voluntary dismissal would not diminish the power of the Commission to continue pursuing the matter on its own.

- Commissioner Villanueva asked what happens when a complaint is voluntarily dismissed during a public hearing, and whether the General Counsel becomes the complainant. Director Farris clarified that, upon intervention, the General Counsel may represent the Commission in the hearing even when it is the result of a complaint initiated by the Complainant. Furthermore, Director Farris explained that this is a variant of the same concern raised earlier: where the Commission can initiate a case and then preside over it. He noted that rather than the Commission initiate complaints to be brought before it later in an administrative hearing, he hopes that the Commission will authorize the Commission staff to file a civil court action against the Respondent, under the same statute, in district court where the Commission could avoid the issue of being a prosecutor and judge in the same case.

- Commissioner Villanueva asked for clarification on who moves forward with the case following a voluntary dismissal, the Commission or the General Counsel? Director Farris clarified that it depends on at what point the case the complaint is voluntarily dismissed. If prior to a finding of probable cause, then the complaint is kept confidential and that case is over. If during a public administrative hearing, then, upon intervention, the General Counsel would proceed effectively as the complainant. Director Farris noted that Section H simply provides that a case being voluntarily dismissed does not preclude the Commission's power to continue acting on it.

- Commissioner Bluestone asked Director Farris to research legal precedent on the matter of other state ethics commissions being able to initiate their own complaints for report at a point in the future.

- Regarding 1.8.3.12.A(2), Case Consolidation, Director Farris clarified that the Commission should be able to consolidate substantially similar cases and that Connecticut's ethics commission has a similar rule.

- Commissioner Williams asked what happens if there are two complaints against the same respondent, and what happens if the parties opposed consolidation. Director Farris clarified that it makes more sense to have a consolidated public hearing but noted that the parties may move to have the cases separated.

- Regarding 1.8.3.13.G, Intervention, Director Farris explained that a simpler intervention rule, allowing only intervention by the General Counsel, would reduce administrative burdens on the staff and that other rule changes allow interested parties to file amicus briefs for consideration by Hearing Officers and Commissioners.
- Commissioner Williams asked why a Commissioner would be allowed to be a Hearing Officer. Director Farris clarified that this is a safeguard against budgetary limitations.
- Commissioner Williams asked about the payment of hearing officers and whether they are all paid the same. Director Farris noted that no decision has been reached on this question.
- Commissioner Williams asked whether audio recordings of public hearings would be made and whether transcripts of those recordings would be made. Director Farris explained that audio recordings would be made of administrative hearings, that they would be made available to the public, and that it would be up to interested parties to contract for their own written transcripts of the hearings.
- Commissioner Bluestone asked whether the Hearing Officer would be able to make the determination whether to allow intervention. Director Farris responded, yes, upon appropriate motion directed to the Hearing Officer. Chair Lang confirmed this understanding.
- Regarding 1.8.3.12.D, Mediation, Director Farris circled back to and clarified that the provision should be removed for several reasons. First, in concurrence with the Secretary of State's office pre-filed comments, the mediation provision in the proposed rule has no basis in the State Ethics Commission Act. Second, mediation likely would not serve the same function within the Commission as it does in ordinary civil litigation, because, under the Commission's administrative proceedings, the complainant would not be pursuing damages. In effect, the Complainant is analogous to a whistleblower. As such, if any party has an interest in mediation, it would likely be the Respondent. Furthermore, if it were the case that the Commission should be made to carry the burden associated with fronting the costs of mediation, it would present both a budgetary constraint and an administrative burden which would delay the proceedings of the case.
- Commissioner Williams asked if Commissioners could serve as mediators and still preside over a hearing on appeal. Director Farris clarified that it is not the role of Commissioners to serve as mediators.
- Commissioner Williams asked whether the Commission should recommend mediation at the beginning of a complaint. Director Farris clarified that the matter under consideration is the staff's proposed change that there be no official rule on mediation, further noting that there is nothing in the statute about mediation and that nothing in the rules prohibit parties from engaging in mediation on their own.
- Commissioner Williams asked about arbitration. Director Farris clarified that the Financial Disclosure Act does include a provision that, for parties who are found liable before the Commission, the parties are entitled to further review of a final Commission decision by an arbitrator.
- Commissioner Bluestone raised a point with respect to mediation, seeking clarification that the rule does not preclude parties from going to a mediator. Furthermore, the Commissioner noted that some cases that arise under the Procurement Code might be instances

where all parties involved have an interest in mediation and as such, there might be some value in including some provision on mediation. Director Farris clarified that the parties could mediate their dispute outside of the Commission proceeding. Furthermore, with respect to Procurement Code claims, Director Farris acknowledged that there may be some instances which it might be in the interest of a Complainant to have a quicker path to resolution; however, most instances of Procurement Code violations would not be within the Commission's jurisdiction to adjudicate. Under the Joint Powers Agreement executed with the General Services Department, many of the kinds of complaints—e.g., protests or petitions for suspension—which might benefit from mediation would not fall under the Commission's jurisdiction to adjudicate.

- Commissioner Baker noted that there is an underlying tension between what the Commission is supposed to do and what the parties can do themselves. He noted that the nature of addressing a complaint through the Commission versus through the parties themselves is a matter of being more public or private respectively, and as such, it would be better for the General Counsel not to be involved in mediation and to allow there to be a degree of separation between those two paths. Director Farris clarified that Baker's comments were in line with the staff recommendation.

- Regarding 1.8.3.13.K, Amicus Briefs, Director Farris explained that this new rule allows those interested parties to be sure that their perspectives and arguments are heard in the case of a public hearing or appeal without burdening the NMSEC staff with a cumbersome administrative process.

- Regarding 1.8.3.13.O, Director Farris explained that this provision brings the rules into alignment with the statute by providing for the same 10-day period to make corrective actions if a Hearing Officer finds by a preponderance of the evidence that the respondent's conduct violates the Governmental Conduct Act, as is specified in the statute.

- Commissioner Bluestone asked to clarify that even if said conduct was reckless and entirely without good cause, a respondent would still get 10 days to correct the conduct. Director Farris confirmed that is the case under the statute.

- Regarding 1.8.3.13.P, Director Farris explained that this recommendation was derived from the pre-field public comments by Ken Resnick and add clarificatory language to instances where a Hearing Officer finds no liability on part of the Respondent.

- Regarding 1.8.3.14.D, Director Farris explained that this addition allows amicus briefs filed by any party that do not exceed 10 pages in length.

- Regarding 1.8.3.14.F through H, Director Farris explained that the staff had recommended adding these three new rules which speak to the instances in which the parties may or may not appeal a Hearing Officer's decision. Paragraph F, which works in tandem with paragraph A, functions to explain when either party may appeal a Hearing Officer's decision to dismiss a complaint for failure to state a claim. Section G explains that the complainant has no right to appeal following a finding of no probable cause by the General Counsel and subsequent ministerial ruling by the Hearing Office. Section H explains how a final decision by the Commission can be appealed.

- Chair Lang asked for other the public comments on the proposed rules.

#### **4.2 Public Comment from Common Cause, New Mexico (Deborah Condit)**

Thanked Director Farris and Paul Biderman for their work on the proposed rules and noted that she was happy with the rules as they were proposed in the staff draft.

#### **4.3 Public Comment from New Mexico First (Lilly Vitella)**

Thanked Director Farris, Paul, and the Commission staff for their commitment to adhering to the statute. Furthermore, Ms. Vitella noted her appreciation for Director Farris specifically with regard to his inclusion of their organization and the broader coalition of government ethics organizations, noting that Director Farris always gave ample time to coordination and was responsive in his communications regarding the rules without ever being condescending. With respect to the substantive changes in the staff draft of the proposed rule, Ms. Vitella noted her appreciation for the greater degree of clarity in the rules, citing rules clarifying the General Counsel's role and function as well.

#### **4.4 Public Comment from Kenneth Resnick**

Noted that he submitted written comments, but that he also wanted to share comments regarding the rules hearing. Mr. Resnick noted the following points:

- Regarding 1.8.3.9.C, Mr. Resnick asked for clarification on whether the Commission had jurisdiction to hear complaints regarding a series of conduct which began in part, prior to the July 1, 2019 date noted in the rules. Chair Lang noted that conduct which is part of a continuous course might well be heard by the Commission but that episodic strings of conduct which begin before the July 1 limit would likely be treated differently. Director Farris noted that it is up to the Commission to offer language clarifying the matter.
- Regarding 1.8.3.9, Mr. Resnick suggested that prior to dismissing a complaint for lacking contact information of the respondent, there should be an attempt to communicate with the complainant.
- Regarding 1.8.3.11.C, Mr. Resnick asked what this provision means when referring to a "designee" of the General Counsel. Director Farris clarified that "designee" means an Attorney staff member or an attorney on contract with the NMSEC.
- Regarding 1.8.3.11.H, Mr. Resnick argued that if probable cause is already found, the Commission should automatically have to move it forward to a hearing. Complaints shouldn't be able to be dismissed wholly after probable cause is found. Director Farris clarified that there are three ways to continue the case upon a Complainant's voluntary dismissal: The GC can intervene and continue the case; the commission can initiate a new complaint on the same actions; and the commission can initiate civil litigation.
- Mr. Resnick concluded with his general thoughts on several provisions of the rules and mentioned his interest in the Commission clarifying what is meant by the term "Actual knowledge," and his concern about Commissioners serving as hearing officers

#### **4.5 Public Comment from the Secretary of State's Office (Tonya Herring, General Counsel)**

Thanked commission regarding work on the rules and thanked Director Farris and the Commission staff for reviewing the SOS's comments.

- Regarding 1.8.3.12.A(1), Ms. Herring recommended changing “promptly” and “practicable”. Without responding to the merits of the suggestion, Director Farris noted that the relevant time periods in the staff recommendations were not numerically specified because the corresponding time limitations are contingent upon the General Counsel’s investigation. Regarding the scheduling of hearings, Director Farris noted that the staff recommendation language was based on the likelihood that the Hearing Officer would need flexibility to schedule dates via a stipulated pre-hearing order.

- Regarding 1.8.3.13, Ms. Herring noted that in the SOS pre-filed written comments, the SOS cited the wrong statutory provision when noting that there were no provisions for binding arbitration in the rules.

#### **4.6 Final Commissioner Questions Regarding Rules During Rule Hearing**

- Commissioner Williams asked if any of the public comments included in the JPAs. Director Farris noted that none of the comments submitted on the rules have been integrated into the JPAs and that the JPAs which were under revision at the Secretary of State’s include edits that Commissioner Bluestone had suggested.

- Commissioner Bluestone thanked Director Farris and all involved for his and their work on the rules.

- The Chair concluded the public rule hearing portion of the meeting.

### **END OF PUBLIC RULE HEARING**

## **5. CONTINUATION OF COMMISSION OPEN MEETING FOR ACTIONS ON RULES AND OTHER MATTERS**

### **5.1 Motions to Adopt Staff Recommendations on Rules 1.8.1 through 1.8.3**

Rule 1.8.1 - General Provisions: Commissioner Bluestone moved to adopt the staff recommendation. Commissioner Solimon seconded. The motion passed unanimously.

Rule 1.8.2 - Recusal of Commissioners: Commissioner Bluestone moved to adopt the staff recommendation. Commissioner Williams seconded. The motion passed unanimously.

Rule 1.8.3 – Rules of Procedure: Commissioner Bluestone moved to adopt the staff recommendation. Commissioner Solimon seconded. The motion passed unanimously.

### **5.2 Discussion and motions on amendments to Rule 1.8.3**

#### **Commissioner Bluestone:**

- Regarding 1.8.3.9.A(3), Commissioner Bluestone asked for clarification that a notarized complaint can be submitted by email. Director Farris clarified, that a complainant may submit a notarized complaint, via email, or in person, or mailed, or via the website.

- Regarding same section, Commissioner Bluestone suggested changing to allow for dismissal rather than mandate dismissal. Director Farris clarified that even if it were

changed, the staff would still dismiss and that, in the overwhelming majority cases, the contact info of the respondent will be readily available or easily accessible.

- Regarding 1.8.3.11.H, Commissioner Bluestone whether it was proper to allow for voluntary dismissal after a case proceeds to a hearing. Director Farris clarified that it is proper to allow a complainant to withdraw from the complaint at any time, noting pressures or burden from the procedure, so long as the General Counsel may still take over the case. General Counsel Boyd clarified that it might be a happy medium to have the General Counsel review the Complainant's ability to withdraw and proposed language for final rule.

- Regarding Commissioners' service as hearing officers, Commissioner Bluestone suggested that the proviso clause be struck. Commissioner Baker noted that retired judges might serve as hearing officers. Director Farris clarified that budgetary issues will likely only be an issue for the first 6 months of the Commission's existence. Commissioner Villanueva asked what if no Commissioners ever qualified as hearing officers and as to the purpose of the rule. Director Farris clarified that the Commission will always have at least one qualified hearing officer, the Chair, who must be a retired judge. Director Farris further clarified that the rule functions as a safeguard allowing the Commission to proceed with its work under severe budgetary circumstances. Commissioner Bluestone argued that striking the provision would still allow the chair to still sit as a Hearing Officer in extraordinary circumstances and that if it is found later that there is a budgetary need to protect the Commission's work, then the rules can be amended to remedy the need, and thus, the clause should be removed. Commissioner Bluestone moved to remove the proviso clause. Commissioner Solimon seconded the motion. The motion passed, with all those present voting in favor, except for the Chair, who voted No.

- Regarding 1.8.3.11.K, Commissioner Bluestone moved to remove the surplusage after "party," in the amicus brief provision. Commissioner Baker seconded. The motion passed unanimously.

- Commissioner Bluestone moved to strike an extra quotation mark typo. Commissioner Baker seconded. The motion passed unanimously.

**Commissioner Williams:** No additional motions or comments.

**Commissioner Baker:** No additional motions or comments.

**Commissioner Solimon:** No additional motions or comments.

**Commissioner Villanueva:** No additional motions or comments.

### **5.3 Approval of Final Rules as Amended**

Rule 1.8.1 NMAC - Commissioner Bluestone moved to adopt the staff recommended draft as amended. Commissioner Solimon seconded. The motion passed unanimously.

Rule 1.8.2 NMAC - Commissioner Bluestone moved to adopt the staff recommended draft as amended. Commissioner Williams seconded. The motion passed unanimously.

Rule 1.8.3 NMAC - Commissioner Bluestone moved to adopt the staff recommended draft as amended. Commissioner Solimon seconded. The motion passed unanimously.

## **6. APPROVAL TO TRANSMIT JOINT POWERS AGREEMENTS (JPAs) TO THE DEPARTMENT OF FINANCE AND ADMINISTRATION**

- Director Farris gave an overview of the JPAs between the State Ethics Commission and the State Purchasing Division of the General Services Department and the Secretary of State. Director Farris clarified the nature of the JPAs, explaining how the Commission would address complaints arising under statutes subject to the provisions of the JPAs. Director Farris explained that the Secretary of State's Office first addresses complaints to attempt to secure voluntary compliance per statutes and rules. If the Secretary of State cannot achieve voluntary compliance, they will inform the Commission, who may then proceed with enforcement.

- Commissioner Williams asked for clarification regarding the lack of the SOS's enforcement power and when the Commission would be referred a matter. Director Farris and SOS General Counsel Herring responded that Commissioner Williams correctly understood that the Commission could handle enforcement in cases where the SOS lacks the power to do so.

- Commissioner Villanueva suggested several edits and offered to go over the edits with Director Farris at a later point.

- Chair Lang asked for a motion to allow Commissioner Villanueva to work with Commission staff on edits to the JPAs. Commissioner Bluestone moved to allow Commissioner Villanueva to work with Director Farris to amend the JPAs after the meeting. Commissioner Baker seconded. The motion passed unanimously.

- Chair Lang sought a motion to allow Director Farris to submit JPAs to DFA upon completion of edits with Commissioner Villanueva.

- Commissioner Baker so moved. Commissioner Solimon seconded. The motion passed unanimously.

## **7. DISCUSSION OF JOB DESCRIPTIONS AND PERFORMANCE METRICS.**

- Commissioner Williams requested job descriptions for the staff who are exempt employees as well as for performance metrics to be developed by the Commissioners. Director Farris explained the State Personnel Act's division of classified and exempt state employees.

- Communications Director Haquani noted that he and the new staff recognize the importance of the opportunity and responsibility they have undertaken as the foundational staff of the state's first ethics commission.

- Commissioner Baker asked whether the Commission can give the Director a raise.

- Director Farris answered that the Commission's salary-increase action would need to be approved by the Governor or the DFA Secretary, pursuant to the Governor's Policies for Exempt Employees.

### **Final Housekeeping Matters:**

- Chair Lang announced the meeting schedule of the commission to be the first Friday of every other month starting February 7, 2020.
- Chair Lang requested any final public comment and seeing none, he adjourned the meeting.

## **8. ADJOURNED**