



## NEW MEXICO STATE ETHICS COMMISSION

Hon. William F. Lang, Chair  
Jeff Baker, Member  
Stuart M. Bluestone, Member  
Hon. Garrey Carruthers, Member  
Ronald Solimon, Member  
Dr. Judy Villanueva, Member  
Frances F. Williams, Member

April 3, 2020, 9:00 a.m. to 12:00 p.m.

### Zoom Meeting

Join Zoom meeting through internet browser: <https://zoom.us/j/724749711>

Join Zoom meeting telephonically: (669) 900 9128

Meeting ID: 724 749 711

### COMMISSION MEETING

Chairman Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of February 7, 2020 Commission Meeting

### Commission Meeting Items

### Action Required

- |   |     |
|---|-----|
| 1. Operations and Legislative Update<br>( <i>Farris</i> ) | No  |
| 2. Advisory Opinion 2020-002<br>( <i>Boyd</i> )           | Yes |

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|--|-----|
| 3. Resolution No. 4, Investigations of Referrals and Informal Complaints and Initiation of Civil Actions<br>( <i>Farris &amp; Boyd</i> ) | Yes |
| 4. Project on Expedited Advisory Letters Rulemaking<br>( <i>Farris &amp; Boyd</i> )  | Yes |
| 5. Project on Initiation of Ethics Complaints<br>( <i>Haquani</i> )  | No  |
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**Upon applicable motion, Commission goes into Executive Session**

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|---|----|
| 5. Discussions regarding Administrative Complaints<br>( <i>Farris</i> ) | No |
| 1. Refresher on 1.8.3 NMAC  |    |
| 2. Administrative Complaint No. 2020-001                                |    |
| 3. Administrative Complaint No. 2020-002                                |    |
| 4. Administrative Complaint No. 2020-003                                |    |

**Commission returns from Executive Session**

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- |  |     |
|--|-----|
| 6. Actions on Administrative Complaints<br>( <i>Farris</i> ) | Yes |
| 1. Administrative Complaint No. 2020-001                     |     |
| 7. Determination of next meeting<br>( <i>Farris</i> )        | No  |
| 8. Public comment  | No  |
| 9. Adjournment   |     |

*For inquires or special assistance, please contact Sonny Haquani at [Ethics.Commission@state.nm.us](mailto:Ethics.Commission@state.nm.us)*



## **STATE ETHICS COMMISSION**

### **Meeting Minutes**

Executive Conference Room, UNM Science and Technology Park  
851 University Dr. SE, Albuquerque, NM 87106  
February 7, 2020, 9:00 A.M. to 12:00 P.M

#### **1. CALL TO ORDER AND ROLL CALL 9:00 AM**

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

Hon. William Lang  
Stuart Bluestone  
Hon. Garrey Carruthers  
Dr. Judy Villanueva  
Frances Williams  
Jeffrey Baker

Commissioners not Present:

Ron Solimon

No Commissioners arrived after roll call.

#### **2. APPROVAL OF AGENDA – 9:00 AM**

**Chair Lang** sought a motion to approve the agenda.

**Commissioner Villanueva** moved to approve the agenda.

**Commissioner Bluestone** seconded.

Seeing no objections, the motion passed unanimously.

#### **3. APPROVAL OF DECEMBER 4th, 2019 MEETING MINUTES – 9:03 AM**

**Chair Lang** sought a motion to approve the Dec 4<sup>th</sup> minutes.

**Commissioner Villanueva** moved to approve the minutes following one correction to the date.

**Commissioner Bluestone** seconded.

Seeing no objections, the motion passed unanimously.

## 1. OPERATIONS UPDATE – 9:05 AM

The Commission's Executive Director Jeremy Farris provided an update on the Commission's operations.

- **Number of complaints submitted to the Commission:**
  - While no notarized complaints on Commission's official complaint form had been filed, the Commission had received several documented allegations of misconduct for which the Commission lacks jurisdiction.
  - The paucity of official complaints is likely the result of jurisdictional constraints, the Commission having jurisdiction for fewer than six weeks, and the statutory requirement that complaints be notarized.
  - Commission staff expects to receive referred complaints from the Attorney General's office and the Secretary of State soon.
- **Progress on website and search engine optimization:**
  - The website currently ranks at the top of search results on the first page of Google when searched using the eight most-likely phrases.
- **Work on the Commission's online docketing system:**
  - The Commission has a contract with an IT contractor, Real Time Solutions.
  - The first phase of a docketing system is built and is in the testing phase.
  - Commission staff are engaged in discussions for a second contract for a filing and docketing system that includes necessary features, including filing notifications, administrative review, and docket management functionality.
  - The Commission needs supplemental FY20 funding to continue development.
- **Progress on retention of hearing officers:**
  - Justice Chavez is on contract with the Commission (\$15K contract with funds set aside within agency budget but not dispersed).
  - Judge Torgerson has an agreement with the Commission to provide hearing officer services on a pro bono basis, and supplemental funding is required for a contract.
  - Commission staff have executed a Memorandum of Understanding (MOU) with the New Mexico Administrative Hearings Office to provide hearing officers for Commission proceedings at the rate of \$100/hour.
- **Appointment of Judge Jim T. Martin as the designated judge for Commission subpoena petitions.**
  - Judge Martin was appointed by Justice Nakamura to be the Commission's designated subpoena judge on January 3, 2020.
  - Director Farris and General Counsel Walker Boyd traveled to Las Cruces and met with Judge Martin to discuss the procedure for opening sealed cases and petitioning for subpoenas. The Third Judicial District Court will work with the Judicial Information Division to establish a process for opening sealed cases for the Commission's subpoena requests.

- Mr. Boyd has sent a draft petition to Judge Martin which would serve as the foundation for requesting future petitions and Judge Martin has indicated he is satisfied with the proposed template.
- **Partnership with the Office of the Attorney General (OAG) regarding ethics training and complaint referrals:**
  - OAG reached out to the Commission to partner on providing training regarding the Governmental Conduct Act.
  - OAG is revising its Governmental Conduct Act (“GCA”) training materials.
  - OAG is developing a process for sorting and referring complaints to the Commission.
- **Recruiting and hiring new staff:**
  - Director Farris explained requirements for recruiting and hiring classified employees.
  - Director Farris is attempting to hire an Administrative/Operations Manager I position (AO I).
  - Director Farris is working with the State Personnel Office and the Department of Finance and Administration to move this process forward.
  - Director Farris intends to hire for an administrative and finance director staff position by the next Commission meeting.
- **Other ethics organizations seeking advice from Commission:**
  - An organization called Reform for Illinois is in the process of developing legislation to reform the Illinois Legislative Ethics Commission and reached out to Commission staff to learn about the best practices and structure of the Commission.

**Commissioner Baker** asked whether Justice Chavez has been paid a 15k retainer.

Director Farris said that Justice Chavez is on contract and that the money is set aside within our budget but has not yet been disbursed. Instead, Justice Chavez will bill against that contracted amount at an hourly rate of \$200 when he is called upon to serve as a hearing officer in a higher profile Commission proceeding.

**Commissioner Baker** asked whether the Administrative Hearings Office requires that its hearing officers be licensed attorneys.

Director Farris said that he is uncertain as a matter of law but noted that several AHO hearing officers are attorneys. Director Farris also noted that other agencies have entered MOUs with the AHO for hearing officers for cases arising under statutes for which the Commission currently has jurisdiction.

**Commissioner Bluestone** asked how the funding request for FY20 was calculated and whether it accounted for costs such as hearing officer contracts.

Director Farris said that the FY20 supplemental amount was calculated by reviewing all projected costs from now until the end of June 2020, including costs associated with hearing officers and other types of contracts.

**Commissioner Bluestone** asked whether Commission staff has considered entering into a Joint Powers Agreement (JPA) with OAG regarding the referral of complaints.

Director Farris said that, since the autumn of 2019, a JPA has not been discussed with the OAG's staff, and that in their first meeting, OAG staff was not inclined to enter a JPA with the Commission. Further, Director Farris said that the kinds of complaints the OAG would be forwarding are not likely to be complaints with a complainant and a respondent, but rather allegations of misconduct that would require investigation.

Director Farris noted that he met with John Boller from the Legislative Council Service and that the Legislative Council has discretion whether to engage the Commission for investigations related to ethics complaints filed with the Legislative Council or Legislative Ethics Committee.

**Commissioner Williams** asked about local jurisdiction, specifically how the Commission staff are handling inquiries concerning local public bodies.

Director Farris said that when the Commission staff receive inquiries about local issues, the staff clarify that the Commission lacks jurisdiction for local public bodies. If a local ethics body exists in the jurisdiction of the person inquiring, then the staff provide that information.

**Commissioner Williams** asked about the contract with Justice Chavez, specifically whether the Commission needs additional funds for hearing-officer contracts.

Director Farris said that the Commission needs additional funding for administrative cases, and that the budget requests for FY20 and FY21 reflect this need.

**Commissioner Carruthers** asked about the notarization constraint on complaints and requested that the Commission research other ethics commissions to determine how restrictive they are in comparison, then use that research to inform the Commission's annual report to the legislature. Additionally, he stated that the Commission should consider including public officials at public universities and county-level officials to the Commission's jurisdiction.

**Commissioner Carruthers** requested that the staff recruit the help of individuals removed from the immediate development team when testing the docket application to ensure that it is user-friendly to individuals who are less tech-savvy.

**Commissioner Villanueva** commended progress on the website and suggested the Commission staff direct energies to compete for additional search terms: NM corruption, NM anti-corruption, voter fraud, election fraud, and campaign finance violations.

**Commissioner Villanueva** asked whether the agency is currently short-staffed.

Director Farris said that the agency is currently short-staffed and that the Commission's goal is to expand to six employees by the end of FY20.

**Commissioner Villanueva** asked about compensation and benefits for the AO I position.

Director Farris said that the position is currently projected at pay-band 80 in the classified service compensation table and noted that he would follow up regarding the details.

**Commissioner Villanueva** requested a job description for the AO I position.

Director Farris noted the job description is provided by the State Personnel Office.

**Chair Lang** echoed Commissioner Carruthers's comments regarding the reasons to omit the notarization requirement. Further, regarding local jurisdiction, Chair Lang argued that it would require a substantial increase in staff size to expand the Commission's jurisdiction to include local public bodies. Chair Lang also noted that several counties already have free-standing ethics commissions, which should inform the Commission's recommendations regarding jurisdiction.

**Commissioner Carruthers** indicated that many small counties do not have ethics commissions and said that the Commission should review localities to determine where there is a need for ethics oversight. Further, he insisted that the Commission should research the expansion of jurisdiction to local public bodies this year.

**Commissioner Williams** noted that many counties do not have any enforcement powers and that it might be beneficial for the Commission to take on jurisdiction for those counties which do not have institutions to address ethics issues.

## **2. LEGISLATIVE UPDATE – 9:39**

Director Farris provided an update on legislation relevant to the Commission's operations.

- Under HB2, which was recently passed by the house, the Commission receives a \$985,000 budget for FY21 and a \$200,000 supplemental appropriation for FY20.
- The Legislative Finance Committee ("LFC") budget recommendation diverges from the Commission's request.
- Recent House Appropriations and Finance Committee ("HAFC") developments:
  - HAFC adopted the LFC FY21 budget and FY20 supplemental recommendations in subcommittee hearings and working group on special and supplemental appropriations.
  - Commission staff worked with the Department of Finance and Administration (DFA) and the HAFC to achieve a supplemental appropriation.
  - Commission staff have continued to advocate for the agency's request for its FY21 operating budget and FY20 supplemental appropriation.
  - Currently, the appropriations to the Commission in HB2 are at \$200,000 in FY20 supplemental funds (section 6) and \$985,600 for the FY21 operation budget (section 4).
  - House Bill 2 is currently with the Senate Finance Committee, where there is an opportunity to adjust the appropriations amounts.
  - The Commission received substantial support from advocacy organizations throughout these developments and continues to receive media coverage regarding the Commission's funding.
- HB2 is currently in the Senate Finance Committee.

- The Commission has prepared a letter in support of the Commission's budget requests to be signed by Commissioners.

**Commissioner Williams** noted that the draft letter does not seem passionate enough and argued that it should mention the 25+ year effort behind the creation of the Ethics Commission and the 75% approval on the ballot to enact the constitutional amendment creating the Commission.

Director Farris said that the Commission's letter was written to represent the entire Commission as one body, and that individual Commissioners may write additional letters of support for the Commission's budget requests.

**Commissioner Bluestone** asked that the letter be sent to the Governor, Senator Papen and Senator Wirth.

Director Farris agreed and said that Commission staff would ensure the Governor and Senators Papen and Wirth received a copy of the letter.

**Commissioner Villanueva** inquired about why Director Farris was surprised at the LFC's recommendation for the Commission's FY20 supplemental appropriation and FY21 operating budget.

Director Farris responded that his surprise was simply a matter of recognizing the inconsistency between the reactions to his and Commissioner Carruthers's presentation to the LFC and the low recommendation.

- **Senate Joint Resolution 7**

Director Farris provided an update on the status of SJR 7. County officials would likely be removed from the bill via friendly amendment in committee.

**Commissioner Bluestone** asked about a provision in SJR 7 that would repeal the prohibition of legislator compensation in the New Mexico Constitution. Commissioner Bluestone noted that Article 4, Section 10 should be amended rather than repealing section 10 entirely. Further, he noted that the Commission should not take a position on the merits of the bill.

**Commissioner Williams** opined that the Commission would need to hire additional staff in order to review and set the salaries of elected state officials and judges. Commissioner Williams additionally inquired about the reasons behind the proposed friendly amendment to SJR 7 that would remove the Commission's jurisdiction to review and set the salary of county officials.

**Commissioner Carruthers** noted his longstanding views that legislators should be paid and that the pay for the Governor is inadequate. He stated that he would not oppose SJR 7, as it would provide an avenue for legislators to be compensated. Further, he noted that it would not be difficult for the Commission and its staff to implement the legislation if enacted.

**Commissioner Bluestone** concurred and reiterated that the Commission should stay neutral on the matter of the bill's merits.

**Commissioner Williams** opined that the lack of pay for legislators could cause some legislators to misuse the public trust.



**Chair Lang** expressed concern that SJR 7, should it pass, would create a potential conflict of interest in that the Commission would rely on the legislature for funding and be responsible for setting legislators' salaries.

Director Farris responded that the Commission's authority to set legislative salaries might deter legislative attempts to defund the Commission.

- **Additional Bills**

The staff has provided Fiscal Impact Reports on seven bills that relate to the Commission's jurisdiction.

- HB97
- HB430
- SB53
- SB107
- SB267
- SJR6
- SJR7

- **Report from State Auditor Colón**

- Director Farris informed the Commission that State Auditor Colón sent Director Farris a report which the Office of the State Auditor conducted on the "secret settlements" executed and paid during FY 15, FY 18, and FY 19.
- In a February 7, 2020 letter, Director Farris informed State Auditor Colón that the Commission does not have jurisdiction over any of the conduct described in the report.

**Commissioner Baker** asked if the State Auditor's report is public and requested that a copy be sent to the Commissioners.

**Commissioner Williams** inquired about the settlements covered in the State Auditor's report, specifically why these settlements were allowed to have confidentiality provisions.

Director Farris responded that the settlements in question had confidentiality provisions that exceeded the statutory limits for confidentiality provisions.

### **3. ADVISORY OPINION 2020-01 – 10:14 AM**

Director Farris presented Advisory Opinion 2020-01, the Commission's first advisory opinion, to the Commission for approval. He reviewed the question presented, the answer provided, and the opinion's analysis supporting the answer.

**Commissioner Baker** asked about the potential for requestors to repeatedly file requests for increasingly specific advisory opinions.

Director Farris replied that individuals might request multiple advisory opinions and, with respect to repeat requests, the Commission has the discretion to decline to provide advisory opinions.

**Commissioner Williams** asked about the opinion's analysis, asking why there was a section that noted the question was not specific enough to provide an answer. Commissioner Williams also asked why the opinion did not refer to the Hatch Act.

Director Farris explained that the advisory opinion did provide answers to all but one part of the request, which related to whether the conduct described would violate any code of conduct adopted pursuant to the provisions of any of the statutes within the Commission's jurisdiction. This request was too broad, and the staff would have had to review every agency code of conduct in order to provide an answer. Further, Director Farris, Commissioner Carruthers, and Chair Lang responded that the request for an advisory opinion did not ask the Commission to opine on the Hatch Act, which is not in the Commission's jurisdiction.

**Commissioner Carruthers** asked Director Farris to deliver the advisory opinion to the requestor in-person and explain how the Commission reached its conclusions.

**Commissioner Villanueva** asked about the structure of the advisory opinion and whether requestors may use the process to craft additional subsequent requests for advisory opinions, which may change the outcome of the Commission's conclusions.

Director Farris responded that the Commission will always review the question according to the specificity presented in the request.

Mr. Boyd followed up on Director Farris's statement, noting that there may be individuals who use the advisory opinion process to bolster a subsequent complaint, so the Commission needs to be careful about making generalized statements that something does or does not violate the law in all circumstances.

**Chair Lang** sought a motion to approve the resolution.

**Commissioner Carruthers** moved to approve the resolution.

**Commissioner Villanueva** seconded.

Seeing no objections, the motion passed unanimously.

#### **4. RESOLUTION No. 2. – 10:43 AM**

Director Farris presented Resolution No. 2, which authorizes the Commission to hire special counsel in the event that a complainant files a complaint against a Commissioner, the Executive Director, or the General Counsel. In that event, the special counsel would take on the responsibilities normally assigned to the Executive Director and the General Counsel for that case.

**Chair Lang** sought a motion to approve the resolution.

**Commissioner Villanueva** moved to approve the resolution.

**Commissioner Carruthers** Seconded.

Seeing no objections, the motion passed unanimously.

BREAK 10:45

RECONVENE 10:56

## **5. RESOLUTION No. 3 COMMISSIONER FINANCIAL DISCLOSURES – 10:57 AM**

Director Farris presented Resolution No. 3, which provides that the Commissioners will voluntarily file financial disclosure statements with the Secretary of State. Commissioners are currently not required to file financial disclosures as they are not subject to confirmation by the State Senate. Resolution No. 3 is needful because the Commission will oversee complaints regarding alleged violations of the Financial Disclosure Act.

**Commissioner Carruthers** asked about the Financial Disclosure form.

Director Farris said that the Secretary of State provides the form.

**Commissioner Baker** asked to look at the SOS financial disclosure form before voting on the resolution.

**Commissioner Williams** mentioned that she had already filed a financial disclosure.

**Chair Lang** sought a motion to approve the resolution.

**Commissioner Bluestone** moved to approve the resolution.

**Commissioner Villanueva** seconded.

Seeing no objections, the motion passed unanimously.

## **6. PROPOSED CODE OF ETHICS FOR STATE AGENCIES – 11:05 AM**

The State Ethics Commission Act mandates the Commission to draft and issue a proposed code of ethics to state agencies and institutions. Director Farris reviewed two proposed timelines for the project to draft and disseminate a model code of ethics and recommended the second, later-occurring timeline.

**Commissioner Bluestone** inquired about the potential costs of the project.

Director Farris responded that the staff anticipates at least one professional services contract for an attorney to research and draft the proposed code of ethics. There would also be costs associated with promulgating the code of ethics through administrative rulemaking. Director Farris estimated the project would cost \$30,000 to \$40,000.

**Commissioner Williams** asked whether a request for proposal (RFP) would be required for the project.

Director Farris responded that the Commission would not require an RFP for the project as professional service contract costs will not exceed \$60,000.

**Commissioner Williams** inquired about the nature of how the model code of ethics would be adopted by the various state agencies.

Director Farris said that state agencies must file their codes with the State Ethics Commission but that the Commission does not have approval power. Further, Director Farris described how the rulemaking process could be used to encourage state agencies to adopt the Commission's proposed code.

**Chair Lang** sought a motion to approve the second timeline.

**Commissioner Bluestone** motioned in favor of timeline two for the project.

**Commissioner Carruthers** seconded the motion,  
Seeing no objections, the motion passed unanimously.

#### **7. MOTION TO ENTER EXECUTIVE SESSION – 11:28 AM**

**Chair Lang** sought a motion to move into executive session in order to discuss the next agenda item.

**Commissioner Bluestone** moved to go into executive session.

**Commissioner Baker** seconded the motion.

Seeing no objections, the motion passed unanimously.

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#### **EXECUTIVE SESSION**

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**11:30 AM**

#### **8. COMMISSION INITIATED COMPLAINTS – 11:30 AM**

The Commission and its attorneys discussed Commission-initiated complaints.

#### **9. AMICUS CURIAE BRIEF IN *STATE V. PADILLA* – 12:00 PM**

The Commission and its attorneys discussed the filing of an amicus curiae brief in *State v. Padilla*.

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#### **COMMISSION RETURNS TO OPEN SESSION**

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**12:05 PM**

#### **9. (A) VOTE ON AMICUS BRIEF – 12:07 AM (Action taken based on agenda item 9 discussed during executive session).**

**Chair Lang** sought a motion to approve the filing of an *amicus curiae* brief in *State v. Padilla*.

**Commissioner Baker** moved to approve the filing of an amicus brief.

**Commissioner Villanueva** seconded.

Seeing no objections, the motion passed unanimously.

## 10. COMMISSION CALENDAR – 12:10

**Commissioner Bluestone** discussed the Commission’s tentative meeting schedule and noted he would be unable to attend the meeting tentatively scheduled for August 7, 2020.

**Chair Lang** noted that it may be difficult to project availability past two months in advance and suggested that the Commissioners should approve the next meeting only.

**Commissioner Williams** commented that the Commission ought to meet more often, such as once a month.

Director Farris noted that absent FY20 supplemental funding, the current budget only accounted for costs of the Commission meetings every other month.

**Commissioner Baker** noted that the Commission’s current meeting schedule is sufficient for its current workload and voiced his general preference for shorter, less frequent, but more productive meetings.

**Chair Lang** concluded the Commissioners will continue meeting every other month until decided otherwise.

**The Commissioners** agreed to meet next on Friday, April 3<sup>rd</sup>.

## 11. PUBLIC COMMENT

Comments from Pete Dinelli:

- Updated the Commission on two articles he wrote about the Commission on his blog. Mr. Dinelli shared those articles with the Commission.
- Argued that the Commission should oppose SJR 7

Comments from Kathleen Sabo from NM Ethics Watch:

- Thanked the Commission for its work
- Updated that NM Ethics Watch has been forwarding inquiries from the public to the Commission.
- Noted that most tips and complaints they hear about occur at the local level.
- Noted advocacy work for the Commission’s FY20 and FY21 appropriations requests.
- Stated that SJR 7 might create the impression of impropriety if the Commission, which oversees complaints against legislators, is given the authority to review and set salaries for legislators.

Comments from Heather Ferguson from Common Cause NM:

- Noted that there is merit to the Commission having a role in setting salaries.
- Argued that an independent funding mechanism for the Commission, such as formulaic distributions from the Tobacco Settlement Fund, could remedy the Commission’s dependence on yearly legislative appropriations, thereby assuaging any appearance of

impropriety that might be created by the Commission's setting salaries, should SJR 7 become law.

**NO FURTHER PUBLIC COMMENTS**

**Chair Lang** sought a motion to adjourn

**Commissioner Carruthers** motioned to adjourn

**Commissioner Baker** seconded.

Seeing no objections, the motion passed unanimously.

**12. ADJOURNED – 12:40 PM**

The next Commission meeting is scheduled for April 3, 2020.



## STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2020-02

April 3, 2020<sup>1</sup>

### **QUESTION PRESENTED**

Does the Governmental Conduct Act, NMSA 1978, Section 10-16-8(B) (2011) or Rule of Professional Conduct 16-109(A), New Mexico Rules Annotated, prohibit a former state agency attorney from representing Nuclear Watch New Mexico in federal district court litigation, given the facts that the request presents?

### **FACTS<sup>2</sup>**

In 2005, a staff attorney employed by the New Mexico Environment Department (“NMED”) represented the agency in negotiating and executing a consent order between NMED, the United States Department of Energy, and others. The lawyer provided counsel to and represented NMED in the negotiation and implementation of the consent order. The consent order imposed duties on the Department of Energy and the operator of Los Alamos National Laboratory to identify and remedy environmental contamination in the area surrounding the Laboratory. The consent order permitted third parties to file actions in federal district court to enforce violations. After the 2005 consent order, the lawyer

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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).

<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.” *See* 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, Advisory Op. No. 2020-01, at \*1-2 (Feb. 7, 2020) (quoting § 10-16G-8(A)(2)). On February 13, 2020, the Commission received a request for an advisory opinion that detailed facts as presented herein.

represented NMED in two administrative actions against the Department of Energy and others to enforce the order, both of which ended in settlement agreements. In 2013, the lawyer left his employment with NMED.

In May 2016, Nuclear Watch filed suit in United States District Court for the District of New Mexico alleging the United States Department of Energy and the Laboratory's current operator, Los Alamos National Security, LLC ("LANS"), violated the consent order in 2014 and 2016. NMED intervened in the federal district court litigation and moved to dismiss Nuclear Watch's second amended complaint. In June 2016, NMED, the Department of Energy, and LANS executed a new consent order that "superseded the [2005 consent order] and settled any outstanding alleged violations under the 2005 Consent Order." Mem. Op. and Order, *Nuclear Watch New Mexico v. U.S. Dep't of Energy, et al.*, No. 1:16-cv-00433-JCH-SCY, 2018 WL 3405256, at \*9 (July 12, 2018).

In July 2018, the federal district court entered an order dismissing Nuclear Watch's claims for prospective relief, concluding that the 2016 consent order mooted those claims. However, the court declined to dismiss Nuclear Watch's claims for civil penalties against LANS and the United States Department of Energy "for their failure to complete 13 corrective tasks under the 2005 [Consent] Order[.]" Mem. Op. and Order, *Nuclear Watch New Mexico v. U.S. Dep't of Energy, et al.*, No. 1:16-cv-00433-JCH-SCY, 2018 WL 3405256, at \*31-32 (July 12, 2018).<sup>3</sup>

The former NMED lawyer is now employed by a nonprofit public interest law firm and desires to represent Nuclear Watch in the federal district court litigation. NMED has refused to consent to the representation, and asserts that the Rules of Professional Conduct and the Governmental Conduct Act prohibit the representation.

## ANSWER

Yes. Under subsection 10-16-8(B), "[a] former public officer or employee shall not represent a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee." In view of the facts the request

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<sup>3</sup> The requester attached a copy of this court decision to the written request for an advisory opinion. Like state courts, the Commission may take administrative notice of the details of court decisions, even if they are not attached to the request. *Cf. City of Aztec v. Gurule*, 2010-NMSC-006, ¶ 12, 147 N.M. 693, 228 P.3d 477 (describing courts ability to take judicial notice of law); 1.2.2.35(D)(1) NMAC (providing that the Public Regulation Commission administrative notice of decisions of state and federal courts *inter alia*).



specifies, the lawyer was “personally and substantially” involved in the negotiation, entry, and enforcement of the 2005 consent order. Because the negotiation and litigation surrounding the 2005 consent order is the same matter as the ongoing federal district court litigation, subsection 10-16-8(B) bars the lawyer from representing Nuclear Watch in the ongoing federal litigation.

The Commission declines to opine on whether the facts alleged establish a violation of Rule 16-109(A) NMRA.

## ANALYSIS

### 1. Subsection 10-16-8(B)

The Governmental Conduct Act’s revolving-door rule, NMSA 1978, Section 10-16-8 (2011), provides in pertinent part:

A former public officer or employee shall not represent a person in the person’s dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

§ 10-16-8(B). Subsection 10-16-8(B)’s restriction on a former public officer’s or employee’s representation is stringent because it does not expire: a former public officer or employee is forever barred from representing a person in the person’s dealings with the government relating to the same matter in which the former officer or employee participated personally and substantially while in public service.<sup>4</sup>

Subsection 10-16-8(B) contains three elements. First, the former public officer or employee must represent a person in “the person’s dealings with the government.” § 10-16-8(B). Second, the person’s dealings with the government must be the same “matter” as one in which the former public officer or employee participated in while in public service. *Id.* Third, the former public officer’s or employee’s participation in that matter must have been personal and substantial. *Id.*

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<sup>4</sup> See Office of the New Mexico Attorney General, Governmental Conduct Act Compliance Guide at 37 (2015) (“Subsection B creates an absolute restriction on certain former public officers or employees. It prevents them from representing a person in the person’s dealings with the government on a matter in which the public officer or employee participated “personally and substantially” while working for either the state agency or local government involved. The amount of the contract or the length of time that the employee has been gone from public service is immaterial.”).

The facts that the request posits establish the first and third elements. As to the first element: NMED is a party to the ongoing federal litigation. Participation in a court action in which a state agency is a party is a classic example of “dealing[] with the government.” § 10-16-8(B). If the former NMED lawyer enters an appearance as Nuclear Watch’s attorney in the ongoing federal district court litigation, he will necessarily represent Nuclear Watch in its “dealings with the government.” § 10-16-8(B). As to the third element: the former NMED lawyer’s participation in the formation and enforcement of the 2005 consent order was personal and substantial, because, as the request articulates, he represented NMED in the negotiation and execution of the 2005 consent order, and provided counsel to and representation of NMED in the implementation and enforcement of the 2005 order.

The second element is a closer question: are the current federal district court litigation and the negotiation, implementation, and litigation surrounding the 2005 consent order the same “matter” such that the former NMED is barred from representing Nuclear Watch in the federal district court litigation? As explained below, the Commission concludes that the answer to this question is “yes.”

The Governmental Conduct Act does not define “matter,” *see* NMSA 1978, § 10-16-2 (2011), and New Mexico courts have not addressed whether one or more matters are the same in the context of subsection 10-16-8(B). Subsection 10-16-8(B), however, is modeled on Rule 16-111(A)(2) NMRA and ABA Model Rule of Professional Conduct 1.11(a)(2).<sup>5</sup> Because the request involves a former state

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<sup>5</sup> Rule 16-111(A)(2) NMRA and ABA Model Rule 1.11(A)(2) provide:

[A] lawyer who has formerly served as a public officer or employee of the government . . . shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

Like the Governmental Conduct Act, these rules are “intended to deal with what [is] conventionally referred to as the “revolving door” situation of lawyer transfer between government and private employment.” *See* Discussion Appendix to Proposed Model Rule of Professional Conduct 1.11 at the February 1983 ABA Midyear Meeting, in ABA Ctr. for Prof’l Responsibility, *A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2013* 279 (Art Garwin ed., 2013); *see also* Rachel E. Boehm, *Caught in the Revolving Door: A State Lawyer’s Guide to Post-Employment Restrictions*, 15 REV. LITIG. 525, 533 (Summer 1996) (collecting state statutes, including subsection 10-16-8(B), which “are the same or similar to the standard imposed by . . . ABA Model Rule 1.11”).

employee who is also an attorney, the comparison to Rule 16-111 NMRA is particularly apt. The rule

represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially.

Rule 16-111 NMRA, comment [4]; *accord* ABA Model Rule of Professional Conduct 1.11 cmt.

The Governmental Ethics Task Force, created by Laws 1992, Chapter 109 and signed into law by Governor Bruce King, drafted the Governmental Conduct Act's revolving door provisions. The task force described subsection 10-16-8(B)'s purpose in similar terms:

The amendments proposed by the task force preclude public officers and employees, after leaving government service, from representing any person before or against the government on specific matters in which the former officer or employee participated personally and substantially while in government. . . . This provision is designed to balance the competing interests involved—ensuring that the government officer or employee acts only in the public interest and not in a way that might “feather his or her nest” for post-government employment,

while at the same time not barring the officer or employee from representation before his or her agency for such a long period that it would deter government recruitment of the best talent available.

Rep. H. John Underwood & James B. Mulcock, *Governmental Ethics Task Force, Final Report—Findings and Recommendations*, at 19 (N.M. Legislative Council Service Info. Memo. No. 202.90785, Jan. 27, 1993).

Given subsection 10-16-8(B) and Rule 16-111(A)(2)'s shared phrasing and purpose, the definition and interpretation of the word "matter" in the latter context guides the Commission's analysis.<sup>6</sup> Rule 16-111 NMRA and ABA Model Rule of Professional Conduct 1.11 define the term "matter" as follows:

"matter" includes: (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Rule 16-111(E) NMRA; *accord* ABA Model Rule of Prof. Conduct 1.11(e).

In determining whether two or more matters are the same for purposes of subsection 10-16-8(B), the Commission will consider whether the matters' underlying facts, parties, and temporal relationship are the same or overlap substantially. *See Roy D. Mercer, LLC v. Reynolds*, 2013-NMSC-002, ¶ 26, 292 P.3d 466 (concluding that Rule 16-111 "indicate[s] a fact-specific, transactional approach to determining the scope of '[the] matter'") (second alteration original); *see also* Rule 16-111 cmt. [10] ("In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties and the time elapsed.").

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<sup>6</sup> *Cf. Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) ("When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well."); *Marquez v. Larrabee et al.*, 2016-NMCA-087, ¶ 12, 382 P.3d 968 (stating that New Mexico courts may look to the Federal Rules of Civil Procedure and caselaw interpreting those rules for guidance in interpreting substantially similar provisions in New Mexico court rules); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 322 (West 2012) (discussing "prior-construction" canon of statutory interpretation).

Applying this test, the negotiation, implementation and enforcement of the 2005 consent order and the current federal district court litigation are the same matter. They involve the same basic facts, the same parties, and the same duties.

- **Same basic facts.** The 2005 consent order imposed remedial duties on the Department of Energy and LANS arising from environmental contamination at LANL from the date of its execution to its revocation in 2016. In the current federal district court litigation Nuclear Watch claims the Department of Energy and LANS failed to remediate the environmental contamination that was the subject of the 2005 consent order and failed to follow processes mandated by the same order.
- **Same parties.** The Environment Department, the Department of Energy, and the operator of Los Alamos National Laboratory were parties to the 2005 consent agreement. The same parties are also involved in the current federal district court litigation.<sup>7</sup>
- **Same duties.** In the ongoing federal litigation, Nuclear Watch seeks to enforce the Department of Energy's and the laboratory operator's duties under the 2005 consent order.

If the former NMED attorney enters an appearance as Nuclear Watch's lawyer in the ongoing district court litigation, he would be prosecuting claims arising from a consent order that he negotiated, implemented, and enforced while a NMED employee. The potential representation is thus part of the same "matter" as the the 2005 consent order, and therefore violates subsection 10-16-8(B).

The Commission is aware of facts that might suggest an otherwise tenuous relationship between litigation concerning the 2005 consent order and the ongoing federal district court litigation. First, the 2005 consent order is almost fifteen years old, and was superseded by the 2016 consent order. Second, in the current litigation, Nuclear Watch also asserts violations of the 2005 consent order occurring after the former NMED attorney left his state agency employment. Hence, the attorney is

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<sup>7</sup> The 2005 consent order expressly contemplates enforcement by third parties. LANS is the successor-in-interest to the operator of Los Alamos National Laboratory that was a party to the 2005 consent order.

unlikely to have confidential information from his NMED employment that might benefit Nuclear Watch or prejudice NMED as to those claims.

The mere lapse of time and absence of concrete prejudice are not dispositive.<sup>8</sup> Court cases applying the analogous rule of professional conduct to similar facts support this conclusion. For example, in *Monument Builders of Pennsylvania, Inc. v. Catholic Cemeteries Ass'n, Inc.*, 190 F.R.D. 164 (E.D. Pa. 1999), the plaintiff alleged violations of a 1984 agreement resolving antitrust claims that had previously been brought in a separate lawsuit fifteen years prior. The court excluded the plaintiff's attorney when it was disclosed that she was the law clerk for the judge who presided over the 1984 lawsuit. The court held that the 1984 and 1999 actions were the same matter, even though they were many years apart: "they involve the same parties and largely the same facts and conduct and, more importantly, this new action seeks to recover for the violation of a consent decree that [the lawyer] had a hand in construing while she served as [a] law clerk." *Id.* at 167-168.<sup>9</sup>

The former NMED attorney's involvement in the 2005 consent order and potential involvement in the ongoing federal district court litigation is like the former law clerk in *Monument Builders*. The former NMED attorney's representation of Nuclear Watch in the current litigation would entail prosecuting claims that the Department of Energy and LANS breached a consent order that he had a personal and substantial role in negotiating, drafting, executing, and enforcing. As with

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<sup>8</sup> Some courts have held that a mere appearance of impropriety "is too slender a reed on which to rest a disqualification order except in the rarest cases." *Bd. of Educ. of the City of N.Y. v. Nyquist*, 590 F.2d 1241, 1247 (2d Cir. 1979). New Mexico courts appear to have rejected this approach, at least when applying the Governmental Conduct Act's revolving-door rules. *See Ortiz v. Tax. & Rev. Dep't, Motor Vehicle Div.*, 1998-NMCA-027, ¶ 9, 124 N.M. 677, 954 P.2d 109 (stating that NMSA 1978, § 10-16-8(C) (now Section 10-16-8(D)) prohibits "conduct which may permit *or appear to permit* undue influence or a conflict of interest.") (emphasis added). In either case, the factual basis of litigation concerning the 2005 consent order and the ongoing federal district court litigation so overlap that the Commission need not determine whether a mere appearance of impropriety is sufficient to establish a subsection 10-16-8(B) violation.

<sup>9</sup> *See also Archuleta v. Turley*, 904 F.Supp.2d 1185, 1192 (D. Utah 2012) (disqualifying state attorney general from defending state against habeas petition where evidence showed the attorney had previously served as law clerk to the judge who had imposed the custodial sentence being challenged); *State ex rel. Jefferson Cnty. Bd. of Zoning Appeals v. Wilkes*, 655 S.E.2d 178, 185 (W.Va. 2007) ("neither common sense nor applicable legal authority support the contention that each stage in the consideration of a conditional use permit application is a separate and discrete "matter." Nor do they support the contention that the [Board of Zoning Appeals] may not bar its former lawyer from aiding an applicant in connection with an application about which the lawyer once advised the [Board].").

*Monument Builders*, the lapse of 15 years between the attorney’s participation in the 2005 consent order and the current federal court litigation is not controlling. Rather, the close factual nexus between the 2005 consent order and the current federal district court litigation—particularly Nuclear Watch’s claims for civil penalties for failure to complete 13 corrective tasks under the 2005 order—outweighs the amount of time that has lapsed. As a result, the attorney’s proposed representation involves the same “matter” as his earlier representation of NMED in connection with the 2005 consent order. Accordingly, subsection 10-16-8(B) prohibits the representation.

As the United States District Court for the District of Minnesota said when it disqualified a former special assistant United States Attorney from representing a plaintiff in a civil action related to previous criminal proceedings:

Many a lawyer who has served with the government has an advantage when he enters private practice because he has acquired a working knowledge of the department in which he was employed, has learned the procedures, the governing substantive and statutory law and is to a greater or lesser degree an expert in the field in which he was engaged. Certainly this is perfectly proper and ethical. Were it not so, it would be a distinct deterrent [*sic*] to lawyers ever to accept employment with the government. This is distinguishable, however, from a situation where, in addition, a former government lawyer is employed and is expected to bring with him and into the proceedings a personal knowledge of a particular matter—for which the government paid him while he was learning it and for which now the client who employs him theoretically will not have to pay.

*Allied Realty of St. Paul, Inc. v. Exch. Nat’l Bank*, 283 F. Supp. 464, 467 (D. Minn. 1968).

Except for the one-year cooling-off period in NMSA 1978, Section 10-16-8(D) (2011), the Governmental Conduct Act does not prohibit former state agency attorneys from representing clients in matters involving the agency. But the Act does prohibit a public employee from transferring the benefit of skills and knowledge acquired from a particular matter to benefit a private client involved in the same transaction or controversy. This prohibition is directly implicated by an attorney appearing and representing a party seeking to enforce the same consent order that he had a personal and substantial role in negotiating, drafting, executing, and enforcing while in public service.

2. Rule 16-109(A)

While the Commission “may issue advisory opinions on matters related to ethics,” NMSA 1978, § 10-16G-8(A), the Commission will not issue advisory opinions regarding the application of the Rules of Professional Conduct for attorneys, Rule Set 16 NMRA.

The New Mexico Supreme Court has the power to prescribe standards of conduct for lawyers. *See, e.g., In re Treinen*, 2006-NMSC-013, 139 N.M. 318, 131 P.3d 1282. The Supreme Court prescribes such standards through the Rules of Professional Conduct and disciplinary proceedings. In respect of the separation of powers, N.M. Const, Art. III, § 1, and in view of the Commission’s reluctance to issue inconsistent or *ultra vires* opinions, the Commission will not interpret “matters relating to ethics” in subsection 10-16G-8(A) to include potential violations of the Rules of Professional Conduct.

The separation of powers presents no obstacle to Commission opining on or enforcing those provisions of the Governmental Conduct Act, even when a current or former public official or employee is also a licensed member of the bar. *See generally Ortiz*, 1998-NMCA-027, ¶¶ 6-14; *see also id.* ¶ 14 (“Section 10-16-8(C) does not violate separation of powers.”). The Commission has Constitutional and statutory authority to issue advisory opinions regarding those same statutes. *See* N.M. Const., Art. V, § 17(B) (“The state ethics commission may . . . issue advisory opinions concerning . . . standards of ethical conduct and other standards of conduct and reporting requirements, as may be provided by law. . . .”); §§ 10-16-13.1 (“The state ethics commission shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties.”); 10-16G-8(A) (granting the power to issue advisory opinions); 10-16G-9(A)(6) (granting jurisdiction for the Governmental Conduct Act). Accordingly, the Commission will issue advisory opinions upon request regarding the application of Section 10-16-8.

### CONCLUSION

Section 10-16-8(B) of the Governmental Conduct Act prohibits the attorney from representing Nuclear Watch New Mexico in the federal district court litigation, *Nuclear Watch New Mexico v. United States Department of Energy, et al.*, No. 1:16-cv-00433-JCH-SCY. The Commission declines to opine whether one or more Rules of Professional Conduct also prohibit the representation.

**SO ISSUED.**



**HON. WILLIAM F. LANG, Chair**

**JEFF BAKER, Commissioner**

**STUART M. BLUESTONE, Commissioner**

**HON. GARREY CARRUTHERS, Commissioner**

**RONALD SOLIMON, Commissioner**

**JUDY VILLANUEVA, Commissioner**

**FRANCES F. WILLIAMS, Commissioner**



## STATE ETHICS COMMISSION

Hon. William F. Lang, Chair  
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Ronald Solimon, Member  
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### **Resolution No. 4: Investigations of Referrals and Informal Complaints and Initiation of Civil Actions**

WHEREAS, THE NEW MEXICO STATE ETHICS COMMISSION (“Commission”) met in regular session at the UNM Science and Technology Park, 851 University SE, Suite 200, Albuquerque, NM, on April 4, 2020, at 9:00 a.m.;

WHEREAS, the Commission has the power to investigate violations of the ethics laws pursuant to the State Ethics Commission Act, the Governmental Conduct Act, the Financial Disclosure Act, the Gift Act, the Campaign Reporting Act, the Procurement Code, and the Voter Action Act, *see* NMSA 1978, §§ 1-19-34.8(A), 1-19A-15.1(A), 10-16-14, 10-16-18(B), 10-16A-6, 10-16A-8, 10-16B-5 10-16G-10(J), 10-16G-13(C), and 13-1-196.1 (2019).

WHEREAS, the Commission desires to adopt a policy that ensures the fair and uniform handling and disposition of its investigation of potential violations of ethics laws referenced above, and to ensure that a referral for impeachment or the initiation of a civil action is based on evidence that, if credited, would be sufficient to impeach or to award civil relief;

NOW, THEREFORE, BE IT RESOLVED by the New Mexico State Ethics Commission adopts the following **Policy for Investigations of Referrals and Informal Complaints and Initiation of Civil Actions**:

## 1. Authority.

{1} The State Ethics Commission investigates and enforces violations of the Ethics Laws in two ways: (1) upon receiving a sworn complaint alleging violations against a respondent, *see* NMSA 1978, § 10-16G-10(A)-(K); or (2) by “fil[ing] a court action to enforce the civil compliance provisions” of the State Ethics Laws. *See* NMSA 1978, § 10-16G-9(F). In other words, the Commission has the authority to investigate and adjudicate reactively (in response to a sworn complaint) or proactively on its own initiative.

{2} Provisions of the State Ethics Commission Act, the Governmental Conduct Act, the Gift Act, the Campaign Reporting Act, and the Voter Action Act confirm the Commission’s independent authority to investigate violations those acts outside of the Administrative Complaint process:

### {3} State Ethics Commission Act

NMSA 1978, Section 10-16G-10(J) permits the commission to “petition the [district] 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.” Section 10-16G-13(C) further provides that “complaints, reports, files, records and communications collected *or generated* by the commission, hearing officer, general counsel or director that pertain to alleged violations” are confidential.

### {4} Governmental Conduct Act

- Under NMSA 1978, § 10-16-14(A), “The state ethics commission may investigate suspected violations of the Governmental Conduct Act.”
- Under NMSA 1978, § 10-16-14(C), “If the state ethics commission determines that there is sufficient cause to file a complaint to remove from office a public officer removable only by impeachment, the commission shall refer the matter to the house of representatives of the legislature.”
- Under NMSA 1978, § 10-16-14(E), “Subject to the provisions of this section, the provisions of the Governmental Conduct Act may be enforced by the state ethics commission. . . . Enforcement actions may include seeking civil injunctive or other appropriate orders.”
- Under NMSA 1978, § 10-16-14(E), “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 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).”

#### {5} Financial Disclosure Act

- Under NMSA 1978, § 10-16A-6(A), “The state ethics commission and the secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated.”
- Under NMSA 1978, § 10-16A-6(F), “The secretary of state may refer a matter to the state ethics commission, attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.”
- Under NMSA 1978, § 10-16A-8(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).”

#### {6} Gift Act

- Under NMSA 1978, § 10-16B-5(A), “The state ethics commission may initiate investigations to determine whether the provisions of the Gift Act have been violated.”

#### {7} Campaign Reporting Act

- Under NMSA 1978, § 1-19-34.8(A), “the state ethics commission shall have jurisdiction to investigate . . . a [written] complaint alleging a civil violation of a provision of the Campaign Reporting Act in accordance with the provisions of that act[.]”

#### {7} Voter Action Act

- Under NMSA 1978, § 1-19A-15.1(A), “the state ethics commission shall have jurisdiction to investigate . . . a [written] complaint alleging a civil violation of a provision of the Voter Action Act in accordance with the provisions of that act[.]”

## **{8} Procurement Code**

- Under NMSA 1978, § 13-1-196.1, “[t]he 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 a 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.”

These statutes and others make it clear that the Commission has authority to initiate its own investigations of potential ethics violations, petition the district court to issue subpoenas in furtherance of an investigation, and, where appropriate, file an action in State District Court to enforce the relevant provisions of the statutes within its jurisdiction.

### **2. Objective.**

{1} This Policy’s objective is the fair and uniform handling and disposition of allegations of violations of ethics laws received by the Commission that are not in the form of either (i) an administrative complaint or (ii) a referral within the scope of a joint powers agreement that is treated as an administrative complaint.

### **3. Limitations.**

{1} This Policy applies to the Commission, Executive Director, General Counsel, other Commission staff, and Commission contractors. It does not give any enforceable rights to others.

### **4. Definitions.**

{1} As used in this Policy,

- a. “Administrative complaint” means an allegation of an actual or potential violation of ethics laws in a sworn and notarized complaint, as fully described in NMSA 1978, Section 10-16G-2(D) (2019).

- b. “Commission” means the State Ethics Commission.
- c. “Commission staff” refers to the State Ethics Commission’s executive director or authorized agents. It does not include the general counsel.
- d. “Ethics laws” means the anti-donation clause and state statutes within the Ethics Commission’s jurisdiction.
- e. “Government agency” means an instrumentality of the United States or an agency of a state, county, or municipal government.
- f. “Person” means any natural person or organization that is not a government agency.
- g. “Referral” means any allegation of an actual or potential violation of ethics laws received by the Commission or its staff from a government agency.
- h. “Informal complaint” means an allegation of an actual or potential violation of ethics laws from a person, which is not an administrative complaint.

{2} All other terms used in this policy are given the definition provided by the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019) or ordinary usage.

## **5. Administrative complaints; referrals.**

{1} Administrative complaints will be handled in the manner set forth in the State Ethics Commission Act and the Commission’s regulations for administrative complaints and adjudications. *See* §§ 10-16G-9 to -16; 1.8.3 NMAC. A referral that sufficiently identifies (i) the complainant; (ii) the respondent; and (iii) the factual basis for alleged violations of the Ethics laws will be treated as an administrative complaint, even if it is not sworn and notarized. *See* NMSA 1978, §§ 1-19-34.8(A)(2); 1-19A-15.1(A)(2); 2-11-8.3(A)(2); 10-16A-6(E) (permitting referrals of complaints received by other state agencies). All other referrals will be handled in the same manner as informal complaints pursuant to the terms of this Policy.

{2} An administrative complaint that is voluntarily dismissed by the complainant before the Commission has an opportunity to act on the complaint may be handled as an informal complaint pursuant to the terms of this Policy.

## **6. Assessments by Commission staff.**

**{1} Assessments.** Commission staff may assess whether a referral or an informal complaint alleges violations of laws that are (i) within the Commission's jurisdiction and (ii) supported by sufficient evidence to support a sworn affirmation that a violation of the laws within the Commission's jurisdiction has occurred. During an assessment, Commission staff may seek information, proactively or in response to investigative leads, relating to activities constituting violations of the ethics laws. Assessments may result in (i) a request for the Commission's approval to commence a civil action; (ii) an investigation pursuant to terms of this Policy; or (iii) a determination of no further action.

**{2} Policy.** Detecting and preventing violations of ethics laws is preferable to allowing violations to occur. Hence, assessments may be undertaken proactively with such objectives as detecting violations of ethics laws and obtaining information on individuals, groups, or organizations of possible investigative interest, without prior approval by the Commission.

**{3} Executive Director approval.** Before initiating or approving an assessment, the Executive Director must determine whether (i) the assessment is based on factors other than the exercise of First Amendment activities or the race, ethnicity, national origin, religion, other protected status of the subject, or a subject's political party membership or political affiliation; and (ii) the assessment is an appropriate use of personnel and financial resources.

**{4} Scope.** In making an assessment, Commission staff may seek and review information that is available to the public. For example, Commission staff may review public social media accounts and news media. Commission staff may also issue written requests for records under the Inspection of Public Records Act. In making an assessment, Commission staff may not interview witnesses, monitor communications, engage in undercover operations, or utilize compulsory process, other than written requests for records under the Inspection of Public Records Act.

**{5} Memorandum.** Regardless of whether an assessment results in a request for the Commission's approval to commence a civil action, an investigation, or no further action by the Commission staff, the Executive Director or his or her designee shall memorialize the results of the assessment.

**{6} Notice to referring agency or informal complainant.** The Executive Director may provide a written notice to the referring agency or informal complainant about the outcome of the Commission staff's assessment.

**{7} No assessments based on protected conduct or status.** Although a potential violation of the ethics laws need not be supported by a factual predication in order to merit an assessment by Commission staff, Commission staff should not perform an assessment based on arbitrary or groundless speculation. An assessment also may not be performed based solely on conduct that is protected by the First Amendment or on subject's race, ethnicity, national origin, religion, or other status protected under State or federal law. Nor may an assessment be performed based solely on a subject's political party membership.

## **7. Investigations.**

**{1} Investigations.** Commission staff may initiate an investigation if there is an articulable factual basis that reasonably indicates that the subject of the investigation has or in the immediate future will violate the ethics laws. Investigations may result in (i) a request for the Commission's approval to commence a civil action; or (ii) a determination of no further action.

**{2} Policy.** Under the State Ethics Commission Act, "[t]he commission may file a court action to enforce the civil compliance provisions of [the Ethics laws]." *See* NMSA 1978, § 10-16G-9(F) (2019). When a referral or informal complaint is supported by an articulable factual basis, Commission staff may investigate to determine whether there is enough evidence for the Commission to initiate a civil action under Section 10-16G-9(F). A civil action initiated under Section 10-16G-9(F) does not require a sworn complaint or a final order from the Commission; in initiating such a complaint, the Commission is asking the district court where the respondent resides to adjudicate alleged violations of the ethics laws. This Policy is designed to ensure that the Commission's decision to initiate a civil action is fair and impartial. In addition, a quorum of the Commission may instruct the Commission's staff to investigate a matter within the Commission's jurisdiction.

**{3} Executive Director and General Counsel approval.** Prior to initiating an investigation, Commission staff must obtain approval from the Executive Director and General Counsel. In deciding whether to approve the initiation of an investigation, the Executive Director and the General Counsel must approve written findings that (i) a sufficient factual predicate exists to support an investigation; (ii) the proposed investigation is a reasonable use of Commission resources and personnel; and (iii) a formal complaint from the source of the referral or informal complaint is unlikely to be obtained or notice to the subject of the investigation is highly likely to result in the destruction of relevant evidence.



**{4} Scope.** In performing an investigation, Commission staff may take any action available to the Commission staff when making an assessment, interview witnesses, and, pursuant to the approval of a quorum of Commissioners, petition a district court for leave to serve subpoenas. *See* NMSA 1978, § 10-16G-10(J) (2019).

**{5} Memorandum.** Regardless of whether an investigation results in a civil action or in no further action by the Commission, the Executive Director or his or her designee shall summarize the results of an investigation in a confidential memorandum and send the summary to the Commission.

**{6} Notice to referring agency or informal complainant.** The Executive Director may provide a written notice to the referring agency or informal complainant about the outcome of the Commission staff's investigation.

## **8. Notice to Commission and Commission Chair**

**{1}** The Executive Director shall alert the Commission Chair about the initiation of an investigation. The Executive Director shall also inform the Commission about investigations at Commission meetings in closed session.

## **9. Civil actions or referral for impeachment proceedings.**

**{1} Commission approval.** To initiate a civil action under Section 10-16G-9(F) or to refer a matter for impeachment proceedings under Section 10-16-14(C), the Executive Director shall obtain approval from a quorum of Commissioners pursuant to Section 10-16G-3(H).

**{2} Request for Commission approval; contents.** In seeking approval from the Commission to initiate a civil action alleging violations of the ethics laws, the Executive Director shall provide a written explanation of the factual basis for the proposed civil action and the list of remedies sought. In seeking approval from the Commission to refer a matter to the house of representatives for impeachment proceedings, the Executive Director shall provide a written explanation of the factual basis for the proposed referral and explain why a referral under Section 10-16-14(C) is appropriate.

Adopted by the New Mexico State Ethics Commission this 4<sup>th</sup> day of April 2020.

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

## MEMORANDUM

From: Walker Boyd  
To: Ethics Commissioners  
Date: March 17, 2020  
Subject: Proposed revisions to 1.8.1 NMAC to allow informal advisory opinions from the general counsel

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In consultation with the Executive Director, I recommend that, at the June 5, 2020 meeting, the Commission issue the attached revisions to 1.8.1 NMAC for notice and public comment. The Commission can consider the revisions on the same timetable that will govern the rulemaking for the proposed code of ethics (*i.e.*, June 5 to issue rule for comment and August 7 for public rule hearing and rule adoption).

Without the proposed rule change to 1.8.1 NMAC, the Commission may only issue *formal* opinions in response to a request for ethics advice. The rule change would permit the general counsel to issue *informal* advisory opinions upon request. The general counsel for the Republican Party of New Mexico, Carter Harrison, has told me that there is need for advice on the Campaign Reporting Act and other laws that is not satisfied by the Commission's formal advisory opinions, because those opinions can take up to two months to be issued. Commission staff also receive informal inquiries from State employees and others about the legality of certain conduct or financial arrangements. In these instances, requesters have indicated a general unwillingness to turn the request for advice into a request for a formal advisory opinion.

Why request informal advice? Because the informal advice can be used as a basis for a "good faith" defense to a subsequent ethics complaint. Because informal advice is not approved by the Commission, the advice does not bind the Commission's decisions on a complaint against

Memorandum  
Ethics Commissioners  
March 17, 2020  
Page 2 of 3

the person who requested the informal advice. Furthermore, Section C of the proposed rule allows the Commission to adopt formal advisory opinions based upon the General Counsel's informal advisory opinions.

Several states offer informal advisory opinions pursuant to statute or administrative rule.<sup>1</sup> These state statutes and administrative rules typically provide that a request for informal advice is confidential and does not bind the ethics commission in any way. The proposed rule adopts the same standard. I spoke with Tiffany Mulligan, the Indiana Office of Inspector General's Chief Legal Counsel, about their informal advisory opinion process. She said that her office typically issues informal advice 1-2 days after receipt. Ms. Mulligan reports that the advice is probably the most valuable service offered by the Office of Inspector General; every year the office receives hundreds of requests for informal opinions.

I recommend the Commission adopt the attached revisions to 1.8.1 NMAC so that the General Counsel can offer expedited written advice in response to requests for advisory opinions. Doing so would encourage individuals to seek counsel before entering into potentially problematic transactions. It would also help the Commission prove its value to state government when it is not occupied with formal complaints. A proposed revision to 1.8.1 NMAC permitting the general counsel to issue informal opinions ("expedited written advice") is attached to this memorandum. I look forward to explaining the mechanics of the proposed revisions at the upcoming meeting on April 3, 2020.

Yours sincerely,

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<sup>1</sup> See, e.g., Haw. Rev. Stat. § 84-31(b) (2019); Indiana Office of the Inspector General Rule 8, 42 Ind. Admin. Code 1-8-1; Wis. Stat. § 19.46(2) (2019).

Memorandum  
Ethics Commissioners  
March 17, 2020  
Page 3 of 3

/s/

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Walker Boyd

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**TITLE 1            GENERAL GOVERNMENT ADMINISTRATION**  
**CHAPTER 8        STATE ETHICS COMMISSION**  
**PART I            GENERAL PROVISIONS**

**1.8.1.1            ISSUING AGENCY:** State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.  
[1.8.1.1 NMAC-N, 1-1-2020]

**1.8.1.2            SCOPE:** The rules of Chapter 8 provide for and govern the organization and administration of the state ethics commission.  
[1.8.1.2 NMAC-N, 1-1-2020]

**1.8.1.3            STATUTORY AUTHORITY:** Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978.  
[1.8.1.3 NMAC-N, 1-1-2020]

**1.8.1.4            DURATION:** Permanent.  
[1.8.1.4 NMAC-N, 1-1-2020]

**1.8.1.5            EFFECTIVE DATE:** January 1, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[1.8.1.5 NMAC-N, 1-1-2020]

**1.8.1.6            OBJECTIVE:** The rules of Chapter 8 are promulgated to ensure that the state ethics commission is administered so that it works effectively, efficiently and fairly to achieve its constitutional and statutory mission. That mission is to ensure compliance with all applicable public ethics laws by all public officials, employees, candidates, contractors, lobbyists and others subject to the commission’s jurisdiction throughout their employment or dealings with New Mexico state government; and to ensure that the public ethics laws are clear, comprehensive and effective. The rules adopted in Chapter 8 shall be interpreted and applied to achieve the purposes and objectives for which the commission has been established.  
[1.8.1.6 NMAC-N, 1-1-2020]

**1.8.1.7            DEFINITIONS:**

**A.            “Advisory opinions”** are opinions written by the commission responding to questions presented by persons authorized under Paragraph 1 of Subsection A of Section 10-16G-8 NMSA 1978 about how ethics laws apply to specific fact situations.

**B.            “Interagency agreement”** means an agreement between the commission and another state or federal agency, including memoranda of understanding, joint powers agreements, and services agreements.

**C.            “Joint powers agreement”** as used in this part, has the same meaning as it does in the Joint Powers Agreements Act, Section 1-11-1 NMSA 1978.

**D.            Other words and phrases used in this part have the same meaning as found in 1.8.3.7 NMAC.**  
[1.8.1.7 NMAC-N, 1-1-2020]

**1.8.1.8            DUTIES AND POWERS OF THE DIRECTOR:** Without limiting the duties and powers conferred by statute, the director shall have the power to:

**A.            review complaints filed with the commission for jurisdiction;**

**B.            refer complaints over which the commission has jurisdiction to the general counsel for investigation and possible filing of a complaint;**

**C.            refer complaints, or parts thereof, to other state or federal agencies with jurisdiction over such complaints, pursuant to the terms of any joint powers agreements or other interagency agreements with any such agency;**

**D.            enter into contracts on behalf of the commission, including, with the commission’s approval, joint powers agreements;**

**E.            with the approval of the commission and at the direction of the commission’s chair, petition courts for the issuance and enforcement of subpoenas in relation to:**

- (1) the general counsel's investigations to determine probable cause in connection with a complaint filed with the commission;
- (2) the adjudication of complaints filed with the commission; and
- (3) an investigation related to the commission's determination whether to file a civil court action to enforce any available civil remedy corresponding to any statute or constitutional amendment over which the commission has jurisdiction;
- F. with the approval of the commission, file a civil court action to enforce any available civil remedy corresponding to any statute or constitutional amendment over which the commission has jurisdiction;
- G. select and hire staff, including a general counsel;
- H. select and contract with hearing officers and other contractors;
- I. recommend to the commission adoption of draft rules, forms or legislative changes;
- J. prepare annual budgets and appropriation requests for commission approval;
- K. authorize the general counsel to administer oaths and take depositions;
- L. during a period of vacancy or extended absence in the office of the general counsel, assign any duties assigned to the general counsel by statute or rule to a qualified attorney who is either on the commission's staff or on contract with the commission;
- M. draft advisory opinions for the commission's approval;
- N. notify parties and the public of commission actions, including dismissals or referrals of complaints;
- O. provide for the confidentiality of all records designated as confidential by law;
- P. with commission approval, delay notification of a complaint to protect the integrity of a criminal investigation;
- Q. perform such other duties as may be assigned from time to time by the commission;
- R. issue standing orders to the extent authorized by the commission; and
- S. delegate the responsibilities as set forth in this section to appropriate commission staff members.

[1.8.1.8 NMAC-N, 1-1-2020]

**1.8.1.9 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.

[1.8.1.9 NMAC-N, 1-1-2020]

**1.8.1.10 EXPEDITED WRITTEN ADVICE:**

- A. A person authorized to request an advisory opinion who desires a response in fewer than 60 days for the purpose of deliberation and decision making may submit the request for an advisory opinion to the general counsel, who may answer the request with expedited written advice. The general counsel's expedited written advice is specific to the person who requests the advice and the facts presented in the request. The request and the general counsel's advice are confidential.
- B. The general counsel's expedited written advice is not binding on the commission unless and until the commission votes to adopt the written advice as an advisory opinion. If the commission determines that a person committed a violation after reasonably relying on the general counsel's expedited written advice and the violation is directly related to the general counsel's advice, the commission may consider that the person acted in good faith.

C. Before each regular meeting of the commission, the executive director shall review the general counsel's written advice and draft an advisory opinion based on the expedited written advice for the commission to consider for publication as a formal advisory opinion.

[1.8.1.10 NMAC-N, 1-1-2020]

**1.8.1.11 REFERENCE TO OTHER DOCUMENTS:** When a rule issued by the commission refers to another rule, regulation or statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute or document.

[1.8.1.11 NMAC-N, 1-1-2020]

**1.8.1.12 INTERPRETATION OF TERMS:** Unless the context otherwise requires:

A. Singular/plural. Words used in the singular include the plural; words used in the plural include the singular.

B. Gender. Words used in the neuter gender include the masculine and feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.

C. Permissive/mandatory. May is permissive; shall and must are mandatory.

[1.8.1.12 NMAC-N, 1-1-2020]

**1.8.1.13 USE OF PRESCRIBED FORMS:** The director may prescribe forms to carry out specified requirements of these rules or the state ethics commission act. Prescribed forms, or their substantial equivalent, must be used when available, unless these rules state otherwise or the director waives this requirement in writing. The director shall accept filings made on legible copies of prescribed forms.

[1.8.1.13 NMAC-N, 1-1-2020]

**1.8.1.14 ADDRESS FOR FILING DOCUMENTS:**

A. By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.

C. By email: ethics.commission@state.nm.us.

[1.8.1.14 NMAC-N, 1-1-2020]

**1.8.1.15 COMPUTATION OF TIME:** In computing any period of time prescribed or allowed by these rules, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation, unless it is a Saturday, Sunday or a day on which the state observes a legal holiday or emergency closure. In case of any such closure, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday, legal holiday or emergency closure day is excluded from the computation.

[1.8.1.15 NMAC-N, 1-1-2020]

**1.8.1.16 SEVERABILITY:** If any provision of Chapter 8 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 8 of these rules which can be given effect without the invalidated provisions or applications, and to this end the several provisions of Chapter 8 of these rules are hereby declared severable.

[1.8.1.16 NMAC-N, 1-1-2020]

**History of 1.8.1 NMAC: [RESERVED]**



# A SURVEY OF COMPLAINT CERTIFICATION REQUIREMENTS ACROSS STATE ETHICS COMMISSIONS

**Sonny C. Haquani, Communications Director**

This memorandum provides a nationwide survey of state ethics commission statutes' certification requirements for complaints. I conducted this survey at the request of Executive Director Farris after Commissioner Carruthers and others inquired about the State Ethics Commission Act's notarization requirement, specifically whether the requirement performs a necessary function.

The research summarized in this memorandum answers three questions:

- *What type of certification is required in order for a member of the public to file a formal complaint with the state's ethics commission?*
- *What, if any, are the penalties for complaints made in bad faith?*
- *Is it within a given commission's power to pursue misconduct or otherwise initiate a complaint through an alternate mechanism other than through the receipt of a formal complaint?*

The research is summarized in a table stating whether a jurisdiction's ethics body accepts complaints with only a complainant's signature or if it requires notarization and what penalties are associated with bad-faith complaints. For each jurisdiction surveyed, the table provides a summary answer and a citation to any resources consulted.

If a commission's statute requires that complaints be signed and the commission's complaint form includes a space for notarization, then I categorized commission as having a notarization requirement. Regarding penalties, if a penalty for false or bad-faith complaints extends beyond perjury, then I listed the penalty in an additional separate column.

I also reviewed: 1) each commission's statute; 2) the commission's website; 3) the complaint form if available; and 4) the administrative rules. If I could not determine whether a commission requires notarization from these sources, then I contacted the commission directly and asked whether a complaint must be notarized. Of course, if a commission's statute does not contain a certification requirement, I assumed that the commission did not require notarization unless indicated elsewhere in available sources.

The remainder of this memorandum is divided as follows: 1) a table summarizing each state's certification requirements and any penalties for false complaints; 2) in-depth summaries of states which do not require notarization; and 3) in-depth summaries of commissions that require notarization for formal complaints.

Most states require a complaint to be signed. Many states require that a complaint be notarized. A number of ethics bodies accept anonymous complaints, but this is almost never explicitly authorized by statute. The states that have explicitly authorized the ethics body to pursue allegations outside of a signed or notarized complaint impose different restrictions on the kind of

information the ethics body may accept anonymously and what the body is able to do with that information.

There is also no apparent standard by which a state chooses to require notarization or a signature only. It is likely that a given state’s rule is based on the legislature’s assessment of how likely it is that anonymous complaints will be used to unfairly tarnish the reputation of political candidates or elected officials. It is also important to note that other state ethics commissions have reached a balance between an accessible complaint process which does not require notarization and their ability to pursue remedies for complaints made in bad faith.

Additionally, in light of the recent societal changes related to Covid-19, the Commission should also account for these kinds of externalities that affect how the public interacts with the Commission in the process of making statutory revisions. It could be argued that in a context of increased social distancing and the decreased availability of in-person services, a notarization requirement may function more as an undue burden than as a useful deterrent to abuses of the Commission’s administrative complaint process.

Accordingly, if the Commission proposes that the State Ethics Commission Act be modified to remove the notarization requirement, could draw from the examples to assuage any concerns that loosening the requirements on the filing of complaints will not lead to harassment.

**COMPLAINT REQUIREMENTS AND PENALTIES SPECTRUM**

**Table Description**

**The table below describes the following:**

- i. Certification requirements for formal complaints;
- ii. Penalties for false statements or complaints otherwise made in bad faith;
- iii. Whether a commission has some alternate process whereby it may receive information and begin a preliminary or alternate investigation and complaint process.

**SIGNED:** A state receives a check in the “Signed” column if complaints are required to be signed by a complainant.

**NOTARIZED:** A state receives a check in the “Notarized” column if complaints must be notarized.

**PERJURY:** A state receives a check in the “Perjury” column if it’s statute either specifies perjury as a punishment for false complaints, or if it is silent on a penalty but includes a requirement for certifying a complaint as true and correct.

**BEYOND PERJURY:** A state receives a check in the “Beyond Perjury” column if its statute lists a penalty for a false complaint that goes beyond perjury.

**ALT PROCESS:** Short for Alternate Process, a state receives a check in the “Alt Process” column if there is some provision in its statute allows the commission to act on information received outside of a signed or notarized complaint.

State	Signed	Notarized	Perjury	Beyond Perjury	Alt Process
<b>ALABAMA</b>	✓	✓	✓	✓	

<b>ALASKA</b>	✓	✓	✓		
<b>ARKANSAS</b>	✓	✓			
<b>CALIFORNIA</b>	✓	✓	✓	✓	✓
<b>COLORADO</b>	✓		✓		
<b>CONNECTICUT</b>	✓		✓	✓(2X Damages)	
<b>DELAWARE</b>	✓	✓	✓		
<b>WASH. D.C.</b>	✓	✓			✓
<b>FLORIDA</b>	✓	✓	✓		
<b>GEORGIA</b>	✓	✓	✓		
<b>HAWAII</b>	✓	✓	✓		✓
<b>ILLINOIS</b>				✓(Criminal)	✓
<b>INDIANA</b>	✓				
<b>IOWA</b>	✓		✓		
<b>KANSAS</b>	✓		✓	✓(Criminal)	
<b>KENTUCKY</b>	✓	✓	✓	✓(\$5k fine)	
<b>LOUISIANA</b>	✓	✓	✓	✓(\$10k fine)	
<b>MAINE</b>	✓		✓	✓(Criminal)	
<b>MARYLAND</b>	✓	✓	✓		
<b>MASSACHUSETTS</b>	✓		✓		
<b>MICHIGAN</b>	✓	✓	✓		
<b>MINNESOTA</b>	✓				
<b>MISSISSIPPI</b>	✓	✓	✓	✓(Criminal)	
<b>MISSOURI</b>	✓	✓	✓		
<b>MONTANA</b>	✓	✓	✓		
<b>NEBRASKA</b>	✓	✓*	✓	✓(Criminal)	
<b>NEVADA</b>	✓		✓		
<b>NEW HAMPSHIR</b>	✓	✓	✓		
<b>NEW JERSEY</b>					✓
<b>NEW MEXICO</b>	✓	✓	✓		✓
<b>NEW YORK</b>	✓				✓
<b>NORTH CAROLINA</b>	✓	✓	✓		
<b>NORTH DAKOTA</b>	✓				✓
<b>OHIO</b>	✓	✓	✓		
<b>OKLAHOMA</b>	✓		✓		
<b>OREGON</b>	✓		✓		
<b>PENNSYLVANIA</b>	✓	✓*	✓		
<b>PUERTO RICO</b>	✓				✓
<b>RHODE ISLAND</b>	✓	✓	✓	✓(\$5k fine)	
<b>SOUTH CAROLINA</b>	✓	✓	✓	(\$1k fine or 1yr prison)	
<b>SOUTH DAKOTA</b>	✓				
<b>TENNESSEE</b>	✓	✓	✓		
<b>TEXAS</b>	✓	✓	✓	✓(\$10k fine)	
<b>UTAH</b>	✓	✓	✓		

VERMONT	✓		✓		
WASHINGTON	✓				
WEST VIRGINIA	✓	✓	✓	✓	
WISCONSIN	✓	✓	✓		

## COMMISSIONS THAT ACCEPT COMPLAINTS WITHOUT NOTARIZATION

### 1. Connecticut

The office's statute requires that complaints be signed and sworn but does not implement this a requirement for notarization. The Commission's statute speaks to penalties for bad-faith complaints where the complainant becomes liable for damages and attorney's fees to the respondent upon the commission's determination. The commission's complaint form includes an affirmation to be signed but no space for notarization.

- *[Statute] § 1-82 (a) (1) Upon the complaint of any person on a form prescribed by the Office of State Ethics, signed under penalty of false statement, or upon its own complaint, the ethics enforcement officer of the Office of State Ethics shall investigate any alleged violation of this part or section 1-101nn.*
- *[Statute] § 1-82 (c)... If any complaint brought under the provisions of this part or section 1-101bb is made with the knowledge that it is made without foundation in fact, the respondent shall have a cause of action against the complainant for double the amount of damage caused thereby and if the respondent prevails in such action, the respondent may be awarded by the court the costs of such action together with reasonable attorneys' fees.*

[Conn. Gen. Stat. Ann. § 1-82 \(West 2020\)](#)

### 2. Colorado

The commission's statute requires that complaints be signed. The commission's administrative Rules of Procedure indicate that anonymous complaints will not be accepted. The commission's Complaint Form Instructions also indicate complaints should not be anonymous and may be rejected at the commission's discretion.

- *[Statute] § 24-18.5-101 (4) (a) To hear complaints, issue findings, and assess penalties on ethics issues arising under article XXIX and other standards of conduct and reporting requirements as provided by law;*
- *[Rules of Procedure] (7) (B.) Complaints must be submitted in writing, signed, and filed with the IEC at the offices of the IEC. A complaint must be either hand delivered to the IEC or sent to the IEC's offices via first class mail, facsimile, or electronic mail (email). Filing by email is encouraged. Anonymous complaints shall not be considered.*
- *[Complaint form Instructions] The complainant's signature is required. As such, anonymously submitted complaints are discouraged and, in the IEC's discretion, may not be accepted.*

[\(Colo. Rev. Stat. Ann. § 24-18.5-101 \(West 2020\)](#)

### 3. Illinois

The statute is silent on certification requirements, and further, the commission's website

permits complaints to be anonymous. The statute is silent on penalties for bad-faith complaints but includes provisions which could be read to subject bad-faith complaints to a Class A misdemeanor. The statute provides for an Office of Inspector General that preliminarily investigates complaints prior to the commission. Complaints that pass preliminary investigation are forwarded to the commission in the proper branch.

- [\[Statute\]](#) **5 ILL. COMP. STAT ANN. 430/20-15 (2) Duties of the Executive Ethics Commission.** *To conduct administrative hearings and rule on matters brought before the Commission only upon the receipt of pleadings filed by an Executive Inspector General, or upon receipt of summaries of reviews submitted by the Inspector General for the Secretary of State under subsection (d-5) of Section 14 of the Secretary of State Act, and not upon its own prerogative, but may appoint special Executive Inspectors General as provided in Section 20-21. Any other allegations of misconduct received by the Commission from a person other than an Executive Inspector General shall be referred to the Office of the appropriate Executive Inspector General.*
- [\[Statute\]](#) **5 ILL. COMP. STAT ANN. 430/20-20. (1). Duties of the Executive Inspectors General.** *In addition to duties otherwise assigned by law, each Executive Inspector General shall have the following duties: (1) To receive and investigate allegations of violations of this Act.*
- [\[Website\]](#) *Complaints regarding allegations of misconduct, fraud, waste, etc. related to entities under the jurisdiction of the Office of Executive Inspector General for the Agencies of the Illinois Governor may be submitted by anyone. Complaints may be submitted anonymously; however, a complaint must relate to the official conduct of:*
- [\[Statute\]](#) **5 ILL. COMP. STAT ANN. 430/50-5 . Penalties.** *(d) Any person who intentionally makes a false report alleging a violation of any provision of this Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor.*  
[5 Ill. Comp. Stat Ann. 430/20-15, 20-20, 50-5 \(West 2020\)](#)

#### 4. Indiana

The statute is silent on certification requirements and penalties for false complaints. Additionally, the commission's complaint form does not include a space for notarization.

- [\[Statute\]](#) **Sec. 4. (a) The commission may do any of the following:**  
*(1) Upon a vote of four (4) members, refer any matter within the inspector general's authority to the inspector general for investigation.*  
*(2) Receive and hear any complaint filed with the commission by the inspector general that alleges a violation of:*  
[Ind. Code Ann. § 4-2-6-4 \(West 2020\)](#)

#### 5. Iowa

The board's statute requires that complaints be signed under penalty of perjury. The board's complaint form includes a signature block for certifying the truth of the statements under penalty of perjury but not a space for notarization.

- [\[Statute\]](#) **§ 68B.32B** *A complaint must include the name and address of the complainant, a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged, and a certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge.*
- [\[Complaint Form\]](#)

[Iowa Code Ann. § 68B.32B \(West 2020\)](#)

**6. Kansas**

The statute requires complaints to be verified and implements this as an oath to be sworn to on the complaint form but not notarized. The statute is silent on penalties for false complaints, but the complaint form oath specifies false statements as a Class B misdemeanor.

- [\[Statute\]](#) *Any individual, including any member of the commission, may file with the commission a verified complaint in writing stating the name of any person to whom or which this act applies alleged to have violated any provision of this act, and which shall set forth the particulars thereof.*

- [\[Complaint Form\]](#)

[Kan. Stat. Ann. § 46-255 \(West 2020\)](#)

**7. Maine**

The commission's statute requires complaints to be signed under oath. The commission's complaint form provides a space to sign under an oath, but not a space for notarization. Bad-faith complaints are subject to criminal penalty.

- [\[Statute\]](#) *§ 1013 B-1. Any person may file a complaint against a Legislator alleging a violation of legislative ethics only as described in sections 1014 and 1015. The complaint must be filed in writing and signed under oath and must specify the facts of the alleged violation citing the specific provisions of sections 1014 and 1015 that are alleged to have been violated, the approximate date of the alleged violation and such other information as the commission requires.*

- [\[Statute\]](#) *§ 1020 Any person who files a false charge of a conflict of interest with the commission or any member of the commission, which he does not believe to be true, or whoever induces another to file a false charge of a conflict of interest, which he does not believe to be true, shall be guilty of a Class E crime.*

- [\[Complaint Form\]](#)

[Me. Rev. Stat. Ann. tit. 1, § 1013 \(West 2020\)](#)

**8. Massachusetts**

The commission's statute requires complaints to be sworn under penalty of perjury. The commission's website invites people to fill out and submit complaints submit complaints online, indicating that they do not require notarization in practice.

- [\[Statute\]](#) *Section 4. (a) Upon receipt of a sworn complaint signed under the penalties of perjury, or upon receipt of evidence which is deemed sufficient by the commission, the commission shall initiate a preliminary inquiry into any alleged violation of chapter 268A or 268B.*

- [\[Website\]](#) *You may file a complaint by using an online form.*

- [\[Website\]](#) *The Commission will not accept anonymous online complaints. If you wish to file an anonymous complaint, you may call the Commission at 617-371-9500 or send a letter to:*

[Mass. Gen. Laws Ann. ch. 268B, § 4 \(West 2020\)](#)

**9. Minnesota**

The board's statute is silent on certification requirements for complaints and penalties for

false complaints. Additionally, the complaint form does not include a space for notarization.

- [\[Statute\]](#) *Subd. 3. Investigation authority; complaint process. (a) The board may investigate any alleged or potential violation of this chapter. The board may also investigate an alleged or potential violation of section 211B.04, 211B.12, or 211B.15 by or related to a candidate, treasurer, principal campaign committee, political committee, political fund, or party unit, as those terms are defined in this chapter. The board may only investigate an alleged violation if the board:*
  - (1) receives a written complaint alleging a violation;
  - (2) discovers a potential violation as a result of an audit conducted by the board; or
  - (3) discovers a potential violation as a result of a staff review.

- [\[Website\]](#)

[Minn. Stat. Ann. § 10A.022 \(West 2020\)](#)

## 10. Nevada

The commission's statute requires complaints to be signed under oath and is silent on penalties for bad-faith complaints. The commission's complaint form does not include a space for notarization.

- [\[Statute\]](#) 281A.710 (2) *An ethics complaint filed by a person must be: (a) Verified under oath and filed on a form prescribed by the Commission;*
- [\[Complaint Form\]](#)

[Nev. Rev. Stat. Ann. § 281A.710 \(West 2020\)](#)

## 11. New Jersey

The commission's statute is silent on certification requirements for complaints. Additionally, the commission's administrative rules are silent on certification requirements. The commission does not have its complaint form online but accepts complaints over the phone.

- [\[Statute\]](#) 52:13D-21 (h) *The commission shall have jurisdiction to initiate, receive, hear and review complaints regarding violations, by any current or former State officer or employee or current or former special State officer or employee, in the Executive Branch, of the provisions of P.L.1971, c. 182 (C.52:13D-12 et al.) or of a code of ethics promulgated pursuant to the provisions of P.L.1971, c. 182 (C.52:13D-12 et al.). Any complaint regarding a violation of a code of ethics may be referred by the commission for disposition in accordance with subsection (d) of section 12 of P.L.1971, c. 182 (C.52:13D-23).*

*(m) The commission shall create and maintain a toll-free telephone number to receive comments, complaints and questions concerning matters under the jurisdiction of the commission. Information or questions received by the commission by this means shall be confidential and not accessible to the public pursuant to P.L.1963, c. 73 (C.47:1A-1 et seq.).*

[N.J. Stat. Ann. 52:13D-21 \(West 2020\)](#)

## 12. New York (Practice Diverges from Statute)

The statute requires complaints to be sworn before an attesting officer. The commission's website, however, notes that complaints can be made anonymously and presents notarization as an optional step. Additionally, the commission also offers the ability to

“submit a tip” via an ethics hotline. The commission’s complaint form includes a space for notarization with a preface indicating that it is optional.

- [\[Statute\]](#) **§ 94** (9)(g) *Receive complaints and referrals alleging violations of section seventy-three, seventy-three-a or seventy-four of the public officers law, article one-A of the legislative law or section one hundred seven of the civil service law;*
- [\[Statute\]](#) **§ 94** (13)(a) *Investigations. If the commission receives a sworn complaint alleging a violation... the commission shall notify the individual in writing, describe the possible or alleged violation of such laws, provide a description of the allegations against him or her and the evidence, if any, supporting such allegations, provided however that the joint commission shall redact any information that might, in the judgment of the commission, be prejudicial to either the complainant or the investigation; the letter also shall set forth the sections of law alleged to have been violated and provide the person with a fifteen day period in which to submit a written response, including any evidence, statements, and proposed witnesses, setting forth information relating to the activities cited as a possible or alleged violation of law.*
- [\[Website\]](#) *All complaints are reviewed by the Commission. A complaint does not need to be sworn. However, if a complaint is sworn to under oath or affirmed before an attesting officer (“sworn complaint”), in accordance with Executive Law § 94, the Commission shall, within sixty calendar days after a sworn complaint is received, determine whether a full investigation shall occur.*
- [\[Website\]](#) *The complainant may choose to remain anonymous. If the complainant is identified, contact information should also be included.*  
[N.Y. Executive Law § 94 \(McKinney 2020\)](#)

### 13. North Dakota

The commission does not appear to be fully established and does not yet have a website. However, according to the National Conference of State Legislatures, the commission will have a whistleblower hotline where people can submit anonymous complaints.

- [\[Website\]](#) *The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information.*  
[NCLS Overview of State Ethics Commissions](#)

### 14. Oklahoma

The commission’s statute requires that a complainant certify that he or she has personal knowledge of the facts alleged and prohibits any action on a complaint from an anonymous source. Bad-faith complaints subject a complainant the commission’s jurisdiction. The commission does not have a prescribed complaint form and does not interpret its certification requirement as a requirement for notarization.

- [\[Statute\]](#) **Rule 6.3.** (A) *A member of the Commission or an employee of the Commission may accept a complaint from any source; provided, however, no complaint shall be accepted from an anonymous source.*
- [\[Statute\]](#) **Rule 6.3.** (B) *Any person other than a member or an employee of the Commission who files a written complaint alleging a violation of any Rule shall (1) cite the Rule or Rules alleged to have been violated, (2) describe in detail the facts alleged to*



have caused a violation of a Rule to occur and the name of any individual involved in the alleged violation, (3) certify that he or she has personal knowledge of the facts alleged. It shall be a violation of these Rules for any person to willfully, knowingly and without probable cause make a false complaint alleging a violation of these Rules. A frivolous complaint shall be deemed to be a violation of these Rules by the person making the complaint. A frivolous complaint means the complaint was knowingly asserted in bad faith, was unsupported by any credible evidence, was not grounded in fact, or was unwarranted by existing law. Any person who files a written complaint shall, by doing so, submit to the jurisdiction of the Commission for purposes of this paragraph. It shall be a violation of these Rules for any state officer or employee to take retaliatory action against any subordinate state officer or employee because the subordinate state officer or employee filed a complaint other than a false complaint or a frivolous complaint.

- **[Phone Call with Staff] (3/18/2020)** Staff member indicated that the commission does not have a complaint form and that written complaints do not need to be notarized.

[Okla. Stat. tit. 74, § 6.3. \(West 2020\)](#)

## 15. Oregon

The commission's statute requires that complaints be signed but is silent on penalties for bad-faith complaints.

- **[Statute]** § 171.776 (1) *In addition to the duties prescribed in ORS 171.772, the Oregon Government Ethics Commission may make inquiries or investigations in the manner prescribed in ORS 171.778 with respect to registrations, statements and reports filed under ORS 171.725 to 171.785, and with respect to any alleged failure to register or to file any statements or reports required under ORS 171.725 to 171.785, and upon signed complaint by any individual or on its own instigation, with respect to apparent violation of any part of ORS 171.725 to 171.785.*

[Or. Rev. Stat. Ann. § 171.776 \(West 2020\)](#)

## 16. Puerto Rico

The commission's statute states that there are no certification requirements for complaints because the preliminary submission is treated as a petition to begin an investigation, not a full and formal complaint. The statute can be read to give discretion to the commission to not pursue any petition.

- **[Statute]** *Any person may petition the Office to initiate an investigation under the provisions of this Act. Such petition may be presented by any means, including anonymously. The Office may also initiate an investigation on its own motion.*

[Ethics Act of Puerto Rico – Section 7.1](#)

## 17. South Dakota

The commission's statute is silent on certification requirements as well as anonymous complaints. The commission's complaint form includes a space to be signed but not notarized.

- **[Statute]** 3-24-4. **Information, reports, and complaints to board--Confidentiality of records.** *Any person acting in good faith may:*

*...File a complaint with the board alleging a violation of any subdivision of § 3-24-3.*

[S.D. Codified Laws – 3-24-4 \(West 2020\)](#)

## 18. Vermont

The commission's statute requires complaints to be signed by the complainant. The commission's statute is silent on specific penalties for false complaints.

- [\[Statute\]](#) § 1223 (a) (1) *On behalf of the Commission, the Executive Director shall accept complaints from any source regarding governmental ethics in any of the three branches of State government or of the State's campaign finance law set forth in 17 V.S.A. chapter 61.*  
(a) (2) *Complaints shall be in writing and shall include the identity of the complainant.*  
[Va. Code Ann. § 1223 \(West 2020\)](#)

## 19. Washington

The board's statute is silent on certification requirements. The board's online complaint form states that a complainant does not need to list his or her name.

- [\[Statute\]](#) *Wash. Rev. Code § 42.52.410 (1) A person may, personally or by his or her attorney, make, sign, and file with the appropriate ethics board a complaint on a form provided by the appropriate ethics board. The complaint shall state the name of the person alleged to have violated this chapter or rules adopted under it and the particulars thereof, and contain such other information as may be required by the appropriate ethics board.*
- [\[Statute\]](#) *Wash. Rev. Code § 42.52.420 (1) After the filing of any complaint, except as provided in RCW 42.52.450, the staff of the appropriate ethics board shall investigate the complaint. The ethics board may request the assistance of the office of the attorney general or a contract investigator in conducting its investigation.*
- [\[Website\]](#) *You are not required to provide your name. However, if you choose not to provide your name, we are unable to keep you updated on the progress of our investigation, or to consult with you regarding the details of your complaint.*  
[Wash. Rev. Code § 42.52.410-420 \(West 2020\)](#)

## **COMMISSIONS THAT REQUIRE NOTARIZATION FOR FORMAL COMPLAINTS:**

### 20. Alabama (Practice Goes Beyond Statute)

The commission's statute is silent on specific certification requirements for formal complaints, but it notes that the commission shall not accept anonymous complaints. The commission's complaint form includes a space for notarization. The statute speaks to violations of the chapter being a Class B felony which can be read to extend to false statements or bad-faith complaints. The commission's website also clearly states that the commission will not accept anonymous or unsigned complaints.

- [\[Statute\]](#) § 36-25-4 (a)(7) *Make investigations with respect to statements filed pursuant to this chapter, and with respect to alleged failures to file, or omissions contained therein, any statement required pursuant to this chapter and, upon complaint by any individual, with respect to alleged violation of any part of this chapter to the extent authorized by law.*

- [\[Statute\]](#) § 36-25-4 (d) *The commission shall not take any investigatory action on a telephonic or written complaint against a respondent so long as the complainant remains anonymous.*
- [\[Statute\]](#) § 36-25-27 (a)(1) *Except as otherwise provided, any person subject to this chapter who intentionally violates any provision of this chapter other than those for which a separate penalty is provided for in this section shall, upon conviction, be guilty of a Class B felony.*
- [\[Website\]](#) *The Alabama Ethics Commission is prohibited from accepting Verbal Complaints, Anonymous Complaints or Unsigned Complaints.*
- [\[Complaint Form\]](#)  
[Ala. Code 1975 § 36-25-4](#), [Ala. Code 1975 § 36-25-27](#) (West 2020)

## 21. Alaska

The committee's statute requires that complaints be signed under oath and the Committee's website clarifies this as a requirement for notarization. The committee's statute is silent on penalties for false statements.

- [\[Statute\]](#) § 24.60.170 (b) *A complaint may be initiated by any person. The complaint must be in writing and signed under oath by the person making the complaint and must contain a statement that the complainant has reason to believe that a violation of this chapter has occurred and describe any facts known to the complainant to support that belief.*
- [\[Website\]](#) *If you are considering filing a complaint, you are encouraged to use a complaint form. A blank complaint form is available on this web site. Complaints will be accepted in any form so long as they are in writing and notarized. NOTE: The committee does not accept complaints through e-mail. They must be signed, notarized and mailed or hand delivered, in a sealed envelope.*  
[Alaska Stat. Ann. § 24.60.170 \(West 2020\)](#)

## 22. Arkansas

The commission's statute requires that complaints be signed under penalty of perjury. Frivolous or false complaints constitute a violation of the chapter and subject complainant to commission jurisdiction with the respondent able to file a counter complaint seeking sanctions. The commission treats certification requirement as a requirement for notarization, a space for which is included on the complaint form.

- [\[Statute\]](#) § 7-6-218. (b) (1) (A) *Upon a complaint stating facts constituting an alleged violation signed under penalty of perjury by any person, the commission shall investigate the alleged violation of this subchapter...*
- [\[Statute\]](#) § 7-6-218. (D) *Filing of a frivolous complaint shall be a violation of this subchapter. For purposes of this section, "frivolous" means clearly lacking any basis in fact or law. In any case in which the commission has dismissed a complaint, the respondent may request in writing that the commission make a finding as to whether or not the complaint filed was frivolous. In the event that the commission finds that the complaint was frivolous, the respondent may file a complaint seeking sanctions as provided in § 7-6-218(b)(4).*
- [\[Complaint Form\]](#)

[\(Ark. Code Ann. § 7-6-218\)](#)

### 23. California\* (Statute and Practice Provide for Alternate Track)

The commission's statute requires that complaints be signed and sworn to. Additionally, the statute is silent on specific penalties for bad-faith or frivolous complaints but does include provisions which could be construed to empower the commission to pursue civil action against a person who abuses the complaint process or commits perjury in the form of false allegations in a complaint. [The commission's website](#) invites complainants to be made anonymously or unsigned but also notes that this will leave the complainant without privileges of notification regarding the complaint. The website also indicates a way for sworn complaints to be made without disclosing the identity of the complainant to the respondent but only with the approval of a commission attorney.

- [\[Statute\]](#) § 83115. *Investigations; Notice.* Upon the sworn complaint of any person or on its own initiative, the Commission shall investigate possible violations of this title relating to any agency, official, election, lobbyist or legislative or administrative action.
- [\[Statute\]](#) § 81004. *Reports and Statements; Perjury; Verification.\** (a) All reports and statements filed under this title shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his knowledge it is true and complete. (This provision appears to apply mostly to the kinds of statements/reports required by the commission of various persons subject to ethics laws, such as campaign finance reports. However, it could be read broadly to apply to complaints as well.)
- [\[Statute\]](#) § 91005.5. *Civil Penalties.* Any person who violates any provision of this title, except Sections 84305, 84307, and 89001, for which no specific civil penalty is provided, shall be liable in a civil action brought by the commission or the district attorney pursuant to subdivision (b) of Section 91001, or the elected city attorney pursuant to Section 91001.5, for an amount up to five thousand dollars (\$5,000) per violation. (This provision appears to be a catch all proviso which enables the commission to pursue civil action against any person who violates the statute. Given that the statute does provide for complaints to be sworn and the provision does not exclude the section which speaks to the complaint filing requirements (83115), this could be read to allow the commission to file civil actions against a complainant for a false/frivolous/bad-faith complaint regardless of whether it was submitted anonymously or sworn under penalty of perjury).
- [\[Website\]](#) 1. You may make the complaint anonymously. Check "Anonymous Complaint." The Enforcement Division will evaluate your claim and has the authority to pursue a complaint on its own initiative. Please note: An anonymous complainant is not entitled to any notification of whether the matter will be investigated or the ultimate resolution.  
[Cal. Government Code § 81004, 83115, 91005.5](#) (West 2020)

### 24. Delaware

The commission's statute requires that complaints be sworn. The commission's website clearly states that complaints must be notarized. The commission's statute does not speak specifically to penalties for false statements or bad-faith complaints.

- [\[Statute\]](#) § 5810 (a) Upon the sworn complaint of any person or on its own initiative, the Commission may refer to the Commission Counsel for investigation any alleged violations of this chapter.

- [/Website/](#) *A Complaint can be filed by any person, including members of the public. A Complaint must be in writing (an email submission is not acceptable) and it must be formally notarized pursuant to 29 Del. C. § 4328(3). There are several different ways a document can be notarized. Make sure your submission is notarized pursuant to subsection (3). If the Complaint is not properly notarized, it will be deemed to have a procedural defect and the Commission will dismiss the Complaint.*

[Del. Code Ann. tit. 29, § 5810 \(West 2020\)](#)

## 25. Florida

The Commission’s statute requires that complaints be signed under oath but does not speak to specific penalties for bad-faith complaints. The complaint form includes a space for notarization.

- [/Statute/](#) **§ 112.324 (1)** *The commission shall investigate an alleged violation of this part or other alleged breach of the public trust within the jurisdiction of the commission as provided in s. 8(f), Art. II of the State Constitution: (a) Upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person; or ...*
- [/Complaint Form & Instructions/](#) **SECTION FOUR—Oath:** *Complaints must be sworn before a notary or other official authorized to administer oaths. Unsworn complaints will be returned.*

[Fla. Stat. § 112.324 \(West 2020\)](#)

## 26. Georgia

The commission’s statute requires that complaints must be verified under oath subject to penalty of perjury.

- [/Statute/](#) **§ 21-5-7** *The commission shall not initiate any investigation or inquiry into any matter under its jurisdiction based upon the complaint of any person unless that person shall produce the same in writing and verify the same under oath to the best information, knowledge, and belief of such person, the falsification of which shall be punishable as false swearing under Code Section 16-10-71.*

[Ga. Code Ann. § 21-5-7 \(West 2020\)](#)

## 27. Hawaii (Statute and Practice Provide for Alternate Track)

Statute requires that formal “charges” must be sworn under penalty of perjury, however, the commission’s [website](#) indicates that informal “complaints” can be sent to the commission anonymously.

- [/Statute/](#) **§84-31 Duties of commission; complaint, hearing, determination (b)** *Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission shall be signed by three or more members of the commission.*
- [/Administrative Rule/ \(HAR\)](#) **§ 21-5-1 (A)** *...The oath may be administered by a notary public of the State of Hawaii or any other person authorized by law in the State of Hawaii to administer oaths.*
- [/Statute/](#) **§84-31.3 Filing of false charges.** *(a) Any person who knowingly and intentionally files a false charge with the commission, or any member of the commission who initiates action against any state official, state employee, or any other person covered by this chapter, knowing such charge to be false, shall be guilty of the crime of perjury and subject to the penalty set forth in*

section 710-1060.

- **[Website] Contact us with a complaint.** You can call us, e-mail us, or send us a letter alleging a violation of the State Ethics Code or the Lobbyists law – all we need is a brief description of the alleged violation and the name and state position (or organization) of the alleged violator, if known. All complaints are confidential. Most complaints lodged with the Commission are done through this “informal” method, though you can also file a formal Charge directly with the Commission (see below, “File a Charge directly with the Commission”). When the Commission staff receive a complaint, it’s processed as follows:

[Haw. Rev. Stat. § 84-31 \(West 2020\)](#)

## 28. Kentucky

The commission’s statute requires complaints to be made under oath subject to penalty of perjury with bad-faith complaints subject to fines up to \$5,000.

- **[Statute] § 11A.080 (1) (a)** *Upon a complaint signed under penalty of perjury by any person, or upon its own motion, the commission shall conduct a preliminary investigation of any alleged violation of this chapter.*
- **[Statute] § 11A.990 (3)** Any person who maliciously files with the commission a false charge of misconduct on the part of any public servant or other person shall be fined not to exceed five thousand dollars (\$5,000), or imprisoned in a county jail for a term not to exceed one (1) year, or both.

[Ky. Rev. Stat. Ann. § 11A.080, § 11A.990 \(West 2020\)](#)

## 29. Louisiana

The statute requires that complaints be sworn to, with bad-faith complaints made subject to penalties set forth in another section which specifies fines up to \$10,000.

- **[Statute] 42:1134 APPLICATION--ACTS 2012, NO. 608 Section 3 of Acts 2012, No. 608** provides:  
*“Section 3. The provisions of this Act shall have prospective application only and the provisions of [R.S. 42:1141\(C\)\(3\)\(c\)](#) as amended by this Act shall apply only to matters initiated by sworn complaint received or, if no sworn complaint was received, vote by the Board of Ethics, on or after the effective date of this Act.”*
- **[Statute] § 42:1141 (b)(3)** *Any person who, with knowledge of its falsity, makes a false complaint shall be subject to the penalties set forth in R.S. 42:1153. [1153 specifies a fine up to \$10,000]*  
[La. Rev. Stat. Ann. § 42:1134, § 42:1141 \(West 2020\)](#)

## 30. Maryland

The commission’s statute requires that complaints be signed under oath. The commission’s complaint form includes a space for notarization. The commission’s statute is silent on penalties for false complaints.

- **[Statute] § 5-401 (1)** *Any entity may file with the Ethics Commission a written complaint alleging a violation of this title.*  
*(2) A complaint filed under this subsection shall be:*
  - (i) signed; and*
  - (ii) made under oath.*

- [\[Complaint Form\]](#)  
[Md. Code Ann., General Provisions § 5-401 \(West 2020\)](#)

### 31. Michigan (Practice Goes Beyond Statute)

The board's statute is silent on certification requirements for complaints and penalties for bad-faith complaints. The board's administrative rules require complaints to be signed and notarized.

- [\[Statute\]](#) § 15.345 Sec. 5. (1) *The board shall: (a) Receive complaints concerning alleged unethical conduct by a public officer or employee from any person or entity, inquire into the circumstances surrounding the alleged unethical conduct, and make recommendations concerning individual cases to the appointing authority with supervisory responsibility for the person whose activities have been investigated. All departments of state government shall cooperate with the board of ethics in the conduct of its investigations.*
- [\[Rule\]](#) R 15.5 Complaints and answers. (1) *Any person or entity, known as the complainant, may file a complaint charging a public officer or employee with unethical conduct. (2) The complaint shall comply with all of the following requirements: (a) Be in writing. (b) Specify 1 or more of the standards of prohibited conduct outlined in section 2 of the act, MCL 15.342, that was allegedly violated. (c) Include evidentiary facts supporting the allegations in the complaint. (d) Contain a statement that the complainant or designee has read the complaint and knows its contents, and believes the alleged violations to be true. (e) Contain the signature of the complainant or designee before a notary.*

[Mich. Comp. Laws Ann. § 15.345 \(West 2020\)](#), [Rule 15.5](#)

### 32. Mississippi

The commission's statute requires complaints to be signed under oath. The commission's complaint form includes a space for notarization. The commission's statute specifies felony charges for false complaints.

- [\[Statute\]](#) § 25-4-19 (e) *Upon a complaint signed under oath by any person, including any member of the commission or its staff or referred to the commission by the Joint Legislative Committee on Performance Evaluation and Expenditure Review, investigate, as provided in Section 25-4-21, any alleged violation of law by public officials or public employees;*
- [\[Statute\]](#) § 25-4-31 (2) *Any person who willfully and knowingly files a false complaint with the commission or who willfully affirms, reports or swears falsely in regard to any material matter before a commission proceeding is guilty of a felony, and, upon conviction, shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or committed to the custody of the Department of Corrections for not more than five (5) years, or by both such fine and imprisonment.*
- [\[Complaint Form\]](#)

[Miss. Code § 25-4-19 \(West\)](#)

### 33. Missouri

The commission's statute requires that complaints be sworn under penalty of perjury. The commission's complaint form includes a space for notarization.

- [\[Statute\]](#) § 105.957 2. Complaints filed with the commission shall be in writing and filed only by a natural person. The complaint shall contain all facts known by the complainant that have given rise to the complaint and the complaint shall be sworn to, under penalty of perjury, by the complainant. No complaint shall be investigated unless the complaint alleges facts which, if true, fall within the jurisdiction of the commission. Within five days after receipt of a complaint by the commission, a copy of the complaint, including the name of the complainant, shall be delivered to the alleged violator.
- [\[Complaint Form\]](#)  
[Mo. Ann. Stat. § 105.957 \(West 2020\)](#)

#### 34. Montana (Practice Goes Beyond Statute)

The commission's statute is silent on certification requirements and penalties for bad-faith complaints. The commission's administrative rules require that complaints must be signed under oath and notarized.

- [\[Statute\]](#) § 13-37-111 (2) The commissioner may:  
(a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.
- [\[Rule\]](#) 44.11.106 (2) (c) be signed and verified by the oath or affirmation of the complainant, taken before any officer authorized to administer oaths.  
[Mont. Code Ann. § 13-37-111 \(West 2020\)](#) [Mont. Admin. R. 44.11.106](#)

#### 35. Nebraska

The commission's statute requires complaints to be signed under oath. Additionally, bad-faith complaints are treated as a class 4 felony.

- [\[Statute\]](#) § 49-14,124 (1) The commission shall, by way of preliminary investigation, investigate any alleged violation of the Nebraska Political Accountability and Disclosure Act, or any rule or regulation adopted and promulgated thereunder, upon: (a) The receipt of a complaint signed under oath which contains at least a reasonable belief that a violation has occurred;
- [\[Statute\]](#) § 49-14,134 In addition to penalties otherwise provided in the Nebraska Political Accountability and Disclosure Act, any person who files a statement or report required under the act knowing that information contained in the statement or report is false or that the verification statement required on the document is false shall be guilty of a Class IV felony.
- [\[Direct Contact\]](#) (Call on 3/18/202) The General Counsel of the Commission specified that in practice, the commission treats the certification standard as a requirement for notarization.  
[Neb. Rev Stat. Ann. § 49-14,124, § 49-14,134 \(West 2020\)](#)

#### 36. New Hampshire

The Committee's statute requires complaints to be signed under oath and penalty of perjury.



- [\[Statute\]](#) § 14-B:4 (I) Each complaint shall be submitted in writing and signed under oath by the complainant.
- [\[Complaint Form\]](#)  
[N.H. Rev. Stat. Ann. § 14-B:4 \(West 2020\)](#)

### 37. New Mexico

The Commission's statute requires that complaints be signed under penalty of perjury specifies notarization.

- [\[Statute\]](#) § 10-16G-2 (D) "complaint" means a complaint that has been signed by the complainant and the complainant attests under oath and subject to penalty of perjury before a notary public that the information in the complaint, and any attachments provided with the complaint, are true and accurate.  
[N.M. Stat. Ann. § 10-16G-2 \(West 2020\)](#)

### 38. North Carolina

The statute requires that complaints be signed and sworn under oath subject to penalty of perjury. The commission's website specifies that complaints are required to be notarized.

- [\[Statute\]](#) § 138A-12 (e) Complaint.-- (1) A sworn complaint filed under this Chapter shall state the name, address, and telephone number of the individual filing the complaint, the name and job title or appointive position of the covered person or legislative employee against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes or G.S. 126-14 or the criminal law in the performance of that individual's official duties has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.
- [\[Website\]](#)  
[N.C. Gen. Stat. Ann. § 138A \(West 2020\)](#)

### 39. Ohio

The commissions statute requires that complaints be signed by affidavit under penalty of perjury.

- [\[Statute\]](#) § 102.06 (A) The appropriate ethics commission shall receive and may initiate complaints against persons subject to this chapter concerning conduct alleged to be in violation of this chapter or section 2921.42 or 2921.43 of the Revised Code. All complaints except those by the commission shall be by affidavit made on personal knowledge, subject to the penalties of perjury. Complaints by the commission shall be by affidavit, based upon reasonable cause to believe that a violation has occurred.  
[Ohio Rev. Code Ann. § 102.06 \(West 2020\)](#)

### 40. Pennsylvania (Practice Goes Beyond Statute)

The commission's statute requires that complaints be signed under penalty of perjury. The commission interprets its requirement for complaints to be signed as a requirement for notarization, a space for which is included on its complaint form.

- [\[Statute\]](#) § 1108 Preliminary inquiry.--Upon a complaint signed under penalty of perjury by any person or upon its own motion, the commission, through its executive director, shall conduct a preliminary inquiry into any alleged violation of this chapter.
- [\[Complaint form\]](#)  
[65 Pa Cons Stat. Ann. § 1108 \(West 2020\)](#)

#### 41. Rhode Island

The commission's statute requires that complaints be made under oath, and further specifies that complaints made in bad-faith are subject to a fine up to \$5,000, all or part of which may be paid to the respondent.

- [\[Statute\]](#) [§ 36-14-12](#) (b) *Any person, including any member of the commission, may file with the commission a complaint alleging a violation of this chapter. Any complaint filed with the commission shall be a statement in writing under oath which shall include the name of the person alleged to have committed the violation and which shall set forth in detail the specific act or acts complained of.*
- [\[Statute\]](#) [§ 36-14-12](#) (d) *The commission, upon a finding pursuant to this section that there fails to exist probable cause for a violation of this chapter, shall issue an order dismissing the complaint, and if it finds the complaint to be frivolous, unreasonable, or groundless, the commission shall require the person filing the complaint to pay a civil penalty of not more than five thousand dollars (\$5,000), all or part of which may be paid to the subject of the complaint in reimbursement of said subject's reasonable expenses of defense.*

[R.I. Gen. Laws Ann. § 36-14-12 \(West 2020\)](#)

#### 42. South Carolina

commission's statute requires complaints to be verified. The commission treats this certification standard as a requirement for notarization, a space for which is included on the complaint form. The commission's statute also includes a provision which would allow the commission to file a complaint on its own motion based on any information, so long as the commissioners agree by vote. Bad-faith complaints are considered a misdemeanor and subject to either a fine or 1 year in prison.

- [\[Statute\]](#) [§ 8-13-320](#) (10) (a) *The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation.*
- [\[Statute\]](#) [§ 8-13-320](#) (d) *If the commission, upon the receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of six or more members of the commission, file a verified complaint, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.*
- [\[Statute\]](#) [§ 8-13-320](#) *If an alleged violation is found to be groundless by the commission, the entire matter must be stricken from public record. If the commission finds that the complaining party willfully filed a groundless complaint, the finding must be reported to the Attorney General. The willful filing of a groundless complaint is a misdemeanor and, upon conviction, a person must be fined not more than one thousand dollars or imprisoned not more than one year.*

[S.C. Code Ann. § 8-13-320 \(West 2020\)](#)

#### 43. Tennessee

The Bureau's statute requires that complaints be signed and sworn before a notary public. The statute is silent on penalties for bad-faith complaints.

- [\[Statute\] § 3-6-201 \(a\) \(1\)](#) Any citizen of Tennessee may file a sworn complaint executed on a form prescribed by the Tennessee ethics commission alleging a violation of laws or rules within the jurisdiction of the commission.

[Tenn. Code Ann. §3-6-201 \(West 2020\)](#)

#### 44. Texas

The commission’s statute requires that complaints be signed and sworn before a notary public. The statute also provides for a penalty fines up to \$10,000 for bad-faith complaints.

- [\[Statute\] § 571.122 \(a\)](#)An individual may file with the commission a sworn complaint alleging that a person subject to a law administered and enforced by the commission has violated a rule adopted by or a law administered and enforced by the commission.  
(c) The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either correct or that the complainant has good reason to believe and does believe that the violation occurred. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant may swear to the facts by oath before a notary public or other authorized official.
- [\[Statute\] § 571.176 \(a\)](#) The commission may impose a civil penalty of not more than \$10,000 for the filing of a frivolous or bad-faith complaint. In this subsection, “frivolous complaint” means a complaint that is groundless and brought in bad faith or is groundless and brought for the purpose of harassment.  
(b) In addition to other penalties, a person who files a frivolous complaint is civilly liable to the respondent in an amount equal to the greater of \$10,000 or the amount of actual damages incurred by the respondent, including court costs and attorney fees.

[Tex. Code Ann. § 571.122 \(West 2020\)](#)

#### 45. Utah

The commission’s statute requires that complaints be signed and accompanied by an affidavit. The complaint form includes a space for notarization. The commission’s statute is silent on specific penalties for false complaints.

- [\[Statute\] § 63A-15-501 \(4\)](#)An affidavit described in Subsection shall include:  
(a) the name, address, and telephone number of the signer;  
(b) a statement that the signer has actual knowledge of the facts and circumstances alleged in the affidavit;  
(c) the facts and circumstances testified by the signer;  
(d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and  
(e) the signature of the signer.

[Utah Code Ann. § 63A-15-501 \(West 2020\)](#)

#### 46. Washington D.C. (Statute Provides for Alternate Track)

The board’s statute requires that formal written complaints be signed under oath. The statute provides that formal written complaints are privileged to a formal investigation process. The commission’s statute is silent on penalties for bad-faith complaints. The statute also provides for an alternate track for complaints whereby the Director of Open Government may begin an investigation based on information from a variety of sources which do not require notarization. Complaints or allegations made through this alternate

track are not privileged to any formal process of review and may be dismissed without cause or notification to the source of information.

- [\[Statute\]](#) **D.C. Code § 1-1162.12.** (a) *The Director of Government Ethics shall conduct a preliminary investigation of a possible violation of the Code of Conduct or of this subchapter brought to the attention of the Director of Government Ethics or the Board through the following sources:*
  - (1) *The media;*
  - (2) *A tip received through the hotline; or*
  - (3) *Documents filed with the Board.*
- [\[Statute\]](#) **D.C. Code § 1-1162.13** (a) *A formal investigation shall be initiated upon: (1) Receipt of a written complaint transmitted to the Board;*  
  
[\[Statute\]](#) **D.C. Code § 1-1162.13** (b) *A written complaint shall include:*
  - (1) *The full name and address of the complainant and the respondent;*
  - (2) *A clear and concise statement of facts that are alleged to constitute a violation of the Code of Conduct or of this subchapter;*
  - (3) *The complainant's signature;*
  - (4) *A verification of the complaint under oath; and*
- [\[Website\]](#) *You may remain anonymous. Should you choose to identify yourself, your identity will be protected to the maximum extent allowed by law. Please note that identifying yourself may aid the investigation so that the BEGA may contact you to obtain additional information.*  
[D.C. Code. § 1-1162.12-13 \(West 2020\)](#)

#### 47. West Virginia

The commission's statute requires that complaints be signed under oath. The commission's complaint form includes a space for notarization. The commission's statute could be read to subject a person making a bad-faith complaint to administrative sanctions.

- [\[Statute\]](#) **§ 6B-2-3a** (a) *The commission may commence an investigation, pursuant to section four of this article, on the filing of a complaint duly verified by oath or affirmation, by any person.*
- [\[Statute\]](#) **§ 6B-2-10** (f) *Any person who knowingly gives false or misleading material information to the commission or who induces or procures another person to give false or misleading material information to the commission is subject to administrative sanction by the commission as provided in subsection (s), section four of this article.*
- [\[Complaint Form\]](#)  
[W. Va. Code Ann. § 6B-2-3a \(West 2020\)](#)

#### 48. Wisconsin

The commission's statute requires that complaints be sworn to. However, the commission's statute is silent on specific penalties for bad-faith complaints. The commission's complaint form includes a space for notarization.

- [\[Statute\]](#) **§ 19.49** (2)(a) *...For purposes of this subsection, the commission may only initiate an investigation of an alleged violation of ch. 11, subch. III of ch. 13, and this subchapter, other than an offense described under par. (b)10., based on a sworn complaint filed with the commission, as provided under par. (b). Neither the commission nor any member or employee of the commission,*

*including the commission administrator, may file a sworn complaint for purposes of this subsection.*

- **[Complaint Form]**

[Wis. Stat Ann. § 19.48-A \(West 2020\)](#)