

NEW MEXICO ETHICS WATCH (NMEW) COMMENTS  
SEC RULEMAKING R-20-01

Dear Commissioners and Staff,

New Mexico Ethics Watch (NMEW) has reviewed the proposed rules published in the June 23<sup>rd</sup> issue of the New Mexico Register, including the proposed Code of Ethics. Before delving into specific comments, we submit the following general comments for consideration:

- We encourage the commission to take an expansive view of ethics and ethical requirements, throughout the entire proposed code. In several instances, the proposed code contains requirements that go beyond what is found in current statutes. We encourage the commission to take that expansive view throughout the model code, in order to strengthen ethical requirements, and have indicated where we believe that to be appropriate.
- We encourage the commission to make the code as user-friendly as possible, including for administrators and employees. This could mean that a digital delivery of the code includes section by section links to the commission's commentary containing additional information, examples, and references to statutory provisions, and that other advanced technological innovations are employed to permit those subject to the code to easily access both the commission's commentary and the relevant statutory sections.
- We encourage the commission to take into account the cultural context within New Mexico and abundance of familial and other relationships in adequately describing and limiting the appropriate delivery and receipt of gifts.

**Comments re: Specific Sections of the Proposed Rules:**

**Section 1.8.1.9**

We encourage the list of those who can request an advisory opinion be expanded to include members of the public. We encourage the listing of criteria for when an advisory opinion is to be issued, in order to create an objective basis for the issuance of an advisory opinion.

**Section 1.8.1.10**

If the list of those who can request an advisory opinion is expanded to include members of the public, they will automatically be permitted to request an informal advisory opinion, per Section 1.8.1.10(A). If, however, that list is not expanded, we encourage members of the public be able to request an informal advisory opinion, either through a hotline or through whatever channels are currently being employed by Commission staff.

**1.8.1.16**

We encourage the Commission to expand the rules to conduct virtual meetings and to permit virtual attendance by members of the public, even when the commissioners are once again meeting in person. This will enable people from throughout the state to attend, regardless of

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the ability to travel and incur costs, and potentially to participate through a public comment portion of a Commission meeting.

**1.8.4.7(E)**

- We encourage the Commission to expand the definition of “financial interest” to include holding an ownership stake, investing in, and at risk of losing \$10,000 or more, or to also define “business interest”, or perhaps “financial or business interest”. While the Financial Disclosure Act, Section 10-16A-2 NMSA 1978 defines “financial interest”, Section 10-16A-3(D)(4) requires the disclosure of “all other New Mexico *business interests* not otherwise listed of ten thousand dollars (\$10,000) or more in a New Mexico business or entity” (emphasis added), yet, there is no definition of “business interest” in the FDA. Additionally, the financial disclosure statement form, Section 9, found on the NM Secretary of State’s website ([https://realfileee3072ab0d43456cb15a51f7d82c77a2.s3.amazonaws.com/4374e725-7ad3-42e1-bde5-77f1386979a4?AWSAccessKeyId=AKIAJBKPT2UF7EZ6B7YA&Expires=1596500845&Signature=GxYKISzso8rD5sE9fMWnPen56vA%3D&response-content-disposition=inline%3B%20filename%3D2020%20Financial%20Disclosure%20Form\\_final.pdf&response-content-type=application%2Fpdf](https://realfileee3072ab0d43456cb15a51f7d82c77a2.s3.amazonaws.com/4374e725-7ad3-42e1-bde5-77f1386979a4?AWSAccessKeyId=AKIAJBKPT2UF7EZ6B7YA&Expires=1596500845&Signature=GxYKISzso8rD5sE9fMWnPen56vA%3D&response-content-disposition=inline%3B%20filename%3D2020%20Financial%20Disclosure%20Form_final.pdf&response-content-type=application%2Fpdf)) requires reporting of “Other Business Interests over \$10,000”. While “financial interest” is defined in both the FDA and the instructions for filling out the financial disclosure statement form, “business interest” is not defined in either place. Again, we encourage the Commission to provide an expansive definition that assists filers and agency employees in knowing what to report, and provides the public (e.g. voters) with adequate information to determine whether a public servant has a conflict of interest sufficient to potentially deter that individual from acting in the public’s behalf, rather than their own.
- We encourage, if warranted, for a definition of “employee” to be included.

**1.8.4.10(A)(2)**

We encourage the Commission to require the creation of a model outside employment disclosure form. While the rules describe the information required to be disclosed in the form, having a model form will make the required information easier to search.

**1.8.4.10(B)(b)**

While the required information tracks with the current Financial Disclosure Act (FDA), Section 10-16A-1 NMSA 1978 et. seq., we encourage the Commission to take into consideration the following recommendations and to craft more expansive disclosure requirements within the model Code of Ethics:

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A) Remove the requirement that sources of income be reported under "broad general categories" and real estate holdings by "general description", and instead require specificity in reporting for these categories.

B) Expand collateral filing requirements to include domestic partners and other family or household members.

C) Require reporting of income under bands of income so that it is clear how significant a holding a particular asset or financial interest is.

D) Tighten the requirements surrounding reporting of the filer's residences, requiring a spouse or domestic partner to report their residence address; requiring the filer of the form to indicate whether their residence is owned or rented, and if rented, from whom; and requiring owned residences to be declared along with other real property holdings.

E) Require elected officials appointed to their positions to have to file a financial disclosure within 30 days of appointment, as state agency heads and other appointed officials must.

F) Remove the present limitations on reporting membership on boards, business interests, professional licenses, and similar associations to New Mexico. Such licenses, board memberships, and business interests should be reported wherever they occur.

See [http://nmethicswatch.org/wp-content/uploads/2017/01/NMEW\\_FinancialDisclosures\\_WalkingBeforeRunning\\_WEB5.pdf](http://nmethicswatch.org/wp-content/uploads/2017/01/NMEW_FinancialDisclosures_WalkingBeforeRunning_WEB5.pdf), p. 33. See also [http://nmethicswatch.org/wp-content/uploads/2018/09/NMEW\\_FDA-Follow-up-Report3.pdf](http://nmethicswatch.org/wp-content/uploads/2018/09/NMEW_FDA-Follow-up-Report3.pdf), p. 386, 387 for additional recommendations.

New Mexico Ethics Watch (NMEW) created a mock form that has been presented to the Secretary of State. That mock form is attached to these comments.

We note that the Commission has gone beyond the requirements of the FDA in requiring, in 1.8.4.10(B)(1)(c) that an officer or employee file a disclosure of financial interests "when the officer or employee believes, or has reason to believe, that the financial interest may be affected by their official acts or actions of the state agency that employs them..." and that the disclosure "must be filed within ten days of the date when the officer or employee knows, or should know, that a potential conflict has arisen...". We encourage the Commission to continue with this expansiveness beyond the FDA when crafting the model Code of Ethics relating to financial disclosure, as suggested in the recommendations provided in the above-linked reports.