

New Mexicans for Ethics Coalition Comments SEC Rulemaking R20-01

Dear Ethics Commission,

The undersigned members of the New Mexicans for Ethics Coalition have reviewed the proposed rules, including the proposed Code of Ethics, within our coalition. 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.

1.8.1.9 ADVISORY OPINIONS

- Please expand the list of those who can request advisory opinions to members of the public. This will not only address specific concerns, it will contribute significantly to community trust in public institutions and processes.
- Providing clear decision rules or criteria for when an advisory opinion is warranted would provide a public reference and avoid the perception that decisions to review in an advisory way are arbitrary or subjective.
- Clarify in the code why requests for advisory opinions are confidential and how each party benefits from this confidentiality.
- Please determine a concrete timeline cap on the length of time it will take for an advisory opinion to be issued. 60 days is reasonable but delays with a 30 day notice should not extend beyond 4 months.

1.8.1. INFORMAL ADVISORY OPINIONS

- It is in the public interest to extend the opportunity to make a request to members of the public.
- Consider staffing a toll-free hotline to provide timely information and support to people who may not be able to reach out during normal business hours.

1.8.1.16 COMMISSION MEETINGS

- C. Virtual Attendance by individual commissioners- The Commission’s efforts to video record and post meetings is commendable. We recommend that the Commission adopt the clear and transparent protocols and suggest that the Commission should consider doing what the Supreme Court and the legislature do when virtual communications break down..i.e halt proceedings until technology is working again so that the public can hear. In addition, making meetings available on YouTube for viewing later, just as NM Supreme Court. Also consider following the example of the Supreme Court by working with public media such as PBS and other media outlets to provide access to the general public. Please consider a virtual option during Commission meetings regardless of public health orders to make them accessible throughout the state.
- D. Maintaining order: The Commission has done an excellent job of planning in-person and virtual meetings to allow for public comment. While it is reasonable to impose limitations on public comment, having clear guidelines would avoid the perception that limits are set arbitrarily or with the intent to stifle civic engagement. Specifying how time limits will be determined would be useful.

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 8 STATE ETHICS COMMISSION
PART 4 CODE OF ETHICS

- Please clarify section 1.8.4.6. In this section the Code of Ethics is described as a "standard" which can be "violated" at the risk of "discipline." Does the Code of Ethics carry the weight of a rule which can be violated or is it simply a standard which one may or may not meet?
- Please clarify section **1.8.4.7 DEFINITIONS** – Please elaborate on what is meant by family or close personal relationships. This may become confusing given our highly relational and family-centric cultural norms. Providing guidance on documenting requirements to disclose a relationship might be more manageable than specifying every relationship that does or does not conflict with the intent of the Code of Ethics.
- Providing more clarity about the intent of this document would be helpful. While it’s called the Code of Ethics, it functions as a model which others may use as a basis of developing their own actual Code of Ethics.
- Section 1.8.4.2 needs rewriting to make it consistent. The words “proposed code” must consider.” The code is clearly meant as a requirement, and it should be consistently stated as such. Section 1.8.4.6 again says this is proposed and should be considered. This principle needs to be applied consistently.

- Section 1.8.4.7 seems to mix categories and could be clearer. It refers to both reimbursement for services and compensation for services.
- The financial disclosure forms could be strengthened, especially in section 10. I think the financial disclosure form is weak - at least the ones I've signed. There are several areas in section 10 that could be strengthened. An additional way to strengthen disclosures of consultants is to require that they are bondable.
- 1.8.4.7(D): expand definition of "financial interest" to include holding an ownership stake, investing in, and at risk of losing \$10,000 or more. Ethics Watch has developed an alternative financial disclosure form that provide greater specificity. In addition defining business interest would be helpful.
- 1.8.4.8(B): The Commission and agencies should use whatever technology possible to connect employees easily with the commentary code. This would include section by section links to corresponding commentary within a digital copy of the code of ethics, for ease of access, and any other advanced technological way of connecting people with the commentary.

1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST

- To ensure accountability, each and every contract for public service should have a provision that states all of the records produced by the contractor are subject to the Inspection of Public Records Act. If you are doing work on behalf of government, then that work should be subject to IPRA. In addition, non-disclosure agreements should not be permitted.
- 1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST (b) the phrase "proportionately equal to or less than the benefit to the general public" is concerning, especially on multi-million dollars deals as this allows for economic gain beyond what has been earned.
- (4) Declining permissible gifts- this is another area in which cultural and relational practices might not be defined in the same way by "reasonable" people.
- (3) Limit personal use- this section should clarify how surplus materials, equipment, supplies, and art is discarded.
- The Commission should create a model outside employment disclosure form.
- B(1)(b): This tracks with the Financial Disclosure Act (FDA). but Ethics Watch suggests some improvements based recommendations in their report and on the mock form they developed and presented.
- B(1)(b): expansion to include disclosure information for some level of family members, not just spouse, and also include "life partners" or some other title that fits better.
- B(1)(b)(1): "including self-employment information".
- FDA requires the following reporting, which is not captured in (B)(1)(b): "In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA

1978], the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed.” Section 10-16A-3(D)(2) NMSA 1978.

- B(1)(b)(iv): add “including an ownership stake, investment, financial interest, or when at risk of losing \$10,000 or more”. This could be more elegant way rather than amending definition of “financial interest”. Problem in FDA and here: definition of “financial interest” but not “business interest”, which is term used in FDA and here. So, could replace “financial interest”, 1.8.4.7, with “business interest” and define that.
- B(1)(b)(v): require disclosure of membership on nonprofit boards, as well.

1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION

This section should comply with IRPA and OMA. Citizens need to know what their government is doing in order to make democracy work. It is only through transparency that citizens can hold elected officials, appointed officials and government employees accountable.

For more than 40 years New Mexico has had some of the most useful tools to ensure citizens know what their government is doing – the Inspection of Public Records Act (IPRA) and the Open Meetings Act. IPRA provides New Mexicans with the power to request and obtain government records – including body-worn camera video, audio records, copies of documents, letters and even emails. The public’s right to know and to hold the government accountable, is not a special interest, it’s a core principle at the very heart of our democracy.

OMA is equally important – a law that requires public bodies post agendas at specific times before meetings, conduct of public officials regarding agenda items so that the public’s business is conducted in the open.

One area of IPRA that continually raises transparency problems is employee disciplinary records. IPRA states that “Factual information or other public information is not protected merely because it is kept in an employee or student files.” Yet, time and again, agencies exempt these records from inspection or the agency will cite collective bargaining agreements that require the information not be made public.

To see the dangers of this practice, one only has to look at the nightly news or the daily newspapers’ headlines. Because these records are not made readily available for inspection, employees have engaged in misconduct making accountability impossible.

It is critical that reforms are necessary to ensure that disciplinary records of all public employees that are currently kept confidential be made public. Transparency, accountability and trust between the government and the public is a high priority.

The issue of trust also extends to open meetings. Transparency is a core value of government meetings including the meetings of the New Mexico Legislature. Yet, year after year, the Legislature conducts budget negotiations behind closed doors. Historically many of those budgetary meetings have shut out not only the public but even legislators from the process.

Why all the secrecy? Lawmakers should be eager, not afraid, to have their constituents view the hard choices that need to be made among competing interests. Openness may breed disappointment about the final decision, but it also breeds trust in government and the democratic process.

Transparency is more than a popular buzzword. In fact, it is much more a verb than a noun, requiring lawmakers to take action – open the doors to committee meetings and eliminate offsite budget strategy meetings. This is not only the right thing to do, but also the legal way to conduct business. NMSA 10-15-2-A *requires all meetings of any committee or policymaking body of the legislature held for the purpose of discussing public business or for the purpose of taking any action within the authority of or the delegated authority of the committee or body are declared to be public meetings **open to the public at all times.***

Another area of concern involving public meetings is that not all Legislative task forces and committees are subject to OMA. Meetings of the task force should be open to the public, subject to the same notice provisions and exceptions provided in the OMA.

The policy behind OMA is to provide the public with access to the *greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.* This policy recognizes that the hallmark of democracy is transparency where citizens can hold their officials accountable. This policy is why it must be mandatory to require that meetings of task forces and working groups be open to the public, and subject to the same notice provisions and exceptions provided in the OMA.

An informed public creates a strong democracy. Citizens have greater faith in their lawmakers when they know what is happening behind closed doors.

Sincerely,

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