



STATE ETHICS COMMISSION  
MEETING

February 4, 2022

**PUBLIC MATERIALS**

**PUBLIC MATERIALS**  
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## STATE ETHICS COMMISSION

Hon. William F. Lang, Chair  
Jeffrey L. Baker, Member  
Stuart M. Bluestone, Member  
Hon. Garrey Carruthers, Member  
Hon. Celia Foy Castillo, Member  
Ronald Solimon, Member  
Dr. Judy Villanueva, Member

Friday, February 4, 2022, 9:00 a.m. to 12:00 p.m. (Mountain Time)

### **Public Meeting (via Zoom):**

Join Zoom through internet browser: <https://us02web.zoom.us/j/84090290225>

Meeting ID: 840 9029 0225

Dial In Number:

+1 346 248 7799 US (Houston)

+1 669 900 9128 US (San Jose)

Chairman Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of December 3, 2021, Commission Meeting

### **Commission Meeting Items**

### **Action Required**

- |   |     |
|---|-----|
| 1. 2022 Legislative Session Update<br>(Farris)  | No  |
| 2. Advisory Opinion 2022-01<br>(Farris)         | Yes |
| 3. Advisory Opinion 2022-02<br>(Farris or Boyd) | Yes |

- |  |     |
|--|-----|
| 4. Process controlling when General Counsel discovers unalleged violation of ethics law during the investigation of an administrative complaint<br>( <i>Bluestone and Farris</i> ) | No  |
| 5. Resolution 2022-01: Procedure related to complaints against notaries public<br>( <i>Farris</i> )  | Yes |

**Upon applicable motion, Commission goes into executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings) & 10-15-1(H)(7) (attorney client privilege pertaining to litigation)**

6. Discussions regarding administrative complaints  
(*Farris, Boyd & Branch*)

Administrative Matters under State Ethics Commission Act:

- a. Administrative Complaint No. 2021-010
- b. Administrative Complaint No. 2021-012
- c. Administrative Complaint No. 2021-020
- d. Administrative Complaint No. 2021-029
- e. Administrative Complaint No. 2021-037
- f. Administrative Complaint No. 2021-039

Administrative Matters under Revised Uniform Law on Notarial Acts:

- a. 2022-NP-04, *In re notary public commission of Stewart*
- b. 2022-NP-06, *In re notary public commission of Kiro*
- c. 2022-NP-07, *In re notary public commission of Rivera*

7. Discussions regarding civil litigation  
(*Farris & Boyd*)

**Upon applicable motion, Commission returns from executive session**

- |  |     |
|--|-----|
| 8. Actions on Administrative Complaints<br>( <i>Farris</i> ) | Yes |
|--|-----|

Administrative Matters under State Ethics Commission Act:

- a. Administrative Complaint No. 2021-010
- b. Administrative Complaint No. 2021-012
- c. Administrative Complaint No. 2021-020
- d. Administrative Complaint No. 2021-029
- e. Administrative Complaint No. 2021-037

f. Administrative Complaint No. 2021-039

Administrative Matters under Revised Uniform Law on Notarial Acts:

- a. 2022-NP-04, *In re notary public commission of Stewart*
- b. 2022-NP-06, *In re notary public commission of Kiro*
- c. 2022-NP-07, *In re notary public commission of Rivera*

9. Discussion of next meeting No  
(Lang)

10. Public Comment No

11. Adjournment

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

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Hon. William F. Lang  
Jeffrey L. Baker  
Stuart M. Bluestone  
Hon. Garrey Carruthers  
Hon. Celia Foy Castillo  
Ronald Solimon  
Judy Villanueva

## **STATE ETHICS COMMISSION**

**Commission Meeting Minutes of December 3, 2021 | 9:00AM-2:00PM**

Virtually Via Zoom

[View Recording Here](#)

### **[SUBJECT TO RATIFICATION BY COMMISSION]**

#### **CALL TO ORDER AND ROLL CALL**

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

Jeffrey Baker, Commissioner  
Stuart Bluestone, Commissioner  
Hon. Garrey Carruthers, Commissioner  
Ronald Solimon, Commissioner  
Hon. Celia Foy Castillo, Commissioner  
Judy Villanueva, Commissioner  
Hon. William Lang, Chair

#### **1. APPROVAL OF AGENDA**

- Chair Lang sought a motion to approve the agenda. Commissioner Baker moved to approve the agenda; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the agenda unanimously.

#### **2. APPROVAL OF OCTOBER 1, 2021 COMMISSION MEETING MINUTES**

- Chair Lang sought a motion to approve the minutes of the October 1, 2021 Commission meeting. Commissioner Bluestone moved to approve the minutes; Commissioner Foy Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the minutes unanimously.

#### **3. ADVISORY OPINION 2021-12**

- Director Farris provided an overview of Advisory Opinion 2021-12 which addresses whether the Commission has subject matter jurisdiction for complaints, alleging

violations of ethics laws based on legislative acts, including speech given in committee or a vote.

- After a discussion on the advisory opinion, Chair Lang sought a motion to approve Advisory Opinion 2021-12. Commissioner Bluestone moved to approve Advisory Opinion 2021-12; Commissioner Baker seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved Advisory Opinion 2021-12 unanimously.
- 4. RESOLUTION 2021-03 (ANNUAL OPEN MEETINGS ACT RESOLUTION)**
- General Counsel Walker Boyd provided an overview of Resolution 2021-03 and sought a motion from the Commission to adopt the resolution.
  - Chair Lang sought a motion to adopt Resolution 2021-03. Commissioner Carruthers moved to adopt the resolution; Commissioner Bluestone seconded. After a discussion on quorum requirements and rolling quorums outside of public meetings, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved Resolution 2021-03 unanimously.
- 5. 2021 ANNUAL REPORT AND DISCUSSION OF 2022 LEGISLATIVE SESSION**
- Director Farris provided an overview of the staff’s draft of the SEC’s 2021 annual report for submission to the Legislature and Governor Michelle Lujan Grisham, including legislative recommendations for the Second Session of the Fifty-Fifth Legislature. After discussion on the annual report and legislative recommendations, Director Farris provided an overview of the Commission’s draft of a new “Disclosure Act” to replace the existing Financial Disclosure Act.
  - After a discussion to clarify elements of the report and proposed legislative recommendations, Chair Lang suggested voting to approve separately the annual report, legislative recommendations, and the Disclosure Act draft. With no objection raised, Chair Lang sought the following motions:
    - **Motion to approve the annual report.** Commissioner Foy Castillo moved to approve the report as drafted; Commissioner Baker seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the annual report unanimously.
    - **Motion to approve proposed legislative recommendations (other than the Disclosure Act).** Commissioner Bluestone moved to approve the proposed legislative recommendations; Commissioner Solimon seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the proposed legislative recommendations unanimously.
    - **Motion to approve the Disclosure Act.** Commissioner Bluestone moved to approve the Disclosure Act; Commissioner Solimon seconded. Baker offered comments on the likelihood of the bill passing in the legislature. Commissioner

Bluestone recommended that the \$600 disclosure requirement for sources of income be pegged to IRS regulations, which may change over time. Hearing no further discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the Disclosure Act unanimously.

## **6. EXECUTIVE SESSION**

- Chair Lang sought a motion to enter executive session under NMSA 1978, §§ 10-15-1(H)(2) (limited personnel matters), 10-15-1(H)(3) (administrative adjudicatory proceedings), and 10-15-1(H)(7) (attorney-client privilege pertaining to litigation). Commissioner Carruthers moved to enter executive session; Commissioner Foy Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the Commissioners entered executive session.

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### **---BEGINNING OF EXECUTIVE SESSION---**

- The following matters were discussed in executive session:
- Discussions regarding administrative complaints:
  - a. Administrative Complaint No. 2021-012
  - b. Administrative Complaint No. 2021-017
  - c. Administrative Complaint No. 2021-020
  - d. Administrative Complaint No. 2021-023
  - e. Administrative Complaint No. 2021-024
  - f. Administrative Complaint No. 2021-025
- Discussions regarding pending civil litigation
- Executive Director 2021 evaluation
- The matters discussed in the closed meeting were limited to those specified in the motion to enter executive session. After concluding its discussion of these matters, the Commission resumed public session upon an appropriate motion.

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### **---END OF EXECUTIVE SESSION---**

## **7. ACTIONS ON ADMINISTRATIVE CASE Nos. 2021-12, 2021-017, 2021-020, 2021-023, 2021-024, & 2021-025.**

- Commissioner Bluestone motion moved to grant the appeal, reverse the hearing officer's dismissal of the complaint, and remand administrative case 2021-12 back to the General Counsel with instructions to investigate for violations of the Governmental Conduct Act and the Procurement Code; Commissioner Carruthers Seconded as stated above. Chair Lang conducted a roll-call vote:



Commissioner Baker,	Yes
Commissioner Bluestone,	Yes
Commissioner Carruthers,	Yes
Commissioner Foy Castillo,	Yes
Commissioner Solimon,	Yes
Commissioner Villanueva,	Yes
Chair Lang,	No

The final vote being 6 in favor of the motion and 1 opposed, the motion carried.

- Director Farris sought the following motions:
  - **Motion to authorize the staff to continue its investigation for another 90 days in administrative case Nos. 2020-017 & 2021-020 under Section 10-16G-11 of the State Ethics Commission Act.**
    - Commissioner Carruthers moved as stated above; Commissioner Foy Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
  - **Motion to dismiss administrative case Nos. 2021-023 and 2021-024 because the Secretary of State’s Office has certified voluntary compliance and, therefore, the complaints are subject to dismissal under Section 1-19-34.3 of the Campaign Reporting Act.**
    - Commissioner Baker moved as stated above; Commissioner Solimon seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
  - **Motion to dismiss administrative case No. 2021-025 for lack of subject matter jurisdiction.**
    - Commissioner Bluestone moved as stated above; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

**8. RESOLUTION FOR AUTHORIZATION OF CIVIL ACTION**

- Director Farris sought a motion to authorize the Commission staff to send a demand letter to the Curry County Republican Women to comply with their obligations under the Campaign Reporting Act. Commissioner Bluestone moved as stated above; Commissioner Villanueva seconded. All Commissioners voted in the affirmative and authorized the staff as stated.

**9. SELECTION OF NEXT MEETING**

- Chair Lang confirmed that the next meeting would take place on February 4, 2022.

## **10. COMMENTS**

- Members of the public were invited to address the Commission.
- Tony Ortiz with New Mexico Ethics Watch (NMEW): Offered comments congratulating the Commissioners and staff on the civil and professional conduct by the Commission in the course of its duties. Additionally, Mr. Ortiz wished everyone at the Commission a happy holiday season.
- No other public comments were offered.

## **11. ADJOURNMENT**

- Chair Lang sought a motion to adjourn. Commissioner Carruthers moved to adjourn. Hearing no discussion or opposition, the meeting was adjourned.

**[SUBJECT TO RATIFICATION BY COMMISSION]**



## STATE ETHICS COMMISSION

### **[Draft] ADVISORY OPINION NO. 2022-01**

February 4, 2022<sup>1</sup>

### **QUESTION PRESENTED<sup>2</sup>**

A Member of the House of Representatives is contracted to do project work through his local Soil and Water Conservation District. The project is funded with federal funds and is located on federal land. As a Member of the House of Representatives, he has no voice in determining project funding or other project details. Yet, the Member would like to be certain that no conflict of interest exists in regards to his position as a member of the House of Representatives. Please provide your opinion on this matter.

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<sup>1</sup>This is an official advisory opinion of the State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceeding concerning a person who acted in good faith and in reasonable reliance on the 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)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On November 17, 2021, the Commission received a request for an advisory letter that detailed the issues as presented herein. The request was submitted by a public official who has the authority to submit a request. *See generally* NMSA 1978, § 10-16G-8(A)(1). The executive director provided an advisory letter in response to the request on November 18, 2021. Commissioner Bluestone subsequently requested that the advisory letter be converted into an advisory opinion. *See* 1.8.1.9(B)(3) NMAC. The Commission now issues the guidance as an advisory opinion. *See id.*

## ANSWER

Subsection 10-16-9(A) of the Governmental Conduct Act applies to the award of any contract between a Soil and Water Conservation District (“SWCD”) and a Member of the House of Representatives. Under that statute, to receive the contract, (i) the Member must disclose his interest in the contract to the SWCD; and (ii) the SWCD must award the contract following the Procurement Code, without resorting to the Procurement Code provisions allowing for the award of sole-source or small-purchase contracts. If the Member happens to also be a supervisor on the SWCD, then he must also recuse from any decision the supervisors take on the award of the contract.

## ANALYSIS

### 1. Section 10-16-9(A) of the Governmental Conduct Act

A legislator has inquired whether his membership in the House of Representatives creates a disabling conflict that would prevent him from entering a contract with a SWCD. SWCDs are independent subdivisions of the State authorized by the Soil and Water Conservation District Act, NMSA 1978, §§ 73-20-25 through 73-20-48 (1965, as amended 2009), and as such are “state agencies” under the Governmental Conduct Act. *See* NMSA 1978, § 10-16-2(K) (1967, as amended 2001) (defining state agency as “any branch, agency, instrumentality or institution of the state”). Accordingly, the Member’s inquiry is governed by the provisions of Subsection 10-16-9(A) of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18 (1967, as amended 2019). This subsection governs contracts between legislators and state agencies. It provides:

A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator’s family or with a business in which the legislator or the legislator’s family has a substantial interest unless the legislator has disclosed the legislator’s substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code, except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of

a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.

§ 10-16-9(A) (2007).

Subsection 10-16-9(A) imposes two requirements on the contract described in the Member's request. First, for a SWCD to contract with the Member for services, goods or construction, the Member must disclose to the SWCD that he has a substantial interest in the contract. Based on the request's description of the contract between the SWCD and the Member personally, it appears that the SWCD is aware of the Member's interest in the contract. If, however, the contract is between the SWCD and a business in which Member (or his immediate family) has a substantial interest, then the Member should disclose his substantial interest in the business to the SWCD before the execution of the contract.

Second, under subsection 10-16-9(A), the SWCD must award the contract "in accordance with the provisions of the Procurement Code." Furthermore, to award a contract to the Member (or a business in which the Member is substantially interested) the SWCD may not rely on the provisions of the Procurement Code authorizing sole source contracts, NMSA 1978, § 13-1-126 (1984, as amended 2013), or small purchase contracts, NMSA 1978, § 13-1-125 (1984, as amended 2019).

The request does not provide information as to the nature of the contract; consequently, we do not opine whether the contract is exempted from the provisions of the Procurement Code under Subsections 13-1-98(A)-(HH) (1984, as amended 2019). The request notes, however, that "the project is funded with federal funds . . . ." Accordingly, we observe that the Procurement Code applies to a state agency's expenditure of all funds, including funds the state agency received from the federal government.

The Code applies "*to every expenditure* by state agencies" including expenditures by state agencies of federal grant funds. *See* NMSA 1978, § 13-1-30(A) (1984, as amended 2005) (emphasis added). And the Code expressly speaks to when a state agency expends federal funds. *See* NMSA 1978, § 13-1-30(B) (1984, as amended 2005). In that event, the state agency must abide by both the provisions of the Procurement Code and any "mandatory applicable federal law and regulations." *See id.* If there is an inconsistency between the Procurement Code and an applicable federal procurement rule, then "compliance with federal law or regulations shall be compliance with the Procurement Code." *Id.*

Similarly, the constraints that Subsection 10-16-9(A) impose on a state agency's award of a contract to a legislator apply, even where the contract is funded by federal dollars, unless applicable federal law expressly allows the state agency to award sole source contracts or small-purchase contracts to a sitting state legislator. *See, e.g., Azar v. Prudential Ins. Co. of Am.*, 2003-NMCA-062, ¶ 30, 68 P.3d 909 (“Federal law may preempt state law under the Supremacy Clause, U.S. Const. art. VI, cl. 2, by ‘express provision, by implication, or by a conflict between federal and state law.’”). While the request did not cite the federal grant agreement or the federal statute or regulation authorizing the funds at issue, we doubt the existence of such language. If there is language that would suggest federal preemption of Subsection 10-16-9(A), then this opinion is subject to revision.

Based on the foregoing analysis, the SWCD may award a contract, funded by federal dollars, to the Member; however, unless applicable federal law says otherwise, the SWCD: (i) must award the contract pursuant to the requirements of the Procurement Code; and (ii) in awarding the contract, the SWCD cannot rely on those provisions of the Procurement Code allowing for noncompetitive sole-source or small-purchase contracts.

## **2. Sections 10-16-3 and 10-16-4 of the Governmental Conduct Act**

The request also refers to the Member's “local Soil and Water Conservation District.” If the Member happens to be a supervisor for this SWCD and if the supervisors, as the SWCD's governing body, have the final authority to award the contract, then sections 10-16-3 and 10-16-4 of the Governmental Conduct would impose additional requirements on the Member.

Subsection 10-16-3(A) requires that legislators, public officers and public employees “shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.” NMSA 1978, § 10-16-3(A) (2011). Relatedly, subsection 10-16-4(A) prohibits a public officer or employee from taking “an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position.” NMSA 1978, § 10-16-4(A) (2011). Further, Section 10-16-3(C) provides that “[f]ull disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct.” NMSA 1978, § 10-16-3(C) (2011).

In view of these provisions, if the Member is a supervisor on the SWCD, then, as a supervisor, he should (i) recuse from any action the supervisors take in the award of a contract to himself or any business in which he is substantially interested; and (ii) disclose that interest to the other supervisors before any action on the award of the contract. *See* NMSA 1978, §§ 10-16-4(B) (1967, as amended 2011); 10-16-3(A), (B) (1967, as amended 2011); *see also generally* NMSA 1978, §§ 73-20-37(A) (1965, as amended 2018) (providing that the governing body of a SWCD is comprised of five supervisors). These requirements apply in addition to the procurement-related requirements that Section 10-16-9(A) imposes on the SWCD's award of a contract to a Member of the House of Representatives.

## CONCLUSION

Under Subsection 10-16-9(A) of the Governmental Conduct Act, to receive a contract that a SWCD awards, (i) the Member must disclose his interest in the contract to the SWCD; and (ii) the SWCD must award the contract following the Procurement Code, without resorting to the Procurement Code provisions allowing for the award of sole-source or small-purchase contracts. Subsection 10-16-9(A)'s requirements apply even where the SWCD's contract is funded with federal dollars. If the Member happens to also be a supervisor on the SWCD, then he must recuse from any decision the supervisors take on the award of the contract.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**  
**JEFFREY L. BAKER, Commissioner**  
**STUART M. BLUESTONE, Commissioner**  
**HON. GARREY CARRUTHERS, Commissioner**  
**HON. CELIA FOY CASTILLO, Commissioner**  
**RONALD SOLIMON, Commissioner**  
**JUDY VILLANUEVA, Commissioner**





## STATE ETHICS COMMISSION

### **[Draft] ADVISORY OPINION NO. 2022-02**

February 4, 2022<sup>1</sup>

#### **QUESTION PRESENTED<sup>2</sup>**

1. A candidate sought a municipal, school district, or special district elected office, and the candidate received contributions to support the candidate's election to that office. Does the Campaign Reporting Act, NMSA 1978, Sections 1-19-1 to -37 (1979, as amended through 2021) ("CRA"), prohibit the candidate from retaining and using those contributions to support the candidate's subsequent campaign for an office covered by the CRA?
2. A municipal judge intends to run for county office in 2022 and seeks to transfer contributions

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<sup>1</sup> This is an official advisory opinion of the State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceeding concerning a person who acted in good faith and in reasonable reliance on the opinion. NMSA 1978, § 10-16G-8(C) (2019).

<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)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On December 10, 2021, the Commission received a request for a formal advisory opinion that detailed the issues as presented herein. The request was submitted by a public official who has the authority to submit a request. *See* § 10-16G-8(A)(1).



received as a candidate for judicial office to a newly-formed campaign committee that supports his candidacy for county office. Does the CRA prohibit the transfer?

### ANSWERS

1. No.
2. Yes.

### ANALYSIS

**1. A candidate who sought election to a municipal, school district, or special district office may transfer contributions to a campaign committee affiliated with the candidate seeking election to an office subject to the CRA.**

Elections for municipal and special district offices are governed by municipal or special district laws. Because those laws generally do not restrict candidates' uses of contributions, and the CRA does not apply to contributions received by those candidates, candidates for municipal or special district offices may convert contributions received for use in an election subject to the CRA. Separately, school district elections are covered by the School District Campaign Reporting Act, NMSA 1978, Sections 1-22A-1 through -10 (2013), and that Act permits the use of contributions for a candidate's election to any public office, including a public office subject to the CRA.

A. Municipal and special district offices

As the request notes, "money raised at local levels may not [be] subject to any campaign reporting laws." Likewise, the CRA excludes municipal and special district offices from its definition of "election," thereby excepting candidates seeking municipal or special district elected office from the CRA's requirements concerning registration, disclosure, contributions, and expenditures. *See* § 1-19-26(K).

Municipalities and special districts may limit contributions or impose restrictions on the permissible use of those contributions by candidates seeking municipal or special district elected office. For example, Santa Fe and

Albuquerque both require a candidate for municipal office to return all unexpended contributions at the end of every election cycle to contributors, place the funds in the city general fund, or give the contributions to charity. *See* Santa Fe, N.M., Code of Ordinances, Ch. 9, § 2.9(H)(2) (2015); Albuquerque, N.M., Charter, Art. XIII, § 4(f) (2019). But as the request points out, a candidate seeking election to other municipal, conservation district, or special district office may not be subject to any specific contribution or expenditure limitations.

For these candidates, contributions are neither subject to the CRA nor subject to local restrictions on the use of contributions received. And under the CRA, “[t]he limitation on contributions to a candidate provided for in Subsection A of [Section 1-19-34.7] shall not apply to a candidate’s own contribution from the candidate’s personal funds to the candidate’s own campaign.” § 1-19-34.7(H). Accordingly, if a candidate is permitted to convert contributions received in furtherance of a campaign for municipal office to another use, the CRA permits the candidate to contribute those converted funds to the candidate’s own campaign for election to an office subject to the CRA.

Our conclusion is narrow: municipal law may restrict a candidate from converting contributions for use in an election to an office subject to the CRA; likewise, the legislature can amend the CRA to restrict or prohibit the use of contributions received by a candidate in municipal or special district elections in an election subject to the CRA.<sup>3</sup> Nor may a candidate skirt the CRA’s contribution and expenditure limits by soliciting contributions for a non-CRA office; as soon as an individual “seeks or considers an office in an election covered by the [CRA],” the individual becomes subject to the CRA’s contribution and expenditure limits. *See* § 1-19-26(G). Finally, a municipal or special district candidate’s conversion of contributions to personal use could constitute fraud, if it is shown that the

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<sup>3</sup> The CRA prohibits the conversion of contributions for a federal election campaign for use in an election subject to the CRA. *See* § 1-19-29.1(C). But this prohibition has never been enforced because two federal district court decisions have held that it violates federal election candidates’ First Amendment rights to make political communications, and is not sufficiently tailored to a compelling state interest. *See* Mem. Op. and Order, *New Mexicans for Bill Richardson v. Gonzales*, No. Civ. 93-1135 JP (D.N.M. Aug. 2, 1996) (ECF No. 73); Mem. Op. and Order, *People for Pearce v. Oliver*, No. 17-cv-752 JCH/SMV, 2017 WL 5891763 (D.N.M. Nov. 28, 2017) (ECF No. 51). But Section 1-19-29.1(C)’s prohibition on conversion of contributions applies only to contributions received by a campaign for federal office; the CRA does not speak to the conversion of contributions received by a campaign for a municipal or special district office.

candidate obtained the contributions through false representations of fact to contributors about how their contributions would be used.<sup>4</sup>

## B. School district offices

The School District Campaign Reporting Act, §§1-22A-1 to -10, governs elections for board of education member offices of school districts with enrollments of twelve thousand students or more. Under the School District Campaign Reporting Act, a candidate seeking a school district office may make “expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office.” NMSA 1978, § 1-22A-10(D) (2013) (emphasis added). In an earlier advisory opinion, the Commission concluded that the term “public office” includes any elected office, federal, state, or local. *See* Advisory Op. 2021-11 (Aug. 13, 2021). Accordingly, a CRA candidate may make an expenditure of contributions received in support of that candidate’s election to a school district office subject to the School District Campaign Reporting Act.<sup>5</sup>

### **2. The unexpended contributions of a candidate for judicial office must be returned to contributors or donated to charity or the State of New Mexico, and therefore cannot be transferred to another campaign committee.**

The CRA applies to candidates seeking judicial office. *See* § 1-19-26(K). Under the CRA, “a candidate for judicial office shall solicit or accept campaign funds and return unused funds in accordance with the provisions of the Code of Judicial Conduct.” § 1-19-29.1(B). The Code of Judicial Conduct applies to municipal judges. *See* Rule 21-004(A) NMRA. The Code of Judicial Conduct prohibits a judge seeking appointment or election to a public, nonjudicial office

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<sup>4</sup> For example, a candidate who solicited contributions for a special district election by representing that the contributions would be expended only on the candidate’s efforts to obtain special district office could be liable for fraud if the candidate converts the contributions to personal use or for use in a campaign for a different office. *See* UJI 13-1633 NMRA (setting out the elements of fraudulent misrepresentation).

<sup>5</sup> There is no law imposing restrictions on the use of contributions for campaigns for a school district office in a school district with fewer than twelve thousand students. Accordingly, there is no general prohibition against a candidate for such an office converting contributions for personal use and later using those contributions for a campaign seeking election to an office covered by the CRA.

from soliciting or accepting funds (either personally or through a committee) to support the candidacy. *See* Rule 21-405(A) NMRA. When a judge seeks election to an elective nonjudicial office, a judge is required to resign from his or her judicial office immediately upon filing of a statement of candidacy. *See* Rule 21-405(C) NMRA. These rules ensure that a judge “cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election.” Rule 21-405 cmt. 2.

Although the Code of Judicial Conduct permits candidates for elective judicial office to accept contributions to support a campaign for judicial office, it prohibits retention of contributions received after the election takes place, without regard to whether the candidate is elected:

a candidate for judicial office who has unused campaign funds shall refund the remaining funds pro rata to the campaign contributors, or donate the funds to a charitable organization, or to the State of New Mexico, as the candidate may choose, within thirty (30) days after the date the election results are certified.

Rule 21-404(B) NMRA.

The Code of Judicial Conduct prohibits a transfer of unexpended contributions from a candidate for judicial office to a campaign committee supporting a candidate for elected office. Because the CRA incorporates the Code of Judicial Conduct (as it applies to candidates for judicial office) by reference, *see* §1-19-29.1(B), the CRA also prohibits a candidate for municipal judicial office from transferring contributions received to a campaign committee.

## CONCLUSION

Where municipal or special district law does not restrict a candidate’s uses of contributions received for election to a municipal or special district office, the CRA allows the candidate to use those converted funds as contributions to support a campaign for election to an office covered by the CRA. The School District Campaign Reporting Act permits a candidate seeking election to a school district office to use contributions to support a subsequent campaign for another public office, including an office covered by the CRA. By contrast, the CRA prohibits a candidate for judicial office from using contributions in a subsequent campaign for other public office, because the Code of Judicial Conduct (which the CRA incorporates by reference) precludes such a transfer.

**SO ISSUED.**

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

**JEFFREY L. BAKER, Commissioner**

**STUART M. BLUESTONE, Commissioner**

**HON. CELIA FOY CASTILLO, Commissioner**

**HON. GARREY CARRUTHERS, Commissioner**

**RONALD SOLIMON, Commissioner**

**JUDY VILLANUEVA, Commissioner**



## STATE ETHICS COMMISSION

Hon. William F. Lang, Chair  
Jeffrey L. Baker, Member  
Stuart M. Bluestone, Member  
Hon. Garrey Carruthers, Member  
Hon. Celia Foy Castillo, Member  
Ronald Solimon, Member  
Judy Villanueva, Member

### **Resolution No. 2022-01: Procedures Governing RULONA Complaints**

WHEREAS, THE NEW MEXICO STATE ETHICS COMMISSION (“Commission”) met virtually over Zoom on February 4, 2022, at 9:00 a.m.;

WHEREAS, the Commission has the authority to take adverse action against a notary public’s commission or application for a commission as a notary public for certain acts and omissions under the Revised Uniform Law on Notarial Acts (“RULONA”), *See* NMSA 1978, §§ 14-14A-22(A) and 14-14A-24(I) (2022);

WHEREAS, the Commission desires to implement a procedure by which the State Ethics Commission will handle complaints alleging violations of RULONA that ensure the fair and uniform handling and disposition of potential violations until such time as the Commission promulgates rules in the New Mexico Administrative Code to administer its authority;

WHEREAS, on December 27, 2021, the Executive Director produced a Memorandum setting forth the procedure by which the State Ethics Commission will handle complaints alleging violations of RULONA;

WHEREAS, since December 27, 2021, the Memorandum has been available to the public through the State Ethics Commission website at:

<https://www.sec.state.nm.us/wp-content/uploads/2021/12/2021-12-27-RULONA-Memorandum.pdf>;

NOW, THEREFORE, BE IT RESOLVED by the New Mexico State Ethics Commission:

1. The December 27, 2021 Memorandum is adopted in full (see attached);
2. The Commission's staff are authorized to process complaints alleging violations of RULONA pursuant to the Memorandum;
3. The Executive Director is instructed to provide regular updates on the status of RULONA complaints.

Adopted by the New Mexico State Ethics Commission this 4th day of February 2022.

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



# STATE ETHICS COMMISSION

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Hon. William F. Lang (Chair)  
Jeffrey L. Baker  
Stuart M. Bluestone  
Hon. Garrey Carruthers  
Hon. Celia Foy Castillo  
Ronald Solimon  
Dr. Judy Villanueva

Jeremy D. Farris, Executive Director



December 27, 2021

## MEMORANDUM

From: Jeremy Farris, Executive Director, State Ethics Commission  
Re: State Ethics Commission’s authority under the Revised Uniform Law on Notarial Acts

Under the Revised Uniform Law on Notarial Acts (“RULONA”), NMSA 1978, §§ 14-14A-1 to -32 (2022) (effective January 1, 2022), the State Ethics Commission has authority to take adverse action against a notary public’s commission or application for a commission as a notary public for certain acts and omissions. *See* NMSA 1978, §§ 14-14A-22(A) & 14-14A-24(I) (2022). This authority takes effect on January 1, 2022.

This memorandum sets forth the procedure by which the State Ethics Commission will handle complaints alleging violations of RULONA; the Notary Public Act, NMSA 1978, §§ 14-12A-1 to 27 (2003, repealed by Laws 2021, ch. 21, §36, effective January 1, 2022); and the Uniform Law on Notarial Acts, NMSA 1978, §§14-14-1 to 14-14-11 (1993, repealed by Laws 2021, ch. 21, §36, effective January 1, 2022), until such time as the Commission promulgates rules in the New Mexico Administrative Code to administer its authority.<sup>1</sup>

### **I. For complaints seeking adverse action against a commission as a notary public submitted on or after January 1, 2022**

For complaints alleging an act or omission that, under Section 14-14A-22 (effective January 1, 2022), supports an adverse action against a notary public’s commission, the following procedures apply until such time as the Commission promulgates supervening rules in the New Mexico Administrative Code:

1. Any person may submit a complaint alleging an act or omission that, under Section 14-14A-22(A) (effective January 1, 2022), supports an adverse action against a notary public’s commission. The complaint shall:

<sup>1</sup> The procedures set forth in this memorandum are also subject to ratification by the State Ethics Commission at its next-scheduled meeting. The Commission will likely issue a notice of proposed rulemaking for rules of procedure governing the administration and enforcement of RULONA at the Commission’s February 4, 2022 meeting. This memorandum is the Commission staff’s interpretation of what process is required before adverse action against a notary public commission may be taken pursuant to RULONA. It does not confer any rights or impose any obligations on members of the public beyond those set forth in RULONA or conferred according to constitutional law, and accordingly does not constitute a “rule” as defined by the State Rules Act, NMSA 1978, 14-4-1 to -11 (1967, as amended 2017).



- (a) provide the name and, if available, the address of the respondent who is the subject of the complaint;
  - (b) attach any supporting documentation related to the complaint's allegations;
  - (c) be submitted on a form provided by the Commission or on a substantially equivalent form; and
  - (d) be submitted by electronic mail to [ethics.commission@state.nm.us](mailto:ethics.commission@state.nm.us) or by U.S. Mail to State Ethics Commission, 800 Bradbury Dr., Ste. 215, Albuquerque, NM 87106.
2. Upon receiving a properly submitted complaint, the Commission's executive director, or their designee, may share the complaint with the Office of the Secretary of State ("SOS") and request the SOS to provide records related to the respondent.
3. After receiving the respondent's file from the SOS, the Commission's executive director, or their designee, shall:
  - (a) send the complaint to the respondent at every address and electronic mail address that either the complainant provided to the commission or the respondent provided to the SOS;<sup>2</sup> and
  - (b) request that the respondent submit a response in writing within 30 days of the correspondence from the Commission's executive director, or their designee.
4. If the respondent fails to provide a response within 30 days, then the notary public's failure to provide a response will be construed as the respondent's failure to maintain the SOS with the respondent's updated contact information, as required by 12.9.3.8(E) NMAC, and the Commission may take adverse action, up to and including revocation of the respondent's commission as a notary public, on that basis.

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<sup>2</sup> See, e.g., *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 & 319 (1950) (concluding that due process requires notice reasonably calculated to reach the person to be notified); see also *Uhden v. N.M. Oil Conservation Comm'n*, 1991-NMSC-089, ¶ 9, 112 N.M. 528 ("The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.") (quoting *Mullane*, 339 U.S. at 315); *Maso v. State Tax. & Rev. Dep't, Motor Vehicle Div.*, 2004-NMCA-028, ¶ 10, 136 N.M. 161 ("Due process does not require the same form of notice in all contexts; instead, the notice should be 'appropriate to the nature of the case.'") (quoting *Mullane*, 339 U.S. at 313); cf. also *Hansen v. Bd. of Registered Nursing*, 145 Cal. Rpt. 3d 739, 7747 (Cal. Ct. App. 2012) (upholding service by certified mail to the address provided by the party subject to license revocation proceedings, noting that California law did not require actual notice and that the party was under a legal obligation to apprise the professional regulator of her current address).

5. After receiving the respondent's response, the Commission's executive director or their designee shall conduct a review of the complaint, the response, and any other relevant documents or material that the Commission's executive director or their designee may obtain pursuant to an investigation. As part of an investigation, Commission staff or contractors may interview witnesses, request documents, and obtain and review any other evidence relevant to the complaint or the provisions of RULONA. Failure by a complainant or a respondent to participate in the investigation in good faith is a basis for the Commission to draw an adverse inference.
6. After reviewing the materials and conducting any investigation:
  - (a) if an adverse action against a commission as notary public is not appropriate, the Commission's executive director or their designee shall issue a notice to the complainant and the respondent that, subject to the Commission's approval, the Commission will not pursue revocation proceedings; and
  - (b) if an adverse action against a commission as notary public would be appropriate, the Commission's executive director or their designee shall issue the respondent with a notice of contemplated action. The notice of contemplated action gives formal notice that the Commission is pursuing revocation proceedings. That notice shall inform the respondent that the respondent may either (i) resign their commission as a notary public or (ii) defend against the contemplated action at a hearing before a hearing officer. The notice shall detail the process and rights afforded in an administrative hearing, and shall be transmitted to the respondent pursuant to the requirements of Paragraph 3(a) of this Memorandum.
7. If the respondent does not respond to the notice of contemplated action within 30 days, the respondent's failure to respond amounts to a waiver of the notary public's right to a hearing and the State Ethics Commission will take the adverse action against the notary's commission specified in the notice of contemplated action. The Commission's adverse action shall take place at an open meeting.
8. If the notary public exercises their right to a hearing, the State Ethics Commission shall contract with either the Administrative Hearings Office or another hearing officer for hearing officer services. The designated hearing officer shall hold a hearing to determine whether the recommendations in the notice of contemplated action should be adopted, modified, or set aside.
9. At any hearing requested by the respondent pursuant to these procedures, the Commission's executive director, or their designee, and the respondent may call

witnesses, present objections, and submit evidence relevant to the hearing officer's disposition of the notice of contemplated action. The hearing need not be conducted according to the rules of evidence, and any relevant evidence, including hearsay of probative value, is admissible. Oral evidence shall be taken only on oath or affirmation. Evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs may be admitted and given probative value. The rules of privilege shall be given effect, and incompetent, immaterial, and unduly repetitious evidence may be excluded. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

10. If, after a hearing, the hearing officer finds the notary committed an action that, under Section 14-14A-22, supports the notice of contemplated action, or other adverse action, against the respondent's commission as a notary public, the hearing officer's report and recommendation will be forwarded to the State Ethics Commission recommending any adverse action available under Sections 14-14A-22(A) and 14-14A-24(I).
11. Upon receiving the hearing officer's report and recommendation, the State Ethics Commission may take adverse action against the respondent's commission as a notary public, up to and including revocation of the commission as a notary public, and will provide the SOS with the order and accompanying case file.
12. At any time, the Commission's executive director or their designee may enter into a settlement agreement with the respondent. All settlement agreements are subject to approval by the Commission.
13. Any action by the Commission regarding a commission as a notary public will take place at a public meeting.
14. Revocation proceedings are separate from any related criminal proceedings.

## **II. For complaints seeking adverse action against a commission as a notary public handled by the Regulation and Licensing Department before January 1, 2022**

Up until January 1, 2022, the Governor has authority to issue a warning and to revoke the commission of a notary public under certain circumstances. *See* § 14-12A-26(A)(1)–(5), (D). Any revocation under Section 14-12A-26 of the Notary Public Act requires the notary public to receive notice, a hearing, an adjudication and an appeal. *See* § 14-12A-26(B). Executive Order 2011-036 (June 2, 2011) sets forth the process by which the Regulation and Licensing Department (“RLD”), under the Governor's authority and in coordination with the Secretary of

State, receives complaints and conducts revocation proceedings against a person's commission as a notary public.

Beginning January 1, 2022, the Governor no longer has authority to take adverse actions on persons' commissions as notaries public, and the State Ethics Commission assumes that authority. Accordingly, the Commission will accept from the Regulation and Licensing Department ("RLD") or the Office of the Secretary of State ("SOS") all pending license-revocation matters against commissions as notaries public under the Notary Public Act or the Uniform Law on Notarial Acts.<sup>3</sup> After accepting those matters implicating a license under the Notary Public Act or the Uniform Law on Notarial Acts, the Commission must follow substantially the same procedures that Executive Order 2011-036 (June 2, 2011) created for RLD and the Office of the Governor.<sup>4</sup> As a result, notaries public who are the subject of license-revocation cases (including complaints, investigations, or proceedings) pending either with RLD, as of January 1, 2022, will receive the same rights and process as they would have received had RLD continued with the matter under Executive Order 2011-036.

Accordingly, for complaints and matters pending as of January 1, 2022 that implicate an adverse action against a commission as a notary public, the State Ethics Commission will employ the following procedures, which is substantially the same as Executive Order 2011-036, *mutatis mutandis*:

1. The State Ethics Commission shall receive from RLD and the SOS all pending complaints that implicate an adverse action against a commission as a notary public. The Commission shall forward any complaint received from RLD to the SOS and request the SOS's corresponding file for the notary public.
2. The Commission's executive director or their designee shall conduct a review of the allegations made against the notary public and finalize a formal report.

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<sup>3</sup> From January 1, 2022, the State Ethics Commission's authority to take adverse action against a commission as a notary public applies not only under RULONA, *see* § 14-14A-22(A), but also under the Notary Public Act and the Uniform Law on Notarial Acts, for two reasons: First, as of January 1, 2022, the State Ethics Commission is the only state governmental agency authorized to take adverse actions on a commission as a notary public. *See* Laws 2021, ch. 21, § 36. Second, RULONA's provisions indicate that the Legislature did not intend for the shift from the Notary Public Act and the Uniform Law on Notarial Acts to RULONA to create gaps in state government's authority over commissions as notaries public. *See* Laws 2021, Ch. 21, § 35 ("References in the New Mexico Statutes Annotated to the Notary Public Act or the Uniform Law on Notarial Acts shall be deemed to be references to the Revised Uniform Law on Notarial Acts."); NMSA 1978, § 14-14A-27(A) ("A commission as a notary public in effect on the effective date of the Revised Uniform Law on Notarial Acts continues until its date of expiration.").

<sup>4</sup> Article IV, Section 34 of the New Mexico Constitution provides that "[n]o act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case." This prohibition applies both to the legislature and administrative agencies. *See Pineda v. Grande Drilling Corp.*, 1991-NMCA-004, ¶ 7, 111 N.M. 536, 807 P.2d 234.

3. The report will be sent to the notary public against whom the complaint was filed, with a copy to SOS.
4. The Commission's executive director, or their designee (if an attorney), will recommend disciplinary action, if appropriate. The disciplinary action can take the form of a written reprimand, a formal warning, or a notice of contemplated action. The SOS shall receive a copy of the disciplinary action.
5. A notice of contemplated action gives formal notice that the State Ethics Commission is pursuing revocation proceedings. That notice shall inform the notary public that the notary public can resign their commission. The notice shall also detail the process and rights afforded in an administrative hearing.
6. If the notary public does not respond to the notice of contemplated action within the time provided by the notice, this amounts to a waiver of the notary public's right to a hearing and the State Ethics Commission will take adverse action against the notary's commission at an open meeting.
7. If the notary public exercises their right to a hearing, the State Ethics Commission shall contract with either the Administrative Hearings Office or another hearing officer for hearing officer services.
8. If, after a hearing, the hearing officer finds the notary committed an action that, under Section 14-12A-26 of the Notary Public Act, supports an adverse action against a notary public's commission, the hearing officer's report and recommendation will be forwarded to the State Ethics Commission recommending revocation of the notary's commission.
9. Upon receiving the hearing officer's report and recommendation, the State Ethics Commission will take adverse action against the notary public's commission, up to and including revocation of the commission.
10. Revocation proceedings are separate from any related criminal proceedings.

*Cf.* Executive Order 2011-036.