

MINUTES OF THE
SANTA FE COUNTY
ETHICS BOARD

March 6, 2017

Santa Fe, New Mexico

This meeting of the Santa Fe County Investment Committee was called to order by Carol Thompson at approximately 2:05 p.m. on the above-cited date in the County Legal Conference Room on the second floor of the County Administrative Building located at 102 Grant Avenue, Santa Fe, NM.

Roll was called and a quorum was indicated with the presence of the following members present:

Members Present:

Carol Thompson
Peter Dodds
MacKenzie Allen

Member(s) Excused:

Linda Ramos
Michael Rosenblum

Staff Present:

Geraldine Salazar, County Clerk
Tony Flores, Deputy County Manager
Lisa Katonak, Staff Liaison
Cristella Valdez, Assistant County Attorney

VII. Introduction of Ethics Board Members

Those present introduced themselves and described their backgrounds.

III. Approval of the Agenda

The agenda was accepted by consensus. [Items were addressed out of order.]

IV. Approval of Minutes: June 2, 2015

It was established that one need not be present at a meeting to vote on the minutes. Mr. Allen moved approval and Mr. Dodds seconded. The motion carried by unanimous voice vote.

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V. Election of Chair

Mr. Dodds nominated Ms. Thompson as chair. There being no other nominations Carol Thompson was named Chair by acclamation.

VI. Election of Vice Chair

Chair Thompson nominated Mr. Dodds. There were no other nominations. Peter Dodds was elected Vice Chair unanimously.

VIII. Introduction of Legal Counsel

Legal Counsel Cristella Valdez introduced herself, as did County Clerk Geraldine Salazar, who said this is an important committee. Clerk Salazar voiced her support for exclusion of the employees from the board's purview. She noted anyone can make accusations and it is unfair for the accuser to remain anonymous. She listed her responsibilities, saying elected officials need to be held to the highest possible ethical standards. She distributed an organizational chart of the County showing that elected officials are not subordinate to the Commissioners or the County Manager. [Exhibit 1] She said it is the duty of the elected officials to be honorable.

Mr. Allen agreed that complaints should not be anonymous, but by the same token there should be protection against retaliation. He noted that not everyone is honorable. Ms. Valdez indicated Section 26 of the ordinance specifically prohibits retaliation against anyone making a complaint in good faith.

X. Review of Santa Fe County Code of Conduct Ordinance

Ms. Katonak welcomed everyone and explained that Michael Rosenbaum and Linda Ramos were unable to attend the meeting because of the short notice. She gave descriptions of their backgrounds.

Tony Flores, Deputy County Manager introduced himself and thanked those present for taking on the challenge.

Chair Thompson stated that in the past this board worked hard to make changes to the code. An ordinance was never passed due to a number of circumstances including an intervening election. She commended staff for their guidance.

Mr. Dodds asked why there had been such a long hiatus after the last meeting. Chair Thompson said no complaints have been received. Mr. Allen said the articles in the newspaper implied that complaints had been deflected. Ms. Katonak said the newspaper essentially turned a non-story into a story. She noted employees are included under the provisions of the Code of Conduct but they are dealt with through the Human Resources Department. Ms. Valdez said that is made clear in Section 23. The Ethics Code is adopted by reference into the employee handbook. Only the enforcement provisions differ.

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Ms. Katonak stated at this point the ordinance has become outdated. The Commission has expressed an interest in clarifying the campaign finance regulations and in expanding the definitions. Clerk Salazar pointed out there could be conflicts with the state law and this needs to be looked into in order to avoid double jeopardy. Mr. Allen asked if there were unique conditions in the County that would preclude using the state regulations. Clerk Salazar said this was something that needed to be established. She added that having an ethics ordinance provides a means of educating people as to what is proper.

As far as being out of date, Ms. Katonak mentioned that there were references to a County Surveyor, a position that no longer exists.

IX. Robert's Rules of Order

Ms. Valdez reviewed portions of rules of procedure as established in Resolution 2009-2 that were pertinent to this board, including quorum, duties of the chair, order of business, noticing requirements, cross examination in adjudicatory matters, etc. She specifically mentioned that rolling quorums and ex parte communications were prohibited.

She described the process following an adjudicatory hearing based on a complaint.

Ms. Katonak defined her role as liaison as helping the Chair put together an agenda, ensure a quorum will be present, and if there is a complaint, engage a neutral investigator.

Mr. Dodds asked what would occur if there was a complaint adjudication, could the members of the Ethics Board be sued. Ms. Valdez said she would look into that. Chair Thompson said she understood they were indemnified under an umbrella policy.

A discussion ensued about how complaints are received and by whom.

XI. Discussion of the 2017 Ethics Board Work Plan

Ms. Katonak said the Board of County Commissioners has requested a review of the ordinance. If changes are to be made a request to authorize publication of title and general summary of a new ordinance will go before the BCC and then it will be heard before a public hearing. Ms. Valdez stated that it is at the discretion of the BCC as to whether there would be one or two public hearings.

Clerk Salazar said there are currently two ethics ordinances in place. She recommended the Ethics Board review those – 2010-12 and 2011-9. She provided the members with copies of the Rules and Regulations for the County Ethics Board. *[Exhibit 2]*

Ms. Katonak indicated that the previously constituted committee had made substantial and substantive changes to those and this now exists in a heavily edited form with changes marked in various colors. She added that a punchlist was left by Willie Brown, the previous board counsel, of ten “must” items to be dealt with.

Ms. Katonak suggested a timeline for the boards work: April, May and June – review previous ordinances and revised draft; July – request that the BCC authorize publication of title and general summary of a new ordinance; public hearings – August to September. This would put a new ordinance in place by October.

XII. Matters from the Board

Various dates were put forward as potential dates for the next meeting and April 13th at 2:00 was tentatively decided upon, subject to the availability of the members currently not in attendance.

XIII. Matters from the Public

None were presented.

XIV. Adjournment

Having completed the agenda and with no further business to conduct the meeting was declared adjourned at 3:45 p.m.

Approved by:

Carol Thompson
Carol Thompson, Chair

Respectfully submitted by:

Debbie Doyle
Debbie Doyle, Wordswork

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STATE OF NEW MEXICO) ss

ETHICS BOARD MINUTES
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I Hereby Certify That This Instrument Was Filed for
Record On The 19TH Day Of July, 2017 at 08:31:50 AM
And Was Duly Recorded as Instrument # **1831356**
Of The Records Of Santa Fe County



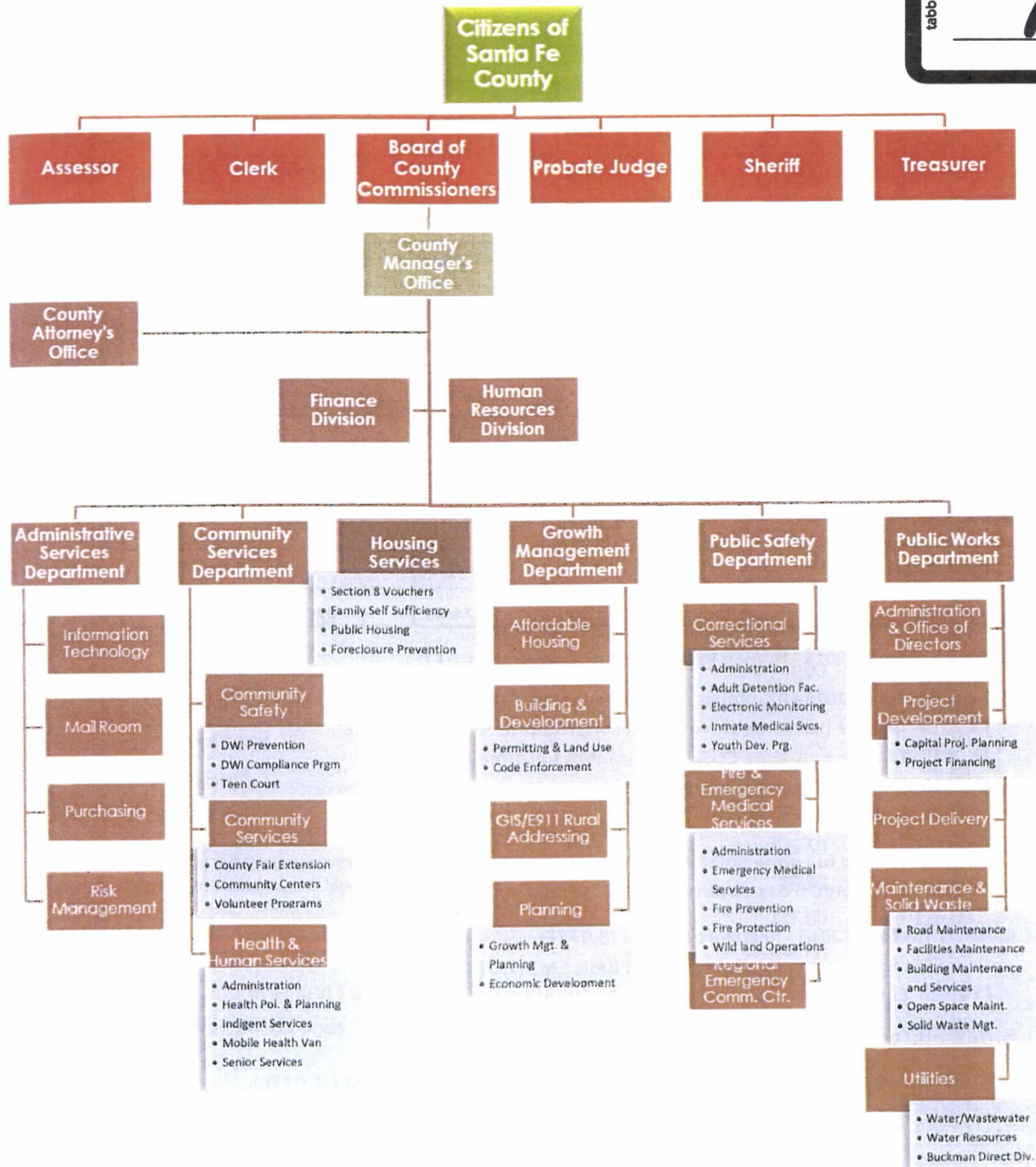
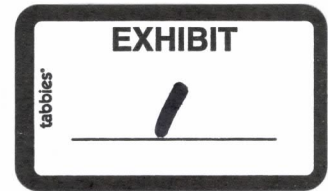
Witness My Hand And Seal Of Office
Geraldine Salazar

Deputy *Geraldine Salazar* County Clerk, Santa Fe, NM



Fiscal Year 2016 Budget

Chapter 8 ORGANIZATION BUDGETS, OBJECTIVES AND PERFORMANCE



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Figure I-1 Organization Chart



RULES AND REGULATIONS OF THE SANTA FE COUNTY ETHICS BOARD

SECTION 1. INTRODUCTION

Pursuant to the authority granted by Ordinance No. 2010-12, the Santa Fe County Ethics Board (hereinafter referred to as the "Board") issues the following Rules and Regulations for its conduct and for interpretation and enforcement of Ordinance No. 2010-12 (hereinafter referred to as "the Ordinance").

In the event that these Rules and Regulations are in conflict with the provisions of the Ethics Ordinance, the provisions of the Ordinance shall prevail.

Section 2. ADVISORY OPINIONS

A. Procedure. The Board shall issue advisory opinions from time to time, pursuant to the following procedures:

1. A request for advisory opinion shall be submitted to the Board by serving the request with the County Attorney's Office. The County Attorney's Office will forward all such requests to the County's contract ethics official and to the Chair of the Board.
2. The Board may require the individual requesting an opinion to provide additional information and to appear before the Board to respond to questions related to the request.
3. The Board shall review the request for an advisory opinion during a meeting of the Board. The individual requesting an opinion may attend such review hearing. The Board may require the individual requesting the opinion to answer questions or provide additional information or documentation at the review hearing. The Board may modify the recommended advisory opinion submitted by the subcommittee.
4. Each advisory opinion shall be issued only after a majority of the entire membership of the Board has voted in favor of the advisory opinion.

B. Public Hearings and Public Record

1. The Board shall comply with the inspection of the State of New Mexico Public Records Act and the State of New Mexico Open Meetings Act.
2. All advisory opinions approved by the Board shall be filed with the County Clerk and, upon filing, shall be a public record.

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C. Advisory Opinion Requirements

1. Each request for an advisory opinion shall concern some provision of the Ordinance that is claimed to be subject of multiple interpretations, vague or unenforceable. An advisory opinion may pertain to a particular person and may be filed instead of a formal complaint pursuant to Section 23 of the Ordinance.
2. The request for an advisory opinion shall be only about prospective conduct, or application of the Ordinance, not past or present actions.
3. The request must be about a real or potential conflict the requesting individual is facing.
4. All material facts must be revealed in the request.
5. The individual who is issued an advisory opinion is the only one who may use the opinion as a defense.

The Board may include in the advisory opinion that the individual must take particular actions or refrain from certain conduct in order to be eligible to use the advisory opinion as a defense to any future complaint.

D. Advisory Opinions as a Defense

1. A person who receives an advisory opinion may rely on the opinion, so long as: the Complaint is filed against that person based on the same facts that are the basis for the opinion request; the person may raise the advisory opinion as a defense in response to the Complaint or any portion of the Complaint; the Board may determine if the opinion was followed and whether the Complaint is based on the same facts revealed in the opinion request; if both are found, the Board shall dismiss the Complaint or that portion of the Complaint that pertains to the advisory opinion.
2. In the event the Board finds that material facts were omitted by the person in requesting the advisory opinion, that the person did not follow the advisory opinion, or that the complaint involves material facts other than those that are the basis of the advisory opinion, the Board shall not dismiss the Complaint solely on the basis of the advisory opinion, however, the person may use the advisory opinion as part of his defense.
3. Advisory opinions may be used by both Complainants and Respondents as precedent, but such opinions are not binding on the Board unless it is an opinion found by the Board to have issued to and followed by the Respondent pursuant to this section.

Section 3. COMPLAINT AND HEARING PROCESS

A. Complaints and Violations

1. A Complaint pursuant to Section 23 of the Ordinance that alleges a violation of the Ordinance shall be made in writing by the filing of a sworn complaint alleging facts which, if true, would constitute a violation of the Ordinance. The Complaint should include detailed factual

- allegations concerning the alleged violation, including information concerning the nature of the violation, the specific section or sections of the Ordinance claimed to have been violated, the factual circumstances of the alleged violation, relevant information about the alleged violation such as the time and place when the violation occurred, together with the names of any witnesses to the alleged violation.
2. The Board will not hear a Complaint that is not sworn as described in Section 23 of the Ordinance unless subsequent investigation by the County contract ethics official reveals admissible evidence of a violation of the Ordinance. Complaints may, at the election of the person filing the Complaint, be accompanied by verified affidavits pertaining to material elements of the Complaint.
 3. A copy of the Complaint shall be served on the Respondent within ten (10) days after the Complaint is served upon the County Attorney's Office.
 4. The Respondent shall be permitted to file an Answer to the Complaint within thirty (30) days of the date the Complaint is served on the Respondent. The Answer of the Respondent shall be sworn in the same manner as the Complaint. The Answer shall include a response to each allegation in the Complaint. The Answer shall be filed with the County Attorney's Office by each Respondent. Each Respondent shall send a copy of his/her Answer to each Complainant by first class mail and certifying that such mailing occurred on or before the date the Answer was filed with the County Attorney. Failure to timely file an Answer, or filing an unsworn answer, may be construed by the Board, depending on the totality of the circumstance, as an admission of allegations. A default judgment may be entered, as appropriate.
 5. The Board will not set for hearing any Complaint charging a violation alleged to have occurred more than one (1) year prior to the date the Complaint or confidential report.
 6. Each Complaint shall be filed in accordance with the Ordinance. After the complaint is delivered to the County's contract ethics official, a copy of the Complaint shall be immediately delivered to each member of the Board.
 7. Each Complaint shall be reviewed by the Board at a preliminary hearing. After reviewing the complaint, the Board shall either set the Complaint for hearing, summarily reject the Complaint if it does not, on its face, state a violation of the Ordinance and notify the complainant in writing of the of rejection and the reasons therefore, or request that further investigation of the Complaint be accomplished by the County's contract ethics official.

B. Summary Dismissals

Any Board member who requests that the Complaint be considered at a preliminary hearing shall so notify the County's contract ethics officer within fifteen (15) days of that Board member's receipt of the Complaint. If the County's contract ethics officer receives such notice, a preliminary hearing shall be scheduled and the summary procedure provided hereafter shall not apply to the Complaint. If the Board agrees to a dismissal, the County's contract ethics official shall prepare an order of dismissal, which the Chair shall be required to sign. The Respondent shall be given notice of all actions taken pursuant to this section. The County's

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contract ethics official shall provide all Board members a copy of the Complaint and the order of dismissal at the time of dismissal.

C. Response for Preliminary Hearing

Respondents may file a statement with the Board explaining why the Complaint fails to state a violation of the Ordinance. Respondents shall be given twenty-five (25) calendar days notice of the preliminary hearing. The Respondent's statement shall be filed with the Internal Audit Contractor fifteen (15) calendar days prior to the preliminary hearing. The County's Contract Ethics Official shall provide the Complainants and Board members with the Respondent's statement five (5) County working days prior to the preliminary hearing.

D. Preliminary Hearing

1. Complainants, Respondents and their representatives shall, at the request of the Board, address the Board during the preliminary hearing. Such presentations shall be limited to discussion of whether the Complaint contains sufficient factual allegations to support a finding that a violation of the Ordinance occurred. No testimony shall be accepted and no argument about the accuracy of the facts alleged in the Complaint shall be accepted at the preliminary hearing. The Board shall also consider the Complaint, Respondent's response to the Complaint and any other documentation provided at the request of the Board.
2. Reasons for Dismissing a Complaint. At the preliminary hearing, the Board may summarily dismiss a Complaint if anyone of the following is found or for such other reason as may be determined by the Board:
 - a) The Board has no jurisdiction over the subject matter specified in the complaint or over the Respondent.
 - b) The time in which a complaint could be filed has run.
 - c) The conduct alleged in the complaint, if true, would not constitute a violation of the Ordinance.
 - d) The complaint on its face is frivolous, groundless, or brought for the purpose of harassment.
 - e) The subject of the complaint has become moot.
 - f) The Respondent had obtained an advisory opinion concerning the identical facts alleged in the complaint and Respondent complied with the advisory opinion.
3. A complainant who is aggrieved by the Board's summary rejection of the Complaint may file an appeal to the District Court pursuant to Section 25 of the Ordinance.
4. The Board shall promptly set a hearing date for any Complaint not summarily dismissed or referred for further investigation.

5. Persons required to testify before the Board shall be served with a subpoena issued pursuant to Section 24 of the Ordinance. Each subpoena issued shall be signed by the Chair of the Board or designee. Complainants and Respondents may request issuance of subpoenas through the County's contract ethics official in a timely manner.

E. Consent Order/Settlement Process

1. At any time after the filing of the Complaint, the Respondent may offer to settle the complaint by admitting to the allegations in the Complaint and requesting a settlement conference with the County's contract ethics official. Based on the settlement conference, a proposed settlement agreement shall be prepared and submitted to the Board. The settlement agreement shall state the sections of the Ordinance violated, the action taken or to be taken by the Respondent to correct the violation and proposed sanctions, if any, upon Respondent.
2. Upon receipt of a proposed settlement agreement, the Board shall meet to determine if it will accept the settlement agreement. Board acceptance of a settlement agreement shall be by a majority vote of those Board members in attendance. Upon acceptance, the Board shall issue a consent order that shall be provided to all parties. The review of the settlement agreement and vote on the consent order shall be conducted at a public hearing, Testimony shall not be allowed at such hearing nor shall argument of the parties be accepted. The Respondent shall attend the hearing to confirm his acceptance of remedial measures, if any, to be taken by Respondent and sanctions imposed. The consent order shall be a final order concluding the case. The settlement agreement approved by the Board and the consent order shall be public records. In the event a settlement agreement is rejected by the Board, such settlement agreement may not be used as evidence in any subsequent hearings.

F. Hearings

In conducting hearings, all parties shall be afforded an opportunity for a full and fair hearing. In this regard, the Board shall follow these procedures:

1. Parties

The party filing a Complaint with the Board shall be referred to herein as the "Complainant" and the party responding to alleged violations of the Ordinance shall be referred to herein as the "Respondent".

2. Notice

- a) The Board shall give at least fourteen (14) days written notice of the hearing to each party stating the time and place of the hearing.

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- b) The notice of hearing shall contain a brief description of the matter to be heard so that all participants have an opportunity to prepare for the hearing.
- c) The Board shall require that the parties provide in advance a written statement of all issues to be addressed, a list of proposed witnesses, a brief statement of the nature of each witness's testimony, and copies of all documentary evidence to be introduced at least fifteen (15) days prior to the scheduled hearing. One (1) copy of each item required pursuant to the paragraph shall be provided to the County Attorney to the attention of the Board, and one (1) copy to each opposing party. Failure of a Complainant to comply fully with this paragraph shall result in a dismissal of the Complaint with or without prejudice at the Board's discretion in view of a totality of the circumstances, Failure of a Respondent to comply fully with this paragraph may result, based on a totality of the circumstances, in an admission of all alleged charges in the Complaint. Parties objecting to authenticity of proposed exhibits must make an objection in writing to the County Attorney at least five (5) days prior to the scheduled hearing and shall provide a copy of the objection to opposing parties simultaneously. A party's failure to make a timely objection to the authenticity of opposing party's exhibits shall result in the admission of those exhibits.

3. Continuances

Requests for continuances shall be made, in writing, at least seven (7) days prior to the hearing, and shall be delivered to the County Attorney to the attention of the Board.

4. Evidence

- a) The Board shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant, immaterial and unduly repetitious evidence shall be excluded. It is the policy of the Board that testimony and information presented during the hearing must have a direct and substantial bearing on the case at hand.
- b) The technical rules of evidence do not apply. Hearsay is permitted so long as it is deemed reliable. The legal residuum rule applies.

5. Hearing Procedure

- a) The Chair of the Board shall act as the presiding officer at the hearing unless he/she is unavailable or wishes to delegate this duty, in which case the Board members shall select a presiding officer. The presiding officer shall:
 - (1) Determine the admissibility of evidence and testimony;
 - (2) Make rulings on procedural issues; and
 - (3) Be responsible for the Board's written ruling in each case.
 - (4) Issue an administrative subpoena for the appearance of a person at a hearing or for the production of documents, or both;

- (5) Request the County Attorney to apply for a court order compelling compliance with an administrative subpoena or for a Court order requiring the giving of the testimony or production of documents.
 - (6) The presiding officer may impose reasonable limits on the number of witnesses to be heard and on the nature and length of the testimony or examination of persons appearing at such hearings.
 - (7) The presiding officer may set time limits for presentation of opening and closing statements.
 - (8) The presiding officer may prohibit repetitive testimony.
- b.) Should an action of the presiding officer challenged by another Board member, and should the presiding officer disagree with the challenge, the issue will be decided by a majority vote of the Board members present.
 - c.) The Board may, but is not required to recognize any agreements on facts and issues between the parties and eliminate certain facts not in dispute in defining the issues to be heard.
 - d.) Prior decisions by the Board on the same issue will generally be followed and the parties are urged to refer to prior rulings on identical or similar issues. Prior decisions are available at the County Clerk's Office. The County Clerk shall index all Board case decisions by subject and date.
 - e.) The Board may request clarification by the Complainant of a Complaint prior to any hearing. request that certain facts be examined initially in order to determine whether such facts exist as will support the allegations to be heard, or make any other rulings that are procedural, limiting, dispositive, or otherwise, which are in accordance with the law as applied to the facts at issue.
 - f.) Any party may be represented by representatives which may but do not have to be attorneys.
 - g.) The Board may dismiss a Complaint after hearing evidence if it finds that the Respondent committed the violation due to an oversight, Respondent has come into compliance voluntarily and the Board determines that no sanction is required or when the Complainant does not appear at a hearing, but only if the Board determines that it would be unfair to the Respondent not to have the opportunity to examine the Complainant.
 - h.) In the absence of the Board's decision to proceed in a different manner, notice of which shall be given to the parties at least three (3) days in advance of the hearing, the sequence of the hearing shall be as follows:
 - (1) Opening Statement of Issues:

The Complainant and then the Respondent will present statements of issues involved in the case and outline the case that will be presented.
 - (2) Complainant's Presentation of its Case:

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The Complainant's case will first be presented to the Board. Witnesses for the Complainant will be called, sworn, and questioned on their involvement in or knowledge of the case, following each witness's testimony; the Respondent will have the opportunity to question the witness. Board members will then have the opportunity to question the witness on matters related to his/her testimony. Follow-up questioning by the Complainant will be allowed at the discretion of the presiding officer. This procedure will be followed for each of the Complainant's respective witnesses.

(3) Presentation of Respondent's Case:

Respondent's presentation shall follow complainants and the same format as the presentation of Complainant's case shall apply.

(4) Rebuttal Testimony:

Following presentation of the Respondent's position, the Complainant will be allowed to present rebuttal testimony at the discretion of the presiding officer. Such testimony shall be brief and specifically address the issues brought forth in the Respondent's presentation. No new issues shall be raised.

(5) Closing Statements:

At the conclusion of the case presentations and rebuttal testimony, the Complainant and Respondent will each make his/her closing statements. The closing statements should briefly review the issues presented and the desired outcome. The Complainant will then have the opportunity to make a final statement, which shall be limited to issues brought forth in the Respondent's closing statement.

(6) Decision:

Any decision or opinion of the Board, including findings of fact, which shall consist of a written statement of the facts relied on to support the decision of the Board, shall be given to each party by certified mail or personal service, and shall be filed in the office of the County Clerk.

(7) Record:

The following records of the Board's proceedings shall be kept:

- a. A full record of the hearing by sound recording or by court reporter, (which shall be retained for one (1) year after the final decision is issued);
- b. All documents of other items considered and received as evidence; and
- c. Any decision or opinion of the Board.

Section 4. MISCELLANEOUS

A. Notice

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Any notice required by the Ethics Ordinance shall be given by certified mail, personal service or as provided below. For the purposes of providing notice to a Candidate, written notice mailed or delivered to the address specified in a Candidate's Declaration of Candidacy shall be considered sufficient notice to the Candidate.

B. Meetings

The Board shall comply with the provisions of the New Mexico Open Meetings Act relating to notice to the public of its meetings and meetings being open to the public. The length of notice given to the public of the Board's meetings shall be determined by annual resolution.

C. Amendments

The Board, by majority vote, may amend these Rules and Regulations pursuant and subject to the authority granted under the Ethics Ordinance.

D. Effective Date and Filing

These Rules shall be effective upon filing with the Santa Fe County Clerk.

*Adopted by the Santa Fe County Ethics Board
without any changes on August 11, 2011.*

Randy Forrester

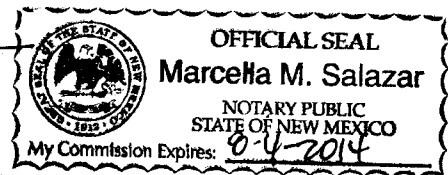
Chair

Santa Fe County Ethics Board

State of New Mexico
County of Santa Fe

The foregoing instrument was acknowledged before me this 11th day of August 2011 by Randy Forrester.

Marcella M. Salazar
Notary Public

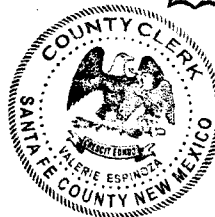


COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

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I Hereby Certify That This Instrument Was Filed for
Record On The 11TH Day Of August, 2011 at 04:25:27 PM
And Was Duly Recorded as Instrument # 1642433
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Deputy *Valerie Espinoza* Valerie Espinoza 9
County Clerk, Santa Fe, NM



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