

NEW MEXICO PUBLIC REGULATION COMMISSION

RESOLUTION 01-11-24

A RESOLUTION ADOPTING THE 2024 COMMISSION CODE OF CONDUCT

WHEREAS, this duly appointed body, on this 11th day of January 2024, does hereby recognize the fundamental principle that a public office is a public trust. This Commission Code of Conduct sets out standards of ethical conduct intended to foster public trust and promote confidence in the integrity of government by avoiding even the appearance of self-interest, personal gain or benefit; and

WHEREAS, ethical leadership sets a good example whereby all citizens are treated with respect; and

WHEREAS, the individual Commissioners of the Public Regulation Commission recognize that various State laws and regulations govern their conduct and that abiding by the letter and the spirit of these laws and regulations is of paramount concern;

THEREFORE, BE IT RESOLVED,

That the Commission shall adopt this Commission Code of Conduct in its entirety, and in general, each Commissioner shall:

1. treat the position of Commissioner as a public trust;
2. use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests;
3. conduct themselves in a manner that justifies the confidence placed in them by the people; and
4. at all times maintain the integrity and ethically discharge the high responsibilities of public service.

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A. Conflicts of Interest

To avoid the appearance of, or an actual conflict of interest, each Commissioner shall:

1. fully disclose real or potential conflicts of interest as a guiding principle for determining appropriate conduct;
2. at all times, make reasonable efforts to avoid undue influence and abuse of office in public service; and
3. not request or receive any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act.

(See NMSA 1978 §10-16-3)

B. Gifts

Each Commissioner or their family member shall handle gifts as follows:

1. A Commissioner shall not accept anything of value from a regulated entity, affiliated interest or intervenor¹. For the purposes of this paragraph, "anything of value" does not include:
 - (a) the cost of refreshments totaling no more than five dollars (\$5.00) a day or refreshments at a public reception or other public social function that are available to all guests equally;
 - (b) inexpensive promotional items that are available to all customers of the regulated entity, affiliated interest or intervenor; or

¹ (1) "affiliated interest" means a person who directly controls or is controlled by or is under common control with a regulated entity, including an agent, representative, attorney, employee, officer, owner, director or partner of an affiliated interest. For the purposes of this definition, "control" includes the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership, control or holding with the power to vote of ten percent or more of the person's voting securities;

(2) "intervenor" means a person who is intervening as a party in an adjudicatory matter or commenting in a rulemaking pending before the commission or has intervened in an adjudicatory or rulemaking matter before the commission within the preceding twenty-four months, including an agent, representative, attorney, employee, officer, owner, director, partner or member of an intervenor;

(3) "pecuniary interest" includes owning or controlling securities; serving as an officer, director, partner, owner, employee, attorney or consultant; or otherwise benefiting from a business relationship. "Pecuniary interest" does not include an investment in a mutual fund or similar third-party-controlled investment, pension or disability benefits or an interest in capital credits of a rural electric cooperative or telephone cooperative because of current or past patronage; and

(4) "regulated entity" means a person whose charges for services to the public are regulated by the commission and includes any direct or emerging competitors of a regulated entity and includes an agent, representative, attorney, employee, officer, owner, director or partner of the regulated entity.

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- (c) pension or disability benefits received from a regulated entity, affiliated interest or intervenor; (*See* NMSA 1978 §62-19-8(D)(1))
2. a Commissioner's family shall not knowingly accept from a restricted donor², and a restricted donor shall not knowingly donate to a Commissioner's family, a gift of a market value greater than two hundred fifty dollars (\$250);
 3. a Commissioner shall not solicit gifts for a charity from a business or corporation regulated by the Commission and shall not otherwise solicit donations for a charity in such a manner that it appears that the purpose of the donor in making the gift is to influence the Commissioner in the performance of an official duty; and
 4. no Commissioner shall accept or receive to his or her own use any compensation, fees, allowance or emoluments for or on account of his or her office, in any form whatever, except the salary provided by law. (*See* NMSA 1978 §10-16B-3)

BE IT FURTHER RESOLVED,

That each Commissioner shall also be prohibited from:

1. having a pecuniary interest in a regulated entity, affiliated interest or intervenor, and if a pecuniary interest in an intervenor develops, the commissioner or employee shall divest that interest or self recuse from the proceeding with the intervenor interest; (*See* NMSA 1978 §62-19-8(D)(2))
2. soliciting any regulated entity, affiliated interest or intervenor to appoint a person to a position or employment in any capacity; (*See* NMSA 1978 §62-19-8(D)(3))
3. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;
4. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage

² "restricted donor" means a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.

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of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, or advising an employee to take part in political activity or similar activities;

5. violating the Commissioner's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes; (*See* NMSA 1978 10-16-3.1)
6. taking an official act for the primary purpose of directly enhancing the Commissioner's financial interest or financial position, engaging in any official act directly affecting a Commissioner's financial interest, or acquiring a financial interest when the Commissioner believes or should have reason to believe that the new financial interest will be directly affected by the official act; (*See* NMSA 1978 §10-16-4)
7. requesting or receiving an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$ 100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit; (*See* NMSA 1978 §10-16-4.1)
8. using or disclosing confidential information acquired by virtue of the Commissioner's position for the Commissioner's or another's private gain; (*See* NMSA 1978 §10-16-6)
9. selling, offering to sell, coercing the sale of or being a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the Commissioner's family or a business in which the Commissioner has a substantial interest, to a person over whom the Commissioner has regulatory authority;
10. receiving a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the Commissioner has regulatory authority; (*See* NMSA 1978 §10-16-13.2)
11. dismissing a classified employee for failure or refusal to pay or promise to pay any assessment, subscription or contribution to any political organization or

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candidate; however, nothing contained in this section shall prevent voluntary contributions to political organizations;

12. refusing the right of any person from taking an examination, from appointment to a position, from promotion or from holding a position because of political or religious opinions or affiliation or because of race or color. (See NMSA 1978 §10-9-21(A) and (E))

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 11th day of January, 2024.

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PATRICK O'CONNELL, COMMISSIONER



JAMES ELLISON, COMMISSIONER



GABRIEL AGUILERA, COMMISSIONER

