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### **Sec. 2-126. - Authority.**

This division is enacted under the authority of NMSA 1978, §§ 3-17-1, 4-37-1 and 10-16-13, and this division shall be known as the Code of Conduct.

(Ord. No. 2012-13, 8-14-12)

### **Sec. 2-127. - Declaration of policy.**

The proper operation of democratic government requires that candidates, elected officials, employees and volunteers of local governments be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office or the pursuit of public office not be used for personal gains; that the public have confidence in the integrity of its government; and, that, persons and businesses seeking to contract and contracting with the county abide by the requirements set out herein to prevent conflicts of interest and unfair contracting practices. To assist in attaining these goals, there is established a code of conduct for all candidates, elected officials, employees and volunteers of county government, including members of boards, committees and commissions (hereinafter "candidates and public servants"). The purpose of this division is to establish standards of conduct for all candidates for elected office and for public servants, by setting forth those acts or actions which are incompatible with the best interests of the county and by requiring such candidates, and public servants to disclose personal interests, financial or otherwise, in matters affecting the county. It is the further purpose of this code to protect county employees and volunteers from undue influence, threats or fear of threat or reprisal with respect to the exercise of their constitutional right to support candidates of their choice.

This code is promulgated under the county's authority to regulate the conduct of candidates, public servants under its control and contractors doing business with the county and prospective contractors.

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The penalties and remedies are not exclusive, and are complementary to other standards of conduct, including criminal prohibitions, and New Mexico's Governmental Conduct Act, NMSA 1978 § 10-16-1 et seq., which apply to individuals covered by this code. The penalties under the Governmental Conduct Act may be more stringent than this code. Nothing herein shall preempt or prevent law enforcement or other governmental jurisdictions to investigate or pursue penalties for the same course of behavior prohibited under this code.

(Ord. No. 2012-13, 8-14-12)

### **Sec. 2-128. - Responsibility of public office.**

Public servants hold office, employment, or volunteer for the benefit of the public. They are bound to uphold the Constitution of the United States and the New Mexico Constitution; to observe the highest standards of law in the exercise of the powers and duties of their office; to impartially carry out the laws of the nation, state and county; to discharge faithfully the duties of their office regardless of personal considerations; and to recognize that the public interest must be their prime concern.

Public servants have the common obligation of serving the public. In performing their duties, public servants shall treat the public and each other with respect, concern, and responsiveness, recognizing that their common goal of exceptional public service can only be achieved by working together. Disputes that arise among public servants shall be resolved at the lowest possible level; keeping in mind that public money spent on resolving these disputes is money not spent on important public needs.

(Ord. No. 2012-13, 8-14-12)

### **Sec. 2-129. - Definitions.**

[The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

*Business* means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

*Candidate* means any person who has filed a declaration of candidacy for the position of county commissioner, sheriff, treasurer, assessor or clerk, including the period of time from the filing of the declaration of candidacy through being sworn into the elected office.

*Compliance officer* means an independent county employee who accepts and processes complaints alleging county government misconduct, and violations of this code, ensures that the complaints are routed to the proper office for handling, investigation, and response; tracks and reports to the review board, county manager and county commission quarterly on the number of complaints, their subject matter, and their resolution; and coordinates annual code of conduct training. The compliance officer shall strive to be unbiased and as impartial as possible and shall conduct themselves with fairness and professionalism at all times.

*Contract* means an agreement or transaction having a value of more than \$1,000.00 with the County of Bernalillo for:

- (1) The rendition of services, including professional services;
- (2) The furnishing of any material, supplies or equipment;
- (3) The construction, alteration or repair of any public building or public work;
- (4) The acquisition, sale or lease of any land or building;
- (5) A licensing arrangement;
- (6) A loan or loan guarantee; or
- (7) The purchase of financial securities or instruments.

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*Domestic partners* means two adults, capable of consent who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, where both persons have a common residence, and neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved or adjudged a nullity. The two persons are at least 18 years of age and not related by blood in a way that would prevent them from being married to each other in this state. A "common residence" means that both domestic partners share a common residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

*Elected official* means the members of the board of county commissioners, sheriff, treasurer, assessor, and clerk, but does not include the probate judge.

*Employee* means all persons filling an allocated position of county employment, including appointees of a county commissioner, the board of county commissioners, or any other elected official.

*Employment* means rendering of services for compensation in the form of salary as an employee.

*Family member* means an individual's spouse, parents, children or siblings, by consanguinity or affinity and includes an individual's domestic partner.

*Financial interest or substantial financial interest* means an interest held by an individual or the individual's family that is:

- (1) An ownership interest in business or property greater than 20 percent; or
- (2) Any employment or prospective employment for which negotiations have already begun.

*Gift* means any money, property, real property, personal property, service, license, permit, contract, authorization, loan, travel, entertainment, food, hospitality, gratuity, or any promise of these, or anything of value that is received or given without equivalent consideration or compensation. For purposes of this division, "gift" does not include:

- (1) Opportunities, benefits, and services that are available on the same conditions as for the general public;
- (2) Anything for which the elected official, employee or volunteer, or his or her spouse, or family member pays the market value;
- (3) Any (i) contribution that is lawfully made and reported in accordance with the election code, or (ii) activities associated with a fundraising event in support of a political organization or candidate, unless otherwise prohibited by this code;
- (4) An award, plaque, certificate, or similar personalized item given in recognition of the official's public, civic, charitable, or professional service;
- (5) An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization;
- (6) The use of a public facility or public property made available by a governmental agency for a public purpose;
- (7) Gifts provided directly or indirectly by a state, regional or national organization whose primary purpose is the promotion of the exchange of ideas between governmental officials or employees or to provide for the professional development or training of such governmental officials or employees;
- (8) Any gift accepted on behalf of and to be used by the county for the costs of attending public meetings or conferences where elected officials or employees are attending as part of their official duties, including local events and the costs of travel and related expenses associated with attending such events outside of the county;
- (9) Any gift given by a family member for personal reasons; and,

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(10) Food or beverage with a value under \$25.00.

*Official act* means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority.

*Person* means any individual, corporation, partnership, joint venture, association or business organization.

*Political activity* means:

- (1) Preparing for, organizing or participating in any political meeting, political rally, political demonstration or other political event;
- (2) Soliciting contributions on behalf of a political candidate or political party including, but not limited to, the purchase of, selling, distributing, or receiving payments for tickets for any political fundraiser, political meeting or other political event;
- (3) Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a political contribution;
- (4) Soliciting votes on behalf of a candidate for elective office or a political organization;
- (5) Initiating for circulation, preparing, circulating, reviewing or filing any petition on behalf of a candidate for elective office;
- (6) Preparing or reviewing responses to candidate questionnaires in connection with a campaign for elective office or for or against any referendum question;
- (7) Campaigning for any elective office;
- (8) Managing or working on a campaign for elective office; or
- (9) Preparation or design of any campaign materials or any form of media for a candidate for elective office.

*Privileged or confidential information* means any written or oral material, or electronic data or media related to county government which had not become part of the body of public information and which is designated by statute, rule, court decision, lawful order, ordinance, resolution or custom as privileged, confidential or exempt from disclosure pursuant to the New Mexico Inspection of Public Records Act.

*Restricted donor* means any person or entity who:

- (1) Is seeking official action (i) by an elected official or volunteer, or (ii) in the case of an employee by the employee or by an elected official, a county department or an employee's supervisor;
- (2) Does business with or seeks to do business (i) with the board of county commissioners, the county, an elected official or volunteer, or (ii) in the case of an employee, with an employee or his/her department, elected office or an employee's supervisor;
- (3) Conducts activities regulated (i) by an elected official or volunteer, or (ii) in the case of an employee, with the employee or his/her department or the employee's supervisor; or
- (4) Has interests that may be substantially affected by the performance or nonperformance of the official duties of the elected official, volunteer or employee.

*Standards* mean the conduct required by the code of conduct.

*Volunteer* means any person who is appointed by an individual county commissioner or by a majority of the board of county commissioners to any board, committee or commission for which the individual receives no compensation.

(Ord. No. 2012-13, 8-14-12)

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### **Sec. 2-130. - Standards of conduct.**

- (a) *General ethical standards of public service.*
- (1) Public servants shall treat their position as a public trust, with a fiduciary duty to use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
  - (2) Public servants shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.
  - (3) Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.
  - (4) No public servant may request or receive, and no person may offer any money, thing of value or promise thereof, other than any county pay received, that is conditioned upon or given in exchange for promised performance of an official act.
- (b) *Improper influence.* No public servant shall make, participate in making or in any way attempt to use his or her position to influence any county governmental decision or action in which he knows, he or she has reason to know, or should know that he or she has any substantial interest. No county commissioner shall make, participate in making or in any way attempt to use his or her position to influence any hiring decision or other decision regarding employment for any county employee, except for appointees of the county commissioners, the county manager, the county attorney and the fire chief. The prohibition does not prohibit:
- (1) A county commissioner from being listed as a reference for an applicant seeking employment with the county; or
  - (2) A county commissioner from participating in and making comments during any concurrence process related to the selection of deputy county managers the public information officer, human resources director and the director of the economic development office; or
  - (3) A county commissioner raising his or her concerns regarding the performance or conduct of a deputy county manager or department director with the county manager, or stating his or her satisfaction, dissatisfaction, compliment, criticism or concern regarding the actions of a deputy county manager or department director publicly; or
  - (4) A county commissioner notifying the county manager or county attorney, in a confidential communication, of allegations of poor employee performance or employee misconduct and requesting appropriate investigation and action if found by the county manager to be warranted.
- (c) *Prohibited bidding and contracting.*
- (1) No public servant shall accept a bid or proposal from a person who directly participated in the preparation of the specification, qualifications or evaluation criteria on which the specific competitive bid or proposal was based.
  - (2) No public servant shall attempt to influence the process or outcome of a competitive bid, proposal or request for a proposal, unless formally or specifically appointed to participate in the bid or proposal process; or by virtue of their job duties has the authority to advise or take action on a specific bid or proposal.
  - (3) No elected official or employee shall enter into contracts or obtain financial interests with a person or business that are, or are attempting to have business with the county.
  - (4) No public servant who participated, directly or indirectly in a county procurement process shall seek employment, be an employee, or receive any financial consideration from a person or business contracting or seeking to contract with the county.

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- (5) No public servant shall enter into contracts with, or take any action favorably affecting, any person or business that is represented in the matter by a person who has been an elected official or employee of the county within the preceding year.
  - (6) No person or business who is doing business with the county or seeking to do business with the county shall attempt to influence the outcome of a bid process by contacting any candidate or public servant about a bid or proposal process unless the public servant contacted is formally or specifically appointed to participate in the bid or proposal process; or by virtue of their job duties has the authority to advise or take action on a specific bid or proposal. Persons or businesses doing business or seeking to do business with the county shall be required to comply with the provisions of this Code of Conduct as they apply to their interactions with the county and any violation of the Code of Conduct requirements are hereby found to be a breach of a county contract they hold and shall be grounds for rejection of any bid or proposal.
- (d) *Receiving and soliciting gifts.*
- (1) *Restrictions.* No candidate, or public servant shall intentionally solicit or accept a gift or gifts with a market value greater than \$100.00 from any restricted donor within a calendar year. No candidate or public servant shall intentionally solicit or accept a gift or gifts in violation of any federal or state statute or regulation, or any county ordinance, rule or regulation. This ban applies to and includes family members of the candidate, elected official, employee or volunteer. No restricted donor shall intentionally offer or make a gift that violates this restriction.
  - (2) *Disclosure.* All gifts accepted by a candidate or public servant from a restricted donor, regardless of their value, shall be reported on a quarterly basis to the county clerk on a form approved by the board of review. The report shall include the market value of the gift, the name of the person(s) providing the gift, and the date the gift was received. Gifts of food and refreshments may be reported in estimated value if below \$35.00 in market value. The quarterly reports provided to the county clerk shall also be posted on the county's transparency portal.
- (e) *County-owned property.* No public servant shall engage in or permit the unauthorized use of county-owned property for any political activity or in violation of any county policy.
- (f) *Use or disclosure of privileged or confidential information.* No public servant shall use or disclose privileged or confidential information gained in the course of or by reasons of his or her position or employment, other than; (i) in the performance of his or her official duties; (ii) as may be required by law; or (iii) as permitted by this code of conduct.
- (g) *Conflicts of interest.*
- (1) *Official act for personal financial interest.*
    - a. It is unlawful for public servant to take an official act for the primary purpose of directly enhancing or improving their financial interest or financial position.
    - b. A public servant shall be disqualified from engaging in any official act directly affecting their or their family members' substantial financial interest.
    - c. No elected official during the term for which elected, and employee or volunteer during the period of their service shall acquire a substantial financial interest when they believe or should have reason to believe that the new substantial financial interest will be directly affected by the officer's or employee's official act.
  - (2) No public servant shall make, or participate in making, any county governmental decisions with respect to any matter in which the public servant or their family member has any substantial financial interest.
  - (3) Any employee who has a conflict of interest as described in subsections (1) and (2) above shall advise his or her supervisor of the conflict or potential conflict in writing. The immediate supervisor may ask for guidance on the nature of the potential conflict from the compliance officer, county manager or county attorney, if it is determined there is a conflict the supervisor shall either:

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- a. Assign the matter to another employee;
  - b. Require the employee to eliminate the substantial interest giving rise to the conflict and only thereafter shall the employee continue to participate in the matter;
  - c. It shall not be considered a violation of this code of conduct where an employee timely discloses his or her potential conflict of interest and complies with the direction of his or her supervisor.
- (4) Any public servant, while acting in a quasi-judicial, legislative or adjudicative role, shall disclose the potential conflict of interest and shall disqualify themselves from participating in any official act, including any substantive discussion or vote. Any elected official may ask guidance on potential conflicts of interests from the county attorney, compliance officer or seek an advisory opinion from the board of review.
- (5) *Interest in county business.*
- a. No public servant shall have any substantial financial interest in his or her own name, or in the name of any other, in any contract, work or business of the county or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the county. Compensation for property taken pursuant to the county's eminent domain power shall not constitute a substantial interest within the meaning of this section if sold pursuant to a process of competitive bidding following public notice. No public servant shall have a substantial financial interest in the purchase of any property that; (i) belongs to the county; or (ii) is sold for taxes or assessment; or (iii) is sold by virtue of legal process at the suit of the county.
  - b. For purposes of section (a), "substantial financial interest" shall not include the interest of the spouse of a public servant which interest is related to the independent occupation, profession or employment of the spouse.
  - c. The county shall not enter into a contract with a public servant or with their family or with a business in which they or their family has a substantial interest unless the public servant has disclosed through public notice to the county clerk their substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to salary for the elected office or employee compensation by the county. A person negotiating or executing a contract on behalf of the county shall exercise due diligence to ensure compliance with the provisions of this section.
- (h) *Political activity.*
- (1) No candidate or public servant shall compel, coerce or intimidate any elected official, volunteer or employee to make, or refrain from making, any political contribution. No candidate or public servant shall directly solicit any political contribution from county employees or immediate family of county employees. Nothing in this subsection shall be construed to prevent any candidate or public servant from voluntarily making a contribution or receiving a voluntary contribution.
  - (2) No candidate or elected official shall accept any campaign contribution in excess of \$1,000.00, per primary, general or special election, from any restricted donor or in violation of any federal or state statute or regulation, or any county ordinance, rule or regulation. This ban applies to and includes immediate family members of the restricted donor. No restricted donor shall offer or make a contribution that violates this division. No candidate or elected official shall accept a campaign contribution from an individual or group of individuals when the candidate or elected official knows, or has reason to believe, that the original source of the campaign contribution was a restricted donor.
  - (3) No employee with contract management authority or property management authority shall serve as a paid political consultant or as a member of the political fundraising committee of any elected official or candidate for federal, state, city or county office.

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- (4) No employee shall be permitted to serve as a paid campaign consultant, paid campaign treasurer or paid campaign manager for a candidate for federal, state, city or county office. No employee shall be permitted to receive more than \$250.00 in reimbursement from any political campaign or political candidate, in any 12-month period.
  - (5) Public servants shall not perform any political activity while at work and during any compensated time, other than annual leave, personal leave, holidays or other time off. Public servants shall not use any county property or resources for any political activity for the benefit of any campaign for elective office or any political organization.
  - (6) At no time shall any public servant solicit or require any employee to perform any political activity; (i) as part of the employee's county duties; (ii) as a condition of county employment; or (iii) during any time off that is compensated by the county (such as annual leave, personal leave or holidays).
  - (7) At no time shall any public servant; (i) threaten to deny a promotion or pay increase to a county employee who does or does not vote for certain candidates; (ii) require an employee to contribute a percentage of the employee's pay to a political fund; (iii) influence a subordinate employee to purchase a ticket to a political fundraising dinner or similar event; or, (iv) advise an employee to take part in political activity or similar activities.
  - (8) No county employee shall be directly or indirectly coerced or attempt to coerce another county employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose.
  - (9) A county employee shall not be awarded any additional compensation or employment benefit in the form of a salary adjustment, promotion, or continued employment in consideration for the employee's participation in any political activity.
  - (10) Nothing in this section prohibits activities that are otherwise appropriate for a county employee to engage in as a part of his official county employment duties or activities that are undertaken by an employee on a voluntary basis as permitted by law.
- (i) *Honoraria.* No public servant may request or receive 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 \$100.00, 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.
  - (j) *Outside employment.* An employee shall disclose in writing to the employee's respective office or employer all employment engaged in by the employee other than the employment with or service to the county and must receive written approval of that outside employment.
  - (k) *Prohibited employment.* It is unlawful for an employee who is participating directly or indirectly in the contracting process to become or to be, an employee or contractor for any person or business contracting with the county.
  - (l) *Prohibited sales.*
    - (1) An elected official or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through their family or a business in which the elected official or employee has a substantial interest, to an employee supervised by the elected official or employee. An elected official or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the elected official or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a elected official or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under their supervision.

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- (2) An elected official or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through their family or a business in which the public officer or employee has a substantial interest, to a person over whom the elected official or employee has regulatory authority.
  - (3) An elected official or employee shall not receive 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 they have regulatory authority.
  - (4) An elected official or employee shall not accept from a person over whom they have regulatory authority an offer of employment or an offer of a contract in which the elected official or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom they have regulatory authority.
- (m) *Prohibited contributions; financial service contractors*
- (1) A business that contracts with the county to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to an elected official or employee of the county who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects.
  - (2) An elected official or employee of the county that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects, shall not knowingly accept a contribution of anything of value from a business that contracts with the county to provide financial services involving the investment of public money or issuance of bonds for public projects.
  - (3) For the purposes of this section:
    - a. "Anything of value" means any gift as prohibited by the code of conduct.
    - b. "Contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.
- (n) *Contracts involving former elected officials and employees.*
- (1) The county shall not enter into a contract with, or take any action favorably affecting, any person or business that is:
    - a. Represented personally in the matter by a person who has been an elected official or employee of the county within the preceding year if the value of the contract or action is in excess of \$1,000.00 and the contract is a direct result of an official act by the elected official or employee; or
    - b. Assisted in the transaction by a former elected official or employee of the county whose official act, while in county employment, directly resulted in the county's making that contract or taking that action; or
    - c. A former public officer or employee shall not represent a person in the person's dealings with the county on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.
  - (2) For a period of one year after leaving county service or employment, a former elected official or employee shall not represent for pay a person before the county.

(Ord. No. 2012-13, 8-14-12)

**Sec. 2-131. - Disclosure of certain financial interests.**

Within ten days after swearing in of any elected official, the elected official shall file a statement of economic interest with the Bernalillo County Clerk. Amended statements of economic interest shall be filed on an annual basis or before the 11th day of January of each year.

- (1) *Form of statement.* The elected official shall provide the following information to the county clerk:
  - a. Interest in land. A description of all parcels of real estate within the county in which the person owns any interest including an option to purchase.
  - b. Elected officials shall identify all corporate interests in any business organization, either as owner, part owner, partner, or shareholder, in which such individual owns more than two percent of the outstanding stock or more than two-percent ownership interest of any other business that is doing business with the county in an amount in excess of \$7,500.00 annually.
- (2) *Amended statements.* Any person required to file a statement hereunder shall not be required to file an amended statement unless that person undergoes a change in those economic interests that are required to be disclosed by this section. Such persons shall file the amended statement in the manner prescribed above within 90 days of the date of any change in circumstances requiring filing thereof.
- (3) *[Compliance.]* All elected officials shall comply with the provisions of this section within 30 days after the requirements hereof are imposed upon such office or position.

(Ord. No. 2012-13, 8-14-12)

**Sec. 2-132. - Reporting violations of code of conduct.**

- (a) Any person who has reason to believe the code of conduct has been violated may report the suspected violation in the following manner:
  - (1) By submitting to the compliance officer, a sworn and signed complaint alleging facts which, if true, would constitute a violation of the code. The sworn complaint must identify the specific section(s) of the code allegedly violated and the facts that support such a violation. The complaint must include the complainant's name and contact information. The mailing address, contact information and direct e-mail link to the compliance officer shall be posted on the county's website.
  - (2) Upon receipt of the sworn complaint, the compliance officer shall refer it to the chair of the review board within three business days.
  - (3) The chair shall schedule a preliminary hearing for the board of review to determine whether the allegations in the complaint, if taken as true, would constitute a violation of the code of conduct, and the complaint is properly heard by the review board.
  - (4) If necessary, the compliance officer shall also refer the complaint to the district attorney or appropriate law enforcement agency to review the matter for potential criminal conduct.
  - (5) The review board shall issue a preliminary order that:
    - a. Dismisses the complaint if it does not state a claim under the code, or if it is not properly heard by the review board and refers the complaint to the compliance officer for handling outside of the code; or
    - b. Holds the case in abeyance while the case is reviewed for potential criminal conduct; or
    - c. Refers complaints involving classified county employees that report to the county manager or county attorney for disposition as an employee disciplinary investigation; or

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- d. Determines that the complaint states a facial claim; schedules the case for an evidentiary hearing and establishes a prehearing schedule; or
  - e. Finds that the allegations require an independent investigation before an evidentiary hearing is held, and sends the case to the compliance officer with specific instructions on what investigation the board determines to be necessary. Investigations deemed necessary shall be performed by an independent investigator selected by the compliance officer and county attorney.
- (b) All sworn and signed complaints are public records and shall be made available in accordance with the provisions of the Inspection of Public Records Act.
  - (c) The complaints shall be served by the compliance officer on the respondent within three business days of receipt.

(Ord. No. 2012-13, 8-14-12)

#### **Sec. 2-133. - Code of conduct review board.**

- (a) There shall be a Bernalillo County code of conduct review board (hereinafter "review board") which shall consist of five members, and five alternates who shall be appointed by the board of county commissioners, with each commissioner appointing one member, and one alternate from his or her commission district. The citizen members shall not be affiliated with county government in any capacity including, but not limited to, employment (including employment for which the salary is in any way funded by or through the county), appointment or election. The members of the review board may not hold elected public office or office with any political party within the county. Terms of office of citizens shall be two years, subject to reappointment thereafter. Regardless of the date of appointment, the term of any individual appointed to the review board shall expire when the commissioner making the appointment leaves office or his/her term expires, and a replacement has been duly appointed by the new commissioner.
- (b) The review board shall elect its own chair and vice-chair. The review board shall sit as a quasi-judicial body and act upon complaints submitted to it by the compliance officer. The alternate members shall be called upon by the chair when a hearing is set and a member of the board is unavailable. Any member whom misses three consecutive meetings, unexcused by the chair, shall be deemed to have resigned from the board and may be replaced by the original appointing commissioner. Members may attend non-quasi judicial hearings by phone.
- (c) The jurisdiction of the review board is limited to acting within the scope of matters covered by this code.
- (d) The review board shall adopt rules of procedure for conducting "due process" hearings. The rules of procedure shall be consistent with the rules for conducting administrative hearings in the State of New Mexico.
- (e) The review board shall have the power to issue administrative subpoenas compelling the attendance of witnesses at hearings and the production of documents, and the authority to seek enforcement of those subpoenas by the Second Judicial District Court.
- (f) If the review board finds that an unclassified employee or volunteer violated this code, the review board, upon a majority vote of a quorum of the board, shall forward its written findings of fact and conclusions of law to the county manager for appropriate action. If the complaint involves the county manager or county attorney the board shall refer the violation to the board of county commissioners.
- (g) If the review board finds, upon a majority vote of a quorum of the board, that a candidate or elected official has violated this code of conduct, the review board may impose any of the following penalties after the entry of written findings of fact and conclusions of law:
  - (1) A civil fine not to exceed \$1,000.00; or
  - (2) A written finding of censure; and

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- (3) When an elected official has committed an act that the board believes could be grounds for removal from office, refer their decision to the district attorney.
- (h) Limitations on complaints:
  - (1) Complaints filed more than one year after a violation of this code is alleged to have occurred shall be dismissed as untimely; and
  - (2) All complaints submitted shall be resolved, determined, or dismissed by the review board within 90 days from the submission of the complaint. If the complaint is not resolved within 90 days, the complaint shall be dismissed, unless delayed by order of the review board upon a showing of good cause.
- (i) All penalties contained herein are non-exclusive, and do not foreclose other remedies available by law. The county reserves the right to refer any conduct, whether covered by the code of conduct or not, to any agency or law enforcement agency with competent jurisdiction for criminal or civil prosecution.
- (j) Review board. Additional duties and authority:

In addition to acting on complaints and conducting due process hearings, the review board may also:

- (1) Recommend amendments to the code of conduct to the board of county commissioners;
- (2) Provide advisory opinions regarding the applicability or interpretation of any provision of this code of conduct upon the request of any candidate or public servant. It shall be a complete defense to any complaint where a candidate or public servant asked the review board for an advisory opinion prior to taking any action prohibited by this division, and complied with the advice of the review board.
- (3) The review board shall meet at least once per quarter, and more often when necessary, to hear cases, act on reports, issue advisory opinions, discuss policy, and/or approve the quarterly report. The review board shall provide the board of county commissioners with a quarterly report stating the number of complaints that were submitted alleging a violation of the ethics ordinance, the number of complaints submitted to the review board by the compliance officer, and a summary of the status of each complaint to include the date of the complaint date for the case to be heard, and date for possible final action. The quarterly status report must be approved by the review board and made available to the public on the county's website

(Ord. No. 2012-13, 8-14-12)

### **Sec. 2-134. - Right of appeal.**

Any decision of the review board finding a violation of this code, with respect to an elected official, candidate or volunteer may be appealed to the Second Judicial District Court. Any decision regarding an employee shall be covered by the terms of the employment rules and regulations or collective bargaining agreement, as applicable.

(Ord. No. 2012-13, 8-14-12)

### **Sec. 2-135. - County compliance officer.**

- (a) A Bernalillo County compliance officer (hereinafter "compliance officer") position is hereby created. The compliance officer will be a neutral, non-partisan county official that will be the staff person for the review board. The compliance officer shall be an unclassified employee selected by the county manager and county attorney acting jointly and may only be removed for cause. The compliance officer may also be the staff person for other county boards and commissions as determined to be necessary by the county manager. The compliance officer shall:

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- (1) Accept all complaints or allegations of misconduct submitted to them by citizens or public servants, whether covered by the provisions of this code of conduct or not, and monitor them to ensure that they are appropriately dealt with, log all complaints and keep record of their referral status and outcome;
- (2) Inform the subject of the complaint about the complaint, when legally necessary, and inform the complainant where the complaint has been referred to and inform them of the outcome of the complaint and report quarterly all non code of conduct complaints to the board of review, keeping the complainants names confidential where legally allowed;
- (3) Direct the complaint to the appropriate law enforcement agency, the review board, county manager or county attorney for review, any necessary investigation, and disposition. If appropriate for a complaint that is easily answered and is not an alleged code of conduct violation, the compliance officer may resolve the complaint and provide a copy of the complaint and resolution to the review board, county manager and county attorney;
- (4) For complaints alleging violations of the code of conduct, the compliance officer shall file the complaint and submit it to the chair of the review board and schedule a preliminary hearing;
- (5) The compliance officer, with assistance from the county manager, shall be responsible for education of public servants on the code of conduct and the responsibilities of public service;
- (6) The compliance officer shall keep all non code of conduct complaints confidential to allow the county to perform a self critical analysis to the extent allowed by law;
- (7) The compliance officer shall accept requests for advisory opinions on the meaning and interpretation of the code of conduct that will be reviewed and issued by the board of review with the assistance of the compliance officer and county attorney; and
- (8) The compliance officer shall maintain an open door policy and shall meet privately and confidentially with public servants or the public to answer their questions and provide them with information about the code of conduct and the obligations of candidates and public servants and resolve their issues informally if possible. These discussions shall be kept confidential except when formal complaints are filed, probable criminal conduct may have occurred, or there are imminent threats to the health and safety of other individuals being made, or their identity must legally be disclosed in order to enforce county, state or federal law.

(Ord. No. 2012-13, 8-14-12)

### **Sec. 2-136. - Nonretaliation.**

The board of county commissioners does not tolerate retaliation against any person who has reported a violation of this code or of other county ordinances or state laws when made in good faith. This nonretaliation provision applies whether the complaint is ultimately determined to be well founded or unfounded. All county personnel and elected officials are specifically prohibited from taking any adverse employment action or other retaliatory action against anyone in retaliation for reporting a good faith claim of violation. Anyone who feels that they have been retaliated against in violation of this policy should submit a sworn complaint to the review board setting forth the claim of retaliation.

A complainant's report of facts may be regarded as being covered by the Whistleblower Protection Act, NMSA § 10-16(c)-I, et seq., and the county shall not retaliate against a complainant for filing a complaint. However, in regard to county employees, merely filing a complaint shall not provide immunity, or protection from county actions related to the complainant's own misconduct, poor job performance, a reduction in work force or other legitimate business purpose. The county reserves the right to act in the public interest in balancing the rights of complainant to bring forward charges of misconduct while maintaining orderly and efficient operations of county government.

If the review board finds that a complaint for violation of the code submitted by an employee is without merit and was made with an intent to harm, harass or intimidate the subject of the complaint, it shall refer the complaint to the county manager for review for proposed disciplinary action. For complaints

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of violations not covered by the code found to be without merit, the county manager and the county attorney may determine if a complaint was made with the intent to harm, harass or intimidate the subject and may take disciplinary action.

(Ord. No. 2012-13, 8-14-12)

### **Sec. 2-137. - Restrictions on employment and appointment after leaving office.**

- (a) No former county commissioner shall accept or enter into any arrangement or agreement for remuneration with the county for consultant work, part-time or full-time employment in any capacity for a period of 12 months from and after leaving office.
- (b) This provision shall have retroactive effect to January 1, 2011.

(Ord. No. 2012-13, 8-14-12)

### **Sec. 2-138. - Employee code of conduct.**

- (a) The county manager and county attorney shall create and maintain an employee code of conduct for county employees that shall prescribe standards, in addition to those set forth in this code of conduct that are appropriate to ensure that the citizens are served in an ethical and responsible manner. The employee code of conduct shall, if violated, constitute cause for discipline. The county manager, county attorney and compliance officer shall adopt ongoing education programs to advise the employees about the employee code of conduct. Upon approval of the county manager, separate offices, and departments of the county may adopt departmental employee codes of conduct for the unique missions they have.
- (b) The employee codes of conduct shall be reviewed at least once every four years.
- (c) All public servants shall attend a minimum of two hours of ethics continuing education and training biennially.

(Ord. No. 2012-13, 8-14-12)

### **Sec. 2-139. - Severability.**

The provisions of this division are severable, and if any provision, sentence, clause, section, or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, the illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this division or their application to the persons or circumstances. It is hereby declared to be the intent of the board of county commissioners that this division would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein, and if the person or circumstances to which this division or part thereof is inapplicable had been specifically exempted therefrom.

(Ord. No. 2012-13, 8-14-12)

### **Secs. 2-140—2-200. - Reserved.**

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FOOTNOTE(S):

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<sup>(5)</sup> **Editor's note**— Ord. No. 2012-13, adopted August 14, 2012, repealed the former Div. 4, §§ 2-126—2-136, and enacted a new Div. 4 as set out herein. The former Div. 4 pertained to the code of ethics and derived from Ord. No. 2010-1, adopted January 12, 2010; Ord. No. 2011-3, adopted March 22, 2011; Ord. No. 2011-5, adopted March 22, 2011 and 2012-10, adopted June 26, 2012. ([Back](#))