



# Board of County Commissioners (BCC)

Meeting: 05/12/15 05:00 PM

Department: Commission  
Prepared By: Monica Roybal  
Director: Randy Autio  
DCM:

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**Title:** Code of Conduct Ordinance Amendment

## Action:

Motion to introduce and approve for publication a proposed amendment to the Bernalillo County Code of Conduct Ordinances Section 2-126 et. Seq.

## Summary:

The Code of Conduct Review Board, pursuant to its duties as outlined in the current Code of Conduct, met and reviewed the current version of the Code of Conduct and made several recommendations regarding possible amendments. Those recommendations are primarily technical in nature but are also intended to provide clarification to certain sections. These proposed amendments are based on the experiences involving complaints filed under the current Code of Conduct involving areas of the Code that the Review Board feels could strengthen and clarify language in the Code of Conduct. A list of some of the more significant proposed amendments include clarifying the definition of a “restricted donor”; clarifying language contained in the political activity section to make a distinction between county employees and other public servants; amending the deadlines for elected officials to file financial disclosure forms and clarifying that amended disclosure forms only need to be filed when there has been a change in financial circumstances of an elected official; providing the Review Board with the ability to adopt a summary judgment process for complaints that are deemed by the Review Board to be either de minimis or moot; clarifying the complaint process as it applies to classified employees; expanding the restrictions on employment with the County after leaving office to include all elected officials covered under the Code of Conduct; and clarifying some of the training requirements for public servants.

## Attachments:

- Code of Conduct Amendments 05-05-15 (PDF)
- Recommendations from CCRB for Code of Conduct Ordinance 050615 (PDF)

## Staff Analysis Summary:

Legal Randy Autio Review Completed 05/06/2015 11:47 AM  
Approved as to legal form.

County Manager Patricia Chandler Review Completed 05/06/2015 1:50 PM  
The recommended clarifications and changes are generally minor in nature, and have been vetted through the Code of Counduct Review Board. Therefore, I recommend approval. T.Z.  
05/06/2015

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Maggie Hart Stebbins, Chair
<b>SECONDER:</b>	Art De La Cruz, Vice Chair
<b>AYES:</b>	Hart Stebbins, De La Cruz, O'Malley, Talbert, Johnson



# County of Bernalillo

## State of New Mexico

### Compliance Office

415 Tijeras, NW, 1st Floor  
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### Recommendations from the Code of Conduct Review Board for Potential Amendments to the Code of Conduct Ordinance

Pursuant to the duties outlined in Section 2-133(j)(1) of the Code of Conduct Ordinance (“the Code”), the Code of Conduct Review Board (“the Board”) has met and makes the following recommendations to the Bernalillo County Commission regarding potential amendments to the Code:

#### Section 2-129. Definitions.

1. In **Section 2-129** provides an exception to the definition of “Gift” as “(10) Food or beverage with a value under \$25.00. . .” However, **Section 2-130(d)(2) Receiving and soliciting gifts. Disclosure...** provides for an exception to the gift closure for “Gifts of food and refreshments may be reported in estimated value if below \$35.00 in market value.” The Board recommends that these two numbers be the same in both sections.
2. Definition of “*Restricted donor*” -- is very broad and certain readings could indicate that everyone who has some contact with the County is included in one of these categories. While it is clear that businesses with contracts with the County or those businesses seeking contracts with the County fall within this definition the other categories have yet to be interpreted by the Board. The Board recommends either a simplification or clarification of this definition as there have been no filed cases or requests for an advisory opinion on this matter. The Compliance Office receives numerous questions about this area of the Code, and therefore, any clarification to this definition would be of value to the Board.



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### Section 2-130. Standards of conduct.

3. Creating an additional definition or language concerning the concept of "employee time." This request stems from issues that were raised in the Sworn Complaint filed against former Sheriff Houston. The Code currently does not define "employee time" or "compensated time" as that term is used in **Section 2-130(h)** "*Political activity*." This became an issue in the Houston case, and may be particularly relevant for Elected Officials who may not keep a routine work schedule as would other County employees. The Board requests a clarification in **Section 2-130 (h)(5)** about how the restrictions contained in this section apply to Elected Officials.

4. Clarification that Forms required to be filed under the Code should be notarized pursuant to requirements of the Clerk's Office. The forms that are required to be filed with the County Clerk's Office (Economic Statement Form and Gift Form) do not currently contain a requirement that they be notarized. The Board respectfully requests a clarification of this requirement in the Code as it has created confusion with employees and elected officials who have tried to file these Forms.

### Section 2-131. Disclosure of certain financial interests.

5. Re-elected Officials requirement to file Economic Statement -- There is a certain amount of ambiguity in **Section 2-131** regarding the filing of the Statement of Economic Interest statement as the first paragraph indicates that an Amended Statement should be filed by every elected official by Jan. 11<sup>th</sup> of each year. However, subsection (2) *Amended Statements* indicates that an amended statement only need be filed within 90 days of any change in circumstances. The Board requests a clarification as to whether this Statement only needs to be filed once upon taking office (by Jan. 11 or later---see below) and that Amended Statement are only filed when there is a change in circumstances. If there is no change from one year to the next, elected officials do not need to file an amended statement each year during an elected official's term of office.



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6. Grace period for filing Economic Statement Forms -- Based on issues raised in the most recent cases heard by the Board, there has been the suggestion that the time for filing the Statement of Economic Interest should be extended. If the above suggested change were adopted (see #5 above.) then perhaps requiring newly Elected (or incumbents who are re-elected) file by Jan. 30. The Board requests that the Commission consider adopting an amendment in this regard.

#### Sections 2-132. Reporting violations of code of conduct.

7. Clarification that service of all documents to be expanded to allow electronic delivery and receipt. Given the availability of email with receipt acknowledgment, the Board requests that there be an allowance made in the Code for any documents that are required to be served either by the parties or the Compliance Office, be served electronically rather than hand delivered or by certified mail.

8. Summary Judgment process. As some of the filed cases demonstrate, there is little discretion for a summary judgment process by the Board once a Sworn Complaint ("Complaint") is filed. It would appear that once a filed Complaint has been forwarded to the Board, the only option is to hold a preliminary hearing and there are only four outcomes that are allowed in **Section 2-132 (a)(5)**. The Board requests an additional subsection be added to this section which would allow for the Board to dispose of a Complaint in a summary fashion without having to go to a preliminary hearing.

9. Clarification of how the Board/Compliance Office should actually handle a Complaint filed against either classified or unclassified employees -- **Sections 2-132 and 2-133** clearly contemplate Complaints can be filed against classified and unclassified employees. However, the Board lacks the authority to discipline or impose sanctions against employees and so most of these Complaints have to be referred to the County Manager to follow the ordinary disciplinary process. The



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Code does indicate that in the case of unclassified employees, the Board could hold a hearing but their findings would only be forwarded to the County Manager for “appropriate action.” The question here is should there be some further simplification of the process especially involving classified employees. The core issue seems to be how much involvement should the Board have when a Complaint has been filed against an employee as opposed to an Elected Official, candidate or volunteer. The Board requests that the Commission reevaluate these sections of the Code and consider providing a more streamlined approach to having Complaints filed against employees forwarded to the appropriate level of management for possible disciplinary action. The Compliance Office could report these types of Complaints to the Board at their quarterly meetings so that the Board is made aware of the volume of these types of Complaints.

#### Section 2-133. Code of conduct review board.

10. Should the Chair and the Vice-Chair be elected each year? **Section 2-133(b)** only requires that the Board elect a Chair and a Vice-Chair, but doesn't indicate whether or not those elected hold that office throughout their term or until they resign or if they should be elected annually. There has not been any dispute to this point about the Chair and Vice-Chair's ability to hold the office throughout their terms, but it is an area that the Commission might want to consider as either an amendment to the Code or the Board's Rules.

11. **Section 2-133(j)(3)** requires the quarterly report to be delivered on a quarterly basis and not presented at a Commission meeting, but perhaps allow for annual or semi-annual report to the full Board of Commissioners at a Commission meeting with the presence of the Chair of the Board to provide an explanation of the Board's activities during the prior period.



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

12. Should **Section 2-137** be expanded to include all Elected Officials? -- Currently this section only applies to Commissioners not being able to work for the County for a period of one year after leaving office. The question has been raised as to whether or not this section should be expanded to include all Elected Officials? The Board requests that the Commission consider whether this section should be amended to include all Elected Officials.

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

13. Training requirement -- There is something of a discrepancy in the definitions section of the term "Compliance officer" which mentions a job duty as coordinating "annual code of conduct training" and the requirement in **Section 2-138** that all public servants attend a minimum of two hours of ethics training biennially. The Compliance Office conducts training on an on-going basis every month in an effort to keep all employees up to date on the training requirement so there is no one annual or biennial training session. We track the training on a fiscal year basis so that we can keep track of when an employee is due for a renewal on the training. The Board requests a clarification to **Section 2-138** regarding this practice.

The Board respectfully requests that the Commission consider these potential amendments to the Code. If there are any questions or further clarifications that are needed with regards to these recommendations, please forward to the Compliance Office and they will communicate them to the Board.



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Approved by:

Alan Packman, Chair  
Code of Conduct Review Board

Date: 5/6/18

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