

RESOLUTION NO. 2013-81

A RESOLUTION TO AMEND THE CODE OF THE COUNTY OF DOÑA ANA, by deleting and repealing Chapter 14 thereof, Code of Conduct, and replacing it with a new Chapter 14, to be entitled Code of Conduct, which chapter provides for the adoption of the establishment of guidelines for ethical standards of conduct for all County elected officials and employees.

Be it resolved by the Board of County Commissioners of Doña Ana County as follows:

Section 1.

The Code of the County of Doña Ana is hereby amended by deleting and repealing Chapter 14, Code of Conduct.

Section 2.

The Code of the County of Doña Ana is hereby amended by adding thereto a new chapter, to replace Chapter 14 hereinabove repealed, to be Chapter 14, Code of Conduct, to read as follows:

Chapter 14**CODE OF CONDUCT**

- § 14-1. Purpose.
- § 14-2. Responsibilities of public office.
- § 14-3. Applicability.
- § 14-4. Definitions.
- § 14-5. Responsibilities of public service.
- § 14-6. Avoidance of disclosure of conflicts of interest.
- § 14-7. Procurement and contract issues.
- § 14-8. County operations.
- § 14-9. Code compliance.
- § 14-10 Notice of amended code review.


COUNTY OF DONA ANA)
STATE OF NEW MEXICO) ss

RESOLUTION
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I Hereby Certify That This Instrument Was Filed for
Record On SEP 9, 2013 03:30:14 PM
And Was Duly Recorded as Instrument # 1322890
Of The Records Of Dona Ana County



Witness My Hand And Seal Of Office,
Lynn J. Ellins, County Clerk, Dona Ana, NM

Deputy
Rafael Garcia

§ 14-1. Purpose.

- A. The purpose of this chapter is the establishment of guidelines for ethical standards of conduct for all elected officials and employees by 1) setting forth those acts or actions that violate public trust and 2) requiring elected officials and employees to disclose personal interests, financial or otherwise, in matters affecting the County. Examples of acts or actions that violate public trust may include, but are not limited to: criminal acts; egregious behavior that reflects badly on the County; attempts by Commissioners to direct the work of County employees or to influence the outcome of a personnel matter; failure to disclose a substantial conflict of interest relating to a matter of importance; and other behavior or acts of omission similar in gravity and effect.
- B. It is the further purpose of this Code of Conduct to protect County employees from undue influence, threats, or reprisal with respect to the work that they perform for the County.

§ 14-2. Responsibilities of public office.

Elected officials and employees hold office or employment for the benefit of the public. They are bound to uphold the Constitutions of the United States and of the State of New Mexico; to impartially carry out the laws of the United States, the State of New Mexico, and Doña Ana County; to discharge faithfully the duties of their office regardless of personal considerations; and to recognize that public interest must be their primary concern.

§ 14-3. Applicability.

The Code of Conduct shall apply to all elected officials and employees, as defined below.

§ 14-4. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ANYTHING OF VALUE

Any money, property, favor, service, payment, forbearance, loan, or promise of future employment/compensation. It does not include such things as compensation and paid expenses by the state or County, expenses, incidental promotional material such as pens, pencils, notepads, or calendars, or any other thing that, in the mind of a reasonable person, is not likely to influence the judgment or conduct of individuals covered by this code.

BUSINESS

A corporation, partnership, sole proprietorship, firm, organization, or individual carrying on a business. Nonprofit entities are included in this definition.

COMMISSIONER

The individual elected from each of the five districts within Doña Ana County to represent the constituents of that district.

CONFLICT OF INTEREST

Any business activity or other relationship with a person that compromises an elected official's or employee's loyalty to the County, and which, in the mind of a reasonable person, is likely to influence or predispose an official action or any use of authority of the office or position for personal reasons.

COUNTY MANAGER

The person retained by the Board of County Commissioners to manage the daily operations of the County. It includes the Assistant County Manager or other designee when acting at the direction of the County Manager.

ELECTED OFFICIAL

The Board of County Commissioners, County Assessor, County Clerk, County Treasurer, and Sheriff but excluding the staff of such officials and the Probate Judge, who is subject to the Code of Judicial Conduct.

EMPLOYEE

Employees, appointees, agents, and volunteers of the County. The inclusion of appointees, agents, and volunteers in this definition is intended only for the provisions of this chapter. It shall not create any employer/employee relationship from which rights of employment arise, including, but not limited to, pay, benefits, or rights under any law which may create rights or benefits for employees of Doña Ana County.

FINANCIAL INTEREST

Any interest which yields, directly or indirectly, a monetary or other material benefit to the elected official or employee or to any person employing or retaining the services of the elected official or employee. It includes benefits to a member of or employer of an elected official's or employee's immediate family.

HONORARIUM

Payment of money, or any other thing of value, in excess of \$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.

IMMEDIATE FAMILY

Spouse or domestic partner, parents, children, and siblings. Included herein are those relationships established by blood, marriage (including "step" relationships), and adoption.

OFFICIAL ACT

An official decision, recommendation, approval, disapproval, or other action that involves the use of authority as granted by virtue of the County office or position.

PERSON

Any individual, corporation, partnership, sole proprietorship, joint venture, or business entity, whether nonprofit or for profit.

PRIVILEGED INFORMATION

Any written or oral material related to County government that has not become part of the body of public information and that is designated by statute, court decision, lawful order, ordinance, resolution, or custom as privileged. It includes, but is not limited to, information acquired at closed sessions of any County body.

QUASI-JUDICIAL

Of, relating to, or involving an administrative adjudicatory type hearing or process.

§ 14-5. Responsibilities of public service.

- A. Elected officials and employees shall use the powers and resources of public office entrusted to them to advance the public interest and will not use those powers and resources to obtain personal benefits or pursue private interests incompatible or competing with the public interest.
- B. No individual member of the Board of County Commissioners has the authority to make representations, assurances, admissions, or waivers on behalf of the Board of County Commissioners without a formal grant of authority.
- C. Elected officials and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people of Doña Ana County and the State of New Mexico, at all times maintaining the highest degree of integrity and discharging their public responsibilities ethically.

- D. Elected officials and employees shall not request or receive anything of value, or promise of such, that is conditioned upon or given in exchange for the promised performance or forbearance of an official act.
- E. Elected officials and employees shall not request or receive an honorarium for a speech or service rendered that relates to the performance of public duties.
- F. Elected officials and employees shall not disclose or use privileged information acquired by virtue of their public office, employment, or position for their own or someone else's gain, or to the County's detriment, unless otherwise required by law. Prior to any such disclosure, the elected official or the employee shall inform the County Attorney.
- G. Elected officials and employees shall not disclose privileged information acquired in a closed session of any County body without the explicit authorization of the County body and the County Attorney.
- H. Elected officials and employees shall not engage in any activity that would compromise the fulfillment of their responsibilities or create an appearance of impropriety when dealing with public policy.
- I. Elected officials and employees shall treat each other and the public with respect, decorum, and fairness at all times. Elected officials and employees shall not make any allegations of misconduct by elected officials or employees, unless they provide, at the time they make the allegation of misconduct or in response to requests by those responsible for the investigation, factual bases for their allegations, including information as to the source of such information.
- J. The Chairperson shall ensure that members of the public treat elected officials and employees with respect at all times, including during public discourse of conflicting views.
- K. Elected officials and employees shall protect and conserve County property and shall not use said property for other than authorized purposes.
- L. Elected officials and employees shall comply with the requirements of the Open Meetings Act.

§ 14-6. Avoidance or disclosure of conflicts of interest.

- A. Full disclosure of real or potential conflicts of interest shall be the guiding principle for determining appropriate conduct. At all times, diligent effort shall be made to avoid undue influence and abuse of office in public service.
- B. When acting in a quasi-judicial role, any elected official or employee shall disqualify himself/herself from any official act, including discussion or vote, directly affecting a financial interest or any other interest which, in the mind of a reasonable person, would

impair the official's or employee's ability to decide fairly and impartially the matter before him/her. When not acting in a quasi-judicial role, any elected official or employee shall disqualify himself/herself from any official act affecting a financial interest. Elected officials and employees may not take any official action for the purpose of enhancing their financial interests and shall disqualify themselves from engaging in any official act directly affecting their financial interests.

- C. Elected officials and employees shall not acquire a financial interest in a business or other activity when they believe or have reason to believe that it will be directly affected by their official act.
- D. No County elected official shall accept or receive to their own use, or for or on account of any deputy or deputies, clerk or clerks appointed by them or employed in their office, or for or on account of expenses incurred by them or by any such deputy or deputies, clerk or clerks, or for or on account of their office, any salary, compensation, allowance, fees or emoluments in any form whatsoever for the performance of their official duties, other than as authorized by law. [NMSA § 4-44-21]
- E. Elected officials and employees with a controlling interest or a financial interest exceeding \$10,000 in a business regulated by the official acts of the County, or who do business with the County in an amount greater than \$1,000 per year, shall publicly disclose the precise nature and value of such interest. Disclosure shall be made to the County Clerk in the manner set forth by state statute during the month of January for each year they hold office. [NMSA § 4-44-25(B)]
- F. Every employee of the County who has a financial interest which he/she believes, or has reason to believe, may be affected by the actions of the County shall disclose the precise nature and value of such interest. The disclosures shall be made to the County Clerk before entering County employment, and during the month of January for each subsequent year. The filing of said disclosure is a condition of entering upon and continuing County employment. [NMSA § 4-44-25]
- G. The County Clerk shall maintain the confidentiality of the valuations attributed to the reported interests, as filed by County officials, appointees, employees and agents, except as permitted by statute in official removal proceedings. Such valuations shall be sealed prior to filing. [NMSA § 4-44-25(C)]
- H. Any elected County official who has received an individual campaign contribution shall publicly announce said contribution prior to consideration of any official action by the Board directly relating to that contributor. Personal or professional relationships shall be similarly disclosed. The elected official shall then make a statement whether the disclosed relationship will affect his/her ability to remain fair and impartial. After a disclosure, if three members of

the Board determine that a reasonable person would not be able to remain impartial under the circumstances disclosed, the member determined to have a conflict of interest shall not participate further in any discussion or proceeding relating to the item.

- I. All elected officials and County employees will each year complete the annual disclosure form and submit it to the designated office by 3:00 p.m. on the last Friday of February.

§ 14-7. Procurement and contract issues.

- A. Elected officials and employees shall not enter into contracts with Doña Ana County unless they disclose any financial interest in the business involved and receive the contract with public notice and pursuant to competitive local and state procurement laws. [NMSA § 4-44-22]
- B. Doña Ana County shall not enter into contracts involving, nor take action favorably affecting, any person or business represented by a person who has been an elected official or employee within the preceding year. When it is determined by the County Manager that granting an exception to this provision is in the best interests of the County, the County Manager may waive this prohibition. If the prohibition is waived, the County Manager shall notify the Board of County Commissioners of the waiver within 30 days of the granting of the waiver.
- C. Elected officials and employees shall not accept anything of value exceeding \$25 from any person doing business with the County or any person who is reasonably anticipated to do business with the County in the future. This limitation of \$25 does not apply to meals or campaign contributions.
- D. Elected officials and employees shall be cognizant of the fact that under the New Mexico Criminal Code it is either a misdemeanor or a fourth-degree felony to commit "unlawful interest in a public contract," i.e., the receipt of anything of value, directly or indirectly, from either a seller or a seller's agent, or a purchaser or a purchaser's agents in connection with the sale or purchase by the County of securities, goods, leases, lands, or anything of value. [NMSA § 30-23-6]
- E. Elected officials and employees shall not participate directly or indirectly in any County matter when they know that they or a member of their immediate family has a financial interest in the organization seeking or obtaining a contract, absent a waiver issued pursuant to the statute. [NMSA §§ 13-1-190, 13-1-194]
- F. Elected officials and employees shall not participate directly or indirectly in a County procurement process and contemporaneously seek employment with or be an employee of

the person contracting or seeking to contract with the County, absent a waiver issued pursuant to the statute. [NMSA §§ 13-1-193, 13-1-194]

- G. Doña Ana County shall not accept a bid from a person who directly or indirectly participated in the preparation of specifications on which the competitive bidding was held.

§ 14-8. County operations.

- A. The Board of County Commissioners employs a County Manager to handle the day-to-day business and general management of the County. It is recognized that for informational purposes dialogue between employees and Board members may be necessary. The Board shall encourage the development, implementation, and enforcement of responsible policies and procedures for efficient operation by the County management staff. [NMSA § 4-38-19]
- B. The County Manager shall report directly to the Board of County Commissioners. No other County employee shall report to the Commission unless so determined by formal action of the Commission. Except for those employees who report directly to the Commission, the County Manager is solely responsible for assignment and direction of work by County employees in accordance with direction set by the Commissioners. The Commission will provide direction for the County Manager in the form of policies or other mutually agreed upon communications. Policies will be formalized in ordinances and resolutions.
- C. The Board of County Commissioners has adopted ordinances and resolutions that govern County personnel matters. It is recognized that these formal acts of the Board of County Commissioners and the collective bargaining agreements entered into by the Board of County Commissioners establish the only procedures for addressing personnel discipline and grievances. It is a violation of the Code of Conduct for any elected official to interfere with these procedures or attempt to influence the outcome of the processes. It is a violation of the Code of Conduct for any elected official to seek information concerning a personnel action except when it is appropriately discussed in closed session of the Board of County Commissioners. It is not a violation of the Code of Conduct for the County Assessor, County Clerk, County Treasurer, or the Sheriff to participate, as permitted by ordinance, resolution, and collective bargaining agreement, in the personnel processes when the involved personnel is an employee of the elected official's office. It is not a violation of the Code of Conduct for an elected official, if he/she desires, to appear as a witness in the personnel disciplinary or grievance processes.
- D. The Commissioner who serves as the Board's Chairperson has certain duties and authority distinct from the other Commissioners. These include: to open all meetings of the Board, call the members to order, announce all business on the agenda and put same to a vote when required; to enforce order and decorum among members of the Board; to sign documents on behalf of the Board; to administer oaths to any person concerning any matter submitted to the

Board or connected with its powers and duties; and to sign all orders on the County Treasury and County documents, as authorized by a majority of the Board. [NMSA § 4-38-11] Unless specifically delegated to the Chairperson by the Board, the Chairperson has no more authority than any other member.

- E. The Board of County Commissioners shall select a Chairperson by simple majority vote at the first meeting of the Board of County Commissioners in January of each year. A Commissioner may serve as Chairperson for two succeeding terms after which a break in tenure of one year is required. In the event the Chairperson resigns, the Vice Chairperson shall serve as the Chairperson until the vacant County Commissioner seat is filled and the Board of County Commissioners selects a new Chairperson by simple majority vote. In the event that a Commissioner is selected to fill out the term of the Chairperson for a period of less than 6 months, said Commissioner may be elected to fill subsequent terms in accordance with this Section.
- F. The Board of County Commissioners shall select a Vice Chairperson by simple majority vote at the first meeting of the Board of County Commissioners in January of each year. A Commissioner may serve as Vice Chairperson for two succeeding terms after which a break in tenure of one year is required. The Vice Chairperson shall exercise the duties and assume the responsibilities of the Chairperson during his or her absence, disability or disqualification. In the event of a vacancy in the position of Vice Chairperson, the Board of County Commissioners shall select a new Vice Chairperson by simple majority vote. In the event that a Commissioner is selected to fill out the term of the Vice Chairperson for a period of less than 6 months, said Commissioner may be elected to fill subsequent terms in accordance with this Section.
- G. A County Commissioner may decline to serve as Chairperson or Vice Chairperson.
- H. The Board of County Commissioners shall recognize that Robert's Rules of Order sets guidelines for the conduct of all County Commission meetings.
- I. Any County Commissioner may place a matter on the agenda for the Board of County Commissioners meetings in any of its official capacities.
- J. The County Assessor, County Clerk, Sheriff, and County Treasurer shall advise the Board of County Commissioners on all matters concerning their respective offices, to include suggestions and recommendations for more efficient administration of County finances, government, or other functions. Cooperation between the various elected officials in the exercise of their respective official duties shall be the goal.
- K. Department heads, managers, and supervisors shall build and maintain a culture of responsible public service by:

- (1) Leading by example, using their behavior as a model for all employees.
- (2) Encouraging employees to bring forth questions, concerns, and suggestions relating to the operation of the County government.
- (3) Ensuring that all employees receive training related to ethical issues related to their work.
- (4) Applying appropriate and consistent disciplinary action, and
- (5) Providing affirmative and appropriate reinforcement for positive accomplishments.

§ 14-9. Code compliance.

- A. The County shall inform all elected officials and employees regarding the terms and provisions of this Code of Conduct.
- B. Any suspected violation of the Code of Conduct by an employee or volunteer firefighter shall be reported to the supervisor of that employee and processed in accordance with procedures established by ordinances, resolutions, and collective bargaining agreements governing such employees/volunteer firefighters.
- C. Suspected violations of the Code of Conduct alleged to have been committed by a County Commissioner or elected official shall be reported to the Chairperson of the Commission. Suspected violations involving the Chairperson shall be reported to the Vice-Chairperson. The Chairperson (or Vice-Chairperson) and one other Commissioner drawn by lot shall review the Code of Conduct violation allegation. If both Commissioners agree that the conduct as alleged would constitute a material violation of the Code of Conduct and that the allegation contains sufficient information upon which to pursue a meaningful investigation, then they shall direct the County Manager to obtain a prompt formal investigation into the allegation by a private sector outside entity with suitable experience in conducting such investigations. A formal investigation shall not be directed if the allegation is unverifiable, or involves a non-material violation of, or conduct not covered by, the Code of Conduct. The Chairperson (or Vice-Chairperson) shall notify the subject Commissioner or elected official as to the general nature of the allegation and whether a formal investigation will be directed.
- D. The results of the formal investigation shall be verbally reported to the Chairperson (Vice-Chairperson) and Commissioner chosen by lot and, if both agree that there is probable cause to believe that the person alleged to have violated the Code of Conduct has committed a material violation of the Code, then they shall direct the investigator to prepare a written report of the investigation, and the matter shall be scheduled for a hearing before the Board of County Commissioners in an open session.

- E. The pursuit of censure or disciplinary corrective action does not foreclose other remedies also available by law.
- F. The District Attorney of the Third Judicial District is authorized to investigate and prosecute any complaint brought involving a violation of NMSA 1978, §§ 4-44-22 through 4-44-27. [NMSA 1978, § 4-44-27] The Attorney General and the District Attorney for the Third Judicial District are both authorized to bring a civil action for the enforcement of the Procurement Code. [NMSA 1978, § 13-1-196] For egregious violations of ethical conduct, the District Attorney may also commence an action to remove a County official from office, in accordance with NMSA 1978, § 10-4-1 et seq.

§ 14-10. Notice of amended code review.

- A. The County Manager shall ensure that each newly elected official and employee is given a copy of this Code of Conduct.
- B. A copy of this Code of Conduct shall be posted in each department, as well as published on the County's Internet website.
- C. The Code of Conduct may be amended at any time at the direction of the Board of County Commissioners, and shall, at a minimum, be reviewed every four years, with the next review due in 2016.

Section 3. Severability.

The provisions of this resolution are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this resolution.

Section 4. Effective Date.

This resolution shall become effective immediately.

RESOLVED this 27th day of August, 2013.

**BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO**



Billy G. Garrett, Acting Chair, District 1

For / Against



A handwritten signature in black ink, appearing to read "Dr. David J. Garcia".

Dr. David J. Garcia, District 2

For / Against

A handwritten signature in black ink, appearing to read "Benjamin L. Rawson".

Benjamin L. Rawson, District 3

For / Against

A handwritten signature in black ink, appearing to read "Wayne D. Hancock".

Wayne D. Hancock, District 4

For / Against

A handwritten signature in black ink, appearing to read "Leticia Duarte Benavidez".

Leticia Duarte Benavidez, District 5

For / Against

ATTEST:

A handwritten signature in black ink, appearing to read "Lynn Ellins".
Lynn Ellins
County Clerk