

**RULES OF PROCEDURE FOR
THE SANDOVAL COUNTY ETHICS BOARD**

March 2019



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Section 1. INTRODUCTION

Pursuant to the authority granted by the Sandoval County Board of Commissioners, the Sandoval County Ethics Board (the “Board”) hereby issues and approves the following Rules of Procedure for its conduct, and for interpretation and enforcement of the Sandoval County Ethics Ordinance (the “Ordinance”).

In the event that these Rules of Procedure are in conflict with the provisions of the Ordinance or other laws, the provisions of the Ordinance or superseding law shall prevail.

Section 2. COMPOSITION, TERMS, AND DUTIES OF THE BOARD

A. Composition.

1. Pursuant to the Ordinance, the Ethics Board shall consist of five members (“board members”), and five alternates appointed by the Board of County Commissioners, with each commissioner appointing one member, and one alternate from his or her commission district.

2. If a board member is unable to serve at a scheduled meeting, the Board Chair shall call upon an alternative member to serve for that meeting. A board member shall notify the Board Chair as soon as possible of their unavailability in order to allow for time for an alternative to serve.

3. Vacancies filled by appointment during the term of a member shall be for the unexpired term only. If the commissioner fails to make a recommendation within 60 days after the vacancy occurs, the board of county commissioners shall appoint an individual to fill that vacancy as soon as possible. On such occasions, the appointee(s) of the board shall reside within the commission district that has the vacancy.

4. The board 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.

5. The board members may not hold elected public office or office with any political party within the county.

6. The Board may not act on any matter without a quorum of the Board being present. When it is otherwise impossible for the Board member to attend the meeting in person, members may attend non-quasi-judicial hearings by phone or similar communications equipment with the Board Chair’s approval made at least 24 hours prior to the scheduled meeting. The member choosing to participate in such a way shall be audible to all other members of the Board and the public, and shall be in compliance with the provisions for electronic appearance at open public meetings set forth in the New Mexico Open Meeting Act, NMSA 1978, Section 10-15-1 *et seq* (as amended).

B. Terms.

1. Each board members shall serve a term of two years, subject to reappointment thereafter.
2. An incumbent member shall serve the full term unless he/she resigns or is removed for cause under the terms of this section. When a vacancy occurs due to the expiration of the term of a member, that incumbent member shall serve until re-appointed or replaced under the terms of this section.
3. 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 presently serving county commissioner.

C. Duties.

1. The Ethics Board shall elect its own chair and vice-chair at its first meeting of the calendar year. Chair and Vice-Chair of the Board shall serve terms of one year.
2. The Ethics Board shall sit as a quasi-judicial body when it acts upon complaints submitted to it by the contract compliance officer.
3. The Ethics 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 Thirteenth Judicial District Court.
4. If the Ethics Board finds that an unclassified employee or volunteer violated this ordinance, the Ethics 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 and written findings of fact and conclusions of law to the board of county commissioners.
5. If the Ethics Board finds, upon a majority vote of a quorum of the board, that an elected or appointed official has violated this Ethics Ordinance, the Ethics 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 \$300.00 or amount currently allowed by law; or
 - (2) Proceedings or penalties pursuant to the County personnel handbook, where appropriate;
 - (3) A written finding of censure; and
 - (4) When an elected or appointed official has committed an act that the board believes could be grounds for removal from office, refer their decision to the district attorney or attorney general.
6. The Board may recommend amendments to the Ethics Ordinance to the Board of County Commissioners.
7. The Board may provide advisory opinions regarding the applicability or interpretation of any provision of this Ethics Ordinance upon the request of any contractor or public servant. Advisory opinions shall only be issued using the procedures set forth below in Section 3 of these Rules. It shall be a complete defense to any complaint where a contractor or public servant asked

the Ethics Board for an advisory opinion prior to taking any action prohibited by this ordinance, and complied with the advice of the Ethics Board.

8. The Ethics 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 Ethics Board by the contract 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.

9. The quarterly status report must be approved by the Ethics Board and made available to the public on the county's website. The quarterly status reports may be provided to the board of county commissioners and their staff on an informal basis however, the Ethics Board and the contract compliance office shall present a semi-annual report of the Ethics Board's activities at a regularly scheduled meeting of the board of county commissioners.

10. The Ethics 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.

Section 3. COMPLAINT AND HEARING PROCESS

A. Complaints and Violations.

1. A Complaint alleging a violation of the Ordinance shall be made in writing by the filing of a signed and sworn statement attesting to the truth of its contents, and including Complainant's name and contact information. The Complaint shall include documentation as to time, place, facts, and the names of any witnesses to the alleged violations, and shall specify the provision or provisions of the Ordinance alleged to have been violated and provide a clear and concise statement of what events took place that the Complainant believes violated the provision or provisions of the Ordinance cited in the Complaint.

2. No Complaint shall be accepted for filing unless all requirements outlined in Section 3(A)(1) are provided at the time the Complaint is offered for filing.

3. The Board will not set for hearing any Complaint charging a violation alleged to have occurred more than one (1) year prior to the date of the Complaint.

4. After service is made, the Complaint will be delivered within three (3) business day to each member of the Board and to each Respondent.

5. Respondents may file a statement with the Board explaining why the Complaint fails to state a violation of the Ordinance. Respondents who have received an advisory opinion regarding the issue raised in the Complaint must raise this as a defense to the Complaint at this time. Respondents shall be given ten (10) calendar days' notice of the preliminary hearing. The Respondent's statement shall be filed with the County Compliance Officer five (5) calendar days prior to the preliminary hearing. The County Compliance Office shall provide the Complainants and Board members with the Respondent's statement three (3) County business days prior to the preliminary hearing.

6. The Chair of the Board or his/her designee may require upon timely request of a party that County documents be provided for purposes of a hearing and that County witnesses be made available to testify at the hearing.

B. Preliminary Hearing.

1. After reviewing the Complaint at a preliminary hearing the Board shall issue a preliminary order consistent with the provisions contained within the Ordinance and the Rules of Procedure. During any meeting of the Board, either before or after holding a preliminary hearing, the Board, by its own motion, or motion by one of the parties, may summarily enter an appropriate order or judgment, if it finds there is no material fact in dispute and

- (a) that the complaint involves a *de Minimis* violation, or
- (b) the matter has been previously decided by the Board, or
- (c) the issues are answered by the Ordinance or Rules of the Board, or
- (d) the issues presented are manifestly without merit, or
- (e) the matter presented has been cured or resolved subsequent to the filing of the complaint.

2. The Board shall transmit a copy of any dispositional order entered under this rule to the parties. A motion for rehearing of any complaint disposed of as provided by this Rule may be filed by an aggrieved party within ten (10) business days after receipt of the Board's disposition. Any such motion for rehearing shall state with particularity the reasons why the Board should rehear the complaint. The Board may either deny the motion or grant the motion for rehearing. If the Board decides to grant the motion for rehearing, the Board shall give notice to all parties as required by these rules for the date and time of the rehearing pursuant to the procedures further described in these Rules.

3. A preliminary hearing shall be held by the Board for the purpose of deciding whether to accept a Complainant for further investigation and/or an evidentiary hearing. The Board's decision shall be based on findings that the factual statements made in the Complaint, taken as being true, establish that Respondent has violated the provision or provisions of the Ordinance that are cited in the Complaint.

4. Complainants, Respondents and their representatives shall, at the request of the Board, address the Board at the preliminary hearing. Such presentations shall be limited to discussion of whether the Complaint contains sufficient factual allegations to support a finding that a violation of the Ordinance occurred. No testimony shall be accepted and no argument about the accuracy of the facts alleged in the Complaint shall be accepted at the preliminary hearing. In addition to testimony, the Board shall consider the Complaint, Respondent's response to the Complaint, and any other documentation provided at the request of the Board.

5. Reasons for Dismissing a Complaint: At a preliminary hearing, the Board may dismiss a Complaint if any one of the following is found or for such other reason as may be determined by the Board.

a. The Board has no jurisdiction over the subject matter specified in the Complaint or over the Respondent.

b. The time in which a Complaint could be filed has run.

c. The conduct alleged in the Complaint, if true, would not constitute a violation of the Ordinance.

d. The Complaint on its face is frivolous, groundless, or appears to have been brought for the purpose of harassment.

e. The subject of the Complaint has become moot.

f. The Respondent had obtained an advisory opinion concerning the identical facts alleged in the Complaint and Respondent complied with the advisory opinion.

6. The Chair shall promptly set hearing dates and deadlines for Complaints not rejected.

7. Persons required to testify before the Board shall be served with a subpoena issued by the Board and signed by the Chair of the Board or his designee. Complainants and Respondents shall request issuance of subpoenas through the County Attorney's Office in a timely manner.

8. Appeal. A Complainant who is aggrieved by the Board's rejection of the Complainant's Complaint may file an appeal to the District Court according to the District Court rules.

C. Consent Order/Settlement Process.

1. At any time after the filing of the Complaint, the Respondent may offer to settle the Complaint by admitting to the allegations in the Complaint and requesting a settlement conference with the County Compliance Officer. Based on the settlement conference, a proposed settlement agreement shall be prepared and submitted to the Board. The settlement agreement shall state the sections of the Ordinance violated, the action take or to be taken by the Respondent to correct the violation and proposed sanctions, if any, upon Respondent.

2. Upon receipt of a proposed settlement agreement, the Board shall meet to determine if it will accept the settlement agreement. Board acceptance of a settlement agreement shall be by a majority vote of those Board members in attendance. Upon acceptance, the Board shall issue a consent order that shall be provided to all parties. The review of the settlement agreement and vote on the consent order shall be conducted at a public hearing. Testimony shall not be allowed at such hearing, nor shall argument of the parties be accepted. The Respondent shall

attend the hearing to confirm his acceptance of remedial measures, if any, to be taken by Respondent, and/or sanctions, if any, to be imposed on Respondent. The consent order shall be a final order concluding the case. The settlement agreement approved by the Board and the consent order shall be public records. In the event a settlement agreement is rejected by the Board, such settlement agreement may not be used as evidence in any subsequent hearings.

D. Answers.

Answers to a Complaint shall include a response to each allegation in the Complaint, and shall be filed with the County Compliance Officer by all Respondents at a date as provided for in the Preliminary Order after the Respondent receives notice that the Board has accepted the Complaint at a preliminary hearing and that a full evidentiary hearing has been set. Each Respondent shall send a copy of his/her Answer to each Complainant by first class mail, certifying that such mailing occurred on or before the date the Answer was filed with the County Compliance Officer.

E. Hearings.

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

1. Parties.

The party filing a Complaint with the Board shall be referred to herein as the “Complainant”, and the party responding to alleged violations of the ordinance shall be referred to herein as the “Respondent.”

2. Notice.

a. The Board shall give at least ten (10) days written notice of the hearing to each party stating the time and place of the hearing.

b. The notice of hearing shall contain a brief description of the matter to be heard so that all participants have an opportunity to prepare for the hearing.

c. The notice of hearing shall contain deadlines for parties to submit a written statement of issues to be addressed, witness lists, and copies of all documentary evidence to be introduced. A party’s failure to make a timely objection to the authenticity of opposing party’s exhibits shall result in the admission of those exhibits.

3. Continuances.

Requests for continuances shall be made by the parties, in writing, at least five (5) business days prior to the hearing, and shall be delivered to the Compliance Officer, to the attention of the Board and the opposing party. The Chair of the Board may grant a continuance upon a showing of good cause.

4. Evidence.

a. The Board shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant, immaterial and unduly repetitious evidence shall be excluded. It is the policy of the Board that testimony and information presented during the hearing must have a direct and substantial bearing on the case at hand.

b. The rules of evidence for the conduct of administrative hearings shall apply.

5. Hearing Procedure.

a. The Chair of the Board shall act as the presiding officer at the hearing unless he/she is unavailable or does not wish to perform this duty in which case the Vice-Chair of the Board shall serve as the presiding officer. In the event neither the Chair nor the Vice Chair is able to perform this duty, the Board members shall select a presiding officer by majority vote of all members.

b. The presiding officer *shall*:

i. Determine the admissibility of evidence and testimony;

ii. Make rulings on procedural issues; and

iii. Be responsible for the Board's written ruling in each case.

c. The presiding officer *may*:

i. Issue an administrative subpoena for the appearance of a person at a hearing or for the production of documents, or both;

ii. Request the County Attorney to apply for a court order compelling compliance with an administrative subpoena for the giving of testimony or the production of documents;

iii. Impose reasonable limits on the number of witnesses to be heard and on the nature and length of the testimony or examination of persons appearing at such hearings;

iv. Set time limits for presentation of opening and closing statements;

v. Prohibit repetitive testimony.

d. Should an action of the presiding officer be challenged by another Board member, and should the presiding officer disagree with the challenge, the issue will be decided by a majority vote of the Board members present.

e. The Board may, but is not required, to recognize any disagreements on facts and issues between the parties and may eliminate certain facts not in dispute in defining the issues to be heard.

f. Prior decisions by the Board on the same issue will generally be followed and the parties are urged to refer to prior rulings on identical or similar issues. Prior decisions are available with the County Compliance Officer. The County Compliance Officer shall index all Board case decisions by subject and date.

g. The Board may request clarification by the Complainant of a Complaint prior to any hearing. The Board may request that certain facts be examined initially in order to determine whether such facts exist as will support the allegations to be heard, or to make any other rulings that are procedural, limiting, dispositive, or otherwise, which are in accordance with the law as applied to the facts at issue.

h. Any party may be represented by representatives which may but are not required to be attorneys.

i. The Board may dismiss a Complaint after hearing evidence if it finds that the Respondent committed the violation due to an oversight, if Respondent has come into compliance voluntarily and the Board determines that no sanction is required, or when the Complainant does not appear at the hearing.

j. Unless the Board determines by majority vote to proceed in a different manner, notice of which shall be given to the parties at least three (3) days in advance of the hearing, the sequence of the hearing *shall* be as follows:

k. Opening Statement of Issues.

The Complainant and then the Respondent will present statements of issues involved in the case and outline the case that will be presented. Opening statements shall be limited to five (5) minutes per side.

l. Complainant's Presentation of their Case.

The Complainant will first present their case to the Board. Witnesses for the Complainant will be called, sworn, and questioned on their involvement in or knowledge of the case. Following each witness' testimony, the Respondent will have the opportunity to question the witness. Board members will then have the opportunity to question the witness on matters related to his/her testimony. Follow-up questioning by the Complainant will be allowed at the discretion of the presiding officer. This procedure will be followed for each of the Complaint's respective witnesses. Complainant shall have one (1) hour to present their case, including all witness testimony and submission exhibits.

m. Respondent's Presentation of their Case.

Respondent's presentation shall follow Complainant's and the same format as the presentation of Complainant's case shall apply. Respondent shall have one (1) hour and fifteen (15) minutes to present their case, including all witness testimony and submission of exhibits.

n. Rebuttal Testimony.

Following presentation of the Respondent's position, the Complainant will be allowed to present rebuttal testimony at the discretion of the presiding officer. Such testimony shall be brief and specifically address the issues brought forth in the Respondent's presentation. No new issues shall be raised. The Complainant shall have fifteen (15) minutes to present any rebuttal testimony.

o Closing Statements.

At the conclusion of the case presentations and rebuttal testimony, the Complainant and Respondent will each make his/her closing statements. The closing statements should briefly review the issues presented and the desired outcome. The Complainant will then have the opportunity to make a final statement which shall be limited to issues brought forth in the Respondent's closing statement. Closing statements shall be limited to ten (10) minutes per side.

p. Decision.

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

q. Record.

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

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

6. Appeal.

A Complainant who is aggrieved by the Board's rejection of the Complainant's Complaint may file an appeal to the District Court in accordance with District Court rules and state law.

Section 4. ADVISORY OPINIONS

A. The Board may issue advisory opinions. The Board shall follow the below proscribed procedures to issue any advisory opinion.

1. A subcommittee of the Board shall review advisory opinion requests from contractors and public servants subject to the Ordinance or from candidates seeking public office who will be subject to the Ordinance. The subcommittee shall consist of the Chair of the Board (or his/her designee) or the Vice Chair of the Board (or his/her designee), and a second member of the Board who shall be designated by the Chair on an *ad hoc* basis. The subcommittee shall make recommendations to the entire Board on each opinion request.

2. A request for an advisory opinion shall be submitted to the Board by serving the request with the County Compliance Officer. The request shall be forwarded to the Chair of the Board.

3. The subcommittee may require the contractor or public servant requesting an advisory opinion to provide additional information and to appear before the subcommittee to respond to questions related to the request.

4. The Board shall review all recommendations from the subcommittee at a review hearing. The contractor, public servant, or candidate seeking public office requesting an advisory opinion may attend the review hearing. The Board may require the contractor, public servant, or candidate seeking public office requesting the advisory opinion to answer questions or to provide additional information or documentation at the review hearing. The Board may modify the recommended advisory opinion submitted by the subcommittee.

5. Each advisory opinion shall be issued only after a majority of the entire membership of the Board has voted in favor of the advisory opinion.

B. Confidentiality, Public Hearings and Public Record.

1. The meetings of each advisory opinion subcommittee shall not be open to the public. The review hearing and any action taken on advisory opinions by the Board shall be an open meeting.

2. All advisory opinions approved by the Board shall be filed with the County Compliance Officer and shall be a public record.

C. Advisory Opinion Requirements.

1. Any contractor, public servant, or candidate for public office seeking an advisory opinion shall file a written request for an advisory opinion with the County Compliance Officer.

2. Any contractor or public servant subject to the Ordinance, any candidate seeking public office, or the County Compliance Officer may request any advisory opinion regarding the applicability or interpretation of the Ethics Ordinance.

3. The request for an advisory opinion shall be limited to prospective conduct, or application of the Ordinance, not past or present actions.

4. The request must concern a real or potential issue regarding the applicability of interpretation of the Code of Conduct.

5. All material facts must be revealed in the request.

6. Only the contractor, public servant, or candidate seeking public office who was issued the advisory opinion may rely on the advisory opinion as a defense to a future complaint.

7. The Board may include in the advisory opinion that the contractor, public servant, or candidate seeking office must take particular actions or refrain from certain conduct in order to be eligible to use the advisory opinion as a defense to any future complaint.

D. Advisory Opinions as a Defense

1. A contractor, public servant or candidate seeking office who receives an advisory opinion may rely on the advisory opinion under the following conditions: If a Complaint is filed against a contractor or public servant –including a public servant who sought the advisory opinion while they were only a candidate seeking public office–, based on the same facts that are the basis for the advisory opinion request, the contractor or public servant may raise the advisory opinion as a defense in their response to the Complaint or any portion thereof. The Board shall determine if the opinion was followed and whether the Complaint is based on the same facts revealed in the advisory opinion request. If both are found, the Board shall dismiss the Complaint or that portion of the Complaint that pertains to the advisory opinion.

2. In the event the Board finds that material facts were omitted by the contractor, public servant, or candidate seeking public office in requesting the advisory opinion *or* that the contractor, or public servant –including a public servant who sought the advisory opinion while they were only a candidate seeking public office– did not follow the advisory opinion *or* that the Complaint involves material facts other than those that are the basis of the advisory opinion, the Board shall not dismiss the Complaint solely on the basis of the advisory opinion, however, the advisory opinion may be introduced as part of a defense.

3. Any advisory opinion issued by the Board may be used by both Complainants and Respondents as persuasive precedent in future Board investigations, but such opinions are not binding on the Board except as to the specific Respondents they are addressed to.

Section 5. MISCELLANEOUS

A. Notice.

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

B. Meetings.

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

C. Amendments.

The Board, by majority vote, may amend these Rules of Procedure pursuant to the authority granted under the Ordinance.

D. Quorum.

The Board may not act on any matter without presence of a quorum.

E. Robert's Rules of Order.

In the absence of any controlling authority contained either in the Code of Conduct Ordinance or these Rules, and matter not covered in these Rules shall be controlled pursuant to Robert's Rules of Order

F. Effective Date and Filing.

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

Approved by the Ethics Board on ___th day of February, 2019.

Attested by

(Signature)

_____, Chair of the Ethics Board