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# Discussion Group Report: Prevention & Enforcement


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# GOVERNOR'S ETHICS AND CAMPAIGN FINANCE REFORM TASK FORCE DISCUSSION GROUP REPORT

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## PREVENTION & ENFORCEMENT

### I. OVERVIEW:

#### A. Summary of Existing Laws & Structure (New Mexico)

1. New Mexico has a mix of ethical canons and statutes, including the Government Conduct Act, the Procurement Code, Financial Disclosure Act, and others. The Judicial branch has its own code of conduct, as does the Legislative branch. The Government Conduct Act encourages Executive branch agencies to develop and maintain agency specific codes of conduct.

It is important to note the distinction between ethical canons, which could result in administrative discipline or sanctions, and criminal/civil statutory provisions, violations of which can result in criminal fines, penalties, etc. Below is a brief summary of the existing ethics laws, mechanisms for enforcement, and responsibility for ethics education, by branch of government.

- a. Executive Branch
  - i. Government Conduct Act, NMSA 1978, § 10-16-1 to -18  
NOTE: Includes references to the development of Agency-specific, in-house Codes of Conduct (are there any?) – NMSA 1978 § 10-16-11
  - ii. Specific statutes or regulations on ex parte communications, PRC, NMSA 1978, § 8-8-17
  - iii. Financial Disclosure Act, NMSA 1978, § 10-16A-3 to 7 (for state agency head and board members subject to Senate confirmation)
  - iv. Personnel Act, NMSA, § 10-9-1 to -25
- b. Legislative Branch
  - i. Government Conduct Act (Partially exempts Legislators), NMSA 1978, § 10-16-2(G)

- ii. Senate Rule 26-1; House Rule 26-1
    - iii. Codes of conduct, NMSA 1978, § 10-16-11
  - c. Judicial Branch
    - i. Government Conduct Act (Partially or entirely exempts Judges)
    - ii. NM Code of Judicial Conduct, Rules 21-001 through 21-901 NMRA
  - d. Local Ethics Laws/Canons
    - i. County
    - ii. Municipalities
  - e. Lobbyists
    - i. Candidate Reporting Act, NMSA 1978, § 1-19-25 to -37
    - ii. Financial Disclosure Act, NMSA 1978, § 10-16A-3 to 7
    - iii. Contractors, 2006 Session, SB 344
    - iv. Lobbyist Reporting Act, NMSA 1978, § 2-11-1 to -9
2. Enforcement Bodies
- a. Executive Branch
    - i. Secretary of State Office, NMSA 1978, § 10-16-14 (SOS is the investigative office and it may refer suspected violations to the AG, DA or appropriate state agency). It can be civil or criminal, NMSA 1978, § 10-16-17, -18
    - ii. US Attorney
    - iii. State Personnel Board, NMSA 1978, § 10-16-14(D)
    - iv. State Board of Finance
    - v. State Auditor
  - b. Legislative Branch
    - i. Interim Ethics Committee, NMSA 1978, § 2-15-7
    - ii. Governmental Ethics Oversight Committee, NMSA 1978, § 2-15-1
    - iii. US Attorney
    - iv. Secretary of State Office, NMSA 1978, § 10-16-14 (SOS is the investigative office and it may refer suspected violations to the appropriate legislative body)
    - v. LFC

- c. Judicial Branch
      - i. The Judicial Standards Commission, Article VI, Section 32. The Commission is charged with the constitutional duty to investigate allegations of judicial misconduct against state court judges.
      - ii. Supreme Court's power of superintending control.
      - iii. Law enforcement agencies, including the NM Attorney General's Office, the various District Attorney's Offices, and the US Attorney's Office, may prosecute judges for violations of criminal law and violations of applicable election laws.
    - d. Lobbyists & Contractors  
Secretary of State Office, NMSA 1978, § 2-11-8, § 1-19-34.4 (SOS is the investigative office and it may refer suspected violations to the AG, DA or appropriate state agency). It can be civil or criminal.
- 3. Education & Prevention
  - a. Executive Branch  
Secretary of State, NMSA 1978, § 10-16-13.1
  - b. Legislative Branch  
Legislature – Senate Rule 26-2; House Rule 26-2 (two hours biennially)
  - c. Judicial Branch
    - i. State of New Mexico Judicial Education Center, which is part of the Institute of Public Law, provides annual continuing judicial education including ethics. In addition, new judges are provided with comprehensive training, which includes a survey of ethical canons.
    - ii. National Judicial College, Reno NV, provides interim judicial training, including ethics courses.
  - d. Lobbyists & Contractors  
Secretary of State is authorized/required to educate candidates and lobbyists. GSD/Procurement interacts with contractors.

## **B. Problem Areas**

- 1. The concept that some offices may be better served as appointed rather than elected. Address government structure where there is a:
  - a. Lack of oversight.

- b. Lack of transparency in office/agency operations
  - c. Specific areas of concern include, but are not necessarily limited to the **Treasurer's Office** and the **Regional Housing Authority**.
- 2. Gifts: Lack of definition as to what a gift is, and/or what a "thing of value" is.
- 3. Contractors and the influence of money. How, if at all, is this issue addressed under the current legal/ethical structure?
- 4. Lack of institutional leadership and commitment (resources and funding) to the notion that state officials must live up to a higher standard of conduct. Lack of enforcement as evidenced by the failure of the SoS's office to enforce areas of law that fall within SoS's responsibility.
- 5. There is a general acceptance and tolerance of conduct that is **not** acceptable, and that would and does violate ethical strictures.
- 6. Dove-tailing with political subdivisions – how should this be done, if at all? Should the state address it, or should it be left to the localities, or should there be some middle ground?
- 7. Officials directing donations to their "favorite" charities, who then derive a benefit from the charity itself.
- 8. Current problems with campaign and finance reporting processes:
  - a. Suppose to be available on line, but system is not working.
  - b. Failure of enforcement agency to review, audit, and enforce.
- 9. Legal structure does not address citizens who are not registered lobbyists.
- 10. Legal structure does not address third party soft money advertising – 501(C) protections regarding full disclosure on contributors and contributions.

**C. Successful laws, Policies, and Best Practices**  
*(See Recommendations Section Below)*

## **II. OPTIONS:**

### **A. Assessment of Current New Mexico Ethics Rules, Regulations and Laws**

As may be apparent from the material presented above, New Mexico's ethical laws and canons have not been integrated. There also appears to be an institutional failure to commit the resources necessary to maintain an effective system of laws, regulations, and code governing ethical conduct of government officials and employees.

### **B. Best Practices – Recommendations**

Define and establish independent organizations/agencies that have clear jurisdictional boundaries, with the resources necessary to fulfill their missions.

1. Establish Executive Branch Independent Ethics Commission
  - a. Such a commission must be an independent watch-dog.
  - b. The Commission should be vested with enforcement powers, responsibility for undertaking routine ethics audits, and implementing mandatory training programs.
  - c. Commission should conduct Mandatory Ethics Training for all (executive) state employees.
  - d. Should perform regular and systematic ethics audits.
  - e. The Commission should be coordinating efforts with other enforcement agencies charged with fighting fraud waste, and ethical misconduct in office. This
  - f. The Commission should serve as the conduit to improve ethics advice and information. This should include the capability to provide advisory opinions in a confidential setting (i.e., the substance of the advisory opinion is public, but the name of the requesting official is confidential).
  - g. Key to its success is an institutional commitment to ethics in state government in the form of adequate funding and staffing.
2. Enact a Uniform Ethics Code, applicable to all (executive & legislative branch) state employees, and Consolidate the State's Scattered Ethics Laws into a Single Act.
3. Implement a Plain Language Ethics Guide that can be easily understood by all state employees and the public.

4. Implement a Business Ethics Guide that is binding on third parties that do business with the state.
5. Provide Leadership from the Top  
The New Jersey Special Counsel on Ethics Reform noted that leadership on ethics in government needed to come from the top.  
  
Ensure there is no undue influence by former state officials and employees on state law and policy development by adopting rigorous post-employment restrictions and effective follow-up procedures.
6. Ensure There are Strong Anti-Nepotism Laws
7. Impose Ethics Laws on Administration Transition Teams
8. Ensure Transparency and Promote Integrity in the Procurement Process. (**NOTE:** This needs to be analyzed further for New Mexico)
9. Adopt a Zero-Tolerance Policy on Gifts
10. Establish Independent Commission on Campaign Practices, Financial Reporting, Lobbyist Oversight
11. Establish Legislative Branch Independent Ethics Commission

**C. Necessary NM Legal/Structural Changes**

1. Constitutional (Can an Executive Ethics Commissions be established by Executive Order? Can an independent Legislative Ethics Commission be created)
2. Statutory
3. Independent Agency Structure
4. Criminal Prosecutorial Authority (?)

**D. Problems/Concerns**

1. Must have clearly defined authorities
2. Must have legislative and executive support
3. Must be adequately and appropriately funded

**III. EXPERTS:**

**Professor Paula A. Franzese**, Special Ethics Counsel to the Governor of the State of New Jersey.

1. Report of the Special Ethics Counsel, Ethics Reform Recommendations for the Executive Branch of New Jersey Government.
2. Background (historical perspective)

#### **IV. BIBLIOGRAPHY:**

1. ***Report of the Special Ethics Counsel to the Governor of the State of New Jersey, Ethics Reform Recommendations for the Executive Branch of New Jersey Government***; Special Counsel for Ethics Review and Compliance, Hon. Daniel J. O'Hern, Sr., Ret.; Professor Paula A Franzese, Seton Hall University School of Law. March 14, 2005. Report includes the following:
  - A. Proposed Uniform Ethics Code
  - B. Proposed Plain Language Ethics Guide
  - C. Proposed Business Ethics Guide
  - D. Ethics Audit Survey
  - E. Ethics Training Prototype
  - F. Compendium of New Jersey Materials and Ethics Guidelines
2. ***Public Corruption in the United States***, A Report Released by Corporate Crime Reporter, January 16, 2004, National Press Club, Washington, DC.