

RESOLUTION NO. 2010 - 40

A Resolution

Adopting Doña Ana County Code of Conduct, Superseding Resolution 2005-29

Whereas, the proper operation of democratic government requires that elected officials, employees, and volunteers of local governments be independent, impartial, and responsible to the people; and

Whereas, government decisions and policy should be made in proper channels of the governmental structure; and

Whereas, public office held by an elected official, a public employee, or a volunteer should not be used for personal gain; and

Whereas, the public should have confidence in the integrity of its government; and

Whereas, the Board of County Commissioners established a County Code of Conduct in 1996 by way of Resolution 96-30, and said Code has been amended and/or reconfirmed by Resolutions 97-03, 99-06, 2001-46, and 2005-29; and

Whereas, the Code of Conduct adopted by Resolution 2005-29 provides for the Board to review the Code at least every four (4) years and said review began in 2009.

Now, therefore, be it resolved by the Board of Commissioners of Doña Ana County that the Code of Conduct be revised and adopted as follows:

Section I: Purpose

A. The purpose of this resolution is the establishment of guidelines for ethical standards of conduct for all elected officials and employees by setting forth those acts or actions which are incompatible with the best interests of the County and by requiring elected officials and employees to disclose personal interests, financial or otherwise, in matters affecting the County.

B. It is the further purpose of this Code of Conduct to protect County employees from undue influence, threats, fear of threats, or reprisal with respect to the work that they perform for the County.

Section II: Responsibility 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 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 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.

Section III: Applicability

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

Section IV: Definitions

A. "**Anything of Value**" means 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, unsolicited advertising or promotional material such as pens, pencils, notepads, calendars, informational or educational materials of unexceptional value, plaques, other advertising giveaways or any other thing which is not likely to influence the judgment of individuals covered by this code.

B. "**Business**" means a corporation, partnership, sole proprietorship, firm, organization, or individual carrying on a business. Non-profit entities are included in this definition.

C. "**Commissioner**" means the individual elected from each of the five (5) districts within Doña Ana County to represent the constituents of that District.

D. "**Conflict of Interest**" means any business activity or other relationship with a person that compromises an elected official's or employee's loyalty to the County, and which may influence or predispose an official action or any use of authority of the office or position for personal reasons.

E. "**County Manager**" means 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.

F. "**Elected official**" means the Board of County Commissioners, County Assessor, County Clerk, County Treasurer, and Sheriff. It does not include the Probate Judge, who is subject to the Code of Judicial Conduct.

G. "**Employee**" means 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 Resolution. 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.

H. "**Financial Interest**" means 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.

I. "**Honorarium**" means payment of money, or any other thing of value, in excess of One Hundred Dollars (\$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.

J. "**Immediate Family**" means spouse, parents, children, and siblings. Included herein are those relationships established by blood, marriage (including "step" relationships), and adoption.

K. "**Official Act**" means 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.

L. "**Person**" means any individual, corporation, partnership, sole proprietorship, joint venture, or business entity, whether non-profit or for profit.

M. "**Privileged Information**" means 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.

Section V: Responsibilities of Public Service

A. Elected officials and employees shall treat their government or quasi-government position as a public trust, requiring adherence to and respect for the Constitution and laws of the United States of America, the Constitution and laws of the State of New Mexico, and the Ordinances and Resolutions of Doña Ana County. Elected officials and employees shall use the powers and resources of public office to advance the public interest rather than as an opportunity 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 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 with the utmost respect, decorum, and

fairness at all times, including during public discourse of conflicting views. 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. Failure to provide specifically factual information shall be a violation of the Code of Conduct.

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.

Section VI: Avoidance/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 themselves from any official act, including discussion or vote, directly affecting a financial interest or any other interests which would impair their ability to decide fairly and impartially the matter before them. When not acting in a quasi-judicial role, any elected official or employee shall disqualify themselves from any official act, excluding discussion, 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 officer 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. (§4-44-21)

E. Elected officials and employees with a controlling interest or a financial interest exceeding Ten Thousand Dollars (\$10,000) in a business regulated by the official acts of the County, or who does business with the County in an amount greater than One Thousand Dollars (\$1,000) per year, shall publicly disclose the precise nature and value of such interest. Disclosure shall be made in the manner set forth by state statute to the County Clerk during the month of January for each year they hold office. (§4-44-25 (B))

F. Every employee of the County who has a financial interest which they believe, or have 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. (§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. (§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 or indirectly 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 their ability to remain fair and impartial. After a disclosure, if three (3) 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.

Section VII: Procurement/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. (§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 Twenty-Five Dollars (\$25) from any person doing business with the County or person who reasonably anticipates doing business with the County in the future. This limitation of Twenty-Five Dollars (\$25) does not apply to meals.

D. Elected officials and employees shall be cognizant of the fact that under 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 of securities, goods, leases, lands, or anything of value by the County. (§30-23-61)

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. (§ 13-1-190,194)

F. Elected officials and employees shall not participate directly or indirectly in a County procurement process and contemporaneously seek employment with, or to be an employee of the person contracting or seeking to contract with the County, absent a waiver issued pursuant to the statute. (§13-1-193,194)

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.

Section VIII: 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 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. (§4-38-191)

B. Commissioners shall not direct the work of employees of the County except through policy that is established by ordinances and resolutions adopted by the Board of County Commissioners. It is the responsibility solely of the County Manager to assign and direct the work of County employees. It is recognized that only two County employees, the County Manager and the Internal Auditor, report directly to the Board of County Commissioners.

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 they desire, to appear as a witness in the personnel disciplinary or grievance processes.

D. Elected officials and employees recognize that the Board of County Commissioners operates as a body politic and corporate and that one elected official, employee, or agent cannot bind the County without specific delegation of authority by the Board. (§4-38-1)

E. 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 their powers and duties; and To sign all orders on the County Treasury and County documents, as authorized by a majority of the Board. (§4-38-111) Unless specifically delegated to the Chairperson by the Board, the Chairperson has no more authority than any other member.

F. The selection of the Chairperson shall be rotated annually by numerical district order in sequence beginning with the Commissioner from District One (1) at the first meeting of the Board of County Commissioners in January 2010 to ensure equal opportunity and a fair and balanced process for selection of the Chairperson. When a newly elected commissioner is scheduled to assume the Chair during their first year of office, the commissioner, with consent of the Board, may defer serving as Chairperson for one year. Thereafter, the rotation will resume according to the normal process.

G. The selection of the Vice Chairperson shall be rotated annually by numerical district order in sequence beginning with the Commissioner from District Two (2) at the first meeting of the Board of County Commissioners in January 2010.

H. A County Commissioner may decline to serve as Chairperson or Vice Chairperson.

I. The Board of County Commissioners shall recognize that Robert's Rules of Order sets guidelines for the conduct of all County Commission meetings.

J. Any County Commissioner may place a matter on the agenda for the Board of County Commissioners meetings in any of its official capacities.

K. 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, and in the event several elected officials fail or neglect to cooperate in exercising their respective duties, to the detriment of efficiency in County government mediation will be sought.

L. Department heads, managers, and supervisors shall build and maintain a culture of

compliance with laws and rules by:

1. Leading by example, using their behavior as a model for all employees;
2. Encouraging employees to bring forth questions and concerns relating to the operation of the county government without fear of retaliation;
3. Ensuring that all employees complete training related to their work and to compliance;
4. Applying appropriate and consistent disciplinary action.

Section IX: Code Compliance

A. The County shall inform and educate the elected officials and employees who are subject to this Code of Conduct. A person who violates the Code unintentionally or for good cause and not for personal motive shall be given fifteen (15) days notice to correct the matter. If voluntary compliance is sought first, referrals for enforcement shall not be pursued until after the fifteen day period.

B. Violations of the Code of Conduct by any elected or appointed official shall be reported to the County Manager, who will ensure a prompt, objective, and thorough investigation. The County Manager will report the results of the investigation to the Board of County Commissioners. If the alleged violation is against the County Manager, it shall be reported to the County Attorney who will ensure a prompt, objective, and thorough investigation. The County Attorney will report the results of the investigation to the Board of County Commissioners.

C. With regard to violations of the Code of Conduct alleged against an employee or volunteer firefighter, the alleged misconduct will be processed in accordance with the procedures established by Ordinances, Resolutions, and Collective Bargaining Agreements governing employees.

D. The pursuit of censure or disciplinary corrective action does not foreclose other remedies also available by law.

E. The District Attorney of the Third Judicial District is authorized to investigate and prosecute any complaint brought involving a violation of Sections 4-44-22 through 27. (§4-4427) 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. (§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.

Section X: 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.

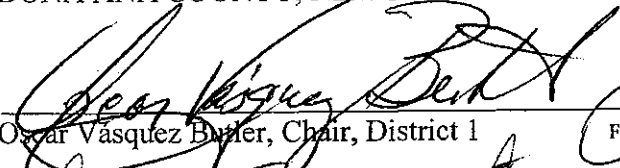
B. A copy of this amended Code of Conduct shall be posted in each Department, as well as published on the County's internet web site.

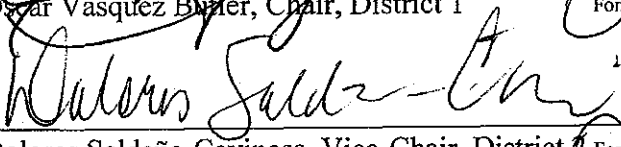
C. The Code of Conduct may be amended at any time at the direction of the Board of County Commissioners, and shall, at a minimum, be reviewed every four years, with the next review due in 2014.

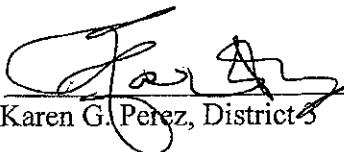
Resolved this day the 13rd day of April 2010.

BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO




Oscar Vásquez Butler, Chair, District 1 For/Against


Dolores Saldaña-Caviness, Vice-Chair, District 2 For/Against

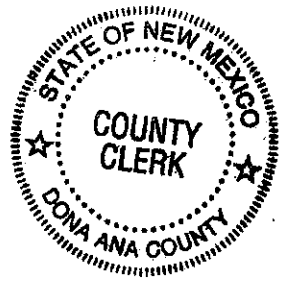

Karen G. Perez, District 3 For/Against

Scott Krahling
Scott Krahling, District 4 (For/Against)

Leticia Duarte Benavidez
Leticia Duarte Benavidez, District 5 (For/Against)

ATTEST:

Lynn Ellins
Lynn Ellins
County Clerk



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COUNTY OF DONA ANA)
STATE OF NEW MEXICO) ss
RESOLUTION
PAGES: 14
I Hereby Certify That This Instrument Was Filed for
Record On The 14TH Day Of April, 2010 at 08:56:28 AM
And Was Duly Recorded as Instrument #1008895
Of The Records Of Dona Ana County

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