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BY:

V. Nicole Gabriel, District 1
Vice Chair Elva Flores, District 2
Steve Fischmann, District 3
Chair Steve Montanez, District 4
Sharon Lalla, District 5

DOÑA ANA COUNTY CODE OF CONDUCT REVIEW BOARD

Rebecca A. Madrid,
COMPLAINANT,

v. No. SC2024-001

Nelson J. Goodin,
RESPONDENT,

Amy Perez,
COMPLAINANT,

v. No. SC2024-002

Nelson J. Goodin,
RESPONDENT,

Barbie Segovia,
COMPLAINANT,

v. No. SC2024-003

Nelson J. Goodin,
RESPONDENT,

PRELIMINARY ORDER,
NOTICE OF HEARING, AND
PRE-HEARING SCHEDULE

THESE MATTERS, having come before the Doña Ana County Code of Conduct Review Board ("Review Board") on October 11, 2024 for reset consolidated Preliminary Hearings, all parties being present and self-represented, the Review Board having a quorum, having reviewed written statements and heard oral statements from all parties, and having deliberated in closed session pursuant to Section 10-15-1(H)(3), NMSA 1978 (excluding deliberations by a public body in connection with an administrative adjudicatory proceeding from the Open Meetings Act), and being otherwise fully advised in the premises, hereby FINDS:

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1. The Review Board has subject matter jurisdiction over the ***Sworn Complaints*** filed in the above-referenced matters on September 5, 2024, and ***Amended Sworn Complaints*** ("Complaints") on September 17, 2024,[1] with the exception of the issues noted in Paragraph C of this Order, pursuant to § 14-9(C) of the Doña Ana County Code of Conduct ("Code").

2. The Review Board has personal jurisdiction over all parties to these matters. Code at § 14-9(C).

3. The Review Board Chair initially set these matters for Preliminary Hearings on September 27, 2024. *See* ***Notices of Preliminary Hearing*** filed September 17, 2024. In response to the Complainants' unopposed requests to reset the hearings for a later date, the Review Board Chair reset them for October 11, 2024. *See* ***Orders of Continuance and Amended Notice of Hearing*** issued September 19, 2024. All parties received timely notice.

4. The Complainants filed an unopposed ***Joint Motion for Closed Session*** on October 2, 2024, which the Review Board Chair reserved a ruling on until the start of the Preliminary Hearings and added the item to the Review Board's meeting agenda. *See* ***Order on Joint Motion for Closed Session*** issued October 8, 2024. Each of the three Complainants withdrew their motion at the start of the Preliminary Hearings.

5. At the Preliminary Hearings, Respondent objected to Complainants having the opportunity to make oral statements. That objection was not well-taken and was overruled by the Chair.

6. Respondent filed a Statement in Response to each of the Complaints seeking dismissal of the claims and arguing that: (1) allegations that he violated HR Policy 6-4(23) are not within the scope of the Code;[2] (2) Sections 14-8(K)(1)-(2),[3] 14-5(H), and 14-5(I) of the Code are aspirational and the Code does not provide specific, clear guidance about what conduct is allowed or prohibited; and (3) the Complaints do not identify which of the alleged facts constitute a violation of Sections 14-8(K)(1)-(2),[4] 14-5(H), and 14-5(I). *See* ***Responses to Code of Conduct Complaints*** filed October 4, 2024 (citing Code at § 14-9(B)(1)(e) and *State v. Gutierrez*, 2023-NMSC-002, ¶ 38, 523 P.3d 560[5]). The first argument is well-taken; the second and third are not.

7. The factual statements made in the Complaints, taken as being true, state one or more facial claims that Respondent has violated the provision(s) of the Code that are cited in the Complaints, and the Complaints are properly heard by the Review Board. Code at § 14-9(B)(1)(c).

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[1] Although Complainants did not reattach Exhibit A to the Sworn Complaints, that exhibit was incorporated by reference in the Amended Complaints. *See* ***Amended Sworn Complaints*** filed on September 17, 2024.
[2] Respondent did not seek to dismiss claimed violations of HR Policy 6-28(c)(1) and HR Policy Definitions page raised in the Complaints, however, those corresponding provisions suffer from the same defect and are therefore included in this order.
[3] Respondent did not seek to dismiss Section 14-8(K)(5) on this ground.
[4] Respondent did not seek to dismiss Section 14-8(K)(5) on this ground.
[5] Respondent cited "*State v. Gutierrez*, 235 P.3d 506, 538, ¶ 38," however we assume based on the filing, that he intended to cite to *State v. Gutierrez*, 2023-NMSC-002, ¶ 38, 523 P.3d 560.

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8. *Gutierrez* is inapplicable to this matter. It considered the issue of whether the Legislature intended for violations of NMSA 1978, Section 10-16-3(A)-(C) (2011) of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2019), to be subject to *criminal* penalties, which is clearly distinguishable from the current matters which contemplate only the civil sanctions provided for in the Doña Ana Code of Conduct. *See, e.g.*, *Gutierrez*, 2023-NMSC-002 at ¶¶ 26-27, 32 ("[T]he plain language of Subsections (A)-(C) does not allow their enforcement as criminal statutes when considered in the light of fundamental principles of criminal law…A basic characteristic of substantive criminal law is that a statute 'will spell out what act ... is required for its commission.' " (citing 1 LaFave, *supra*, § 1.2 at 11-12 (3d ed.)).

9. The Code of Conduct provisions at issue in these matters are not "aspirational" as described in *Gutierrez.*

10. The Review Board accepts the Complaints, in part; schedules the matters for a consolidated Evidentiary Hearing ("Hearing") as indicated in Paragraph F of this Order; and establishes a Pre-Hearing Schedule as described in Paragraph G of this Order. Code at § 14-9(B)(1)(e)(3).

11. The matters to be heard at a consolidated Hearing include allegations that Respondent violated the Code at Section 14-8(K)(1),(2), and (5); Section 14-5(H); and Section 14-5(I).

12. The Review Board rejects the Complaints, in part, with respect to the remaining claims in the Complaints alleging Human Resources Policy violations as they are not properly heard by the Review Board. Code at §14-9(B)(1)(e)(1); § 14-9(C)(3).

13. In light of unavoidable delays due to the amended pleadings and the parties' requests to reset the Preliminary Hearings, and in the interest of allowing all parties (who are self-represented) a full and fair opportunity to be heard, there is good cause to extend the 60-day deadline to allow an additional 30 days for the Review Board to resolve these matters. *See* § 14-9(C)(8)(b).

IT IS THEREFORE ORDERED:

A. Complainants' unopposed ***Joint Motion for Closed Session*** was **WITHDRAWN.**

B. Respondent's oral objection to Complainant's making oral statements at the Preliminary Hearings was **OVERRULED**.

C. To the extent Complainants assert that the Review Board should or has the authority to adjudicate alleged violations of HR Policies 6-4(23) and corresponding provisions at 6-28(c)(1) and at the Definitions page, that request for relief is hereby **DISMISSED** and **REFERRED** to the Compliance Officer for handling outside the Code per Section 14-9(B)(1)(e)(1).

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D. The remaining issues alleging violations of the Code of Conduct will be set for a full Evidentiary Hearing ("Hearing") and shall be disposed of by the Review Board no later than **December 5, 2024**, absent good cause to extend further.

E. Prior to the adjournment of the meeting, the Review Board Chair instructed the parties to file their Notice of Unavailability with the Compliance Office by **October 15, 2024.**

F. The parties and their witnesses are directed to appear in person at the time and place noted below. This is the only Notice the Parties will receive.

NOTICE OF HEARING
Friday, November 22, 2024 at 10:00am – 2:30pm
(*includes a 30-min break for the lunch hour if needed)
Doña Ana County Government Center
845 North Motel Blvd Las Cruces, NM 88007
County Manager's Conference Room 2-143

G. The parties shall adhere to the following **PRE-HEARING SCHEDULE.** All filings shall be submitted by email to the Compliance Officer no later than 5:00 p.m. on the stated deadline.

1. Respondent's Answer **November 6, 2024**
Respondent shall file an Answer responding to each allegation in the Complaint of the accepted claims. Respondent shall send a copy of their Answer to the Complainant by either first class mail or electronic delivery with return receipt; and shall certify that such mailing occurred on or before the date the Answer was filed with the County Compliance Office.

2. Requests for Administrative Subpoena, if any **November 8, 2024**
Any party requiring an administrative subpoena compelling the attendance of witness(es) at the Hearing and the production of documents must make such a request through the Compliance Office no later than 5:00 p.m. The Chair of the Review Board shall issue such subpoenas and the party requesting the subpoena shall ensure the signed subpoena is timely served on the witness(es).

3. Complainant's Brief and Respondent's Brief **November 12, 2024**
Both parties shall submit their own Briefs containing: (a) a written statement of the issues to be addressed, (b) a list of witnesses and a summary of the witness' testimony, and (c) copies of any written evidence, including proposed exhibits, to be introduced. A copy shall be provided to the opposing party/ies simultaneously. Any witnesses not listed, or documents not provided in accordance with this Order may not be used at the Hearing.

4. Pre-Hearing Motions, if any **November 15, 2024**
Any pre-Hearing motion(s), including a motion to continue, that requires the Review Board's consideration shall be filed with the Compliance Office no later than 5:00 p.m., and a copy shall be provided to the opposing party/ies simultaneously.

5. Responses to any Pre-Hearing Motions filed **November 19, 2024**

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Should any pre-Hearing motion(s) be filed, the opposing party must file a response. A copy shall be provided to the opposing party simultaneously. In most cases, Pre-Hearing motions will be decided at the start of the Hearing.

6. Requests for Continuances **November 19, 2024**

Requests for continuance shall be made by parties, in writing, and shall be delivered to the Compliance Office to the attention of the Review Board and the opposing party. The Chair of the Review Board may grant a continuance for good cause. Please note that a party filing a request of this nature must necessarily include consent to extend the Review Board's time to dispose of the matters beyond the date provided herein.

7. Objections to Proposed Evidence and Exhibits, if any **November 19, 2024**

Any party objecting to the authenticity of written evidence, including proposed exhibits to be introduced, must make an objection in writing stating the grounds. A copy shall be provided to the opposing party simultaneously. A party's failure to make a timely objection to the authenticity of an opposing party's exhibits shall result in the admission of those exhibits as evidence at the Hearing.

H. The Review 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 Review Board that testimony and information presented during the Hearing must have a direct and substantial bearing on the case at hand.

I. The Hearing Procedure shall be governed by the rules of evidence for the conduct of administrative hearings, the Rules and Regulations of the Review Board at Section 3(E)(5) (approved October 18, 2024), and the following deviations under these circumstances. Code at § 14-9(C)(4).

1. The Complainants' case will first be presented to the Review Board. Witnesses for the Complainants will be called, sworn, and questioned on their involvement in or knowledge of the case ***by the Review Board***. Following each witness' testimony, the Respondent will have the opportunity to suggest additional topics of inquiry, which will be allowed at the discretion ***of the Presiding Officer*** and will count toward Respondent's presentation time. This procedure will be followed for each of the Complainants' respective witnesses. All Complainants shall have a total combined one and a half hours (1.5 hours) to present their case including all witness testimony and submission of exhibits.

2. Respondent's case presentation shall follow Complainants' and the same format as the presentation of Complainants' case shall apply. Respondent shall have one and a half hours (1.5 hours) to present their case including all witness testimony and submission of exhibits.

3. Complainants will be allowed to present rebuttal testimony at the discretion ***of the Review Board.*** Such testimony shall be brief and specifically address the issues brought forth in the Respondent's presentation. No new issues shall be raised. If

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rebuttal is permitted, the Complainants shall have a total combined fifteen (15) minutes to present any rebuttal testimony or evidence.

4. The "exclusionary rule" shall apply, thus excluding all non-party witnesses from the Hearing until the time of their testimony. The non-party witnesses shall not discuss their testimony with each other until the conclusion of the Hearing. Any non-party witness who remains in the Hearing room after conclusion of their testimony may not be recalled as a witness in the Hearing.

J. If the Review Board finds, upon a majority vote of a quorum of the Review Board, that the Respondent violated the Code, it will issue a final order which 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 $1,000.00; or (2) a written finding of censure; and (3) when an elected official has committed an act that the Review Board believes could be grounds for removal from office, refer their decision to the district attorney. Code at §14-9(C)(7).

K. All penalties contained above are non-exclusive, and do not foreclose other remedies available by law. The County reserves the right to refer any conduct, whether covered by the Code or not, to any agency or law enforcement agency with competent jurisdiction for criminal or civil prosecution. Code at §14-9(C)(9).

IT IS SO ORDERED.

Steve Montanez 11/01/2024

Chair Steve Montanez
Doña Ana County Code of Conduct Review Board

Date

NOTICE PROVIDED TO:

REBECCA A. MADRID
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T: 575-525-5916
Complainant in Case No. SC2024-001

AMY J. PEREZ
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Complainant in Case No. SC2024-003

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Respondent in Case Nos. SC2024-001, SC2024-002, SC2024-003