



# Statutes & Policies Pertaining to the Interim Legislative Ethics Committee

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# Goals for Today's Presentation

- ▶ Provide background on the formation of the Interim Legislative Ethics Committee (ILEC)
  - ▶ Discuss statutory duties of the ILEC
  - ▶ Discuss interplay between the ILEC, House Rules and Order of Business Committee, Senate Ethics Committee and the State Ethics Commission
  - ▶ Provide familiarity with procedures governing ILEC in:
    - ▶ Statute
    - ▶ Legislative Council Policy No. 15
    - ▶ Anti-Harassment Policy
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# Background--Legislative authority to review conduct of and discipline members

- ▶ Article 4, Section 11 of the Constitution of New Mexico provides the respective chambers with the authority to review the conduct of and discipline its members.
  - ▶ “Each house may determine the rules of its procedure, punish its members or others for contempt or disorderly behavior in its presence and protect its members against violence; and may, with the concurrence of two-thirds of its members, expel a member, but not a second time for the same act. Punishment for contempt or disorderly behavior shall not be a bar to criminal prosecution.”
- ▶ This authority is exercised through the House Rules and Order of Business Committee and Senate Ethics Committee during a legislative session, and the Interim Legislative Ethics Committee (ILEC) during the interim.



# House Rules and Order of Business Committee

- ▶ Per House Rule 9-2-1, the House Rules and Order of Business Committee is designated as the House committee to which the Speaker shall refer all matters related to ethical conduct of House members arising during a regular or special session of the legislature, including matters which may give rise to constitutional discipline under Article 4, Section 11 of the Constitution of New Mexico. With respect to such matters, the committee shall proceed under House Rules 9-13 et seq.
- ▶ Matters relating to the ethical conduct of House members which arise during the interim shall be dealt with by the Legislative Council and the Interim Legislative Ethics Committee.



# Senate Ethics Committee

- ▶ Per Senate Rule 9-13-1, the Senate Ethics Committee is designated as the committee to which all matters pertaining to ethics shall be referred.
  - ▶ The Senate Ethics Committee may adopt its own rules of procedure as necessary or appropriate to exercise its powers and carry out its duties.
  - ▶ The ethics committee may meet during any session of the legislature as it deems appropriate.
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# Interim Legislative Ethics Committee-- Establishment

- ▶ Established in 1993 by statute.
- ▶ Section 2-15-7 NMSA 1978
- ▶ “All matters arising in the interim pertaining to legislative ethics shall be referred to this special interim legislative ethics committee.”
- ▶ The ILEC is convened upon the receipt of a complaint, a request for advisory opinion or a referral.



# Interim Legislative Ethics Committee-- Composition

- ▶ Members are appointed by the Legislative Council. Legislative Council members are allowed to serve on the ILEC.
- ▶ The committee shall be appointed by the New Mexico Legislative Council so as to give the two major political parties in each house equal representation on the committee. In appointing the members to the committee, the Legislative Council shall adopt the recommendations of the respective floor leaders of each house.
- ▶ Legislative Council Policy No. 15:
  - ▶ The ILEC shall be appointed by the Legislative Council in accordance with the recommendations of the respective floor leaders of each house.
  - ▶ There shall be co-chairs, one from each house of the legislature.
  - ▶ To the extent feasible, the committee shall be comprised of members of the standing committees of the House and Senate responsible for ethics matters during legislative sessions.
  - ▶ In dealing with charges brought against a legislator or a referral relating to a legislator's conduct, the ILEC "shall function through investigative and hearing subcommittees."



# Interim Legislative Ethics Committee-- Duties

- ▶ Issues advisory opinions on the interpretation and enforcement of ethical principles as applied to the legislature and that are under not the jurisdiction of the State Ethics Commission.
- ▶ Investigates complaints from another member of the legislature or a member of the public alleging misconduct of the legislator.
- ▶ Investigates referrals made to the co-chairs of the Legislative Council from the State Ethics Commission, the Attorney General, the Secretary of State or a district attorney.
- ▶ Hires special counsel, arbitrators or independent hearing officers as necessary.
- ▶ Makes recommendations to the respective houses regarding proposed sanctions for ethical misconduct.



# Interim Legislative Ethics Committee— Duties

- ▶ Maintains a web page on the legislature's website.
  - ▶ [https://www.nmlegis.gov/Committee/Interim\\_Committee?CommitteeCode=LEC](https://www.nmlegis.gov/Committee/Interim_Committee?CommitteeCode=LEC)
- ▶ Issues an annual report no later than the first day of May of each year regarding its activities during the previous twelve months, including a listing of the number of complaints received, the disposition of the complaints that have been resolved and the advisory opinions issued.



# ILEC Statutory Procedures Pertaining to Advisory Opinions (*Section 2-15-9 NMSA 1978*)

- ▶ The ILEC is authorized to issue advisory opinions on matters related to ethical conduct during the interim.
- ▶ Any question relating to the interpretation and enforcement of ethical principals as applied to the legislature may be submitted in writing to the Legislative Council by a legislator describing a real or hypothetical situation and requesting an advisory opinion establishing an appropriate standard of ethical conduct for that situation. The question shall be referred to the ILEC.



## ILEC Statutory Procedures Pertaining to Participation (Section 2-15-9 NMSA 1978)

- ▶ *A member of the ILEC is ineligible to participate in any matter relating to that member's conduct. In such a case, a substitute member from the same house and same political party shall be appointed by the appropriate appointing authority.*
- ▶ A member may seek to be disqualified from any matter before the ILEC on the grounds that the member cannot render a fair and impartial decision. Disqualification must be approved by a majority vote of the remaining members of the committee.



# ILEC Statutory Procedures Pertaining to Confidentiality (Section 2-15-9 NMSA 1978)

- ▶ The *committee* and its *staff* shall not publicly disclose any information relating to the filing or investigation of a complaint, including the identity of the complainant or respondent, *until after a finding of probable cause has been made that a violation has occurred.*
- ▶ The identity of the complainant shall be released to the respondent immediately upon request.
- ▶ No member of the committee or its staff may knowingly disclose any confidential information except as authorized by the committee.
- ▶ Note: A 2023 amendment to this law removed a provision prohibiting a complainant from publicly disclosing information relating to the filing or investigation of a complaint made to the interim legislative ethics committee alleging the misconduct of a legislator.



# ILEC Statutory Procedures Pertaining to Complaints (Section 2-15-9 NMSA 1978)

- ▶ To initiate any action during the interim on alleged misconduct, any legislator or member of the public may file a *written, sworn* complaint setting forth, with specificity, the facts alleged to constitute unethical conduct.
  - ▶ A complaint shall be filed with the Legislative Council.
  - ▶ Upon receipt of the complaint, the co-chairs shall convene the ILEC.
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# Legislative Council Policy No. 15

- ▶ The Legislative Council is required to develop procedures to carry out the provisions of Section 2-15-9 NMSA 1978.
- ▶ Legislative Council Policy No. 15 establishes specific procedures for the ILEC in carrying out its functions, including:
  - ▶ issuance of advisory opinions; and
  - ▶ handling complaints.



# Legislative Council Policy No. 15 (D)— Procedures for Advisory Opinions

- ▶ Advisory opinions shall be issued by the *full committee*.
- ▶ Any legislator may seek an advisory opinion related to the interpretation and enforcement of principles of ethics with respect to a situation affecting that legislator.
- ▶ A request for an advisory opinion shall be submitted *in writing* by the requesting legislator. The question may describe a real or hypothetical situation and request an advisory opinion establishing the appropriate standard of ethical conduct for that situation.
- ▶ Neither the contents nor the nature of a request for an opinion shall be revealed to any person outside of the committee or the staff to the committee except with the consent of the legislator requesting the opinion.



# Legislative Council Policy No. 15 (D)— *Procedures for Advisory Opinions*

- ▶ The committee shall issue a written opinion regarding each inquiry or explain in writing why no opinion will be issued. Opinions shall be prospective only. Once issued, opinions shall be public documents, except that no opinion shall identify the requesting legislator without the legislator's consent.
- ▶ A requesting legislator may rely upon an advisory opinion of the ILEC, and any legislator acting in good faith reliance upon such an advisory opinion shall be immune from sanctions for conduct allowed by the opinion, unless the advisory opinion has been rejected by the relevant standing committee prior to the conduct in question.
- ▶ Committee advisory opinions shall be forwarded to the relevant standing committees for adoption or rejection in accordance with their respective procedures.



# Legislative Council Policy No. 15— Complaint Procedures (Format)

- ▶ Preliminary Note: Interplays with additional procedures contained in the Anti-Harassment policy with regard to additional subcommittee members, hiring of outside counsel and specific deadlines or disclosure requirements.
- ▶ Any charge seeking the discipline of a member of the legislature during the interim shall be in writing, under oath or affirmation, signed by a member of the legislature or a member of the public, verifying the truthfulness of the allegations in the complaint, addressed to the respective co-chair of the Legislative Council and filed with the Legislative Council Service at the State Capitol.
- ▶ The complaint shall state with *reasonable particularity* the relevant facts upon which the charge is based and the *substantive ethics rule or law* which the legislator is charged with violating.



# Legislative Council Policy No. 15— Complaint Procedures (Leadership Review)

- ▶ The respective co-chair of the Legislative Council and the respective majority and minority floor leaders, plus any outside counsel included pursuant to the Anti-Harassment Policy, shall determine whether the complaint raises an issue implicating the charged member's role as a legislator under the substantive ethics rules or laws governing legislative conduct.
  - ▶ The Anti-Harassment Policy requires consultation with *outside counsel* experienced in discrimination law and in the investigation of claims of harassment.
- ▶ If *any* member of this group determines that the complaint raises an issue implicating the charged member's role as a legislator under the applicable rules or laws, the complaint must be forwarded to the ILEC. (The members of the group could alternatively agree to forward the matter to the appropriate standing committee, but all members must agree to do so.)
  - ▶ The Anti-Harassment Policy requires a complaint to be forwarded to a subcommittee of the appropriate ethics committee within five business days.
- ▶ If *all* members of this group agree the complaint *does not* raise an ethics issue, the complaint shall be dismissed, and a copy of the dismissal and explanatory letter shall be sent to the complainant.



# Legislative Council Policy No. 15— *Complaint Procedures (Subcommittees)*

- ▶ In dealing with charges brought against a legislator or a referral relating to the conduct of a legislator, the ILEC shall function through investigative and hearing subcommittees.
- ▶ An investigative subcommittee conducts a confidential *investigation* to determine whether or not there is *probable cause* that a charge is warranted.
- ▶ A hearing subcommittee initiates a formal *hearing* to determine whether the legislator committed an offense that justifies the imposition of sanctions and makes a recommendation to the appropriate *standing committee* on the severity of any sanctions.



# Legislative Council Policy No. 15— *Investigative Subcommittee*

## ▶ Composition

- ▶ Investigative subcommittee members are selected by the appropriate co-chair of the Legislative Council, in accordance with recommendations of the appropriate majority and minority floor leaders, plus any additional members appointed pursuant to the Anti-Harassment Policy.
- ▶ Investigative subcommittee is selected from:
  - ▶ ILEC membership; and
  - ▶ the same house of the charged party.
- ▶ Equal number from each party must be selected.
- ▶ The Anti-Harassment Policy requires addition of a *voting member* who is a licensed attorney, who has experience in harassment claims and who is without any current or previous involvement in the matter. The additional voting member shall serve as the chair of the investigative subcommittee.
- ▶ Good cause excusal of a member from investigating, hearing or voting on a matter may be granted only by a majority vote of the hearing subcommittee. A vacancy shall be filled by the appointing authority in the same manner as the original appointment.



# Legislative Council Policy No. 15— *Investigative Subcommittee*

- ▶ The Investigative Subcommittee shall conduct a *confidential* investigation.
- ▶ Legislative Council Policy No. 15 generally provides that “special legal counsel, arbitrators, hearing officers or other professionals may be hired by the Legislative Council Service as authorized by the investigative subcommittees, hearing subcommittees or the ILEC to assist the subcommittees with their respective duties and responsibilities.”



# Investigative Subcommittee—Anti-Harassment Policy Provisions

- ▶ If the complaint is made under the Anti-Harassment Policy, the investigative subcommittee shall retain *special counsel*, who has experience in the investigation of harassment claims and shall not be the same person as outside counsel to investigate the complaint and submit to the subcommittee a report containing the special counsel's findings, conclusions and recommendations regarding further action.
- ▶ The special counsel shall make every effort to complete the investigation and submit a report to the investigative subcommittee within 45 days from the date the special counsel is retained.



# Investigative Subcommittee—Anti-Harassment Policy Provisions

- ▶ If the report is not completed within 45 days, the special counsel shall advise the investigative subcommittee, complainant and respondent of the status of the investigation and the estimated time needed to complete the investigation.
- ▶ The special counsel shall provide an update every 15 days until the investigation is complete.
- ▶ Within 15 days of receipt of the special counsel's recommendations, the investigative subcommittee shall determine whether probable cause exists to believe a formal charge is warranted.



# Legislative Council Policy No. 15— *Investigative Subcommittee*

- ▶ If the subcommittee finds no probable cause to believe a charge is warranted, it shall recommend that the hearing subcommittee close the investigation or dismiss the charge.
- ▶ Dismissal by the hearing subcommittee shall be communicated to the complainant, and the legislator charged shall not be subject to further charges by the complainant for the same event.
- ▶ If the subcommittee finds probable cause to believe that the charge is warranted, it shall recommend that the hearing subcommittee initiate a formal hearing.



# Investigative Subcommittee—Anti-Harassment Policy Provisions

- ▶ If the investigative subcommittee finds that probable cause does not exist, the investigative subcommittee shall immediately close the investigation, dismiss the complaint and so inform the complainant, the legislator against whom the complaint is filed and the appropriate ethics committee during the interim or standing committee during the session.
- ▶ If the ILEC receives this notice during the interim, it shall issue a public report of the investigative subcommittee's determination within 10 days.
- ▶ If the investigative subcommittee finds that probable cause exists, it shall cause to be prepared a charging document to the appropriate ethics subcommittee during the interim or standing committee during the session.



# Legislative Council Policy No. 15— *Hearing Subcommittee*

## ▶ Composition

- ▶ Hearing subcommittees are comprised of the members of the committee from the house of the charged member that were *not members of the investigative subcommittee*.
- ▶ Hearing subcommittee is selected from:
  - ▶ ILEC membership; and
  - ▶ the same house of the charged party
- ▶ Equal number from each party must be selected.
- ▶ The Anti-Harassment Policy requires the hearing subcommittee to retain an additional voting member who is an attorney, retired judge or justice, without any current or previous involvement with the matter. That member shall service as the chair.



# Legislative Council Policy No. 15— *Hearing Subcommittee*

- ▶ A formal hearing is initiated by the issuance of a written finding of probable cause by the hearing subcommittee (following from the investigative subcommittee's finding) and the service of a copy of that document on the legislator being charged. The written finding of probable cause shall be limited to matters reasonably related to the original charge and shall become the formal charging document.
  - ▶ A member of the investigative subcommittee or special legal counsel to the investigative subcommittee shall become the charging party and present the case against the legislator being charged.
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# Legislative Council Policy No. 15— *Hearing Subcommittee*

- ▶ The hearing subcommittee shall hear the matter.
  - ▶ Members of the hearing subcommittee shall avoid ex parte communications.
  - ▶ Good cause excusal shall be granted only by a majority vote of the hearing subcommittee. (Vacancy is filled by the appointing authority.)
- ▶ If the charge involves conduct that is the subject of a pending civil or criminal proceeding in which the charged party is a defendant, the hearing subcommittee shall determine if the public interest is best served by suspending the disciplinary proceedings pending resolution of the civil or criminal charges or whether portions of the formal proceedings shall be kept confidential, and notice thereof shall be forwarded to the appropriate standing committee of the relevant house.



# Legislative Council Policy No. 15— *Hearing Subcommittee*

## ▶ Formal Hearing

- ▶ Subcommittee shall establish and notify the parties of the preliminary schedule and procedures to be followed, including those for making opening and closing statements and for the presentation of evidence.
- ▶ The hearing subcommittee is not bound by the rules of evidence and may hire legal counsel to assist the subcommittee.
- ▶ The procedures shall include notice that all testimony shall be taken under oath and the hearings shall be open to the public, except that the hearing subcommittee may designate specific information or portions of the hearing to be confidential to:
  - ▶ protect the integrity of an ongoing investigation or prosecution; or
  - ▶ preserve the privacy of third parties or for any other lawful purpose.
- ▶ All testimony at the formal hearing shall be recorded. The recorded testimony, together with all evidence, shall be compiled as the record of the formal hearing.



# Legislative Council Policy No. 15— *Hearing Subcommittee*

- ▶ If the hearing subcommittee determines that the legislator has committed an offense that justifies the imposition of sanctions, it shall make a recommendation, including the severity of the sanction in the report to the standing committee.
  - ▶ Under the Anti-Harassment Policy, the hearing subcommittee shall determine whether a preponderance of the evidence supports that the legislator against whom the complaint is filed has committed an offense that justifies the imposition of sanctions.
- ▶ Recommended sanctions may include:
  - ▶ reprimand
  - ▶ censure
  - ▶ expulsion



# Legislative Council Policy No. 15— *Hearing Subcommittee*

- ▶ Reprimand: Appropriate for single, relatively minor act of ethical conduct.
- ▶ Censure: Appropriate for more serious or repeated acts of unethical conduct, although repeated or aggravated violations may merit expulsion. Censure normally carries with it a stripping of a leadership and chairmanship positions for the remainder of the legislator's current term in office.
- ▶ Expulsion: The extraordinary power of expulsion generally should be reserved for very serious breaches of legal or ethical responsibilities of members that directly relate to their duties as members of the legislature and that impugn the integrity of the legislature, reflect adversely on the legislature or otherwise undermine public trust in the institution of the legislature.



# Legislative Council Policy No. 15— *Hearing Subcommittee*

- ▶ In accordance with the report from the hearing subcommittee and the respective house's rules, the appropriate standing committee shall either dismiss the matter or refer the matter to the appropriate house of the legislature with the recommendations of the subcommittee, with the understanding that the ultimate authority lies with the appropriate house of the legislature pursuant to its rules.



# State Ethics Commission--Jurisdiction

- ▶ The State Ethics Commission may receive and investigate complaints alleging ethics violations against public officials, public employees, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers.
- ▶ "Public official" means a person elected to an office of the executive or legislative branch of the state or a person appointed to a public agency.
- ▶ "Public agency" includes any department, commission, council, board, committee, agency or institution of the executive or legislative branch of government of the state.



# State Ethics Commission--Jurisdiction

- ▶ The commission has jurisdiction to enforce the applicable civil compliance provisions for public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers of:
  - ▶ the Campaign Reporting Act;
  - ▶ the Financial Disclosure Act;
  - ▶ the Gift Act;
  - ▶ the Lobbyist Regulation Act;
  - ▶ the Voter Action Act;
  - ▶ the Governmental Conduct Act;
  - ▶ the Procurement Code;
  - ▶ the State Ethics Commission Act;
  - ▶ the Revised Uniform Law on Notarial Acts; and
  - ▶ Article 9, Section 14 of the Constitution of New Mexico (the Anti-Donation Clause).



# State Ethics Commission—Jurisdiction Sharing and Referrals

- ▶ If the commission decides not to act on a complaint, whether the complaint was filed with the commission or forwarded from another public agency, or decides only to act on part of the complaint, the commission shall forward the complaint to the public agency with appropriate jurisdiction within 10 days of the decision.
- ▶ The commission may share jurisdiction with other public agencies having authority to act on a complaint or any aspect of a complaint.
- ▶ The commission may investigate a complaint referred to the commission by the legislature, or a legislative committee, in accordance with an agreement entered into pursuant to the polices of the New Mexico Legislative Council or rules of the House or Senate.



# Resources

- ▶ [ILEC webpage](#)
- ▶ [Legislative Ethics Guide](#)
- ▶ [ILEC statutes](#)
- ▶ [Legislative Council Policy No. 15](#)
- ▶ [Anti-Harassment Policy](#)
- ▶ [State Ethics Commission website](#)



# Parting Thoughts

- ▶ The statutes and policies governing the ILEC do not exist in a vacuum. The statutes governing ILEC, along with Legislative Council Policy No. 15, the Anti-Harassment policy, and the ILEC's relationship with the legislative standing committees should be considered together.
  - ▶ The process governing any ethics complaint for the ILEC is contained in the existing policies.
  - ▶ Laws and policies are dynamic and are always subject to change.
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