



Law Offices of the Public Defender

Bennett J. Baur
Chief Public Defender

CODE OF CONDUCT

In addition to each employee's obligation to comply with the provisions of the New Mexico Conflict of Interest Act (Act), this Code of Conduct (Code) is adopted in compliance with section eleven (11) of that Act.

General Disciplinary Provisions and Policy

Other valid and applicable provisions of federal, state law or regulation, such as the New Mexico Criminal Offender Employment Act, may pre-empt or take precedence over one or more provisions of this Code of Conduct. In the event that occurs, the remaining provisions of the Code will remain valid and continue in force.

The Law Offices of the Public Defender (LOPD) expects and assumes that all its employees are familiar with the provisions of this Code and considers an employee's continued employment with the LOPD to constitute such familiarity.

Conduct or behavior by a LOPD employee that the LOPD in its sole judgment determines to be a violation of the following may be used by the LOPD as the basis for appropriate disciplinary action, up to and including dismissal, against an employee: any provision of this Code set forth herein; any provision of state, federal, local law or regulation or constitutional provisions; any law, rule or regulation governing the conduct of State of New Mexico employees; any provision governing or relating to the practice of law in New Mexico, including but not limited to the Rules of Professional Conduct and its Preamble, and the Supreme Court of New Mexico Attorney's Oath; or, any other provision of law or regulation incorporated into this Code by reference. The LOPD may use such conduct or behavior as a basis for appropriate disciplinary action against an employee regardless of when the conduct or behavior occurs, whether or not the conduct or behavior occurs during formal State of New Mexico working hours and whether or not such conduct or behavior results in criminal or other proceedings brought against that employee by a person or entity other than the New Mexico Public Defender Department.

This Code is not intended to nor does it divest New Mexico Public Defender Department employees of any rights to which they may be entitled by law, including but not limited to the New Mexico State Personnel Act, and any rights to which they may be entitled under applicable provisions of any collective bargaining agreements.

A. Personal Conduct

1. Employees, volunteers or contractors of the LOPD shall conduct themselves in a manner that reflects the highest personal and professional ethics and standards of honesty and integrity as an officer of the State. Employees are expected to devote their full working days to the business of the LOPD. Employees, volunteers or contractors shall not act in a manner which gives rise to suspicion or even the appearance of conflict of the interest with the State or the LOPD; or engage in negative personal or professional conduct or behavior that results in criticism of themselves or the LOPD; or if an attorney engage in any conduct that adversely reflects on his or her fitness to practice law.

2. Workplace Violence. The LOPD has a zero tolerance workplace violence policy. Violation of the zero tolerance workplace violence policy may result in disciplinary action, up to and including termination of employment. "Workplace violence" is violent conduct, in or associated with the workplace or while on duty against employees, supervisors or non-employees which may include but is not limited to:
 - Physical acts against persons or their property or against LOPD property
 - Veiled, direct or indirect verbal threats or physical harm that cause psychological or emotional harm or create a hostile or intimidating environment
 - Written threats, profanity, vicious cartoons or notes or other unspoken communication that is meant to threaten or create a hostile environment
 - Intentional pushing or shoving
 - Engaging in aggressive or hostile behavior that creates a reasonable fear of injury
 - Other behavior, including the use of abusive or vulgar language to insult or threaten a co-worker or non-employee

- Possession, transfer, sale or use of firearms, explosives or other inappropriate material while on LOPD premises or while on duty conducting PDD business
 - Using any object in a threatening or weapons-like manner
3. Consumption of alcoholic beverages or being under the influence of drugs or alcohol while on LOPD premises or in LOPD vehicles or in private vehicles is prohibited.
 4. Employees arrested for any criminal offense must report their arrest to their supervisor within 24 hours or by the close of business of the next work day. This applies to employee arrests whether occurring during working hours or occurring during off duty hours.
 5. Following the LOPD's internal investigation, employees arrested for driving while intoxicated, domestic violence, possession of controlled substances or paraphernalia or crimes of a sexual nature or moral turpitude are subject to disciplinary action, up to and including termination of employment.
 6. As per LOPD policy, employees of the LOPD may be required to submit to a urinalysis test if the LOPD has a reasonable suspicion that the employee is under the influence of drugs or alcohol based on observation of physical symptoms or manifestations of intoxication or the use or possession of drugs or drug paraphernalia or use of alcohol while on duty.
 7. Employees shall not make any type of recording of conversations or meetings with other employees, clients or any other person without that person's prior written or recorded consent. This applies to conversations or meetings with LOPD employees, clients and others in the legal profession at any time or location.

B. Business Conduct

1. Personnel will bear in mind that the chief purpose of the LOPD is to provide services and programs to the indigent charged with criminal offenses. Employees, volunteers and contract employees will respect and protect the legal rights of all clients. Applicable personnel will serve each case with appropriate concern for the individual's welfare and with no goal of personal gain.

2. Relationships with colleagues and clients will be of such character as to promote respect within the profession and improvement of quality of the LOPD's service.
3. Employees will respect the importance of all elements of the criminal justice system and cultivate professional cooperation with each segment of that system. In any public statement, LOPD employees will clearly distinguish between those statements that are personal views and those which are authorized statements and positions taken on behalf of the LOPD. Employees stating their personal views must not identify themselves as speaking on behalf of the LOPD without first obtaining authority to do so from the LOPD.
4. All employees of the LOPD who in the course of performing their duties visit various court and correctional facilities are subject to the rules and regulations of those court and correctional facilities. Employees are specifically prohibited from taking or attempting to take prohibited items, such as, weapons, into court buildings or from taking or attempting to take contraband into correctional facilities. Additionally, employees are prohibited from accepting packages or correspondence from anyone addressed to the employee but intended for delivery to the client.
5. Employees, volunteers and contract employees will not discriminate against any client, employee or prospective employee on the basis of race, color, religion, national origin, age, gender, ancestry, veteran or marital status, sexual preference or mental or physical disability.
6. Undue familiarity with clients is forbidden and personnel will conduct themselves in compliance with all laws and regulations so as to not subject their profession, colleagues and the LOPD to criticism.
7. The actions of personnel are to be in accordance with prescribed LOPD rules and regulations. Employees, volunteers and contract employees are expected to perform their assignments in a manner that reflects professional judgment, prudence and sincere interest in the LOPD and its clients. Employees, volunteers and contract employees shall maintain an attitude of courtesy and service to clients, other employees and other individuals who have contact with

the LOPD.

8. Employees, volunteers and contract employees shall protect and conserve State government property, including equipment, supplies and other property entrusted or issued to them. They shall not willfully damage or otherwise misuse state government property including vehicles, equipment, tools and instruments.
9. No employee shall accept reimbursement of travel expenses or other related business expenses other than from the State of New Mexico unless prior approval has been obtained from the Chief Public Defender or his or her designee.

C. Outside Employment

All employees shall be expected to place the responsibility and obligations of their position and assignment with the LOPD first and shall only be permitted to engage in outside work subject to the following conditions.

1. There shall be no conflict of interest or activity between the outside work and the work of the LOPD. Whether particular outside employment gives rise to suspicion of conflict of interest or incompatibility of employment must be determined on the facts of each individual situation. To this end, any employee currently involved in outside employment will prepare a statement outlining this employment. This statement, following review by the Chief Public Defender or his or her designee, will be filed in the individual's personnel file and reviewed annually at the time of annual evaluation for accuracy.
2. Effective immediately, all employees and all new employees entering the Department must have the prior written approval of the Chief Public Defender or his or her designee before obtaining outside employment.
3. There shall be no interference with the work of the LOPD and any outside work may be terminated by order of the Chief Public Defender or his or her designee if, in his or her opinion, such work is adversely affecting the efficiency, quality and effectiveness of the employee's work with the LOPD.

4. No outside employment shall be conducted on LOPD premises nor shall office equipment, supplies, machines or technical data be used for such work.
5. Approved outside work must not occur during hours the employee is expected to work for the LOPD unless annual leave is authorized.
6. Every employee who has a financial interest that he or she believes, or has reason to believe, may be affected by actions of the LOPD shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the Chief Public Defender or his or her designee before entering State employment or whenever such a situation develops. Such disclosures shall be reviewed every January.
7. Employees may not solicit business from fellow employees under coercive or intimidating circumstances.
8. Outside work may not be performed for a person or contract employee with whom the LOPD has a current contract without prior written approval of the Chief Public Defender or his or her designee.
9. No LOPD employee may be compensated by any person or business for any duties which the employee has an obligation to perform for the LOPD.
10. Outside work may not require the use of confidential or inside information to which the employee, volunteer or contractor has access.
11. No person employed by the LOPD may engage in the outside practice of law whether paid or unpaid.

D. Conflict of Interest

The following listed conflicts of interest are not all-inclusive.

1. No employee shall directly or indirectly acquire a financial interest in a business at a time when he or she may reasonably anticipate it may directly affect any official act of his or hers.
2. No employee may directly or indirectly make any bids for the purchase of property put up at a public sale for the satisfaction of contributions or other sums due to the LOPD under the Unemployment Compensation Law; nor shall the LOPD accept any procurement bid from a person, organization, firm, corporation or other entity who directly or indirectly participates in the preparation of specifications for purchase.
3. No employee shall directly or indirectly engage in a financial transaction as a result of or primarily relying on information obtained through his or her state employment.

E. Disclosure or Misuse of Information

1. No employee, volunteer or contract employee shall directly or indirectly use official information not available to the general public for the purpose of furthering a private interest or allow such use of official information obtained through or in connection with his or her State employment to be used for such purposes.
2. Personnel shall not, except as specifically authorized, disclose any official information that represents a matter of confidence or trust or any other official information of such character that its disclosure of use would be contrary to the best interest of the LOPD or the client being served. Information concerning a client's personal life and private affairs is privileged information and shall not be the subject of casual conversation or gossip.
3. Official records of the LOPD are the property of the Department and will be filed according to the rules of the Department. Personnel will not remove records or copies thereof from the Department without lawful authority.

F. Gratuity, Gifts

1. Personnel or their relatives shall not accept any favor or gratuity from any person, firm, corporation or other entity that would affect or appear to affect the person's judgment in the performance of his or her duties in an impartial manner. This does not apply in the case of an occasional non-pecuniary gift that is insignificant in value, a public award or a loan made in the ordinary course of business.
2. Supervisors shall not place themselves in positions of potential indebtedness to their subordinates. Supervisors will not permit persons subordinate to them to provide them with representation in grievance matters or lawsuits.
3. No employee, volunteer or contract employee may directly or indirectly accept or give any compensation, gift, ban, entertainment, favor or service that would tend to give an appearance of impropriety or which might interfere in the discharge of official duties.

G. Confidential or Inside Information

1. Employees, volunteers or contract employees shall not disclose or make available confidential or inside information which may be used to the advantage of another person or be used to the disadvantage of another person or business in competitive procurement.
2. Employees, volunteers or contract employees shall not disclose or make available confidential or inside information which may harm the legitimate interests of the State, fellow employees or clients.
3. The foregoing does not prohibit disclosure of public records which are in the lawful custody of an employee or contract employee and which have been properly requested under Sections 14-2-1 through 14-2-12 NMSA 1978, "Inspection of Public Records Act."

H. Political Activities

Employees whose principal employment is financed in full or part by the United States or a federal agency are subject to the Hatch Act. Political activities prohibited to LOPD employees in this status include holding of partisan political office, soliciting or handling political contributions, distribution of campaign literature and soliciting political support for a party faction or candidate while on duty with the State. All employees are prohibited from:

1. Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose.
2. Directly or indirectly coercing, attempting to coerce, commanding or advising a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose.
3. Threatening to deny promotions to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to a political fund, influencing subordinate employees to buy tickets to political fund-raising dinners and similar events, advising employees to take part in political activity and matters of similar nature.
4. Engaging in political activity while on duty.
5. Being an officer of a political organization.
6. Engaging in political activity during work hours or in using state equipment, supplies, etc., in any political activity.

I. Computer Usage, Security and Code of Conduct

1. Employees, volunteers or contract employees will use department computer resources to acquire information that is job related only.

2. For networked offices, an employee will not disclose his or her password to anyone nor log on for another employee using their password. Passwords will be changed when someone knows an employee's password.
3. No employee will delete files or otherwise change or destroy data stored on a computer unless so authorized.
4. Employees, volunteers and contract employees must comply with the LOPD Computer Information Systems, Internet and E-Mail Usage Policy and Code of Conduct.

J. Rules and Regulations

All employees of the LOPD will familiarize themselves with this Code and references to other authorities made within the Code, and the general rules and regulations of the LOPD as a part of their orientation training.

K. Attorney and Social Worker Ethics

This Code of Conduct shall be recognized in addition to any other laws, rules and regulations governing attorneys and social workers in the practice of their profession.

L. Definitions

1. **Business** – a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business.
2. **Confidential Information** – information which by law or practice is not available to the public.
3. **Employee** – any person elected to, appointed to or hired for any State office

and who receives compensation in the form of salary or is eligible for per diem or mileage, excluding legislators and judges.

4. Financial Interest – an interest held by an individual, his or her spouse or minor children which is an ownership interest in business or any employment or prospective employment for which negotiations have already begun.
5. Gratuity, Gift – anything of value given, offered or made available to an employee or a relative of the employee.
6. Inside Information – information not generally known by the public but which the employee has reason to know has substantial value.
7. Official Act – an official decision recommendation, approval, disapproval or other action which involves the use of discretionary authority, except an act of the legislature or an act of general applicability.
8. Outside Employment – any activity performed by an employee with the expectation of or which brings a monetary or nonmonetary gain to the employee or the employee's relative.
9. Relative – includes spouses, parents, mother and fathers-in-law, step- parents, children, son and daughters-in-law, step-children, brothers and sisters, brother and sisters-in-law, step-brother, step-sister, grandparents, grandchildren, uncles and aunts, nieces and nephews, great- grandparents, any other person the employee recognizes as a relative and any person residing in the employee's household.