

ATTEST: A TRUE COPY

Joey D. Moya

Chief Clerk of the Supreme Court
of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

June 3, 2014

NO. 14-8500

**IN THE MATTER OF THE APPROVAL
OF THE NEW MEXICO JUDICIARY
FINANCIAL FRAUD POLICY**

ORDER

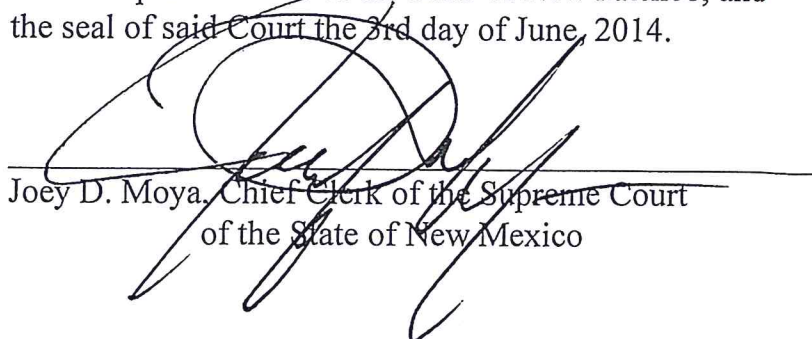
WHEREAS, this matter came on for consideration by the Court upon recommendation of the Administrative Office of the Courts to approve a financial fraud policy for the New Mexico Judiciary, and the Court having considered the recommendation and being sufficiently advised, Chief Justice Barbara J. Vigil, Justice Petra Jimenez Maes, Justice Richard C. Bosson, Justice Edward L. Chávez, and Justice Charles W. Daniels concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation is APPROVED and the attached New Mexico Judiciary Financial Fraud Policy is ADOPTED.

IT IS SO ORDERED.

WITNESS, Honorable Barbara J. Vigil, Chief Justice
of the Supreme Court of the State of New Mexico, and
the seal of said Court the 3rd day of June, 2014.

(SEAL)



Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

NEW MEXICO JUDICIARY FINANCIAL FRAUD POLICY

STATEMENT OF POLICY AND PRINCIPLES

The New Mexico Judiciary is committed to protecting its revenue, property, information and other assets from any attempt, by members of the public, contractors, sub-contractors, agents, intermediaries or its employees, to gain by deceit financial or other benefits. It is the New Mexico Judiciary's intent to fully investigate any suspected acts of fraud, misappropriation or other similar irregularity. An objective and impartial investigation will be conducted regardless of the employee's or individual's position, title, length of service, or relationship with the New Mexico Judiciary. This policy sets out specific guidelines and responsibilities regarding appropriate actions that must be followed for investigating fraud.

The New Mexico Judiciary is committed to truthful financial reporting at all times.

DEFINITIONS

A. New Mexico Judiciary includes the following entities:

Supreme Court Law Library, New Mexico Compilation Commission, Court of Appeals, Supreme Court, Supreme Court Building Commission, Administrative Office of the Courts (including all Magistrate Courts), First Judicial District Court, Second Judicial District Court, Third Judicial District Court, Fourth Judicial District Court, Fifth Judicial District Court, Sixth Judicial District Court, Seventh Judicial District Court, Eighth Judicial District Court, Ninth Judicial District Court, Tenth Judicial District Court, Eleventh Judicial District Court, Twelfth Judicial District Court, Thirteenth Judicial District Court, and the Bernalillo County Metropolitan Court.

B. Judicial Entity:

Any court or administrative group within the New Mexico Judiciary

C. Fraud includes all fraudulent acts and activities as defined by applicable law including but not limited to:

1. Forgery or alteration of documents (checks, time sheets, contractor agreements, purchase orders, other financial documents, electronic files, anything filed with the court)
2. Embezzlement or misappropriation of funds, supplies or any other asset.
3. Irregularity in the handling or reporting of money transactions done with malicious

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intent.

4. Misappropriation of furniture, fixtures and equipment.
5. Seeking or accepting anything of material value from vendors, consultants or contractors doing business with any judicial entity.
6. Unauthorized use or misuse of Judiciary property, equipment, materials or records.
7. Any computer related activity involving the alteration, destruction, forgery or manipulation of data for fraudulent purposes or misappropriation of Judiciary-owned software.
8. Any claim for reimbursement of expenses that were not made for the exclusive benefit of the judicial entity.
9. Any similar or related intentional irregularity.

D. Administrative Authority of the Entity:

Individual or designee with the primary responsibility to supervise and coordinate the administration of a Judicial Entity, or as designated by the Chief Judge and approved by Supreme Court Order. This individual may or may not be the Court Executive Officer CEO.

E. Chief Financial Officer (CFO):

Individual designated by the Administrative Authority of the entity with the primary responsibility to supervise, monitor and control the judicial entities accounting and financial function and investigate any allegations of fraud or fraudulent behavior pursuant to this policy.

APPLICABILITY

This policy has a broad application and applies to all employees of the New Mexico Judiciary as defined in the New Mexico Judicial Branch Personnel Rules, in addition to outside parties.

CONFIDENTIALITY

All participants in a fraud investigation shall keep the details and results of the investigation confidential. However, the Chief Judge, Administrative Authority of the entity or CFO in consultation with the AOC CFO, the AOC Director, and local law enforcement agency, may disclose particulars of the investigation with potential witnesses if such disclosure would

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further the investigation.

GENERAL POLICY AND RESPONSIBILITIES

- A. Each judicial entity shall establish, institute and maintain written policies and procedures designed to set the standards for the accounting methods and internal controls intended to safe guard all assets entrusted to them. These policies and procedures shall ensure that an internal control structure exists that: defines fraudulent acts; defines activities and/or behaviors that give rise to suspected fraud; prevents accounting errors; prevents violation of state and federal law and rules related to financial matters; and describes the consequences of committing fraud.
- B. Each justice, judge, manager, supervisor or employee of the New Mexico Judiciary is expected to abide by this policy and shall avoid all fraudulent acts, activities or conduct that would compromise the integrity and appropriate reporting of the statutory intended use of public funds.
- C. Management should be familiar with the types of improprieties that might occur within their area of responsibility and be alert for any indications of such conduct.
- D. Management should insure that adequate training has been provided to all judicial entity employees regarding the entity's operating, case management, accounting, and security policies and procedures.
- E. Management must alert suspected individuals that an investigation is under way, uphold any person's right to due process, and avoid making incorrect statements that could lead to claims of false accusation or other civil rights violations.
- F. The New Mexico Judiciary will make every reasonable effort, including court ordered restitution, to obtain recovery of the agency losses from the offender, or other appropriate source(s).
- G. The AOC will review the results of any investigations with responsible management and administrators as necessary, making recommendations for improvement to the systems of internal control.

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JUDICIARY EMPLOYEE EDUCATION AND TRAINING

- A. Each judicial entity shall ensure that every justice, judge, manager, supervisor and employee, on an annual basis: attends a training regarding this fraud policy; documents their attendance; and certifies their understanding of the responsibilities and consequences contained in this policy.
- B. Judicial Entity Certification - The Administrative Authority of the entity shall certify to the AOC Director by the first of January each year in a letter or e-mail that all current employees of that judicial entity have received training regarding the reporting requirement, responsibilities and consequences contained in this policy. The certification shall include all names of justices, judges, supervisors and employees in attendance. The AOC Fiscal Services Division (FSD) will maintain a record of certification communications received from all judicial entities
- C. The Fraud Training shall include:
 - (1) What constitutes fraud, fraudulent behavior and fraudulent activities;
 - (2) Examples of fraud, fraudulent behavior and fraudulent activities;
 - (3) Examples of how to report suspected fraud;
 - (4) Responsibilities of Justices, Judges, Supervisors, Managers and Employees;
 - (5) Consequences of committing fraud or reporting false allegations;
 - (6) An explanation of the Whistle-Blower protection provision

PROVISIONS

- A. All Employees

Any employee who has knowledge of an occurrence of irregular conduct, or has reason to suspect that a fraud has occurred, shall immediately notify his/her immediate supervisor. If the employee has reason to believe that the employee's supervisor may be involved in the suspected fraud, the employee shall immediately notify the entity

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CFO and the Administrative Authority of the entity. The employee shall not discuss the matter with anyone other than his/her immediate supervisor, the entity CFO, the Administrative Authority of the entity and/or the local law enforcement agency if necessary. Employees who knowingly make false allegations will be subject to disciplinary action up to and including termination.

If an employee has reason to believe that the CFO may be involved directly or in collusion with the supervisor, the employee should immediately notify the Administrative Authority of the entity.

B. Supervisors

Upon notification from an employee of suspected fraud, or if the supervisor has reason to suspect that a fraud has occurred, the supervisor shall immediately notify the entity CFO and the Chief Judge or Administrative Authority of the entity. The supervisor shall not attempt to investigate the suspected fraud or to discuss the matter with anyone other than the person to whom the fraud was reported, the Chief Judge or Administrative Authority of the entity and/or the local law enforcement agency if immediately necessary to protect the safety and welfare of court staff and the public.

C. Entity CFO

Upon notification from an employee or supervisor of suspected fraud, or if the entity CFO has reason to suspect that a fraud has occurred, the entity CFO shall immediately contact the Chief Judge or Administrative Authority of the entity. The Chief Judge or Administrative Authority shall not attempt to investigate the suspected fraud or to discuss the matter with anyone other than the AOC CFO, AOC Director and/or local law enforcement agency if immediately necessary to protect the safety and welfare of court staff and the public..

D. Chief Judge or Administrative Authority of the entity

Upon notification or discovery of a suspected fraud, the Chief Judge or Administrative Authority of the entity will promptly instruct the entity CFO to investigate the fraud. In all circumstances where there appears to be reasonable grounds for suspecting that a fraud has taken place, the Chief Judge or Administrative Authority of the entity, in consultation with the AOC CFO and the AOC Director, may contact local law

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enforcement agency depending on the severity. In circumstances where there appears to be reasonable grounds for suspecting that a cash fraud or forgery in a single or aggregate amount of \$250.00 or more has taken place, the Chief Judge, in consultation with the AOC CFO and the AOC Director, will contact local law enforcement agency.

E. Security of Evidence

Once a suspected fraud is reported, the entity CFO, in consultation with the Chief Judge or Administrative Authority of the entity, shall take immediate action to prevent the theft, alteration, or destruction of relevant records. Such actions include, but are not necessarily limited to, removing the records and placing them in a secure location, limiting access to the location where the records currently exist, and preventing the individual suspected of committing the fraud from having access to the records.

F. Personnel Actions

If a suspicion of fraud is substantiated by the investigation, disciplinary action, up to and including termination, shall be taken by the CEO or appropriate level of management, in consultation with the AOC Human Resources Division, the Chief Judge or Administrative Authority of the entity, the AOC CFO, and the AOC Director, in conformance with the New Mexico Judicial Branch Personnel Rules (NMJBPR).

G. Whistle-Blower Protection

No Administrative Authority of the entity or person acting on behalf of an Administrative Authority shall:

- (1) terminate employment or threaten to terminate employment of an employee;
- (2) discipline or suspend or threaten to discipline or suspend an employee;
- (3) impose any penalty upon an employee; or
- (4) intimidate or coerce an employee, because the employee has acted in accordance with the requirements of the policy.

Violation of this section will result in disciplinary action up to and including termination.

H. Media Issues

Any judicial employee or elected official contacted by the media with respect to a fraud

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investigation shall refer the media to the Director of the AOC or the Director's designate. The alleged fraud investigation shall not be discussed with the media by any person other than through the Director of the AOC or designate, in consultation with the Chief Judge or Administrative Authority of the entity.

I. Documentation

At the conclusion of the investigation, the Chief Judge or Administrative Authority of the entity will document the results in a confidential memorandum report to the Chief Justice of the Supreme Court with a copy to the AOC CFO and the AOC Director. If the report concludes that the allegations are founded, the report will be forwarded to the local law enforcement agency. The Chief Judge or Administrative Authority of the entity and the entity CFO will also be required to submit a report to the AOC CFO documenting the procedures in place, and enforcement of the procedures, in order to prevent future similar occurrences.

J. Reporting to the State Auditor's Office and the agency External Auditors

The Chief Judge or Administrative Authority of the entity shall report findings of fraud to the State Auditor's Office and the external auditors of the entity pursuant to NMSA 1978 Section 12-6-6.

REPORTING PROCEDURES

- A. Justice, judge, at-will employee, or an employee should submit a clear, concise and relevant written complaint within a reasonable time not to exceed 90 calendar days from the most recent alleged related incident of fraud.
- B. A complaint against a justice, judge, Court Executive Officer, Chief Appellate Court Clerk, or AOC Director shall be submitted to the AOC CFO.
- C. A complaint against an employee or outside person shall be submitted as follows:
 - (1) In the Supreme Court or the Court of Appeals to the Chief Justice/Judge or Administrative Authority of the judicial entity.
 - (2) In a District Court or the Metropolitan Court to the Chief Judge or Administrative Authority of the judicial entity.
 - (3) In Magistrate Courts to the AOC CFO or Director of the AOC.

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- D. Any employee knowingly making false statements in a complaint or during an investigation of fraud shall be subject to discipline, pursuant to the NMJBPR.

INVESTIGATION PROCEDURES

The entity CFO, in consultation with the Chief Judge or Administrative Authority of the entity, has the primary responsibility for the investigation of all activity as defined in this policy. Throughout the investigation the Chief Judge or Administrative Authority and the CEO of the entity should be informed of pertinent investigative findings. In all circumstances, where there are reasonable grounds to indicate that a fraud may have occurred at the conclusion of the investigation, the Chief Judge or Administrative Authority of the entity, shall report the findings to the AOC Director and CFO.

- A. Upon receipt of a fraud allegation, the entity CFO shall make an initial determination within 10 business days whether the allegation states facts that fairly describe that a fraudulent act has occurred as defined in this policy. The allegation should be read broadly, and should not be held to technical pleading standards. If the entity CFO determines that the complaint does not allege that a fraudulent act has occurred, the entity CFO shall so notify the complainant in writing.
- B. Nothing in this section shall prevent the entity CFO from addressing the allegations with the Administrative Authority of the entity if the complaint states facts related to mismanagement or misconduct that is not considered a fraudulent act.
- C. If the investigator's initial determination is that the allegation does state a cause that a fraudulent act has occurred, the entity CFO will provide the accused individual with a copy of the full allegation within 10 business days.
- D. The accused individual may submit a clear, concise and relevant written response within 10 business days of receipt of the allegations against him or her. Any response will be provided by the entity CFO to the complainant within five (5) business days of receipt of the complaint.
- E. The entity CFO shall initiate a confidential investigation within 20 business days after providing the complaint to the accused.

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- F. All interviews and discussions with parties associated with the complaint and witnesses shall be conducted in private.
- G. The entity CFO shall inform each interviewee in writing to keep the matter confidential.
- H. If the complainant, respondent or a witness is unwilling to be interviewed, to sign the formal complaint statement, to timely sign a witness statement or to otherwise participate or cooperate in the investigative process, the entity CFO shall prepare and sign a written statement attesting to the refusal of the complainant, respondent or witness to cooperate in the investigation. An investigation of the allegation shall nevertheless be conducted in a manner appropriate to the circumstances.

Written & Signed Statements - All interviews of the complainant, respondent and witnesses shall be documented by the investigator in statement form, signed by the individual interviewed and will become part of the evidence of the investigation. Any refusal to sign will be noted by the investigator.

(1) Interview of the Complainant

The allegation shall be discussed in detail to determine:

- a. identity of the accused individual (hereafter, the "respondent");
- b. the specific details of each event the complainant believes is inappropriate, including date(s), time(s), location(s), act(s), gesture(s) and dialogue;
- c. whether there are any documents to support the allegations of the complainant;
- d. to the extent possible, any economic and/or psychological consequences to the complainant;
- e. the nature and past history of the relationship between the complainant and respondent and the relationship of the respondent to the organization (i.e., supervisory employee, non-supervisory employee, third party, elected official);
- f. any statement(s), act(s) or gesture(s) the complainant has made to let the respondent know the fraudulent act is not appropriate. When the complainant initially saw the fraudulent act occur, did the complainant give specific notice to the respondent that the fraudulent act was improper;

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- g. whether the complainant knows of others who may have been party to the alleged fraudulent act by the respondent;
- h. the names of any witnesses to the alleged fraudulent act;
- i. whether management could have become or was aware of the incident(s) that are the subject of the complaint; and
- j. whether the complainant has made a previous complaint concerning the alleged fraudulent act and to whom such complaint was made.

(2) Interview of the Respondent

The respondent should receive an explanation and be afforded the opportunity to discuss the allegation(s) in detail. The entity CFO must:

- a. inform the respondent of the nature of the inquiry;
- b. request that the respondent reply to each of the allegations made;
- c. ask for the name(s) of witnesses, if any, who are actual witnesses to the alleged fraudulent act and can confirm the respondent's statement;
- d. obtain copies of any relevant documentation supporting the respondent's statement;
- e. ask if the respondent has previously had any kind of conflict with the complainant;
- f. determine the nature and past history of the relationship between the complainant and the respondent. Assess if the complainant had knowledge of the alleged fraudulent act and if the complainant gave specific notice to the respondent that the fraudulent act was improper; and
- g. inform the respondent that any retaliation against the complainant is unlawful and, in the case of an employee, will result in discipline up to and including termination.

(3) Interview of Complainant's and Respondent's Witnesses

- a. If there are witnesses to the alleged fraudulent act or to other matters discussed in the separate interview with the complainant and respondent, the witnesses must be interviewed to confirm or refute any of the allegations.

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- b. Because fraudulent acts often occur in private, there may not be any witnesses to the allegations. Evidence may be obtained from individuals who observed either party's demeanor immediately after the alleged fraudulent act or individuals with whom the complainant or respondent discussed the incident.

FINDINGS OF FACT, REPORT & FINAL DECISION

- A. Upon completing the investigation, the entity CFO shall:
 - (1) Evaluate the complainant's and respondent's accounts of the events for internal consistency, contradictions, and plausibility.
 - (2) Evaluate all other facts, documents and statements gathered during the investigation.
 - (3) Prepare a thorough report documenting all information gathered regarding the alleged behavior, and recommend appropriate action (which may include disciplinary action) to the Administrative Authority of the entity. Report documentation must include: all documentation, signed witness statements, findings of fact, conclusions and recommendations.
- B. The Administrative Authority of the entity in which the complaint was submitted and investigated by the entity CFO makes the final decision regarding any actions to be taken, and:
 - (1) informs the complainant and respondent of the results of the investigation in writing, and;
 - (2) informs the complainant's and respondent's supervisor(s) of the results of the investigation and of any action(s) recommended
- C. A confidential file containing all documentation shall be maintained by the judicial entity in the case of a local investigation or the AOC CFO in the case of a referred investigation.

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REFERRED INVESTIGATION (If referred to AOC CFO.)

- A. If upon review of the local investigation findings the Administrative Authority of the entity determines based upon the facts, documents, witness statements and the entity CFO's report that the investigation rises to the level of complexity that a referral to the AOC CFO for investigation is required, the Administrative Authority of the entity shall forward the complaint and all supporting documents to the AOC CFO within 30 business days.
- B. Local Investigator's Summary Report - The local investigators report shall summarize the evidence gathered and the reason why AOC CFO assistance is required.
- C. The local investigation will terminate at the point it is referred to the AOC CFO, unless the AOC Director determines that the investigation does not rise to the level of complexity requiring an AOC CFO investigation, Should this occur the investigation must be completed by the judicial entity in which the complaint arose by the entity CFO.
- D. Any recommendations made by the AOC CFO shall be reviewed by the AOC Director. All AOC Director approved actions including discipline up to and including employee termination shall be adopted and implemented by the Judicial Entity within 45 calendar days.

GRIEVANCE RIGHTS

A. At-Will Employee

An at-will employee who is disciplined under this policy has no grievance rights under NMJBPR Part 2.

B. An Employee Who Has Completed Probationary Period

An employee who has completed the probationary period who is suspended, demoted, terminated or suffers a loss of accrued compensation under this policy may file a grievance in accordance with the NMJBPR Part 1.

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Non-Fraud Irregularities

Identification or allegations of acts outside the scope of this policy, such as personal improprieties or irregularities, whether moral, ethical, or behavioral, safety or work environment related, or complaints of discrimination or sexual harassment, should be resolved by the respective judicial entity management in conjunction with the AOC Human Resources Division.

Approved by the Supreme Court on

June 3, 2014