Doña Ana County
A Study of Local Government Ethics
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Doña Ana County: A Study of Local Government Ethics

by

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2013 Daniels Fund Ethics Fellows

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Cover Artist: Judy Bess

Picacho Overlook: A view of the Organ Mountains of Las Cruces, from across the valley at Picacho Peak. Judy Bess is a local acrylic painter who loves capturing the beauty and vivaciousness of the area. She is the director of and exhibits locally in the Mesilla Valley Fine Arts Gallery in Mesilla, New Mexico. Her paintings can be found in public, private and corporate collections in the US and Europe.
Executive Summary

Local government ethics is about three things: 1) transparency, 2) conflicts of interest and 3) campaign finance and lobbying. The main objective of a local government ethics program is the prevention of unethical conduct (primarily conflict of interest violations).

This is not to say that other elements such as professionalism, customer service, caring, honest and respectful behaviors are not important to the ethical management of county operations. They are, but they more aptly fall under organizational ethics, not government ethics. Ethics for public servants, be they elected, appointed or hired, must focus on building trust between the government and the public.

Before enacting or reforming any ethics government laws, it is important to have an understanding of the purpose, principles and approaches to government ethics. The overarching themes found in the Local Government Ethics Overview of this report provide some basis for this understanding. Also, one should take into account that the principles behind such government ethics laws are to:

- Promote both the reality and the perception of integrity in government;
- Focus on prevention, not punishment;
- Not intended to catch criminal offenders (that is the purview of criminal laws, law enforcement, inspectors general, prosecutors);
- Recognize the inherent honesty of public officials (whom these laws seek to guide);
- Do not regulate morality (most are conflict of interest laws not ethics laws); and
- Require that the public have a stake in the system.

This report looks internally at the existing organizational culture in Doña Ana County government and to the mechanisms currently used to guide ethical behavior (code of conduct, training program) as well as externally at Best Practices used across the nation in local government ethics. Contained within are the findings and recommendations for: government ethics codes; methods for disseminating information about ethics; and the use of an ethics commission as part of a system of accountability. An Executive Summary of Findings and Recommendations provides a quick reference.

In addition to the recommendations, a focus on the most important components of a government ethics program would help the county to prioritize its next steps. They include:

1) Ethics advice through an independent ethics officer.
2) Training of elected officials, county management and all staff to raise awareness so that individuals in the organization know when to seek advice.
3) Disclosure of conflicts of interests.
4) Enforcement by an independent ethics commission.

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¹ By definition, a “Best Practice” is a technique, process, or methodology that, through experience and research, reliably leads to a desired outcome. An examination of best practices can add value by creating awareness of approaches that have had some success in other organizations and can help in generating new ideas. [wikipedia]
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Introduction and Approach
Introduction and Approach

This study, which was co-sponsored by the Doña Ana County (DAC) Board of County Commissioners (BOCC) and New Mexico State University (NMSU), began in September 2012 and concluded in February 2013. The study team was comprised of two independent consultants, Jill VonOsten and Anne Lightsey.

The study included both an external examination of best and promising practices and an internal review and assessment of the current ethics training program and culture in DAC government.

- The external examination involved researching and reviewing best and promising practices in local government ethics, specifically in three areas:
  - Standards and codes;
  - Raising awareness and disseminating information; and
  - Accountability

- The internal examination involved:
  - Assessing current perceptions, knowledge and attitudes of ethics among county employees and elected officials through a survey conducted in November 2012;
  - among county elected officials and high ranking members of County management through one-on-one meetings that were held in September and October 2012;
  - Assessing the current DAC code of conduct; and
  - Meeting with the DAC Ethics Trainer, reviewing the training curriculum and training evaluations to assess the scope, content and effectiveness of the current DAC ethics training.

Through the survey and one-to-one meetings with county leaders, the consultants identified some reoccurring themes. These themes help define and contribute to the current ethical culture of DAC. Like any organization, there are some positive themes to be built upon and some obstacles to overcome (see Attachment 1).

Tools

In addition to the internal and external assessments and research, the study team also created two tools to support future organizational change and/or to facilitate the implementation of a comprehensive ethics program (that includes both government and organizational ethics).

Written Report

The first tool is this written report that includes the findings of Best Practices in local government ethics across the nation. The report provides specific recommendations and suggestions for the county to consider.

As DAC looks to the future and creates procedures and approaches that contribute to a stronger ethical climate, it is worthwhile to continue to monitor these Best Practices for their continued efficacy and to seek out new practices as they surface for their relevancy and adaption to DAC government. A list of helpful resources is included in Attachment 2.
Ethics Advocates
As a second and essential tool for change, the study team also brought together a team of approximately 20 staff and elected officials from various county departments, and various levels and employment types. This group, called Ethics Advocates, was composed of people who were identified in the one-to-one meetings with county leaders for possessing the following qualities:

a. Being well respected by their colleagues – their peers, their boss(es), and their subordinates;
b. Being known as someone who demonstrates ethical behavior;
c. Being a good communicator; and
d. Caring about the ethical climate of DAC.

The Ethics Advocates convened three times between November 2012 and February 2013. At each meeting, Advocates were given the choice to opt out of participating or commit to the process and continuing to serve as a member of the Ethics Advocate initiative.

The meetings, each averaging about 3 hours in length, were to:

• introduce the members of the group to the concept of organizational and government ethics,
• build a consensus and shared understanding of what government ethics entails—both how it differs from organizational ethics and their overlap;
• identify common ethical issues encountered at DAC and potential risks for misconduct;
• share some Best Practices for creating a culture of ethics;
• identify with the team the best ways to move forward, including next steps for the group after the study is concluded in order to sustain the effort (see Attachment 3).
Local Government Ethics Overview
Local Government Ethics Overview

When you look externally to the research, there are some reoccurring themes that are important to gain a better understanding of the field of “government ethics” and distinguishing it from other ethics arenas. These themes are summarized in the following three overarching findings. Grasping these concepts is key before considering the individual elements of an ethics program and before making decisions on what direction to take when it comes to promoting ethics in a government, organizational setting.

**OVERARCHING FINDING #1: The word “ethics” lacks a clear definition.**

The word “ethics” is used a lot and often with the assumption of a common definition. When, in fact, the term means different things to different people. Depending on the milieu, the sentence context or the foundational upbringing of an individual, ethics can be used to mean anything from using common sense in decision making, to following the Golden Rule, to conducting oneself as a professional, to obeying the law, to having good manners, to providing good customer service...

Because of this, what is deemed to be “ethical” behavior is rarely as black and white as one might suppose. In fact, the results of an internal survey conducted for this study in November 2012 demonstrate the word “ethics” has various meanings within the DAC government community (This corresponds with the external research finds of other organizations.) See survey results in Attachment 4.

**RECOMMENDATION #1: Define and distinguish government ethics.**

The significance of this finding is not that DAC try to change each individual’s personal ethics or the source of what drives them to behave ethically. It does mean that government organizations need to help their members gain clarity by: 1) defining and raising awareness of what ethics means in public service so that there is a shared understanding; 2) distinguishing between personal ethics, government ethics, organizational ethics and other behavioral expectations on the job; and 3) connecting the concepts of government ethics to how they make decisions and apply those concepts to their own behavior and specific job duties.

Clear communication is one of the most critical aspects of implementing an effective local government ethics program and it starts by creating a shared understanding among stakeholders of what is meant when “we” use the word "ethics."

**OVERARCHING FINDING #2: What then is government ethics?**

The second overarching finding is grown out of the first - the need to define and clarify what is meant by the term “government ethics.”

What is clear is that government officials and employees serve the people and manage the resources of others. As stewards, the public expects, that in conducting daily activities, government officials and employees will:
- practice fairness and equality,
- act in the best interest of the public, not their own, and
• maintain openness in their workings to ensure that they are operating within the public’s perception of what is "right.”

As Robert Wechsler, Director of Research at City Ethics, Inc. and author of City Ethics Model Code, writes: “Government ethics is not about being good or bad. It is about acting responsibly and professionally, as a government official or employee, under certain circumstances and following certain rules and procedures.”

The “certain circumstances” that Wechsler refers to as government ethics are: "those areas of decision-making regarding conflicts between, on the one hand, the obligations government officials and employees have toward the public and, on the other hand, their obligations to themselves and their family, their business associates, and others with whom they have a special relationship.”

Additionally, because public trust is a central goal of a government ethics program, it is not only the reality of a conflict, but also the appearance of a conflict that is at issue. A government ethics program that strives to maximize transparency can begin to address negative perceptions and strengthen public trust.

Public servants have a duty to nurture trust between the government institution they represent and the public. As those who work as engineers, lawyers, and accountants have professional ethical standards and principles of conduct to guide them in their duties and relationships with their clients, so too should government professionals have clear standards to help guide them in fulfilling their duty.

**RECOMMENDATION #2: Clarify the scope of government ethics.**

The findings indicate that local government would serve the public well to focus its government ethics program on three topics, all of which center around the governments duty to the public. Those areas are: 1) Transparency 2) Conflicts of Interest, and 3) Campaign Finance and Lobbying.

While this limited scope will not cover all potential forms of misconduct or encourage all types of ethical behavior, it can address the key areas of government activity where the public’s trust in government is jeopardized. These are the areas where independent oversight is called for in order to restore faith and build trust.

This is not to say that other desirable conduct, such as that associated with organizational communication, professionalism and customer service, are not important to the ethical management of county operations or do not affect the public’s perception of county ethics, they are and they do. However, for clarity purposes it is best not to muddy the waters of government ethics by including these topics in the formal government ethics program.

These other behaviors that we hope our public servants will demonstrate can be addressed in other areas of training, administration and programming (i.e. employee and elected official orientation, principle/values-based codes of conduct, management training, professional development, performance evaluations).
OVERARCHING FINDING #3: Ethics is...more than a code.

The third overarching finding about ethics in organizations is that ethical behavior cannot be assured by a code alone. A code is often the only visible part of an ethics program and people often mistakenly think that that is all there is to having an ethics program.

The most important elements of an ethics program are training and advice, not a code. “Without quality training and timely advice,” states Wechsler, “government ethics programs can become (or appear to be) the kind of ‘gotcha’ enforcement regimes that politicians fear.”

The research indicates that a common characteristic among the worlds’ most ethical organizations is that they contain both: 1) a well-implemented ethics program, and 2) a strong, ethical organizational culture. The organizations’ culture can actively support and promote ethical behavior, passively accept the existing behavior (whatever that might be), or actively encourage people to engage in misconduct.

RECOMMENDATION #3: Direct efforts to develop both 1) a government ethics program and 2) an ethical organizational culture.

With the recommendations offered in this report, DAC will have the information to create a blueprint for establishing and implementing a government ethics program. The equally important Culture of Ethics can be developed at DAC, with the assistance of Ethics Advocates, by directing on-going attention to five fundamentals:

1) Standards for ethical behavior. Usually in writing, but also in practice, standards need to be clear, concise and understood. Therefore DAC must create...

2) Awareness of ethical behaviors. This includes holding a shared definition of government ethics, but also awareness of where to go for guidance, how to report misconduct, supervisors skilled in how to receive and refer reports of misconduct, etc. This involves specialized training, effective communication and regular information dissemination that are essential for achieving...

3) Accountability for conduct. You cannot have accountability without the clear expectations that come with standards and the awareness that come with training and open communication. Being accountable in an ethical culture includes such things as monitoring and questioning your own behavior, disclosing conflicts, reporting and investigating misconduct; providing recognition for good conduct, etc.

The fourth and fifth elements generally result from the first three, but also require focused attention. They are:

4) Trust, which must be perceived and present among stakeholders. Building trust is the responsibility of every member of the organization and can be most effective when leaders extend trust to others and pay attention to designing and aligning systems that promote trust. Author Stephen M.R. Covey in his book, The Speed of Trust, offers leaders concrete ways to align their organization in order to create a high-trust environment. Even with a high-trust environment it still takes...
5) Courage, and not just the courage to report misconduct, but also the courage to disclose conflicts, stand up to intimidation, apologize, raise issues for discussion, ask for advice and guidance, and relinquish power to an independent body. A recommended reading for understanding the bridge between talking about ethics and doing ethics is Rushworth Kidder’s book, Moral Courage.\textsuperscript{5}

The 2007 National Government Ethics Survey, the fourth in a longitudinal study was conducted by the Ethics Resource Center, a non-profit devoted to independent research and the advancement of high ethical standards and practices in public and private institutions. The study found that “when both a well-implemented ethics and compliance program and a strong ethical culture are in place within a government organization, misconduct drops by 60 percent, and reporting rises by 40 percent.” \textsuperscript{6}

With the focus and leadership of Ethics Advocates and the support of county elected officials and top management, DAC can further develop their organizational culture to actively support and promote ethical behavior. The Institute for Local Government has a guidebook on their website (http://www.ca-ilg.org/ppo) designed to help local government promote a culture of ethics, entitled, Understanding the Basics of Public Services Ethics; Promoting Personal and Organizational Ethics.\textsuperscript{7}
Setting Standards: Codes
SETTING STANDARDS: CODES

“In practice, it is seldom very hard to do one’s duty when one knows what it is. But it is sometimes exceedingly difficult to find this out.”

Samuel Butler (1912)
“First Principles” Note Book

For the purposes of this study, Best Practices for codes of conduct and similar ethics policies in local government were researched. The study included a review of the approach, content and structure of ethics codes used in various local governments across the United States. Sample code language is provided where appropriate.

This section, particularly the sample language provided, was richly informed by the Model Code Project conducted by City Ethics, Inc. a non-profit organization whose purpose is to provide a centralized location for information and resources for all forms of local government ethics programs. Further advice was garnered through telephone interviews and conversations with the Director of Research at City Ethics, Inc., Mr. Robert Wechsler. Permission to use the Model Code to inform the DAC study was requested and granted in writing.

A Word About Standards

If ethics is more than a code, why are standards so important to creating a culture of ethics within an organization? Because without standards (codes, policies, creeds, value statements) there is no benchmark to form our expectations of conduct, no level to aspire to, and no position from which to judge misconduct. In his work on what drives people to behave honestly or dishonestly, behavioral economist Dan Ariely, found that the mere contemplation of a moral benchmark of some kind (honor code, professional code of conduct, ethics policy, etc.) before taking action increases honest behavior, on average by 84%.8

Standards are forms of communication. They exist, among other reasons, to give members and other stakeholders shared meaning and common purpose, which are both essential to organizational development.

FINDING # 4: Using the word “ethics” in written standards.

Ethics standards are often found within written documents like Standards of Conduct in Personnel Handbooks, Ethics Code, or Standard Operating Procedures in Administrative Manuals. Some ethics standards, however, can be embedded in other documents such as Organizational Creeds and Mission, Vision or Values Statements.

RECOMMENDATION #4: Be discerning when using the word “ethics” to bring greater clarity and understanding.

When standards containing the word “ethics” can be found among various documents in an organization, it can be confusing and further confound the meaning of the word. Because “ethics” is interpreted in so many different ways, it is important to be selective in using the word and qualify the meaning of the word by using descriptors like “government ethics” or “personal ethics.” Ideally, all ethics standards could be found in one place. If it makes sense to refer to “ethics” or “ethical” in
more than one document, be sure that those documents are organized and included in one place for easy reference, preferably the primary government ethics code.

**FINDING #5: Some forms of misconduct are not appropriate in a government ethics code.**

As previously discussed in Overarching Finding #2, because of the “ethics” definition problem, the scope of government ethics can become quite expansive.

Wechsler points out, “not all forms of misconduct are appropriate for a (government) ethics program to deal with, for a variety of reasons.” For one, “much ethical misconduct is simply not enforceable, at least without enormous expense and without turning the ethics process into a political and personal circus.”

But if we want our local government officials and employees to act like professionals, to be fair and not discriminate, to follow the laws and act respectfully with one another and the public, why not include those behaviors in a formal standard?

Because if a standard is intended to communicate expectations and hold people accountable, then enforceable standards should be clearly separated from unenforceable, aspirational ones. Wechsler suggests that it is better to deal with behaviors such as truth-telling in a positive, unenforceable way in aspirational codes.

Mark Davies, Executive Director of the New York City Conflicts of Interest Board, says if a local government wants to do both – “instill values while enabling clear guidance and the imposition of civil fines and other penalties, Best Practices dictates that an ethics law first set forth ethical precepts (a largely precatory code of ethics) and then from those ethical precepts draw forth compliance-based rules (an enforceable conflicts of interest code).”

**RECOMMENDATION #5: Keep enforceable standards separate and clearly distinct from unenforceable, aspirational standards in a code.**

Aspirational standards are important tools to creating an ethical culture. Aspirational goals stress positive behavior, integrity and performance. They are a reflection of the values and principles the organization wants to promote. For instance, the Six Pillars of Character Counts can be the basis of an aspirational code. Often times they are universal principles that all members in the organization can buy in to. They are aspirational because they suggest to members of the organization to aim for a higher standard of conduct than the mere minimum requires.

Because the behaviors associated with a values-based standard are subject to wide interpretation, it is very difficult to enforce a suspected violation to an aspirational standard. Rules-based codes on the other hand (like the government ethics code discussed below), draw clear lines, describing the restricted behavior and are therefore enforceable.

If DAC wishes to include aspirational behaviors in a formal standard(s) it is best to keep the aspirational standards in a separate section/place from the enforceable standards, especially if both types of standards are going to be included in a government ethics code. One way to do this is to include aspirational behavior for employees separately in a Standards of Conduct section of the Personnel handbook. For elected officials, a written Public Service Oath can be taken and signed as part of the annual meeting. As an example, see Attachment 5: City of Riverside Code of Ethics and Conduct Officials’ Certification.
The other way to make them distinct and still keep all ethical standards in one place (as suggested in Recommendation #4) is to create a code that clearly separates the aspirational provisions from the enforceable ones. An appropriate place for aspirational provisions, as Davies recommends, is at the beginning of the code, in a Declaration of Policy section, or the like.

In his book, Wechsler points to the City of Albuquerque’s treatment of aspirational provisions to make a point about enforcement.

Albuquerque’s Ethical Public Service Act has an extensive aspirational section, written in the first person (e.g., “I do not lie cheat or steal, or tolerate those who do.”). The provisions on enforcement of aspirational provisions is worth sharing:

(A) The seven values of ethical public service . . . govern all actions of public servants. The seven values are guidelines for behavior, and do not by themselves create a basis for discipline or other consequences.

(B) For violations of the seven values that are not prohibited by a specific law or the prohibited behavior section of the Ethical Public Service Act, the consequences are the loss of personal respect and the diminished reputation of all public servants.

This is a responsible way to deal with aspirational provisions. Unfortunately, the Albuquerque ordinance also sets forth behaviors that can be penalized, some of which are aspirational, such as lying, and others of which involve other areas of law, including criminal conduct, such as theft, and sexual and racial harassment. These are complex areas outside the jurisdiction of an ethics commission.

For a set of aspirational provisions, look to the American Society for Public Administration’s Code of Ethics (see Attachment 6). It is incorporated in the City Ethics Model Code because it represents the work of “numerous public administrators over a number of years.” However, in the Model Code it clearly distinguishes these provisions as aspirational and that they will not be enforced.10

**Government Ethics Code**

“Virtually alone among laws enacted by government, an ethics law regulates the very persons who enact it. Not surprisingly, therefore, the road to ethics reform more often than not proves long, rocky, and arduous, fraught with obstacles along the way.”

- Mark Davies, Executive Director
  New York City Conflicts of Interest Board
  (statement to the Chicago Ethics Reform Task, 2/14/2012)

**FINDING #6: Government ethics codes are different than other ordinances/laws.**

The legislative branch of local government, in this case the Doña Ana Board of County Commissioners, is responsible for, among other things, enacting local laws and ordinances. But an ethics code is unlike other laws and ordinances. The basic difference, according to Wechsler, is that “an ethics code provides only minimum requirements, that is, the least that is expected from government officials. Therefore, ethics provisions are not meant to be viewed or interpreted the way other laws are.”
Wechsler contends there are two reasons for this:

1) An ordinary ordinance provides a way for the government (on behalf of the community) to regulate its citizens. It is expected for citizens to act in their own best interest and only depart from that interest to the extent the community, through its government, requires. If something isn’t covered in an ordinary ordinance, it is not illegal, it is a loophole that government is supposed to eliminate. Until it does, the loophole is legal.

But an ethics code is the way the government (on behalf of the community) regulates those who serve the community in the government. Unlike ordinary citizens, those who agree to serve the community are not expected to act in their own interest. They are not expected to use their position to help themselves or those with whom they have special relationships.

In other words, they have a special, overriding fiduciary duty to the community. If they find a loophole in an ethics law, they are supposed to get rid of the loophole and, until they do, not take advantage of it. If they take advantage of it, even if their conduct is legal, it is unethical and inappropriate. And unlike ordinary citizens, public servants have a special duty not to act unethically.

2) While ethics codes are meant to guide officials to act in the public interest, ordinary ordinances are not meant to guide, but to limit and define. Everyone knows it’s wrong to kill people, no one checks homicide laws to help them decide whether or not to kill someone. If an ethics code does not clearly state that certain conduct is a violation, it does not mean that the conduct is appropriate. It only means that it is not illegal.

**RECOMMENDATION #6: Interpret ethics codes differently.**

Criminal laws contain maximum rules that are to be *narrowly construed* to protect the accused from a miscarriage of justice. If every requirement in a criminal provision cannot be proved beyond a reasonable doubt, the accused is found not guilty. With minor criminal laws, people go well beyond them, knowing there is leeway. Wechsler cites the example of speeding laws. The speed limit may be 55 mph, but a highway with this speed limit will generally go at 65 mph.

Because an ethics code provides only minimum requirements it will be full of loopholes. Criminal laws are all about enforcement. Since the intent of an ethics code is different - to provide guidance to public officials to act in the public interest - an ethics code should be *construed liberally* for the publics’ benefit.

**FINDING #7: Determine the code’s scope and title.**

An effective government ethics code establishes the ethical expectations for employees, management and elected officials alike, and sets forth the mechanisms for enforcement and consequences of noncompliance. The *Model Code* Project recommends that the scope of a local government ethics code should, at the very least, contain the following essential elements:

1. that it be clear and comprehensive, providing clear guidance to government officials, employees, contractors, and citizens;
2. that it provide sensible disclosure of interests;
3. that it provide effective administration; featuring an independent ethics commission with teeth, which gives swift advisory opinions, which has a monopoly on interpreting and enforcing the code, which can give waivers for exceptions, and which provides training for all city officials and employees, as well as for everyone who does business with the city;
4. that it provide whistle-blower protection so that county employees (the people who know what’s going on) and others will be able to report violations without endangering their jobs and pensions.

**RECOMMENDATION #7: Limit the scope of the code to areas of government ethics.**

Recommendation #2 proposes to limit the scope of the government ethics program to those areas that pertain to the government’s duty to the public: 1) Transparency 2) Conflicts of Interest, and 3) Campaign Finance and Lobbying. While a government ethics program should address all three of these areas, a government ethics code can attempt to take on all three topics or limit itself to the one where the most guidance is needed, conflicts of interests. Below are two suggested options for titling the code based on its scope.

1) For all the reasons identified in Findings #1 and #2 regarding the need for clarity, consider renaming the code to a *Conflicts of Interest Code*. This title would be especially appropriate if DAC chooses to limit the scope to conflicts solely and not include aspirational provisions within the code. It will give the reader/user of the code a more accurate reflection of the limited scope of code.

2) If DAC chooses to tackle aspirational provisions as well as enforceable ones and/or include all three of the government ethics areas in their code, a most appropriate name would be a *Government Ethics Code*. By including requirements for all three areas under the title of “government ethics,” you begin to educate the public servant and the public as to the scope and the intent of government ethics. Again, if DAC chooses this option, it is recommended that the code separate the aspirational and enforceable provisions and inform the reader that the aspirational provisions are not enforceable. To help define and delineate government ethics, it is a good idea to include a description of the intent of the code in an Intent or Purpose section.

**FINDING #8: Code structure and style.**

Many government ethics codes are written in a style that reads like a book of “don’ts,” restricting certain behavior and emphasizing what will happen if the behavior is violated. Because a government ethics code is a mechanism used to hold people accountable for behaving in accordance with minimum requirements, it cannot help but have a somewhat directive tone.

Beyond enforcement, a code is also intended, as Wechsler suggests, to “provide guidance to public servants before the fact and without the need to consult an expert, except in difficult circumstances.” A code’s style should reflect this intent by communicating, in an encouraging way, to public servants to ask for and except guidance. The structure of the code should be clear, concise and easy to read. It should be laid out in such a way that gives the user easy access to the answers or guidance they seek.
RECOMMENDATION #8: Structure and style the code to enhance accessibility and user friendliness.

A code is an official decree of the government providing guidance and direction to its own members, and as such, its style and structure sets the "tone from the top" of the organization. Its style should reflect a helpful and supportive intent, not an imposing and punitive one, and should avoid legalese.

The following is a list of structure and formatting suggestions that enhance accessibility and user friendliness of a code:

- **Table of Contents** - The Table of Contents section at the beginning of the document, and include a page reference with hyperlinks (for the online version) to the referred page.

- **Aspirational (Values-Based Code/Credit)** – This is optional content that is placed in the code separate from the enforceable code provisions. Could incorporate and be based on the Six Pillars of Character Counts.

- **Provisions Section** - Provisions are the conditions describing the various conflicts of interest. Locate the Provisions near the beginning, have them start within the couple of pages of the document and always before the administrative, enforcement and definitions sections. See Code Content section below for sample language. Other formatting and style recommendations of the provision section, include:
  - Clearly title, and highlight, underline or bold each subsection in the provisions. This will give the user quicker access to the information they seek.
  - Write the provisions in plain language and avoid legalese. An ethics code is intended to be understood by ordinary people.” Simplicity, brevity and clarity in the provisions section should be the goal.
  - Do not worry so much about the overall length of the document, but do keep the length of the provisions to a minimum. Put any exceptions to the provision in the definition section.

- **Disclosures Section** – Disclosure requirements should come after the provisions section. See Disclosure section below for content.

- **Ethics Commission Section** - Identify and describe the powers and responsibilities of an independent body that has exclusive control on the interpretation, administration, and enforcement of the code, including training and advice.
  - This section should also describe the mechanism or selection process used to ensure that the members of the body are independent.

- **Advice, Reports and Complaints Section** - The code should set out the process for dealing with ethics complaints and requests for waivers and advice.

- **Definitions** - Move the Definitions section to the end of the document. Hyperlink all defined words, so that the online reader can easily access those definitions without have to excessively scroll through the document. There should be no rules in the definition section.

- **Other Applicable Laws Section** - Be sure not only to reference all applicable county, state, federal laws, rules, and regulations that relate to local government ethics or that pertain to a particular section, but to also hyperlink all referenced laws so that the reader has access to the full legal document and so that all ethics laws can be found in one place, and read in relation to one another.

- **Additions or Amendments** – As time goes by and the code is put to the test, supplement the code with ethics commission interpretations, formal advisory opinions, and new regulations. Include those as updates or for reference within the relevant code provision.
FINDING #9: Code content.

As previously mentioned, the research into local government ethics codes revealed many different approaches which is reflected in the content of those codes. Most all government ethics codes, including the current DAC code, cover content regarding some aspects of conflicts and disclosure. Some expand into other areas of government ethics, spelling out requirements for such things as campaign finance and lobbying. And finally, some include values-based (aspirational) provisions as well as rules-based provisions.

Local governments, responding to weak or ineffective laws in state government, may choose to include additional content. It may be that a past scandal or identified area of risk has made that particular content or section important to the stakeholders in that community. Customizing an ethics code so that speaks to the issues of your audience is a good practice. In this way, a code can do as it is intended: to provide guidance to public servants in order to prevent a conflict.

RECOMMENDATION #9: Content and sample language to include in a government ethics code.

The content of the code will be determined, in part, by the code’s scope and whether DAC creates a Government Ethics Code or a Conflict of Interest Code (see Rec. #7). Either option contains provisions regarding Conflicts and a Disclosure section, hence the recommendations begin with these provisions, followed by approaches and resources to turn to for aspirational and other content.

Types of Conflicts of Interest

Ethical conflicts occur much more frequently than people might think, especially in smaller towns and counties.

Thus, it is essential to provide clear guidance to ensure that conflicts are handled responsibly. A government ethics code or conflict of interest code can go a long way towards reaching that end by inclusion of the following nine provisions, which represent the most essential aspects of ethical conflicts for public servants. There are other enforceable provisions that the county can consider including (see Other Provisions below), but the nine essential provisions is the place to start.

Included below is the provision and suggested language from the City Ethics Model Code Project (“city” has been replaced with “county” for the purposes of this report).
1. Conflict of Interest. This most basic provision prohibits the use of one’s position to do anything that benefits an official or employee, his family, or his business associates, except to the extent a large segment of the community also benefits. It is important to define conflicts not in terms of interests, which are vague, but instead in terms of benefits, which are more concrete.

Sample language (* words are hyperlink to their definition)

1. An official or employee* may not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows, or has reason to believe, may result in a personal* or financial benefit*, not shared with a substantial segment of the county’s population, for any of the following persons or entities (no group of government employees may be considered "a substantial segment" for the purposes of this provision):
   a. himself or herself;
   b. a member of his or her household*, including a domestic partner* and his or her dependents, or the employer or business of any of these people;
   c. a sibling or step-sibling, step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
   d. a person with which he or she has a financial or business relationship, including but not limited to:
      i. an outside employer or business* of his or hers, or of his or her spouse or domestic partner, or someone who works for such outside employer or business;
      ii. a customer or client*;
      iii. a substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner.
   iv. a person or entity from whom the official or employee* has received an election campaign contribution of more than $200 in the aggregate during the past election cycle (this amount includes contributions from a person’s immediate family or business as well as contributions from an entity’s owners, directors, or officers, as well as contributions to the official or employee**’s party town committee or non-candidate political committee); or
      v. a nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

2. The prohibition in (a) above applies equally to attempts to use, act, or influence.

3. It is a violation of this code for an official or employee* to, within two years of entering city employment or service, award a contract or participate in a matter benefiting a person or entity that formerly employed him or her.
2. Withdrawal from Participation. Also known as recusal, withdrawal is what someone usually does to deal responsibly with an ethical conflict. Often it is seen as simply not voting on a matter, but it is far more than that. It means not discussing the matter, privately or publicly, directly or indirectly. It means not participating in the matter in any manner.

Sample language

1. An official or employee* must refrain from acting on or discussing, formally or informally, a matter before the county, if acting on the matter, or failing to act on the matter, may personally* or financially benefit* any of the persons or entities listed in subsection 1 of this section. Such an official or employee should join the public if the withdrawal occurs at a public meeting, or leave the room if it is not a public meeting.

2. An official or employee* must refrain from acting or discussing, formally or informally, a matter involving a person who appointed or recommended him or her for that position, if he or she is aware of such appointment or recommendation.

3. If a board or agency member is requested to withdraw from participation in a matter, for the reason that he or she has a conflict of interest, by
   i. another member,
   ii. a party to the current matter, or
   iii. anyone else who may be affected by a decision relating to this matter, the member must decide whether to withdraw. If the member decides not to withdraw, the unchallenged members must consider any relevant evidence concerning such claimed conflict of interest, as defined in this code, and vote whether or not to allow the request and require that the member withdraw from participating in the matter.

4. Withdrawal at a meeting requires the public announcement, on the record, of the reason for withdrawal. Withdrawal outside of a meeting requires disclosure in writing of the reason for withdrawal to the official or employee’s supervisor.

Ongoing Conflict: An official or employee* whose outside employment or other outside activity or relationship can reasonably be expected to require more than sporadic withdrawal must resign or cease such outside employment or activity. If the ongoing conflict involves a relationship, the official or employee* must resign. An official or employee* should not begin employment or an activity or relationship that can reasonably be expected to require more than sporadic withdrawal. If a prospective official or employee* is in such a situation, he or she should not accept the position.

Rule of Necessity: If withdrawal would leave a board with less than a quorum capable of acting, members must disclose their conflicts on the public record, but they may then vote. If an official or employee* is the only person authorized by law to act, the official or employee* must disclose the nature and circumstances of the conflict to the Ethics Commission and ask for a waiver or advisory opinion.
3. Gifts. Prohibiting gifts from those doing or seeking to do business with the local government (usually referred to, in this context, as “restricted sources”) is the most important way in which an ethics program takes bribery and pay-to-play out of the criminal sphere, where it is extremely difficult to prove. There is no reason for gifts to be given to officials or employees by those seeking something from the local government. Usually gift provisions allow gifts worth no more than, say, $50 annually from a single source (which includes a firm’s principals and officers, as well as affiliated firms), but it is questionable whether an official or employee, or their immediate families, should seek or accept a gift of any amount from a restricted source beyond, say, a cup of coffee at a meeting.

Sample language

1. An official or employee*, his or her spouse or domestic partner*, child or step-child, parent, or member of his or her household*, may not solicit nor accept anything of value, directly or indirectly, from any person or entity that the official or employee knows, or has reason to believe, has received or sought a financial benefit*, directly or through a relationship with another person or entity, from the county within the previous three years, or intends to seek a financial benefit in the future. If in doubt, the official or employee should refrain from soliciting or refuse a gift, and should first inquire into the person or entity’s relationship with the county. [or: If the official or employee* does not know whether a person or entity fits this description, he or she should inquire and, if it is discovered that the person or entity does fit this description, the gift should be returned (or its monetary value if it cannot be returned) and no further gifts accepted during the relevant period.]

2. A person or entity that has, in the last three years, received or sought, or is seeking, a financial benefit, directly or indirectly, from the city, may not give or seek to give anything of value to any official or employee.

3. Gifts of property, money, or services given nominally to the city must be accepted by a resolution of the legislative body.

4. Representation and Appearances. These two closely related provisions prohibit government officials and employees from representing others before the local government or even elsewhere when it is against the interests of the government, for example, in a suit against the government. The reason there are often two separate provisions is that an appearance is a much more concrete act, easy to prove, and yet there are many instances where representation can occur without an appearance, and such representation creates just as great a conflict as an appearance. Prohibiting just appearances leaves open a big area for abuse.

Sample language:

Representation:
An official or employee* may not represent any other person or entity before the county, nor in any matter not before the county, but against the interests of the county. However, it is acceptable for elected officials to represent constituents without compensation in matters of public advocacy.
5. Confidential Information. This provision prohibits not the disclosure of confidential information, which is not a government ethics problem, but rather the use of confidential information to benefit oneself or others. "Confidential information" means information obtained in the course of holding public office or employment, or as a contractor to the county, which is not available to members of the public and which the official or employee* is not authorized to disclose, except to designated individuals or bodies, including written and non-written information. When such information is also available through channels open to the public, officials and employees* are not prohibited from disclosing the availability of those channels.

Sample Language Continued:
NOTE: The second sentence refers to those instances where a county official represents the interest of his/her constituents. Example: when a constituent’s driveway has been blocked by a county vehicle or snow and calls their county commissioner to complain. The official must be able to pursue the complaint with the proper county authorities.

Appearances:
An official or employee* may not appear* before any county department, agency, board or commission, except on his or her own behalf or on behalf of the county. Every time an official or employee appears before the meeting of any municipal body, or when he or she writes a letter to the editor or other publicly distributed writing, he or she is required to disclose before speaking or clearly on the writing whether he or she is appearing in an official capacity or as a private citizen. If the speech or writing is in response to criticism or other communication directed at or regarding his or her official role, the official or employee may respond only in his or her official role.

NOTE: New York City adds a valuable exception to its confidential information provision: "provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest."
6. Post-Employment Restrictions. These provisions apply to certain of the conflict provisions to
officials and employees usually for a limited period of time after they have left their government
positions. The provisions applied to former officials and employees are usually the
representation and appearance provisions, the confidential information provision, and the
conflict provision, to the extent that leaving government office to work for a company that did
business with one’s board or agency makes it look as if the official was misusing his or her
office to help the business, and was being rewarded for the favor.

Sample language
a. Representation. For a period of two years after the termination of his or her county service or
employment, an official or employee may not, on behalf of any other person, for
compensation, directly or indirectly, formally or informally, act as agent, attorney, lobbyist, or
other sort of representative, to or before his or her former agency, department, authority,
board, or commission. For the purposes of this provision, a county manager or assistant
manager, county commissioner member or commission aide is deemed to have worked for
every county department, agency, authority, board, and commission. Acting indirectly includes
action by a partner, associate, and other professional employee of an entity in which the former
official or employee is a partner, associate, or professional employee, as well as acting by a
member of the former official or employee’s immediate family.

b. Particular Matters. With respect to particular matters on which the official or employee
personally and substantially worked while in county service or employment, the foregoing
prohibition is permanent.

c. Area of Responsibility. With respect to matters for which the official or employee had official
responsibility, but were not personally and substantially involved, the foregoing prohibition is for
a period of two years after termination of county service or employment.

d. Employment. An official or employee*, or a member of his or her immediate family, may not
accept employment with, or with the help of, (a) a party to a contract with the county, within
two years after the contract was signed, when he or she participated personally and
substantially in the preparation, negotiation, or award of the contract, and the contract obliged
the county to pay an aggregate of at least $25,000; or (b) an individual or entity who has,
within the previous two years, benefited directly from any decision made by, or based on
advice or information supplied by, the official or employee or by a subordinate. An elected or
appointed official, or a member of his or her immediate family, may not accept employment if
the body of which he or she is a member or was a member within the previous two years had
any role in filling the job, including an advisory role. A county manager, assistant manager, or
county commission member, or a member of his or her immediate family, may not, for two
years after termination of county service or employment, accept any full-time compensated
position with the county. For the purposes of this section, “employment” includes full-time and
part-time jobs, and professional and other work for hire, given directly or indirectly.

e. Exceptions. Former officials and employees are not prohibited from acting if:
   i. They are working for the city on a volunteer basis.
   ii. They are acting on behalf of another federal, state, or local government.
   iii. They are giving testimony under oath and is not being compensated for it.
   iv. They are providing scientific or technological information at the government’s request.
   v. They performed only ministerial acts*.

f. Waivers. The Ethics Commission may waive the prohibitions of this provision if it determines
that the situation does not create a potential for undue influence, unfair advantage, or a serious
appearance of impropriety. See section ____ for the waiver process.
7. Misuse of Local Government Property. This provision prohibits using or allowing others to use local government property for personal purposes, unless the use is generally available (e.g., use of the library, sports facilities, etc.). Local government property includes not only concrete things, such as vehicles and equipment, but also such things as expense reimbursements. This is the provision most often violated by ordinary employees.

**Sample language**

An official or employee* may not use, or permit others to use, any county funds, property, or personnel for profit or for personal convenience or benefit, except (a) when available to the public generally, or to a class of residents, on the same terms and conditions, (b) when permitted by policies approved by the local legislative body, or (c) when, in the conduct of official business, used in a minor way for personal convenience. “County funds” includes travel and other expense reimbursements, which may not be requested for nor spent on anything but official business.

NOTE: Some codes take this further by requiring care in the use of county property, so that there is no waste. This is an essential element of government ethics, but it is a difficult thing to put into law. People - especially opposition parties - often paint other people’s actions as wasteful and negligent. The duty to use county property and resources with care belongs in the aspirational section of an ethics code, or it invites frivolous complaints, making it almost impossible to reject any complaint as frivolous.

8. Transactions with Subordinates. In a certain sense, this is a subcategory of misuse of city property, except that it involves people. Violations of this provision can be very injurious to individuals, and can have a serious effect on morale.

**Sample language**

No official or employee* may engage in a financial transaction, including the giving or receiving of loans or monetary contributions, including charitable contributions, with a subordinate* or person or business over which, in the official or employee’s* official duties and responsibilities, he or she exercises supervisory responsibility, unless (a) the financial transaction is in the normal course of a regular commercial business or occupation, or (b) the financial transaction involves a charitable event or fundraising activity which is the subject of general sponsorship by a state or municipal agency through official action by a governing body or the highest official of state or municipal government.

NOTE: Exception (b) allows for United Way campaigns and the like, but officials should be careful not to abuse this exception by getting pet charities approved by the county manager. Too often, charities are as much about the official as elections are, and even good causes should not be aided through coercion.
9. Complicity and Knowledge. Lone bad apples are not the norm in government ethics violations. Usually, there are multiple individuals involved, individuals who either know what is going on, and say nothing, or who are complicit in others’ ethical misconduct. This provision makes complicity a violation, and requires the reporting of ethics violations.

Sample language
No one may, directly or indirectly, induce, encourage, or aid anyone to violate any provision of this code. If an official or employee* suspects that someone has violated this code, he or she is required to report it to the relevant individual, either the employee’s supervisor, the board on which the official sits or before which the official or employee* is appearing* or will soon appear, or the Ethics Commission if the violation is past or if it is not immediately relevant to a decision, to discussion, or to actions or transactions. Anyone who reports a violation in good faith will be protected by the provisions of 110 (whistleblower protection section/ordinance).

Other Provisions
In addition to the above 9 essential code provisions, there are other ethical conflict provisions that DAC might consider including in their code, such as: political activity, patronage, nepotism, incompatible offices, confidential information, and other minor provisions. For more information about these types of provisions or for sample language reference Cityethics.org’s Model Code Project (http://www.cityethics.org/content/model-code-introduction), or the Institute for Local Government sample ethics codes (http://www.ca-ilg.org/ethics-codes).

Types of Disclosures
Finding #10: Disclosing potential conflicts can help prevent misconduct, increase transparency, and build a stronger ethical culture.

As mentioned before, the primary objective of a local government ethics program is to educate and help guide employees and elected officials in order to prevent misconduct and conflicts from occurring. By disclosing relationships (e.g., employers and clients) and information (e.g., property and business ownership) that could pose a conflict, officials, employees and those seeking benefits from a local government do three things:

1. remind themselves of possible conflicts at a time when they can deal responsibly with them;
2. let other officials (such as supervisors, fellow board members, and those providing oversight) and the public (including the news media) know about conflicts that might arise, so that when a conflict situation does occur, there is information available for them to make sure the conflict is dealt with responsibly; and
3. disclosure means that officials regularly participate in the ethics program, which helps create a good ethics environment in the local government.

For disclosures to truly prevent conflicts, employees and elected officials must feel free to openly discuss and ask for advice about their relationships and interests. All officials and employees must know that they may openly and honestly discuss possible conflicts (theirs and others’) without fear.
Sometimes the lack of disclosure is not due to fear or purposeful evasion. Often times it is hard for an individual to see her own conflicts. A clear-cut, well-organized conflicts of interest code/section can go a long way in illuminating the types of relationships and interests individual’s need to look out for. But an open and trusting environment that encourages discussion and offers advice can provide clarity for conflicts that aren’t so clear-cut.

If a public servant has any doubt about whether something should be disclosed, s/he should err on the side of disclosure. Disclosure is the default. And if an official realizes that she overlooked a relationship or interest, she should immediately make a disclosure or amend a disclosure form. This should not be treated as an admission of guilt, but rather as a responsible act.

**Recommendation #10: Require 3 types of disclosures in order to be most effective in identifying potential conflicts.**

There are three essential types, or timings, of conflict-related disclosure in local government ethics (excluding lobbyist and campaign finance reports):

1. **Transactional Disclosure:** the disclosure of interests and relationships when they relate to a particular matter, such as approval of a contract, the appointment of a board member, or the provision of a permit or grant. A transactional disclosure occurs when a potential conflict actually arises. For example, in a county commission meeting where a contract bid is up for commission approval, a commissioner with a potential conflict would disclose publicly: “My brother’s company is bidding on this contract, so I recuse myself from this matter.”

2. **Applicant Disclosure:** the disclosure of interests and relationships by those applying for something from the government, including permits, contracts, jobs, and grants. Private citizens or firms seeking government business or a government license or benefit submit an applicant disclosure form, disclosing the interests of government officials in the applicant or application, to the extent the applicant knows or should know. Applicant disclosure provides a system of checks and balances on transactional disclosure.

3. **Annual Disclosure:** the annual disclosure of financial interests and personal and business relationships.

**NOTE:** Not every official or employee needs to disclose her financial interests on an annual form. This requirement should be made only by those most at risk of conflicts of interest, such as elected officials, department heads and those who can act on their behalf, policymakers, and those involved in purchasing, contracting, and inspecting.

Only those questions that may reveal a potential violation of the ethics code should appear on an annual disclosure form. For example, if the ethics code permits an official to take an action that benefits a publicly-traded company in which the official owns less than $10,000 in debt and equity, then the annual disclosure form should not require disclosure of ownership interests below that threshold. By tying the annual disclosure form to the government ethics code, there is no need to disclose any amounts on the form. Whether a conflict is a $10,000 conflict or a $10 million conflict, it is still a conflict and still prohibited.
Other Key Elements

Administration of Code
After the provisions and disclosure sections, the code should include a section describing how the code will be enforced. Describe the powers and responsibilities of the body (ethics commission) that will interpret, administrate, and enforce the code, including the role the ethics commission will have in providing training and rendering advice. If the ethics commission is an independent body, describe the selection of members and the powers the body has to investigate, subpoena, and carry out enforcement. The code should set out the process for dealing with ethics complaints and requests for waivers and advice.

Confidentiality - For a code that will be enforced by an independent ethics commission, it is helpful to draw the line between confidentiality and transparency. That is, come up with a clear description of how to administer the code while both respecting the confidentiality of information and respecting the public’s “right to know.” There are many things to consider in drawing that line. Among the topics for consideration are: the protection of officials, the protection of complainants, protecting reputation for integrity, constitutionality, penalties for violating confidentiality, and closed meetings. Wechsler has a very comprehensive treatment on how best to approach this important topic in his book.13

Whistleblower Protection
A whistleblower is defined as a person who takes a concern...outside of the organization in which the abuse or suspected abuse is occurring and with which the whistleblower is affiliated.14

A Whistleblower Protection provision is a must in an ethics code. Without whistleblower protection the people who best know what is going on in any local government will be unlikely to come forward with reports of misconduct. The protection should extend beyond government employees and officials, to consultants and employees of contractors, developers, and others. Because retaliation is a valid fear,15 the provision should cover not only action but also threat of action, and it should cover both direct action and threats and the action and threats of others done on behalf of officials or others.

Transparency and Campaign Finance
Beyond conflicts, the other two areas of government ethics - transparency and campaign finance/lobbying – should be included in provisions of the code. Transparency can be address in it’s own provision or it can be referred to in the Confidentiality provision as discussed above.

Campaign Finance and Lobbying provisions can be included in the government ethics code if the local government has determined to make more stringent requirements for these activities than those administered by the Secretary of States office. They can also be included if the local government decides that this area is specifically at risk for abuse in their jurisdiction and they want a more diligent oversight of these activities than the state can provide. It does increase the scope of activities that the ethics commission would have to administer and monitoring the campaign reports can result in significant added duties.
Creating and Raising Awareness
Creating and Raising Awareness

“[A] world-class code is no guarantee of world-class conduct...,
A code is only a tool, and like any tool, it can be used well or poorly –
or left on the shelf to be admired or to rust.”

Lynn Paine et al
Harvard Business Review, 2005

Another objective of this study was to research and consider various methods for disseminating information to raise awareness of the organizational expectations for ethical conduct. To that end, this section looks at three of the most important and effective methods used for communicating ethics in an organization:

1) a dedicated government ethics website;
2) an ethics training program; and
3) ethics discussions.

Dedicated Government Ethics Website
Creating a dedicated ethics website can help meet many of the communication and education goals of a government ethics program. Websites not only serve to educate and inform, but also to increase government transparency by making this information easily accessible to the public. Because a website can offer a consistent message, to a large audience, in an affordable, easily accessible medium, the website should be considered the most important center for ethics information.

Finding 11: Ethics websites communicate their goals by their tone, format and content.

A review of government ethics websites found that most all dedicated ethics sites were those of state and local government ethics commissions or boards. The review included a look at the tone, format and content of these sites. One common element is that the tone and content seems to stress enforcement over guidance and education. For instance, most have no link to ethics advice or guidance, yet many have links to report misconduct. This sends a message that enforcement is more important, or more needed, than advice.

What a program chooses to feature on the homepage can set the tone for the website and the ethics program. Some other websites feature the biography and pictures of the ethics commission members on the home page and neglect to link to resources that can help those with an ethical dilemma. Again, highlighting the members of the commission over providing information that could assist a public official/employee in dealing responsibly with conflicts, suggests that the website was not designed with the end in mind.

One might argue that an ethics commission that emphasizes enforcement on their website will deter public official/employees from violating the code. While that may be true in some instances, you have to be aware of and agree that a potential conflict exists, to be deterred from engaging in it. As Judy Nadler and Miriam Schulman, from the Markkula Center for Applied Ethics write, “many times,
government officials honestly believe that they are not being unduly influenced by their personal
stake in an issue. They may feel, to the contrary, that their interest in the matter gives them special
insight into the subject.”16

Most of us, as behavioral researcher Dan Ariely’s work attests, are able to rationalize that our
situation is different and our behavior is honest. As Ariely said in a 2012 interview: “Our ability to
rationalize our own actions can actually help us be more dishonest while thinking of ourselves as
honest.”17 Ethics websites need to understand this propensity to rationalize and speak to it by
including content that clarifies what conflicts of interests are and uses a tone that encourages you to
reflect on you own relationships.

**Recommendation 11: Design the website so that its tone, format and
content speaks to the needs of the primary audience.**

In designing a website, it is important to begin by looking at everything from the point of view of the
user. While many types of users may visit the website, (i.e. the press, students, other government jurisdic
tions) it is the needs of two stakeholders groups - 1) the employee/elected official and 2) the
public – that should be top of mind.

The typical employees and/or elected officials may visit the website seeking something very specific. For instance, they might want assistance or information, such as:

- guidance regarding a particular situation they’re in and what to do about it;
- when the next meeting (or training class) is;
- what was decided at yesterday’s meeting;
- read a copy of the code or other applicable law or policy;
- determine who to call to avoid a conflict;
- how to file a complaint or make a report of questionable conduct.

If the goal is to prevent government conflicts, the websites should express a helpful tone, and be
formatted with content that highlights that priority. It should encourage the practice of asking for advice. New York City Conflicts of Interest Board’s website (http://www.nyc.gov/html/conflicts/html/home/home.shtml) does a nice job of featuring education and advice over enforcement. As does the Palm Beach County Commission on Ethics website (http://www.palmbeachcountyethics.com).

The website design does not have to be expensive, but the website should be clear, complete, and kept up-to-date. Like the ethics code, the website should be written using the language of laypeople and not legalese. Information should be laid out in an easy-to-read format with the following considerations as a guide:

- **Entryways** - to optimize access, there should be multiple ways to get to information. The larger the scope of ethics commission responsibilities the less information should be on the home page, and the more need to separate information into various entryways. Two such ways for sorting information are:
  - **Area of Interest** - Each area of government ethics - conflicts, campaign finance, lobbying, transparency, or public financing - should have a separate home page of its own because most people visiting the website will be interested in only one area.
Audience - As the scope of ethics commission responsibilities grow, it might also be helpful to provide different entryways/separate pages for different audiences (i.e. candidates, committees, county officials, employees, and lobbyists).

Home page – what is contained on this page, should reflect the priority or most requested information, including:

- Upcoming meetings - The one thing that should be on the home page is information about the next ethics commission meeting. Time, location and preferably, an agenda should all be posted on the website in advance.
- About Us – The website should not feature the ethics commission members over their services. This sends the wrong message about the priorities. As Wechsler points out “while it’s important both to humanize an ethics program and to have information about the members and staff, they should not be the website’s focus.”
- Advice line - Ethics commissions should seek contact as much as possible, especially for advice. Therefore, it should be possible to call or e-mail the Ethics Officer or Ethics Commission staff members and, where there is no staff, the commission chair or some other representative.
- “Report an Ethics Violation” link. And a statement, or requirement, that officials and employees either report, or seek advice regarding, any situation they know about where an official or employee does not appear to be dealing responsibly with a conflict.
- Defined terms - All terms that need to be defined should be internally hyperlinked to a Definition of Terms page.
- Redirect - because there are so many different conceptions of what ethics does and does not entail, it is likely that visitors to your website will be looking for information that is not within the scope of government ethics, but may be closely related. For those cases, it is important to have a “You May Be on the Wrong Website” section or tab that redirects the visitor to the information they are seeking. Here are examples of possible links:
  - Human Resources – most employee misconduct, discrimination
  - Inspector General – fraud and waste
  - District or State’s Attorney – bribery, embezzlement, and other crimes
  - Secretary of States Office– campaign finance matters, including local candidates
  - Disciplinary Committees – lawyer, judge, and court personnel misconduct

Forms and Links

- Applicable Laws - the website should have links to full versions of all the laws, rules and regulations that apply to government ethics within the DAC, including applicable state and federal laws. They should be searchable and in a downloadable, PDF format.
- Public Records Requests
- Ethics Commission’s Rules
- Disclosure - a link to forms for all three types of disclosure should be available online. The forms should include instructions and make very clear who must file and when. Forms should be fillable and searchable PDFs, so that they may be filled out online and submitted, rather than printed out and mailed in. A number to call and an e-mail address should also be provided if anyone has a question about disclosure.

The website should have links to full versions of all the DAC laws, rules and regulations that apply to government ethics.
Finding #12: Perceptions of local government transparency are made primarily based on websites.

The Sunshine Review collects and shares information about state and local transparency using a 10-point Transparency Checklist to evaluate 6,000 state and local government websites. The Sunshine Reviews’ 2013 Transparency Report Card graded the websites of the State of New Mexico and DAC. While the state received an overall grade of C for transparency, DAC general website received a grade of D- (lasted updated Dec. 2012) with the following evaluation:

**The good**
- Current and past budgets and audits are available
- All meeting agendas and notices are posted online.
- Contact information for elected officials is available.
- Videos of the meetings are posted.
- The Dona Ana website contains an Audit Hotline link.
- Property tax rates are posted along with a tax calculator and the ability to pay property taxes online.

**The bad**
- No budgets and audits from before 2008 or narrative and graphic information explaining the budget.
- No election information is provided for elected officials.
- Meeting minutes are not available.
• Only property tax information is provided on the website.
• The website contains no information regarding about who to contact or how to file for public records.
• Does not disclose if belongs to government sector lobbying associations.18

While not all of the items on the 10-point checklist are appropriate on a dedicated government ethics site (property tax), the majority of items are very specific to government ethics and transparency. This report reveals some specific areas that DAC can address if they choose to improve the level of transparency.

In their book, Transparency, How Leaders Create a Culture of Candor, authors Warren Bennis, Daniel Goleman and James O’Toole, point out “because the term ‘transparency,’ like ‘courage’ and ‘patriotism’ has an exalted ring of eternal truth, it is easy to forget that transparency is a choice.”19

In determining where to draw the line on transparency, it is worth remembering that the New Mexico Supreme Court stated in 1977 that “a citizen’s right to know is the rule and secrecy is the exception.”20 Looking at the grades and ranking of all the government websites on The Sunshine Review’s list would indicate the opposite - that confidentiality, and not transparency - is the default of most local governments.

**Recommendation #12: Use a dedicated government ethics website as example of transparency for the entire government.**

A dedicated ethics website gives local government the opportunity to be more open and fulfill a citizen’s right to know. Recognizing that transparency is one of the three areas of government ethics, a website that provides the greatest possible information regarding the affairs of government and the official acts of public officers and employees will be perceived as being more transparent. That perception is crucial for building public trust and for creating a culture of trust within DAC.

What follows are some of the types of information to include in order to improve transparency on a government ethics website:

• **Meeting Notices, Agendas, and Minutes** - Online access to public documents is not enough to ensure full transparency. Especially in the case of meeting notices, agendas, and minutes. Timeliness is key to accessibility and transparency.

• **Public Records Requests** - New Mexico’s Inspection of Public Records Act is the state law governing public record requests and the Attorney General (www.nmag.gov) has created a Compliance Guide to help counties like DAC understand the Acts requirements and application. The details are spelled out in the state law, but ethics commissions should set an example by making records requests easy, by placing required forms on their website. Links to the State Attorney General site or other relevant policy should also be included. The name and contact information of the County’s or Ethics Commission’s public records officer or contact should be included.

• **Ethics Commission’s Rules** – All regulations and rules of procedure that the Ethics Commission uses for it’s operations (i.e. bylaws, rules of order) should be available on the website.

• **Disclosure** - the actual disclosures filed by public officials and others should be accessible on the website.
• **Advice and Formal Opinions** – Full transparency requires that formal opinions of the Ethics Commission be made available online. While timing and the integrity of investigative process must be considered, generally once there is a finding of probable cause or if the respondent waives confidentiality either expressly or by publicly discussing the proceeding, all materials, including the complaint, response, investigation report, and finding of probable cause, become public documents. Knowing that these materials will be made available online also acts as a deterrence to misconduct.

• **Campaign Financing and Election Information** – information or an active link(s) to information governing campaign finance laws, reporting and elections (Secretary of State’s Office, Attorney Generals Office) should be available.

• **Government Sector Lobbying** – disclosure should be made and included on the website of all DAC lobbying activities including all contracts with lobbying firms and membership in all lobbying associations.

• **Enforcement documents** - for transparency purposes, all enforcement documents that are public should be placed on the website. However, they should not be the focus or be emphasized more than any other element, esp. not advice, guidance and training.

**Finding #13: Ethics advice is difficult to find because few websites feature advice.**

It has been said that ethics is not black or white. Determining when a conflict exists is not always intuitive, particularly when considering our own relationships. That’s why independent ethics advice is so critical.

A review of dedicated ethics website finds that few provide advice or give it the prominence it deserves. If it does exist, advice is often shrouded by the use of alternative headings. For instance, the Miami - Dade County Ethics Commission website does not mention advice per se, but if you were to look under “Library of Opinions,” you are likely to find a prior ethics commission decision that is similar or applicable to your dilemma. At the Rhode Island State Ethics Commission site, the closest thing to advice is found under the heading of Advisory Opinions. While both sites have information that might be helpful when you are in need of advice, neither one makes it welcoming or user friendly to get the specific advice on your dilemma.

Many websites choose to omit advice altogether. By not posting advice on the website and not encouraging public officials and employees to seek advice, it leads the public to believe that the ethics commission cares more about enforcing misconduct than it does about preventing it.

**Recommendation #13: Featuring advice on the website provides clarity to the code, educates, encourages open dialog and helps others in similar situations.**

Asking for advice is not something to be embarrassed about. It is also not an admission of wrongdoing. In fact, having a conflict itself is not wrong, it is how the conflict is dealt with that is the issue. It is the ethics commissions’ job to let officials and those doing business with the county know that seeking advice is encouraged – it is the professional thing to do.
Armed with advice, the official/employee can then make an informed and responsible decision of how to proceed. And it is not only the person requesting the advice that can benefit from it. By posting advice on the website, others in similar situation can also learn from it. In this way, the advice provides ethics education and can be used in more formal training as well.

The goal, according to Wechsler, “is to use advice to provide continuing ethics education and to make the ethics program’s guidelines increasingly clear, so that it is as easy as possible for officials to deal responsibly with their conflict situations.” Once advice has been rendered, the advice itself creates instant precedents that can provide a great deal more guidance than an ethics code alone.21

Featuring ethics advice and encouraging people to ask for clearly sets the right tone for responsible handling of conflicts. But without any track record or library of opinions, how does a new program provide guidance to those in need of advice? The most important provisions in your code probably use language that is very similar to other jurisdictions. Useful and applicable advisory opinions from other government ethics programs can be used, without permission, to illuminate the DAC code.

On the ethics website you want to provide as many ways as possible to seek advice. Make sure to have the advice seeker provide a phone number and/or e-mail address for follow-up questions and possible discussion of the issues involved. Advice should be:

- collected in special information sheets on particular topics;
- summarized or explained where necessary;
- indexed by subject matter and by code section, and
- searchable by keywords.

Training

As a part of this study, the consultants were asked to review and assess the County’s current “Conduct and Ethics” training program. The review included: an interview and discussion with the current trainer and HR Administrator; the results of an internal ethics survey conducted November 2012; one-to-one interviews with elected officials and top administrators; discussions with Ethics Advocates; and research on best practices in ethics training in organizations. The review and assessment resulted in the following findings and recommendations.

Findings #14: Current DAC ethics training, impressions, Best Practices and the elements of effective training.

Current DAC Ethics Training

Over the last couple of years, a concerted effort has also been made to expose elected officials and employees to ethics training.

2011 - a training curriculum entitled, “Defining Moments” was presented and all employees were required to attend one of the multiple sessions that were scheduled. The trainer coordinator responsible for this training has since left the county and the file notes do not indicate the length of the training, whether it was conducted in-house or by contracted trainers, or evaluation results.
2012 - an ethics training was introduced and presented by in-house trainers. “A Matter of Public Trust” was a 2-hour curriculum, provided in 32 scheduled sessions to groups of 20-30 participants. The mandatory all-staff (and some elected officials) training covered a wide breadth of information, including such topics as: County HR policies and procedures, defining conflicts of interests, responsibility of public trust, perception vs. reality and its impact on public trust, 6 pillars of Character Counts, decision making, distinction between ethics and the law, introduces how unethical behavior is rationalized, and discusses what to do if you witness misconduct and to whom you are to report it to.

2012/2013 - DAC trainers extracted material from the 2012 training to create a 1 hour ethics training, “Your Guide to Ethical Decision Making.” That training is currently being given to small groups of approximately 5-15, every other week in new hire orientation. This is currently the only ethics training being offered at DAC.

Note: DAC has adopted the Character Counts Program’s 6 Pillars of Character which is prominently displayed on the website and there are other visible expressions of Character Counts values found throughout the government building.

**Impressions of DAC Training**

Post training evaluations of the 2012 mandatory, all-staff version were completed by 837 trainees. The evaluation revealed an overall course appraisal of Excellent 38.8%; Very Good 29.1%; Good 28.6% Fair 2.8% and Poor 0.7%. The vast majority of written comments were a brief “good job” or “thank you” and complementary of the training and particularly the trainer, Vicki Lusk. Some of the more specific comments include:

- “Hard topic to cover. She did a great job.”
- “Great content but anyone who has had to deal with HR Director and County Management can see how they fail to follow this practice.”
- “Too elementary – need more operational workplace examples – course should be outsources to a training professional with expertise in this position.”
- “I think the training may have helped some employees think more about their position and how they interact and treat subordinates or co-workers.”
- “These types of trainings are excellent to refresh officers duties and responsibilities.”
- “I think if we are going to have ethics training, the content should be more ethics case studies relevant to County functions.”
- “Doing what is right is sometimes difficult at DACDC due to pressure from others as well as direct supervisor. Can this be changed? How?”
- “Training was awesome. Employees still need support with abusive supervisors. We feel helpless.”
- “Ethics – It’s about public trust ALL THE TIME!!!”
- “I think people are getting ethics confused with customer service.”
- “More group work. Better real examples for DAC.”
- “...overall lacked a tie back to a work environment.”
- “very few opportunities for interaction due to time constraints.”

One-to-one interviews conducted in September and October 2012, by the study consultants, with top administrators and elected officials disclosed their thoughts and opinions on the current
training and what they would like to see in the future. Listed below is a sampling of other comments heard in interviews.

- “I’m so glad that the County is committed to ethics training.”
- “Too many topics in too short of time to adequately do each of them justice.”
- “I kept asking myself, ‘What am I doing here?’ ‘What’s the purpose?’”
- “There definitely seems to be more focus on ethics training around here and that’s good!”
- “Not customized enough.”
- “No connection between the curriculum and actual job duties.”
- “Need to pare it down. An orientation should focus on 1) introduction to county ethics program, 2) overview of policy (code of conduct), 3) how you make ethical decisions with a real life, case study, 4) how to report misconduct.”
- “Not enough time for break outs/group work or discussion.”
- “Topics don’t tie together. But in this time frame it’s not possible. I don’t see how that really helps us deal with an actual ethical dilemma.”
- “Ethical decision-making is not being addressed right now. The case needs to be made for how you practically apply this to your job.”

The Ethics Survey conducted for this study had two questions on training. First, the question posed and generated the following response: “Ethics training should be…

1) Conducted primarily with new hires – 11.9%;
2) Offered annually – 28.4%;
3) Never offered, because you cannot teach people to behave – 2.8%;
4) Mandatory, for all employees and elected officials – 50.5%;
5) None of the above – ethics training is worthwhile – 6.3%

The second training question asked: “what is the most effective way for you to receive information about ethics? (select all that apply):

1) In-person training – 68.3%
2) Online training – 20.4%
3) Staff Meetings – 23.6%
4) Emails – 16.5%
5) Newsletter or e-newsletter – 17.6%
6) Ethics Website with Resources and Tips – 14.1%
7) Discussion Groups – 19.7%
8) Ethics Officer – 10.2%

Another 4.9% chose to specify “other” delivery methods or make comments. A sampling of those comments, includes:

- “Management should lead by example and they don’t.”
- “All of the above, remind people of the importance of ethics.”
- “Don’t bother.”
- “In-person Training is the best way, but Supervisors must be trained to be Ethical before they are allowed to train others about Ethics.”
- “Online site where people can ask or state questions and concerns without retaliation.”

“Ethical decision-making is not being addressed right now. The case needs to be made for how you practically apply this to your job.”
• “Information (through any source) on edge cases where it is not clear whether behavior is ethical/acceptable, as opposed to examples of obvious ethical lapses.”

In a DAC survey of staff, volunteers and elected officials conducted in October 2012, as a step in the DAC strategic planning project, the following take-away was identified:

“There is a significant issue surrounding the standards and ethics practiced within Doña Ana County.”

This statement is consistent with what was captured in one-to-one interviews, group meetings and the internal ethics survey conducted for this study.

Ethics Training Best Practices

“Simply training employees to ‘do the right thing’ in today’s complex, changing situations, will not work.”

Stephen B. Knouse and Robert A. Giacalone

Ethics scholars Knouse and Giacalone believe that it is an organization’s responsibility to “structure ethics training so as to help employees clarify both their own expectations and the expectations of the organization, while at the same time examining both sets of expectations within a larger ethical framework.” In their article, The Six Components of Successful Ethics Training, the authors outlined what is needed to achieve ethics training success, they suggested that trainings must:

- help people understand ethical judgment philosophies and decision-making heuristics;
- address areas of ethical concern within their industry/profession;
- teach the organization’s ethical expectations and rules;
- help people to understand their own ethical tendencies;
- take a realistic view, while also elaborating on difficulties in ethical decision-making; and
- have people use the material in the workplace, then return to training for additional work to analyze their application.  

In a 2008 study, Leslie Sekerka, identified over 400 techniques, processes or methods recognized as best practices, clustered them into 13 themes and then sorted the themes into two categories: Content and Context. Content describes the type of material and delivery form utilized, and Context describes the application of content and to communicate, assess, and measure ethics in the organization.

For example, Sekerka’s best practice themes under Content were: Core Issues, Specific and Explicit Behaviors, Situation and Scenarios, Learning Styles, Target Audience, Delivery Form and Ongoing Reflection, Practice and Dialogue. Themes under the Context heading include: Raising Questions and Promoting Awareness, Commitment to the Code, Actions of the Board, Links to Performance, Ethical Risk Assessment, Program Effectiveness, and Ongoing Communications.

A focus on the content of ethics training is essential, however content alone is an incomplete approach. Sekerka recommends:

“People need environments that also support and encourage the practice of ethical
reflection, dialog and action. Needed are additional activities that cultivate organizational process norms to develop ethical thinking in support of personal accountability and moral development.

A greater focus on context implies that supervisors and managers need to bring forward ethical issues in staff meetings, become aware of and responsible for areas of ethical risk, and link ethical practice to organizational goals and personal performance. Finally, an emphasis on ethical competency development will help employees exercise ethics as an active ‘practice’ rather than seeing ethics as a form of forced compliance.”

Finally, Wechsler contends that the most important aspects of government ethics training are “the concepts (what government ethics is and is not), the concrete examples, and the psychological obstacles to dealing responsibly with one’s conflicts.”

**Recommendation 14: Modify and make improvements to the DAC existing ethics training program.**

To follow the lead of Best Practices, DAC can improve its ethics training by more carefully considering both the content and context of training.

Comments from DAC staff and elected officials reflect the need and desire to see more content that poses specific situations and scenarios that in context are linked to performance in their current jobs. Most employees are excited to attend live trainings, believe it is so important as to make it mandatory, want to discuss ethics, and want to see it reflected in their leaders.

This report makes many recommendations that, if adopted, will impact the content and the context of ethics training at DAC. For instance, if DAC decides to revise the current code to focus on conflicts, it is advisable to develop a training that teaches to the expectations of those provisions and discusses its practical application in a DAC work environment.

If the County continues to utilize Character Counts, they must strengthen the context aspects of this values-based ethics program so that the specific values of trustworthiness, citizenship, fairness, responsibility, respect and caring can be brought to life by applying them to actual areas of ethical concern in their specific workplace. Learning and exploring values-based and other ethical frameworks so that individuals understand their use and application is how you move from information to ethical action and decision-making.

With regard to the government ethics training, the best ethics training consists of an introduction to the concepts of government ethics, followed by active discussions of case studies. With practice through interactive exercise, reflection, discussion, and the like, the use of contextual approaches will expand ethical competencies as they relate to more effective decision-making and behavior. If DAC establishes an independent government ethics commission, best practices indicates that trainings on this topic be developed and implemented by the ethics commission or their staff.

Given the findings and recommendations in this report, the suggestions for types of training in Table 1 below are intended to help bring about greater understanding of the government ethics program. To keep the content of the government ethics program distinct (see Recommendation #5) from other types of training (such as professionalism, customer service, and leadership development) Table 2 contains a list of other related types of training.
## Suggested Training Modules
### Table 1: DAC Government Ethics

<table>
<thead>
<tr>
<th>#</th>
<th>Training Type &amp; Description</th>
<th>Delivery Method</th>
<th>Audience</th>
<th>Frequency</th>
<th>Who responsible</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Code Training – Introduction to Gov. ethics. Target to the concerns of decision makers with highest exposure to conflicts.</td>
<td>Online or in-person training</td>
<td>Mandatory for elected officials and key managers and administrators, ethics commission members</td>
<td>At orientation and bi-annually thereafter</td>
<td>Ethics Commission or designated trainer(s)</td>
<td>To orient the user to code and concepts of Gov. ethics, code’s purpose, who administers the code and how to report and receive/refer reports.</td>
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<td>2</td>
<td>Code Application and Disclosures – A follow-up to Code training. Cases and specific real life examples of conflicts are applied to participants work duties.</td>
<td>In person, active discussion of cases, topic specific, reflection, dialog, action</td>
<td>Mandatory for elected officials and key managers and administrators, ethics commission members.</td>
<td>Within 2-3 weeks of Code Training (#1)</td>
<td>Ethics Commission or designated trainer(s)</td>
<td>Application of provisions to relevant situations/scenarios, raise awareness of particular types of misconduct. How to complete disclosures.</td>
</tr>
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<td>3</td>
<td>Code Training – Introduction to Gov. ethics. Target to the concerns of non-decision makers</td>
<td>Online or In-person training</td>
<td>Mandatory for all staff</td>
<td>At orientation and bi-annually thereafter</td>
<td>Ethics Commission or designated trainer(s)</td>
<td>To orient the user to code and concepts of Gov. ethics, code’s purpose, where to direct reports.</td>
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<td>4</td>
<td>Ethical Decision Making – exposure to ethical decision making models, right vs. right dilemmas, and apply values and principles in decision making.</td>
<td>In-person training or structured discussion session</td>
<td>All employees and elected officials</td>
<td>Annual - alternating with other annual training programming</td>
<td>Ethics Commission or designated trainer(s)</td>
<td>Encourage reflection, dialog, action. Help people understand their own ethical tendencies; distinguish between options, discuss difficulties in ethical decision-making.</td>
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<td>5</td>
<td>Reporting - Making/Receiving reports of misconduct, whistleblower protection</td>
<td>In-person training or structured discussion session</td>
<td>Managers, supervisors, administrators, elected official</td>
<td>Annual - alternating with other annual training programming</td>
<td>Ethics Commission or designated trainer(s)</td>
<td>To understand and relate reporting procedures, how to refer reports, how to create a safe environment to report.</td>
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<td>#</td>
<td>Training Type &amp; Description</td>
<td>Delivery Method</td>
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<td>1</td>
<td>“Answering the Call to Public Service” or similar name. Covers professionalism, customer service, etc. Similar to the current “Workplace Expectations” training but with more of a public service focus.</td>
<td>Lecture with interactive exercises</td>
<td>New Hire Orientation</td>
<td>Upon hire or determined as needed for existing employees/elected officials.</td>
<td>DAC training (HR Dept. or contracted trainer)</td>
<td>An introduction to public service work. To lay the foundation for the public service work ethic, stress fiduciary responsibility and living up to the public trust.</td>
</tr>
<tr>
<td>2</td>
<td>“Voicing Concerns in the Workplace” - 4 step process: get courage up, question your motivations, take the right attitude, get facts right, talk w/someone</td>
<td>In-person. Skill and practice-based approach</td>
<td>All staff and elected officials</td>
<td>Biannually</td>
<td>DAC training – curriculum developed in concert with the Gov. Ethics Trainer(s)</td>
<td>To empower employees to learn how to act on their convictions, to speak truth to power, share their commitment to integrity. Builds “tone from the top, middle and bottom”.</td>
</tr>
<tr>
<td>3</td>
<td>Leadership Development Training – among other topics, include dealing with conflict and misconduct, build understanding of organizational ethics</td>
<td>In-person. Skill and practice-based approach</td>
<td>For first time supervisors or those new to taking a leadership role</td>
<td>Annual</td>
<td>DAC training (HR Dept.) curriculum developed in concert with the Gov. Ethics Trainer(s)</td>
<td>To build competency to confront ethical issues, to create a “tone in the middle,” to properly address and follow through on reports of misconduct.</td>
</tr>
<tr>
<td>4</td>
<td>Elected Official Orientation – provide an Intro to DAC culture and the roles of each elected official.</td>
<td>In-person or online</td>
<td>Elected officials in all county offices</td>
<td>Within 1 month of being sworn into office</td>
<td>HR Dept. or BOCC liaison</td>
<td>To introduce new officials to the county, to clearly defined the roles and responsibilities of the three branches in local gov’t.</td>
</tr>
</tbody>
</table>
Finding #15: The structure of ethics training is key to its effectiveness.

The way a government ethics program structures training can either add to or detract from the program’s objectives. The research of effective ethics training finds that well-developed training programs share the following structural elements in common.

Required - When more than half of the DAC survey respondent said they thought ethics training should be mandatory, they were on to something. That is, ethics training is unlike other types of training in that it is an opportunity to explain the ethics program, DAC’s ethical values and goals, and the reasons why ethical behavior is important. It is a way to get everyone on the same page. But a shared vision will not exist if all members of the organization do not attend. Basic ethics training should be required of all employees and elected officials. But mandatory ethics training is only mandatory to the extent attendance is enforced.

Frequent - The findings indicate that to be effective, training must be on-going and not just a one-time lecture with no follow-up. The point that time is needed for reflection, dialog, linking to performance, evaluation has been made, but these applications of new behaviors may diminish over time and continuous training and other efforts are important if organizations are to sustain benefits. The organization and its leaders must send a constant message of ethics as a habit of choice, a capability that needs to be exercised to be sustained.

Most professions require annual or biannual continuing professional ethics education. One reason for this is because conditions in the industry and profession are dynamic and periodic training allows the application of ethical frameworks to those changes. Within any given year in the public sector, an employee may change positions, a new elected official may enter office, or a new project or community crisis may expose the county to new ethical risks. Ethical competencies need to be practiced in context to current realities. Requiring annual training allows time for that practice and reflection.

Engaging - It appears from many of the responses of the DAC training evaluations that the training was engaging and interesting, but most attributed that more to the likability of the trainer than to a connection to the content.

There are a lot of things that go into making training engaging. What is engaging to one might not be for others depending on their learning styles and understanding of the topic. Most of the DAC surveys and best practice reviews point to live face-to-face training as the most engaging and therefore most effective. Beyond that, when political and administrative leaders can endorse training, appear in videos, add a preface to training materials, and show up at larger lectures or small ethics discussions, it encourages others to participate, and to engage.

Also, those responsible for training need to “sell” ethics training. Wechsler suggests government ethics training can be sold by the way it is named (“conflicts” rather than “ethics” or “career survival training” to emphasize how useful it is to officials), by making it as entertaining and participatory as possible, and by making it clear that it is professional training.

Consistent - There cannot be competing visions of the government ethics program, or of government ethics in general. The message needs to be consistently presented in order to get everyone on the same page. In delivering the government ethics tract of trainings, it is especially important to make sure that it comes from one source. It should be developed and ideally
conducted by an independent ethics officer, contracted trainer or members of the ethics commission, in order for participants to build a relationship with ethics officers so discussion and advice are sought, and to understand the purpose and process of an independent ethics commission.

**Recommendation #15: Tips to keep ethics training fresh, focused and in the forefront.**

Assuring that ethics training is offered regularly, is easily accessible, and that all officials/employees attend are only part of training effectiveness. A training program can achieve greater results and DAC can address some of the concerns of their current ethics training by keeping the following tips in mind:

**Keep it fresh**

- Think Short / Deliver Often. Do not do it all at once. Multiple shorter, well-structured lessons convey more information than one long one. They also give time for reflection, practice and dialog in between session and they keep ethics in the forefront.
- Alternate topics each year so you are not offering the same topic every year.
- Update curriculum to address emerging topics or needs.
- Use social media to create a community and to spread the message to a new audience.
- Be Positive and stress do’s, not don’ts.
- Use Pre-Work. Build interest and anticipation by having trainees prep for an upcoming training by sending out a list of focus questions ahead of time.
- Entertain. Use story-telling, suspense, humor, highly qualified trainers, and high production quality. Consider calling the training something other than “ethics.”
- Utilize multiple channels and means of learning so message are reinforced and trainees do not tire of the delivery method and miss the content.

**Keep it focused**

- Distinguish between government ethics and other related training (customer service, professionalism, etc.). They have different learning objectives and serve different purposes and that should be clear in training.
- Be Relevant - Know your audience. Match education to job roles, culture, and settings, so trainees think, “This is about me.”
- WIIFM - Emphasize “what’s in it for me” at the beginning of the session. State the objectives (be realistic), the value of the session, and the value of the information during the entire session.
- Integrate and align all elements of the program and channels (website, advice, code training, discussions, etc.) together in a coordinated package. Build on and reinforce the class content learned in earlier sessions.
- Train-the-trainer classes help to keep the message consistent and keep all training staff on the same page. Especially true if DAC uses HR training staff or outside trainers to deliver the government ethics commission’s training curriculum.
- Encourage double loop learning. Have trainees focus on and question the values, assumptions and policies that lead to actions, so that they are able to view and modify those, if need be.29
Keep it in the forefront – make it a priority

- Communicate – Keep your messages “front of mind” by employing online and network technologies, surveying, newsletters, memos, signage, etc.
- Discuss – Encourage peer group discussions at employee listening sessions, brown bag lunches, DAC RAP meetings, etc. Let colleagues apply what they’ve learned and build a “tone in the middle” (see Discussions below).
- Promote Ownership – Trainees should make it their responsibility to learn – to comply with pre-training assignments, participate actively in the session, and apply new ideas and skills. When you own something it’s hard to forget it.
- Use it or lose it – Provide opportunities and situations to practice immediately and frequently after training, to help participants retain and learn.
- Sustain An Environment – Go beyond “messages,” and provide an atmosphere of principled behavior.
- Talk the Talk AND Walk the Walk - Introduce a decision making model, try out the model, and then report back on what worked and what did not work.

**Finding #16: Training is a worthy investment.**

Ethics training can be the most expensive part of a government ethics program. The greater the frequency, the time allocated and the numbers trained, the more the program costs can add up.

But training is also where you can see the most bang for your buck! Consider the costs when employees and officials fail to follow government ethics rules. Local government stands to lose millions of dollars a year both in money and productivity when contracts, grants, and jobs are given on the basis of personal relationships, rather than what is best for the community; nepotism, favoritism and intimidation destroy morale; patronage brings down the quality of administration; scandals undermine a community’s ability to attract businesses; and competent people do not want to work for corrupt governments. If done right, training can help prevent the costs of investigating, enforcing and litigation that can arise from enforcement.30

**Recommendation #16: Target training efforts and utilize existing resources to reduce costs and increase effectiveness.**

For the government ethics program, DAC should put the most resources into training high-level administrators, government attorneys, elected officials and employees working in the areas of land use, procurement, and grants, and ethics commission members and staff. These and others in decision-making roles are the ones most likely to face conflicts that can impact their ability to make fair and impartial decisions, and whose decisions set the ethics tone within DAC.

While lower level employees (this includes the vast majority of DAC employees), do need to understand the code’s provisions and need to be informed about the purpose, services and procedures of the ethics commission (particularly those that pertain to reporting), they are not as likely to be in a position to violate the code. Therefore, they do not need the same depth of training on the Code.

Many organizations, especially large ones, use online training to cut costs and reach large numbers. Online training can be a very effective method for informing and communicating a
consistent message, but lacks the face-to-face, human element that enables discussion and analysis. An online platform might be appropriate use for the Code Training (#1 & #3 on Table1), but it will not provide the reflection and interaction time needed to discuss the application of the code (#2 on Table 1).

Another way of targeting training efforts in a cost effective manner is to continue to survey and utilize feedback from employees/officials to find out which topics they struggle to understand or for which they need more practice.

In-person training, which can be the most effective kind of training, is also the most expensive. Consider a part-time, full-time, or shared (with nearby local governments) ethics officer who can train in addition to providing ethics advice and counsel to the ethics commission. If one is available, use an experienced volunteer facilitator, instead of a hired trainer to generate small groups discussion on ethics matters taken from training materials.

Given the size of DAC it makes sense to hire at least a part-time ethics officer and/or use professional government ethics trainers to conduct government ethics training. If DAC opts not to hire an Ethics Officer, it might be best to limit in-person training to an introduction to government ethics, supplemented by an online video and/or quiz to train on the code. Follow this training with face-to-face, small group discussions of cases for at least elected officials, high-level administrators, and board and ethics commission members.

Ethics Discussions

Inside an organization, information is disseminated through many channels, not just the usual methods like websites and training. When it comes to raising awareness about the expectations for ethical conduct, many Best Practices now emphasize the importance of communication using multiple channels.

Finding 17: Raise awareness about ethics and build organizational competency with ethics by generating a two-way discussion.

Based on previous findings, it is clear how a two-way discussion in training session enhances the experience by making it real, interactive and applicable for the trainees. But the learning does not end after the training ends. In fact, discussion of ethics outside of training can be even more effective because it can occur in the place, with the people, and at the time when one is experiencing a workplace dilemma.

Formal Discussions

Discussing ethics issues in local government workplaces should be every bit as common, as discussing engineering, fiscal, and personnel issues. Ethics discussions should be regular, that is, institutionalized. If formal and open discussions are not held, there will still be ethics discussions and gossip, but it might not be productive.

“Formal discussions of ethics leads to more open informal discussions of such issues outside of meetings, a better understanding of government ethics and, therefore, a better recognition of ethics issues when they arise,” states Wechsler. If done right, discussions make ethics issues
less personal and more professional. They help to identify and form both values and processes for dealing with conflict situations.

Most of us do not believe we are capable of ethical misconduct. We rationalize and justify our behavior to fit the images we hold of ourselves. Discussion gives us the opportunity to test our feelings about ourselves, to look at the motivations behind or actions or inactions.³¹

Safe from Retaliation
For many, openly discussing ethics can feel awkward and even politically incorrect. But for most, the biggest obstacle to speaking about ethics is a lack of organizational trust - the fear that if you do speak up nothing will be done or worse yet, it will be held against you and there will be retribution. In the DAC survey and one-to-one interviews, a significant number of employees expressed that it was fruitless to speak up and that they feared retaliation.

It is hard to live with the fear that you will be personally ostracized if you speak out. Employees especially, but also officials, including board and commission members, need a secure forum in which to speak their minds. They need to be asked for their opinion by someone in charge, and to know that they will be rewarded for speaking their minds, instead of penalized.

Culture of Candor – Leader’s responsibility
Warren Bennis, a pioneer in the study of leadership, says the “best way for leaders to start information flowing freely in their organizations is to set a good example. They must accept, even welcome, unsettling information.” The “free flow of information” according to Bennis, is key to an organizations’ effectiveness and requires “followers to speak openly, and leaders must welcome such openness.”³²

The best way to encourage those who do not speak up in group discussions, is to be a leader who is approachable. “Encourage a “culture of communication,”” as one of the DAC Ethics Advocates suggested, “by being approachable and holding more face-to-face discussions.

When discussing ethics, it’s important to approach not in an accusatory fashion, but with questions intended to get a discussion going. Holding discussions “the right way” is about showing respect and building trust. As Bennis’ colleague and co-author James O’Toole writes: “…trust is created by the behavior of leaders toward followers. When leaders treat followers with respect, followers respond with trust.”

Leaders can begin to create a trusting community by endorsing the discussion of ethics and by modeling it in formal settings, like county commission, departmental, and staff meetings. O’Toole asserts that to create a “Culture of Candor” leaders must “tell the truth, admit mistakes and respectfully listen to the perspectives of others.” In this way a leader sets the tone for an entire culture.

Voice to Values – Everyone’s responsibility
It’s normal to think that if you raise an ethics issue others will find you naïve or question your motives. Author and scholar Mary Gentile points out, when you do muster the courage to discuss the issue with people, you often find that people do want to act on their values, that they share your fears. Knowing this makes one less afraid and more determined to at least continue talking about the issue with others.³³
In her book, Giving Voice to Values: How to Speak Your Mind When You Know What’s Right, Gentile says it is important to “recognize that there are many different ways to express our values in the workplace (for example, assertion, questioning, research, and providing new data; persuasion, negotiation, setting an example, identifying allies).” In discussion, she suggests that people “approach their superiors as if they are on the same side, as if they share your commitment to integrity, and to the importance of values and reputation to success.”

**Recommendation 17: DAC leaders need to send the message that discussing ethics issues is an important part of being a professional public servant.**

Based on a currently held sentiments that the DAC culture lacks trust and the research findings regarding the importance of having discussions, creating candor, and speaking up about ethical issues, the following lists suggests some possible opportunities - scenarios, existing forums, and times – to hold two-way discussions of ethics.

**Scenarios that present opportunities for discussions**

- When there are complaints that conflict and transparency issues are not being discussed, high-level officials must insist on discussion and lead the discussion. Department heads and chairs should also lead such discussions.
- At a BOCC meeting, whenever the board moves on to a new agenda item, the names of the individuals and entities involved can be read aloud and the chair should ask: “Does anyone here know of a potential conflict or does anyone have a special relationship with anyone involved in this matter?” By regularly asking this question again and again, it will be natural for conflict issues to be discussed.
- When procurement officers are discussing a contract, the question should be raised if anyone has or knows of a potential conflict. Both acts and failures to act should be discussed. For instance, the decision to proceed with no-bid contracts should be questioned.
- When discussions do not lead to a clear and agreed resolution of the situation, the manager or chair should seek professional ethics advice. Once they receive the advice, the manager or chair should share the advice at the next meeting, so that all (meeting/board members, and the public) understand the ethics issues involved. This creates an integrated multi-channel loop where discussion builds on advice and provides training.
- Officials should be allowed to question elements of the program they feel are wrong or harmful. These feelings need to be recognized and talked out. Emotions, including feelings of loyalty, entitlement, and obligations to family, friends, business associates, and political supporters, in addition to a belief in one’s integrity, should be discussed openly, without embarrassment. These feelings and obligations are not wrong. What is wrong is not recognizing these feelings and allowing them to prevent us from dealing responsibly with conflicting obligations.

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ii Employee/elected officials “sentiments” refers to themes identified in the findings of an internal ethics survey, a strategic planning survey, one-to-one interviews with county officials and top administrators, and opinions expressed in Ethics Advocates meetings.
Some possible forums for ethics discussion at DAC
In meetings with DAC “Ethics Advocates,” the group convened as a part of this study, members have brainstormed ways to keep the ethics conversation in the forefront. They identified some potential existing meetings and forums where ethics could be discussed. They include:

- Use RAP (Risk Awareness Program) roll-out to communicate about the ethics initiative. Possibly have management attend/guest speaker RAP meetings;
- Implement listening sessions in small groups (subset of department);
- Use brown bag lunches in departments to discuss ethics
- Host department open houses
- Employ the “management by walking around” technique to build relationships and encourage face-to-face communication to spur informal ethics discussions.
- Include an ethics component in staff meeting [similar to safety briefing (discussion)]
- Identify “Ethics Advocates” in departments that can bring the departmental concerns for discussion at the regular “Ethics Advocates” meetings.
- Increase frequency of staff meetings to talk about ethics, involve managers
- Host interdepartmental meetings (brown bag and breakfast meetings)

These forums offer the place and time for various types of discussions of ethics issues. And while making a place for the “where” and “when” of discussions is important, the real challenge comes in the “how.”

There are a number of ways how one should approach a discussion, but perhaps the most important factor is that the manager creates an environment where it is safe to speak. She should, as Wechsler suggests: “make it clear that there will there be no retaliation for the presentation of unpopular views, and should herself play devil’s advocate when necessary, forcing meeting participants to confront uncomfortable facts and concepts and talk about all aspects of the situation under discussion.”

Another approach might be more reflective, asking meeting/training participants to do some pre-work before the group gets together. Something such as asking participants to:

1. Keep a journal of both their work activities and how they and others react to their actions.
   a. Write down whether they believe their actions were ethical, unethical or if they were unsure.
   b. Identify short and long term consequences of their actions.
   c. Explore how good they felt about their actions and would they do it over again?
2. At the meeting, coworkers provide feedback on how they perceived the actions.
3. Together they explore commonalities in values and identify areas where the county could provide further guidance about ethical conduct.
Accountability: The Ethics Commission
Accountability: The Ethics Commission

The scope of this study included a review of the approaches used to investigate violations of the ethics code and hold people accountable. Specifically, the focus of this analysis is on the various ways to set up and operate an Ethics Commission, including the ethics commission as an independent organization that could be contracted by multiple jurisdictions to conduct training and perform investigations in support of an ethics code.

The scope did not include a survey of current or proposed state or local statutes and laws or their impact on the administration, duties and power of an Ethics Commission. Therefore, these laws and their reach should be taken into account before implementing any suggestions or recommendations made in this section.

Setting up an Ethics Commission

The decision to establish an ethics commission must be carefully considered. According to the Institute for Local Government, before you decide whether an ethics commission will be a useful tool for your community, there are a number of questions to ask, including:

- What is your overall goal?
- What do you want an ethics commission to do?
- How would commission members be selected?
- What powers would the commission have?
- What resources are available to support the commission?
- What decision-making process should you use to determine whether an ethics commission is right for the community?

The findings below discuss the various ways an ethics commission can be set-up including their goals, geographic jurisdiction, and the process used to select members. They are intended to provide information to assist DAC in determining whether the establishment of an ethics commission will help them to reach their goal.

**FINDING # 18: Goals of an ethics commission.**

What is an Ethics Commission? What purpose do they serve and why have one?

One goal may be to convey the message that ethics is important to the county or a regional jurisdiction -- so important that the jurisdiction has a body responsible for it. Another goal may be that you want to improve transparency and build public trust. It could be that you want to assemble a group to provide guidance and advice so public servants can deal responsibly with conflicts of interests. Or it may also be that you want a group to gather information, provide advice on policy, or feedback on how to promote and enhance the ethics program. Or it could be that you want all or none of the above.

In local government there are various types of ethics-related bodies that have been created to play different roles with regard to ethics. In researching the various ways to set-up an ethics commission, or more broadly, to address the various aspects of a government ethics program, it seems that just about every conceivable configuration has been tried.
Formal Ethics Bodies

The following list describes some of the more typical ways that local governments have set up bodies or entities to address different elements of their ethics programs.

1. **No formal body.** There are many local governments that either do nothing or choose not to create a formal body to address ethics and do not enforce non-criminal ethics violations. In these cases, employee conduct is handled by the human resources department, and elected official conduct is handled (or not) by elected officials. They bank on the fact that either officials will not act unethically or if they do, the infraction will come to light and the electorate will vote them out of office when the time comes.

2. **Ethics Task Force** – This is a body convened by a local government to accomplish a specific task relating to ethics, typically making policy recommendations on ways to enhance the culture of ethics in an agency. The task force is usually disbanded after it has made its recommendations or accomplished its task(s).

3. **Ethics Committees/Boards** - Many local governments are keenly aware that the public trust is jeopardized when there is an apparent lack of accountability of public employees and/or officials, and that the public wants to see something done about. In response, these local governments have established internal ethics committees or boards whose duties can branch into training and education, but are generally limited to an advisory role (i.e. advice on policy implementation and support for ethics within the agency). Ethics committees usually consist of 3-9 members and usually have not been granted investigative or enforcement authority. There are ethics committees that have attempted to gain some level of independence on their committee by having selection criteria for their members. Most often, members are selected/appointment by those serving in elected office (i.e. the county commission, or the mayor selects three members and the city council selects three members).

4. **Ethics Commissions** - An Ethics Commission is a standing body with delegated authority to interpret and enforce the jurisdiction’s ethics regulations. It is usually an independent body that provides external oversight and enforcement. Their goal is to guide government employees and/or elected officials in dealing responsibly with conflicts of interests they may encounter in their roles as public servants. They can also work to improve transparency and advise on issues of campaign finance and lobbying as well as play a role in training and education. Like ethics committees, members are volunteers who have been appointed or selected to serve for a designated term (see selection of members below). Ethics Commission should consist of 5-7 members so as to allow for a member’s absence and still have a quorum, 2 members to communicate without constituting a public meeting, and the creation of sub-committees.

**Recommendation #18: Establish an ethics commission to address current and long range government ethics concerns.**

A worthy goal of ethics commissions is to enhance public trust by helping to prevent conflicts in public service and by providing a structure to hold people accountable for
violating the public’s trust. As an added benefit, a government ethics commission provides an opportunity to improve the perception of fairness, transparency, and accountability in government.

Fairness, transparency and accountability are all very pertinent concerns for DAC right now, considering the results of the internal surveys and the recent transparency report of the DAC website. These should also be long-term concerns of any local government.

While the act of establishing an ethics commission, by itself, will not address all legitimate concerns, perceptions and misconceptions people have about government ethics, it does provide a means to begin to address them. Moreover, having the explicit standards that a government ethics code provides, the training to raise awareness of those standards, and a structure to hold people accountable for violating the standards, are three of the five critical components found in an ethical organizational culture (See Recommendation #3).

Having said that, the extent to which you will be able to affect the perceptions held by the public and internal stakeholders, depends in part, on how DAC decides to set up the ethics commission.

**Jurisdiction Geographic Territory**

Finding # 19: Jurisdiction (geographic) varies across the country.

A review of the various ethics commissions across the U.S. revealed that there are a number of ways to form a commission based on the jurisdiction(s) or territory it covers.

A Single Jurisdiction

States: At last count (August 2012) there were 41 out of 50 states that had a state ethics commission. New Mexico is one of only 9 states (Arizona, Idaho, New Hampshire, North Dakota, South Dakota, Vermont, Virginia and Wyoming are the others) that do not have a commission to oversee ethics enforcement.

Most state commissions are focused on enforcing ethics laws for state legislators and those serving in statewide elected offices. Most commissions include state employees as well as state elected officials in the enforcement of state ethics laws. And some other state commissions address the concerns of other public servants, including local government and public school officials. Because local government is a subdivision of the state, the state has the power to take ethics out of the hands of local governments.

For local government, one of the benefits of a state ethics commission having jurisdiction over local government officials and employees, is that because it is more removed from local officials and politics, it is more likely to be independent. Several states have ethics commissions with such jurisdictions (Arkansas, Louisiana, Missouri, Nevada, Ohio, Oregon, Pennsylvania, and West Virginia), but as Wechsler points out, “these are often so weak that local governments form their own commissions anyway.” Florida and California are the best examples of a weak state commission that oversees local officials. There are exceptions, as Wechsler also points out, “there are smaller states that do effectively handle local government ethics at the state level, including Massachusetts and Rhode Island.”
Over the last decade, the numerous bills introduced in the New Mexico State Legislature to create a statewide ethics commission have failed to pass. Additionally, the State Integrity Investigation, ranked New Mexico 39th among the 50 states, with a “corruption risk report card” grade of D-. Given the current status, it appears the state of New Mexico has neither the will nor the leadership to create a strong state ethics commission that can effectively oversee local officials.

Counties or Cities: In addition to state commissions, local government can choose to establish their own commission to oversee city or county ethics programs. A review found that most large cities – New York, L.A., Houston, Denver, Albuquerque – have commissions or boards established to oversee adherence to the jurisdictions’ code or to advise the executive branch on ethics matters. The powers and duties of these commissions/boards vary.

In addition, many counties across the U.S. have established their own local government ethics commissions to administer county ethics codes. There are many county programs found in small to medium population counties, such as: Calvert County, MD (89,000); Knox County, TN (436,000); Pierce County, WA (807,000).

The development of county ethics commissions has been stronger in some states than others. For instance, the states of Florida, Kentucky and Maryland have a number of county ethics commissions and again the powers and duties vary significantly. According to Wechsler, many local governments have been dissatisfied with the job state ethics commissions have done and want a more local approach to ethics. “Florida is an example of a state where state jurisdiction over local government ethics has not prevented numerous scandals,” writes Wechsler. “The result has been the recent increase and improvement of local ethics programs.”

So while state oversight gives an ethics commission more independence from local politics and officials, in most cases it has not provided the diligent oversight most counties seek. Moreover, county ethics commissions can be more attentive to the local needs and provide more timely advice, if they have been given adequate resources and powers.

Multi–Jurisdictions and Regional Programs

Regional and multi-jurisdictional administration offers an alternative to state and county administration. For many reasons, regional programs have advantages over local programs. Among the most salient advantages are (1) more independence, (2) cost savings, and (3) pooling of resources to afford staffing of the commission.

These larger regional programs have the potential to be more independent because ethics commission members can be selected from a broader cross-section of the larger community, so that no member will appear to be connected to any local government. The

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iii The State Integrity Investigation is a public collaboration of the Center for Public Integrity, Global Integrity, and Public Radio International designed to expose practices that undermine trust in state capitols. The Investigation ranked every state from 1 to 50. Each state received a report card with letter grades in 14 categories, including campaign finance, ethics laws, lobbying regulations, and management of state pension funds.
joint city-county solution has worked well in Miami/Dade County, FL for 17 years, and more recently, in Palm Beach County, FL.

There are three regional and ten county-city ethics commissions in the state of Kentucky alone. There are only four regional ethics commissions that are not tied to a county, three in Kentucky and one in Northwest Indiana, the Shared Ethics Advisory Commission, founded in 2005.

The agreements between Palm Beach municipalities and the county regarding government ethics, as well as the regional and county-city ethics agreements in Kentucky, were Interlocal Cooperation Agreements. These Agreements were made pursuant to Interlocal Cooperation Acts that have been passed in many states. An Interlocal Cooperation Act enables local governments to cooperate with each other to provide services and facilities that will best serve the needs and development of local communities. Kentucky’s regional programs were created pursuant to an act expressly relating to ethics programs.

Ad hoc Programs

Another alternative is that of an ad hoc ethics commission. Ad hoc is Latin meaning “for this” and when applied to an ethics commission, ad hoc mean a new ethics commission is created every time someone files an ethics complaint. Operating an ethics commission in this manner, Wechsler contends “shows a complete lack of understanding of government ethics programs, placing all the emphasis on enforcement.” Wechsler continues:

An ad hoc ethics commission makes for a lot of work and a lot of attention given every time even a minor complaint is filed. Considering that a majority of complaints are quickly dismissed or settled, it makes no sense to form an ethics commission that will likely meet once to dispense with a wrong-headed complaint. And an ethics commission formed for one complaint is going to find it hard to dismiss or settle it quickly; this will seem anticlimactic, and there is no reason to believe that the members will have any more understanding of government ethics than the complainant did.

Despite his aversion for ad hoc ethics commissions, Wechsler admits that for the sake of independence and the public trust “if a local government has no ethics program, just a conflict of interest provision in the charter or an ordinance, it’s better to form an independent ad hoc ethics commission than to let the legislative body or city/county attorney handle it.”

Recommendation #19: Start with one or two jurisdiction(s) and build to regional.

Establishing an ethics commission, regardless of the jurisdiction or scope, takes a concerted effort, dedicated time and the will to accomplish. A multi-jurisdictional approach requires the
same effort with the additional task of getting the buy-in from officials in other municipality(ies) and/or county(ies) and enacting legislation or agreements to formalize the partnership. This can be very challenging and requires a common vision, a collaborative spirit, the relinquishment of authority and control, and a commitment to serving the interests of the public above the interests of an individual elected official or one particular government entity.

Having said that, if DAC is able to lead an effort to join with another jurisdiction such as the City of Las Cruces or an adjacent county to create a multi-jurisdictional or regional ethics commission, they could potentially work out a cost sharing agreement that would benefit all parties. As establishing a regional ethics commission will be a new initiative for southern New Mexico, this type of collaboration is likely to take much effort on the front end and more partners could mean more challenges in getting the ethics commission off the ground.

A better approach might be to start with only one jurisdiction – Doña Ana – or two and grow to include other jurisdictions once the ethics commission has been up and running for a while. This way there will be a structure in place and some experience on which to build that attracts other jurisdictions to join the effort. As more jurisdictions participate and more resources become available, the level of ethics commission services can grow.

Finding #20: Independent ethics commission – selection of members.

The methods used by local government to select members to serve on ethics commissions has been approached in different ways. The scenarios below represent the most commonly found approaches and the potential advantages and disadvantages of each approach.

Scenario 1: No formal body exists
There are many local governments, particularly smaller counties and cities, that have no formal body established to address conflicts or accountability of elected officials. Despite the growing trend and interest from other local governments around the United States to establish local ethics commissions.

In the absence of a formal state and/or local ethics commission, the local government organization must fend for itself. There may be procedures or other resources in place to address some aspects of an ethics program. In these instances, accountability measures such as handling reports, investigation, deliberation, findings or enforcement are often left to the internal personnel (county attorney, internal auditor, inspector general) and/or to the members of the governing body itself to process (county commission, city council).

One of the shortfalls for a local government that has not established an ethics commission or formal body, is that they can be ill prepared to deal with suspected violations of the ethics code or conflicts of interest when they do occur. Even if they do have the resources or procedures in place to respond, the fact that internal players are involved (individuals who fall under the rules they are trying to enforce), creates conflicts of interests which undermines their decisions.

Scenario 2: Ethics commission comprised of local officials
Local government ethics commissions comprised of local officials who administer the ethics
program themselves, alone or as part of a commission that also includes employees and/or citizens. They are selected to serve by the governing body (city council or county commission) and they enforce the ethics code, making determinations regarding violations and penalties. This or similar set-ups are found in many local governments who have formal ethics commissions.

When a county commissioner serves on the ethics commission it requires her to wear several hats: 1) they are officials subject to the jurisdiction of the ethics commission; 2) they are the appointing authority of ethics commission members and, sometimes, ethics staff; 3) they are the appointing authority for the city or county attorney, who sometimes provides ethics advice and/or advises the ethics commission, and 4) they are sometimes also the judge of or appellate body for determinations of ethics violations and penalties. When a county commissioner wears all of these hats, there are clear conflicts.

The other problem with local government officials either serving on the ethics commission or without a formal body as in scenario 1, is that they are put in a position to judge their fellow elected officials. On a county commission or city council, the members sometimes work long hours together and throughout their terms they can develop a certain collegiality. In these situations, Wechsler states: “Not only do they have a personal interest in not enforcing rules against the conduct, but they feel it is unfair to single any member out, even if it might be politically advantageous.” Few groups of colleagues are willing to extend an accusation against one member.

Scenario 3: Elected officials participate in ethics commissions
There are local governments that see the inherent conflict of an official, who is subject to ethics commission’s jurisdiction, serving on the ethics commission. To avoid this type of conflict of interests, they appoint/select others who do not have that conflict to serve.

While this approach serves to provide some measure of independence by being once removed from the official, conflicts are still present. If an ethics commission’s members or their staff have been selected to serve by officials under their jurisdiction, it is reasonable for the public or for those internal to the organizations not to trust its decisions. Ethics commissioners may feel they “owe” something to their appointer or be perceived to be cronies of the appointing official.

Other types of participation include approval of the ethics program’s budget and the role of elected or appointed city or county attorneys in providing ethics advice and representing the ethics commission. See Role of the County Attorney below. All of these types of activities create potential conflicts and undermine the integrity of the process.

On the Center for Public Integrity’s website there is an article about state ethics commissions that lack investigative and enforcement “bite” due to underfunding. But author Caitlin Ginley writes that behind the underfunding “an inherent conflict stands at the core of the mission: the ethics agency commonly is tasked with policing the same government officials who control its funding, resources and regulatory power.”

If elected officials do not believe selecting members of the ethics commission to be a conflict, consider how the above three scenarios might appear to members of public. If officials involved in an ethics program appear to act too indulgently toward other officials, do
not act at all, or appear to act to hurt their opponents, their involvement undermines the public trust. But they don’t even have to act in order to do this; if people do not trust the ethics program, they will not seek advice or file complaints at all.

Scenario 4: Independent ethics commissions
Since government ethics is all about conflicts of interests, it is extremely important that there not be any conflicts in the ethics program itself. That is why many governments are moving towards independent ethics commissions. Independent, in this context, means that no one under an ethics commission jurisdiction should sit on it and participation, by these individuals, in the operations of the ethics commission should be minimized to the greatest extent possible.

“The people who it’s policing are the people who give it power. It has to be independent, or it doesn’t work so well.”
Craig McDonald
Texans for Justice

Scenario 4. A. Bipartisan ethics commissions
Some ethics commissions attempt to eliminate conflicts or appear independent by selecting its members according to their political party affiliation. For instance, in these types of constructions, public official(s) representing one party (Republican) will appoint 2 members and officials representing the other party (Democrat) will also appoint 2 members. The goal of bipartisanship is to ensure that both major parties are equally represented on a body.

There is a problem with this approach too however. If partisan requirements are in place to make the ethics commission appear as if it is fair and impartial, why are there not requirements for third parties or those unaffiliated with any party? Excluding or stacking the deck against third parties will not gain the public’s trust. Independent and non-partisan ethics commissioners are necessary to ensure a high level of impartiality. Party affiliation and bipartisanship should not be the key determinant for member selection.

In a UN-HABITAT/Transparency International Toolkit designed to support transparency in local governance, the authors list ethics commission independence as the number one key element to effectiveness, stating: “It is imperative that the influence of political affiliations and conflicts of interest be kept to an absolute minimum.”

“The best type (commission) is one that can work without fear of entanglement of political influence...why should politics be even part of that process in the first place if you really want a mechanism that is going to make objective opinions?”
Robert Smith, Professor
Kennesaw State University
Leading researcher on ethics commissions
Scenario 4. B. Nonpartisan ethics commissions

Another approach to selecting members of an independent ethics commission is choosing nonpartisan individuals to serve. Nonpartisanship, in this instance, means individuals be selected without respect to their party affiliation and, as far as possible, individuals who have been active in a party are not selected.

While the selection of bipartisan and nonpartisan members makes attempts at fairness, if the elected officials are the ones selecting the members, then there will be a perception of doubt regarding their independence.

Scenario 4. C. Community organizations select ethics commission members

Many cities and counties have turned to nonpartisan community organizations and academic institutions to select the members of the ethics commission. Ethics commissions in Milwaukee, Atlanta, Miami/Dade County Florida, Jackson County Missouri, and other cities/counties, use this approach to selecting members. 46

The actual selection process involves boards or representatives from multiple nonpartisan community organizations vetting and selecting individuals from the community to sit on the ethics commission. When the organizations do this independent of each other, it can be seen as each organization having a “seat” on the commission.

Another, and probably better, way is to have all the organizations boards and representatives meet together to determine selections together as a group. It’s may require more coordination, but it is more likely to lead to the selection of individuals who do not appear to be representing any interests other than the public interest.

Community Organizations - What types of nonpartisan community organizations can effectively provide independent selections? Possible organizations in southern New Mexico might include: Common Cause New Mexico, League of Women Voters, New Mexico Foundation for Open Government, NMPIRG (Public Interest Research Group), NMSU, New Mexico First, Rotary International Club(s). Community organizations that have contracts with or receive grants from the local government should not be included among the organizations.

Member Characteristics - Individuals selected to serve should not necessarily be someone employed or associated with the organization, though they should not be excluded from consideration either. In general, the organization or selection panel should look for individuals who do not have strong ties to county politics. Those who look as if they will not be neutral to the public, should not be on an ethics commission.

The following lists suggests the types of individuals or professions that are best suited to serve on an ethics commission, as well as those who are more likely to have conflicts and should not be considered.

Well suited for service
- accountants
- engineers
- medical and mental health professionals
- social workers
• academics
• corporate employees
• clergy

These professions make the best ethics commission members because, for many, their jobs require they take on-going professional ethics training which makes them more knowledgeable on the subject of conflicts of interest and more likely to spot a conflict. Outreach to attract this type of member can be made through professional associations, community organizations, human resource departments, and universities.

**Excluded from service**

- those doing business with the local government (i.e. consultants, lobbyists)
- candidates or potential candidates (potential candidates should be vetted and self-identified)
- party officials
- current government officials or employees
- recent government officials
- individuals who do substantial work in local political campaigns, large contributors, advisers, or those who work with or are identified with major local political figures.

Lawyers are the profession most often asked to sit on ethics commissions. While not to be excluded from consideration, lawyers are more likely to have conflicting obligations (relationships with political figures as well as clients who do business with the local government) and thus, their relationships and activity should be scrutinize before they are selected to serve. Due to their training, they are also the professionals most likely to read ethics code language narrowly rather than expansively.47

**RECOMMENDATION #20: Commit to a members selection process that strives for independence.**

“*The more independent the ethics commission, the more it will be trusted by city (or county) residents, the less it will be used for political purposes, and the more respect its decisions will be given.*”

City Ethics, Inc.
Model Code Project

If DAC goals include establishing an ethics commission for the purposes of strengthening the reality and perception of fairness and accountability, or creating a more transparent government, or building the public trust, then it should commit to a selection process that strives for independence.

The administration of an ethics program should not itself undermine trust in the local government. This is an important reason why officials (or top level employees under the ethics commissions jurisdiction) should have nothing to do with the selection of ethics commission members or staff. In fact, from his research, Wechsler believes “the independence of an ethics program from government officials is the single most important criterion for its effectiveness.”
While no selection method can guarantee total independence or that there will never be conflicts of interest on the ethics commission, some approaches work better than others to meet that end. For DAC, the selection of members by nonpartisan community organizations would be the best approach for achieving independence and reducing the perceptions of bias in local government. It would also encourage greater citizen participation in the process.

Ethics Commission Operations

After considering the various ways to set-up an ethics commission, and which, if any, set-up will help DAC to reach their goals, it is important to also think of the operations of the ethics commission. What do you want an ethics commission to do? What will be the extent of their authority? Who will do what?

Duties and Work of the Ethics Commission

**FINDING #21: Duties, powers and limitations of local government ethics commissions.**

Most government ethics commissions focus on government ethics laws as opposed to ethics (values-based conduct that goes above and beyond the minimum requirements of the law). The specific duties assigned to ethics commissions tend to fall into one or more of three categories:

- Overseeing and enforcing local ethics laws and/or codes;
- Providing advice to local officials on ethics and ethics laws; and
- Training local officials on ethics and ethics laws.48

There are a number of duties and tasks that can fall within these three categories. A survey of local government ethics commission websites found ethics commissions who perform some or all of the following list:

**Overseeing and enforcing local ethics laws/codes**
- initiate complaints, commence investigations on the board’s own initiative
- receive reports of misconduct and violations of the code
- hold hearings to determine whether a local elected official or employee warrants suspension or removal for acts of official misconduct
- issue subpoenas for witnesses and documents
- investigate allegations of violations to county ethics laws
- issue Advisory Opinions, Alerts or Guidelines to make ethics provisions more clear and concrete
- determine who must file an annual disclosure statement
- reprimand, suspend, fine those found in violation of the code
- grant waivers of prohibitions of the code
- recommend individuals to be considered for a seat on the ethics commission
- create rules of procedure, regulations and by-laws
- hire and oversee ethics commission staff
Providing advice to local officials on ethics and ethics laws; and
• hold public meetings asking officials and citizens to ask about ethics matters
• create and disseminate ethics guides and publications
• respond to requests for advice or guidance
• give unsolicited advice
• make recommendations to the governing body on ethics reform

Training local officials on ethics and ethics laws.
• provide ethics training and educational programs for public officials and employees
• develop good government policy in collaboration with local public officials
• develop and maintain a dedicated ethics commission website

Other Activities
• build strategic community collaborations
• raise awareness through community outreach
• hold community-wide town hall meetings
• produce an annual report
• communicate its role and mission to the press and public
• submit, directly to the voters, any ordinance related to conflict of interest, campaign finance, lobbying, campaign consultants or governmental ethics
• give out awards or recognition to those who encourage open discussion of ethics issues, report ethical misconduct, or choose not to indulge in it

As you can see from the above list, ethics commissions engage in a wide range of activities that include everything from public outreach, to education, to investigation and enforcement.

**Independence – Powers and Limitations**

Another way for ethics commission to be independent is by having sole authority over the administration of the government ethics program. Wechsler calls this having a “monopoly” over the operations – ethics training, advice, disclosure, and enforcement. He says a “monopoly is necessary to ensure the independence, effectiveness, and consistency of an ethics program and to assure the public that only the ethics commission will interpret, administer, and enforce the ethics code.”

Since providing advice and guidance are a priority, having a commission that operates independently has the advantage of ensuring consistency in the delivery of advice and the opportunity to create a public body of advice on which officials can rely. If “government attorneys, supervisors, and others are permitted to give ethics advice confidentially, without any accountability or transparency,” Wechsler warns, “this seriously undermines the attempt to create a public body of advice.” In addition, when a public official or employee can get “official” advice from multiple sources it can create confusion as to the most responsible way to deal with their potential situation.

There are alternatives to an independent ethics commission having a monopoly, which is how most local governments

“Ethics commission independence, in its many aspects, is the most important single characteristic of an effective ethics program.”
Doña Ana County - Study of Local Government Ethics, Feb. 2013

approach government ethics. In the following passage, Wechsler provides a look into what happens when there is not a central, independent authority responsible for the administration of local government ethics.

The alternative is what is known as “forum shopping,” where officials and employees can choose where to get their ethics training (say, from a municipal association), where to seek their ethics advice (say, from the city attorney), and where to make their financial disclosures (say, to the state rather than to the city or county). The alternative, with respect to enforcement, is to allow, say, the legislative body or city manager to decide some cases, or give the district attorney or state attorney general the authority to dismiss or settle a case and prevent it coming before the ethics commission (or try the case poorly, since it is a low priority for them). The alternative is to provide inconsistent training and advice, inconsistent disclosure, and inconsistent enforcement, so that no one knows what is truly required of them. The alternative is to allow those with connections to use their connections to get the advice they want and to avoid enforcement. The alternative is preferential treatment in a program that aims to prevent preferential treatment. 50

These other ways of addressing training, advice, disclosure and enforcement are not ideal practice because they create a fragmented system where expectations and accountability are unclear and inconsistent. These are the types of practices that undermine the trust that a government ethics program is attempting to create.

Jurisdiction (Powers of Authority)

One of the main reasons to have an independent government ethics commission is so that the program does not appear to favor certain officials/employees over others. It is important that the public (and internal stakeholders) see ethics enforcement as fair and objective. That is why Wechsler recommends that all employees and “all local government officials, including those who work in agencies that consider themselves independent, such as sheriff’s offices, law departments, and authorities, including public-private authorities” be included in the ethics commission’s jurisdiction. 51

In the ethics commissions reviewed for this study, the jurisdictional authority of the vast majority includes employees, administrators and elected officials. The State of Oregon’s, Government Ethics Law has broad jurisdiction. The Law, administered by a State Ethics Commission, applies to all “public officials,” which Oregon defines as follows:

You are a public official if you are:
• Elected or appointed to an office or position with a state, county or city government.
• Elected or appointed to an office or position with a special district.
• An employee of a state, county or city agency or special district.
• An unpaid volunteer for a state, county or city agency or special district.
• Anyone serving the State of Oregon or any of its political subdivisions, such as the State Accident Insurance Fund or the Oregon Health & Science University. 52

Elected Officials - “If certain entities are excluded, the others feel the ethics program is unfair, and this undermines their support for the ethics program,” claims Wechsler. As the survey and interviews with DAC employees, elected officials and top administrators
demonstrate, the perception of a lack of fairness is currently evident among all groups. There seems to be a commonly held belief that the standards, behaviors and systems of accountability vary from department to department within DAC government. Many comments were made about how some elected officials see their offices as independent and not beholden to a common DAC ethical standard or code.

Sometimes independent offices of local government – sheriffs, clerks, assessors, school board - say the jurisdiction of the ethics commission should not include their office and believe they should have the right to self-regulate their ethics. Wechsler advises that it should be pointed out to officials who oppose ethics commission authority over them that they “are putting their personal interest, rather than the interest of their authority (which is, after all, the public interest), ahead of the public interest in having independent ethics oversight of all local public servants.”

For those independent agencies/offices that are not included in the local government charter/ordinance, Wechsler recommends amending the ordinance or other document that deals with their creation to include the ethics commission’s jurisdiction over them, their officials and employees, their contractors and others over whom the ethics commission generally has jurisdiction.

Employees: Most government employees, because they are not the ultimate decision makers, have few ways in which they can have conflicts. However, they too should be part of the program and trained on conflicts of interest. If not to maintain the perception of fairness, than for no other reason than the fact that they are the individuals most likely to know about and, hopefully, report ethics violations.

Volunteers: The Oregon code, as well as other counties and states, include volunteers under the description of “public officials.” Because Oregon governments utilize volunteers (firefighters, police) in the provision of basic government services and those volunteers may be viewed as public officials when interacting with the public, they believe they must be held to the same standards.

In New York City, the Conflict of Interest law applies to “all paid City officers, employees, and officials, regardless of salary or rank, whether full-time, part-time, or per diem. Some of these rules also apply to those who are not paid for City service, but who play an important role in government, such as members of Community Boards and Community Education Councils.”

Contractors and Others: Some local governments extend the jurisdiction of the ethics commission to those who do business with the government, or do the government’s business, along with candidates, former officials, school boards, quasi–governmental entities and others. One of Wechsler’s arguments for this broad jurisdiction is that the more officials and employees are covered by an ethics code, the more resources the ethics program will have and, therefore, it will be more likely to be able to afford full-time staff and a quality training program.
Limitations Placed on the Ethics Commission’s Independence

Some ethics commissions have been assigned more powers than others and that, along with the amount of resources allocated, is why the range of activities is broader in some commissions than others. There are a number of forces that limit the extent of power an ethics commission can have. Discussed below are some of the types of limitations placed on ethics commission powers and some of the possible reasons behind those limitations.

Local Ethics Law/Code
The choice to either grant the ethics commission full power or to limit their power in some way, is often made by the local governing body and specified in the enacting legislation that creates the commission or a code.

Limited Initiative - One way local governments limit the activities and power of ethics commissions is by restricting the ethics commission from acting on their own initiative. That is, not allowing ethics commission the power to initiate their own investigation or file their own complaint.

There are no comprehensives studies on local ethics commissions powers and limitations, but research among state ethics commissions shows that 36 of the 41 state ethics commissions are able to proactively investigate alleged violations. For the other state commissions, power is limited due either to the panel simply not having the authority to do so in law — like in Florida — or the law requires a lofty standard for launching a probe, as is the case in North Carolina. The ethics commission can only pursue investigations if it finds “probable cause” of an ethics violation, a stronger requirement than law enforcement agencies that need only “reasonable suspicion” to pursue a case.

In order for the Texas Ethics Commission to pursue an investigation, six out of the eight board members must agree, which, according to Texas attorney and good government advocate Fred Lewis, “makes for a dysfunctional body that is rarely proactive about investigations.” Lewis says if the commission “had all the money in the world, it wouldn’t matter, unless they had the structure — an enforcement division — to do proper investigations.”

The City Ethics Model Code provision below contains the language that allows ethics commissions to act on their own initiative:

*The Ethics Commission may, on its own initiative, determine that a violation of this code may exist and prepare a complaint of its own. The Ethics Commission may also amend a complaint that has been filed with it by adding further allegations, by deleting allegations that would not constitute a violation of this code, or by deleting allegations against persons or entities not covered by this code.*

Note the second part of this provision, which allows an ethics commission to amend a complaint by adding further allegations it discovers in its investigation, and by deleting any allegation that does not state a violation or that is directed toward someone not under the ethics commission’s jurisdiction. The power to add allegations is part of the ethics commission’s power to act on its own initiative.
Limited Enforcement - The most common limit an ethics code/legislative body imposes on an ethics commissions is in their enforcement role because, as Wechsler puts it, “that is what officials fear most, and what they think government ethics is all about.”

Sometimes ethics commissions are permitted only to investigate complaints and make non-binding recommendations to the local legislative body. In this instance, the local legislative body (DAC BOCC in this case) would be tasked with carrying out the enforcement. This could potentially put county commissioners in that awkward and conflicting spot of acting (or not acting) against a colleague. While the recommendation may have come from an independent group, the decision to act on that recommendation (or not) is back in the hands of the governing body. This nullifies the independence of the ethics commission and undermines the system of fairness an independent ethics commission represents.

Director of the New York City Conflict of Interest Board, Mark Davies thinks limiting a commission power is a big mistake, as he said in a recent public statement, “absence of enforcement power over all officials subject to the code makes the ethics board (commission) a toothless tiger.” Davies describes enforcement power to include:

- complete control of investigations and prosecution;
- the ability to commence investigations on the board’s own initiative;
- subpoena power; and
- impose a broad range of penalties, including:
  - civil fines;
  - public censure;
  - private censure;
  - disgorgement of ill-gotten gains;
  - voiding of contracts, licenses, permits, or other action taken in violation of the ethics law; and
  - debarment of violators from future government business.

Furthermore, Davies asserts that “the official’s agency may take disciplinary action, but agency action or inaction should never restrict the power of the ethics board to act. The government’s legal department should be authorized to seek damages resulting from unethical conduct and injunctive relief against future violations.”

State Law Limitations
State laws can also limit a local ethics program’s options. While, the scope of this study did not include a review of the applicable New Mexico state laws, there are state laws such as Gift Act, the Governmental Conduct Act, the Procurement Code, the Lobbyist Regulation Act, the Financial Disclosure Act and Chapter 1, Article 19 NMSA 1978 relating to campaign practices, that clearly fall within the scope of government ethics and do pertain to the administration of a local government ethics commission.

However, some states have other non-ethics laws that may unintentionally (or intentionally be used to) limit an ethics commissions’ scope and powers. Illinois, for instance, has an internal control statute that prohibits elected officials from passing laws that affect other elected
officials. This law gives each elected official the right to run his office independently and therefore, each elected official can choose whether or not to sign over authority to an ethics commission. Other states do not allow ethics commission oversight over all three branches of government. While still others have requirement that there can be no fine without a misdemeanor.

When a local government or an ethics commission feels an improvement is important, but state law does not allow it (or it isn’t clear), it should try to get support for a change to state law. Discuss the matter with not only the local legislative body, but also with local state representatives. A lot of state limitations go back long before government ethics programs became common, and have unintended consequences that the state legislature will be happy to get rid of.

**Criminal Enforcement Limitations**
The goal of government ethics is to stop ethical misconduct before it becomes criminal misconduct. When misconduct becomes criminal in nature, the ethics commission should refer to the appropriate enforcement office and this should be written into the ethics code. Local ethics code should deal with criminal enforcement in one simple, short provision, such as this from the City Ethics Model Code:

> The Ethics Commission may refer possible criminal violations to the appropriate prosecutor. Nothing contained in this code may be construed to restrict the authority of any prosecutor to prosecute any violation of any law.  

In Palm Beach County, Florida, the ethics commissions can enforce punishments for ethics code violations, ranging from reprimands to prosecution by the State Attorney’s Office as a first-degree misdemeanor, with maximum penalties of one year in jail and a $1,000 fine.

**Confidentiality**
One of the reasons local officials and others argue to limit the powers of an ethics commission is because they fear that an investigation would lead to a witch hunt or that the transparency of the process could tar the reputation of the innocent.

Generally speaking, that fear is unlikely to materialize with a truly independent ethics commission. First, it is hard to argue a motive for a witch hunt when ethics commissions members are selected on the basis of no affiliation to local government or politics and local government is not participating in their selection. Second, most ethics commissions take confidentiality seriously, knowing that officials will not seek advice or file a complaint if they fear it will be disclosed to supervisors or the public.

A good practice is to keep advisory opinion requests confidential and release the commission’s opinion with the requestors name omitted. With regard to a possible investigation, most commissions keep the information confidential until a finding of probable cause is made or a petition has been filed, then it would become public. As Davies advises, “To the greatest extent permitted by law, the records and meetings of the ethics board should be confidential…But all decisions and settlements finding a violation must be public if the public is to keep faith in the integrity of the ethics process.”
For employees, it is a common argument to insist that public employees have a right to privacy and that that right supersedes the public’s right to know. But if an investigation of a government employee finds that she violated the code by effectively putting her personal interest ahead of the public interest (the definition of a conflict of interest), then it would be wrong to put her personal interest (her privacy) before the public interest once again.

"To the greatest extent permitted by law, the records and meetings of the ethics board should be confidential...But all decisions and settlements finding a violation must be public if the public is to keep faith in the integrity of the ethics process."

Standards of Proof
While “probable cause” is usually the standard needed to move the complaint into the hearing phase, there is no common standard of proof used to find a violation. Most commissions do not explicitly state the standards of proof needed in their code, some others use the language “beyond a reasonable doubt” (West Virginia), others use “clear and convincing proof” (Pennsylvania) and others have the very difficult task of proving there was a “knowing and willful violation” (Rhode Island).

Wechsler advises programs to provide a standard of proof for finding a violation in the code. He recommends “preponderance of the evidence” standard used by the “best-run ethics programs, such as those in New York City, Los Angeles, San Diego, and Chicago.” This standard allows for protection of the officials while allowing the commission to do their job. When a standard is too high, ethics enforcement becomes either too expensive or toothless.

Administration of Penalties and Discipline
After a complaint has been found to violate the code and before the commission has decided on an appropriate penalty, Wechsler suggests that the commission consider any mitigating and aggravating circumstances. He uses the following considerations as a guide in these deliberations:

- The nature and severity of the respondent’s misconduct
- The duration of the misconduct
- The position and responsibilities of the respondent
- The amount of any financial or other loss to the city as a result of the misconduct
- The value of anything received or sought
- The costs incurred in enforcement
- The efforts taken by the respondent to either correct the misconduct, or to conceal it from, or otherwise deceive or mislead, other officials, the commission, or the public
- Whether or not the respondent sought advice from the ethics commission or officer (or a government attorney if neither is available), and what that advice was (failure to follow advice is a serious aggravating circumstance)
- Whether the violation appears to have been inadvertent, negligent, or deliberate
- Whether the incident appears to have been singular or part of a pattern
- Whether a violation is a first violation, or the respondent has been found to have violated the provision, or other provisions, before
• Whether the conduct appears to have been induced, encouraged, or aided by a superior, colleague, or someone outside of government
• Whether the respondent cooperated with the commission both in terms of his own conduct and in terms of the conduct of others
• Whether the respondent had prior notice or reason to believe, due to the handling of similar situations, that the conduct was prohibited

After taking into consideration the above, an ethics commission (with teeth/enforcement power) can reprimand or censure officials and employees, but can also choose among other penalties, such as fines, suspension or removal, and suits for damages, civil forfeiture, and injunctive relief. Most of these penalties can fall within the ethics commission’s discretion (with a disciplinary action provisions in the code), except those automatic fines for late filing of disclosure, etc. which are set by the ethics code.

Imposing penalties like fines, a suit for damages or the loss of a contract can serve some powerful purposes. For one, it helps to educate by clearly announcing the behavior to be inappropriate. Secondly, it serves as restitution when violations cost the taxpayers money. Thirdly, penalties serve as a form of punishment, deterring the individual and others from engaging in it again.

Wechsler says “it’s appropriate for ethics commission to discipline elected and appointed officials, as well as department and agency heads and many professionals, but clarifies that for most employees it is appropriate that they be “disciplined by the county manager, their supervisor, the human resources department, or by an oversight board, based on an ethics commission’s finding and recommendations” (union members cannot be disciplined except by procedures outlined in union contracts).

Censure and reprimand are among the most common forms of penalties imposed. Some programs referred to as admonition or others as “warning letters”. In distinguishing the two, a censure means that the discipline is made in public and a reprimand is in private. Both are generally given out for serious violations of the code, but do not mean much if they are the only penalty that an ethics commission is permitted to make. Yes, the ethics commission has the power to penalize, but the severity of penalty is not clear when there are no other penalties to compare it with. Censures and reprimands are better tools when they are just one of many penalties in the ethics commissions toolbox.

One of the most important penalties available to an ethics commission is the ability to void transactions, contracts, grants, and permits resulting from an ethics violation. That is the best way Wechsler says, “to ensure that those doing business with local governments have an interest in protecting the public from the irresponsible handling of officials’ conflicting interests.” The decision to void has to be weighed with consideration of whether the loss of those services is in the best interest of the public.

Staffing an Independent Ethics Commission

As a body comprised of volunteer members, an ethics commission generally requires support in getting their work accomplished. There are a number of ways to go about staffing an ethics commission. Among the local ethics commissions researched for this study, the following approaches to staffing were found to be most common.
Borrowing Staff – Many of the less developed government ethics commissions perform their work by borrowing the staff of the local government. They depend on the county attorney to give out advice and/or be the commission’s legal counsel, they use internal trainers or others in the organization to provide ethics training and they utilize administrative staff to prepare for their meetings.

No staff – Sometimes ethics commission members have the time, ability and expertise to staff the commission themselves. Among the members on the commission, there may be those with knowledge in law or training that are willing and able to take on these extra duties in addition to the work of ethics commissioner. Some ethics commissions even actively recruit lawyers to sit on the commission in order to get their legal counsel.

Neither one of the above options are ideal. Borrowing the local government staff pulls those individuals away from the jobs they were hired to do and can create all kinds of conflicts of interest. For instance, if the county attorney is asked to provide legal council to the ethics commission, they cannot be neutral when the respondents in an ethics proceeding are also clients of the county attorney.

Utilizing the local governments training staff to provide ethics training does not necessarily constitute a conflict, but they should be trained in government ethics and if there are multiple trainers, there should be a standardized curriculum and/or train-the-trainer approach so that a consistent and focused message is delivered (See Training section of this report).

Also, while commissioners may be willing and able to conduct periodic trainings or prepare an advisory opinion, it is not realistic to think that a body of volunteers will have the time, skills or expertise to adequately and consistently staff the commission.

Contracting staff – Many programs, especially new and those in less populous areas, contract for most or all of the ethics commission’s staff needs. Contracting for ethics staff is a better option for local government ethics commissions that are committed to having independent staff without divided loyalties or conflicting interests.

A government ethics professional or a lawyer or public administrator who is trained in government ethics, and that does not represent anyone in matters before the particular local government is best to serve in the position of ethics officer. Other expertise that may be needed for the commission’s work, such as legal counsel, hearing officers, investigators, or an advice hotline can also be contracted part-time or as needed.

Independent Ethics Officer
An ethics officer is found in some small and most mid to large size local government ethics programs. In larger programs, sometimes there is an Ethics Commission Executive Director (ED) with ethics officer(s) who report to them, or the ED performs the role of ethics officer. In some programs this role is referred to as an ethics advisor.

Wechsler’s number one recommendation for a local government ethics program is to have an independent ethics officer. He believes the most important role of a government ethics program is to provide advice to prevent conflicts of interests from occurring. In fact, he says
“it is just as important that ethics advice be independent as it is that ethics enforcement be independent. It is very damaging for an ethics adviser to appear to be favoring or disfavoring an official.”

An ethics officer job involves providing informal ethics advice, overseeing the government ethics training, reviewing disclosures and making sure they are complete and submitted on time, investigating allegations, and advising the ethics commission on formal advisory opinions, ethics proceedings, and other matters.

Depending on the skills and resources available to her, the work of an ethics officer can also entail preparing the agendas, memos, and advisory opinions for its meetings, presenting tips, media articles, and complaints, and recommending whether to dismiss or investigate the allegations (or turn them over to other authorities), investigating, and working with the ethics commission on all the aspects of an ethics proceeding.

The critical skills needed to successfully perform this job include being honest, fair, objective, professional and the ability to keep a clear head during times of crisis. In addition, specific training skills in ethics, a good knowledge of organizational culture and decision-making skills might be helpful.

Wechsler recommends that the best approach for smaller jurisdictions is “an ethics commission to contract for a part-time ethics officer or a full-time ethics officer along with nearby local governments.” The advantages of having a full-time ethics officer is that she will be able to go beyond the required and reactive aspects of the job.

**Legal Counsel**

There are times when the ethics commission needs legal counsel. As mentioned above, some ethics commissions obtain this through selecting an attorney to serve on the commission. Others hire or contract for an ethics advisor/officer to provide that service.

When the legal work of the ethics commission is beyond the ethics officer’s knowledge and skills, the ethics commission hires an outside attorney. Large ethics commission programs have attorney’s on staff. As an important assurance of independence from the local government, Wechsler asserts that “ethics commission, and no one else, should hire its own legal counsel and determine counsel’s hours, pay, and benefits.”

**Role of the County Attorney**

Local government attorneys across the country provide ethics advice every day. Many take part in ethics reform and in drafting the ethics code and some are even the designate “go to” for ethics advice. Ethics Commissions, even some independent ones, rely on local government attorneys to provide counsel, to augment the role of ethics adviser, to conduct investigations and many more duties outside their primary role of legal representative to the executive and legislative branches of local government.

Wearing these multiple hats will eventually place the county attorney in a position of conflicting interests. Even those governments that are aware of these conflicts turn to the attorney because s/he is available and they do not have to pay for their services. Also, because people equate ethics laws with other types of laws (see Finding #6), they assume the attorney is best trained to provide ethics advice.
However, most county attorneys do not have formal training in the provision of ethics advice, though they may have experience with government ethics. The American Bar Association’s Center for Professional Responsibility provides free assistance to help lawyers and other legal professionals to understand and resolve ethics questions. The online service, ETHICSearch, is staffed by ABA lawyers to help with citations to relevant rules, ethics opinions, and other ethics resources.72

Wechsler, an attorney by training, has strong opinions on the role of local government attorney’s involved in government ethics programs, which are best summarized in the following passage.

In every community where ethics reform is on the table, someone in a position to be listened to must get up and let officials and the public know that government attorneys are not the best individuals to do the work of ethics reform, in fact, they can be the worst: political animals with conflicts, a legalistic approach to ethics, and the inability to recognize that they should not be involved, which means a basic lack of understanding of government ethics.

The only role that a city or county attorney’s office should play in ethics reform is to be available to answer specific legal questions asked by an ethics commission or task force that does not have its own counsel.73

Ethics Advocates/Liaisons
In some workplaces ordinary employees throughout the government or public officials act as ethics liaisons. These are people who care about the ethical environment and voluntarily commit to improving it. In DAC, the newly formed Ethics Advocates, with the active, vocal support of managers, are well poised to be ethics liaisons and implement aspects of the government ethics program and/or the organizational ethics program.

Ethics liaisons are important to promoting ethics in an organization. For one, they can help to raise awareness through communication (distribute notices and publications, remind officials and employees about disclosure due dates and of training dates). They can also be the ones to raise ethics issues at meetings and in ordinary conversations.

If well trained and coordinated, they can provide the first level of guidance for employees and officials. They can help to discern issues appropriate to government ethics from those that are not and refer them to the appropriate source. Ethics liaisons also conduct in-person training in larger cities and counties.

PNM Resources, a New Mexico-based utility company, has eight ethics liaisons, called ECRs - Ethics & Compliance Representatives, appointed by the Company’s Chief Ethics Officer and serve on a voluntary basis. As their “job description” outlines: “ECRs are in place to provide co-workers with an avenue by which compliance or business integrity issues can be raised.” They also function to “keep a finger on the pulse” of ethics and compliance trends within the organizations where they work and to assist in educational and other program initiatives.74
Recommendation #21: DAC should determine the goals of their government ethics program first. If providing a fair means of accountability and/or building the public’s trust is among their goals, they should establish a fully independent ethics commission.

Local government ethics commissions are still in their infancy. The mid 1970’s, post Watergate era, saw the establishment of many ethics commissions in an attempt to provide better accountability and repair the damage to the publics’ trust. More recently, in response to high-profile misconduct at the state and local level, throughout the country there has been a surge of activity to establish state, local and regional ethics commissions.

New Mexico has not been a leader in this trend. Efforts to establish a state ethics commission have been renewed year after year, but to no avail. New Mexico is one of only 9 states in the U.S. that have no state ethics commission. However, there is nothing to prevent local governments from leading the ethics reform movement in New Mexico and establishing their own systems of accountability, either as single jurisdiction or a joint or regional effort.

In this section of the report, the consultants have attempted to provide DAC with the most up-to-date research on approaches and the best and promising practices used to create a system of accountability. Particular attention was directed to the various ways of setting up and operating an ethics commission, with consideration to the role and efficacy of an independent ethics commission over other approaches.

As the material in this section illustrates, there are many things to consider in determining whether the establishment of an ethics commission is the right step for DAC. There are also many things for DAC to consider if they decide to take no action and keep the current system of accountability in place.

A process to determine whether an ethics commission is appropriate, and if so, how best to set-up and operate it can be aided by examining and discussing the following:

1) identify a goal(s) within the scope of government ethics,
2) design a commission to address a documented goal/need,
3) clearly delineate commission responsibilities shared with other agencies,
4) assure compliance with state laws,
5) commit adequate funds, and
6) protect reporters/complainants (whistleblower provision).

If DAC officials determine that one of the following is among their main objectives, then establishing a fully independent ethics commission would be strongly recommended:

- address the perception of unfairness;
- have a more transparent and consistent approach to accountability; and/or
- build public trust in local government.

It is further recommended that DAC proceed with the following priorities in mind. To this end, the most important components of government ethics program are:

1) Ethics advice through an independent ethics officer.
2) Training of elected officials, county management and all staff to raise awareness so that individuals in the organization know when to seek advice.

3) Disclosure of conflicts of interests.

4) Enforcement by an independent ethics commission.

Having said that, the consultants agree with the conclusion of the authorities cited in this study, that a main objective of a local government ethics programs is the education and prevention of conflicts of interest. To that end, providing ethics advice through the hiring of an independent ethics officer would be our recommendation for the highest priority for reform in DAC's government ethics program.

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16 www.ethics.com
20 “Newsome vs. Alarid”, New Mexico Supreme Court, (90 NM at 797, 1977).
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## Themes Heard in Leadership Interviews

**Doña Ana County**  
September 4, 2012

<table>
<thead>
<tr>
<th>Strengths to Build On</th>
<th>Obstacles to Overcome</th>
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<tbody>
<tr>
<td>Faith in staff</td>
<td>• Low Morale</td>
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<tr>
<td></td>
<td>• Lack of faith in leadership</td>
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<tr>
<td>Most supervisor indicated that they are interested in supporting their employees</td>
<td>• Many staff fear retaliation if report misconduct</td>
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<tr>
<td></td>
<td>• Don't bring it up, nothing will be done about it</td>
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<td></td>
<td>• Many feel leadership is not approachable</td>
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<tr>
<td>There is a united front among the administrative team</td>
<td>• Division between staff and administration. Administration and elected official</td>
</tr>
<tr>
<td></td>
<td>• Different standard for different people</td>
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</tbody>
</table>
Ethics Resources

Books:


Ethics Resources and Advice

American Bar Association, Center for Professional Responsibility, ETHICSsearch http://www.americanbar.org/groups/professional_responsibility.html. (Ethics Resources, ABA Lawyers Support, Citations, Ethics Opinions)


Ethics Resources (continued)

Institute for Local Government www.ca-ilg.org (Sample codes, Ethics Resources, How-To Booklets)

Santa Clara University, Markkula Center for Applied Ethics, http://www.scu.edu/ethics/practicing/focusareas/cases.cfm?fam=GOVN (Government Ethics Case Studies (for training and discussion)

The Sunshine Review; “Doña Ana County Profile,” (http://sunshinereview.org/ (Transparency Website)

The Center for Public Intergrity, State Integrity Investigation, http://www.stateintegrity.org, (Corruption Risk Report Cards and State Rankings)

Reports and Publications

Institute for Local Government, Understanding the Basics of Public Services Ethics; Promoting Personal and Organizational Ethics, Sacramento, CA, 2009.


New Mexico Governor’s Task Force on Ethics Reform: 2007 Report Summary

Ethics Advocates
Roles and Opportunities Worksheet - 1/22/13

Brainstorm ways Ethics Advocates can keep ethics in the forefront of day-to-day work and discussions. (Answers compiled from breakout groups’ scribe notes and flipchart notes. Duplication among groups.)

1. Sponsor interdepartmental discussions on the link between the 6 pillars of character counts and the elements of Government Ethics (transparency, conflicts, campaign finance) create a common language/understanding
2. Promote Culture of Communication – be approachable; all levels, face-to-face
3. Integrate ethics regularly into meetings (every day) - “applied ethics”
4. Leaders vs. managers. Clear distinction.
5. Clearly establish system for reporting misconduct; support from leadership
   o How do you speak out
   o How do you receive feedback/reports (manager/supervisor)
   o How will you follow up
   o How is that communicated
   o Encourage reporting
   o What/how to report before getting to formal process – How to report/raise the question informally
6. Communicate to depts. what we are doing about ethics initiative
7. Report/post disciplined names – make it public; consider some form of this to increase perception of fairness, transparency
8. Make public –commissioner interaction w/ personnel or other items
9. World isn’t black and white, need to look outside the box
10. Look at/use Employee Assistance Program (EAP) as a method of assistance prior to discipline
11. Without transparency we will always look as if we are doing nothing
12. Have to hire outside consultants to solidify or support analysis because of mistrust/fairness.
13. At each staff meeting include an ethics topic with discussion/activity, possibly a success story.
14. Using RAP (Risk Awareness Program) as the unveiling/part of implementation.
15. Possibly have management attend/guest speaker RAP and Sept. meetings
16. Have internal (dept.) ethics Advocates
17. Implement listening sessions (subset of dept.) small groups; employees submit questions in advance – HR involved
18. Brown bag lunches – dept.; ask/Submit questions in advance
   o Recognize employees
   o Tell dept. stories
   o Dept. open houses
   o Continue surveys
   o Management by walking around
19. Staff meetings; include an ethics component [similar to safety briefing (discussion)]
20. Use RAP sessions
21. Increase frequency of staff meetings to talk about ethics, involve managers (maybe like HHS “listening sessions”)
22. Know the “tone in the middle” and lower portions of the organization
23. Interdepartmental meetings (brown bag and breakfast meetings)
24. More/primary reliance on face-to-face communication
25. Clarify role of “leader” vs. “manager” for commissioners, etc.
26. Need ways to convey that reports of misconduct are addressed (Confidentiality vs. Transparency)

What are the components necessary for this effort to be sustainable?

1. Get agreement/commitment from dept. heads to participate
2. Agree upon order or process
3. Provide Incentive: recognition, profile individual/Team, “reward”
4. Publish good and bad
5. Meetings should be part of regular process – not separate, not another initiative
6. Work with Strategic Planning Process – integrate and look to goals for overlap
7. This group at current size or expanded
8. Meet regularly – reports/discussion
   a. Open meetings – others encouraged to “listen in” mtg
9. Schedule a meeting w/ report in mind to determine scope, actions, subcommittees
10. Identify core group of “ethics Advocates” so others know who to go to
11. Core group to lead effort
12. Expand group to include all departments
13. “Regular” meeting schedule – open to all
14. Meet after report is issued
   o To discuss what needs to be done
   o To implement recommendations
   o Including ideas generated by this group
15. Have ways for everyone to identify ethics
16. Regular meetings
17. Core group review report, implementation plan
18. Team approach
19. Why are we here – public service
20. Fiduciary responsibility
21. Use current group in quick implementation
22. Sub groups in dept.
23. Create discussion questions & activities for dept. sub groups
24. Cindy Capanna (trainer) w/ HR should lead this group with support from Jess (PIO) to communicate
25. This group meet set date/time monthly for at least six months
26. Utilize report for direction of this group
27. Establish core values; who benefits? Public trust, public benefit
28. More rank and file in committee; 2 form each dept. (1 manager, 1 rank & file)
29. Need consistent output from this group to each dept.
And the Survey says...

1) Which of the following most closely fits your understanding of the definition of ethics (select one)?

- Behave not to reflect poorly on myself, my family, my employer 13.0%
- It's a matter of individual character; have it or you don't 1.8%
- Do the right thing...being moral is common sense 12.7%
- None of the above fit 9.9%
- Follow laws/policies 13.4%
- Like "The Golden Rule", 6.3%
- Be professional 15.1%
- Behave honorably...in accordance with values and principles 27.8%

Question #: None of the above fit. My definition is...
- All of the above
- My definition of ethics includes all of the above with the exception of option 6.
- Although I do believe ethics is a matter of individual character, I believed ethical behavior can be learned.
- It's really a combination of several of the choices. Just because something may be legal doesn't necessarily make it ethical.
- I feel like it's a combination of all of the above.
- Honesty, integrity, treat customers (internal/external) like you would like others to treat your family.
- All of the above and with integrity
- The first four
- Do the right - even when noone is watching
- A combination of above.
- Moral principles of an individual to know the difference between right and wrong
- Ethics is being professional, honorable, honest, having values and principles, respect and provide excellent customer service. All policies, regulations, ordinances and local, state and federal laws need to be followed
- Follow federal, state, and local laws and policies that govern my position at the county AND do the right thing.
- Essentially, ALL OF THE ABOVE!
- The moral standards of right and wrong conduct.
November 2012 Survey of Doña Ana County Staff & Elected Officials

2/15/13

Question #1 Comments (Continued)

• The closest is 'Do the right thing...;', however, to me ethics is comportment. Treating all people with respect, helping when I am able to help.

Work ethics is being professional, courteous to all, going the extra step to do one's job well (one's job is not stealing, or harrasing, etc.) Moral issues (ethics) impact one's behavior at work, at home, and socially.

• Following laws and policies is a given but ethics is more than what I am legally required to do; it is doing the right thing for the given situation.

A combination of several of the above-listed elements.

• Ethics are what ALL these statements are...

All of the above apply to this, it is not just one thing. It basically comes down to ethics is doing what is right no matter what the cost or outcome.

• Conducting yourself at the highest standard of thought and actions possible at all times.

I think ethics is one on the most difficult topics we deal with. To start with, I view ethics as a multi-faceted issue that is often lumped together under the general term "Ethics". I believe business (or government) ethics is a completely different, but linked, issue than personal ethics. I think that business ethics, especially in government, needs to be separated from personal ethics in many ways. Personal ethics involve too many aspects of personal morals that can, in my view, be contrary to effective business or governmental ethics. While I think ethics is too complex an issue to define in a single sentence, I would say that a combination of "Follow federal, state and local laws and policies that govern my position at the County" AND "Behave in a way that does not reflect poorly on myself, my family, or my employer" is the best way to express my view of business ethics.

Question #1 Comments (continued)

• Do the right thing
• All of the above less #6
• Do the right thing at all times, whether at work, home, or out and about.

Be respectful of others and value everyone as you would like to be valued.

• Don't do anything illegal, immoral, embarassing to yourself or others, or disrespectful.
• Always do right no matter the consequences
• Do the right thing even when nobody is watching.
• Do the right thing for the right reasons for the good of others
• All of the above
2) Ethics Training should be?

* Offered annually. **28.4%**
* Conducted primarily with new-hire orientation **11.9%**
* Never offered, because you cannot teach people to behave ethically **2.8%**
* Mandatory, for all employees and elected officials **50.5%**
* None of the above. Ethics training is worthwhile when... **6.3%**

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**Question #2: Ethics training should be...**

1. 1st option, done with new-hire orientation and 2nd option, annually.
2. It should be conducted during new-hire and offered throughout the year.
3. The real problem even with making it mandatory is most people show up just because they have to and really pay no attention to the material. This in effect makes it a waste of resources. There is enough training going around that is required by the county and the Sheriff's Department that it sometimes becomes overwhelming. Every couple of years would be good, along with new hire orientation.
4. Ethics training should be mandatory for all employees and elected officials. It should be placed on a cycle of 2 to 3 years in order to maintain current standards without overbearing training staff while avoiding becoming redundant and repetitive.
5. It should be given to Sheriff's department administration by-weekly A,B,D
6. At new hire orientation and every five years. I do not feel like our ethics training is valid."volunteer" firefighters are NOT being held to the same standards as paid personnel.
7. How does that make the county ethical?!
8. Mandatory for all employees and elected officials done annually.
9. Mandatory annually AND taught by the County Manager in conjunction with the County Attorney and the HR Director ethics training is useless if not everyone abides by it and do what they want to do as opposed to what they should do and what is morally right.
Question #2 (continued)
10. Ethics is important to be trained on so a employee knows what is expected however, I have seen first hand how certain supervisors feel they are exempt from being ethical towards employees. XX in particular displays horrible treatment towards anyone he dislikes and unfairly manages by fear instead of through leadership. To my knowledge, several complaints have been filed against him yet it would seem that he is protected by the County which gives the appearance that unethical treatment in the work place is acceptable.
11. Should be covered at new hire orientation, including volunteers, and at least annually thereafter for all employees and agents that act on behalf of Dona Ana County.
12. Providing a "training" and documenting that someone attended does not make that person ethical.
13. Ethics is a "culture" starting from the top.
14. I Behaving ethically is a daily and continuous choice.
15. Ethical thinking needs to be reinforced and encouraged regularly among all public servants.
16. Annual if there is a new presentation. Otherwise, it should be offered at the same rate as defensive driving refresher.
17. Standard training for new-hires and annually for all others, but should not be the same one each year.
18. It should also be blended with other training throughout the year.
19. Should be mandatory and yearly

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### Survey: Ethics Information

3) What is the most effective way for you to receive information about ethics? (select all that apply)

* In-person training **63.3%**
* Online trainings **20.4%**
* Staff Meetings **23.6%**
* Emails **16.5%**
* Newsletters/e-newsletters **17.6%**
* Ethics Website with Resources and Tips **14.1%**
* Discussion Groups **19.7%**
* Ethics Officer **10.2%**
Question #3: What is the most effective way for you to receive information about ethics? (select all that apply)

- It can be received in any of the ways listed, but what matters that people follow or adhere to ethical standards.
- Kindergarten
- Upon request only
- Role modeled by supervisors and management everyday
- Management should lead by example and they don't.
- Information (through any source) on edge cases where it is not clear whether behavior is ethical/acceptable, as opposed to examples of obvious ethical lapses. Conducted by an outside expert at a level that is commensurate with average adult intelligence, not at the kindergarten level, as our current program seems to be
- On line site where people can ask or state questions and concerns without retaliation.
- Ethics is something that is taught from childhood. How one continues thru life is primarily determined by teachings/learnings throughout ones lifetime.
- Having a boss that has ethics as a core value
  I don't understand this question...information about what? doing the right thing?
  either you do or you don't.
  In-person Training is the best way, but Supervisors must be trained to be Ethical before they are allowed to train others about Ethics.
- Don't bother all of the above, remind people of the importance of ethics.

Survey: Ethics Information

4) Select TWO options you are most likely to choose if you were to witness misconduct/unethical behavior at work.

* Report it to my supervisor. 72.1%
* Check the code of conduct/policy manual. 18.7%
* Talk with a trusted friend or co-worker. 7.4%
* Address the behavior with the person directly. 28.6%
* Report it to Human Resources. 22.3%
* Talk to an elected official. 2.5%
* Report it anonymously. 15.5%
* Do nothing. It’s none of my business. 15.5%
* Take no action b/c I'll get in trouble or nothing will be done. 12.7%
* Other (please specify) 7.1%
**Question #4:** Select TWO options you are most likely to choose if you were to witness misconduct/unethical behavior at work.

- ...who is the County Attorney. I am confident he will address the situation appropriately, always has.
- Report it but expect nothing to be done about it.
- Document you have reported to your supervisor
- Depending on the employee - if someone relatively unknown then probably relay it to HR, but if someone known and well-liked, then probably nothing.
- Many issues have been brought to management and nothing has been done.
- I have seen, observed the unethical behavior by management in which they retaliate on anyone who brings it to their attention.
- My response would most likely be circumstantial. Depending upon the circumstance at hand I could imagine doing nearly all of the above.
- Hope and pray that sooner or later, the County recognizes the problem and deals with it.
- Report it to the individual's supervisor
- It would depend on the context of the situation.
- You cannot trust Human Resources, they do what management says, right or wrong
- be very careful, all depends who does reporting and who is reported
- Nothing happens to the "golden people" regardless of their unethical conduct.
- Speak with a superior of the witnessed person
- Under current system there is no confidence that anything will be done depending on what and who you are reporting on.

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**Question #4 (continued)**

- Have reported it and nothing was done-guess gambling is legal in the county workforce
- HOPE SOME DAY THERE WILL ACTUALLY BE ETHICAL OFFICIAL IS DONA ANA COUNTY
- DEPENDING ON WHO THE OFENDER IS, BECAUSE IF ITS A FRIEND OF A HIGHER FRIEND, NOTHING WILL BE DONE. THERE SEEMS TO BE THE BIOUS VIRUS WITH SOME DIRECTORS, AND THERE IS RETALIATION
- I have tried to report it but nothing was done so I feel like it would be pointless to report it.
- I dont really know how to answer this but it should be discussed with some one who address the situation and DO something about it
Question #6: I gave this ranking because...(regarding question 6)

- personal experience or knowledge of
- I believe they generally try to be ethical but conflicts of interest often occur
- They are always courteous and polite
- I do not work close enough with any of the elected officials to feel comfortable enough to rate them but from what dealings
- I have had with the elected officials, they appear to conduct county business in a very ethical manner.
- In my position I’ve seen instances of unethical and other types of conduct.
- Personal observation.
- observation
- The elected officials I know are very ethical and are not the problem. The problem the County has with ethics are with the County Manager and the HR director
- based on what i have observed or witnessed.
- All County employees are not treated equally.
- The elected officials I have come in contact with are ethical.
- Observation, awareness of issues and behavior of officials
- Just listening to what is said by some of the elected officials, They may not think they are acting unethical/conflict of interest, but the impression is very clear that they may be.
- I'm generally not aware of the political scene from Dona Ana County.
- I trust very few elected officials.
- I beleive in my elected officials

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Question #6: I gave this ranking because...(regarding question 6)

- I have only personally witnessed one event regarding an elected official. The event occurred on county property during business hours. This elected official has changed for the better, and that is why I gave a higher mark than if I had just recently witnessed the event.
- I feel everyone is given a fair share
- With an elected official your not only doing your duty as an elected official but they also have to look at how the public is going to view/judge them if the decision is favorable or not favorable.
- I am a good judge of character and have spoke to them on a one to one basis. I believe in them. They are good people.
- Don't know all but the ones I do know let the wrong people run their department sometimes which affects my opinion of them.
- I think most of the elected officials are ethical, my concern is with county management, county legal and Human Resource heads.
- Some of the elected officials commonly put themselves in situations where a conflict of interest may occur.
- Favoritism
- They seem to have the county’s best interest at heart.
- They do what is expected of them and not more.
- I beleive that most are ethical and I do not have any reason to say that they are not. Fairness is mostly a matter of perception, but the County has come leaps and bounds as far as professionalism in the past decade or so.
**Question #6: I gave this ranking because... (regarding question 6)**

- I can't speak for all but certain deputies keeping their jobs only because their parent is an elected official is not right.
- Many elected officials tend to affect their personal interests rather than the interests of the County Government as a whole.
- No knowledge of unethical behavior by them.
- The Sheriffs lets admin do what ever they want
- past actions
- the feeling is that the elected officials have a motive or plan for gain in mind.
- Because its the truth
- do as i say, not as i do
- Some are very ethical some are questionable.
- An elected official cannot be ethical 100% of the time. It is their hidden agenda and/or groups they "owe" or they need their vote.
- Politics, pay to play and good old boy network trumps effective and efficient government for its citizens and employees.
- observation
- Their actions and the inability/lack of interest of management to do anything.
- It's difficult to rank an Elected official because they are not here most of the time.
- don't know the elected officials
- Basically, most officials are ethical
- I've seen them do things that were unethical but that they new they could get a way with.
- An Elected Official's duty is to represent the people who elect them.

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**Question #6: I gave this ranking because... (regarding question 6)**

- All Elected Officials that I have met are very professional and do a great job.
- That is how I have seen things to be since I have been here.
- I do not know the elected officials.
- Because we don't deal with them very often and you really rely on what you hear from others regarding certain issues. So based on my dealings and hearsay, I would say that they are ethical for the most part. Unfortunately, it is really hard to say.
- Some not all push personal agenda for personal gain. Others try to push their own agenda through Commission authority.
- Seen it first hand.
- I have interacted with some elected officials and have personally witnessed it.
- Many of the Elected Officials have maintained their seat or have been re-elected and I never heard any complaints so far.
- What I read from the media and my observation.
- experience
- I don't trust them to do the right thing when confronted with the choice.
- Just look at Benevidez.
- They follow different standards. Garrett, Perez and Benevidez. Krahling and Caviness play by the rules.
- I'm neutral on this.
- past experiences!!!!!!!!!!
- Not consistant at DASO
### Question #6: I gave this ranking because... (regarding question 6)

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Elected officials seem to think that a different set of standards apply to them. They are not willing to follow policies because they know there will be no consequences if they don’t comply.</td>
</tr>
<tr>
<td>2</td>
<td>General impression and the feeling among people I work with.</td>
</tr>
<tr>
<td>3</td>
<td>Haven’t seen ups out in the field only office im not in the office</td>
</tr>
<tr>
<td>4</td>
<td>I have to answer but I do not have enough contact with them to know! Because of a certain County Commissioner. I won’t name HER but her initials are LDB. She’s is a liar but she will deny, deny, deny it.</td>
</tr>
<tr>
<td>5</td>
<td>working with them</td>
</tr>
<tr>
<td>6</td>
<td>unethical behavior is seen everyday. I have the opinion that elected officials are aware and do nothing or participate in said behavior.</td>
</tr>
<tr>
<td>7</td>
<td>It’s incredibly difficult (if not nearly impossible) to completely leave individual bias at the door; however, I believe the commission could do better (and should do better).</td>
</tr>
<tr>
<td>8</td>
<td>Not all are bad but the Sheriff has been aware of the problems with this kind of activity yet nothing has been corrected on his behalf.</td>
</tr>
<tr>
<td>9</td>
<td>The majority do what is right, a handful of them don’t!!</td>
</tr>
<tr>
<td>10</td>
<td>I have repeatedly witnessed favoritism and nepotism by my own supervisors and their supervisors and it just seems to be the way the county officials function despite telling us that kind of behaviour is unacceptable.</td>
</tr>
<tr>
<td>11</td>
<td>recent revelations about the former District Attorney</td>
</tr>
<tr>
<td>12</td>
<td>I have witnessed numerous incidents that while not illegal, were clearly and obviously contrary to the interest of the county as a whole.</td>
</tr>
<tr>
<td>13</td>
<td>Nobody is a 10, but DAC elected officials seem to be close.</td>
</tr>
</tbody>
</table>

### Question #6: I gave this ranking because... (regarding question 6)

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I am not in direct involvement with elected officials, however, if what we do in our department is in any way connected to them (and I’m sure it is, we elect officials to do a good job at leading the county; leading assumes that one directs administration of the county). Then, they do a good job, I cannot give them any higher mark, unless I am aware of their specific actions in leading the county.</td>
</tr>
<tr>
<td>2</td>
<td>Issues and incidents that have occurred in the County based on election outcomes, newspapers, articles, decisions and comments made at BOCC Meetings over the past 12 years.</td>
</tr>
<tr>
<td>3</td>
<td>Because I have seen or heard things said.</td>
</tr>
<tr>
<td>4</td>
<td>I gave the ranking because of things that have happened in the Sheriff’s Dept.</td>
</tr>
<tr>
<td>5</td>
<td>officials not doing what’s right for everyday employees. giving themselves pay raises but claiming there isn’t a budget for raises for the rest of the county. looking after only themself</td>
</tr>
<tr>
<td>6</td>
<td>TOO MUCH FAVORITISM AND CONFLICT OF INTEREST AMONG ADMINISTRATIVE POSITIONS AND SUBORDINATES</td>
</tr>
<tr>
<td>7</td>
<td>There appears to be an epidemic of unethical behavior evinced by elected officials in DAC and surrounding areas.</td>
</tr>
<tr>
<td>8</td>
<td>politics guide what they do so they can get re-elected and management follows because the want there support</td>
</tr>
<tr>
<td>9</td>
<td>Favoritism, Bribery, biased opinons</td>
</tr>
<tr>
<td>10</td>
<td>In my opinion many elected officials misuse their position to &quot;pursuade&quot; their views upon the people the work for them.</td>
</tr>
<tr>
<td>11</td>
<td>Because these individuals are elected by the populus, I have to believe in them until other proven. I have not been in this county long enough to decide otherwise.</td>
</tr>
<tr>
<td>12</td>
<td>I prefer not to say due to retaliation!!</td>
</tr>
</tbody>
</table>
Question #6: I gave this ranking because... (regarding question 6)
• It's a toss up, some are more ethical than others.
• This is what I have observed.
• I don't know that much about most of the elected officials.
• Most elected officials behave ethically, however some seem to have a personal agenda that takes precedence over what is ethically right.
• DON'T FOLLOW THEIR OWN CORE VALUES
• when a boss can get someone in trouble just because that person does not see eye to eye with them and they get away with it. You cant trust those put in place to support you.
• I believe some do play favorites and this causes a serious ethical delima. I have also witnessed the elected officials getting a call from a member of the County and right away assuming that person is correct...this is not right
• information which is available to public
• The majority of elected officials do whatever will get them re-elected - regardless of ethics
• because it’s true observed actions of commissioners
• There haven't been any instances elected officials have done to garner bad press recently.
• They don't care about the working class, they have there own agendas, thing that will benefit them only.
• I base this on my own observation and personal interactions with the elected officials.
• I have personally witnessed elected officials act in ways that are guided by their personal morals, but are contrary to ethical behavior for an elected official.
• Personal opinion by observation and communication
• because i believe everyone is aware and putting their best foot forward
• I see them at times doing what's best for themselves or select few

Question #6: I gave this ranking because... (regarding question 6)
• haven't witness anything that would alert me as unethical.
• Knowing most of the ethical issues that occur in his/her department is mandatory for the dept. head.
• Haven't had enough interaction with elected officials to rank them.
• Power goes to ones head and the abuse begins.
• not all elected officials are viewed the same
• Overall, elected officials are ethical. There are some agendas are pursued for personal reasons, not necessarily for the greater good of DAC citizens.
• I watch them
• I am not familiar with all o them, just what you hear and read by the media.
• You cannot measure all elected officials in a group as ethical or not.
• Elected officials primarily concern themselves with re-election. Oftentimes this end justifies any means used to acheive it, to include questionable behavior. This is not intended to blanket all elected officials, per se, but the question is not more specific.
• Great Sheriff
• I have recently relocated and am not familiar enough to give an opinion
• I work directly under an elected official.
• Work with an elected official
• I don't know enough about them so I stayed in the middle on my ranking.
• I believe that some of the elected officials are very ethical; however, I also have seen some that are not so much...nothing specific, just questionable decision-making.
• I do not know many of the elected officials which makes ranking anyone difficult.
Question #6: I gave this ranking because...(regarding question 6)

- Not much experience working with all elected officials
- They are politicians. Lying comes so naturally to them. They use different standards for themselves.
- Some seem to be mostly ethical, and others seem to be highly unethical. The question is far too vague. I can't lump everyone into one category. I believe for the most part they all do what is right. Although I have had less than good experiences with 2 elected people.
- What little contact I have had with elected officials has shown them to be generally honorable people
- I wanted to
- I gave this ranking because of one bad apple, the treasurer, what ever he did or failed to do caused the former deputy treasurer to file a suite against the county. I have the highest respect for all the commissioners but I believe commissioner Perez is the best. She will make time to come to the county to sign paper work. She takes time to listen to everyone not only managers or directors. I believe if every elected official followed Commissioner Perez foot steps we would never be in the paper for wrong reasons. And last but not least what showed how ethical she is was when commissioner Benavidez was but on stand to loose her commission seat Commissioner Perez stood by her side, and that is ethics and morals.
- I've seen favoritism from elected officials on occasion.
- I haven't had much interaction with the Elected Officials directly.
- they get raises, we don't
- Observation of discipline or the lack thereof.
- Probably influenced by election adds

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Question #6: I gave this ranking because...(regarding question 6)

- Saying one thing, doing another. Covering for each other.
- They don't want to be governed by the code of conduct. The only thing I can think of is that they are doing unethical things and don't want to be held accountable.
- elected official have chosen not to get involved in the county personnel matter despite unethical pay, treatment and recognition
- I have not personally witnessed any wrongdoing
- Too much favoritism
- I don't see other departments that often
- I watch commission meetings and they seem to be ethical.
- First Hand Observation!
- sometimes use their office to get things done
- Reason this was given was because of the answers marked on question 5. (Of course taking into consideration that not all elected officials are unethical)
- Good old boy attitude
- have never interacted with officials
- I believe some are ethical, but some are very unethical so I split it in the middle. There areas some that will not hesitate to engage in unethical behavior if it benfits them, and do so on a regular basis.
- based on past issues that have come up.
- MY PERCEPTION.
- thats my opinion
- Personal encounters with elected officials
- Special treatment is widespread throughout the county
Question #6: I gave this ranking because...(regarding question 6)

- THE TRACK RECORD OF THE CURRENT OFFICIALS AND DEPARTMENTAL STAFF WITHIN DONA ANA COUNTY
- Because of the observed way of life within the Sheriff's Office, some people get disciplined others don't.
- My dealings with the elected officials support it. I believe they strive to act in the best interests of the county
- WHEN I SEE THEM OUT OF THE GOV. CENTER, THEY ACKNOWLEDGE MY PRESENCE THEY ARE RESPECTABLE
- Observation
- The Board of County Commissioner's seem ethical, but our bound by politics and what seems to be intimidation. Other elected officials such as the Treasurer, Clerk, Assessor, & Sheriff seem as if they are in the same predicament.
- I believe that elected official should have more communication with his employees in reference to the changes within in the department and why they are being made.
- I don't work with them on a personal bases but if they are elected officials then that's the image they should convey. Lead by example and people will follow.
- Procurement violations Agenda items that are not complete
- Because the Elected County Assessor was allowed to hire his best friend and godparent of his children, which is a direct violation of the Code of Conduct and the County Code of Ethics. I think the elected commissioners are far more ethical.
- Best educated guess.
- I have eyes and ears

Question #6: I gave this ranking because...(regarding question 6)

- They all appear to be ethical and their actions are above board and transparent.
- They don't seem to be thieves
- I know that as a government entity we get a few bad apples every once in a while
- Knowledge of unethical behavior
- WE CURRENTLY ENJOY THE PLEASURE OF WORKING FOR A GREAT GROUP OF ELECTED OFFICIALS, THEY LEAD BY EXAMPLE AND HAVE NOT DONE ANYTHING MAJOR TO REFLECT NEGATIVELY ON THEMSELVES OR THE COUNTY. THEY DIDN'T GET A PERFECT 10 BECAUSE WELL NOBODY'S PERFECT. WE ARE ALL HUMAN AND OCCASIONALLY DO MAKE MISTAKES.
- The Sheriff's office has many problems.
- elected officials tend to do the right thing because they are in public view
- I see conflict of interest or at least the impression of conflict of interest often.
- Based on information available, I was disappointed with their decisions/actions. Some EO refused to be governed by Code of Conduct. Some EO get involved with employee matters.
- I ranked this question a 5 because my interaction with most elected officials shows them to be highly ethical. However, there is one elected official that is highly unethical by allowing his subordinates to behave unethically and does NOTHING about it.
- I am not familiar with elected officials but if they behave like some of the employees then a
- some are not accountable for their actions
- The elected officials get involved in the day to day business
- Conflicts of interest violations and favoritism.
Question #6: I gave this ranking because...(regarding question 6)
- CAUSE THATS HOW I FEEL
- I would like to think they are ALL good but nobody is perfect.
- I have only observed good ethical behaviour.
- DONA ANA COUNTY IS VERY ETHICAL
Aspirational Certification attachment (Institute for Local Government site)
ATTACHMENT A

City of Riverside Code of Ethics and Conduct Officials’ Certification

As a newly elected, appointed, or reappointed official of the City of Riverside, California, I herein certify that I have received a copy of the Code of Ethics and Conduct of the City of Riverside, have been offered training and assistance in understanding this Code, and am aware of the provisions of the Code and its application to my responsibilities. Consistent with the Code, I pledge the following in the conduct of my duties.

As an elected/appointed official, I will aspire:

i. To create a government that is trusted by everyone.
ii. To make decisions that are unbiased, fair, and honest.
iii. To use my public office for service to the public good and not for personal or private gain.
iv. To ensure that I treat everyone with respect and in a just and fair manner.
v. To create a community that affirms the value of diversity.
vi. To ensure that all public decisions I make are well informed, independent, and in the best interests of the City of Riverside.
vii. To maintain a nonpartisan and civic minded local government.
viii. To be adequately prepared for the duties of my office.
ix. To make a diligent effort to attend all regularly scheduled meetings of the board, commission, or committee.

Signed this _____ day of __________________, ______.

____________________________________ Name

____________________________________ Signature

____________________________________ Office
American Society for Public Administration Proposed Code of Ethics

The American Society for Public Administration (ASPA) advances the science and practice of public administration. The Society affirms its responsibility to develop the spirit of responsible professionalism within its membership and to increase awareness and commitment to ethical principles and standards among all those who work in public service in all sectors. To this end, we, the members of the Society, commit ourselves to uphold the following principles:

i. Advance the Public Interest. Promote the interests of the public and put service to the public above service to oneself.

ii. Uphold the Constitution and the Law. Respect and support government constitutions and laws, while seeking to improve laws and policies to promote the public good.

iii. Promote participation. Inform the public and encourage their active engagement in governance. Be open, transparent and responsive, and respect and assist all persons in their dealings with public organizations.

iv. Strengthen social equity. Treat all persons with fairness, justice, and equality and respect individual differences, rights, and freedoms. Act affirmatively to reduce unfairness, injustice, and inequality in society.

v. Fully Inform and Advise. Provide accurate, honest, comprehensive, and timely information and advice to elected and appointed officials and governing board members, and to organizational superiors.

vi. Demonstrate commitment to duty, principle, and personal integrity. Adhere to the highest standards of conduct to inspire public confidence and trust in public service.

vii. Promote Ethical Organizations: Strive to attain the highest standards of ethics, stewardship, and public service in organizations that serve the public.

viii. Strive for Professional Excellence: Strengthen individual capabilities to act competently and ethically and encourage the professional development of others.