

NMPRC NOMINATING COMMITTEE
Thursday, August 11, 2022 at 9:00 am
State Capitol, Room 307

MINUTES OF THE MEETING

I. CALL TO ORDER

The scheduled meeting of the NMPRC Nominating Committee was called to order on August 11, 2022 at 9:10 a.m. by Chairperson Brian Egolf.

II. ROLL CALL

Roll call indicated the presence of a quorum in person, as follows:

MEMBERS PRESENT

The Honorable Brian Egolf, Chairperson
The Honorable Alonzo Baldonado, Secretary
Member Ron J. Lovato
Member Denise Ramonas
Member Cydney Beadles
Member Rikki Seguin
Member William Brancard

III. FINANCIAL DISCLOSURE EDUCATIONAL SESSION: DYLAN LANGE, GENERAL COUNSEL, OFFICE OF THE SECRETARY OF STATE (INFORMATIONAL ITEM)

Ms. Laura Hutchinson, Compliance Officer with the New Mexico Secretary of State presented the Financial Disclosure Educational Session to the Committee.

Ms. Hutchinson said all individuals who are in elected positions must file a financial disclosure every year by January 31. Last year, the State Ethics Committee clarified who was required to making the financial disclosure. Their decision included some new positions that previously were not required to disclose. One of them was "Agency Head" which referred to anyone responsible for making decisions for the State agency.

As a disclaimer, she said this training was only intended to give an overview, not ---to be considered legal advice of an attorney.

She shared the definitions for terms used in the rule including Business, Employment, Financial Interest, Official Act, Person, Public Officer, or Employee. The requirement excluded legislators and judges.

The deadline also was within 30 day of appointment and during the month of January every year thereafter that they hold public office. The disclosure is filed with the Secretary of State. Members of the Nominating Commission are subject to this requirement.

Ms. Hutchinson described the Campaign Finance Information System (CFIS), which has a public side and a private side. It is a secure web-based reporting system.

The CFIS Report included residence and employer information, any gross income more than \$5,000 categorized by guidelines, all business interests and property besides the person's residence, all professional licenses, all board members of for-profit New Mexico businesses. She added that people may edit or add to their report anytime things change for them. When people request printed copies of the report, the State is allowed to redact any private personal information. More information could be found at SOS.Elections@state.nm.us.

IV. OPEN MEETINGS ACT AND INSPECTION OF PUBLIC RECORDS ACT EDUCATIONAL SESSION: JOHN KREINKAMP, OFFICE OF THE ATTORNEY GENERAL (INFORMATIONAL ITEM)

John Kreinkamp, Assistant Attorney General in the Open Government Division, (via Zoom) gave information to the Committee about the Open Meetings Act (OMA) and the Inspection of Public Records Act (IPRA).

The OMA governs the principle that the public is due the most information possible about government affairs, so all meetings of the government are public meetings. Public bodies cannot have closed meetings except by one or more of ten exemptions provided. All meetings must accommodate public-made audio and video recordings. And any meeting of a quorum of members is a public meeting. The OMA applies to all policymaking body of the state or a subgroup. The PRC Nominating Committee is a public body subject to the OMA.

Mr. Kreinkamp next explained what "Rolling Quorum" which refers to communications by phone, text, or emails by a portion of the membership without all being physically present. He described when a rolling quorum might take place and become a violation of the OMA. Mr. Kreinkamp clarified situations suggested by Committee members.

An email chain is most often the violation of rolling quorum. Making an announcement on meeting schedule is not a violation. He added that a subcommittee that was making policy was subject to the OMA rules.

He identified four situations where the OMA does not apply:

1. Social situations without business discussions.
2. When the gathering is not a quorum of members.
3. Accidental chance encounters.
4. Other communications of members not related to business.

He advised the best practice was not to gather as a quorum outside of meetings and Staff should send emails with all members blind copied to prevent a rolling quorum.

Mr. Kreinkamp addressed Meeting Notices next in which members usually don't get involved. He clarified what constitutes adequate notice and listed the requirements, which include posting in a place accessible by the public with at least 10 days' notice for regular meetings, three days' notice for special meetings, and as little as 24-hour notice for emergency meetings. Each notice must include date, time, place, and either have an agenda or how to get a copy of the agenda. The agenda must be posted at least 72 hours in advance. If not posted be then, no meeting can happen.

Mr. Kreinkamp described the requirements for minutes and is to be an item for approval at all meetings.

Mr. Kreinkamp noted the ten exceptions to allow closed sessions, which were quite limited. No actions could be made in a closed session. He shared the procedures to follow when the body decides to have a closed session, including a roll call vote and a statement afterward of what discussion subject was limited to in closed session (not the content of the discussion). He advised the Nominating Committee ought to get a legal opinion about discussions on candidates in closed sessions and a list of all candidates was not required to be put on the agenda. He suggested that "Selection of Candidates to Interview" would be sufficiently specific.

Mr. Kreinkamp said the OMA is enforced by the Attorney General and District Attorneys by statute. He noted that private individuals must provide 15 days' notice for remedial action, leaving time for a special meeting to be called to avoid a lawsuit. The most significant sanction is that the meeting can be deemed invalid when not properly noticed. Typically, that pertains to employment matters.

Mr. Kreinkamp provided an overview of Inspection of Public Records Act (IPRA). This act is premised on the idea that the public is entitled to inspect public records except on a few exceptions.

Upon request, the individual may inspect the record or get a copy of the record. The statute states that public officers and employees are responsible for provide

the records, including photos, emails, etc, as long as they relate to public business.

For the Nominating Committee, request would be made in writing through the PRC and would be valid if it includes the name and address of the requestor. The PRC must respond by providing the record or supply a good reason why it was declined. The reply must be given within 3 days and the record within 15 days, or a letter explaining a delay.

Mr. Kreinkamp briefly noted the eight exceptions that allowed redactions or withholding and shared some examples. A letter of reference on a candidate would qualify for exception. Among personal information, only a date of birth and Social Security number would be withheld.

The Committee thanked Mr. Kreinkamp and Ms. Hutchinson for their clear and helpful presentations.

Mr. Propst said the Approval of the Agenda was inadvertently omitted from the agenda.

APPROVAL OF AGENDA

Member Brancard moved, seconded by Member Beadles, to approve the agenda as amended. The motion was approved on a unanimous 5-0 consensus without objection.

V. APPROVAL OF OPEN MEETING ACT RESOLUTION (ACTION ITEM)

Mr. Propst presented the Open Meeting Act Resolution which was modeled after the PRC OMA Resolution.

Member Beadles requested revisions in the public comment section and distributed written copies to the Committee members. She suggested these for purposes of being more pragmatic and efficient in the public comment section.

On page 4, fourth full paragraph, she requested replacing “Chair” with “Committee” to decide to take someone out of order or allow more than three minutes since it implies some formal action.

On page 4, it says Chair can exercise discretion. She requested to make previous paragraphs consistent with that to change “the Committee” to “the Chair.”

She also felt the Resolution order should be changed to take a dignitary out of order if appropriate. If the speaker is not present, "they forfeit" seemed a little strong. Should say "may forfeit" and any extension of time should be "Chair" and not "Committee." That was the reason behind her proposed changes.

Member Seguin requested a change in the second paragraph in public comment. The draft said commentors must sign up beforehand and she wondered about comments from a remote person or someone who did not sign when entering the room.

On a motion by Chair Egolf and second by Member Beadles the changes she proposed were accepted without objection.

Chair Egolf said his practice would be that a person logged in by Zoom who, in midst of meeting, asked to comment, would be allowed. He suggested the resolution should say in the second to last sentence, "may sign up in advance, or by calling the number, or they may indicate a desire to comment by raising the hand if attending remotely. He suggested considering that amendment later in the meeting.

Several other suggestions were made about the method of requesting to comment.

Member Beadles moved, seconded by Member Seguin, to strike the last two sentences in paragraph 2, of Section G and insert in lieu thereof "public comment shall be allowed from members of the public indicating their desire to offer public comment by their physical presence in the room where the Committee meeting is occurring or by indicating their desire to offer public comment via the virtual communications platform in use for the meeting."

Chair Egolf suggested it say, "Members of the public shall be encouraged to indicate their desire to offer public comment by emailing it to the email address provided in the meeting notice or by calling the phone number provided in the meeting notice.

Member Beadles moved, seconded by Member Seguin, to adopt Chair Egolf's recommended language. The amendment was accepted without vote.

Member Brancard noted the meeting notice says the Nominating Committee will meet in Rm 307, but it should say "or otherwise stated in the final meeting notice."

Mr. Propst agreed. He had been informed the Committee will have this room except on November 14 and specified Room 322 for that meeting.

Chair Egolf accepted, “unless otherwise specified for that meeting in the meeting’s final notice.”

Chair Egolf moved adoption of the Open Meeting Act Resolution as amended three times. Hearing no objection, it was so adopted.

The Committee took a break at 10:48 and reconvened at 11:05 a.m.

Secretary Baldonado chaired this segment of the meeting while Chair Egolf was called away.

VI. APPROVAL OF REQUEST FOR REPRESENTATION BY THE OFFICE OF THE ATTORNEY GENERAL (ACTION ITEM)

The Committee reviewed the proposed letter of request to the Office of the Attorney General.

Member Seguin, suggested to strike “As you know” in the request, and add “k” in “look.”

Secretary Baldonado moved, seconded by Member Beadles, to adopt the letter of request as amended. Without opposition, the motion carried.

VII. APPROVAL OF JOB DESCRIPTION AND RECRUITMENT TIMELINE (ACTION ITEM)

Member Beadles said the draft job description appeared to have a lot of duties inserted coming from the PRC Act and asked the job description needed all of it.

Mr. Propst responded that one of the more senior attorneys asked that the statutory language from the Bill that formed the new Commission be included and some duties of present Commissioners that likely would continue. One draft he got was twice as long and he tried to pare it down to what the Committee might be seeking to submit to the Governor. This draft was intended to start the discussion.

The approved job description will be published in various newspapers and nationally as well perhaps. The proposed timeline was similar, and the Committee may wish to change it according to the Committee meeting schedule.

Member Beadles asked for clarification of paragraph 17 under job duties.

Mr. Propst anticipated they will provide policy direction to him and all PRC Staff. It could be narrowed down.

Member Seguin asked the Committee if this description was just to present the requirements that would get the largest number of applications, or just the legal requirements. She wanted the greatest number of applicants in the pool.

Member Ramonas said she called NARUC for assistance, and they sent some job descriptions currently open in other states. She referenced one from DC that had both qualifications and disqualifications. She merged our draft description with that one and she distributed copies of her merger and commented on how she changed it and why.

Member Brancard agreed with the first part to better understand what a Commissioner does and the jurisdiction. In general, he believed less is better, but he believed adding more information not in the statute would bring more applicants.

Secretary Baldonado suggested the Committee could keep this document but not include all of it in the published ads.

Member Seguin agreed. Her instinct was more to keeping it to the minimum required.

Member Beadles thought the source of those duties should be identified as a place the applicant could go for more detail. The controlling statute should be a separate section.

Secretary Baldonado commented that the culture of today's PRC might change in the future in a different way than it functions today.

Mr. Propst agreed and suggested the Committee might want to stop after page one.

Member Seguin supported Member Ramonas on eligibility requirements. The Committee's job is not to define what the Commissioners are to do but to submit nominations to the Governor. The PRC Act should be cited but on best qualities, it is a balancing act among the members.

Secretary Baldonado asked about listing all the statutes the PRC oversees. He asked how many there were.

Member Beadles began to list some of them. She explained that it is a full-time job, and the Commissioner is not eligible for keeping other employment. She noted they could preside over evidentiary sessions but usually delegate that to

Hearing Examiners (HE) which could take weeks and then the HE submits a Recommended Decision, and the Office of General Counsel advises the Commissioners who have to act on it. They can sit in on hearings, but the hearings take up a lot of time. They also have enforcement authority also. So their role is quasi-executive. She suggested citing the statutes in the posting.

Secretary Baldonado agreed. That way, people could determine if they meet all those qualifications and probably would know what a Commissioner does.

Member Beadles said it should identify Santa Fe as the post for this position.

Secretary Baldonado wondered if that might deter anyone from out of state applying.

The Committee members raised questions about further requirements, including party affiliation, whether they must live in Santa Fe, compared to being in one of the three different counties, whether they could work remotely or must be present for work in Santa Fe, whether a specific salary or salary range would be specified.

Secretary Baldonado concluded that revisions needed to be made and the Committee might not be able to make them without legal counsel. Since the time was approaching for a lunch break, he agreed to consider it.

Chair Egolf returned at 12:02 pm and thanked Secretary Baldonado for chairing the meeting in his absence.

Mr. Propst asked Chair Egolf if the Committee has received any feedback from the Governor's Office about salary.

Chair Egolf said the Governor's Staff are aware of the issue, and it would be good to send a letter to have DFA set a starting salary. He suggested a range of \$150,000 to \$175,000 to keep it in line with Cabinet positions. He could send that letter or ask for formal or informal legal opinions on salary.

Upon favorable comments by Committee members, Chair Egolf agreed to draft a letter asking for a salary amount to use in recruitment.

Member Seguin supported that range from her research with other states and asked if it could be determined during the lunch break to have no delay.

Member Brancard asked whether the announcement that should indicated applicants might be subject to a background check.

Mr. Propst agreed to prepare a revised draft that took the morning's consideration of changes into account and have it ready in the about 90 minutes.

Lunch Break

Chair Egolf asked members to return at 1:45 p.m.

The Committee recessed at 12:10 pm until 1:52 p.m. when all members had returned.

Mr. Propst distributed copies of his draft.

The Committee reconvened at 1:54 p.m.

Chair Egolf acknowledged the "New Notice to Candidates for Discussion" and asked for comments from the Committee.

Secretary Baldonado asked about the statement candidates may be subject to background check.

Mr. Propst proposed it be inserted in paragraph 3.

Regarding the salary request, Chair Egolf pointed out that DFA has authority to set a secretary's salary. In the effort to get this notice out, he suggested saying, "The salary will be set by the Governor as soon as possible." That way we can move forward with an announcement. "Salary will be set at a later date."

Member Seguin suggested the salary will be posted on the website as soon as possible, which would be more efficient, quicker, and more efficient.

Several other minor changes were mentioned by Committee members.

Mr. Propst asked if they are required to send a resume with cover letter, which satisfied the requirements, attached, and put that under item 2.

The Committee members agreed. Other information could be submitted but was not required.

Chair Egolf asked for any concerns about having Staff finish the changes. There were none.

Mr. Propst summarized the changes as: correct typos, on page 2, at the paragraph beginning, applicants required to send cover letter with resume attached that indicates how the application meets the qualifications with reference to the Statute.

Chair Egolf read his letter to the Governor aloud.

His letter to the Governor was approved to be sent.

Because the approval of the announcement was not on the agenda. The Committee members generally agreed with what they had decided and allowed the Staff to finish the announcement content.

Mr. Propst agreed to post it on the PRC Nominating Committee website tomorrow. He said they will publish the announcement in the Albuquerque Journal, Santa Fe New Mexican, and Las Cruces Sun-Times. It may be sent to NARUC and the Institute in Michigan and quite a few who were on the list of those interested in what the PRC does. The PIO will also prepare and send a Press Release Statement about it.

Mr. Propst suggested Chair Egolf also write an op-ed about it.

Chair Egolf agreed and would do that later today.

At the suggestion by Member Beadles, Staff would publicize the notice with Native American leaders in New Mexico including the All Pueblo Council and the Secretary of Indian Affairs.

Chair Egolf announced the Recruitment Timeline starts tomorrow through September.

He reminded the members that the meeting schedule was in the packet as proposed.

It was for meetings on August 29, September 12 and 29, October 3 and 18, November 7 and 8, 2022, as discussed at the last meeting.

Member Seguin moved, seconded by Secretary Baldonado to approve the meeting schedule. Hearing no objection, it was so ordered.

VIII. DISCUSSION OF PUBLIC INPUT PROCESS (INFORMATIONAL ITEM)

Mr. Propst agreed public input is very important and applauded that the Nominating Committee wanted it. He asked the Committee's direction in what form it should take and how it would be most valuable for the August 29 and September 12 meetings.

Chair Egolf said the Legislature has been surprised with the public participating at the Legislative Sessions. The Committee should have a link on the agenda for folks to say they want to participate. He suspected conservation

organizations, the IOUs, etc will share the announcements to them on public input.

Member Ramonas hoped the individual people could give public input and with some level of respect that people are putting themselves out there. She wondered how the Committee could assure some level of respect and dignity will be practiced here.

Chair Egolf agreed and said at the Legislature there was technology used that fixed that problem. The Committee can also help by sharing ground rules.

Member Beadles understood there would be public comment as an item at every meeting, but input would be emphasized and south at these two particular meetings.

Mr. Propst agreed and after the first one, the Committee might decide to do things differently.

Chair Egolf hoped the Committee could get some input from other states on how to proceed. They are not action items so they could be added when requested. And who could make such a presentation.

IX. REPORTS FROM PRC STAFF

Mr. Propst wanted to make sure your emails were working and asked members to let him know if they had any trouble with them. He recalled Member Ramonas suggested last time a portal only available to members and to not be getting emails more than once.

The PRC Staff will schedule more training. He will get name tags and gavel for the Committee and Chair. He provided specified email addresses and if anyone would like designated phones or computers, which could be done also. Finally, he said he would not be present for the September 12 meeting have another staff member in his place.

X. PUBLIC COMMENT

Mr. Rico Gonzales, with EPE, asked if out of state candidates will be able to apply. He asked that it be discussed by the Committee at some time.

Chair Egolf believed the Committee would await an opinion from the PRC or AG.

Mr. Propst hoped it would be the new Counsel from the NMAG Office. He will flag that issue for them to get clarification by the next meeting.

Chair Egolf said he assumed people can reside elsewhere. There is a requirement in the statutes that people must reside in the State of New Mexico. But there was no residency requirement to apply. The Committee could leave that until the interview process and make a recommendation to the Governor.

There were no other public comments.

Member Beadles thanked Mr. Propst and his staff for the way they anticipate everything the Committee needs.

XI. ADJOURNMENT

Having completed the agenda and with no further business to consider, the meeting was adjourned at 2:47 p.m.

Approved by:

Brian Egolf, Chair

Date