

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS**  
**REGULAR MEETING – May 21, 2019**  
**1205 Camino Carlos Rey, Santa Fe, NM 87505**

**Members Present**

Matt Baca	Attorney General, Designee
Brian Colón, Esq.	State Auditor, Office of State Auditor
Ken Ortiz	Secretary, General Services Department
Dan Cordova	Interim Director, State Law Librarian
Anita Tellez	Designee, Department of Cultural Affairs
John Kreienkamp	Attorney General Council, Office of the Attorney General

**Staff Present**

Georgette L. Chavez	Deputy State Records Administrator
Rick Hendricks, Ph. D	State Records Administrator,
Justin Herrera	Financial Specialist, Administrative Services Division (ASD)
Leo Lucero	Director, Records Management Division (RMD)
Peter Chacon	Director, Information Technology Management Division (ITMD)
James Kirby	Information Technology End User Support, ITMD
Thomas Shumaker, Ph.D.	Grants Administrator, Office of the State Historian (OSH)
Felicia Lujan	Director, State Archives of New Mexico (SANM)
Gail Packard	Administrative Assistant, SANM
Lynne Newton, Ph.D.	Archivist, SANM
Tanya Vigil	Bureau Chief, RMD
Jonathan Roybal	Management Analyst, RMD
Matt Ortiz	Director, Administrative Law Division
Rob Martinez	Assistant State Historian, OSH

**Public Present**

Twila Kunde	Department of Health
Christina Peterson	Department of Health
Julie Filatoff	State Treasurers Office
Melanie Majors	New Mexico Foundation of Open Government (NMFOG)
Marivel Baca	New Mexico Crime Victims Reparation
Joanne Ziegler	New Mexico Crime Victims Reparation
Rose Martinez	New Mexico Crime Victims Reparation
Annette Washburn	Department of Health
Joe Stimmel	New Mexico Occupational Safety and Health Administration

**I. OPENING ACTIVITIES**

1205 Camino Carlos Rey | Santa Fe, NM 87507 | [nmcpr.state.nm.us](http://nmcpr.state.nm.us)

**Hon. Hector Balderas**  
*Attorney General*

**Hon. Brian S. Colón**  
*Chairman/State Auditor*

**Hon. Maggie Toulouse Oliver**  
*Secretary of State*

**Debra Garcia y Griego**  
*Department of Cultural Affairs*

**Kenneth Ortiz**  
*General Services Department*

**Daniel Cordova**  
*Interim Director, NM State Law Library*

**A. Call to Order**

Acting Chairman Baca called the meeting to order at 10:00 a.m. Ms. Chavez then called out roll call.

**B. Approval of the Agenda**

Acting Chairman Baca entertained a **MOTION** to approve the agenda. Mr. Cordova **MOVED**, Mr. Colón **SECONDED**; the motion **PASSED UNANIMOUSLY**.

**C. Approval of the Minutes of the February 19, 2019 Regular Meeting**

Mr. Colon noted there was an item that required minor editing on the Ricci & Co. presentation handout and asked that it be corrected

Acting Chairman Baca entertained a **MOTION** to approve the corrected minutes. Mr. Ortiz **MOVED**. And Mr. Colón **SECONDED**. The motion **PASSED UNANIMOUSLY**.

**II. ACTION ITEMS**

**A. Vote on Proposed Commission Rules**

**1. 1.21.2 NMAC Retention and Disposition of Public Records (CPR Rule)**

Acting Chairman Baca called the regular meeting back into session to discuss and vote on the proposed rules. The first item to vote on was the amendment of 1.21.2 NMAC Retention and Disposition of Public Records (CPR Rule). The acting chairman asked if there was any discussion in regards to this amendment. Mr. Cordova stated the retention schedule for 10 years has no context and asked of there were any related time periods to any of the different statutes or rules that this amendment might negatively affect regarding particular circumstances like cold cases etc. Mr. Kreienkamp answered the termination date is not a part of the proposed change of the rule. The amendment only proposes to extend the rule to include toxicology. Mr. Cordova stated he was satisfied with that answer and had no further questions.

Acting Chairman Baca entertained a **MOTION** to approve the amendment of 1.21.2 NMAC Retention and Disposition of Public Records (CPR Rule). Mr. Cordova **MOVED**. Mr. Ortiz **SECONDED**; the motion **PASSED UNANIMOUSLY**.

**2. 1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives (CPR Rule)**

Acting Chairman Baca proceeded to on to vote on the proposed amendment of 1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives (CPR Rule). The acting chairman stated that based on the discussion for the rule hearing, there were legal issues with the language to the rule. In particular, he indicated that the request that a person state a purpose for the use would be in conflict to the provision of IPRA and opened the floor for discussion. Mr. Kreienkamp stated after reviewing the proposed rule he agreed with the comments submitted by Ms. Majors of New Mexico Foundation for Open Government (NMFOG). Specifically, he indicated that asking for photo ID would be in clear violation of IPRA and requiring an explanation of intended use would also be problematic and is not authorized by the Inspection of Public Records Act. Mr. Kreienkamp advised not to move forward with the rule, however, he suggested that the commission vote the rule down or hold it open until the next commission meeting, in order obtain a legal opinion by his office. Mr. Kreienkamp then replied to Mr. Cordova's question in regards to the differences between the Freedom of Information Act (FOIA) and the Inspection of Public Records Act (IPRA). Mr. Kreienkamp explained that FOIA is significantly less open than IPRA since IPRA is written in favor of transparency. He indicated that timing of IPRA requests would be an issue, and although the originating agency may conduct their own review, the ultimate responsibility will be with State Records Center and Archives (SRCA). He explained that SRCA

would need to verify that all redactions would be consistent with the law. Mr. Kreienkamp went on to say that he would like to thoroughly review the comments submitted by NMFOG so he can determine if the rule is salvageable in its current form. Acting Chairman Baca and the commissioners went on to discuss in the length of the legalities of the rule and how to move forward with it. Mr. Colón stated that he would not like incur unnecessary expenses to re-publish the notice in the register and proposed to leave the public comment period open and postpone the revision to the next meeting in August, 2019. Discussion occurred if the public comment period could be re-opened under the current rule making process considering the possible substantial changes.

Mr. Kreienkamp led a lengthy discussion about whether subsequent changes to the proposed rule would meet the logical outgrowth test. If the additional changes are considered a logical outgrowth of the changes that were originally proposed, it will be possible for the commission to vote on the rule at the next meeting. If the changes are not deemed to be a logical outgrowth, the rule making process will have to be initiated again. Mr. Kreienkamp will make a determination after working with SRCA staff and FOG.

Mr. Kreienkamp summarized the procedures for processing IPRA requests, emphasizing that the greatest concern was in redacting too much rather than too little when providing documents to someone making an IPRA request.

Mr. Kreienkamp indicated that parts of the proposed rule could be salvaged and that part could be adopted at the next meeting. He also explained that staff could make bring amendments to the next meeting, after collaborating with NMFOG. The commission proceeded to clarify that SRCA should address each request on a case by case basis. Mr. Cordova and Mr. Colón suggested that until a rule is approved by the commission, that the Office of the Attorney general provide assistance. Mr. Kreienkamp confirmed that he would provide assistance to SRCA.

Acting Chairman Baca entertained a **MOTION** to re-open the comment period and postpone action on proposed amendment on 1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives (CPR Rule) until the next commission meeting on August, 2019. Mr. Colón **MOVED**. Mr. Cordova **SECONDED**; the motion to postpone action until the next commission meeting **PASSED UNANIMOUSLY**.

#### **B. Election of Chair and Secretary**

Acting Chairman Baca stated the appointment of Chair would be decided first. Mr. Colón formally offered to serve as chair. The Acting Chairman asked if anyone else was interested in holding the chairman position. The acting chairman entertained a **MOTION** to elect Mr. Colón chairman. Mr. Ortiz **MOVED** to elect Mr. Colón as chairman. Ms. Tellez **SECONDED**; the motion **PASSED UNANIMOUSLY**.

The chairman moved on to the election of the secretary and asked if anyone would like to volunteer for that position. Mr. Cordova asked the primary function of the secretary. Dr. Hendricks answered that the primary function would be to serve in the absence of the secretary. Acting Chairman Baca volunteered the Attorney General or his designee to continue to act as secretary.

Acting Chairman Baca entertained a **MOTION** to elect the Attorney General to proceed as the secretary. Mr. Colón **MOVED**. Mr. Cordova **SECONDED**. The motion **PASSED UNANIMOUSLY**.

**C. Adoption of Fiscal Year 2020 Commission of Public Records Reasonable Meeting Notice Resolution pursuant to the Open Meeting Act, Section 10-15-1 (D) NMSA 1978**

Acting Chairman Baca asked if any one has any questions regarding the resolution. Dr. Hendricks reminded the commissioners there were numerous changes and pointed out items two through seven. Mr. Kreienkamp stated he reviewed and has verified that it is consistent with the State Rules Act and NMSA. No changes would need to be made.

Acting Chairman Baca entertained a **MOTION** to adopt the 2020 fiscal year OMA resolution. Mr. Colón **MOVED**. Mr. Ortiz **SECONDED**; the motion **PASSED UNANIMOUSLY**.

**D. Acceptance of Deed of Gift**

**1. Robert John Stahl Collection**

Felicia Lujan, Director of State Archives of New Mexico (SANM) presented the Robert John Stahl Collection and recommended it for inclusion into the permanent archives. The collection includes Bill the Kid comics, books, old original newspaper clippings, and memorabilia. The dates found in the collection date from 1951 to 2015. Ms. Lujan went provided information regarding Robert John Stahl’s childhood, his education, and his storied professional career. Ms. Lujan then reiterated her reason for presenting this collection and recommending it for inclusion into archives. Mr. Cordova stated since the comics are old and acidic, he asked if SANM would be consider digitizing them so the public wouldn’t have to handle such fragile material. Ms. Lujan answered by saying this collection is considered “Pop Culture” and would not want to use state funds to digitize the comics since material that is usually digitized, is scholar material. Mr. Colón recommended a review of the gift agreement regarding heirs to the collection and for clarification as to what happens to the collection after the original owner of the collection becomes deceased.

Acting Chairman Baca entertained a **MOTION** to accept the deed of gift from the Robert John Stahl collection. Mr. Colón **MOVED**. Mr. Cordova **SECONDED**. The **motion PASSED UNANIMOUSLY**.

**III. NEW BUSINESS**

**A. Report of the New Mexico Historical Records Advisory Board Regrant Approvals**

Dr. Shumaker, Grants Administrator for the Office of the State Historian presented the following information to the commissioners regarding the re-grant awards decided upon by the New Mexico Historical Records Advisory Board (NMHRAB) during their meeting in May, 2019. He disseminated a spreadsheet providing a brief description of the projects and award amounts. He also provided the intended use of the grant.

<b>Ranking</b>	<b>Grantee Name</b>	<b>Requested</b>	<b>Fund %</b>	<b>Award Amount</b>
1	Pueblo of Zuni	\$8,500.00	100%	\$8,500.00
2	New Mexico Farm and Ranch Heritage Museum	\$8,500.00	94%	\$7,990.00
3	School for Advanced Research	\$6,506.00	90%	\$5,855.40
4	Pojoaque/Poeh Cultural Center	\$7,620.00	87%	\$6,629.40
<b>Total</b>				<b>\$28,974.80</b>

Mr. Cordova asked Dr. Shumaker how the funds are distributed state-wide? Dr. Shumaker explained that the NMHRAB is made up of representatives from different regions of the state. He also stated that applications are received and awards are granted to entities from all areas of the state. Mr. Colón asked Dr. Shumaker the reason why two of the applicants were not awarded funds. Dr. Shumaker provided the names of those applicants and provided an explanation. Mr. Colón also requested that the commissioners receive this information well in advance of the meeting. Mr. Ortiz asked how the NMHRAB advertises these so grants so organizations know how and when to apply. Dr. Shumaker informed the commission that the board takes a multi-faceted, multi-media approach. The notice is posted on the Office of the State Historian website, advertised on radio media, the agencies' Facebook page, and newspapers in multiple cities around New Mexico.

**B. Radon Report from Jay Stimmel, New Mexico Environment Department**

Mr. Stimmel presented his report on the findings for the June, 2018, radon testing. He carefully explained to the commissioners the effects of radon and provided the results. In addition, he provided suggestions to remediate the radon in the building at minimal cost to the New Mexico General Services Department (GSD). He suggested that employees in areas that tested at an elevated level should limit their time in that area; lift their chairs and desks above the floor; refrain from eating and drinking; and utilize respirator masks. He also suggested that GSD fill in the cracks in the slurry wall and vault area. Mr. Ortiz asked Ms. Chavez if he can get in contact with her in the very near future to coordinate a meeting with SRCA and the facilities director as GSD to create a plan of action. She agreed and suggested that a meeting take place before the next radon testing takes place in June, 2019. Mr. Cordova asked there are funds set aside for this particular testing in June. Mr. Ortiz and Ms. Chavez both answered yes and explained where these funds come from to perform the testing. The acting chairman requested that a status update be provided at the next meeting.

**IV. DIRECTORS REPORT**

Dr. Hendricks reported that the agency had 11 vacancies out of 37 positions placing our vacancy rate at 29.7 percent. He provided a list of the all the vacant positions and reported information regarding fiscal year 2019 budget and then provided the divisions highlights.

In the division highlights for Administrative Services Division, Dr. Hendricks informed the commission that State Records Center and Archives received \$953,000 in CBRF funding during the 2019 legislative session. He explained that the funds would be utilized to repair the Santa Fe Records Center roof and explained that quotes were being obtained to procure additional shelving for the archives vaults. Dr. Hendricks also reported that a HVAC system and a Sapphire fire suppression system will be installed.

**V. SCHEDULING OF NEXT MEETING**

Acting Chairman Baca stated the next meeting is scheduled for August 27, 2019.

**VI. ADJOURNMENT**

Acting Chairman Baca entertained a **MOTION** to adjourn. Mr. Colón **MOVED**. Mr. Ortiz **SECONDED**; the motion **PASSED UNANIMOUSLY**.

Submitted by: \_\_\_\_\_  
Dr. Rick Hendricks, State Records Administrator

\_\_\_\_\_  
Date

Attested by: \_\_\_\_\_  
Brian S. Colón, Esq., Commission Chair

\_\_\_\_\_  
Date

Minutes approved on: \_\_\_\_\_