

**MINUTES OF THE
STATE COMMISSION OF PUBLIC RECORDS
REGULAR MEETING
June 19, 2008**

The State Commission of Public Records convened at 9:00 a.m. on Thursday June 19, 2008, at 1209 Camino Carlos Rey, Santa Fe New Mexico.

Members Present

Mr. Evan Blackstone	Representing the Honorable Hector Balderas, State Auditor
Mr. Robert Mead	State Law Librarian
Ms. Deborah Moll	Designee for Arturo Jaramillo, Secretary, General Services Department (GSD)
Ms. Tania Maestas	Representing the Honorable Gary King, State Attorney General
Ms. Patricia Herrera	Representing the Honorable Mary Herrera, Secretary of State
Ms. Frances Levine, Ph.D.	Director, Museum of New Mexico

Members Absent

Mr. Stanley Hordes, Ph.D.	Chairman
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Staff Present

Ms. Sandra Jaramillo	State Records Administrator
Ms. Judi Ross Hazlett	Deputy State Records Administrator
Ms. Antoinette L. Solano	Administrative Assistant
Mr. John Martinez	Director, Administrative Law Division
Ms. Angela Lucero	Director, Records Management Division
Ms. Lori LeRouge	Director, Information Technology Director, Information Technology
Ms. Jackie Garcia	Records Management Analyst, RMD
Mr. Jay Rodriguez	Records Management Analyst, RMD
Mr. Leo Lucero	Bureau Chief, Records Management, RMD
Mr. Stephen Vigil	Assistant Attorney General, Legal Counsel

Guest Present

Mr. Joseph Valdez	President, ARMA Northern NM Chapter
Mr. Jim Brewster	New Mexico Corrections Department
Ms. Cathleen Catanach	New Mexico Corrections Department
Captain Mike Waring	New Mexico State Police Department
Ms. Lynn Hart	New Mexico Medical Board
Mr. Jeffrey Ludwig	New Mexico Professional Surveyors

I. CALL TO ORDER:

Ms. Deborah Moll called the meeting to order at 9:00 a.m. Ms. Moll advised that as Vice-chair she would be presiding over the Commission of Public Records meeting in the absence of the Chair, Dr. Stanley Hordes, who was out of the country. The Chair requested that roll call be taken so the audience would know who was sitting on the Commission. Ms. Antoinette L. Solano administered the roll call. Ms. Deborah Moll, present, Mr. Mead, present, Dr. Levine, present, Ms. Herrera, present Mr. Blackstone, present, Ms. Maestas, present. The roll call confirmed the Commission had a quorum.

II. APPROVAL OF AGENDA:

The Chair entertained a motion to approve the agenda. Ms. Jaramillo asked that the repeal and replacement of 1.18.805 NMAC, Executive Records Retention and Disposition Schedule for the Department of Transportation be removed from the agenda. She informed the Commission that legal counsel for the Department of Transportation had not yet reviewed the schedule. Mr. Mead moved for approval of the agenda as amended, and Dr. Levine seconded the motion. The agenda was approved as amended.

III. APPROVAL OF MINUTES:

The Chair entertained a motion for the approval of the minutes of the April 8, 2008 meeting, Mr. Mead so moved, and Mr. Blackstone seconded, and the motion carried.

IV. ACTION ITEMS:

A. 1.11.2.NMAC, Real Property Electronic Recording

Ms. Jaramillo stated the first order of business was to solicit public comment on the proposed rule, *1.11.2 NMAC, Real Property Electronic Recording*. Ms. Jaramillo advised that the rule being promulgated pursuant to Chapter 14, Article 9A, NMSA 1978, Uniform Real Property Electronic Recording Act, which became law on July 1, 2007. The Act stipulates that, at the discretion of the county clerk, a county may create a system for the electronic recording of real property records provided that the county adheres to standards adopted by the Department of Information Technology and the Commission of Public Records. The rule will be promulgated as a joint rule. She stated that a public hearing was held on Tuesday, June 3; however, due to the response from a number of county clerks who stated they would not be able to attend the hearing because of primary elections held on the same day, the Commission of Public Records would provide the county clerks and other interested parties with a second opportunity to provide comment. Ms. Jaramillo asked Mr. John Martinez, Chair of the Real Property Working Group, to summarize the comments received at the public hearing held on June 3, 2008. Mr. Martinez stated that the working group had researched real property electronic recording standards adopted by other states as well as national standards adopted by the Property Records Industry Association (PRIA) and the Mortgage Industry Standards Maintenance Organization (MISMO), to keep the standards and practices of county clerks in New Mexico in agreement with the standards of national organizations such as PRIA and MISMO.

Mr. Martinez stated that most of the comments received during the public hearing were from county clerks who wished clarification on whether they were required to accept electronic recordings. He stated that the rule allows the clerks to accept electronic records if they so choose and establishes the requirements for acceptance.

The Chair asked if Commissioners had any questions before accepting comments from the audience. Dr. Levine asked if there were any counties currently accepting electronic recordings of real property records. Mr. Martinez replied there were not, but Los Alamos County had indicated it planned to implement an electronic recording system in the near future. Dr. Levine asked if counties were going to implement any back-up procedures for the electronic records. Mr. Martinez stated that real property records are permanent records; therefore, counties will be required to convert electronic records to microfilm for preservation purposes and that master microfilm may be stored the State Records Center and Archives if the county so chooses.

The Chair opened the floor for comments and asked that anyone making a comment begin by stating his or her name and if appropriate, the agency or organization they represented. She advised that comments offered would be considered in preparing the final rule; however, they might or might not be incorporated into the final version and that all questions and comments would become part of the record. Mr. Joseph Valdez, ARMA President of the Northern New Mexico Chapter, commented that the Chapter stood in support of the rule. The Chair thanked Mr. Valdez and asked if anyone else wished to comment. Seeing there were no other individuals wishing to comment, the Chair stated she would proceed to the next order of business.

Ms. Jaramillo stated that the rule would be presented at the next Commission meeting for adoption after all comments were reviewed and considered.

1.18.770, NMAC, Executive Records Retention and Disposition Schedule (ERRDS), Department of Corrections

Ms. Jaramillo stated the first action item for the Commission's consideration was the repeal and replacement of the retention schedule for the Department of Corrections, *1.18.770 NMAC, ERRDS Department of Corrections*. Ms. Jaramillo informed the Commission that the schedule would be presented by Ms. Angela Lucero. Ms. Lucero reminded the Commission that it had tabled the repeal and replacement of the schedule at the April 8, 2008 meeting due to questions the Commission had regarding several records series retention periods. Ms. Lucero introduced Ms. Cathy Catanach, Records Manager, and Mr. Jim Brewster, Legal Counsel for the Department of Corrections, who were in attendance to answer any of the Commission's questions.

Ms. Lucero stated the retention period of one year for *1.18.770.36, Dismissed Disciplinary Report Packets*, had been questioned by the Commission. The Commission felt the retention period was too short and should be increased to 10 years should litigation arise due to disciplinary action taken against an inmate. Mr. Brewster advised that the files were records of administrative hearings in which

charges against an inmate had been dismissed and no misconduct was involved; therefore, no litigation was foreseen as the charges against the inmate had been dismissed.

The Chair stated that if litigation regarding an inmate's conduct went beyond the one year retention period for any purpose, there would be no viable evidence to make a case for any individual. The Chair also reiterated that it would be substantial to the individual to have the record of dismissed charges for a longer period if needed in the future. Mr. Mead stated that any individual might need his or her files beyond a one year period. Mr. Brewster replied that the Department kept all information regarding an inmate's stay at a correctional facility, including information on interactions with other individuals, complaints, charges and so forth in other departmental records. He also stated that, should the occasion occur when information was needed from a dismissed disciplinary report, the same information could be gleaned from the transcripts of the court proceedings involving the disciplinary action. He advised that the Federal retention period for this type of record is three years and that he felt ten years was too long.

The Chair stated the Commission would consider a three year retention period. Mr. Mead asked how many dismissals were asked for in discovery cases. Mr. Brewster stated he had yet to have one discovery request pertaining to dismissed disciplinary reports in his years of working for the Department of Corrections. The Chair asked if the records would be of any use when the Department went through the federal accreditation process. Mr. Brewster replied that he felt they would be of no use and that a three year retention period would be more appropriate than a ten year retention.

The Chair entertained a motion to substitute three-year retention in lieu of a one-year retention period for record series 1.18.770.36, *Dismissed Disciplinary Report Packets*. Mr. Mead so moved, Ms Levine seconded, and the motion carried.

Ms Lucero advised that the two other record series questioned by the Commission were 1.18.770.46, *Inmate Grievance Files*, and 1.18.770.47 *Inmate Grievance Appeal Files*. The suggested retention period for these particular records series was four years; however, the Commission felt ten years was more appropriate.

Mr. Mead asked Mr. Brewster what retention period the Department of Corrections would consider placing on these files. Mr. Brewster replied that tort claims are kept for two years and that was long enough for any lawsuit that might occur. Ms. Lucero stated that a four-years; retention period would be sufficient for both series. The Commission concurred.

The Chair asked why the retention period for mail as described in record series 1.18.770.105, *Inmate Legal Mail Files*, was retained for only five years. Mr. Brewster replied that personal mail and correspondence remained with the inmate, but the retention period of five years was on the inmate mail log.

The Chair thanked the Department of Corrections staff for their participation and guidance. The Chair entertained a motion to repeal and replace *1.18.770 NMAC, ERRDS, Department of Corrections*, as amended. Ms Maestas so moved, Mr. Mead seconded, and the motion carried.

Amendment to 1.18.446 NMAC, ERRDS, New Mexico Medical Board

Ms. Lucero indicated that the amendment to *1.18.446 ERRDS, New Mexico Medical Board* had also been tabled at the April 8, 2008 Commission Meeting. Ms. Lucero stated the Commission had questions on record series *1.18.446.105, NMAC, Malpractice Report Files*. The Commission felt the retention period of ten years was not long enough and felt it should be changed to twenty-five years. Ms. Lucero indicated that Ms. Lynn Hart of the New Mexico Medical Board was in attendance and would be glad to address any questions the Commission might have regarding the proposed retention periods. Mr. Stephen Vigil reported that the Commission had asked him to do some research to determine the statute of limitations on malpractice claims. He stated that medical malpractice actions must be commenced within three years of the act or omission and tort claims within two years.

Ms. Lynn Hart addressed the Commission by stating that the statute of limitations on medical malpractice issues is irrelevant to the Board since malpractice lawsuits are not brought before the Board. The primary mission of the Medical Board is to grant, deny, review, suspend and revoke licenses to practice medicine in New Mexico, and that the malpractice report files are used to monitor malpractice patterns of misconduct. Malpractice issues are tort claim issues, and their retention is twenty five years after action is taken. After the file was closed, she stated that the records were kept for ten years.

The Chair entertained a motion to approve the amended schedule as presented, Mr. Mead so moved, Ms. Maestas seconded, and the motion carried.

Amendment to 1.18.465, NMAC, ERRDS, New Mexico Gaming Control Board

Ms Jaramillo introduced Mr. Jay Rodriguez, who presented the amendment to *1.18.465, NMAC, ERRDS, Gaming Control Board*. Mr. Rodriguez indicated that the amendment had been requested by the Gaming Control Board. The amendment added two new sections, *1.18.465.61 NMAC, Operation Log Files* and *1.18.465.62 NMAC, Application to Transport Gaming Media Files*. The Chair asked how and when information was captured on the log, and if information was entered when a machine malfunctioned, or when a licensee suspected a machine has been tampered with. Mr. Rodriguez replied that all the machines were connected to a central data system which created the log. The Chair asked why the retention period was just one year and shouldn't it be retained for a longer period of time.

Mr. Rodriguez replied that the same information resided in the central system. Dr. Levine asked how long the information was retained in the system. Mr. Rodriguez replied he did not have that information. Ms. Hazlett advised the Commission that the central system was not described in the current schedule. Ms. Jaramillo asked the

Salazar explained how the collection complimented other collections in the custody of the SRCA that document architectural changes to the City of Santa Fe's downtown area. The Chair entertained a motion for approval Mr. Blackstone so moved, Mr. Mead seconded, and the motion carried.

The fourth donation and deed of gift for the Commission's consideration was the *Santa Fe Land Use Resource Center Collection*. The collection consists of twenty one linear feet of records documenting the organization's existence, including land use publications, audio tapes, books, newspaper clippings, and maps. Ms. Salazar stated that the Land Use Resource Center was established in 1996 as a non-profit, community-based, advocacy organization, committed to promoting land use with respect to culture and environment. The Chair entertained a motion for approval. Dr. Levine so moved, Mr. Mead seconded, and the motion carried.

V. OLD BUSINESS

A. Building Issues

Ms. Jaramillo reported that the Property Control Division (PCD) of the General Services Department was finalizing the contract for repair of the foundation and stucco to the records center's north wall. She informed the Commission that the PCD was working with a consultant to recommission the building's HVAC systems. Re-commissioning is the process of confirming HVAC systems are operating as designed.

Strategic Plan 2010-2014

Ms. Jaramillo provided a draft copy of a five-year strategic plan (2010-2014) for the Commission's review. She reported that the SRCA management team, along with the Chair of the Commission, Secretary Jaramillo and the Attorney General, King had met in Taos for a strategic planning retreat facilitated by Dr. Carl Moore. The major issues that were put forth by staff included insufficient resources to carry out the agency's statutory responsibilities due to increase in requests for SRCA services.

Ms. Jaramillo stated she hoped to have a final draft for the Commission's November meeting. Dr. Levine asked if the Commission as a body would need to review the plan or would a subcommittee suffice. Ms. Jaramillo indicated that a subcommittee would be best; however, the final strategic plan should be considered by the full Commission. Dr. Levine stated that she would volunteer her time to be on the subcommittee. The Chair thanked Dr. Levine, and asked how many members should be on the subcommittee. Ms. Jaramillo replied three would be sufficient. Mr. Vigil stated if the number of subcommittee members contained a quorum of the Commission, the subcommittee would be subject to requirements of the Open Meetings Act. Ms. Jaramillo advised that the three would not be a quorum. Ms. Jaramillo indicated that Dr. Hordes would welcome working on the subcommittee along with Dr. Levine and herself.

VI. DIRECTOR'S REPORT

Ms. Jaramillo reported that the SRCA had hosted an interim meeting of the Legislative Land Grant Committee on June 18, 2008. The SRCA reported to the Committee on the work that had been authorized by the Committee through an appropriation to conduct abstracts of state-owned properties that were once part of common land with community land grants. She stated that the abstracts had been completed, and that the agency would contract in FY 09 with a Historian to provide a synopsis of the abstracts.

The Chair asked who was on this Committee. Ms. Jaramillo replied that the Chair, Senator Martinez, and Vice chair, Representative Garcia were present, along with the Speaker of the House, Ben Lujan, Representative Hill, Representative Bandy, Representative Rodella, and Senator Carrarro. She informed the Commission that the SRCA had received an appropriation in FY 09 to digitize the original land grant documents, and that the Land Grant Committee had requested the SRCA include funds in its FY 10 appropriation request, for digitizing land grant documents and for providing access to the documents through the Internet. The Committee was given a tour of the Records Center and the Archives.

Ms. Jaramillo advised the Commission that she, along with John Martinez, would be attending a summit on Intergovernmental Preparedness for Essential Records (IPER) in Atlanta, Georgia, the week of July 21 through July 26 along with representatives from the NM Department of Information Technology. The IPER summit, sponsored by the Council of State Archivists and FEMA, is a national effort to establish Business Continuity of Operations plans in each state that includes training for the preservation and recovery of essential records in the event of a disaster.

Ms. Jaramillo also informed the Commission that she and Dr. Hordes would be appearing before the Capital Building Planning Commission, on July 29, 2008 to discuss the needs of the Albuquerque Records Center. The Albuquerque Records Center is a leased facility that can no longer accommodate the needs of the SRCA. The lease will expire in June of 2010, and the SRCA must initiate planning efforts to determine whether to pursue construction, or lease a new facility. She stated the agency was requesting funds for FY 10 to conduct a feasibility study, and that the study would document all aspects of building requirements and facility needs.

Mr. Vigil asked if there was a clause stating that the lease could be renewed, or renegotiated. Ms. Hazlett stated that the lease was negotiated in 2001 with options to renew for a 10 year period. The ten-year period is to expire in 2010.

Dr. Levine asked if fees could be charged to state agencies for storing records. Ms. Jaramillo replied that storage is free for all state agencies; however, the SRCA can assess fees for storing records that have met their legal retention period, but which agencies refuse to concur in their destruction.

VII. SCHEDULING OF NEXT MEETING

The next meeting of the New Mexico Commission of Public records was scheduled for **Tuesday August 26, 2008** at 9:00 a.m.

VIII. AJOURNMENT

The Chair entertained a motion for adjournment. Mr. Mead so moved and Ms. Herrera seconded the motion. The meeting was adjourned at 11:12 a.m.