



**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS
REGULAR MEETING – March 18, 2014**

The State Commission of Public Records convened at 9:30 a.m. on Tuesday, March 18, 2014 at 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507.

Members Present

Robert J. Torrez	Chair, Historian
Edwynn Burckle	Cabinet Secretary, General Services Department
Patricia Herrera	Designee for the Honorable Secretary of State
Robert Mead, J.D.	State Law Librarian
Sonya Carrasco-Trujillo	Representative for the Honorable Hector Balderas, State Auditor
Mark Reynolds	Representative for the Honorable, Gary King, Attorney General

Members Not Present

Robert Mead, J.D.	State Law Librarian
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Staff Present

John Hyrum Martinez , C.A.	State Records Administrator
Linda Trujillo, Esq.	Deputy State Records Administrator
Antoinette L. Solano	Administrative Assistant
Ruben Rivera	Accounts Payable Officer
Pete Chacon	Information Technology, Chief Information Officer
Leo Lucero	Director, Records Management Division, RMD
Matt Ortiz	Director, Administrative Law Division
Pete Gurule	Management Analyst, RMD
Jennifer Camp	Management Analyst, RMD
Tanya Vigil	Management Analyst, RMD
Melissa Salazar	Director, Archives and Historical Services
Felicia Lujan	Archives Bureau Chief
Dr. Rick Hendricks	State Historian
Samantha Tubbs	Archivist Operational

I. CALL TO ORDER

The Chair called the meeting to order at 9:30 a.m.

II. APPROVAL OF AGENDA

The Chair entertained a **MOTION** to approve the agenda. Secretary Burckle **MOVED** to approve the agenda and Ms. Herrera **SECONDED** the motion. The motion **PASSED** unanimously.

III. APPROVAL OF MINUTES –December 3, 2013

The Chair entertained a **MOTION** to approve the minutes of the December 3, 2013 meeting. The Chair stated that on page 3, the third sentence in the second full paragraph is difficult to understand. Secretary Burckle suggested omitting the word *what*. The Chair also stated that the 4th sentence in the second paragraph on page six, regarding the Marion Jenkins Theatre, was difficult to understand. Secretary Burckle suggested to omit the word *said* and replace it with *ask*. The Chair said it did not answer the question of whether they were motion pictures or plays that were performed. Ms. Salazar

clarified that it was plays that had been performed. The Chair further requested that on page eight the minutes should reflect the prayer that was presented. Mr. Martinez clarified that the next paragraph cited the prayer, which was offered after the motion. The Chair affirmed this was correct. The Chair noted the changes and asked if there were any more corrections. Hearing none; the Chair called for a vote. Secretary Burckle **MOVED** that the December 3, 2013 minutes be approved as amended and Ms. Herrera **SECONDED** the motion. The motion **PASSED** unanimously.

IV. ACCEPTANCE OF THE AUDIT-Fiscal Year 2013

Mr. Martinez stated that the FY 2013 audit was submitted to the State Auditor by the required deadline. The audit was approved by the State Auditor and released in December. He introduced Mr. Daniel Trujillo and Mr. Don Wittman of Kubiak Melton and Associates LLC.

Mr. Trujillo reported that this was the second year the firm had completed an audit for the Commission. He explained that the auditor examines internal control over financial reporting and reviews internal controls for compliance of certain legal and contractual provisions. Mr. Trujillo reported that in accordance with Government Auditing Standards there were no current or prior year findings. The Chair asked if there were any questions or comments.

Secretary Burckle commended agency staff for their hard work and asked if the Commissioners could receive a copy of the audit to review and reiterated that no finding for the past two years was outstanding. Mr. Martinez suggested that the audit be emailed to the Commissioners. Mr. Trujillo also commended the agency staff and looked forward to working with the agency in the future. Mr. Martinez credited his staff and management team for their diligence and hard work. The Chair accepted the Fiscal year 2013 audit.

A. Records Retention and Disposition Schedules

1.18.420 NMAC, Executive Records Retention and Disposition Schedule (ERRDS), Regulation and Licensing Department

Mr. Martinez stated that the first schedule to be considered was an amendment to *1.18.420 NMAC, Regulation and Licensing*, to be presented by Ms. Camp and Ms. Vigil. Ms. Camp informed the Commission that the purpose of the amendment was to schedule and update current records being produced by the department.

The following programs were considered: Financial Institutions, Accountancy Board, Athletic Commission, Interior Design Board, Nursing Home Administrators, Occupational Therapy, Optometry Board, Real Estate Commission, Respiratory Care Board and the Funeral Services Board.

The following is recommended:

- Amend Sections 8, 9, 282, 283, 285, 287, 288, 431 - 433, 457, 458, 497, 500, 751, 791, 809, 821, 826, 1002 - 1006, 1009, 1011, 1020, 1031, 1032, 1071, 1074 - 1076 to reflect current record keeping practices;
- Add Section 810 to reflect a new record series; and
- Repeal Sections 281, 284, 286, 289 - 292, 308 - 310, 434, 446 - 456, 459, 498, 499, 501, 753 - 759, 792, 794 - 801, 810 - 814, 822, 824, 825, 827 - 829, 1001, 1008, 1010, 1012 - 1019, 1033 - 1042, 1072, 1073, 1077 - 1079 and 1081 - 1104 due to the records no longer being created, records series being re-located in licensure or complaint files or furnished by mail to the licensees.

These proposals were reviewed and approved by the Superintendent of the Regulation and Licensing Department, the Commission of Public Records Internal Review Committee and the Regulation and Licensing Department Legal Counsel.

The Chair had a question regarding the strikeouts and underlining; he asked for clarification regarding repealed language. Mr. Martinez clarified that underlining is for new language and repealed is struck out. The Chair asked if the letters change above does each letter below have to be changed. Mr. Martinez stated, yes.

The Chair asked if there were any further comments or discussion. Mr. Reynolds asked if there was any feedback from the boards during the process of drafting the retention schedules. Ms. Camp stated that the Regulation and Licensing department was updated as the schedule was developed. Mr. Martinez said that analysts visit agencies that they are working with and discuss work flow, creation of records and how the schedules are adopted. Each agency then has an opportunity for their legal counsel to review and approve the schedule. The Chair asked if these changes, amendments, deletions are initiated by the agencies. Ms. Camp stated that it was a combination of team work that includes the agency staff and the CPR internal review committee.

The Chair entertained a **MOTION** for adoption of the amendments as well as the repeal and replace. Mr. Reynolds **MOVED** to adopt the proposed amendments and the proposed repeal and replace to **1.18.420 NMAC** and Secretary Burckle **SECONDED** the motion. The Chair asked if there were any further questions or comments. Mr. Reynolds asked if all the Boards and Commissions in the amendment were under Regulation and Licensing; Ms. Camp confirmed they were. The motion **PASSED** unanimously.

1.18.630 NMAC, ERRDS, Human Services Department

Ms. Camp stated the amendment to 1.18.630 NMAC was to the existing retention schedule for the *Human Services Department*. The amendment changes section 91 to conform to Federal guidelines. This modification has been reviewed by staff of the Human Services Department, the CPR Internal Review Committee and legal counsel at the Human Services Department.

Mr. Martinez pointed out that staff had struck out specifics dealing with confidentiality, which is now the practice due to the agency not having authority under the Public Records Act to explain what is confidential for an agency. Instead the schedule state that information may be confidential and it is up to the agency and its legal counsel to determine which statutes or Federal regulation would apply.

The Chair asked if there were any further discussion or comments. Secretary Burckle asked why the retention was bumped from 10 years to 3 years and if this was sufficient. Ms. Camp said that the agency and the CPR staff agreed it was an adequate retention period. Mr. Reynolds stated that he had worked with the Human Services Department general counsel and the modification had been necessary for many years. He said the stipulation comes directly from a Federal regulation dealing with the program, which requires 3 year retention. Secretary Burckle stated that this falls along the Civil Rights Act which consists of the same retention period. Mr. Reynolds stated that this stems from when an individual is denied food stamp benefits they can state that they were denied because of race or gender. He said that holding on to these records for the new 3 year retention period was more reasonable.

The Chair entertained a **MOTION** to approve the amendment of *1.18.630 NMAC, ERRDS, Human Services Department*. Mr. Reynolds so **MOVED** and Ms. Herrera **SECONDED** the motion. The motion **PASSED** unanimously.

1.18.760 NMAC, ERRDS, Adult Parole Board

Mr. Martinez stated that there were two copies of the rule; one is the current rule and the other is what is being proposed as a repeal and replacement. The copies should help members compare the rules. The Chair asked if this was an entire replacement of the rule. Mr. Martinez stated, the entire rule is being repealed and the new rule will replace it. The Chair asked for clarification of the changes. Ms. Vigil stated that there was only one change on section 15, Section 17 changed to reflect current record keeping practices and Section 16 is a new record series not previously captured. Mr. Martinez stated that the earlier version has higher section numbers and the agency is trying to step away from this to adhere to the Administrative Code. He said that is why the replacement has much lower numbers.

The Chair asked if there were any further questions or comments. Ms. Herrera asked if the Parole Board keeps a copy of the rule. Ms. Vigil said that the Board does keep a copy for the investigation section and that one is sent to the Governor's Office. The Chair asked if the original is sent to the Governor's Office. Mr. Martinez stated it was and then it is turned over to the State Archives. The Chair asked if they stay under the Governor's records. Mr. Martinez stated that was correct. Ms. Herrera said a copy is also sent to the Secretary of State's office. The Chair entertained a **MOTION** to approve the repeal and replacement of *1.18.760 NMAC, ERRDS, Adult Parole Board*. Secretary Burckle so **MOVED** and Mr. Reynolds **SECONDED** the motion. The motion **PASSED** unanimously.

VI. New Business

A. Election of a Vice Chair

The Chair asked if there were any nominations for the position of Vice Chair. Mr. Martinez reminded the Commission that the vacancy was because Dr. Frances Levine had been the Vice Chair for many years and she has left New Mexico and moved to the Museum of Missouri. He said the agency has not heard from the Secretary of the Department of Cultural Affairs regarding a replacement. The Chair asked if the Secretary was responsible to appoint the position; Mr. Martinez said yes. The Chair asked if the election could be postponed until there is a full Commission and to give members an opportunity to consider if they could take on the position. The Chair postponed this business until the next meeting.

B. 2014 Legislative Update

Mr. Martinez stated that there had not been much activity. He said that in August Senator Daniel Ivey-Soto has suggested that there may be some bills that were dealing with county records to clarify the authority that the Commission and the State Records Administrator has over counties and county records; this did not come to pass. He said that it could be introduced next year, which would be more appropriate. This leaves the Administrator with the first right of refusal. The counties must still obtain the Administrators consent before destroying any records. He said the retention schedules will remain in the Administrative Code even though technically they do not have the force of law. He spoke with the Association of Counties and they were concerned and felt the counties need consistency.

The Chair asked for clarification. Mr. Martinez stated that counties are not required to send records. However, before destruction of any records they need the approval of the Administrator. Mr. Reynolds asked if many counties follow the process. Mr. Martinez said that some counties are very good at following procedures and some others have not been. The Chair asked Mr. Martinez if there had been a current review of county records. Mr. Martinez said that, yes there had been one done in 2004. He said that the agency also works with the Secretary of State regarding county records.

Mr. Martinez said that Senator Ivey-Soto also stated there might be another bill to overhaul the State Rules Act and that he was hoping the agency would be more involved in the development, but that he was concerned that there were still issues to be reviewed. He said that he would keep the Commission updated

on these particular issues. Secretary Burckle asked Mr. Martinez if he was going to contact the Senator to see where he is with these issues. Mr. Martinez stated that he would contact him and see how he wants to proceed.

Secretary Burckle asked Mr. Martinez if the agency's request for an increase in the budget was approved. Mr. Martinez stated that it was increased. Mr. Martinez told the Commission that both DFA and LFC budget recommendations were below the requested amount. When it was placed in front of the house appropriation and finance committee, Representative Varela asked that an agreement be reached so that the agency receive a higher number than the LFC but lower than the DFA amount. He said that he was grateful for the amount that the agency did acquire and with the increased funding the agency can hire one of the authorized positions that were currently vacant. The Chair asked if these were the positions that were in the Division Director report. Mr. Martinez said, yes. Mr. Martinez also stated that the agency received an extension on the CT funding for the Centralized Electronic Records Repository project. He said that one fund would expire at the end of June 2014 and the other fund is a year from that date. In this session the agency was able to request and obtain a two year extension until 2016.

The Chair asked for clarification of the funding. Mr. Martinez stated the funds were actually held by the Department of Information Technology (DoIT). Secretary Burckle asked how the project has progressed. Mr. Martinez explained that a project manager was on contract and the agency has acquired Trim licenses for testing the system. The RFP is in development and Independent verification is also required. This will be presented to DoIT, State Purchasing and the Department of Finance and Administration (DFA). The Chair asked about the cost of the project. Mr. Martinez stated the pilot project cost is less known, but the entire project would be around \$1.2 million.

Mr. Martinez then discussed the building expansion funding of \$600,000 dollars, which was received in a previous legislative session. This funding is dedicated to pay for Architectural design. A contract is in the stage of being finalized. The funds requested for the expansion of the building were not included in the Capital Outlay budget in the last session. The understanding is that once the agency receives the Architectural plans the construction funding will be considered. In the interim, the Record Center and the Archives are at capacity. Additional shelving has been purchased for the Archives vault. These shelves will be viewed during the tour of the Archives. The Chair asked how many additional linear feet the shelving would give the vault. Ms. Salazar said about 1,000 feet of more shelving. The Chair asked if there were any further questions or comments. Mr. Martinez stated that the agency did not get a single bill analysis request this Legislative session.

VII. OLD BUSINESS

A. Santa Fe Building Update

Mr. Martinez went on to discuss the building update and said that the agency was waiting for the contract to be finalized with the Architectural service that had been selected, once that is finalized the program meetings will be set up between the agency and the State Library.

These meetings will establish the understandings of the programs that are being facilitated in the building and what designated space is being used for these specific programs. He said that library staff had a concern with the changes in space but that he was working with the State Librarian to address the concerns. The goal is to have as little impact on the staff of the library as is possible. The Architectural staff is very cognizant of this issue and will work to keep these specs viable as they proceed with the project. He said that the group is actually two different architectural firms. One is based in Rochester, New York, with staff across the country that specializes in archival storage, and libraries.

The Chair asked if there is a time line. Mr. Martinez replied there is not. Mr. Reynolds asked if the contract was being negotiated. Mr. Martinez said that the General Services Department was in charge of the contract. Mr. Martinez did say he had spoken with Michael Rodriguez, who is the agency contact from GSD, and he is handling the Architectural issues.

Secretary Burckle stated that he would be willing to review the contract and would keep the Commission updated. Mr. Martinez stated that the date to begin will be forth coming. He said that Ms. Devon Skeele the State Librarian was in attendance to answer any questions. He stated that he had been in constant contact with her and they have worked together on all the aspects of the expansion. The Chair welcomed Ms. Skeele and asked if she had any comments. She said that the most important concern was that of the unused space that the State Library had and with the expansion she would like it to be a more feasible work flow for the staff. She said that she was grateful for the team work between the agencies. Mr. Martinez reiterated that this has been a joint effort between the agencies. Secretary Burckle said that the effort of all the groups is very important.

The Chair asked if the issues of electronic records, with fewer books and more electronic media, would be the future of libraries across the nation. Ms. Skeele said that it was a change which has included more of an informal sitting area, with more use of computer access. She said there is still much need for the printed page. The Chair thanked Ms. Skeele.

Mr. Martinez informed the Commission that the building cameras were operating and the building door issues have been taken care of. He also thanked GSD staff.

VII. Directors Report

Mr. Martinez informed the Commission that the agency had some new hired positions. He introduced the new Administrative Law Division Director, Mr. Matthew Ortiz. He congratulated Ms. Jennifer Camp who had been promoted to an advanced Management Analyst position with the Records Management Division. Ms. Samantha Tubbs was the new hired Archivist in the Archives. He said that the Archives were in the process of hiring one other vacant position.

The Chair asked for clarifications on the O and the A analyst positions. Mr. Martinez said that the O is operational and the A is advanced. He said that there was a vacant position in Administrative Law vacated by Ms. Marlene Salvidrez who has taken a position at the State Personnel Office. That position will be filled as well as others that are vacant throughout the agency. He said the agency had some funding for positions but not for all of them and that some of the positions have been delayed. The Chair asked if the five positions of the agency were awaiting budget availability and would it be included in the numbers of the performance measures. Mr. Martinez said, yes that was correct and that this also included the learning curve and the training that pertains to the certain positions.

Secretary Burckle asked if the vacant positions were approved by the Governor. Mr. Martinez stated that the agency was not under an executive order. But the agency does go through approval of Department of Finance and Administration (DFA) and the State Personnel Office. Secretary Burckle said he was concerned because some of the positions have been vacant for a long period of time.

Mr. Martinez informed the Commission of the performance measures that are reported to DFA and LFC.

- Placing the Administrative Code online; the goal is 32 days and performance was within 29 days. Mr. Martinez thanked the ALD staff for its hard work with the last filing being the largest the

division has had. He said that Mr. Art Bransford from the Administrative Law Division had retired.

- Percentage of archival projects and grants that were achieved. This is through the Historical Records Advisory Board that is an adjunct board of the Commission. Funding is through the Federal and State government, which is passed to smaller repositories that are private or nonprofit and local governmental agencies. Mr. Martinez reported that 7 grants had been approved and will finish the end of June. Ms. Meghan Bayer is the agency's grant administrator and works with all of the grantees. Mr. Martinez said few of the deliverables were amended because some of the grantees have run into some timing issues. He said this process is on track and doing well. He also mentioned that there were 17 applications for the next cycle in July. The Board will be meeting in May to review these particular requests. The Chair asked Mr. Martinez what the budget was for the next cycle. Mr. Martinez said that it was just under \$40,000.
- Total records schedules adopted, amended or replaced within a five year period. This relates to the Records Management Division. Mr. Martinez advised the Commission that at the last regular meeting there was a request to have a report included with the agencies with the longest outstanding records that have met retention. He then described the details of the report, the first column is the agency name; average name of the rule for the retention schedule for the particular agency. The next measure was how many record series are actually contained in the rule. The goal of 40% is almost achieved with the number being at 33% due to lack of staffing.
- Number of research documents and educational activities provided by the State Historian. They are required to have 12, but had surpassed that number. Mr. Martinez reported that the Historians office had been presenting for many entities. They will also be speaking at the History Society of New Mexico Conference in May. Dr. Hendricks, the Assistant State Historian and Mr. Martinez would be presenting at the conference.
- Number of times visitors' accessed information from the New Mexico History website. Mr. Martinez report that 53,294 patrons visited in the first quarter and the second quarter there were 30,000. This reduction may be due to the change of websites. The Chair asked if the numbers reflected on both sites. Mr. Martinez said that they were for the new website. The Chair asked if he would clarify what the word unique means. Mr. Martinez explained that if an individual visits a website and then goes back within one half hour it would not be consider unique. Or if they would go to multiple pages within one half hour it would be considered one visit to the website. He said the unique meaning deals with how many times you log in and out of the website which establishes a unique hit on the site.
- Request for access of public records in custody of the Commission within twenty four hours. The goal is 75% and the agency is achieving 100%. The Chair said that he understands that there is an Archivist position being advertised and if filled will the Archives be fully staffed. Mr. Martinez said that there would be one more position open after they hire that position.

Mr. Martinez reported that the agency is meeting 86% (93 out of 105) of the internal measures. The next few pages of the report are the number of records that have been brought to the Record Center for destruction from November 1 through November 31. However, the Record Center has not had a destruction date, due to the lack of staff in the Record Center. He said that the Record Center is at full capacity but there are a few records that have met their retention and that can be destroyed, but until the

vacant position in the Record Center can be filled to assist with this project it is on hold. A destruction process and completion would allow more space for agencies to bring in records for destruction.

Mr. Martinez said he has approved onsite destruction which authorizes agencies to destroy on their site instead bringing them into the Record Center. There are some records that have been transferred from state agencies as well as from Counties and other entities that have been sent to the Archives. The agency has accessioned some private collections that have been sent to the Archives. He also noted that on February 8 both the Historical Records Advisory Board (NMHRAB) and the Office of the State Historian represented the Commission with a display at the State Capitol. He said the display was successful, particularly getting out the information for the NM History website. Ms. Salazar represented the archives and informed visitors about the many services available at the archives. The Chair asked if any schools received information about touring and coming to the Archives.

Ms. Salazar said they had made many contacts and gave out information about the history of the archives. She said it was typically more beneficial when archives staff went to schools. Dr. Hendricks stated that he and the Assistant Historian visit many schools and during the week of April they will be going to a few.

Mr. Martinez announced that the first portion of the Ancestry.com project has been placed on line. Ms. Salazar gave a brief report on the records and the procedures for this project. The Chair stated that this had been talked about being done many years ago and wondered if it was being done by contract services. Mr. Martinez stated that it was under a Memo of Understanding (MOU). He said that Ancestry has access to the agency's records and the caveat is that the agency has free accessibility to the Ancestry website, plus the agency will receive a copy of the electronic version. He said that for the first three years these will be used internally and that after that the records may be posted on the agency website. He stated that Ms. Salazar and the staff have been diligently working to have the records and procedures in place for the project.

The Chair had a question on how the muster rolls were being dealt with and if this is part of the project. Ms. Salazar stated that some of these particular rolls were processed last year and are available on Heritage online. Mr. Martinez stated the ARMA conference which is an organization of Record Managers will be hosted in the building. He said that he will be teaching a half day course on beginning record management. Secretary Burckle asked if this was the National Organization. Mr. Martinez replied that this was the local chapter. He also reported that the Historical Records Advisory Board will be conducting training on April 22, 2013 regarding digitizing records. Secretary Burckle asked if he could be emailed information on the training. Mr. Martinez said that the Board has training every year that assists agencies with records management issues. He said that the agency will also be supporting the Historical Society of New Mexico conference that is being held in Las Vegas, New Mexico on May 1st through the 3rd.

IX. TOUR OF THE BUILDING

The Chair stated the next item was a tour of the building and asked if he had to suspend the meeting. Mr. Martinez stated that the meeting would go into recess. The Chair entertained a **MOTION** to recess the meeting. Secretary Burckle so **MOVED** and Ms. Herrera **SECONDED** the motion. The motion **PASSED** unanimously.

X. SCHEDULING OF NEXT MEETING

At 11:37 am the meeting was back in session. The Chair asked if the members of the Commission would consider moving the meeting from June 24 to June 17, 2014 which would be a week earlier. The Chair

entertained a **MOTION** to reschedule the meeting to Tuesday, June 17, 2014. Mr. Reynolds so **MOVED** and Secretary Burckle **SECONDED** the motion. The motion **PASSED** unanimously.

XI. ADJOURNMENT

The Chair entertained a **MOTION** to adjourn. Mr. Reynolds **MOVED** and Secretary Burckle **SECONDED** the motion. The motion **PASSED** unanimously. The meeting adjourned at 11:39a.m.