

**RESOLUTION NUMBER 2011-\_\_\_\_\_**

**A RESOLUTION CENSURING DISTRICT FIVE COMMISSIONER  
LETICIA DUARTE-BENAVIDEZ**

**Whereas**, on April 15, 2008, the Board of County Commissioners of Doña Ana County adopted Ordinance 235-08, An Ordinance Establishing Human Resources Policies; and

**Whereas**, Ordinance 235-08 charges the County Manager, as Chief Executive Officer of County government, with the exclusive authority to employ, discipline, and discharge employees pursuant to the Ordinance and Human Resource policies adopted pursuant to the Ordinance; and

**Whereas**, on May 28, 2008, the Board of County Commissioners of Doña Ana County adopted Resolution 2008-53 adopting Human Resources Policies and Procedures; and

**Whereas**, Section 2-5 D of those policies and procedures prohibits an elected official from using her position to secure or grant unwarranted privileges, preferences, exemptions or advantages for herself, members of her household or any other person; and

**Whereas**, Section 2-5 N states that violations of county policies may result in an elected official's censure; and

**Whereas**, Section 2-5 O states that elected officials are also governed by the Code of Conduct adopted by the Board of County Commissioners of Doña Ana County, violations of which may result in an elected official's censure; and

**Whereas**, on April 13, 2010, the Board of County Commissioners of Doña Ana County adopted Resolution 2010-40, adopting Doña Ana County Code of Conduct, superseding Resolution 2005-29; and

**Whereas**, the Code of Conduct states: decisions and policy should be made in proper channels; public office should not be used for personal gain; the public should have confidence in the integrity of its government; and

**Whereas**, the Code of Conduct provides: guidelines for ethical standards for all elected officials and employees; protection of County employees from undue influence, threats, fear of threats or reprisal with respect to the work that they perform for the County; and

**Whereas**, the Code of Conduct defines conflict of interest to include relationships with a person that compromises an elected official's loyalty to the County and which may influence or predispose an official action or any use of authority of the office for personal gain; and

**Whereas,** the Code of Conduct requires that elected officials use the powers and resources of public office to advance the public interest rather than as an opportunity to obtain personal benefits or pursue private interests incompatible or competing with the public interest; and

**Whereas,** the Code of Conduct requires that elected officials conduct themselves in a manner that justifies the confidence placed in them by the people of Doña Ana County and at all times maintaining the highest degree of integrity and discharging their public responsibilities ethically; and

**Whereas,** the Code of Conduct requires elected officials and employees to treat each other with utmost respect, decorum and fairness at all times; and

**Whereas,** the Code of Conduct prohibits elected officials and employees from making allegations of misconduct unless they provide the factual bases for their allegations, including the source of their information; and

**Whereas,** the Code of Conduct requires elected officials and employees to make a diligent effort to avoid undue influence and abuse of office in public service; and

**Whereas,** the Code of Conduct recognizes that the formal acts of the Board of County Commissioners of Doña Ana County in adopting the personnel ordinance and resolution, as well as collective bargaining agreements, establish the only procedures for addressing personnel discipline and grievances; and

**Whereas,** it is a violation of the Code of Conduct for any elected official to interfere with these procedures or to attempt to influence the outcome of those processes; and

**Whereas,** it is a violation of the Code of Conduct for an elected official to seek information concerning a personnel action except when it is appropriately discussed in closed session of the Board of County Commissioners of Doña Ana County; and

**Whereas,** the Code of Conduct provides that violations of the Code by an elected official shall be reported to the County Manager, who will investigate and report the results of the investigation to the Board of County Commissioners of Doña Ana County; and

**Whereas,** County Management has received complaints that County Commissioner Leticia Duarte-Benavidez has violated the Code of Conduct and the Human Resources policies and procedures; and

**Whereas,** County Management has conducted the required investigation into those allegations and provides the following information to the Board of County Commissioners of Doña Ana County:

1. In January 2009, Commissioner Duarte-Benavidez met with the County Attorney to discuss her new role as County Commissioner. During this discussion, Commissioner Duarte-Benavidez, who was to serve as the Commission's Chair, asked specific questions about the

Board of County Commissioners' (BOCC) authority to discipline and discharge County employees. She was informed that the BOCC had no role in the discipline and discharge of any County employees, other than the County Manager and County Internal Auditor.

2. In November 2009, County Management learned that Commissioner Duarte-Benavidez had been commenting about employee discipline and reminded her that the BOCC, other than establishing the policy and procedure governing discipline, had no role in the discipline of employees and should refrain from making any statement concerning specific instances of discipline.

3. Between January 26, 2010, and February 24, 2010, District 5 County Commissioner Leticia Duarte-Benavidez contacted County employee 1 seeking information on how to assist one of Commissioner Duarte-Benavidez's family members who is County employee 2 on an employment qualification issue. County employee 1 was not an employee from whom County employees would normally seek such assistance. The normal channels to resolve the issue would have been through the supervisory chain or the Human Resources Department. Commissioner Duarte-Benavidez used her relationship with County employee 1 with whom she served on a County committee to secure assistance on the employment issue.

4. In early April 2010, Commissioner Duarte-Benavidez learned from County employee 3 that County employee 3 was being investigated for work-related misconduct. County employee 3 had served as the campaign treasurer for Commissioner Duarte-Benavidez's campaign in 2008. Commissioner Duarte-Benavidez offered to try to learn more about the on-going investigation. Unknown to Commissioner Duarte-Benavidez, County employee 3 allowed County employee 4 to listen in on the conversation between Commissioner Duarte-Benavidez and County employee 3. The next day, Commissioner Duarte-Benavidez did, in fact, contact the Internal Affairs Investigator (IAI) handling the investigation. The IAI told Commissioner Duarte-Benavidez that it would be inappropriate for them to discuss an on-going investigation. On April 12, 2010, County Management spoke with Commissioner Duarte-Benavidez about her involvement in personnel actions and warned her that her contact with the IAI was inappropriate. Commissioner Duarte-Benavidez denied having had any discussion with the IAI. Shortly after April 12, 2010, Commissioner Duarte-Benavidez again attempted to contact the IAI and left a voicemail message asking the IAI to call her. The IAI did not return the telephone call and reported the voicemail message to County Management.

5. On November 16, 2010, Commissioner Duarte-Benavidez with other Commissioners and senior County staff attended training by the New Mexico Association of Counties at the Doña Ana County Government Center. During this training, one of the issues discussed was the role of the BOCC in personnel matters. It was clearly stated that the BOCC, other than adopting the policies and procedures governing discipline of employees, had no authority in the discipline and discharge of County employees, other than the County Manager and the County Internal Auditor.

6. On February 14, 2011, Commissioner Duarte-Benavidez, while present in the County Government Center, told County employee 5 that one of Commissioner Duarte-Benavidez's friends, former County employee 3 and the Commissioner's campaign treasurer,

had been “set-up” to be fired by other personnel in the department. Commissioner Duarte-Benavidez further stated that her friend had been fired for sharing inappropriate jokes and the exchanging of novelty gifts. On February 28, 2011, County employee 5 to whom Commissioner Duarte-Benavidez made these comments later shared them with County employee 4 who worked in the department to which Commissioner Duarte-Benavidez had referred. County employee 4 had been a witness at the employment hearing of Commissioner Duarte-Benavidez’s friend and campaign treasurer. County employee 4 shared Commissioner Duarte-Benavidez’s comment with County employee 6 who had also been a witness at the same hearing. County employees 4 and 6 reported Commissioner Duarte-Benavidez’s statement and their concern of retaliation for their cooperation/participation in the disciplinary process to the Deputy Assistant County Manager. County employee 4 commented, “This [Commissioner Duarte-Benavidez’s statement] made me sick to my stomach because that situation was already dealt with and put behind us.”

7. On March 4, 2011, Commissioner Duarte-Benavidez first denied any meeting or discussion during the last two years with County employee 5. Later in the same discussion Commissioner Duarte-Benavidez indicated that she had discussed only two topics with County employee 5 with neither being the disciplinary action of former County employee 3. County Management has re-interviewed all the witnesses who confirmed their initial statements.

8. Commissioner Duarte-Benavidez’s statement concerning the bases of discipline of County employee 3 was false and disruptive to the workplace.

**Therefore be it resolved** by the Board of County Commissioners of Doña Ana County that IT hereby finds that Commissioner Duarte-Benavidez has violated Ordinance 235-08, An Ordinance Establishing Human Resources Policies, Resolution 2008-53 adopting Human Resources Policies and Procedures, and Resolution 2010-40, adopting Doña Ana County Code of Conduct, as described above.

**Be it further resolved** by the Board of County Commissioners of Doña Ana County that Commissioner Duarte-Benavidez is hereby censured.

APPROVED AND ADOPTED this \_\_\_\_ day of March 2011.

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

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**Dolores Saldaña-Caviness, Chair, District 2** For/Against

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**Karen G. Perez, Vice-Chair, District 3** For/Against

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**Scott Krahling, District 4** For/Against

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**Leticia Duarte-Benavidez, District 5** For/Against

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**Billy G. Garrett, District 1** For/Against

**ATTEST:**

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**Lynn Ellins**  
**County Clerk**