

This is an amendment to 1.8.1 NMAC, Section 7, adding new Sections 10 through 13, and renumbering old Sections 10 through 16 to Sections 14 through 20 (with no changes), effective 7/1/2023.

1.8.1.7 DEFINITIONS:

A. “Administrative complaint” means an allegation of an actual or potential violation of ethics laws in a sworn complaint, as fully described in Subsection D of Section 10-16G-2 NMSA 1978.

~~[A]~~ B. “Advisory opinions” are opinions written by the commission responding to questions presented by persons authorized under Paragraph 1 of Subsection A of Section 10-16G-8 NMSA 1978 about how laws within the commission’s jurisdiction apply to specific fact situations.

C. “Commission” means the State Ethics Commission.

D. “Ethics laws” means Article IX, Section 14 of the New Mexico Constitution and the statutes set out in Subsection A of Section 10-16G-9 NMSA 1978.

E. “Government agency” means an instrumentality of the United States or an agency of a state, county, or municipal government.

F. “Informal complaint” means an allegation of an actual or potential violation of ethics laws from a person, which is not an administrative complaint.

~~[B]~~ G. “Interagency agreement” means an agreement between the commission and another state or federal agency, including memoranda of understanding, joint powers agreements, and services agreements.

~~[C]~~ H. “Joint powers agreement” as used in this part, has the same meaning as it does in the Joint Powers Agreements Act, Section 1-11-1 NMSA 1978.

I. “Person” means any natural person or organization that is not a government agency.

J. “Referral” means any allegation of an actual or potential violation of ethics laws received by the Commission or its staff from a government agency that is not an administrative complaint.

~~[D]~~ K. Other words and phrases used in this part have the same meaning as found in 1.8.3.7 NMAC or the State Ethics Commission Act, Sections 10-16G-1 to -16 NMSA 1978.

[1.8.1.7 NMAC-N, 1/1/2020; A, 10/27/2020; A 7/1/2023]

1.8.1.10 INFORMAL COMPLAINTS; ASSESSMENTS:

A. Upon receipt of an informal complaint or a referral, the director shall assess whether the informal complaint alleges a violation of the ethics laws and is supported by sufficient evidence for a reasonable person to conclude that a violation has occurred.

B. To complete the assessment provided in Subsection A of this Section, the director may seek information, proactively or in response to investigative leads, relating to activities that constitute violations of the ethics laws. In making an assessment, the director may seek and review information that is available to the public. For example, the director may review public social media accounts, make written requests for records under the Inspection of Public Records Act, and interview witnesses. Assessments may result in:

(1) An investigation pursuant to 1.8.1.11 NMAC;

(2) A request for the Commission’s approval to commence a civil action pursuant to 1.8.1.12 NMAC; or

(3) A determination of no further action pursuant to 1.8.1.13 NMAC.

C. Before initiating an assessment, the director must determine whether the proposed assessment is based on factors other than activities protected by the First Amendment of the United States Constitution or the race, ethnicity, national origin, religion, political affiliation, or other protected status of the assessment’s subject.

[1.8.1.10 NMAC-N, 7/1/2023]

1.8.1.11 INVESTIGATIONS; SUBPOENAS:

A. The director may initiate an investigation if there is an articulable factual basis that reasonably indicates that the subject of the investigation has or in the immediate future will violate the ethics laws and the investigation is a reasonable use of Commission resources and personnel. Investigations may result in:

(1) a request for the Commission’s approval to commence a civil action pursuant to 1.8.1.12 NMAC; or

(2) a determination of no further action pursuant to 1.8.1.13 NMAC.

B. In performing an investigation, the director may take any action available to the director when making an assessment, interview witnesses, and petition a district court for leave to issue and serve subpoenas for

evidence pursuant to Paragraph 2 of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection D of this Section.

C. Upon approval of the Commission, the director may file an action in district court for the issuance, service, and enforcement of subpoenas requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to the investigation. The civil action provided for in this paragraph shall be filed under seal in the district court in the county where a witness resides. If a witness neglects or refuses to comply with a subpoena, the director may apply to the district court for an order enforcing the subpoena and compelling compliance. The district court may impose sanctions or other relief permitted by law, including contempt, if a person neglects or refuses to comply with an order enforcing the subpoena and compelling compliance.

[1.8.1.11 NMAC-N, 7/1/2023]

1.8.1.12 CIVIL ACTIONS:

A. If, after an assessment pursuant to 1.8.1.10 NMAC or an investigation pursuant to 1.8.1.11 NMAC, the director concludes that the subject of the investigation has violated or will violate the ethics laws, the director shall ask the Commission to approve the initiation of a civil action under Subsection F of Section 10-16G-9 NMSA 1978 and any other applicable statutory authority or a referral to the house of representatives for impeachment proceedings under Subsection C of Section 10-16-14 NMSA 1978.

B. The approval of the Commission is required to initiate a civil action or to refer a matter to the house of representatives for impeachment proceedings.

C. In seeking approval from the Commission to initiate a civil action or refer a matter for impeachment proceedings, the director shall provide a written explanation of the factual basis for the proposed civil action and the list of remedies sought. In seeking approval from the Commission to refer a matter to the house of representatives for impeachment proceedings, the director shall provide a written explanation of the factual basis for the proposed referral and explain why a referral under Subsection C of Section 10-16-14 NMSA 1978 is appropriate.

[1.8.1.12 NMAC-N, 7/1/2023]

1.8.1.13 NO FURTHER ACTION ON INFORMAL COMPLAINT:

If the director determines that an informal complaint is unsubstantiated, does not imply a violation of the ethics laws, or that the assessment or investigation is not a reasonable use of Commission resources and personnel, the director may decide to take no further action on the informal complaint and close the matter.

[1.8.1.13 NMAC-N, 7/1/2023]

[1.8.10] 1.8.14 REFERENCE TO OTHER DOCUMENTS: When a rule issued by the commission refers to another rule, regulation or statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute or document.

[1.8.1.9 NMAC-N, 1/1/2020, Rn, 1.8.10 NMAC, 10/27/2020; Rn 1.8.1.14 NMAC, 7/1/2023]

[1.8.14] 1.8.15 INTERPRETATION OF TERMS: Unless the context otherwise requires:

A. Singular/plural. Words used in the singular include the plural; words used in the plural include the singular.

B. Gender. Words used in the neuter gender include the masculine and feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.

C. Permissive/mandatory. May is permissive; shall and must are mandatory.

[1.8.1.10 NMAC-N, 1/1/2020, Rn, 1.8.11 NMAC, 10/27/2020; Rn 1.8.1.15 NMAC, 7/1/2023]

[1.8.12] 1.8.16 USE OF PRESCRIBED FORMS: The director may prescribe forms to carry out specified requirements of these rules or the state ethics commission act. Prescribed forms, or their substantial equivalent, must be used when available, unless these rules state otherwise or the director waives this requirement in writing. The director shall accept filings made on legible copies of prescribed forms.

[1.8.1.11 NMAC-N, 1/1/2020, Rn, 1.8.12 NMAC, 10/27/2020; Rn 1.8.1.16 NMAC, 7/1/2023]

[1.8.13] 1.8.17 ADDRESS:

A. By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

C. By email: ethics.commission@sec.nm.gov.
[1.8.1.13 NMAC-N, 1/1/2020; Rn & A, 1.8.13 NMAC, 10/27/2020; A, 10/26/2021; Rn 1.8.1.17 NMAC, 7/1/2023]

[1.8.14] 1.8.18 COMMISSION MEETINGS: The time, location, and format of commission meetings is determined in accordance with this section.

A. **Time, place, and duration.** The commission chair, in consultation with the director, shall determine the time, place, format, and duration of commission meetings necessary to conduct the commission's business.

B. **Executive Session.** Upon motion and vote of a quorum, the commission may enter into a closed, executive session to discuss matters that are confidential under the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, and as otherwise permitted by the Open Meetings Act, Section 10-15-1 NMSA 1978.

C. **Virtual meetings.** With the consent of the commission chair, the commission may meet virtually via web or teleconference. In the event the commission meets virtually, the meeting should occur on a platform that allows members of the public to observe and participate. At a virtual or telephonic meeting, each commissioner participating shall be identified when speaking and all meeting participants and members of the public attending must be able to hear every person who speaks during the meeting. The commission staff shall record virtual meetings and make the recordings (except for recordings of closed executive sessions) available for public inspection.

D. **Attendance by individual commissioners.** An individual commissioner may attend a physical commission meeting virtually, through telephone phone or web conference provided that each commissioner participating by conference telephone can be identified when speaking, and those attending may hear every person who speaks during the meeting.

[1.8.1.14 NMAC-N, 10/27/2020; Rn 1.8.1.18 NMAC, 7/1/2023]

[1.8.15] 1.8.19 COMPUTATION OF TIME: In computing any period of time prescribed or allowed by these rules, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation, unless it is a Saturday, Sunday or a day on which the state observes a legal holiday or emergency closure. In case of any such closure, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday, legal holiday or emergency closure day is excluded from the computation.

[1.8.1.13 NMAC-N, 1/1/2020; Rn, 10/27/2020; Rn 1.8.1.19 NMAC, 7/1/2023]

[1.8.16] 1.8.20 SEVERABILITY: If any provision of Chapter 8 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 8 of these rules which can be given effect without the invalidated provisions or applications, and to this end the several provisions of Chapter 8 of these rules are hereby declared severable.

[1.8.1.14 NMAC-N, 1/1/2020; Rn, 10/27/2020; Rn 1.8.1.20 NMAC, 7/1/2023]