

STATE ETHICS  
COMMISSION MEETING

June 2, 2023

**PUBLIC MATERIALS**

**PUBLIC MATERIALS**  
**TABLE OF CONTENTS**

---

(1) Agenda for 2023-06-02 Commission Meeting	1
(2) Minutes for 2023-05-12 Commission Meeting	3
(3) Advisory Op. 2023-04	9

**Public Rule Hearing**

(4) General Provisions Rule (1.8.1 NMAC)	14
(5) Administrative Hearings Rule (1.8.3 NMAC)	17
(6) Notary Cases Rule (1.8.5 NMAC)	27



## STATE ETHICS COMMISSION

Hon. William F. Lang, Chair  
Jeffrey L. Baker, Member  
Stuart M. Bluestone, Member  
Hon. Dr. Garrey Carruthers, Member  
Hon. Celia Foy Castillo, Member  
Ronald Solimon, Member  
Dr. Judy Villanueva, Member

June 2, 2023, 9:00 a.m. to 12:00 p.m. (Mountain Time)

New Mexico Department of Agriculture  
(3190 S Espina St, Las Cruces, NM 88003)

Meeting Link: [Here](#)

Meeting ID: 872 3210 7149

Passcode: Hello123

### Public Rule Hearing and Commission Meeting

Chairman Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of May 12, 2023 Commission Meeting

#### Commission Meeting Items

#### Action Required

- |   |     |
|---|-----|
| 4. Advisory Opinion 2023-04<br>(Branch) | Yes |
|---|-----|

#### **Beginning of Public Rule Hearing**

NMSA 1978, § 14-4-5.3 & 1.24.25.13 NMAC

5. Presentation of any written public comments received regarding proposed amendments to rules governing general provisions (1.8.1 NMAC), administrative hearings (1.8.3 NMAC) and notary cases (1.8.5 NMAC); and (ii) any Commission staff recommended amendments to proposed rules

No

Public comment on proposed amendments to rules governing general Provisions (1.8.1 NMAC), administrative hearings (1.8.3 NMAC) and notary cases (1.8.5 NMAC)

No

**End of Public Rule Hearing & Continuation of Commission Open Meeting for Actions on Rules and Other Matters.**

1.24.25.14(D) NMAC.

6. Adoption of amendments to rules governing general provisions (1.8.1 NMAC), administrative hearings (1.8.3 NMAC), and notary cases (1.8.5 NMAC)  
(Farris)

Yes

**Upon applicable motion, Commission goes into executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings) and 10-15-1(H)(7) (attorney client privilege pertaining to litigation).**

- 7. Discussion regarding current and potential litigation:  
(Manierre)
  - a. Resolution No. 2023-02
  - b. Resolution No. 2023-03
- 8. Administrative Matters under Revised Uniform Law on Notarial Acts:  
(Branch)
  - a. 2022-NP-23 (In re commission Saenz)

**Upon applicable motion, Commission returns from executive session**

---

9. Actions regarding current and potential litigation:  
(Manierre)

- a. Resolution No. 2023-02
- b. Resolution No. 2023-03

Yes

10. Administrative Matters under Revised Uniform Law on Notarial Acts:  
(Branch)

- a. 2022-NP-23 (In re commission Saenz)

Yes

11. Discussion of next meeting:  
(Lang)

No

12. Public Comment

No

13. Adjournment

SEC Office  
800 Bradbury Dr. SE,  
Suite 215  
Albuquerque, NM 87106



Hon. William F. Lang  
Jeffrey L. Baker  
Stuart M. Bluestone  
Hon. Garrey Carruthers  
Hon. Celia Foy Castillo  
Ronald Solimon  
Judy Villanueva

## **STATE ETHICS COMMISSION**

### **Commission Meeting Minutes of May 12, 2023 | 9:00AM-12:00PM [Subject to Ratification by Commission]**

#### **1. Call to Order**

Chairman Lang called the meeting to Order at 9:01 AM.

#### **2. Roll Call**

The roll was called; the following Commissioners were present:

Jeffrey L. Baker, Commissioner  
Stuart M. Bluestone, Commissioner  
Hon. Garrey Carruthers, Commissioner  
Hon. Celia Foy Castillo, Commissioner  
Ronald Solimon, Commissioner  
Judy Villanueva, Commissioner  
Hon. William Lang, Chair

#### **3. Approval of Agenda**

Chair Lang sought a motion to approve the agenda. Director Farris sought an amendment to the agenda, adding the settlement in agenda item 8 (2022-015, *Schafer v. Benavidez*) to the open session following executive session. Commissioner Bluestone moved to approve the agenda; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the agenda unanimously.

#### **4. Approval of April 14th Commission Meeting Minutes**

Chair Lang sought a motion to approve the minutes of the April 14<sup>th</sup> Commission meeting. Commissioner Carruthers moved to approve the minutes; Commissioner Foy-Castillo seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the minutes unanimously.

#### **5. Approval of April 20th Commission Meeting Minutes**

Chair Lang sought a motion to approve the minutes of the April 20<sup>th</sup> Commission meeting. Commissioner Foy-Castillo moved to approve the minutes; Commissioner Solimon seconded. After brief discussion regarding providing the minutes to a vote by the temporarily appointed commissioners, Chair Lang conducted a roll-call vote. Commissioner Carruthers and Chair Lang recused from the vote. All other commissioners voted in the affirmative and approved the minutes.

## **Commission Meeting Items**

### **6. Presentation and approval of FY24 operating budget**

Director Farris presented the FY 24 budget, requesting approval from the Commission. Chair Lang sought a motion to approve the FY24 operating budget. Commissioner Carruthers moved to approve the budget; Commissioner Foy-Castillo seconded. Following discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the budget unanimously.

### **7. Public Comment (pre-closed session)**

No public comments were offered.

---

### **---Beginning of Executive Session---**

Chair Lang sought a motion to enter executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings), and 10-15-1(H)(7) (attorney-client privilege pertaining to litigation). Commissioner Carruthers moved to enter executive session; Commissioner Bluestone seconded. After brief discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and entered executive session.

1. Discussion regarding current and potential litigation:  
(*Boyd, Branch, Manierre*)
  - a. Request for authorization to file a civil enforcement action against a local public official for violations of the Governmental Conduct Act
2. Discussion of administrative matters under the State Ethics Commission Act subject to settlement approval:  
(*Randall*)
  - a. Administrative Complaint No. 2022-015
3. Discussion regarding administrative matters under the Revised Uniform Law on Notarial Acts:  
(*Branch*)
  - a. 2022-NP-18 (*In re commission James*)
  - b. 2022-NP-20 (*In re commission Burnett*)
  - c. 2022-NP-21 (*In re commission Gardner*)
  - d. 2022-NP-22 (*In re commission Lopez*)

At this point, Deputy General Counsel Branch left the executive session.

4. Discussion regarding administrative matters under State Ethics Commission Act:  
(*Manierre*)
  - a. Administrative Complaint No. 2023-002
  - b. Administrative Complaint No. 2023-003
  - c. Administrative Complaint No. 2023-004
  - d. Administrative Complaint No. 2023-006

- e. Administrative Complaint No. 2023-008
- f. Administrative Complaint No. 2023-009
- g. Administrative Complaint No. 2023-010
- h. Administrative Complaint No. 2023-011
- i. Administrative Complaint No. 2023-012
- j. Administrative Complaint No. 2023-013
- k. Administrative Complaint No. 2023-016
- l. Administrative Complaint No. 2023-017

At this point, Special Counsel Manierre left the executive session.

*(Farris)*

- m. Administrative Complaint No. 2022-006
- n. Administrative Complaint No. 2022-045

*The matters discussed in the closed meeting were limited to those specified in the motion to enter executive session. After concluding its discussion of these matters, the Commission resumed public session upon an appropriate motion.*

**---End of Executive Session---**

**7. Authorization of Civil Actions**

- a. Commission authorization of civil action regarding violations of the Governmental Conduct Act by a local public official
  - i. This item was removed from the agenda and meeting due to the recusals of two Commissioners. It will be on a future meeting agenda.

**8. Approval of Settlement in Administrative Matter**

Deputy General Counsel Randall sought the following motion in the following administrative matter:

- In administrative case 2022-015, motion to approve the settlement agreement: Commissioner Foy-Castillo moved as stated above; Commissioner Bluestone seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.

**9. Administrative Matters under Revised Uniform Law on Notarial Acts**

Deputy General Counsel Branch asked the Commission for the following motions on the following RULONA cases:

- **In 2022-NP-18, in re commission James, motion to issue a dismissal of the complaint:** Commissioner Baker moved as stated above; Commissioner Carruthers seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In 2022-NP-20, in re commission Burnett, motion to approve the settlement agreement:** Commissioner Foy-Castillo moved as stated above; Commissioner

Carruthers seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- **2022-NP-21, in re *commission Gardner*, motion to issue a dismissal of the complaint:** Commissioner Bluestone moved as stated above; Commissioner Foy-Castillo seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In 2022-NP-22, in re *commission Lopez*, motion to approve the settlement agreement:** Commissioner Carruthers moved as stated above; Commissioner Bluestone seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

**10. Actions on Administrative Complaints Nos. 2023-002, 2023-003, 2023-004, 2023-006, 2023-008, 2023-009, 2023-010, 2023-011, 2023-012, 2023-013, 2023-016, 2023-017, 2022-006 and 2022-045:**

Special Counsel Caroline Manierre asked the Commission for the following motions on the following administrative cases:

- **In administrative case 2023-002, motion for an order of dismissal due to a lack of jurisdiction:** Commissioner Carruthers moved as stated above; Commissioner Foy-Castillo seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.
- **In administrative case 2023-003, motion for an order of dismissal due to a lack of jurisdiction:** Commissioner Foy-Castillo moved as stated above; Commissioner Villanueva seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.
- **In administrative case 2023-004, motion for an order of dismissal due to a lack of jurisdiction:** Commissioner Bluestone moved as stated above; Commissioner Villanueva seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.
- **In administrative case 2023-006, the matter was tabled to a later meeting.**
- **In administrative case 2023-008, motion for an order of dismissal due to a lack of jurisdiction:** Commissioner Carruthers moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.
- **In administrative case 2023-009, motion for an order of dismissal due to a lack of jurisdiction:** Commissioner Carruthers moved as stated above; Commissioner Foy-Castillo seconded as stated above. Chair Lang conducted a roll-call vote. Chair Lang recused. All other commissioners voted in the affirmative and approved the motion unanimously.
- **In administrative case 2023-010, motion for an order of dismissal due to a lack of jurisdiction:** Commissioner Bluestone moved as stated above; Commissioner Villanueva seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.



- **In administrative case 2023-011, motion for an order of dismissal due to a lack of jurisdiction:** Commissioner Carruthers moved as stated above; Commissioner Foy-Castillo seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.
- **In administrative case 2023-012, motion for an order of dismissal due to a lack of jurisdiction:** Commissioner Bluestone moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.
- **In administrative case 2023-013, motion for an order of dismissal due to a lack of jurisdiction:** Commissioner Carruthers moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.
- **In administrative case 2023-016, motion for an order of dismissal due to a lack of jurisdiction:** Commissioner Bluestone moved as stated above; Commissioner Carruthers seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.
- **In administrative case 2023-017, motion for an order of dismissal due to a lack of jurisdiction and to refer the matter to the Florida Commission on Ethics:** Commissioner Carruthers moved as stated above; Commissioner Bluestone seconded as stated above. Chair Lang conducted a roll-call vote. All commissioners voted in the affirmative and approved the motion unanimously.

Director Farris asked the Commission for the following motions on the following administrative cases:

- **In administrative case 2022-006, motion for an authorization to seek a subpoena:** Commissioner Carruthers moved as stated above; Commissioner Villanueva seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Baker, Carruthers, Foy-Castillo, Solimon, Villanueva and Chair Lang voted in the affirmative. Commissioner Bluestone voted in the negative. The motion was approved.
- **In administrative case 2022-045, motion for an authorization to seek a subpoena:** Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. Commissioners Baker, Carruthers, Solimon, and Villanueva voted in the affirmative. Commissioners Bluestone, Foy-Castillo, and Chair Lang voted in the negative. The motion failed.

#### 11. **Selection of Next Meeting**

Chair Lang confirmed that the next meeting would take place on June 2, 2023. The meeting will be held at the New Mexico Department of Agriculture's office on New Mexico State University's campus in Las Cruces, with virtual participation options available as well.

#### 12. **Public Comments**

No public comments were made.

**13. Adjournment**

Chair Lang raised adjournment of the meeting. With no objections made, the meeting was adjourned at 11:02 AM.

**[Subject to Ratification by Commission]**



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2023-04**

June 2, 2023<sup>1</sup>

#### **QUESTION PRESENTED<sup>2</sup>**

A municipality is considering purchasing a fire truck. The fire truck would be procured under statewide price agreement #10-00000-21-00101 AF, a National Association of State Procurement Officials (“NASPO”) contract led by the State of Mississippi, which the State of New Mexico has followed that covers purchases of fire trucks and fire apparatuses.

The cost of the truck is over \$2 million. The vendor offers a discount if the municipality prepays for the truck. The time of delivery of the truck does not significantly depend on whether the municipality pays in advance of

---

<sup>1</sup> This is an official advisory opinion of the State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceeding concerning a person who acted in good faith and in reasonable reliance on the opinion. NMSA 1978, § 10-16G-8(C) (2019).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue.” NMSA 1978, § 10-16G-8(A)(2) (2019). “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n, Advisory Op. No. 2020-01, at 1-2 (Feb. 7, 2020) (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On April 5, 2023, the Commission received a request for an advisory letter that detailed the issues as presented herein. See 1.8.1.9(B) NMAC. Commissioner Bluestone requested that the advisory letter be converted into a formal advisory opinion. See 1.8.19(B)(3) NMAC. See generally NMSA 1978, § 10-16G-8(A)(1); 1.8.1.9(A)(1) NMAC.

delivery. (The estimated delivery following the order is approximately 24 months.) The vendor will provide the municipality a 100% performance bond following the receipt of any prepayment. Once the municipality places the order, the municipality's employees will meet with the manufacturer to ensure the fire truck is built to the municipality's desired specifications. The municipality will have the option of not accepting the truck if it does not meet specifications; however, it is unsaid whether in the event of non-acceptance, the municipality would be entitled to a refund (and in what amount) if the municipality had prepaid. May the municipality prepay for the fire truck?

### **ANSWER**

No.

### **ANALYSIS**

Section 13-1-158 of the Procurement Code addresses payments for purchases. See NMSA 1978, § 13-1-158 (1997). Subsection A of that Section provides:

No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code.

§ 13-1-158(A).

Under Subsection 13-1-158(A), where a purchase is subject to the Procurement Code, there is a general rule against prepayment. This statute makes clear that the municipality's central purchasing office may not issue payment for the purchase of any items of tangible personal property, unless that office certifies that the property has been received and meets the specifications that the

municipality bargained for. *See id.*; *see also* NMSA 1978, § 13-1-37 (2013) (defining “central purchasing office” in the Procurement Code).<sup>3</sup> While the Procurement Code’s general rule against prepayment might frustrate state agencies and local public bodies in securing a better deal in certain instances, overall, the rule operates as a safeguard to protect the public’s funds. In the past, state agencies have taken special precautions to ensure they were not making unlawful prepayments. *See, e.g.*, N.M. Att’y Gen. Adv. Ltr., No. 86-17, 1986 WL 220349 (June 18, 1986) (advising that a state agency establish an escrow account with an authorization to an escrow agent to transfer funds to a contractor as the contractor periodically provides maintenance services following delivery of the desired product).

Subsection 13-1-158(A) contains an exception to the general rule against prepayment. Prepayment is permitted for those purchases that are excluded from the Procurement Code’s scope, either by Section 13-1-98, which exempts specific purchases from the Code’s application, or by the operation of some other law. *See* NMSA 1978, § 13-1-98 (2020); *see also* § 13-1-98(HH) (exempting from the Code’s application “procurements exempt from the Procurement Code as otherwise provided by law”). Section 13-1-98, however, does not exempt the purchases of fire trucks from the Code’s application.

The only potentially relevant exemption under Section 13-1-98 is for purchases by “municipalities having adopted home rule charters and having enacted their own purchasing ordinances.” § 13-1-98(K). This request, however, does not involve a home rule municipality. *See generally* N.M. Const. art. X, § 6 (home rule amendment); NMSA 1978, §§ 3-15-1 to -16 (1971, as amended through 2018) (municipal charter act). As such, the municipality’s powers, including its powers with respect to purchasing, are defined by the New Mexico Legislature and, with respect to purchasing, the Procurement Code. *See, e.g.*, NMSA 1978, § 13-1-30(A) (2005) (providing that, “[e]xcept as otherwise provided in the Procurement Code, the code shall apply to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services or construction”); *see also State ex rel. Haynes v. Bonem*, 1992-NMSC-062, ¶ 10, 114 N.M. 627 (explaining that, absent municipal home rule, the

---

<sup>3</sup> Fire trucks are “tangible personal property” under the Procurement Code, which defines “tangible personal property” as “tangible property other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed materials.” NMSA 1978, § 13-1-93 (1984).

state exercises plenary control over municipal government and a municipality must look to state statutes for express or implied grants of authority).

The municipality cannot prepay for the fire truck for another reason. The plans to purchase the fire truck are under an existing contract between the State of New Mexico and Pierce Manufacturing, Inc. *See generally* NMSA 1978, § 13-1-129 (1991) (authorizing local public bodies to procure items and services under existing contracts, including statewide price agreements). The price agreement that the municipality is using to procure the fire truck itself prohibits prepayment for goods. The State of New Mexico has entered into Statewide Price Agreement #10-00000-21-00101AF with Pierce Manufacturing, Inc. *See* General Services Department Statewide Price Agreement #10-00000-21-00101AF, *available at* <https://www.generalservices.state.nm.us/state-purchasing/statewide-price-agreements>. This New Mexico statewide price agreement follows and incorporates the terms and requirements of a NASPO contract, led by the State of Mississippi, with Pierce Manufacturing, Inc. for the purchase of fire trucks and fire apparatuses. *See* Master Agreement #8200060944 with Pierce Manufacturing Inc. for Fire Trucks and Fire Apparatus (The State of Mississippi on behalf of NASPO ValuePoint Cooperative Purchasing Organization), *available at* <https://naspovaluepoint.org/portfolio/fire-trucks-and-fire-apparatus/pierce-manufacturing-inc/>. The Master Agreement—and therefore New Mexico’s Statewide Price Agreement—expressly provides, “No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Master Agreement.” *See* Master Agreement #8200060944, § 6.1. Therefore, under the existing contract by which the municipality seeks to purchase a fire truck from Pierce Manufacturing, Inc., prepayment is not allowed.

Last, the availability of a performance bond does not allow the municipality to prepay for the fire truck. According to the request, the municipality is being offered a 100% performance bond in exchange for prepayment. Generally, a central purchasing office may require a performance bond for contracts for items of tangible personal property, where the central purchasing office deems a performance bond necessary to protect the interests of the state agency or a local public body. *See* NMSA 1978, § 13-1-148(A) (1987). But the availability of a performance bond does not operate as an exception to the Code’s general rule against prepayment. *See* § 13-1-158(A). Subsection 158(A) specifies those exceptions when prepayment is allowed, and the statute does not include an exception for prepayment of purchases for which the procuring entity has obtained a performance bond. Nor does the availability of a performance bond alter the contract term in the New Mexico Statewide Price Agreement, which the

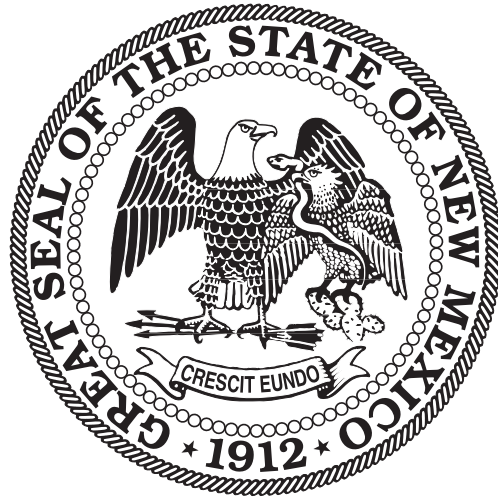
municipality is using to purchase the fire truck, that “[n]o advance payment shall be made for the Products and Services” furnished by Pierce Manufacturing, Inc. under the agreement.

## **CONCLUSION**

For the foregoing reasons, under the Procurement Code, the municipality may not prepay for the firetruck and may only pay for the truck after the municipality’s central purchasing office certifies that the truck has been received and meets the specifications that the municipality bargained for. *See* § 13-1-158(A).

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**  
**JEFFREY L. BAKER, Commissioner**  
**STUART M. BLUESTONE, Commissioner**  
**HON. GARREY CARRUTHERS, Commissioner**  
**HON. CELIA FOY CASTILLO, Commissioner**  
**RON SOLIMON, Commissioner**  
**JUDY VILLANUEVA, Commissioner**



STATE ETHICS  
COMMISSION MEETING

June 2, 2023

**PUBLIC RULES HEARING**



**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]

**This is an amendment to 1.8.3 NMAC, Section 7, 9 through 11, 13 through 15, effective 7/1/2023.**

**1.8.3.7 DEFINITIONS:** The following terms apply to these rules unless their context clearly indicates otherwise:

- A. “Appellant”** is a party who requests that the commission review and change the decision of the hearing officer.
- B. “Appellee”** is a party to an appeal arguing that the hearing officer’s decision is correct and should stand.
- C. “Blackout period”** means the period beginning 60 days before a primary or general election in which a person against whom a complaint is filed is a candidate, and ending on the day after that election.
- D. “Brief”** is a document summarizing the facts and points of law of a party’s case. It may be offered to or requested by a hearing officer or filed in an appeal to the commission. For example, a “brief in chief” is filed with the commission by the appellant. An “answer brief” is filed by the appellee in response to the brief-in-chief.
- E. “Candidate”** as used in this part, has the same meaning as it does in Subsection G of Section 1-19-26 NMSA 1978 of the Campaign Reporting Act, Section 1-19-25 NMSA 1978.
- F. “Case management system”** is the commission’s electronic filing and notification system for complaints, which may be accessed at [~~https://proceedings.sec.state.nm.us~~] <https://sec.nm.gov/proceedings>.
- G. “Claim”** is a complainant’s allegation that a respondent violated a particular provision of law.
- H. “Designated district court judge”** is an active or pro tempore district judge who has been appointed by the chief justice of the supreme court to consider the issuance and enforcement of subpoenas applied for by the commission.
- I. “Discriminatory practice,”** as used in this part, has the same meaning as it does in Subsection L of Section 28-1-2 of the Human Rights Act, Section 28-1-1 NMSA 1978.
- J. “Lobbyist’s employer”** as used in this part, has the same meaning as it does in Subsection F of Section 2-11-2 of the Lobbyist Regulation Act, Section 2-11-1 NMSA 1978.
- K. “Meeting”** means a meeting of the commission duly noticed and conducted in compliance with the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978.
- L. “Party” and “Parties”** means the named persons in a proceeding before the commission or a hearing officer.
- M. “Person”** means any individual or entity.
- N. “Pleading”** means any written request, motion, or proposed action filed by a party with the hearing officer or commission.
- O. “Qualified hearing officer”** means an official appointed by the director in accordance with these rules to conduct an administrative hearing to enable the commission to exercise its statutory powers.
- P. “Records”** means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, whether or not the records are required by law to be created or maintained.

[1.8.3.7 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

**1.8.3.9 COMPLAINTS: FILING REQUIREMENTS AND LIMITATIONS; AMENDMENTS; NOTICE; TIME LIMITATIONS; CONSOLIDATION; COMMISSION-INITIATED COMPLAINTS:**

- A.** The commission shall investigate allegations of violations of any statutes or constitutional provisions over which the legislature gives it jurisdiction. [~~Such~~] Complaints concerning such violations may be filed against any public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist’s employer, or a restricted donor subject to the Gift Act.
  - (1)** The commission may initiate a proceeding before the commission concerning an alleged violation:
    - (a)** through the filing of a complaint with the commission by any person which alleges that the complainant has actual knowledge of the alleged violation of such statutes or constitutional provisions;
    - (b)** by initiating its own complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a person subject to the jurisdiction of the commission, pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978; or

(c) by accepting a complaint filed with another public agency or legislative body and forwarded by that agency or legislative body to the commission pursuant to Subsection B or E of Section 10-16G-9 NMSA 1978.

(2) A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, shall:

(a) be filed electronically on the commission's case management system, or on a form prescribed by the commission and provided at no cost to the complainant or in a substantially equivalent form, which the director or the director's designee shall record electronically on the commission's case management system;

(b) state the name and, to the extent known to the complainant, the respondent's mailing address, email address, telephone number, and public office or other position;

(c) set forth in detail the specific claims against the respondent and the supporting factual allegations, including, if known to the complainant, any law that the respondent has allegedly violated;

(d) include any evidence that the complainant has that supports the complaint, which may include documents, records and names of witnesses; and

(e) be signed and sworn to by the complainant, under penalty of false statement.

(3) The director shall reject any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC that fails to state either the respondent's mailing address or email address, or is not signed and sworn to by the complainant, under penalty of false statement and the complainant will have the opportunity to refile the complaint.

(4) A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC may be amended once as a matter of course at any time before a responsive pleading is served. Otherwise, the complainant may amend the complaint by leave of the director. An amended complaint must be filed within seven days of the director's determination under Paragraph (3) of Subsection [A] C of 1.8.3.10 NMAC that the commission has jurisdiction over the complaint.

(5) Unless the director grants the complainant leave, the commission shall not accept a complaint filed by a complainant who, within the previous calendar year, filed two complaints that were subsequently dismissed. In applying for leave to file a third or subsequent complaint within the same calendar year, the complainant shall explain how, as compared to the dismissed complaints, the proposed complaint concerns different facts, asserts different claims, or asserts claims against different respondents.

(6) By registering and filing a complaint through the commission's case management system, a party agrees to accept electronic service of subpoenas, notices, and other filings as a condition of submitting filings with the commission.

(7) Any party may represent themselves or may be represented by a licensed attorney. Corporations and other non-natural persons must be represented by counsel.

(a) Any attorney representing party shall enter an appearance with the commission and register on the commission's case management system. Upon receipt of the appearance, the commission shall direct all official notices and correspondence to the attorney named in the written appearance, at the address or location stated therein. Any official notice received by any named attorney shall be deemed to have been received by the represented party. An attorney may withdraw from representing a party before the commission only with leave of the director and for a reason provided for by Section B of Rule 16-116 NMRA.

(b) If the respondent is a public official or state public employee subject to a complaint alleging a violation made in the performance of the respondent's duties, the respondent is entitled to representation by the risk management division of the general services department. "Respondent's duties," within the meaning of Subsection K of Section 10-16G-10 NMSA 1978 and this rule, excludes:

(i) conduct undertaken by an elected public official in furtherance of his or her campaign for election or reelection; and

(ii) any duty or obligation that by law is personal, rather than official, in nature.

(8) The commission may proceed with any complaint that is forwarded to the commission by another public agency, or by the legislature or a legislative committee pursuant to Subparagraph (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, according to the terms of any agreement for shared jurisdiction between the commission and the referring agency or the legislative body, pursuant to Subsection E of Section 10-16G-9 NMSA 1978.

(9) No complaint may be accepted or considered by the commission unless the date on which the complaint is received by the commission, or the date on which the commission votes to initiate a complaint, falls within the later of two years from the date:

- (a) on which the alleged conduct occurred; or
- (b) the alleged conduct could reasonably have been discovered.

(10) For the purpose of applying the two-year statute of limitations established in Subsection A of Section 10-16G-15 NMSA 1978, the date on which a complaint is filed with a public agency that refers the complaint to the commission under the law, or under an agreement for shared jurisdiction, shall be deemed the date of filing with the commission.

**B.** The commission shall not adjudicate a complaint filed against a candidate, except under the Campaign Reporting Act or Voter Action Act, fewer than 60 days before a primary or general election.

(1) This paragraph does not preclude during the blackout period:

- (a) the dismissal of frivolous or unsubstantiated complaints, or dismissal or referral of complaints outside the jurisdiction of the commission, as provided by these rules; ~~or~~
  - (b) assigning to a hearing officer and making public a complaint that is found to be supported by probable cause pursuant to Subsection B of Section 1.8.3.13 NMAC before the blackout period begins;
- or

~~(b)~~ (c) an investigation related to the commission's discretion to file a court action to enforce the civil compliance provisions of any statute or constitutional provision over which the commission has jurisdiction.

(2) For complaints filed during and subject to the blackout period, the director, or the director's designee, shall notify the complainant:

- (a) of the provisions of this section regarding the blackout period;
- (b) that the complainant may refer allegations of criminal conduct to the attorney general or appropriate district attorney at any time; and
- (c) of the deferral of commission action on the complaint for the duration of the blackout period.

(3) The director, or the director's designee, shall within five days notify a candidate named as a respondent in a complaint filed during the 60-day pre-election blackout period of:

- (a) the filing of the complaint;
- (b) the specific allegations and violations charged in the complaint; and
- (c) the deferral of commission action on the complaint for the duration of the blackout period.

**C.** The commission shall not adjudicate a complaint that alleges conduct occurring only before July 1, 2019. Any complaint filed with the commission or referred to the commission that alleges conduct occurring only before July 1, 2019 shall be dismissed and, if applicable, returned to the referring entity.

**D.** The director may consolidate a complaint with any other pending complaint involving related questions of fact or laws; provided that the consolidation will not unduly delay resolution of an earlier-filed complaint, unduly prejudice any complainant, or compromise the right of any complainant or respondent to confidentiality under these rules.

**E.** The Commission may initiate a complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer, or a restricted donor subject to the Gift Act, if:

- (1) any commissioner or the director presents to the commission information or documents showing a violation of any statute or constitutional provision over which the commission has jurisdiction;
  - (2) the director determines that the complaint would be within the commission's jurisdiction; and
  - (3) five commissioners vote to initiate the complaint.
- (4) A commissioner's vote to initiate a complaint pursuant to this Subsection E is not grounds for recusal pursuant to Subsection A of 1.8.2.8 NMAC.

**F.** If the commission initiates any complaint under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, then the director shall:

- (1) provide the respondent with notice of the complaint in accordance with Subsection A of 1.8.3.10 NMAC; and



(2) forward the complaint to the general counsel to initiate an investigation in accordance with 1.8.3.11 NMAC.

**G.** If the director determines that the complaint, either in whole or in part, is subject to referral to another state or federal agency in accordance with Subsection D of Section 10-16G-9 NMSA 1978, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, Subsection D of Section 10-16-14 NMSA 1978, Subsection C of Section 1-19-34.4 NMSA 1978, or Subsection B of Section 2-11-8.2 NMSA 1978, the director shall refer some or all claims within the complaint to the appropriate agency and, within ten days of the referral, provide notice to the respondent of the referral.

**H.** When the commission initiates its own administrative complaint, the commission may serve in an appellate role after a hearing officer decision, and the commission will be limited to reviewing the record developed at the hearing. As such, except as provided in Subsection E of 1.8.3.9 NMAC, Subsections I & J of Section 10-16G-10 NMSA 1978, Subsection A of Section 10-16G-11 NMSA 1978, Subsection A of 1.8.3.12 NMAC, or Subsection J of 1.8.3.14 NMAC, the commission shall not receive any information related to a complaint filed pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC until an appeal is made pursuant to 1.8.3.15 NMAC.

[1.8.3.9 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

### **1.8.3.10 DIRECTOR'S RESPONSIBILITIES UPON RECEIVING A COMPLAINT; RESPONDENT'S OPPORTUNITY TO RESPOND; JURISDICTIONAL REVIEW; REFERRALS; NOTIFICATION TO PARTIES:**

**A.** Within seven days of receiving a complaint, the director shall notify the respondent of the filing of the complaint; provided that, for any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, the director shall ensure that the complaint satisfies the filing requirements set forth in Paragraph (1) of Subsection A of 1.8.3.9 NMAC before notifying the respondent of the filing of the complaint.

**B.** Upon receiving a complaint pursuant to Subparagraph (a) or (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, the director shall, within 10 days, review the complaint to determine whether it is within the commission's jurisdiction.

**C.** If the director determines that a complaint [~~lies wholly or in part~~] is within the jurisdiction of the commission, unless otherwise provided in Subsection D of this Section below, the director shall:

(1) provide the complainant with notice that the commission has jurisdiction for the complaint;

(2) provide the respondent with notice of the complaint and inform the respondent that the respondent may file with the commission a responsive pleading answering the complaint's assertion of facts and presenting arguments that the complaint is frivolous, unsubstantiated or not supported by probable cause within 15 days from the date of receiving the director's notification and serve the same upon the complainant; and

(3) forward the complaint to the general counsel to initiate an investigation. Upon receiving the respondent's responsive pleading, the general counsel may request the complainant to file ~~[a response, which, if requested, is due within 15 days from the date of the respondent's responsive pleading. The response may answer the complaint's assertion of facts and present arguments that the complaint is frivolous, unsubstantiated or not supported by probable cause]~~ a reply by a date set out in the request.

**D.** If the director determines that the complaint, [~~either in whole or in part,~~] is subject to referral to another state or federal agency, pursuant to Subsection D of Section 10-16G-9, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, Subsection D of Section 10-16-14 NMSA 1978, Subsection C of Section 1-19-34.4 NMSA 1978, or Subsection B of Section 2-11-8.2 NMSA 1978, the director shall refer some or all claims within the complaint to the appropriate agency and, unless a determination is made under Section 10-16G-10(H) NMSA 1978 to delay notification, within ten days of the referral, shall provide notices to the complainant and the respondent of the referral.

**E.** If the director determines that the complaint is within the jurisdiction of the commission and recommends that the commission should not act on some or all aspects of the complaint, then the commission shall decide whether to dismiss some or all aspects of the complaint under Subsection C of Section 10-16G-9 NMSA 1978.

**F.** If the director determines that the complaint is neither within the jurisdiction of the commission nor subject to referral to another agency, the commission shall dismiss the complaint.

**G.** Subject to Subsection E of Section 1.8.3.15 NMAC, the director shall notify the complainant and respondent in writing of any action taken under Subsections [~~B~~] C through [~~E~~] F of 1.8.3.10 NMAC, unless notification has been delayed by the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978 and

Subsection E of 1.8.3.15 NMAC. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

**H.** With respect to any complaint filed with or under investigation by the commission, the director shall consult with the attorney general, an appropriate district attorney or the United States attorney if:

(1) when reviewing a complaint for jurisdiction, the director determines that the complaint alleges conduct on the part of the respondent or another that appears reasonably likely to amount to a criminal violation; or

(2) the commission, any commission staff member, or any commission hearing officer finds at any time that a respondent's conduct appears reasonably likely to amount to a criminal violation.

(3) Nothing in Section 10-16G-14 NMSA 1978 or in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

[1.8.3.10 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

### **1.8.3.11 GENERAL COUNSEL'S INVESTIGATION:**

**A.** Upon receiving notice of the director's determination that the commission has ~~full or partial~~ jurisdiction over the complaint, the general counsel shall determine whether the complaint is frivolous or unsubstantiated, or supported by probable cause.

**B.** To perform the investigation into whether probable cause supports the complaint, the general counsel, or the general counsel's designee, may administer oaths, interview witnesses under oath, and examine books, records, documents and other evidence reasonably related to the complaint. The general counsel, or the general counsel's designee, may:

(1) Request to inspect books, records, documents and other evidence reasonably related to a complaint; request the complainant or respondent to admit certain facts; and serve written interrogatories, to be responded to under oath at a time therein specified;

(2) Interview a witness under oath and outside the presence of the parties; and

(3) Notice and take the deposition of any person, including any party, subject to the

following provisions:

(a) The general counsel, or the general counsel's designee, may put the witness on oath or affirmation and shall personally, or by someone acting at the general counsel's direction, record the testimony of the witness.

(b) Any objection during a deposition shall be stated concisely in a non-argumentative and non-suggestive manner. Objections to form or foundation may only be made by stating "objection—form" or "objection—foundation". When a question is pending, or a document has been presented to the witness, no one may interrupt the deposition until the answer is given, except when necessary to preserve a privilege.

(c) All objections shall be noted by the general counsel or the general counsel's designee upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections, except where the objection is based on an assertion of privilege made in good faith.

(d) The general counsel, or the general counsel's designee, shall certify on the deposition that the witness was duly sworn by the general counsel or the general counsel's designee and that the deposition is a true record of the testimony given by the witness.

(e) A witness who appears at a deposition may receive one day's expenses provided by Subsection A of Section 10-8-4 NMSA 1978 as per diem for nonsalaried public officers attending a board or committee meeting and the mileage provided by Subsection D of Section 10-8-4 NMSA 1978. The Commission is not required to tender expenses and mileage before the witness appears at a deposition, and may require the witness to provide information needed to facilitate payment of expenses and mileage (such as IRS form W9) as a condition of payment.

**C.** It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. If a party refuses to respond to the general counsel's request for information or discovery requests, to attend a deposition, or to answer questions at a deposition noticed under this subsection, unless the party's refusal is based on an assertion of privilege made in good faith, the general counsel, when deciding whether a complaint is supported by probable cause, may draw an adverse inference against the party refusing to testify. If a party fails to provide information or identify a witness in response to a request by the general counsel, the party is not allowed to use that information or witness to



supply evidence on a motion, at a hearing, or on appeal, unless either a hearing officer or the commission determines the failure was substantially justified or is harmless.

[1.8.3.11 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

**1.8.3.13 [GENERAL COUNSEL'S] PROBABLE CAUSE DETERMINATIONS AND CONSEQUENCES; INVESTIGATION REPORTS AND RECOMMENDATIONS TO COMMISSION; DISPOSITION BY AGREEMENT; NOTICE TO PARTIES:**

~~[~~ **A.** ~~If the general counsel finds probable cause to support the allegations of the complaint, the general counsel shall report promptly the general counsel's findings and recommendations to the director, and the director shall:~~

~~(1) promptly notify both the complainant and the respondent:~~  
~~(a) of the specific claims and allegations in the complaint that were the subject of the general counsel's investigation;~~  
~~(b) of the finding of probable cause as to specific claims; and~~  
~~(c) that a public hearing before a hearing officer will be set, provided that the notification has not been delayed by order of the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978; and~~

~~(2) designate a qualified hearing officer to conduct a hearing on the complaint if so recommended by the general counsel. Based on the report of the general counsel, the hearing officer will set a public hearing as soon as practicable.~~

~~**B] A.** At the conclusion of the investigation provided by 1.8.3.11 NMAC, the general counsel shall determine whether the complaint is frivolous or unsubstantiated.~~

~~(1) If, [after completing the investigation,] the general counsel determines that a complaint is [not supported by probable cause] frivolous or unsubstantiated, a hearing officer must dismiss the complaint. In that event, the complainant and the respondent shall be notified in writing of the decision and the reasons for the dismissal. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.~~

~~(2) If the general counsel determines that a complaint is not frivolous or unsubstantiated, the general counsel shall prepare a summary of the investigation and a specification setting forth all violations reasonably related to the allegations in the complaint. The general counsel shall provide the summary, the specification, and all supporting evidence to the executive director. The executive director shall designate a hearing officer meeting the qualifications set out in Subsection A of 1.8.3.14 NMAC to determine whether the complaint is supported by probable cause.~~

~~**B.** Within 30 days of being appointed pursuant to Paragraph 2 of Subsection A of this Section, the hearing officer shall enter a written decision as to whether the complaint is supported by probable cause. To determine whether the complaint is supported by probable cause, the hearing officer must find that the evidence supports a finding that a violation has occurred. The degree of proof necessary to establish probable cause is more than a suspicion or possibility but less than a certainty of proof.~~

~~(1) If the hearing officer decides that the complaint is supported by probable cause, the hearing officer shall prepare a written order to that effect and provide it to the executive director. The executive director shall then promptly notify both the complainant and the respondent of the hearing officer's determination and that a public hearing will be set, provided that the notification has not been delayed by order of the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978.~~

~~(2) If the hearing officer decides that the complaint is not supported by probable cause, the executive director shall promptly notify both the complainant and the respondent of the hearing officer's decision and inform the complainant of their right to appeal the hearing officer's decision to the commission pursuant to 1.8.3.15 NMAC.~~

**C.** The general counsel may at any time enter into a proposed settlement agreement of the complaint with the respondent. The proposed settlement agreement shall be presented to the commission for approval. If the complaint alleges, or the general counsel has found probable cause to support, a discriminatory practice or action by the respondent against the complainant, no settlement agreement may be reached without prior consultation with the complainant. If approved by the commission, the settlement agreement shall be subject to public disclosure.

**D.** At any time, the complainant may voluntarily dismiss the complaint, either in whole or in part, by filing a notice of voluntary dismissal with the commission; however, any notice of voluntary dismissal does not diminish the power of the commission to initiate a complaint under Paragraph 1 of Subsection C of Section 10-16G-

5 NMSA 1978. If the general counsel has determined the complaint is supported by probable cause, the complainant may dismiss the complaint only on motion and on such terms and conditions as the hearing officer deems proper.

**E.** If a hearing has not been scheduled concerning the disposition of a complaint within 90 days after the complaint has been received from the complainant or after referral from another agency, whichever is later, the director shall report to the commission at a duly convened meeting on the status of the investigation. The commission and the director shall thereafter proceed in accordance with Section 10-16G-11 NMSA 1978.

**F.** At any time before or during a hearing, the hearing officer may, at a duly convened public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, provided that:

- (1) the complainant shall be consulted on the proposed agreement prior to its execution, and
- (2) the agreement shall be effective upon approval by the commission at a public meeting.

[1.8.3.12 NMAC-N, 01/01/2020; Rn 1.8.3.13 NMAC & A, 09/14/2021; A, 7/1/2023]

#### **1.8.3.14 HEARING OFFICERS; SUMMARY DISPOSITION; HEARINGS; INTERPRETERS; EVIDENCE:**

**A.** The commission shall authorize the director to contract, for reasonable hourly compensation, with qualified persons to act as hearing officers. Hearing officers shall be assigned to act on or preside over hearings on complaints. Hearing officers must be currently licensed attorneys, or retired judges of the appellate, district, or metropolitan courts of New Mexico or any federal court, who are familiar with the ethics and election laws enforced by the commission. A hearing officer shall conduct a hearing fairly and impartially. A hearing officer who determines whether a complaint is supported by probable cause pursuant to Subsection B of Section 1.8.3.13 NMAC shall not preside over a hearing on the merits of the same complaint.

**B.** All hearings before the hearing officer will occur in Santa Fe or Albuquerque, or at such other location within the state as may be determined by the hearing officer. In selecting the location of a hearing other than in Santa Fe or Albuquerque, the hearing officer shall consider and give weight to the location and reasonable concerns of the respective parties, witnesses, and representatives in the proceeding. Upon a showing by any party of an undue burden, the hearing officer may move the hearing to a more appropriate venue.

**C.** If a hearing officer has not already notified the parties of a hearing through the issuance of a scheduling order, the director will notify the parties to the hearing by mail, directed to the address provided by the parties, of the date, time, and place scheduled for the hearing, at least 15 days before the scheduled hearing.

**D.** The hearing shall be conducted pursuant to the rules of evidence governing proceedings in the state courts, Rule 11-101 NMRA, and these procedural rules. In the event of a conflict between these procedural rules and the rules of evidence governing proceedings in the state courts, these procedural rules control. All hearings shall be open to the public in accordance with the Open Meetings Act, Section 10-15-1 NMSA 1978, except for hearings or portions thereof exempted from the requirements of that Act.

**E.** Audio recordings shall be made of all hearings conducted pursuant to this section.

**F.** The parties may be represented by counsel, who shall enter an appearance at the earliest opportunity, pursuant to Paragraph (7) of Subsection A of 1.8.3.9 NMAC.

**G.** The hearing officer shall permit the general counsel to intervene upon request. If the complaint was initiated by the commission under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, then the [~~general counsel~~] executive director shall represent the commission at the hearing.

**H.** The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

- (1) to administer or have administered oaths and affirmations;
- (2) to cause depositions to be taken;
- (3) to require the production or inspection of documents and other items;
- (4) to require the answering of interrogatories and requests for admissions;
- (5) to rule upon offers of proof and receive evidence;
- (6) to regulate the course of the hearings and the conduct of the parties and their

representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(8) to schedule, continue and reschedule hearings;

(9) to consider and rule upon all procedural and other motions appropriate in the proceeding;

- (10) to require the filing of briefs on specific legal issues prior to or after the hearing;
- (11) to cause a complete audio record of hearings to be made;
- (12) to make and issue decisions and orders; and
- (13) to reprimand, or with warning in extreme instances exclude from the hearing, any person

for engaging in a continuing pattern of disruptive or other improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

**I.** In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter, but may communicate with parties separately solely on scheduling issues if all parties are notified of such communications and do not object to them. An improper *ex parte* communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing despite having received timely notice thereof.

**J.** Parties who appear at the hearing may:

(1) request the director to request the commission’s authority to petition a district court to compel the presence of witnesses. Subpoenas may be requested by the commission from a district court in the same manner as provided for in Subsection J of Section 10-16G-10 NMSA 1978 and Subsections C and D of 1.8.3.11 NMAC;

- (2) present evidence and testimony;
- (3) examine and cross-examine witnesses; and
- (4) introduce evidentiary material developed by the general counsel. Before the hearing, the

general counsel shall timely disclose to the parties all evidence in the possession or within the control of the general counsel, other than privileged information.

**K.** Evidence shall be presented by the parties at the hearing consistent with the terms agreed to in a prehearing conference or as set forth in a scheduling order entered under Subsection H of 1.8.3.14 NMAC. The hearing officer may allow a deviation from the agreed-upon process for good cause.

(1) The general counsel shall present any evidence collected in the investigation relating to the complaint that is relevant to the matters at issue as set forth in the general counsel’s findings under Subsection A of 1.8.3.12 NMAC; evidence that is agreed to be relevant by the parties; or evidence that is allowed by the hearing officer. If the general counsel has intervened as a party pursuant to Section G of 1.8.3.14 NMAC, the general counsel must be afforded a reasonable opportunity to seek prehearing discovery necessary to meet any anticipated defense raised by the respondent to the claims identified in the specification of violations prepared by the general counsel pursuant to Subsection B of 1.8.3.13 NMAC.

(2) The respondent may present evidence that is relevant to the matters at issue as set forth in the general counsel’s findings under Subsection A of 1.8.3.12 NMAC; evidence that is agreed to be relevant by the parties; or evidence that is otherwise allowed by the hearing officer.

(3) The general counsel or the general counsel’s designee may authenticate evidence produced during an investigation if the source of the evidence declines a request to appear and testify about the evidence and the hearing officer determines that there are no other reasonable means for authenticating the evidence.

**L.** Any person may timely file an amicus brief, not to exceed ten pages, with the director, for consideration by the hearing officer.

**M.** Upon reasonable notice by the party to the director, a party needing language interpreter services for translation of one language into another, and any interpreter required to be provided under the American with Disabilities Act, shall be provided for by the commission. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a hearing before the commission must affirm the interpreter’s oath applicable in courts across this state.

**N.** After the termination of the hearing, or in lieu of a hearing if, upon a motion by a party or the general counsel, the hearing officer concludes there is no genuine dispute as to any material facts, the hearing officer shall issue written findings and conclusions on whether the evidence establishes that the respondent’s conduct as alleged in the complaint constitutes a violation of any law within the jurisdiction of the commission. The hearing officer’s written decision:

- (1) may
  - (a) impose any fines provided for by law; and
  - (b) recommend to the appropriate authority commensurate disciplinary action

against the respondent;

- (2) and must

- (a) state the reasons for the hearing officer's decision; and
- (b) provide the parties with notice of the right of appeal to the commission.

**O.** Clear and convincing evidence is required to support a finding by a hearing officer that a respondent's conduct was fraudulent or willful.

**P.** If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint constituted a violation of the Governmental Conduct Act and was either unintentional or for good cause, then the hearing officer shall give the respondent 10 days to correct the violation, pursuant to Subsection B of Section 10-16-13.1 NMSA 1978, before taking any action under Subsection N of 1.8.3.14 NMAC.

**Q.** If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint does not constitute a violation of any law within the jurisdiction of the commission, the hearing officer, in a written decision, shall dismiss the complaint and inform the complainant of their right to appeal to the commission.

**R.** A party may request copies of evidence considered by the hearing officer or a copy of the audio recording of the hearing by submitting a written request to the director. The director may charge a reasonable fee for copies made, consistent with its fee schedule under the Inspection of Public Records Act. The director may also require the requesting party to submit a new, sealed computer storage device, such as a compact disc, dvd disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record. Every party is responsible for paying the cost of any transcription of the audio recording.

[1.8.3.13 NMAC-N, 01/01/2020; Rn 1.8.3.14 NMAC & A, 09/14/2021; A, 7/1/2023]

### **1.8.3.15 APPEALS; ENFORCEMENT:**

**A.** The complainant or respondent may appeal the final decision of the hearing officer within 30 days of the issuance of the decision to the full commission by filing a notice stating:

- (1) each party taking the appeal and each party against whom the appeal is taken;
- (2) the name, address, telephone number and email address of counsel for the appellant;
- (3) the decision or part of a decision from which the party appeals; and
- (4) the specific grounds for the appeal, including specific references to any evidence or law

interpreted by the hearing officer.

(5) If the hearing officer issued a final decision on a complaint that was initiated by the commission under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, or where the general counsel has intervened under Section G of 1.8.3.14 NMAC, then the general counsel may appeal the hearing officer's decision within 30 days of the issuance by filing a notice stating the information required in subsections (1) through (4) above.

**B.** For the purpose of this rule, briefing time shall commence from the date the appellant files a notice of appeal to the full commission. Unless otherwise provided for by the commission,

- (1) The appellant shall file and serve a brief in chief within 15 days;
- (2) The appellee shall file and serve an answer brief within 15 days after service of the brief of the appellant; and
- (3) Neither the brief in chief nor the answer brief shall exceed 10 pages.

**C.** The commission shall schedule oral arguments, if requested by either party or ordered by the commission within sixty days of the notice of appeal.

**D.** Any person may timely file an amicus brief, not to exceed ten pages, with the director for consideration by the commission.

**E.** The commission shall review the whole record of the proceeding and shall, within 180 days of receiving the notice of appeal, issue its decision upholding or reversing the decision of the hearing officer. The commission may reverse all or part of the hearing officer's decision and remand the matter to the hearing officer for further proceedings.

~~[F.]~~ (1) If a hearing officer dismisses a complaint, pursuant to Subsection B of 1.8.3.13 NMAC, following the general counsel's determination that the complaint is ~~[not supported by probable cause]~~ frivolous or unsubstantiated, then the complainant has no right to an appeal of that dismissal to the commission. If the general counsel does not determine that the complaint is frivolous or unsubstantiated but the hearing officer dismisses the complaint for lack of probable cause, the complainant may appeal that decision to the commission.

(2) If the hearing officer decides that a complaint is supported by probable cause pursuant to Subsection G of Section 10-16G-10 NMSA 1978, the respondent has no right to appeal that decision to the commission.

**[G.] E.** A party may seek review of the commission's final decision by filing for a petition of writ of certiorari pursuant to Rule 1-075 NMRA. In any action to review a final decision by writ of certiorari, or, if no petition for writ of certiorari has been timely filed, in a court action in the judicial district where the defendant resides, the commission may move for an order enforcing the commission's final decision pursuant to Subsection F of Section 10-16G-9 NMSA 1978.

[1.8.3.14 NMAC-N, 01/01/2020; Rn 1.8.3.15 NMAC & A, 09/14/2021; A, 7/1/2023]

**TITLE 1           GENERAL GOVERNMENT ADMINISTRATION**  
**CHAPTER 8       STATE ETHICS COMMISSION**  
**PART 5           COMPLAINTS AGAINST NOTARIES**

**1.8.5.1           ISSUING AGENCY:** State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, New Mexico 87106.  
[1.8.5.1 NMAC-N, 7/1/2023]

**1.8.5.2           SCOPE:** This part applies to proceedings to revoke, suspend, or impose a condition on a notarial officer pursuant to Subsection A of Section 14-14A-22 NMSA 1978.  
[1.8.5.2 NMAC-N, 7/1/2023]

**1.8.5.3           STATUTORY AUTHORITY:** Subsection C of Section 14-14A-26 NMSA 1978.  
[1.8.5.3 NMAC-N, 7/1/2023]

**1.8.5.4           DURATION:** Permanent.  
[1.8.5.4 NMAC-N, 7/1/2023]

**1.8.5.5           EFFECTIVE DATE:** July 1, 2023, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[1.8.5.5 NMAC-N, 7/1/2023]

**1.8.5.6           OBJECTIVE:** The objective of this part is the fair, efficient, and uniform handling and disposition of complaints alleging violations of the Revised Uniform Law on Notarial Acts by a notarial officer.  
[1.8.5.6 NMAC-N, 7/1/2023]

**1.8.5.7           DEFINITIONS:** The following terms apply to these rules unless their context clearly indicates otherwise:

**A.           “Adverse action”** means the denial of, revocation of, suspension of, or imposition of a condition on a notarial officer’s authority to perform notarial acts.

**B.           “Commission”** means the State Ethics Commission.

**C.           “Complaint”** means an allegation of a violation of the Revised Uniform Law on Notarial Acts by a notarial officer.

**D.           “Complainant”** means a person who files a complaint with the Commission.

**E.           “Director”** means the executive director of the Commission or the executive director’s designee.

**F.           “Notarial act”** has the same meaning as that term is defined in Subsection F of Section 14-14A-2 NMSA 1978.

**G.           “Notarial officer”** means a notary public or other individual authorized to perform a notarial act.

**H.           “Respondent”** means a notarial officer alleged in a complaint to have violated the Revised Uniform Law on Notarial Acts.

**I.           “Person”** means any individual or legal entity.

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

**1.8.5.8           COMPLAINTS:**

**A.** Any person may submit a complaint against a notarial officer alleging an act or omission that, if proven, would justify denial, revocation, suspension, or the imposition of a condition on the notarial officer’s authority to perform notarial acts. The complaint shall:

(1) provide the name and the address of the respondent who is the subject of the complaint;

(2) attach any supporting documentation related to the complaint’s allegations;

(3) be submitted on a form provided by the Commission or on a substantially equivalent form; and

(4) be submitted by electronic mail to [ethics.commission@sec.nm.gov](mailto:ethics.commission@sec.nm.gov) or by U.S. mail to the Commission’s mailing address.

**B.** Upon receiving a properly submitted complaint, the director may share the complaint with the Office of the Secretary of State and request the SOS to provide records related to the respondent; provided that, if the complaint names a respondent who is a judicial officer, the director shall refer the complaint to the judicial standards commission and take no further action on the complaint.

**C.** After receiving the respondent’s file from the Secretary of State, the director shall:



- (1) send the complainant a notification of receipt of the complaint;
- (2) send the complaint to the respondent at every address and electronic mail address that either the complainant provided to the commission or the respondent provided to the Secretary of State; and
- (3) request that the respondent submit a response in writing within 30 days of the director's sending a copy of the complaint pursuant to paragraph 2 of this subsection.

**D.** If the respondent fails to provide a response to the complaint, then the respondent's failure to provide a response will be construed as the respondent's failure to maintain address information with the Secretary of State, as required by Subsection E of 12.9.3.8 NMAC, and the Commission may take adverse action, up to and including revocation of the respondent's authority to perform notarial acts, on that basis.

**E.** After receiving the respondent's response, the director shall conduct an investigation and review the complaint, the response, and any other relevant documents or material that the director may obtain pursuant to an investigation. As part of an investigation, the director may interview witnesses, request documents, and obtain and review any other evidence reasonably related to the complaint.

**F.** Failure by a complainant or a respondent to participate in the investigation in good faith is a basis for the Commission to draw an adverse inference.  
[1.8.5.8 NMAC-N, 7/1/2023]

### **1.8.5.9 NOTICE OF CONTEMPLATED ACTION; HEARINGS; ADVERSE ACTIONS:**

**A.** After investigating the complaint pursuant to 1.8.5.8 NMAC, the director shall determine whether the facts and the law support taking an adverse action against the respondent.

(1) If the director determines that an adverse action against the respondent is not supported by the facts or the law, the director shall issue a notice to the complainant and the respondent that, subject to the Commission's approval, the Commission will dismiss the complaint.

(2) If the director determines that an adverse action against the respondent is supported by the facts and the law, the director shall send the respondent a notice of contemplated action. The notice of contemplated action gives formal notice that the Commission may take an adverse action against the respondent. That notice shall inform the respondent that the respondent may defend against the contemplated action at a hearing before a hearing officer. The notice shall detail the process and rights afforded in an administrative hearing and shall be sent to the respondent in the manner provided by paragraph 2 of Subsection C of 1.8.5.8 NMAC.

**B.** If the respondent does not respond to a notice of contemplated action within 30 days, the respondent's failure to respond amounts to a waiver of the respondent's right to a hearing, and the Commission may take an adverse action against the respondent's authority to perform notarial acts. The Commission's adverse action, if any, shall take place at an open meeting.

**C.** If the respondent exercises their right to a hearing, a hearing officer shall hold a hearing to determine whether, under a preponderance of the evidence presented, the adverse action specified in the notice of contemplated action should be adopted, modified, or set aside.

**D.** At any hearing conducted pursuant to these rules, the director and the respondent may call witnesses, present objections, and submit evidence relevant to the hearing officer's disposition of the notice of contemplated action. The hearing need not be conducted according to the rules of evidence, and any relevant evidence, including hearsay of probative value, is admissible. Oral evidence shall be taken only on oath or affirmation. Evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs may be admitted and given probative value. The rules of privilege shall be given effect, and incompetent, immaterial, and unduly repetitious evidence may be excluded. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

**E.** If, after a hearing, the hearing officer finds the respondent committed an action that supports the notice of contemplated action or other adverse action, the hearing officer shall produce for the Commission a report and recommendation, recommending any adverse action available under the Revised Uniform Law on Notarial Acts.

**F.** Upon receiving the hearing officer's report and recommendation, the Commission may take any adverse action against the respondent permitted under the Revised Uniform Law on Notarial Acts, including denial of, suspension of, revocation of, or the imposition of a condition on a notarial officer's authority to perform notarial acts.

**G.** At any time, the director may enter into a settlement agreement with the respondent. All settlement agreements are subject to approval by the Commission.

**H.** Any decision to take an adverse action against a respondent by the Commission will take place at an open meeting. If the Commission takes an adverse action against a respondent, the director shall provide the Secretary of State with the order and accompanying case file.

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

**1.8.5.10 APPEALS OF COMMISSION DECISIONS:** A final decision by the Commission on a complaint may be appealed pursuant to Rule 1-075 NMRA.  
[1.8.5.10 NMAC-N, 7/1/2023]

**History of 1.8.5 NMAC: [RESERVED]**



**NOTICE OF RULE MAKING AND PUBLIC RULE HEARING**

**Notice of Rulemaking:** The State Ethics Commission [the commission] will hold a public hearing on the proposed adoption and amendment of certain rules, as detailed below. These amendments are proposed pursuant to Paragraph 2 of Subsection A of Section 10-16G-5, NMSA 1978. No technical scientific information was consulted in drafting these proposed amendments.

Copies of all the proposed amendments may be found at the Commission's website, <https://www.sec.nm.gov>, or at the commission's main office in Albuquerque: the State Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

**Notice of Public Rule Hearing:** The public rule hearing will occur on Friday, June 2, 2023 at 9:00 am in the main conference room of the New Mexico Department of Agriculture at New Mexico State University, 3190 S. Espina, Las Cruces, NM. The public hearing will be conducted in a fair and equitable manner by the commission and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact [Suha.Musa@sec.nm.gov](mailto:Suha.Musa@sec.nm.gov). The commission will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least five calendar days before the scheduled hearing.

**Notice of Acceptance of Written Public Comment:** Written public comments, including presentation of data, views, or arguments about the proposed amendments, from any interested member of the public will be accepted until 5:00 p.m. on Wednesday, May 31, 2023, by submitting them via email to [ethics.commission@sec.nm.gov](mailto:ethics.commission@sec.nm.gov) with the subject line "SEC Rulemaking R23-01," or via first class mail or by hand delivery to the commission's Albuquerque office: New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

**Description of Proposed Amendments:** In compliance with Section 14-4-5.2 NMSA 1978, this notice includes the following summary of the proposed amendment, a short explanation of the purpose of the amendment, and specific legal authority authorizing the amendment and proposed new rule. The method and manner of public comment and notice of public hearing on the proposed rules are listed above.

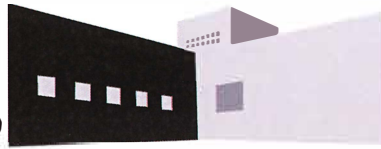
**The proposed amendments are as follows:**

**Amendments to 1.8.1 NMAC, Section 7, new Sections 10-13, and renumbering old Sections 10 through 16 to Sections 14 through 20 (with no changes):** These amendments are proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5, State Ethics Commission Act, NMSA 1978. The purpose of the proposed rule is to promulgate rules governing the Commission's initiation, prosecution, and resolution of civil actions to enforce the state's ethics laws.

**Amendments to 1.8.3 NMAC, Sections 7, 9-11, 13-15:** These amendments are proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5 of the State Ethics Commission Act, NMSA 1978. These amendments are for the purpose of improving the efficiency of commission adjudications and to respond to recent amendments to Section 10-16G-10 NMSA 1978 of the State Ethics Commission Act.

**1.8.5 NMAC ("Complaints against Notaries"):** This rule is being proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5 of the State Ethics Commission Act, NMSA 1978, and Laws 2023 Chapter 110 (being SB 246, Section 23(C)). The purpose of the proposed rule is to promulgate binding rules governing the Commission's receipt, investigation, and adjudication of complaints alleging violations of the Revised Uniform Law on Notarial Acts ("RULONA"), NMSA 1978.

**NEW MEXICO**  
**State Records Center and Archives**  
COMMISSION OF PUBLIC RECORDS  
Your Access to Public Information



April 10, 2023

**SENT VIA EMAIL ONLY TO [jeremy.farris@sec.nm.gov](mailto:jeremy.farris@sec.nm.gov)**

Jeremy Farris, Executive Director  
State Ethics Commission  
800 Bradbury Dr. SE, Ste. 215  
Albuquerque, New Mexico 87106

FILED WITH  
NEW MEXICO STATE  
RECORDS CENTER  
2023 APR 10 PM 4: 19

Dear Jeremy:

Your request for a new part name and number change for, Title 1, Chapter 8, Part 5 is approved. A new part name and number for the new rule is approved and shall be recorded in the Administrative Law Division's master listing as:

TITLE 1	GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 8	STATE ETHICS COMMISSION
PART 5	COMPLAINTS AGAINST NOTARIES

If you have any questions, please contact me at (505) 476-7941.

Sincerely,

Matthew Ortiz  
Administrative Law Division

1205 Camino Carlos Rey | Santa Fe, NM 87507 | [www.srca.nm.gov](http://www.srca.nm.gov)

**Hon. Raúl Torrez**  
*Attorney General*

**Hon. Joseph Maestas**  
*State Auditor*

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

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

**Robert E. Doucette Jr.**  
*Secretary, General Services Department*

**Stephanie Wilson**  
*State Law Librarian, Supreme Court Law Library*

**SEC 31**



**STATE ETHICS COMMISSION**

Jeremy D. Farris, Executive Director  
800 Bradbury Drive Southeast, Suite 215  
Albuquerque, NM 87106  
505.490.0951 | jeremy.farris@sec.nm.gov

Hon. William F. Lang (Chair)  
Jeffrey L. Baker  
Stuart M. Bluestone  
Hon. Garrey Carruthers  
Hon. Celia Foy Castillo  
Ronald Solimon  
Dr. Judy Villanueva

Jeremy D. Farris, Executive Director

April 6, 2023

Matthew Ortiz, Administrative Law Division  
New Mexico State Records Center and Archives  
1205 Camino Carlos Rey  
Santa Fe, NM 87507

Via email only: Matt.Ortiz@srca.nm.gov

Dear Matthew:

The State Ethics Commission respectfully requests a new Part of Title 1, Chapter 8 to be named:  
COMPLAINTS AGAINST NOTARIES.

New:

TITLE 1	GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 8	STATE ETHICS COMMISSION
PART 5	COMPLAINTS AGAINST NOTARIES

Sincerely,

Jeremy Farris

FILED WITH  
NEW MEXICO STATE  
RECORDS CENTER  
2023 APR 10 PM 4:19