

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 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]