



STATE ETHICS
COMMISSION MEETING

August 1, 2025

PUBLIC MATERIALS



STATE ETHICS COMMISSION

Hon. William F. Lang, Chair
Jeffrey L. Baker, Member
Stuart M. Bluestone, Member
Hon. Celia Castillo, Member
Hon. Gary Clingman, Member
Hon. Dr. Terry McMillan, Member
Dr. Judy Villanueva, Member

August 1, 2025, 9:00 a.m. to 12:00 p.m. (Mountain Time)

A livestream of the meeting will be available on the day of the event at the following YouTube link: <https://www.youtube.com/@stateethicscommissionnm3535/streams>

Commission Meeting

Chair Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of June 6, 2025 Commission Meeting

Commission Meeting Items

Action Required

- | | |
|--|-----|
| 4. Advisory Opinion 2025-03 – District Legislative Aide Employment with Another State Agency (<i>Amended</i>) (<i>Chato</i>) | Yes |
| 5. Updated Notice of Proposed Rulemaking (<i>Chato</i>) | Yes |

Upon applicable motion, Commission goes into executive session under NMSA 1978, §§ 10-15-1(H)(2) (limited personnel matters), 10-15-1(H)(3) (administrative adjudicatory proceedings) and 10-15-1(H)(7) (attorney client privilege pertaining to litigation).

6. Appointment and salary of Executive Director (*Farris*)

7. Discussion regarding administrative matters under RULONA:
(*Branch*)
 - I. 2025-NP-07
8. Discussion regarding administrative matters under State Ethics Commission Act:
(*Goodrich, Randall*)
 - I. Administrative Complaint No. 2025-19
 - II. Administrative Complaint No. 2025-20
 - III. Administrative Complaint No. 2025-21
 - IV. Administrative Complaint No. 2025-22
 - V. Administrative Complaint No. 2025-23
9. Discussion regarding current and potential litigation:
(*Farris, Woods*)
 - I. Commission authorization of a civil against regarding violations of the Governmental Conduct Act by an elected official employee of a local municipality.
 - II. Commission authorization of a civil action regarding late reporting fees referred to the Commission by the Secretary of State.

Upon applicable motion, Commission returns from executive session

10. Appointment and salary of Executive Director
(*Farris*) Yes
11. Administrative Matters under RULONA:
(*Branch*) Yes
 - I. 2025-NP-07
12. Administrative Matters under State Ethics Commission Act:
(*Goodrich, Randall*) Yes
 - I. Administrative Complaint No. 2025-19
 - II. Administrative Complaint No. 2025-20
 - III. Administrative Complaint No. 2025-21
 - IV. Administrative Complaint No. 2025-22
 - V. Administrative Complaint No. 2025-23
13. Authorization of Civil Action:
(*Farris, Woods*) Yes
 - I. Commission authorization of a civil against regarding violations of the Governmental Conduct Act by an elected official employee of a local municipality.
 - II. Commission authorization of a civil action regarding late reporting

fees referred to the Commission by the Secretary of State.

- | | |
|--|----|
| 14. Discussion of next meeting
(Lang) | No |
| 15. Public Comment | No |
| 16. Adjournment | |

For inquiries or special assistance, please contact Ethics.Commission@sec.nm.gov

The Commission will accept written public comment to Ethics.Commission@sec.nm.gov, with the subject line: "Public Comment: August 1, 2025," which will be distributed to Commissioners prior to the meeting and included in the official meeting minutes. Individuals wishing to participate by providing oral comment should register and join using the following link https://us02web.zoom.us/join/mtg-joiner/register/mtg-joiner/register/mHv9GDTyTi-2qI_TbPIVMA public comment will be heard during the public comment section of the meeting, must be addressed to an agenda item above, and will be limited to a maximum of three minutes per individual.



STATE ETHICS COMMISSION

Commission Meeting Minutes of June 6, 2025, 9:00AM [Subject to Ratification by Commission]

Call to Order

Chair Lang called the meeting to order at 9:00 AM.

1. Roll Call

Chair Lang called roll; the following Commissioners were present:

Hon. William F. Lang, Chair (attended virtually)
Jeffrey L. Baker (attended virtually)
Stuart M. Bluestone (attended virtually)
Hon. Celia Castillo (attended virtually)
Hon. Gary Clingman (attended virtually)
Hon. Terry McMillan (attended virtually)
Dr. Judy Villanueva (attended virtually)

2. Approval of Agenda

Chair Lang sought a motion for approval of the agenda. Commissioner Baker moved to approve the agenda; Commissioner Castillo seconded. Hearing no discussion or objections the agenda was approved unanimously.

3. Approval of April 4, 2025, Commission Meeting Minutes

Chair Lang sought a motion for approval of the minutes of the April 4, 2025 meeting. Commissioner Bluestone moved to approve the minutes; Commissioner Castillo seconded. Hearing no discussion or objections, the April 4, 2025 meeting minutes were approved unanimously.

Commission Meeting Items

4. FY26 Operating Budget (Farris, George)

Executive Director Farris and Chief Financial Officer George presented the FY26 operating budget of approximately \$1.88 million. Director Farris requested Commission approval for the budget. Chair Lang sought a motion to approve the budget. Commissioner Baker moved to approve; Commissioner Bluestone seconded. After some discussion Chair Lang conducted a roll call vote, and the FY26 Operating Budget was approved unanimously.

5. **Advisory Opinion 2025-02** – The Governmental Conduct Act and Outside Employment (*Chato*)

Chief Compliance Counsel Chato provided an overview of Advisory Opinion No. 2025-02, which in summary states that Governmental Conduct Act does not prohibit a public employee from having a second paying job so long as the employee discloses the job to the employee's employer, the employee is not being paid for work already performed as a public employee, and there is no conflict between the employee's public employment and secondary employment such that the positions are otherwise incompatible.

Chair Lang sought a motion to approve Advisory Opinion 2025-02. Commissioner Bluestone moved to approve Advisory Opinion 2025-02; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved Advisory Opinion 2025-02 unanimously.

6. **Advisory Opinion 2025-03** – District Legislative Aide Employment with Another State Agency (*Chato*)

Chief Compliance Counsel Chato provided an overview of Advisory Opinion No. 2025-03, which in summary states that a district legislative aide is permitted to hold full time employment with another state agency so long as the district legislative aide meets the requirements of each position, discloses the position, and does not take any official acts in one position that would affect the other. Chato recommended one edit to the opinion, specifically to footnote four which Chato explained should include a citation to Section 10-6-5.

Chair Lang sought a motion to approve Advisory Opinion 2025-03 with the recommended edit. Commissioner Bluestone moved to approve Advisory Opinion 2025-03 with the recommended edit; Commissioner Castillo seconded. After some discussion Chair Lang conducted a roll call vote. All Commissioners voted in the affirmative and approved Advisory Opinion 2025-03 unanimously.

7. **Advisory Opinion 2025-04** – Campaign Expenditures for Legal Expenses (*Chato*)

Chief Compliance Counsel Chato provided an overview of Advisory Opinion No. 2025-04, which in summary states a legislator may use campaign funds to cover legal expenses so long as the funds are reasonably attributable to the legislator's duties of office, and are not used to fulfill a commitment, obligation, or expense of the legislator that would exist even if the legislator were not in office. A candidate may use campaign funds to cover legal expenses

that are reasonably attributable to the candidate's campaign. A candidate, legislator, or former legislator would be permitted to use campaign funds on legal expenditures related to an affirmative defamation suit as a plaintiff only where the lawsuit is reasonably attributable to the candidate's campaign or the legislator or former legislator's legislative duties of office. A candidate, legislator, or former legislator would be prohibited, however, from converting any monetary recovery from a defamation lawsuit funded by campaign funds for the candidate, legislator, or former legislator's personal use.

Chair Lang sought a motion to approve Advisory Opinion 2025-04. Commissioner Bluestone moved to approve Advisory Opinion 2025-04; Commissioner Castillo seconded. After some discussion Chair Lang conducted a roll call vote. All Commissioners voted in the affirmative and approved Advisory Opinion 2025-04 unanimously.

8. Notice of Proposed Rulemaking (*Chato*)

Chief Compliance Counsel Chato provided the Commissioners with the notice of proposed rulemaking. In 2025, the Commission will propose amendments to its rules of procedure (1.8.1, 1.8.3, and 1.8.5 NMAC) to close gaps and clarify provisions related to the informal complaint process, administrative cases, and RULONA complaints. The proposed changes include formalizing a compliance process in certain informal complaints, clarifying records access for parties, aligning procedures with recent statutory changes, and allowing hearing officers to dismiss complaints for lack of jurisdiction. The public hearing and potential adoption is scheduled for August 1, 2025. Final rules will be filed by August 14 and published on August 26, 2025.

Chair Lang sought a motion to approve the notice of proposed rulemaking. Commissioner Bluestone moved to approve the notice of proposed rulemaking; Commissioner Clingman seconded. Hearing no discussion, Chair Lang conducted a roll call vote, Commissioners voted unanimously to approve the notice of proposed rulemaking.

Commission Meeting Items

---Begin Executive Session---

Chair Lang sought a motion to enter executive session. Commissioner Castillo moved 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 Clingman seconded the motion. Hearing no discussion, Chair Lang conducted a roll call vote, Commissioners voted unanimously to enter executive session.

8. Discussion regarding administrative matters under RULONA: (*Branch*)

1. 2024-NP-07

9. Discussion regarding administrative matters under State Ethics Commission Act:
(Goodrich, Randall)

1. Administrative Complaint No. 2025-011
2. Administrative Complaint No. 2025-012
3. Administrative Complaint No. 2025-013
4. Administrative Complaint No. 2025-014
5. Administrative Complaint No. 2025-015
6. Administrative Complaint No. 2025-016
7. Administrative Complaint No. 2025-017

10. Discussion regarding current and potential litigation:
(Farris, Woods)

1. Commission authorization of a civil action regarding violations of the Campaign Reporting Act during the 2024 election cycle by a political committee.
2. Commission authorization of a civil action regarding violations of the Governmental Conduct Act by a local municipality and its employees.
3. Commission authorization of a civil action regarding violations of the Lobbyist Regulation Act by a lobbyist advertising campaign.

---End Executive Session---

Matters discussed in closed meeting were limited to those specified in motion to enter executive session. After concluding discussion of these matters, the Commission resumed public session upon an appropriate motion pursuant to NMSA 1978, § 10-15-1(J).

12. Action on administrative matters under RULONA

1. Commission staff sought a motion for an order of dismissal in 2024-NP-07. Chair Lang sought a motion for approval of the dismissal. Commissioner Baker moved to approve the dismissal; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted roll call vote. Commissioner Bluestone voted no, expressing that he would prefer a more stringent penalty. The remaining Commissioners voted in the affirmative, the motion carried.

13. Action on Administrative Matters under the State Ethics Commission Act
(Goodrich, Randall)

Commission considered the following motions regarding actions on Administrative Complaints:

1. Chair Lang announced that Administrative Case No. 2025-11 was withdrawn.

2. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-12. Chair Lang sought a motion for approval of the dismissal. Commissioner Clingman moved to approve the dismissal; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the dismissal.
3. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-13. Chair Lang sought a motion for approval of the dismissal. Commissioner Baker moved to approve the dismissal; Commissioner Clingman seconded. Hearing no discussion, Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the dismissal.
4. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-14. Chair Lang sought a motion for approval of the dismissal. Commissioner Bluestone moved to approve the dismissal; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the dismissal.
5. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-15. Commissioner Castillo recused herself from the matter. Chair Lang sought a motion for approval of the dismissal. Commissioner Bluestone moved to approve the dismissal; Commissioner Clingman seconded. Hearing no discussion, Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the dismissal, Commissioner Castillo recusing.
6. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-16. Chair Lang sought a motion for approval of the dismissal. Commissioner Bluestone moved to approve the dismissal; Commissioner McMillan seconded. Hearing no discussion, Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the dismissal.
7. Commission staff sought a motion for an order of dismissal due to lack of jurisdiction in Administrative Case No. 2025-17. Chair Lang sought a motion for approval of the dismissal. Commissioner Bluestone moved to approve the dismissal; Commissioner Clingman seconded. Hearing no discussion, Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the dismissal.

14. Action on Authorization of Civil Action

(Farris, Woods)

1. Commission staff sought a motion for the authorization of a civil action regarding violations of the Campaign Reporting Act during the 2024 election cycle by New Mexico Building and Construction Trades. Chair Lang sought a motion for approval of the authorization. Commissioner Bluestone moved to approve the authorization; Commissioner Castillo seconded. Hearing no discussion, Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the authorization.
2. Commission staff sought a motion for approval of the authorization of a civil action regarding violations of the Governmental Conduct Act by the City of Deming and Deming city councilors Joe “Butter” Milo and Irma Rodriguez. Commissioner Castillo recused herself from the matter. Executive Director, Jeremy Farris supplemented the request by seeking authorization to issue a subpoena in furtherance of the civil action. Chair Lang sought a motion for approval of both authorizations. Commissioner Baker moved to approve the authorizations; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the authorizations, with Commissioner Castillo recusing.
3. Commission staff sought a motion for approval of the authorization of a civil action regarding violations of the Lobbyist Regulation Act by New Mexico Safety Over Profit (“NMSOP”). Chair Lang recused himself from substantive consideration of the matter but in open session presided in an administrative capacity only. Chair Lang sought a motion for approval of the authorization. Commissioner Bluestone moved to approve the authorization; Commissioner Clingman seconded. Hearing no discussion, Chair Lang conducted a roll call vote, and the Commissioners unanimously approved the authorization, with Chair Lang recusing.

15. Discussion of Next Meeting

Chair Lang confirmed the next regularly scheduled meeting will take place on August 1, 2025.

16. Public Comment

There was no public comment.

17. Adjournment

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting adjourned at 12:17 PM.

For inquiries or special assistance, please contact Ethics.Commission@sec.nm.gov



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2025-03 (*Amended*)

August 1, 2025¹

District Legislative Aide Employment with Another State Agency

QUESTION PRESENTED²

The request asks whether a district legislative aide (“DLA”) for a legislator is permitted to also hold full time employment with another state agency.

¹ On June 6, 2025, the Commission issued its original advisory opinion 2025-03. Unless amended or revoked, opinions are binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C). This August 1, 2025 opinion is an amended opinion 2025-03, providing additional clarity to the matters at issue herein. This is an official advisory opinion of the New Mexico State Ethics Commission and supersedes the June 6, 2025 version.

² 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). On May 7, 2025, the Commission received a request for an advisory opinion that detailed the issues as presented herein. “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 Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (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. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

ANSWER

A DLA is permitted to hold full time employment with another state agency only in the narrow circumstances where the DLA meets the requirements of each position, discloses the position, and does not take any official acts in one position that would affect the other.

ANALYSIS

New Mexico law contemplates that a state employee may hold another position in state government, but provides certain restrictions to ensure the employee is faithfully fulfilling the duties of each position. First, an individual cannot hold two incompatible positions of state employment. And second, the Governmental Conduct Act³ provides certain disclosure and conflict-of-interest requirements that apply when a state employee holds two positions of employment, including two positions of state employment.

I. A DLA may hold another state job that is not incompatible with the performance of the DLA's duties.

Under New Mexico law, the analysis of whether a public employee may hold two public positions turns on whether the positions are “incompatible.” Incompatibility of positions takes two forms. Two positions may have “physical incompatibility,” that is, whether accepting another public employment interferes with the employee’s performance of the duties of the original employment. They may also have incompatibility of duties, that is, whether there is an inconsistency in the functions of two offices caused by one individual holding both positions.

A. A DLA would not be prohibited from holding another public position, provided the positions are not physically incompatible.

Section 10-6-3 provides that a public employee who accepts “any public office or employment, . . . for which a salary or compensation is authorized” is “deemed to have resigned from and to have permanently abandoned his public office and employment” if the employee “fail[s] for a period of thirty successive days or more to devote his time to the usual and normal extent during ordinary

³ NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023).

working hours to the performance of the duties of such public office and employment[.]”⁴ For example, the Attorney General has previously reviewed a comparable situation where a legislator also held the office of president of Luna Vocational Technical Institute, explaining that “[i]f a technical vocational district board grants the president leave of absence in accordance with its own administrative procedures, thereby allowing the president to perform his legislative duties during a legislative session, physical incompatibility may not be an issue.”⁵

A DLA would be permitted to hold employment with another state agency so long as neither employment causes the DLA to fail to perform the duties of the other for a period of longer than thirty days. It is critical to note that this conclusion is applicable in only narrow circumstances. Where two positions each require an in-person, forty-hour work week between Monday and Friday, such positions are likely incompatible due to the inability of one person to devote sufficient time to the performance of duties for each position during the applicable working hours for each position. However, the modern world is no longer confined to a traditional forty-hour work week. Where a DLA holds only a part-time position, or where agency policy permits remote work or alternative work schedules, it is conceivable that a DLA could meet the requirements of two positions. To be clear, where a DLA attempts to perform the duties of two jobs during the same working hours or where it is otherwise prohibited under applicable agency policy, the DLA is not permitted to hold both positions because the DLA cannot meet the required performance of duties for each position. But where a DLA fulfills the duties of public employment for each agency or otherwise seeks appropriate accommodation

⁴ NMSA 1978, §§ 10-6-3 (1953); 10-6-5 (1979).

⁵ N.M. Att’y Gen. Op. 06-01 (Jan. 26, 2006). The State Ethics Commission considers the Advisory Opinions and Advisory Letters issued by the New Mexico Attorney General as persuasive authority. The Attorney General’s opinions and letters, however, do not necessarily dictate the advisory opinions that the Commission may issue. *See* NMSA 1978, §§ 8-5-2(D) (requiring the Attorney General to issue opinions in writing upon questions of law submitted by state officials); 10-16G-8 (authorizing the Commission to issue advisory opinions on matters related to ethics upon request); *First Thrift & Loan Ass’n v. State ex rel. Robinson*, 1956-NMSC-099, ¶ 28, 62 N.M. 61, 304 P.2d 582 (“We are not bound by [opinions of the Attorney General’s office] in any event, giving them such weight only as we deem they merit and no more. If we think them right, we follow and approve, and if convinced they are wrong . . . we reject and decline to feel ourselves bound.”). Although opinions of the Attorney General are not binding on the Commission, these opinions are persuasive authority grounded in applicable law.

to permit a leave of absence longer than thirty days, the DLA would not be considered to hold two physically incompatible positions or be deemed to have abandoned either public employment.

B. A DLA would be permitted to seek another position in state government so long as the functions of the position are not incompatible with that of a DLA.

New Mexico law also prohibits a public officer from holding another public office that is functionally incompatible with the first office. In *Haymaker v. State*,⁶ the court determined that the relevant inquiry is whether there “is an inconsistency in the functions of the two offices, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both.”⁷ In *Amador v. N.M. State Bd. of Educ.*,⁸ the court concluded that the positions of school teacher and a member of the State Board of Education are not incompatible, because if the teacher appealed from a local board of education to the State Board, the “teacher would simply refrain from acting as a member of the Board in his case[.]”⁹

Under this framework, the prohibition against holding two incompatible offices does not outright prevent a DLA from holding another position with a state agency, it only precludes the DLA from holding another position that is *incompatible* with the position of DLA. As noted above, the courts have identified functional incompatibility where one office is subordinate to the other.¹⁰ There are few circumstances where this would prohibit a DLA from holding secondary state employment, but could apply if, for example, a DLA also sought to be director of the Legislative Council Service or if a legislator also sought to be the legislator’s own DLA. The courts have also identified functional incompatibility “where a contrariety and antagonism would result in the attempt by one person to faithfully

⁶ 1917-NMSC-005, 22 N.M. 400.

⁷ *Id.* ¶ 9 (quotation marks omitted) (quoting *People v. Green*, 58 N.Y. 295).

⁸ 1969-NMSC-076, 80 N.M. 336.

⁹ *Id.* ¶ 7.

¹⁰ *Haymaker*, 1917-NMSC-005, ¶ 9.

and impartially discharge the duties of both.”¹¹ A DLA must therefore consider whether holding both positions would result in “contrariety and antagonism”; that is, whether the DLA can faithfully and impartially perform the duties of each position, or whether the duties of one position conflict with those of the other. Given the foregoing, however, a DLA would be permitted to hold another position in state government so long as the positions do not meet either definition of incompatibility.

II. The Governmental Conduct Act outlines certain disclosure and conflict-of-interest requirements for a DLA holding employment with another state agency.

The Governmental Conduct Act provides guidance on the disclosure and recusal requirements applicable to a DLA where the DLA holds secondary employment.¹²

First, the Governmental Conduct Act requires that “[a] public officer or employee shall disclose in writing to the officer’s or employee’s respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency.”¹³

Additionally, the Governmental Conduct Act provides that the “[f]ull disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.”¹⁴

¹¹ *Id.*

¹² See also State Ethics Comm’n Adv. Op. 2025-02 (June 6, 2025) (concluding that as a general matter the Governmental Conduct Act does not prohibit a public employee from having secondary employment).

¹³ NMSA 1978, § 10-16-4.2 (2011). While there is conceivably an argument that this provision does not require disclosure of “service to a state agency or local government agency” such an argument runs counter to the common sense reading of the statute.

¹⁴ NMSA 1978, § 10-16-3(C) (2011).

The Governmental Conduct Act also delineates what official acts a public employee may engage in that affect the employee's financial interest, defined by the Governmental Conduct Act to include "any employment or prospective employment for which negotiations have already begun[.]"¹⁵ Specifically, Section 10-16-4 of the Governmental Conduct Act prohibits a public employee from taking an official act "for the primary purpose of directly enhancing the public . . . employee's financial interest[.]" generally disqualifies a public employee from "engaging in any official act directly affecting the public . . . employee's financial interest[.]" and provides that "no public employee during the period of employment shall acquire a financial interest when the public . . . employee believes or should have reason to believe that the new financial interest will be directly affected by the . . . employee's official act."¹⁶

Taken together, these provisions outline the disclosure requirements and conflict-of-interest provisions governing a public employee's holding, or seeking, additional employment. Importantly, none of these provisions is limited to when a public employee seeks additional employment with a *private* employer. These considerations would apply equally to a public employee holding employment with another state agency.¹⁷

A DLA is a public employee subject to the Governmental Conduct Act.¹⁸ Reviewing these provisions in the context of a DLA holding a secondary employment with a state agency, a DLA must disclose each position, in writing, to each of the DLA's supervisors. A DLA is prohibited from negotiating with another state agency for employment if the DLA knows or should have reason to know that

¹⁵ NMSA 1978, § 10-16-2(F)(2) (2011).

¹⁶ NMSA 1978, § 10-16-4 (2011).

¹⁷ NMSA 1978, § 10-16-2(K) (defining "state agency" to mean "any branch, agency, instrumentality or institution of the state").

¹⁸ See NMSA 1978, § 10-16-2(I) (2011) (defining "public employee" to mean any "employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators"). See also State Ethics Comm'n Adv. Op. 2024-05, at 7 (Oct. 5, 2024), available at <https://nmonesource.com/nmos/secap/en/18985/1/document.do> (concluding a DLA is a public employee for purposes of the Governmental Conduct Act).

those negotiations will be directly affected by the DLA's official act.¹⁹ For example, if the DLA is tasked with making official recommendations to the DLA's supervising legislator about appropriations and recommends an appropriation to a certain state agency, the DLA could be prohibited from holding or accepting employment with that agency. Finally, a DLA must also at all times hold each position of public employment as a public trust.²⁰ To the extent the DLA encounters a situation where the obligations as a DLA conflict with the DLA's obligations to another state agency, the DLA should disclose the conflict and decline to take action which would breach the public trust for either position.

CONCLUSION

A DLA may simultaneously be employed by another state agency in the narrow circumstances where the DLA can perform the duties of both positions, including devoting time to the usual and normal extent during expected working hours and meeting any applicable agency policy related to schedule and outside employment, and so long as the two positions are not otherwise incompatible. Further, the DLA must disclose each employment to the DLA's other supervisor in writing. Finally, the DLA should disclose any potential conflicts that arise between the two positions, and recuse from any official acts that would affect the other position.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
STUART M. BLUESTONE, Commissioner
HON. CELIA CASTILLO, Commissioner
HON. GARY L. CLINGMAN, Commissioner
HON. DR. TERRY MCMILLAN, Commissioner
DR. JUDY VILLANUEVA, Commissioner

¹⁹ § 10-16-4(C).

²⁰ § 10-16-3(A).

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 by appointment 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 commission will conduct a virtual public rule hearing on Friday, October 3, 2025, beginning at 9:00 a.m. For instructions on how to attend this meeting, visit the Commission's website at: <https://www.sec.nm.gov/meetings/>. 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 ethics.commission@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 Friday, September 26, 2025, by submitting them via email to ethics.commission@sec.nm.gov with the subject line "SEC Rulemaking R25-01," or via first class mail or by hand delivery by appointment 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 amendments, a short explanation of the purposes of the amendments, and specific legal authority authorizing the amendments. 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, Sections 9-12, new Section 21: 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 amendments is to clarify the scope of laws under the Commission's jurisdiction and authority, incorporate the requirement that the commission seek voluntary compliance in certain matters into the investigation and resolution of civil actions to enforce the state's ethics laws, and to move the commission's general provisions concerning confidentiality of records from 1.8.3 NMAC, the rule governing Administrative Hearings, to 1.8.1 NMAC, which addresses General Provisions.

Amendments to 1.8.3 NMAC, Sections 9-11, 13-15, removing Section 16: 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 provide clarity for the process of submitting an administrative complaint, the general counsel's role in investigating a complaint and the hearing officer's role in determining probable cause, and deletes the rule on records and confidentiality so that it is more appropriately located in 1.8.1 NMAC.

Amendments to 1.8.5 NMAC, Sections 8 and 10: This amendment is proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5 of the State Ethics Commission Act, NMSA 1978. The purpose of the amendment is to include a jurisdictional review component for complaints alleging violations of the Revised Uniform Law on Notarial Acts ("RULONA") prior to conducting an investigation.

This is an amendment to 1.8.1 NMAC, Sections 9 through 12, adding new Section 21, effective 10/21/2025.

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.

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~~ those laws for which the Commission has jurisdiction or authority to act.

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.

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.

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.

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; A, 10/21/2025]

1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

A. Advisory opinions. The commission may issue advisory opinions on matters related to ethics upon request.

(1) A request for an advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist’s employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) Upon receiving a request for an advisory opinion, the director or the director’s designee:
(a) must provide the requester with a written confirmation of receipt; and
(b) may ask the requester if the requester would prefer to receive an informal advisory opinion.

(3) Within sixty days of receiving a request for an advisory opinion, the commission must either:
(a) issue an advisory opinion;
(b) inform the requester that the commission will not be issuing an advisory opinion and provide an explanation for the commission’s decision; or
(c) inform the requester that the commission requires more than sixty days to issue an advisory opinion, and notifies the requester about the status of the request every thirty days thereafter.

(4) Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

(5) At the request of any commissioner, the director or the director’s designee shall draft an advisory opinion based on any legal determination issued by the director, the general counsel, or a hearing officer for the commission to consider for issuance as an advisory opinion.

B. Informal advisory opinions. A person may submit the request for an informal advisory opinion to the director ~~[or general counsel]~~, who may assign an attorney to answer the request.

(1) A request for an informal advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act or the Governmental

Conduct Act, government contractor, lobbyist or lobbyist's employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) An informal advisory opinion is specific to the person who requests the advice, and the facts presented in the request.

(3) An informal advisory opinion is not binding on the commission unless and until the commission votes to adopt the informal advisory opinion as an advisory opinion. The director, based on any informal advisory opinion issued, may draft an advisory opinion for the commission to consider for issuance as an advisory opinion.

(4) If the commission determines that a person committed a violation after reasonably relying on an informal advisory opinion and the violation is directly related to the informal advisory opinion, the commission may consider that the person acted in good faith.

[1.8.1.9 NMAC-N, 10/27/2020; A, 10/26/2021; A, 10/21/2025]

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; or

(4) A request seeking compliance under applicable law.

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; A, 10/21/2025]

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 violated 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; or

(3) a request seeking compliance under applicable law.

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; A, 10/21/2025]

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~~ may 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; A, 10/21/2025]

1.8.1.21 OPEN RECORDS AND CONFIDENTIALITY:

A. Thirty days after the director provides notice pursuant to Paragraph (1) of Subsection B of 1.8.3.13 NMAC to the respondent of the allegations of a complaint, the hearing officer's finding of probable cause, and the setting of the public hearing:

(1) the director shall make public the specific allegations of the complaint, the notification to the respondent, any response filed by the respondent, and any related records, provided that:

(2) prior to the publication of any commission records pursuant to the preceding subparagraph, any proceedings in district court initiated by the commission to obtain subpoenas shall be sealed and shall remain so until such time as the commission notifies the court that the commission has made the complaint public or the parties enter into an approved settlement agreement.

B. If a complaint is dismissed because the general counsel has found it to be frivolous or unsubstantiated, as provided in Subsection E of Section 10-16G-10 NMSA 1978, the commission shall not release to the public the complaint, the reason for its dismissal, or any related records. Nothing in this subsection shall prevent the making public of any document by a complainant or respondent to the proceeding.

C. Notwithstanding any other requirement in these rules or the law requiring notification to the complainant or respondent of commission actions on a complaint, the director may delay notifying parties or releasing to the public the complaint and related information if the director deems it necessary to protect the integrity of a criminal investigation.

(1) The director shall, within 10 days of making the decision to delay release of a complaint pursuant to this subsection, present to the commission the records and information to be withheld and the reasons for delaying their release.

(2) The commission may, by a majority vote pursuant to Subsection H of Section 10-16G-10 NMSA 1978, confirm the director's decision in a meeting closed pursuant to the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978, and the commission's open meetings resolution.

D. A complainant or respondent to a formal administrative complaint or a complaint alleging violations of the Revised Uniform Law on Notarial Acts may request, and the Commission's records custodian may provide to that complainant or respondent, records comprising the administrative record, including any pleadings, motions, filed exhibits, or orders. This Subsection does not prevent the records custodian from withholding records otherwise made confidential or privileged under law, including records related to an administrative complaint subject to Subsection H of Section 10-16G-10 NMSA 1978.

[1.8.1.21 NMAC-N, 10/21/2025]

This is an amendment to 1.8.3 NMAC, Sections 9, 10, 11, 13, 14, & 15, and repealing Section 16, effective 10/21/2025.

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. 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 ~~[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.]~~ that:

(a) is not signed and sworn to by the complainant, under penalty of false statement;

(b) fails to provide contact information for the complainant or any respondent;

(c) does not identify the complainant or a respondent; or

(d) is filed on behalf of a corporation or other non-natural person but is not filed by the entity's attorney in accordance with Paragraph (7) of Subsection A of 1.8.3.9 NMAC.

(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 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]~~ 365 days, 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;

(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

(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; A, 10/21/2025]

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 is within the jurisdiction of the commission, unless otherwise provided in Subsection D of this Section, 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 reply by a date set out in the request.

D. If the director determines that the complaint 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 Subsection H of Section 10-16G-10 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 or a hearing officer 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 C through 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; A, 10/21/2025]

1.8.3.11 GENERAL COUNSEL'S INVESTIGATION:

A. Upon receiving notice of the director's determination that the commission has 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~~] a complaint is frivolous or unsubstantiated, 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; A, 10/21/2025]

1.8.3.13 PROBABLE CAUSE DETERMINATIONS AND CONSEQUENCES; INVESTIGATION REPORTS AND RECOMMENDATIONS TO COMMISSION; DISPOSITION BY AGREEMENT; NOTICE TO PARTIES:

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 the general counsel determines that a complaint is 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]~~ a hearing officer 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 assigned to conduct the hearing 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; A, 10/21/2025]

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 e-mail if the parties have agreed to receive e-mail correspondence, or 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 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 post-investigation 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~~] that a hearing officer determines are supported by probable cause.

(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~~] hearing officer's determination of probable cause; 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 actionagainst 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; A, 10/21/2025]

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.

(1) If a hearing officer dismisses a complaint, pursuant to Paragraph (1) of Subsection [B] A of 1.8.3.13 NMAC, following the general counsel's determination that the complaint is 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.

F. An aggrieved 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; A, 10/21/2025]

1.8.3.16 [OPEN RECORDS AND CONFIDENTIALITY:]

~~A. Thirty days after the director provides notice pursuant to Subsection A of 1.8.3.13 NMAC to the respondent of the allegations of a complaint, the general counsel's finding of probable cause, and the setting of the public hearing:~~

~~(1) the director shall make public the specific allegations of the complaint, the notification to the respondent, any response filed by the respondent, and any related records, provided that:~~

~~(2) prior to the publication of any commission records pursuant to the preceding subparagraph, any proceedings in district court initiated by the commission to obtain subpoenas shall be sealed, and shall remain so until such time as the commission notifies the court that the commission has made the complaint public or the parties enter into an approved settlement agreement.~~

~~B. If a complaint is dismissed because the general counsel has found it to be frivolous or unsubstantiated, as provided in Subsection E of Section 10-16G-10 NMSA 1978, the commission shall not release to the public the complaint, the reason for its dismissal, or any related records. Nothing in this subsection shall prevent the making public of any document by a complainant or respondent to the proceeding.~~

~~C. Notwithstanding any other requirement in these rules or the law requiring notification to the complainant or respondent of commission actions on a complaint, the director may delay notifying parties or releasing to the public the complaint and related information if the director deems it necessary to protect the integrity of a criminal investigation.~~

~~(1) The director shall, within 10 days of making the decision to delay release of a complaint pursuant to this subsection, present to the commission the records and information to be withheld and the reasons for delaying their release.~~

~~(2) The commission may, by a majority vote pursuant to Subsection H of Section 10-16G-10 NMSA 1978, confirm the director's decision in a meeting closed pursuant to the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978, and the commission's open meetings resolution.] [RESERVED]~~

[1.8.3.15 NMAC-N, 01/01/2020; Rn 1.8.3.16 NMAC & A, 09/14/2021; Repealed, 10/21/2025]

This is an amendment to 1.8.5 NMAC, Sections 8 and 10, effective 10/21/2025.

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 determine whether the complaint is within the commission's jurisdiction.

D. If the director determines the commission does not have jurisdiction over a complaint, the director shall inform the complainant of the reasons and close the matter without further action.

E. If the director determines the complaint is within the commission's jurisdiction, 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] E. 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] G. 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] H. 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; A, A, 10/21/2025]

1.8.5.10 APPEALS OF COMMISSION DECISIONS: A final decision by the Commission on a complaint may be appealed by an aggrieved party pursuant to Rule 1-075 NMRA.

[1.8.5.10 NMAC-N, 7/1/2023; A, 10/21/2025]