

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 10, 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.



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Proposed Rule Name:

Notice of Rulemaking and Public Rule Hearing to 1.8.1, 1.8.3, and 1.8.5 NMAC

Agency:

Ethics Commission

Purpose:

The purpose of the proposed rule is to promulgate rules governing the Commission's initiation, prosecution, and resolution of civil actions to enforce the state's ethics laws; improve the efficiency of commission adjudications and to respond to recent amendments to Section 10-16G-10 NMSA 1978 of the State Ethics Commission Act; and to promulgate binding rules governing the Commission's receipt, investigation, and adjudication of complaints alleging violations of the Revised Uniform Law on Notarial Acts ("RULONA"), NMSA 1978.

Summary:

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 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.

Rule Complete Copy :

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

Corrections:

Not available

Rule Explanatory Statement:

Not available

Related New Mexico Register Publications:

Not available

For any additional information or questions concerning this rule making or posting please contact:

Amelia Bierle
amelia.bierle@sec.nm.gov
505-554-7706

Last Updated Date

8/1/2025 4:57 PM

How to submit Comments:

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 (<mailto: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.

When are comments due:

9/26/2025 5:00 PM

Hearing Date:

10/10/2025 9:00 AM

Public Hearing Location:

The commission will conduct a virtual public rule hearing on Friday, October 10, 2025, beginning at 9:00 a.m. 10/10/2025 (9:00 AM -12:00 PM)

How to participate:

For instructions on how to attend this meeting, visit the Commission's website at: <https://www.sec.nm.gov/meetings/> (<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 (<mailto: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.

① If the document is not visible on the previewer, please download the file.

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View Document (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/UW000007UuqLqr7BGPngYgQLcRKhiwzJOe5YFAdBWa5C7X1qUWGI2UU)	Proposed- Rulemaking- Sunshine-Portal	PDF	
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From: [Bierle, Amelia, SEC](#)
To: [Commission, Ethics, SEC](#)
Cc: [Chato, Caroline, SEC](#)
Bcc: [act@lwnm.org](#); [agarrahan@cov.com](#); [alanctorgerson@yahoo.com](#); [allan@thornburgfoundation.org](#); [Andrew Ostic](#); [Antoinette Sedillo Lopez](#); [bap.casey@yahoo.com](#); [bgjimmerson@msn.com](#); [blackbearguardian@gmail.com](#); [Blumenfeld, Richard, OSI](#); [bmares594@hotmail.com](#); [Boyd, Dan](#); [Brian Colon](#); [BRODY K NORTON](#); [brymetzger@gmail.com](#); [Carlos MONTTOYA](#); [carolmiller@newmexico.com](#); [charles.cole@g.com](#); [Chris Mechels](#); [Cris Balzano](#); [d.l.bowley@gmail.com](#); [Daniel Chacon](#); [David Leach](#); [deborahortzacondit@gmail.com](#); [dedefeld@comcast.net](#); [devarajaran@gmail.com](#); [director@nmfog.org](#); [Erwin@erwinlegal.com](#); [Etta Pettijohn](#); [formpsy@aol.com](#); [FRANK SUSMAN](#); [Giandomenico, Lisa](#); [gmiraben@icloud.com](#); [gphilips@nmcounties.org](#); [Greg](#); [gwynethdoland@gmail.com](#); [Hannah Miller](#); [Haussamen, Heath](#); [heather balas](#); [Heather Heunermund](#); [hferguson@commoncause.org](#); [Janet Goodman](#); [Jarratt Applewhite](#); [Jeff Baker](#); [Jeff Carr](#); [Jimenez, Diego, DFA](#); [jjowflc@gmail.com](#); [Joe](#); [joeaccetta@comcast.net](#); [juliagoldberg@sfreporter.com](#); [jybaca@gmail.com](#); [jzfall@hotmail.com](#); [kathleen sabo](#); [Kathryn Hamilton](#); [Ken Resnick](#); [KOAT 7, TV](#); [krager@rmselca.org](#); [ktca@comcast.net](#); [Lauren Bernally](#); [Laurie Vogel](#); [leclairerd@icloud.com](#); [Linda S. Akvare](#); [Long Komer & Associates P. A.](#); [Lorraine Mendiola](#); [m.garciasierra@nmlegis.gov](#); [Margaret Romero](#); [marjorie@nmindepth.com](#); [martyg@swcp.com](#); [maryhenrie@msn.com](#); [matthew.jaramillo@pnmresources.com](#); [McKay, Dan](#); [Melinda P Chapman](#); [meshleman@sandovalcountynm.gov](#); [Micaela Fischer](#); [Mike Kelly](#); [mikekiley5252@gmail.com](#); [Morgan Lee](#); [msilva@commoncause.org](#); [Naomi Tenorio](#); [natdean@hubwest.com](#); [Nicholas Koluncich](#); [nmsunlight72@gmail.com](#); [Ortiz, Tony](#); [Paul Biderman](#); [pennfam10@gmail.com](#); [Pete Dinelli](#); [Plantard, G](#); [president@lwnm.org](#); [rbranch1@comcast.net](#); [Rees, Cliff](#); [Richard Allan](#); [Richard Mason](#); [Richard Russo](#); [Rikki-Lee G. Chavez](#); [Roberta.baca2000@gmail.com](#); [S. Muehlhausen](#); [sirknightacepage@hotmail.com](#); [STellez@commoncause.org](#); [Stuart M. Bluestone](#); [suhamusa23@gmail.com](#); [Tamarra Howard](#); [Ted Allen](#); [Terry Ihnat](#); [Tim Sorrells](#); [Travis Smith](#); [Trip@nmindepth.com](#); [Vincent Rodriguez](#) - KOAT; [William James](#)
Subject: Notice of Proposed Rulemaking by the State Ethics Commission
Date: Thursday, June 12, 2025 11:49:00 AM
Attachments: [ETHICSnotice_meoAPPROVED 5 22 2025.pdf](#)

Good afternoon,

The State Ethics Commission has issued a notice of proposed rulemaking. A copy of the notice is attached to this email for your review.

Please feel free to share this information with others who may be interested in the Commission's rulemaking process.

Thank you,
Amelia

Amelia Bierle, MPP, MBA
Deputy Director
New Mexico State Ethics Commission
800 Bradbury Dr. SE, Suite 215
Albuquerque, NM 87106
www.sec.nm.gov
(505) 554 7706 (mobile)
amelia.bierle@sec.nm.gov

From: [Bierle, Amelia, SEC](#)
To: lcs@nmlegis.gov
Cc: [Commission, Ethics, SEC](#); [Chato, Caroline, SEC](#)
Subject: Notice of proposed rulemaking
Date: Thursday, June 12, 2025 11:45:00 AM
Attachments: [ETHICSnotice_meoAPPROVED 5 22 2025.pdf](#)

Good afternoon,

Pursuant to NMSA 1978, Section 14-4-5.2(A), I am providing the Legislative Council Service with a copy of the State Ethics Commission's notice of proposed rulemaking.

Kind regards,
Amelia

Amelia Bierle, MPP, MBA
Deputy Director
New Mexico State Ethics Commission
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The Commission will hold a public rules hearing on August 1, 2025.
Details are provided in the [Notice of Rule Making and Public Rule Hearing](#).

WELCOME TO THE NEW MEXICO

State Ethics Commission

The State Ethics Commission is an independent state agency that promotes the integrity of state government through the interpretation, enforcement, and improvement of New Mexico’s campaign finance, lobbying, procurement, and governmental conduct laws.

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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 11/4/2025.

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 11/4/2025.

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 11/4/2025.

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]

From: [Chris Mechels](#)
To: [Commission, Ethics, SEC](#)
Subject: [EXTERNAL] SEC Rulemaking R25-01
Date: Wednesday, September 17, 2025 7:50:29 AM

You don't often get email from cmechels@q.com. [Learn why this is important](#)

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To the Commission;

Upon examination and consideration of the proposed changes, I believe the following language, from page 5 of the document describing the changes, should be eliminated, with the current text retained..

(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

As a prospective user, I find the existing text adequate and less confusing. The proposed text seems to change the outcome, with no explanation provided, and is poorly written.

Regards.

Chris Mechels
505-982-7144
1336 Bishops Lodge Road
Santa Fe, NM 87506

From: [walker boyd](#)
To: [Commission, Ethics, SEC](#)
Subject: [EXTERNAL] Comments on proposed rules
Date: Thursday, September 25, 2025 11:19:40 AM

You don't often get email from jwb@jwboyd.com. [Learn why this is important](#)

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

I am writing to offer my comments on proposed amendments to Rule 1.8.3.14 NMAC. I was formerly the Commission's general counsel. I am appearing before the Commission on my own behalf, and without compensation.

1. Subsection (B), which governs the location of meetings, should be amended to permit the hearing officer to hold the hearing on a web conference medium. The provision should further be modified so as not to require a showing of "undue burden" for the hearing officer to change the location of the hearing to another location in New Mexico or to a virtual hearing. This change would bring Commission practice in line with the practice in many district courts for bench trials, and it would save the Commission the cost and expense of in-person hearings at the Commission's offices, particularly those costs associated with providing for the physical security of the hearing officer and parties.
2. Subsection (D) should be amended to strike the requirement that the hearing be "open to the public in accordance with the Open Meetings Act, except for hearings or portions thereof exempted from the requirements of that Act." It is not clear that the Open Meetings Act applies to a hearing before a hearing officer, since the hearing officer is not a public body and, in conducting a hearing, is not exercising delegated authority of the Commission. *See* NMSA 1978, Section 10-15-1(B). To the extent the Open Meetings Act does not apply, requiring it to apply by way of the SEC's procedural rules would enable parties to challenge hearing officer decisions for technical deviations from the Open Meetings Act's notice and agenda requirements, such as a failure to post an agenda for the hearing more than 72 hours before the hearing occurs, or failing to give notice that the hearing officer is deliberating on a case. To the extent the Open Meetings Act does apply, the determination of the notice required can

be determined by the hearing officer by looking to the statute; the rule does not assist with that task.

I support the other proposed amendments to the Commission's rules of procedure.

--

walker boyd

From: [Chris Mechels](#)
To: [Commission, Ethics, SEC](#)
Subject: [EXTERNAL] SEC Rulemaking R25-01
Date: Thursday, September 25, 2025 3:34:39 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

To the Commission:

Upon further examination, I find that the Commission's past Rule Makings, since 2019, have not complied with the NM Rules Act.

The 2019 Rule Making shows the required filing of documents on the Portal, but is still not fully compliant with the comments requirements, which date to 2018.

Filing after that are non complaint, failing the required Portal filings.

There is a good deal of non-compliance across state government, as the SRCA (Matt Ortiz) refuses to examine Rule Makings for compliance with the Rules Act, though he knows very well that this leads to broad non-compliance. Even worse, the Records Commission refuses to deal with this, and even allows illegal records destruction. Scofflaws.

This is of course no excuse for the Ethics Commission to violate the Rules Act, going back to 2019.

Should you continue to do so, you will do it knowingly.

With your role in promoting Ethics in New Mexico, that would be unseemly.

As the current Rule Making does not seem urgent, I suggest that it be rescheduled, and done in compliance with law.

An explanation from your Counsel might also be appropriate.

Regards,

Chris Mechels
505-982-7144
1336 Bishops Lodge Rd
Santa Fe, NM 87506

Chris Mechels
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Santa Fe, NM 87506

This is an amendment to 1.8.1 NMAC, Sections 7, 9 through 12, adding new Section 21, effective 11/4/2025.

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

This is an amendment to 1.8.3 NMAC, Sections 9, 10, 11, 13, 14, & 15, and repealing Section 16, effective 11/4/2025.

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, including a virtual location, 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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

This is an amendment to 1.8.5 NMAC, Sections 8 and 10, effective 11/4/2025.

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, 11/4/2025]

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, 11/4/2025]



STATE ETHICS COMMISSION

CONCISE EXPLANATORY STATEMENT FOR AMENDMENTS TO 1.8.1 NMAC (NMSA 1978, § 14-4-5.5 & 1.24.25.14(F) NMAC)

1. **Citation to authority authorizing rule:** Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978.
2. **Effective date of rule:** November 4, 2025.
3. **Date of adoption of rule:** October 10, 2025.
4. **Date of meeting at which agency voted to approve rule:** October 10, 2025.
5. **Reasons for adopting rule:** 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.
6. **Reasons for any change between the initial published amendments to rule and final adopted amendments to rule:**

Section 1.8.1.7 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

No changes.

Section 1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

No changes.

Section 1.8.1.10 INFORMAL COMPLAINTS; ASSESSMENTS

No changes.

Section 1.8.1.11 INVESTIGATIONS; SUBPOENAS:

No changes.

Section 1.8.1.12 CIVIL ACTIONS

No changes.

Sections 1.8.1.21: OPEN RECORDS AND CONFIDENTIALITY

No changes.

7. Reasons for not accepting substantive arguments made through written pre-filed public comment:

Section 1.8.1.7 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

No substantive arguments received.

Section 1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

No substantive arguments received.

Section 1.8.1.10 INFORMAL COMPLAINTS; ASSESSMENTS

No substantive arguments received.

Section 1.8.1.11 INVESTIGATIONS; SUBPOENAS:

No substantive arguments received.

Section 1.8.1.12 CIVIL ACTIONS

No substantive arguments received.

Sections 1.8.1.21: OPEN RECORDS AND CONFIDENTIALITY

No substantive arguments received.



STATE ETHICS COMMISSION

CONCISE EXPLANATORY STATEMENT FOR AMENDMENTS TO 1.8.3 NMAC (NMSA 1978, § 14-4-5.5 & 1.24.25.14(F) NMAC)

1. **Citation to authority authorizing rule:** Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978.
2. **Effective date of rule:** November 4, 2025.
3. **Date of adoption of rule:** October 10, 2025.
4. **Date of meeting at which agency voted to approve rule:** October 10, 2025.
5. **Reasons for adopting rule:** The purpose of these amendments is to provide clarity for the process of submitting an administrative complaint and the Commission's administrative hearings, the general counsel's role in investigating a complaint and the hearing officer's role in determining probable cause, and repeals the rule on records and confidentiality so that it is more appropriately located in 1.8.1 NMAC.
6. **Reasons for any change between the initial published amendments to rule and final adopted amendments to rule:**

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

No changes.

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

No changes.

Section 1.8.3.11 GENERAL COUNSEL’S INVESTIGATION:

No changes.

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

No changes.

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

1.8.1.14(B):

Insert “, including a virtual location,” in the first sentence, after “the state” and before “as may be determined by the hearing officer.”

Rationale: The Commission received public comment concerning Section 1.8.3.14(B) NMAC from Walker Boyd recommending express inclusion of virtual hearings as an option for the location of administrative hearings held by a hearing officer, noting that this change would bring the Commission practice in line with the practice in many district courts for bench trials, would save the Commission the cost and expense of in-person hearings at the Commission’s offices, particularly those costs associated with providing for the physical security of the hearing officer and parties. The Commission finds this amendment aligns with the Commission’s statutory authority related to administrative hearings, provides additional access to Commission hearings by offering a virtual format, conserves resources of the Commission and parties before the Commission, is a practice already in place in other forums, including the courts, and clarifies expressly what is already permitted under the rule, that is, that the hearing officer may determine the location for a hearing.

Section 1.8.3.15 APPEALS; ENFORCEMENT:

No changes.

Section 1.8.3.16 OPEN RECORDS AND CONFIDENTIALITY

No changes.

7. **Reasons for not accepting substantive arguments made through written pre-filed public comment:**

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

Chris Mechels submitted a written comment about the proposed amendments to Subsection A of Section 1.8.9 NMAC indicating as a prospective user he finds the existing text adequate and less confusing and that the proposed text seems to change the outcome, with no explanation provided, and is poorly written. The Commission elected to adopt the amendment as proposed because it clarifies in one section for both Commission staff and the public the circumstances under which an administrative complaint may be rejected for failing to complete the required complaint form. *See* NMSA 1978, § 10-16G-10(B).

Section 1.8.3.10 DIRECTOR’S RESPONSIBILITIES UPON RECEIVING A COMPLAINT; RESPONDENT’S OPPORTUNITY TO RESPOND; JURISDICTIONAL REVIEW; REFERRALS; NOTIFICATION TO PARTIES:

No substantive arguments received.

Section 1.8.3.11 GENERAL COUNSEL’S INVESTIGATION:

No substantive arguments received.

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

No substantive arguments received.

Section 1.8.3.14 HEARING OFFICERS; SUMMARY DISPOSITION; HEARINGS; INTERPRETERS; EVIDENCE:

In addition to public comment related to 1.8.3.14(B) discussed above, Walker Boyd also submitted comment recommending removing a provision in Section 1.8.3.14(D) NMAC which provides that administrative 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.” Mr. Boyd comments that it is not clear that the Open Meetings Act applies to hearings before a single hearing officer where the officer is not exercising delegated authority in lieu of the Commission. The State Ethics Commission Act, NMSA 1978, § 10-16G-10 (2023), requires the administrative hearing before a hearing officer following a determination of probable cause be “a public hearing.” The Commission declined to adopt the suggested amendment because the rule already excepts those hearings or portions of a hearing which are exempted from the requirements of the Open Meetings Act, and to the extent the hearing or portions of a hearing are not excepted, they should still be held in accordance with the Open Meetings Act.

Section 1.8.3.15 APPEALS; ENFORCEMENT:

No substantive arguments received.

Section 1.8.3.16 OPEN RECORDS AND CONFIDENTIALITY

No substantive arguments received.



STATE ETHICS COMMISSION

CONCISE EXPLANATORY STATEMENT FOR AMENDMENTS TO 1.8.5 NMAC (NMSA 1978, § 14-4-5.5 & 1.24.25.14(F) NMAC)

1. **Citation to authority authorizing rule:** Subsection C of Section 14-14A-26, Revised Uniform Law on Notarial Acts, Section 14-14A-1 NMSA 1978.
2. **Effective date of rule:** November 4, 2025.
3. **Date of adoption of rule:** October 10, 2025.
4. **Date of meeting at which agency voted to approve rule:** October 10, 2025.
5. **Reasons for adopting rule:** 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.
6. **Reasons for any change between the initial published rule and final adopted rule:**

Section 1.8.5.8 COMPLAINTS:

No changes.

Section 1.8.5.10 APPEALS OF COMMISSION DECISIONS:

No changes.

7. **Reasons for not accepting substantive arguments made through written pre-filed public comment:**

Section 1.8.5.8 COMPLAINTS:

No substantive arguments received.

Section 1.8.5.10 APPEALS OF COMMISSION DECISIONS:

No substantive arguments received.

This is an amendment to 1.8.1 NMAC, Sections 9 through 12, adding new Section 21, effective 11/4/2025.

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

This is an amendment to 1.8.3 NMAC, Sections 9, 10, 11, 13, 14, & 15, and repealing Section 16, effective 11/4/2025.

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, including a virtual location, 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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

This is an amendment to 1.8.5 NMAC, Sections 8 and 10, effective 11/4/2025.

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, 11/4/2025]

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, 11/4/2025]

Instructions for completing the NMAC TRANSMITTAL FORM



Your agency must complete the following:

Volume, Issue and Publication Date. [Example: Volume: XXXII , Issue: 10, Publication date: May 25, 2021.](#)

Provide the total number of pages of the paper version of the new rule, amendment, repeal, or emergency document.
[Note: Do not include the pages of the transmittal form, billing sheet, PO, etc.](#)

Sequence number is for **ALD use only**.

Issuing agency's name and mailing address.

Agency's 3-digit DFA code. [Example: 123](#)

Contact person's Name, Phone number, E-mail address.

Check type of rule action: **New** (brand new rule or replacement rule), **Amendment**, **Repeal** (repeal and do not replace or repeal and replace), **Emergency**, or **Renumber**. [For a repeal and replacement rule, the agency must provide TWO signed transmittal forms; one for the repeal statement and another for the new \(replacement\) rule.](#)

Most Recent Filing Date of the Part for **ALD use only**.

Identify NMAC Title, Chapter and Part numbers and Title, Chapter and Part names.

[Example:](#)

Title 19 Natural Resources and Wildlife
Chapter 30 Wildlife Administration Aquatic
Part 14 Invasive Species

Description of Amendment: (if amending) [Example: "Amending three sections "](#)

Amendment's NMAC citation: (if amending) [Example: "Sections 9, 10 and 18 of 7.1.13 NMAC".](#)

Are any materials incorporated by reference? [Check: Yes or No. If Yes, please list attachments or provide Internet site.](#)

If incorporated, has copyright permission been granted? [Check Yes or No or check if document is in the public domain.](#)

Concise Explanatory Statement for rulemaking adoption See 1.24.25.14 NMAC:

Provide your agency's specific statutory or other authority authorizing rulemaking: Check with your agency's general counsel office to determine the correct citation(s) authorizing your agency to make rules.

Provide your Notice date(s) ([when notice of rulemaking was published in Register](#)): Hearing date(s) (if agency has board or commission): Rule adoption date: ([see note below](#)) and Rule effective date ([date rulemaking becomes effective](#))

Note:

- There must be at least **30** days between the notice publication date and hearing date.
- Your agency **must file** your rule within **15** days from rule adoption date. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement. Unless your rule is an emergency filing, the rule effective date cannot be any earlier than the publication date in the New Mexico Register.

Findings required for rulemaking adoption. If attaching a separate document as findings or as concise explanatory statement, please indicate as such in findings section.

[Check with your agency's general counsel office regarding substance of any required findings to be filed.](#)

Issuing Authority: Name, Title Date signed and original Signature of issuing authority or their delegate in **black** ink or with valid digital signature: [Note: If authority has been delegated, this box must be checked. A letter of delegation must be on file with the State Records Center and Archives, Administrative Law Division.](#)

NMAC

Transmittal Form



Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: ☐ New ☐ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐ (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes ☐ No ☐ Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes ☐ No ☐ Public domain ☐

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings **MUST** include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Check if authority has been delegated

Title:

Signature: (BLACK ink only **OR** Digital Signature)

Date signed:

Instructions for completing the NMAC TRANSMITTAL FORM



Your agency must complete the following:

Volume, Issue and Publication Date. [Example: Volume: XXXII , Issue: 10, Publication date: May 25, 2021.](#)

Provide the total number of pages of the paper version of the new rule, amendment, repeal, or emergency document.
[Note: Do not include the pages of the transmittal form, billing sheet, PO, etc.](#)

Sequence number is for **ALD use only**.

Issuing agency's name and mailing address.

Agency's 3-digit DFA code. [Example: 123](#)

Contact person's Name, Phone number, E-mail address.

Check type of rule action: **New** (brand new rule or replacement rule), **Amendment**, **Repeal** (repeal and do not replace or repeal and replace), **Emergency**, or **Renumber**. [For a repeal and replacement rule, the agency must provide TWO signed transmittal forms; one for the repeal statement and another for the new \(replacement\) rule.](#)

Most Recent Filing Date of the Part for **ALD use only**.

Identify NMAC Title, Chapter and Part numbers and Title, Chapter and Part names.

[Example:](#)

Title 19 Natural Resources and Wildlife
Chapter 30 Wildlife Administration Aquatic
Part 14 Invasive Species

Description of Amendment: (if amending) [Example: "Amending three sections "](#)

Amendment's NMAC citation: (if amending) [Example: "Sections 9, 10 and 18 of 7.1.13 NMAC".](#)

Are any materials incorporated by reference? [Check: Yes or No. If Yes, please list attachments or provide Internet site.](#)

If incorporated, has copyright permission been granted? [Check Yes or No or check if document is in the public domain.](#)

Concise Explanatory Statement for rulemaking adoption See 1.24.25.14 NMAC:

Provide your agency's specific statutory or other authority authorizing rulemaking: Check with your agency's general counsel office to determine the correct citation(s) authorizing your agency to make rules.

Provide your Notice date(s) ([when notice of rulemaking was published in Register](#)): Hearing date(s) (if agency has board or commission): Rule adoption date: ([see note below](#)) and Rule effective date ([date rulemaking becomes effective](#))

Note:

- There must be at least **30** days between the notice publication date and hearing date.
- Your agency **must file** your rule within **15** days from rule adoption date. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement. Unless your rule is an emergency filing, the rule effective date cannot be any earlier than the publication date in the New Mexico Register.

Findings required for rulemaking adoption. If attaching a separate document as findings or as concise explanatory statement, please indicate as such in findings section.

[Check with your agency's general counsel office regarding substance of any required findings to be filed.](#)

Issuing Authority: Name, Title Date signed and original Signature of issuing authority or their delegate in **black** ink or with valid digital signature: [Note: If authority has been delegated, this box must be checked. A letter of delegation must be on file with the State Records Center and Archives, Administrative Law Division.](#)

NMAC

Transmittal Form



Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: ☐ New ☐ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐ (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes ☐ No ☐ Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes ☐ No ☐ Public domain ☐

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings **MUST** include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Check if authority has been delegated

Title:

Signature: (BLACK ink only **OR** Digital Signature)

Date signed:

Instructions for completing the NMAC TRANSMITTAL FORM



Your agency must complete the following:

Volume, Issue and Publication Date. [Example: Volume: XXXII , Issue: 10, Publication date: May 25, 2021.](#)

Provide the total number of pages of the paper version of the new rule, amendment, repeal, or emergency document.
[Note: Do not include the pages of the transmittal form, billing sheet, PO, etc.](#)

Sequence number is for **ALD use only**.

Issuing agency's name and mailing address.

Agency's 3-digit DFA code. [Example: 123](#)

Contact person's Name, Phone number, E-mail address.

Check type of rule action: **New** (brand new rule or replacement rule), **Amendment**, **Repeal** (repeal and do not replace or repeal and replace), **Emergency**, or **Renumber**. [For a repeal and replacement rule, the agency must provide TWO signed transmittal forms; one for the repeal statement and another for the new \(replacement\) rule.](#)

Most Recent Filing Date of the Part for **ALD use only**.

Identify NMAC Title, Chapter and Part numbers and Title, Chapter and Part names.

[Example:](#)

Title 19 Natural Resources and Wildlife
Chapter 30 Wildlife Administration Aquatic
Part 14 Invasive Species

Description of Amendment: (if amending) [Example: "Amending three sections "](#)

Amendment's NMAC citation: (if amending) [Example: "Sections 9, 10 and 18 of 7.1.13 NMAC".](#)

Are any materials incorporated by reference? [Check: Yes or No. If Yes, please list attachments or provide Internet site.](#)

If incorporated, has copyright permission been granted? [Check Yes or No or check if document is in the public domain.](#)

Concise Explanatory Statement for rulemaking adoption See 1.24.25.14 NMAC:

Provide your agency's specific statutory or other authority authorizing rulemaking: Check with your agency's general counsel office to determine the correct citation(s) authorizing your agency to make rules.

Provide your Notice date(s) ([when notice of rulemaking was published in Register](#)): Hearing date(s) (if agency has board or commission): Rule adoption date: ([see note below](#)) and Rule effective date ([date rulemaking becomes effective](#))

Note:

- There must be at least **30** days between the notice publication date and hearing date.
- Your agency **must file** your rule within **15** days from rule adoption date. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement. Unless your rule is an emergency filing, the rule effective date cannot be any earlier than the publication date in the New Mexico Register.

Findings required for rulemaking adoption. If attaching a separate document as findings or as concise explanatory statement, please indicate as such in findings section.

[Check with your agency's general counsel office regarding substance of any required findings to be filed.](#)

Issuing Authority: Name, Title Date signed and original Signature of issuing authority or their delegate in **black** ink or with valid digital signature: [Note: If authority has been delegated, this box must be checked. A letter of delegation must be on file with the State Records Center and Archives, Administrative Law Division.](#)

NMAC

Transmittal Form



Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: ☐ New ☐ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐ (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes ☐ No ☐ Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes ☐ No ☐ Public domain ☐

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings **MUST** include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Check if authority has been delegated

Title:

Signature: (BLACK ink only **OR** Digital Signature)

Date signed:

NMAC

Transmittal Form

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Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐ (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes ☐ No ☒ Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes ☐ No ☐ Public domain ☐

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

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See attached concise explanatory statement.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

New Mexico State Ethics Commission

Check if authority has been delegated

☐

Title:

Executive Director

Signature: (BLACK ink only OR Digital Signature)

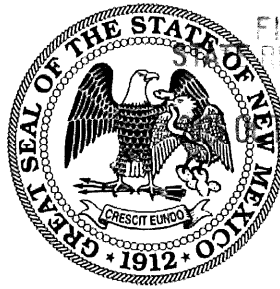
Jeremy Farris

Digitally signed by Jeremy Farris
Date: 2025.10.21 16:08:04 -06'00'

Date signed:

10/21/2025

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Albuquerque, NM 87106
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Hon. William F. Lang (*Chair*)
Jeffrey L. Baker
Stuart M. Bluestone
Hon. Celia Castillo
Hon. Gary Clingman
Hon. Terry McMillan
Judy Villanueva

STATE ETHICS COMMISSION

CONCISE EXPLANATORY STATEMENT FOR AMENDMENTS TO 1.8.1 NMAC (NMSA 1978, § 14-4-5.5 & 1.24.25.14(F) NMAC)

1. **Citation to authority authorizing rule:** Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978.
2. **Effective date of rule:** November 4, 2025.
3. **Date of adoption of rule:** October 10, 2025.
4. **Date of meeting at which agency voted to approve rule:** October 10, 2025.
5. **Reasons for adopting rule:** 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.
6. **Reasons for any change between the initial published amendments to rule and final adopted amendments to rule:**

Section 1.8.1.7 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

No changes.

Section 1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

No changes.

Section 1.8.1.10 INFORMAL COMPLAINTS; ASSESSMENTS

2025 OCT 21 PM 4: 41

No changes.

Section 1.8.1.11 INVESTIGATIONS; SUBPOENAS:

No changes.

Section 1.8.1.12 CIVIL ACTIONS

No changes.

Sections 1.8.1.21: OPEN RECORDS AND CONFIDENTIALITY

No changes.

7. Reasons for not accepting substantive arguments made through written pre-filed public comment:

Section 1.8.1.7 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

No substantive arguments received.

Section 1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

No substantive arguments received.

Section 1.8.1.10 INFORMAL COMPLAINTS; ASSESSMENTS

No substantive arguments received.

Section 1.8.1.11 INVESTIGATIONS; SUBPOENAS:

No substantive arguments received.

Section 1.8.1.12 CIVIL ACTIONS

No substantive arguments received.

Sections 1.8.1.21: OPEN RECORDS AND CONFIDENTIALITY

No substantive arguments received.

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This is an amendment to 1.8.1 NMAC, Sections 9 through 12, adding new Section 21, effective 11/4/2025.

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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, 11/4/2025]

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

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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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

1.8.1.12 CIVIL ACTIONS:

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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, 11/4/2025]

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, 11/4/2025]

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Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address:

Agency DFA code:

Contact person's name:

Phone number:

E-mail address:

Type of rule action:

(ALD Use) Recent filing date:

New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐

Title number:

Title name:

Chapter number:

Chapter name:

Part number:

Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Please list attachments or Internet sites if applicable.

Yes ☐ No ☒

If materials are attached, has copyright permission been received?

Yes

☐

No

☐

Public domain

☐

Specific statutory or other authority authorizing rulemaking:

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

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See attached concise explanatory statement.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

New Mexico State Ethics Commission

Check if authority has been delegated

☐

Title:

Executive Director

Signature: (BLACK ink only OR Digital Signature)

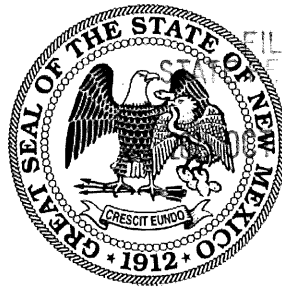
Jeremy Farris

Digitally signed by Jeremy Farris
Date: 2025.10.21 16:09:23 -06'00'

Date signed:

10/21/2025

800 Bradbury Dr. SE
Suite 215
Albuquerque, NM 87106
(505) 827 7800
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Hon. William F. Lang (*Chair*)
Jeffrey L. Baker
Stuart M. Bluestone
Hon. Celia Castillo
Hon. Gary Clingman
Hon. Terry McMillan
Judy Villanueva

STATE ETHICS COMMISSION

CONCISE EXPLANATORY STATEMENT FOR AMENDMENTS TO 1.8.3 NMAC (NMSA 1978, § 14-4-5.5 & 1.24.25.14(F) NMAC)

1. **Citation to authority authorizing rule:** Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978.
2. **Effective date of rule:** November 4, 2025.
3. **Date of adoption of rule:** October 10, 2025.
4. **Date of meeting at which agency voted to approve rule:** October 10, 2025.
5. **Reasons for adopting rule:** The purpose of these amendments is to provide clarity for the process of submitting an administrative complaint and the Commission's administrative hearings, the general counsel's role in investigating a complaint and the hearing officer's role in determining probable cause, and repeals the rule on records and confidentiality so that it is more appropriately located in 1.8.1 NMAC.
6. **Reasons for any change between the initial published amendments to rule and final adopted amendments to rule:**

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

No changes.

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

No changes.

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Section 1.8.3.11 GENERAL COUNSEL'S INVESTIGATION:

No changes.

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

No changes.

Section 1.8.3.14 HEARING OFFICERS; SUMMARY DISPOSITION; HEARINGS; INTERPRETERS; EVIDENCE:

1.8.1.14(B):

Insert “, including a virtual location,” in the first sentence, after “the state” and before “as may be determined by the hearing officer.”

Rationale: The Commission received public comment concerning Section 1.8.3.14(B) NMAC from Walker Boyd recommending express inclusion of virtual hearings as an option for the location of administrative hearings held by a hearing officer, noting that this change would bring the Commission practice in line with the practice in many district courts for bench trials, would save the Commission the cost and expense of in-person hearings at the Commission's offices, particularly those costs associated with providing for the physical security of the hearing officer and parties. The Commission finds this amendment aligns with the Commission's statutory authority related to administrative hearings, provides additional access to Commission hearings by offering a virtual format, conserves resources of the Commission and parties before the Commission, is a practice already in place in other forums, including the courts, and clarifies expressly what is already permitted under the rule, that is, that the hearing officer may determine the location for a hearing.

Section 1.8.3.15 APPEALS; ENFORCEMENT:

No changes.

Section 1.8.3.16 OPEN RECORDS AND CONFIDENTIALITY

No changes.

7. Reasons for not accepting substantive arguments made through written pre-filed public comment:

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

Chris Mechels submitted a written comment about the proposed amendments to Subsection A of Section 1.8.9 NMAC indicating as a prospective user he finds the existing text adequate and less confusing and that the proposed text seems to change the outcome, with no explanation provided, and is poorly written. The Commission elected to adopt the amendment as proposed because it clarifies in one section for both Commission staff and the public the circumstances under which an administrative complaint may be rejected for failing to complete the required complaint form. *See* NMSA 1978, § 10-16G-10(B).

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

No substantive arguments received.

Section 1.8.3.11 GENERAL COUNSEL'S INVESTIGATION:

No substantive arguments received.

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

No substantive arguments received.

Section 1.8.3.14 HEARING OFFICERS; SUMMARY DISPOSITION; HEARINGS; INTERPRETERS; EVIDENCE:

In addition to public comment related to 1.8.3.14(B) discussed above, Walker Boyd also submitted comment recommending removing a provision in Section 1.8.3.14(D) NMAC which provides that administrative 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." Mr. Boyd comments that it is not clear that the Open Meetings Act applies to hearings before a single hearing officer where the officer is not exercising delegated authority in lieu of the Commission. The State Ethics Commission Act, NMSA 1978, § 10-16G-10 (2023), requires the administrative hearing before a hearing officer following a determination of probable cause be "a public hearing." The Commission declined to adopt the suggested amendment because the rule already excepts those hearings or portions of a hearing which are exempted from the requirements of the Open Meetings Act, and to the extent the hearing or portions of a hearing are not excepted, they should still be held in accordance with the Open Meetings Act.

Section 1.8.3.15 APPEALS; ENFORCEMENT:

No substantive arguments received.

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No substantive arguments received.

This is an amendment to 1.8.3 NMAC, Sections 9, 10, 11, 13, 14, & 15, and repealing Section 16, effective 11/4/2025.

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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.

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(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.

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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, 11/4/2025]

**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, 11/4/2025]

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, 11/4/2025]

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, 11/4/2025]

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, including a virtual location, 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;

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- (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.

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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, 11/4/2025]

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 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, 11/4/2025]

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, 11/4/2025]

NMAC**Transmittal Form**

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Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address:

Agency DFA code:

Contact person's name:

Phone number:

E-mail address:

Type of rule action:

(ALD Use) Recent filing date:

New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐

Title number:

Title name:

Chapter number:

Chapter name:

Part number:

Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Please list attachments or Internet sites if applicable.

Yes ☐ No ☒

If materials are attached, has copyright permission been received?

Yes

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No

☐

Public domain

☐**Specific statutory or other authority authorizing rulemaking:**

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

**Concise Explanatory Statement For
Rulemaking Adoption:**

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

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See attached concise explanatory statement.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

New Mexico State Ethics Commission

Check if authority has been delegated

☐

Title:

Executive Director

Signature: (BLACK ink only OR Digital Signature)

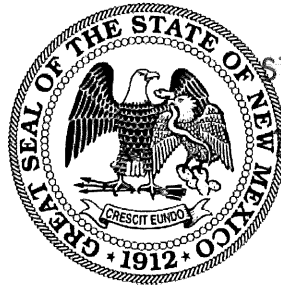
Jeremy Farris

Digitally signed by Jeremy Farris
Date: 2025.10.21 16:10:14 -06'00'

Date signed:

10/21/2025

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

STATE ETHICS COMMISSION

CONCISE EXPLANATORY STATEMENT FOR AMENDMENTS TO 1.8.5 NMAC (NMSA 1978, § 14-4-5.5 & 1.24.25.14(F) NMAC)

1. **Citation to authority authorizing rule:** Subsection C of Section 14-14A-26, Revised Uniform Law on Notarial Acts, Section 14-14A-1 NMSA 1978.
2. **Effective date of rule:** November 4, 2025.
3. **Date of adoption of rule:** October 10, 2025.
4. **Date of meeting at which agency voted to approve rule:** October 10, 2025.
5. **Reasons for adopting rule:** 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.
6. **Reasons for any change between the initial published rule and final adopted rule:**

Section 1.8.5.8 COMPLAINTS:

No changes.

Section 1.8.5.10 APPEALS OF COMMISSION DECISIONS:

No changes.

7. **Reasons for not accepting substantive arguments made through written pre-filed public comment:**

Section 1.8.5.8 COMPLAINTS:

No substantive arguments received.

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Section 1.8.5.10 APPEALS OF COMMISSION DECISIONS:

No substantive arguments received.

This is an amendment to 1.8.5 NMAC, Sections 8 and 10, effective 11/4/2025.

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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] F. 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, 11/4/2025]

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, 11/4/2025]