

This is an amendment to 11.21.1 NMAC, Sections 11, 12, 15, 16, 18, 22, 23 and 33 effective 2/11/2020. Statute citations throughout the rule have been corrected to conform with legislative styles.

11.21.1.11 REPRESENTATION OF A PARTY: A party may represent his, her, or itself, or be represented by counsel or other representative. Any representative of a party [~~who is not an employee of the party~~] shall file with the board a signed notice of appearance, stating the name of the party; the title and official number (if available) of the case in which the representative is representing the party, and the name, address and telephone number of the representative. The filing of a pleading containing the above information is sufficient to fulfill this requirement.

[11.21.1.11 NMAC - N, 3/15/2004; A, 2/11/2020]

11.21.1.12 EX PARTE COMMUNICATIONS: Except as otherwise provided in this rule, no party to a proceeding pending [~~representation, prohibited practices, or fact finding proceeding~~] before this board or any of its agents shall communicate, or attempt to communicate, with a hearing examiner assigned to the case, with the director, or with a board member, concerning any issue in the case, without, at the same time, transmitting the same communication to all other parties to the proceeding. It shall not be a violation of this rule to communicate concerning the status of a case, or to communicate concerning such procedural matters as the location or time of a hearing, the date on which documents are due, or the method of filing. It shall not be a violation of this rule for a party to communicate with the director during the investigatory phase of a [~~representation, prohibited practices, or impasse resolution~~] proceeding. It shall not be a violation of this rule for a party to communicate with anyone concerning any rulemaking proceeding of the board, or to communicate with the director, a mediator, or board member at the director's, mediator's, or board member's request.

[11.21.1.12 NMAC - N, 3/15/2004; A, 2/11/2020]

11.21.1.15 RECORDS OF PROCEEDINGS: All meetings of the board (whether general, special or emergency) and all rulemaking, unit determination, and prohibited practice hearings before the board or a hearing examiner of the board shall be audio- recorded, or, upon order of the board may be transcribed, except that board meetings or portions thereof lawfully closed shall not be recorded or transcribed, unless so directed by the board. Following the board's approval of the minutes of a meeting of the board, the minutes shall become the sole official record of the meeting, and the audio [~~tape~~] recording of the meeting may be erased. The director shall keep the audio [~~tapes~~] recordings of the rulemaking, unit determination, and prohibited practices hearings for a period of at least one year following the close of the proceeding in which the hearing is held, or one year following the close of the last judicial or board proceeding (including any appeal or request for review) related to the case in which the hearing is held, whichever is later, or such longer period as may be required by law. No recording shall be made of any mediation proceeding, settlement discussion, or alternative dispute resolution effort except by agreement of all parties and participating officials. The board's recording or transcript shall be the only official record of a hearing.

[11.21.1.15 NMAC - N, 3/15/2004; A, 2/11/2020]

11.21.1.16 NOTICE OF HEARING:

A. After the appropriate notice or petition is filed in a representation, prohibited practices or impasse resolution case, the director shall hold a status and scheduling conference with the parties to determine the issues; establish a schedule for discovery, including the issuance of subpoenas, and pretrial motions; and set a hearing date.

B. Upon setting a rulemaking hearing, the director or the board shall cause notice of hearing to be issued setting forth the nature of the rulemaking proceeding, the time and place of the hearing, the manner in which interested persons may present their views, and the manner in which interested persons may obtain copies of proposed rules. Notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice, and shall be published in at least one newspaper of general circulation in New Mexico at least 30 days prior to commencement of the hearing.

C. Upon setting a hearing or conference before the director or designee or before the board in any proceeding, the director or the board shall cause notice of hearing to be issued to all parties of record setting forth the time and place of the hearing or conference. A party to a representation, prohibited practices or impasse

resolution case in which a hearing or conference is scheduled may request postponement of the hearing or conference by filing a written request with the director, and serving the request upon all other parties, at least five days before commencement of the hearing or conference. The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the director shall grant a postponement to a date no more than 20 days after the previously set date. Only in extraordinary circumstances may the director grant a further postponement, or a postponement to a date more than 20 days after the previously set date, or a postponement with less than five days' notice.

[11.21.1.16 NMAC - N, 3/15/2004; A, 2/28/2005; A, 2/11/2020]

11.21.1.18 MISCONDUCT: As part of the board's statutory duty under Section 2 of the Act to ensure the orderly functioning of the state and its political subdivisions; and as part of its power to hold hearings and enforce the act by the imposition of appropriate administrative remedies pursuant to Section 9 of the Act, [The] the hearing examiner or body conducting a hearing or official [conducting any other proceeding,] performing duties under the act may exclude or expel from [the] any hearing or proceeding, any person, whether or not a party, who engages in violent, threatening, disruptive, abusive or unduly disrespectful behavior. An exercise of the board's power to control its proceedings under this rule may include prohibiting a representative from appearing before the board or one of its hearing examiners for a period of time designated by the board, reprimanding, suspending, or recommending referral for other disciplinary action. In the event of such exclusion or expulsion [of a person for misconduct,] the hearing examiner, body or official shall explain on the record the reasons for the exclusion or expulsion and may either proceed in the absence of the excluded person or recess such proceeding and continue at another time, as may be appropriate. An exercise of this power by an agent of the board is subject to review by the board.

[11.21.1.18 NMAC - N, 3/15/2004; A, 2/11/2020]

11.21.1.22 BURDEN OF PROOF:

A. Except in unit clarification proceedings, no party shall have the burden of proof in a representation [or fact finding] proceeding. Rather, the director in the investigatory phase or the hearing examiner shall have the responsibility of developing a fully sufficient record for a determination to be made and may request any party to present evidence or arguments in any order. In a unit clarification proceeding, a party seeking any change in an existing appropriate unit, or in the description of such a unit, shall have the burden of proof and the burden of going forward with the evidence.

B. In a prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence.

[11.21.1.22 NMAC - N, 3/15/2004; A, 2/11/2020]

11.21.1.23 MOTIONS AND RESPONSES TO MOTIONS: All motions and responses to motions, except those made at a hearing, shall be in writing and shall be served simultaneously upon all parties to the proceeding. All written motions shall be filed and served on all parties pursuant to the scheduling order. Motions and responses made at hearings may be made orally. If a party decides to file a response to a written motion, the response shall be filed and simultaneously served pursuant to the scheduling order or, if no deadline is set forth in the scheduling order or such has yet to be issued, within 10 days.

[11.21.1.23 NMAC - N, 3/15/2004; A, 2/11/2020]

11.21.1.33 CHAIRPERSON SUCCESSION:

A. From among the three members appointed to the public employee labor relations board pursuant to Section 10-7E-8 NMSA 1978, the board shall appoint a chair to serve as the primary point of contact for the board's staff, to conduct the regular and special meetings of the board in a manner consistent with parliamentary procedure. In like manner the board shall appoint a vice-chair to serve in the capacity of chair in its absence or inability to serve and to provide for automatic succession when the term of the chair is up.

B. The chair and the vice-chair shall serve in those capacities for a period of one year. Upon completion of the chair's one-year term, the vice-chair shall automatically become the chair and assume the duties of that office. The past chair shall resume regular duties as a member of the board and the third board member, who has not served as vice-chair within the preceding year, shall assume that role.

C. Initial appointments under this rule shall be by seniority based on the board members' appointment letters. In the event of a tie, the chair shall be determined from between the two most senior members either by acclamation or by a coin toss supervised by the board's director.
[11.21.1.33 NMAC – N, 2/11/2020]