

This is an amendment to 11.4.5 NMAC, Sections 10, 11, 12, 13 and 15, effective 1/1/2023. Statutory citations were changed throughout the rule, and in Section 3, in order to conform to correct legislative style.

11.4.5.10 ENFORCEMENT OF THE ACT BY THE DIRECTOR:

- A.** These rules establish a procedure for the administrative enforcement of the act by the director. These rules do not govern procedure for criminal prosecution by the WCA's enforcement bureau.
- B.** Administrative enforcement proceedings shall be presided over by the director or designee and shall be conducted with dignity, in a manner conducive to deliberation.
- C.** Administrative enforcement hearings shall be recorded by a certified court monitor in compliance with the rules governing the recording of judicial proceedings adopted by the New Mexico supreme court.
- D.** No right of peremptory disqualification: The peremptory right of disqualification does not apply to proceedings conducted under the provisions of this rule.
- E.** The rules of civil procedure ~~[and evidence]~~ shall apply where not inconsistent with the provisions of these rules. The rules of evidence shall not apply. The rules of privilege shall apply to the extent that they are required to be recognized in civil actions in the district courts of New Mexico.
- [11.4.5.10 NMAC - Rp, 11 NMAC 4.5.10, 10/1/2014; A, 1/1/2023]

11.4.5.11 INITIATION OF ADMINISTRATIVE ENFORCEMENT PROCEEDINGS:

- A.** Commencement of action:
- (1) An action may be commenced by the issuance of a notice of administrative enforcement proceeding by the enforcement bureau chief. The notice shall be delivered immediately to the director.
- (2) The notice of administrative enforcement proceeding shall be in the form of a signed statement containing the name, address and phone number of the violator, a statement of facts, the specific violation charged and the specific rule or statutory provision violated.
- B.** Probable cause determination:
- (1) A probable cause determination shall be made by the director in each case where a notice of administrative enforcement proceeding has been issued. The probable cause determination shall be made promptly, but in any event within 30 days after the service of the notice.
- (2) The director may make the determination of probable cause solely upon a paper review of the administrative file. ~~[The director may consider hearsay evidence from a credible source with a factual foundation.]~~
- (3) If the director determines no probable cause exists to believe a violation has been committed, the proceeding shall be dismissed and the notice of administrative enforcement shall not be filed with the clerk or served on any party.
- (4) If the director determines probable cause exists, a finding of probable cause and a notice of proposed penalty indicating the maximum penalty shall be filed with the clerk along with the notice of administrative enforcement proceedings.
- C.** When the alleged violator is a party to a pending workers' compensation complaint and the director deems the alleged violations material to the issues raised in the pending complaint, the director shall file the finding of probable cause and notice of proposed penalty and the notice of administrative enforcement proceeding in the case file for the pending complaint and the enforcement proceedings shall be referred to the assigned workers' compensation judge for determination.
- [11.4.5.11 NMAC - Rp, 11 NMAC 4.5.11, 10/1/2014; A, 1/1/2023]

11.4.5.12 ADMINISTRATIVE ENFORCEMENT PROCEEDINGS BEFORE THE DIRECTOR: For every case not referred to a workers' compensation judge and upon the filing of the notice of administrative enforcement proceedings and finding of probable cause:

- A. Summons:** A summons shall be issued by the clerk, directed to the alleged violator and must contain:
- (1) The name and street address of the WCA, the docket number of the case and the name of the person(s) or entity the summons is directed to;

(2) A direction that the alleged violator shall appear ~~[in person]~~ before the director or director's designee in the manner prescribed by the summons, to respond to the charges ~~[and the time and place of the hearing]~~;

(3) the time and place of the hearing, including video conference and telephone information if appropriate;

~~[(3)]~~ (4) A notice that unless the alleged violator appears as directed, the maximum proposed penalty may be imposed; and

~~[(4)]~~ (5) The name, address, telephone number and e-mail address of the prosecuting attorney for the enforcement bureau.

B. Service of the summons:

(1) The summons shall be served ~~[by the enforcement bureau by certified mail, domestic return receipt requested, or]~~ by any ~~[other]~~ means~~[-]~~ listed in Rule 1-004 NMR Civ. P. Dist. Ct. unless the director orders service ~~[in person]~~ by other manner reasonably calculated to apprise the alleged violator of the existence and pendency of the action.

(2) Service of the summons shall be completed no less than 15 days before the date the alleged violator is scheduled to appear for a hearing on the violation.

(3) The summons shall be served with endorsed copies of the notice of administrative enforcement proceeding and the director's finding of probable cause and notice of proposed penalty.

C. Service of papers:

(1) Unless the director orders otherwise, every pleading subsequent to the service of the summons shall be served on the violator and filed with the clerk.

(2) When a party is represented by an attorney, service shall be made upon the attorney.

(3) Service shall be made either by mailing a copy by first class mail with proper postage or by handing a copy to the attorney or to the party, unless the director orders service by other means.
[11.4.5.12 NMAC - Rp, 11 NMAC 4.5.12, 10/1/2014; A, 1/1/2023]

11.4.5.13 MOTIONS AND DISCOVERY:

A. Unless otherwise stated in Part 5 or approved by the director, motion practice shall not be allowed in administrative enforcement proceedings.

B. The use of discovery is discouraged. Discovery may be approved only by the director or the director's designee, in exceptional circumstances where justice demands.
[11.4.5.13 NMAC - Rp, 11 NMAC 4.5.15, 10/1/2014; A, 1/1/2023]

11.4.5.15 HEARING:

A. ~~[Evidence shall be admitted in accordance with the rules of evidence.]~~ The hearing shall be conducted expeditiously, but each party shall be permitted to present their position amply and fairly. The director may admit any documentary evidence, including hearsay evidence, provided that the evidence is relevant, has sufficient indicia of reliability and authenticity, and will assist the director in determining a fact or issue in dispute.

B. The parties shall have the right to call and cross examine witnesses. Oath of witnesses shall be administered by the director.

C. Following the hearing, the director may orally announce the decision and enter the appropriate order.

D. The director may delay issuing the decision for a period not exceeding 60 days if findings of facts and conclusions of law or briefs are to be submitted.
[11.4.5.15 NMAC - Rp, 11 NMAC 4.5.17, 10/1/2014; A, 1/1/2023]

HISTORY OF 11.4.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

WCA 86-3, Evidentiary Rules, filed 5/26/1987.

WCA 89-3, Evidentiary Rules, filed 6/20/1989.

WCA 92.4, Evidentiary Rules, filed 10/30/1992.

WCA 91-1, Miscellaneous Proceedings and Preliminary Questions of Fact, filed 1/24/1991.

WCA 91-1, Miscellaneous Proceedings and Preliminary Questions of Fact, filed 5/29/1991.

WCA 92.1, Rules Governing Miscellaneous Proceedings and Preliminary Questions of Fact, filed 10/30/1992.

WCA 93-1, Rules Governing Miscellaneous Proceedings and Preliminary Questions of Fact, filed 10/28/1993.

History of Repealed Material:

11 NMAC 4.5, Enforcement and Administrative Investigations, filed 5/20/1996, Recompiled 11/30/2001, Repealed effective 10/1/2014.