

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 8 STATE ETHICS COMMISSION
PART 1 GENERAL PROVISIONS

1.8.1.1 ISSUING AGENCY: State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

[1.8.1.1 NMAC-N, 1/1/2020; A, 10/27/2020]

1.8.1.2 SCOPE: The rules of Chapter 8 provide for and govern the organization and administration of the state ethics commission.

[1.8.1.2 NMAC-N, 1/1/2020]

1.8.1.3 STATUTORY AUTHORITY: Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978; Section 10-16-13.1, Governmental Conduct Act, Section 10-16-1 NMSA 1978, Subsection (C) of Section 10-15-1, Open Meetings Act, Section 10-15-1 NMSA 1978.

[1.8.1.3 NMAC-N, 1/1/2020; A, 10/27/2020]

1.8.1.4 DURATION: Permanent.

[1.8.1.4 NMAC-N, 1/1/2020]

1.8.1.5 EFFECTIVE DATE: January 1, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1.8.1.5 NMAC-N, 1/1/2020]

1.8.1.6 OBJECTIVE: The rules of Chapter 8 are promulgated to ensure that the state ethics commission is administered so that it works effectively, efficiently and fairly to achieve its constitutional and statutory mission. That mission is to ensure compliance with all applicable public ethics laws by all public officials, employees, candidates, contractors, lobbyists and others subject to the commission's jurisdiction throughout their employment or dealings with New Mexico state government; and to ensure that the public ethics laws are clear, comprehensive and effective. The rules adopted in Chapter 8 shall be interpreted and applied to achieve the purposes and objectives for which the commission has been established.

[1.8.1.6 NMAC-N, 1/1/2020]

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.

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]

1.8.1.8 DUTIES AND POWERS OF THE DIRECTOR: Without limiting the duties and powers conferred by statute, the director shall have the power to:

- A. review complaints filed with the commission for jurisdiction;
- B. refer complaints over which the commission has jurisdiction to the general counsel for investigation and possible filing of a complaint;
- C. refer complaints, or parts thereof, to other state or federal agencies with jurisdiction over such complaints, pursuant to the terms of any joint powers agreements or other interagency agreements with any such agency;
- D. enter into contracts on behalf of the commission, including, with the commission's approval, joint powers agreements;
- E. with the approval of the commission and at the direction of the commission's chair, petition courts for the issuance and enforcement of subpoenas in relation to:
 - (1) the general counsel's investigations to determine probable cause in connection with a complaint filed with the commission;
 - (2) the adjudication of complaints filed with the commission; and
 - (3) an investigation related to the commission's determination whether to file a civil court action to enforce any available civil remedy corresponding to any statute or constitutional amendment over which the commission has jurisdiction;
- F. with the approval of the commission, file a civil court action to enforce any available civil remedy corresponding to any statute or constitutional amendment over which the commission has jurisdiction;
- G. select and hire staff, including a general counsel;
- H. select and contract with hearing officers and other contractors;
- I. recommend to the commission adoption of draft rules, forms or legislative changes;
- J. prepare annual budgets and appropriation requests for commission approval;
- K. authorize the general counsel to administer oaths and take depositions;
- L. during a period of vacancy or extended absence in the office of the general counsel, assign any duties assigned to the general counsel by statute or rule to a qualified attorney who is either on the commission's staff or on contract with the commission;
- M. draft advisory opinions for the commission's approval;
- N. notify parties and the public of commission actions, including dismissals or referrals of complaints;
- O. provide for the confidentiality of all records designated as confidential by law;
- P. with commission approval, delay notification of a complaint to protect the integrity of a criminal investigation;
- Q. perform such other duties as may be assigned from time to time by the commission;
- R. issue standing orders to the extent authorized by the commission; and
- S. delegate the responsibilities as set forth in this section to appropriate commission staff members.

[1.8.1.8 NMAC-N, 1/1/2020]

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 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]

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.

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]

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.

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]

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 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]

1.8.1.13 NO FURTHER ACTION ON INFORMAL COMPLAINT:

If the director determines that an informal complaint is unsubstantiated, does not imply a violation of the ethics laws, or that the assessment or investigation is not a reasonable use of Commission resources and personnel, the director may decide to take no further action on the informal complaint and close the matter.

[1.8.1.13 NMAC-N, 7/1/2023]

1.8.1.14 REFERENCE TO OTHER DOCUMENTS: When a rule issued by the commission refers to another rule, regulation or statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute or document.

[1.8.1.14 NMAC-Rn, 1.8.10 NMAC, 7/1/2023]

1.8.1.15 INTERPRETATION OF TERMS: Unless the context otherwise requires:

A. Singular/plural. Words used in the singular include the plural; words used in the plural include the singular.

B. Gender. Words used in the neuter gender include the masculine and feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.

C. Permissive/mandatory. May is permissive; shall and must are mandatory.

[1.8.1.15 NMAC-Rn, 1.8.11 NMAC, 7/1/2023]

1.8.1.16 USE OF PRESCRIBED FORMS: The director may prescribe forms to carry out specified requirements of these rules or the state ethics commission act. Prescribed forms, or their substantial equivalent, must be used when available, unless these rules state otherwise or the director waives this requirement in writing. The director shall accept filings made on legible copies of prescribed forms.

[1.8.1.16 NMAC-Rn, 1.8.12 NMAC, 7/1/2023]

1.8.1.17 ADDRESS:

A. By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

C. By email: ethics.commission@sec.nm.gov.

[1.8.1.17 NMAC-Rn, 1.8.13 NMAC, 7/1/2023]

1.8.1.18 COMMISSION MEETINGS: The time, location, and format of commission meetings is determined in accordance with this section.

A. Time, place, and duration. The commission chair, in consultation with the director, shall determine the time, place, format, and duration of commission meetings necessary to conduct the commission's business.

B. Executive Session. Upon motion and vote of a quorum, the commission may enter into a closed, executive session to discuss matters that are confidential under the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, and as otherwise permitted by the Open Meetings Act, Section 10-15-1 NMSA 1978.

C. Virtual meetings. With the consent of the commission chair, the commission may meet virtually via web or teleconference. In the event the commission meets virtually, the meeting should occur on a platform that allows members of the public to observe and participate. At a virtual or telephonic meeting, each commissioner participating shall be identified when speaking and all meeting participants and members of the public attending must be able to hear every person who speaks during the meeting. The commission staff shall record virtual meetings and make the recordings (except for recordings of closed executive sessions) available for public inspection.

D. Attendance by individual commissioners. An individual commissioner may attend a physical commission meeting virtually, through telephone phone or web conference provided that each commissioner participating by conference telephone can be identified when speaking, and those attending may hear every person who speaks during the meeting.

[1.8.1.18 NMAC-Rn, 1.8.1.14 NMAC, 7/1/2023]

1.8.1.19 COMPUTATION OF TIME: In computing any period of time prescribed or allowed by these rules, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation, unless it is a Saturday, Sunday or a day on which the state observes a legal holiday or emergency closure. In case of any such closure, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday, legal holiday or emergency closure day is excluded from the computation.

[1.8.1.19 NMAC-Rn, 1.8.1.15 NMAC, 7/1/2023]

1.8.1.20 SEVERABILITY: If any provision of Chapter 8 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 8 of these rules which can be given effect without the invalidated provisions or applications, and to this end the several provisions of Chapter 8 of these rules are hereby declared severable.

[1.8.1.20 NMAC-Rn, 1.8.1.16 NMAC, 7/1/2023]

HISTORY OF 1.8.1 NMAC: [RESERVED]