

This rule was filed as 2 NMAC 81.3.

TITLE 2 PUBLIC FINANCE
CHAPTER 81 RETIREE HEALTH CARE FUNDS
PART 3 CODE OF ETHICS

2.81.3.1 ISSUING AGENCY: NM Retiree Health Care Authority ("NMRHCA").
[6-15-98; Recompiled 10/01/01]

2.81.3.2 SCOPE: This Rule applies to all board members, employees, actuaries, consultants, attorneys and members of ad. hoc. or standing committees of the NMRHCA.
[6-15-98; Recompiled 10/01/01]

2.81.3.3 STATUTORY AUTHORITY: This Rule is promulgated pursuant to the New Mexico Retiree Health Care Act (the "Act"), Sections 10-7C-1 et seq. NMSA 1978.
[6-15-98; Recompiled 10/01/01]

2.81.3.4 DURATION: Permanent.
[6-15-98; Recompiled 10/01/01]

2.81.3.5 EFFECTIVE DATE: June 15, 1998 [unless a later date is cited at the end of a section].
[6-15-98; Recompiled 10/01/01]

2.81.3.6 OBJECTIVE:

A. The objective of this Rule is to establish procedures governing a code of ethics that must be adhered to by those persons covered and provide penalties for failure to comply. The proper operation of a democratic government requires that public representatives and those attorneys, consultants, agents and employees on who they rely for advice and opinions be independent, impartial, and responsible to the people.

B. NMRHCA decisions and policy should be made through proper channels of the NMRHCA structure and public office, employment or contracts should not be used for personal gain. A conflict of interest exists when a public representative's, public employee's or public contractor's private or personal interests conflict with his/her public duties or when a public representative, public employee, agent, consultant or attorney for the public entity uses insider knowledge, official position, power or influence to further his/her private interests.

C. When a sound code of ethics is promulgated and enforced, the public has confidence in the integrity of its government. The objective of the Code of Ethics Rule is to advance openness in government by requiring disclosure of private interests that may affect public acts, to set standards of ethical conduct, to minimize pressures on Public Representatives and to establish a process for reviewing and settling alleged violations.
[6-15-98; Recompiled 10/01/01]

2.81.3.7 DEFINITIONS: As used in the code of ethics rule [now 2.81.3 NMAC]:

A. "Business" means a corporation, partnership, sole proprietorship, firm, organization, or individual carrying on a business or owning real property other than a personal residence.

B. "Insider information" or "Confidential information" means information which is confidential under law or practice or which is not generally available outside the circle of those who regularly serve the NMRHCA as a board member, public representative, official, employee, agent, consultant or attorney.

C. "Financial interest" means:

(1) an interest of ten percent or more in a business or an interest exceeding ten thousand dollars (\$10,000.00) in a business. For a board member, official, employee, agent, consultant attorney or other public representative this means an interest held by the individual or his or her spouse, siblings, parents, or children.

(2) an ownership interest held by the individual or his/her spouse, siblings, parents or children in business; or

(3) any employment or prospective employment (for which negotiations have already begun) of the individual or his/her spouse, siblings, parents or children.

D. "Public representative" means a person serving the NMRHCA as board member, official, employee, agent, consultant or attorney or as a member of an ad.hoc. or standing NMRHCA advisory committee.

E. "Controlling interest" means an interest which is greater than twenty percent.

F. "Official act" means an official decision, recommendation, approval, disapproval or other action which involves the use of discretionary authority, except the term does not mean an act of the legislative or an act of general applicability.

[6-15-98; Recompiled 10/01/01]

2.81.3.8 PUBLIC REPRESENTATIVE/REGISTRATION/DISCLOSURE:

A. Upon becoming a public representative, the public representative shall provide registration information to the NMRHCA office as listed below. This information shall be updated at the end of every fiscal year and shall be available to the public at all times:

- (1) name;
- (2) address and telephone number;
- (3) professional, occupational or business licenses;
- (4) membership on boards of directors of corporations, public or private associations or organizations; and

(5) the nature, but not the extent or amount, of any financial interests and controlling interests as defined in the code of ethics rule [now 2.81.3 NMAC] within one month of becoming a public representative.

B. A public representative who has a financial interest which may be affected by an official act of the NMRHCA, ad. hoc. or advisory committee shall declare such interest prior to discussion, voting, advising or taking any other action and that declaration shall be entered in the official minutes of the NMRHCA. A public representative shall abstain from voting, advising or taking any other action including discussion on that issue if the decision, in the public representative's opinion, may affect his/her financial interest in a manner different from its effect on the general public.

[6-15-98; Recompiled 10/01/01]

2.81.3.9 PROHIBITIONS/PRIVATE BENEFITS OR GIFTS/PERSONAL REPRESENTATION/USE OF NMRHCA SERVICES/ACQUIRING FINANCIAL INTEREST:

A. No public representative nor a member of his/her family shall request or receive and accept a gift or loan for his/her personal use or for another, if:

- (1) it tends to influence the public representative in the discharge of his/her official acts; or
- (2) the public representative, within two years, has been involved in any official act directly affecting the donor or lender or knows that he/she will be involved in any official act directly affecting the donor or lender.

B. No public representative shall request or receive a gift or loan for personal use or for the use of others from any person or business involved in a business transaction with the NMRHCA with the following exceptions:

- (1) an occasional nonpecuniary gift of insignificant value;
- (2) an award publicly presented in recognition of public service;
- (3) a commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of the state to engage in the business of making loans; or
- (4) a political campaign contribution, provided that such gift or loan is properly reported and actually used in a political campaign.

C. No public representative shall personally represent private interests before the board of the NMRHCA or any ad. hoc. or standing committee, which the public representative is a member, or directly or indirectly receive compensation for that representation.

D. No public representative shall personally represent private interests before the NMRHCA board, ad. hoc., standing committees or directly or indirectly receive compensation for that representation.

E. No public representative shall use or disclose insider information for his or others private purposes.

F. No public representative shall use NMRHCA services, personnel or equipment for personal benefit, convenience or profit, except when such use is generally available to the public and when in accordance with policies of the NMRHCA board.

G. No public representative shall acquire or negotiate to acquire a financial interest at a time when the official believes or has reason to believe that it will be substantially or directly affected by his official acts.

H. No public representative shall enter into a contract or transaction with the NMRHCA or its public representatives, unless the contract or transaction is made public by filing notice with the NMRHCA board.

I. A public representative shall disqualify himself from participating in any official act directly affecting a business in which he has a financial interest.

J. No public representative shall use confidential information acquired by virtue of his employment, office or status for his or another's private gain.

K. The NMRHCA shall not enter into any contract with an employee of the state or with a business in which the employee has a controlling interest, involving services or property of a value in excess of one thousand dollars (\$1,000), when the employee has disclosed his controlling interest unless the contract is made after public notice and competitive bidding; provided that this section does not apply to a contract of official employment with the NMRHCA.

L. The NMRHCA shall not enter into a contract with, nor take any action favorable affecting, any person or business which is:

(1) represented personally in the matter by a person who has been an employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the employee; or

(2) assisted in the transaction by a former employee of the state whose official act, while in state employment, directly resulted in the NMRHCA's making that contract or taking that action.

M. The NMRHCA shall not enter into any contract of purchase with a legislator or with a business in which such legislator has controlling interest, involving services or property in excess of one thousand dollars (\$1,000) where the legislator has disclosed his controlling interest, unless the contract is made after public notice and competitive bidding. As used in Section 9.13 [now Subsection M of 2.81.3.9 NMAC], contract shall not mean a "lease."

[6-15-98; Recompiled 10/01/01]

2.81.3.10 ENFORCEMENT/COMPLAINT/HEARING OFFICER/PENALTY FOR VIOLATION/ FRIVOLOUS COMPLAINTS:

A. Any contract approval, sale or purchase entered into or official action taken by a public official in violation of this rule may be voided by action of the NMRHCA board.

B. Any person may make a sworn, written complaint to the NMRHCA board of a violation by a public official of any provisions of the code of ethics rule [now 2.81.3 NMAC]. Such complaint shall be filed with the NMRHCA executive director or if it is a complaint against him, with a member of the NMRHCA board, who shall maintain the confidentiality thereof and instruct the complainant of the confidentiality provisions of the code of ethics rule [now 2.81.3 NMAC], and shall refer said complaint to the NMRHCA board at its next regularly scheduled meeting in executive session. The complaint shall state the specific provision of the code of ethics rule [now 2.81.3 NMAC] which has allegedly been violated and the facts which the plaintiff believes support the complaint.

C. Within fifteen days of receiving the complaint, the NMRHCA board in executive session shall appoint a hearing officer to review the complaint for probable cause. Within fifteen days of undertaking the inquiry to determine probable cause, the hearing officer shall report his findings to the NMRHCA board. Upon find of probable cause, within 30 days, the hearing officer shall conduct an open hearing in accordance with due process of law. Fifteen days notice in advance of the hearing shall be provided to the person subject to the complaint. Within a time specified by the NMRHCA board, the hearing officer shall report his findings and recommendations to the NMRHCA board for appropriate action based on those findings and recommendations.

D. If the complaint is found to be frivolous, the NMRHCA board may assess the complainant the costs of the hearing officer's fees.

E. Except for the hearing, the proceedings shall be kept confidential by all parties concerned, unless the accused public official requests that the process be open at any stage. Persons complained against shall have the opportunity to submit documents to the hearing officer for his review in determining probable cause.

F. Any violation of the law shall be referred to the appropriate law enforcement agency for prosecution.

[6-15-98; Recompiled 10/01/01]

2.81.3.11 CODE OF ETHICS HEARING OFFICER/APPOINTMENT/QUALIFICATIONS/DUTIES:

A. A hearing officer shall be appointed by the NMRHCA board for each complaint. The hearing officer may be an authority board member, agent or employee of the NMRHCA or another person. The complainant and the person complained against have the right to one disqualification of a designated hearing officer.

B. The hearing officer shall:

(1) receive written complaints regarding violations of the code of ethics rule [now 2.81.3 NMAC], notify the person complained against of the charge, and reject complaints not supported by probable cause. In the event the hearing officer rejects a complaint as lacking in probable cause, he shall provide a written statement of reasons for his rejection to the NMRHCA board and the complainant;

(2) conduct hearings of all complaints received; and

(3) report the findings of the hearings and make recommendations on resolving the complaint to the NMRHCA board.

C. The decision of the board shall be final and not subject to appeal.
[6-15-98; Recompiled 10/01/01]

2.81.3.12 VIOLATION: It is a violation of this Rule for any public official knowingly, willfully or intentionally to conceal or fails to disclose any financial interest called for by the code or violate any of the provisions hereof.

[6-15-98; Recompiled 10/01/01]

2.81.3.13 PENALTIES: Upon recommendation of the hearing officer the NMRHCA board may:

A. issue a public reprimand to the public official;

B. remove or suspend from his office, employment or contract [sic] the public official; and

C. refer complaints against public officials to the appropriate law enforcement agency for investigation and prosecution.

[6-15-98; Recompiled 10/01/01]

HISTORY of 2.81.3 NMAC:

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

RHCA Rule 90-3, Code of Ethics, 7-10-90.

History of Repealed Material: [RESERVED]