

**TITLE 10       PUBLIC SAFETY AND LAW ENFORCEMENT**  
**CHAPTER 4     DISTRICT ATTORNEYS**  
**PART 1        GENERAL PROVISIONS**

**10.4.1.1       ISSUING AGENCY:** Administrative Office of the District Attorneys  
[10.4.1.1 NMAC - N, 06/30/2010]

**10.4.1.2       SCOPE:** This part sets forth general provisions for implementation of the District Attorney Personnel and Compensation Act and rules as they apply to all employees in the offices of the district attorneys and the administrative office of the district attorneys, except where noted.  
[10.4.1.2 NMAC - N, 06/30/2010]

**10.4.1.3       STATUTORY AUTHORITY:** This rule is adopted pursuant to:

- A.       Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;
- B.       Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;
- C.       Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration; and
- D.       Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys.

[10.4.1.3 NMAC - N, 06/30/2010]

**10.4.1.4       DURATION:** Permanent  
[10.4.1.4 NMAC - N, 06/30/2010]

**10.4.1.5       EFFECTIVE DATE:** June 30, 2010, unless a later date is cited at the end of a section.  
[10.4.1.5 NMAC - N, 06/30/2010]

**10.4.1.6       OBJECTIVE:** To establish for all district attorneys a uniform, equitable and binding system of personnel administration.  
[10.4.1.6 NMAC - N, 06/30/2010]

**10.4.1.7       DEFINITIONS:**

- A.       "Anniversary date" means the date (month/day) which begins and ends an appraisal cycle. It is determined by the date of appointment or re-employment into an employee's current position and shall change with a lateral transfer between two (2) district attorneys' offices or a change in class due to a promotion, demotion, position reclassification or any other personnel action which affects an employee's job class. When employees are placed on leave without pay, their anniversary dates may be extended by that same amount of time.
- B.       "Break in employment" means a period of separation of one (1) work day or more in which an employee is not officially on an agency's payroll.
- C.       "Bereavement leave" is leave that is approved by the district attorney for the purpose of attending events surrounding the death of an immediate family member. Sick leave, annual leave, or administrative leave may be authorized for bereavement leave.
- D.       "Dismissal" means the involuntary separation from employment for disciplinary reasons.
- E.       "Immediate family" means an incumbent's spouse, children, step children, parent, step parent, brother, sister, step brother, step sister, aunt, uncle, niece, nephew, grandparent, grandchild, great grandparent, great grandchild, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

F. "Involuntary demotion" means the involuntary placement of an incumbent in a position with a lower salary range than their current position. It involves a reduction in pay, and it must be the result of employee misconduct, unsatisfactory performance, or other disciplinary reasons.

G. "Job evaluation" means the comprehensive review of the duties, responsibilities and qualifications of a position. It is not a review or evaluation of any person holding the position being reviewed. As a result of a job evaluation, a position may be reclassified to a different job class. The reclassification may result in a reduction, an increase, or no change in pay grade at all.

H. "Local public body" means an entity which is under the auspices of a county or city government, public schools, and public institutions of higher learning.

I. "Suspension" means an enforced leave of absence, with or without pay, for a period not to exceed thirty (30) work days for disciplinary reasons or pending investigation of charges made against a covered employee.

J. "Voluntary demotion" means the voluntary acceptance by an employee of placement in a position with a lower salary range. It may or may not entail a reduction in pay; and it may or may not be the result of a disciplinary reasons.

K. "Written reprimand" means a letter, memo or other written form of communication which serves to advise an employee of poor performance, inappropriate behavior, or other personnel rule violations, and it shall serve as a warning of more severe disciplinary action if the employee fails to take the appropriate action.

L. "Years of service" means the total years of employment within either the executive, judicial, or legislative branches of New Mexico state government or any local public body within New Mexico.

[10.4.1.7 NMAC - Rp, NMDAA 91-1.12.01, 06/30/2010]

#### **10.4.1.8 COVERAGE OF SERVICE:**

A. Covered employees.

(1) Employees holding covered positions affected by the District Attorney Personnel and Compensation Act shall be recognized as covered employees if they have successfully completed the probationary period.

(2) Once an employee in a covered position attains covered status, they shall retain that status as long as they remain in, transfer to, or are promoted into a covered position without a break in employment. Nothing in the District Attorney Personnel and Compensation Act shall preclude the reclassification or reallocation of any position held by an employee.

B. At will employees.

(1) The positions of attorney, district office manager and special program director are at will positions that serve at the pleasure of the district attorney.

(2) Such at will employees shall have no property interest in the continued position and may be dismissed with or without cause.

C. Probationary employees.

(1) A probationary appointment is the placement of an applicant into a position designated as covered.

(2) A probationary period of one (1) year from the date of hire is required of all employees in covered positions. If leave without pay is taken during the probationary period, the probationary period may be extended by the number of days of leave taken within the applicable one (1) year period.

(3) Probationary employees may be terminated at any time by the district attorney.

(4) Probationary employees have no rights to utilize grievance procedures and the appeals provisions in this rule.

(5) The covered status of a probationer begins the day following the end of the probationary period.

(6) All probationary employees shall be evaluated prior to the end of their probationary period utilizing the approved performance appraisal form.

(7) The district attorney is responsible for taking action on the status of probationary employees prior to the end of the probationary period.

(8) An employee transfer to another district attorney's office will result in a new probationary period as defined in this subsection.

[10.4.1.8 NMAC - Rp, NMDAA 91-1.5.03, 06/30/2010]

#### **10.4.1.9 ADMINISTRATION OF THE PLAN:** The responsibility for administration of the classification plan rests with the district attorneys and with the district attorney personnel review board.

A. District attorney personnel review board.

(1) The district attorney personnel review board ("board") shall consist of five (5) district attorneys including the president, vice-president and secretary-treasurer of the New Mexico district attorney's association and two (2) additional voting members, all elected annually by the district attorneys.

(2) Each board member shall be reimbursed as provided in the Per Diem and Mileage Act when traveling on board business directly related to the District Attorney Personnel and Compensation Act.

(3) As found in Section 7 of the District Attorney Personnel and Compensation Act (36-1A-7et seq. NMSA 1978), the board's responsibilities for the administration of the classification plan are as follows:

(a) The board shall recommend to the district attorneys, as a group, regulations necessary or appropriate to implement and administer the District Attorney Personnel and Compensation Act.

(b) The board shall determine the qualifications for each class specification or classification series; including required levels of education, experience, special skills and legal knowledge.

(c) The board shall recommend salary grades and pay ranges to which class specifications and job classifications are assigned, subject to legislative appropriations.

(d) The board shall hear appeals solely involving suspension, demotion or termination of a covered employee and render its final decision, unless the covered employee elects, under Section 10 of the District Attorney Personnel and Compensation Act, to have the appeal heard by the state personnel office-designated hearing officer.

(e) The board shall make periodic reviews of the personnel regulations, classification plan and compensation ranges that govern employees to ensure that all federal action, legislative mandates and other substantive changes are incorporated into the regulations in a timely fashion and make recommendations thereon to the district attorneys.

(f) The board shall consider other personnel matters as designated by the district attorneys and they shall have the authority to override all actions based on a justification provided on a case by case basis. A quorum of the board shall consist of at least three (3) members.

B. District attorneys as a group: The responsibilities of the district attorneys as a group shall be:

(1) the adoption and promulgation of regulations to effectuate the provisions of the compensation plan for all employees;

(2) the conducting of periodic reviews of the regulations, classifications series and compensation ranges to ensure that applicable federal action, legislative mandates and other substantive changes are incorporated in the compensation plan in a timely fashion;

(3) the contracting of consultant services to reevaluate the classification and compensation plans to ensure their compatibility, subject to legislative appropriation, with classes covered by the Personnel Act and the judicial pay plan; and

(4) the preparation of an annual fiscal report specifying proposed changes, if any, to the compensation plan prior to each regular legislative session; before any proposed changes are implemented, they shall be reviewed by the legislative finance committee and approved by the department of finance and administration; competitive market compensation levels shall be reviewed at least every five (5) years and incorporated into the report; subsequent budget requests shall include this information.

C. Each district attorney.

(1) Primary responsibility for the day-to-day administration of the classification plan rests with each district attorney or their designee.

(2) Each district attorney shall submit position change requests and personnel action requests to the administrative office of the district attorneys for review. The administrative office of the district attorneys will forward reviewed requests to the department of finance and administration. These actions shall then be incorporated into a monthly personnel and classification report to be administered by the administrative office of the district attorneys and distributed to the district attorneys, the department of finance and administration and the legislative finance committee.

D. Administrative office of the district attorneys: The administrative office of the district attorneys shall ensure that the department of finance and administration and the legislative finance committee receive a table of organizational listing (TOOL) for all district attorney positions and employees. This monthly report shall include each employee's position number, name, title of authorized job, status, pay grade and salary and shall reflect any department of finance and administration-approved position changes or administrative office of the district attorneys-approved personnel actions.

[10.4.1.9 NMAC - Rp, NMDAA 91-1.1.03, 06/30/2010]

#### **10.4.1.10 PERSONAL CONDUCT:**

A. Employees of the district attorneys' offices and the administrative office of the district attorneys shall conduct themselves in a manner which reflects the highest professional ethics. Employees shall be loyal and devote their full working days to their duties and the business of the district attorneys. Under no circumstances shall employees give rise to a conflict of interest or the appearance of a conflict of interest or act in such a way as to adversely affect any district attorneys' office or adversely affect the employee's ability to perform his/her duties.

B. Consumption of alcoholic beverages on the premises of any office is expressly prohibited. The use or possession of illegal drugs or other illegal substances at any time or place is expressly prohibited. This policy will be strictly enforced and employees found in violation will be subject to disciplinary action.

C. Any personal conduct which violates the civil or criminal law which adversely affects the interests of any district attorney's office or the person's ability to perform their duties is prohibited.

[10.4.1.10 NMAC - N, 06/30/2010]

#### **10.4.1.11 BUSINESS CONDUCT:**

A. Employees will respect and protect the civil and legal rights of all persons. Employees having contact with victims or witnesses will serve each case with appropriate concern for the individual's welfare and with no goal of personal gain. Relationships with the public and colleagues will be of a professional nature and promote improvement of the respective office's quality of service. Statements critical of others or their agencies will be made only if these are verifiable and constructive in purpose, and made in a personal capacity. Employees will respect the importance of all elements of the criminal justice system and cultivate professional cooperation with each segment of that system. In any public statement, employees will clearly distinguish between those statements which are personal views and those which are authorized statements and positions taken on behalf of each respective office.

B. Employees will not discriminate against any prospective employee or other persons having business with the district attorneys on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity, national origin, religion, age or disability.

C. Undue familiarity or any sort of financial or business transactions with victims, witnesses, etc., or their immediate families, agents or close friends is strictly forbidden. Employees will conduct themselves in compliance with all laws and regulations so as to not subject their profession, colleagues or office to criticism. No employees shall give or accept any gifts or gratuities or engage in any personal business with victims, witnesses, etc. or their immediate families, agents or close friends.

D. The actions of employees are to be in accordance with prescribed rules and regulations. Employees are expected to perform their assignments in a manner that reflects professional judgment, prudence and sincere interest in the business of the office. Employees shall maintain an attitude of courtesy and service to the public and colleagues.

E. Employees shall protect and conserve government property, including equipment, supplies and other property entrusted or issued to them. They shall not willfully damage or otherwise misuse government property, including vehicles, equipment, tools and instruments.

[10.4.1.11 NMAC - N, 06/30/2010]

#### **10.4.1.12 PERSONNEL INVESTIGATIONS:**

A. Applicants may be subject to a background investigation prior to being hired by any district attorney's office or the administrative office of the district attorneys. Employees may be subject to an investigation or may be required to provide a statement or submit to a polygraph examination in any investigation concerning the provisions of this code or any other suspected misconduct. If an employee refuses to comply, they shall be subject to disciplinary action up to and including dismissal from employment or termination of their contract.

B. Employees may be required to submit to a drug or alcohol test. If the employee refuses to comply with the test requirements or examiner, or requirements necessary to conduct the test, they shall be subject to disciplinary action up to and including dismissal from employment.

[10.4.1.12 NMAC - N, 06/30/2010]

#### **10.4.1.13 OUTSIDE EMPLOYMENT - CONFLICT OF INTEREST:**

A. Every employee who has a financial interest which they know, or have reason to know, may be affected by actions of their respective office shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the district attorney before entering employment and during the month of January every year thereafter.

B. Under no circumstances shall employees have a conflict of interest or the appearance of a conflict of interest. Such conflicts of interest include, but are not limited to, the following.

(1) No employee shall directly or indirectly acquire a financial interest in a business which may be directly affected by any official act of the employee.

(2) An employee shall not engage directly or indirectly in a financial transaction as a result of, or primarily relying on information obtained through, their employment with a district attorney's office.

(3) No employee may directly or indirectly accept or give any compensation, gift, ban, entertainment, favor or service which would tend to give an appearance of impropriety or which might interfere in the discharge of official duties.

[10.4.1.13 NMAC - Rp, NMDAA 91-1.10.04, 06/30/2010]

#### **10.4.1.14 DISCLOSURE OR MISUSE OF INFORMATION:**

A. Employees shall not directly or indirectly use official information which is not available to the general public or contract with the state for the purpose of furthering a private interest or allow such use of official information obtained through or in connection with his or her employment.

B. Except as specifically authorized, employees shall not disclose official information which represents a matter of confidence or trust or any other official information of such character that its disclosure or use would be contrary to the best interest of the office. Information concerning another person's personal life, social history and private affairs is confidential information and shall not be the subject of casual conversation or gossip.

C. Official records of every district attorney's office are the property of that office and will be filed according to the existing rules. Employees shall not remove records or copies thereof from any district attorney's office without lawful authority.

[10.4.1.14 NMAC - N, 06/30/2010]

#### **10.4.1.15 GRATUITY:**

A. Employees shall not give or accept any favor or gratuity to or from any person, firm, corporation or other entity which would affect or appear to affect the person's judgment in the performance of their duties in an impartial manner, except in the case of an occasional non-pecuniary gift that is insignificant in value, a public award or a loan made in the ordinary course of business.

B. Supervisors shall not place themselves in positions of potential indebtedness to their subordinates. Supervisors will not permit persons subordinate to them to provide them with representation in grievance matters or lawsuits.

[10.4.1.15 NMAC - N, 06/30/2010]

#### **10.4.1.16 POLITICAL ACTIVITIES:**

A. Employees may engage in the following activities as long as it is while they are on approved leave or not on duty:

- (1) serve as convention delegates;
- (2) attend political rallies;
- (3) sign nominating petitions and make voluntary contributions to political organizations; and
- (4) serve as election officials or officers in political organizations.

B. Employees are prohibited from:

- (1) engaging in political activity while on duty;
- (2) distributing or displaying campaign materials (including buttons) and soliciting contributions for a political candidate or party while on duty;
- (3) using official authority for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose;
- (4) using office supplies, equipment or facilities in connection with any political activities;
- (5) directly or indirectly coercing, attempting to coerce, commanding or ordering any employee to pay, lend or contribute anything of value to a party, committee, organization or person for a political purpose; and
- (6) threatening to deny promotions to any employee who does not vote for certain candidates or requiring employees to contribute a percentage of their pay to a political fund or ordering employees to buy tickets to political fund-raising events.

[10.4.1.16 NMAC - Rp, NMDAA 91-1.10.01 - 10.02, 06/30/2010]

#### **10.4.1.17 PUBLIC OFFICE:**

A. Employees shall not hold any other public office during the employee's duty hours in the service. An employee may accept appointment to a state or local board or commission provided such participation does not create a conflict of interest, is consistent with existing statutes and court rules and does not interfere with an employee's assigned duties.

B. An employee may seek a full-time public office if the employee's absence does not interfere with the function of the office and the district attorney authorizes such absence. Otherwise, the employee shall resign to seek such public office.

C. The act of filing nomination papers or, where appropriate, the payment of a filing fee or the accepting of the nomination shall constitute the seeking of public office.

D. Being a local school board member or an elected or appointed member of any post-secondary educational institution shall not be construed to be holding political office.

[10.4.1.17 NMAC - Rp, NMDAA 91-1.12.03, 06/30/2010]

**10.4.1.18 SEXUAL HARASSMENT:** Employees shall refrain from sexual harassment of any other employee or any other person having business with the office. Examples of sexual harassment include, but are not limited to:

- A. sexual innuendo or sexually oriented verbal abuse;
- B. sexual jokes, sexist jokes, vulgar jokes or abusive sexual "teasing";
- C. unwanted physical contact such as hugging, patting, stroking or grabbing body parts;
- D. statements or acts of a sexual nature about a person's physical attributes or sexual activity;
- E. displaying sexually suggestive pictures, objects or materials;
- F. using disparaging, demeaning or sexist terms to refer to any person;
- G. making obscene gestures or suggestive/insulting sounds;
- H. indecent exposure; and
- I. suggesting or demanding sexual favors or activity in relation to any condition of employment.

[10.4.1.18 NMAC - Rp, NMDAA 91-1.11.01 - 11.04, 06/30/2010]

**10.4.1.19 ENFORCEMENT:** All employees of a district attorneys' office and of the administrative office of the district attorneys will familiarize themselves, as a part of their orientation training, with rules contained in Title 10, Chapter 4 of the New Mexico administrative code pertaining to district attorneys and with the specific internal policies and procedures set forth by each district attorney's office.

[10.4.1.19 NMAC - N, 06/30/2010]

#### **HISTORY OF 10.4.1 NMAC:**

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

NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

#### **History of Repealed Material:**

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.