

**TITLE 10       PUBLIC SAFETY AND LAW ENFORCEMENT**  
**CHAPTER 4     DISTRICT ATTORNEYS**  
**PART 9        DISCIPLINARY ACTIONS**

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

**10.4.9.2       SCOPE:** This part sets forth the rules for the establishment, maintenance and administration of an equitable, disciplinary process which shall be applicable to all positions in the offices of the district attorneys and the administrative office of the district attorneys.  
[10.4.9.2 NMAC - Rp, NMDAA 91-1.8.01, 06/30/2010]

**10.4.9.3       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;
- 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; and
- E.       Section 36-1A-8 (B) (8) NMSA 1978 which requires the promulgation of district attorney personnel rules governing a disciplinary procedure, which shall provide for an equitable response to infractions of rules or work performance standards.

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

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

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

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

**10.4.9.7       DEFINITIONS:** [RESERVED]  
[See 10.4.1.7 NMAC]

**10.4.9.8       JUST CAUSE FOR DISCIPLINARY ACTION:**

- A.       A covered employee may be suspended, demoted or dismissed only for just cause which is any behavior that is inconsistent with the employee's obligation to the agency, even though no previous disciplinary actions have been taken.
- B.       Just cause includes, but is not limited to: inefficiency; incompetence; misconduct; negligence; insubordination; continued unsatisfactory performance; unauthorized leave; failure to comply with any provisions of these rules or to meet a condition of employment as required by law; violation of the obligation of confidentiality imposed upon district attorney employees; falsifying official records or documents; or violation of a felony or misdemeanor when the provisions of the Criminal Offender Employment Act of NMSA 1978 apply.

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

#### **10.4.9.9 TYPES OF DISCIPLINARY ACTIONS:**

- A. Formal disciplinary actions include dismissal, demotion, suspension or written reprimand.
- B. Informal disciplinary actions include a written or verbal warning, or a written or verbal reprimand.
- C. The written reprimand must be signed by the district attorney or the designee and the employee.

The signature of the employee does not necessarily indicate concurrence with the written reprimand. Signature of the employee at least will indicate that they acknowledged receipt of the written reprimand.

D. An employee may submit a written response or rebuttal to his/her supervisor's written reprimand which shall be included in the employee's personnel file.

[10.4.9.9 NMAC - Rp, NMDAA 91-1.8.04, 06/30/2010]

#### **10.4.9.10 FORMAL DISCIPLINARY PROCEDURE:**

A. The dismissal, demotion or suspension of a covered employee shall be accomplished according to the following procedure.

(1) The employee will be served by the district attorney, or their designee, with a written notice of the proposed disciplinary action which shall:

- (a) cite the specific action or acts allegedly constituting just cause;
- (b) provide an explanation of the evidence that the district attorney or their designee has;
- (c) specify what the proposed disciplinary action is; and
- (d) state that the employee, or a representative of the employee's choosing, has five (5) working

days from service of the notice to respond to the district attorney or their designee in writing to the notice or to request an opportunity to be heard.

(2) If service of the notice is by certified mail, with return receipt requested, three (3) working days shall be added to the time for an answer.

(3) If the employee requests a pre-disciplinary review, the district attorney or designee shall conduct such review within five (5) working days of the district attorney's or designee's receipt of the request, unless the employee and the employer agree, in writing, to an extension of time. The review is not a formal evidentiary proceeding.

B. The district attorney or their designee shall consider the employee's response, if any, and determine what action is appropriate within five (5) working days of the response. If the employee does not respond to the notice of proposed disciplinary action, the district attorney or designee may proceed to determine the appropriate action and serve a notice of final decision no later than ten (10) working days after the employee receives the written notice of proposed action. The district attorney or their designee may proceed with a notice of final decision before the end of the five (5) day period for response if the employee's response is received or the review is concluded prior to the expiration of this period.

C. The written notice of final decision must:

- (1) specify the date of service of the notice of proposed disciplinary action;
- (2) identify the specific acts constituting just cause, which may not include acts not specified in the notice of proposed disciplinary action;
- (3) specify the disciplinary action, if any, to be taken;
- (4) specify the effective date of the dismissal, demotion or suspension which must be at least twenty-four (24) hours from the date of service; and
- (5) inform the covered employee that the disciplinary action may be appealed to either the district attorneys personnel review board or to the state personnel office within thirty (30) days of the effective date of the disciplinary action.

D. The disciplinary action will not be stayed, pending the completion of the appeal process.  
[10.4.9.10 NMAC - N, 06/30/2010]

#### **HISTORY OF 10.4.9 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.