

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT**  
**CHAPTER 5 STATE POLICE**  
**PART 500 ADJUDICATORY PROCEEDINGS FOR COMMISSIONED NEW MEXICO STATE**  
**POLICE OFFICERS PURSUANT TO NMSA 1978, SECTION 29-2-11C**

**10.5.500.1 ISSUING AGENCY:** Department of Public Safety - State Police Division  
[10.5.500.1 NMAC - N, 6-30-04]

**10.5.500.2 SCOPE:** All officers of the state police division of the New Mexico department of public safety holding a permanent commission.  
[10.5.500.2 NMAC - N, 6-30-04]

**10.5.500.3 STATUTORY AUTHORITY:** Section 9-9-6 NMSA 1978 outlines the duties and general powers of the secretary of the department of public safety which include the power to make and adopt such reasonable procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. Section 29-2-1.1G defines the New Mexico state police board as meaning the secretary of the department of public safety. Section 29-2-22 NMSA 1978 assigns authority to the New Mexico state police board, i.e., the secretary of the department of public safety to promulgate rules and regulations for the purpose of carrying out the provisions of Section 29-2-1 NMSA 1978 through Section 29-2-29 NMSA 1978. Section 29-2-4 specifically requires the New Mexico state police board, i.e., the secretary of the department of public safety to promulgate rules and regulations governing employment and operating practices and related matters for the employees of the New Mexico state police. The New Mexico Administrative Procedures Act, Sections 12-8-1 through 12-8-25 provides for the adoption of an adjudicatory procedure as contemplated by Section 29-2-11C NMSA 1978.  
[10.5.500.3 NMAC - N, 6-30-04]

**10.5.500.4 DURATION:** Permanent  
[10.5.500.4 NMAC - N, 6-30-04]

**10.5.500.5 EFFECTIVE DATE:** June 30, 2004, unless a later date is cited at the end of a section.  
[10.5.500.5 NMAC - N, 6-30-04]

**10.5.500.6 OBJECTIVE:** The objective of this rule is to provide a procedure for a full and fair adjudicatory hearing for a New Mexico state police officer holding a permanent commission who is facing disciplinary action as contemplated by Section 29-2-11C NMSA 1978.  
[10.5.500.6 NMAC - N, 6-30-04]

**10.5.500.7 DEFINITIONS:**  
**A. "Commission"** means the public safety advisory commission.  
**B. "Officer"** means a New Mexico state police officer holding a permanent commission facing disciplinary action involving removal from office, demotion, or suspension for more than thirty (30) days.  
**C. "Parties"** means the department of public safety and the officer.  
[10.5.500.7 NMAC - N, 6-30-04]

**10.5.500.8 ADOPTION AND MODIFICATION OF SPECIFIC SECTIONS OF THE ADMINISTRATIVE PROCEDURES ACT, SECTIONS 12-8-1 THROUGH 12-8-25 NMSA 1978:** The secretary of the department of public safety adopts, as modified, to comport with the purposes of Sections 29-2-11C and 29-2-11D, the following sections of the Administrative Procedures Act: Sections 12-8-1B(1), (2) and (3); Sections 12-8-10C and 12-8-10D; Sections 12-8-11 through 12-8-16.  
[10.5.500.8 NMAC - N, 6-30-04]

**10.5.500.9 APPOINTMENT OF A HEARING OFFICER:** For the purpose of providing a New Mexico state police officer subject to discipline as contemplated by Section 29-2-11C NMSA 1978 with a timely hearing, the commission shall appoint an independent hearing officer who is an attorney licensed to practice law in the state of New Mexico to preside over the hearing pursuant to Section 29-2-11C and these rules. The hearing officer's powers shall include administering oaths or affirmations to witnesses called to testify, taking testimony, examining witnesses, admitting or excluding evidence.

[10.5.500.9 NMAC - N, 6-30-04]

**10.5.500.10 DISCOVERY DEADLINES:** The parties will submit a list of proposed witnesses, together with the gist of testimony or the type of testimony expected to be elicited from each witness. The parties shall likewise be required to submit a list of exhibits it intends to introduce at the hearing. The parties shall produce for examination or copying any exhibits the parties anticipate using at the hearing. The witness and exhibit lists shall be made available to the parties and submitted to the hearing officer. Other discovery or pretrial conferences and procedures available in the district courts may be utilized upon demand by any party. The hearing officer shall issue a pre-trial order establishing discovery deadlines.

[10.5.500.10 NMAC - N, 6-30-04]

**10.5.500.11 NOTICE:** In this proceeding, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall include:

**A.** a statement of the time place and nature of the hearing;  
**B.** a statement of the legal authority and jurisdiction under which the hearing is to be held; and  
**C.** a short and plain statement of the matters of fact and law asserted so that all have sufficient notice of the issues involved to afford them reasonable opportunity to prepare; if the issues cannot be fully stated in advance, they shall be fully stated as soon as practicable; in all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare.

[10.5.500.11 NMAC - N, 6-30-04]

**10.5.500.12 VENUE:** The hearings shall take place at the department of public safety headquarters in Santa Fe, New Mexico or at such other location in Santa Fe as the hearing officer may designate.

[10.5.500.12 NMAC - N, 6-30-04]

**10.5.500.13 RECORD:**

- A.** The record in a proceeding subject to this rule shall include:
- (1) all pleadings, motions and intermediate rulings;
  - (2) evidence received or considered;
  - (3) a statement of matters officially noticed;
  - (4) questions, and offers of proof, objections and rulings thereon;
  - (5) proposed findings and conclusions; and
  - (6) any decision, opinion or report by the hearing officer conducting the hearing.
- B.** The hearing shall be recorded by a certified court monitor.

[10.5.500.13 NMAC - N, 6-30-04]

**10.5.500.14 EVIDENCE:**

**A.** In this proceeding the rules of evidence shall be followed.  
**B.** Irrelevant, immaterial or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonable susceptible to proof under the rules of evidence, evidence thereunder may be admitted, except where precluded by statute, if it is of type commonly relied upon by reasonably prudent men in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers shall be made and noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

**C.** All evidence, including any records, investigation reports and documents in the possession of the department of public safety, which it relies upon as evidence in this hearing, shall be offered and made part of the record in the proceeding.

**D.** The parties may call and examine witnesses, introduce exhibits, cross-examine witnesses who testify and submit rebuttal evidence.

**E.** The officer subject to these proceedings has the right to be represented by counsel of his choice and at his own expense. Such counsel shall be an attorney licensed to practice law in the state of New Mexico.

**F.** If the officer who has requested a hearing does not appear and no continuance has been granted, the hearing officer may hear the evidence of the witnesses who appear, and then may proceed to consider the matter and dispose of it on the basis of the evidence before it and in the manner required by these rules. For good cause

shown, the hearing officer may continue the hearing.

**G.** Where relief or procedure is not otherwise provided for in these rules, the rules of civil procedure and the rules of evidence may be utilized by the parties at any stage of the proceeding, and if refused by the hearing officer, then upon application to the First Judicial District Court for the entry of an order providing for such relief or procedure.

**H.** Prior to each initial or tentative decision, the parties shall be allowed a reasonable opportunity to submit briefs for the consideration of the hearing officer.

**I.** The record shall include all briefs, proposed findings and exceptions and shall show the ruling upon each finding, exception or conclusion presented. All decisions at any stage of the proceeding become part of the record and shall include a statement of findings of fact and conclusions of law, as well as the reasons or basis therefore, upon all material issues of fact, law or discretion involved, together with the appropriate rule, order, sanction, relief or denial thereof.

[10.5.500.14 NMAC - N, 6-30-04]

**10.5.500.15 DEPOSITIONS, INSPECTION OF DEPARTMENT FILES AND DISQUALIFICATIONS:**

The hearing officer may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses and the production of books, records, papers and other objects necessary and proper for the purposes of the proceeding.

**A.** The parties may take depositions of witnesses, including the parties, within or without the state, in the same manner as provided by law for taking depositions under the rules of civil procedure for the district courts, and they may be used in the same manner and to the same extent as permitted in the district court.

**B.** The hearing officer may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents relating to any matter in question in the proceeding.

**C.** The form of the subpoena shall adhere, insofar as practicable, to the form used in civil actions in the district courts. Witnesses summoned, unless they are employees of the department, shall be paid the same fees for attendance and travel as in civil actions in the district courts unless otherwise provided by law. Service of subpoenas shall be in accordance with the rules of civil procedure for the district courts.

**D.** The parties are entitled as of right to the issue of subpoenas in the name of the commission. The parties shall present a written request to the hearing officer for the issuance of the subpoena and he shall issue the subpoenas requested. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued. The cost and fees for attendance of witnesses shall be born by the party that summoned the witness.

**E.** Any witness summoned may petition the hearing officer, or if the hearing officer denies the petitioner's requested relief, the first judicial district court to vacate or modify the subpoena served on the witness.

**F.** In the case of disobedience to any subpoena issued and served under this section or for refusal of any person to produce any thing or to testify to any matter regarding which he may be interrogated lawfully under the rules of evidence, the parties or the hearing officer may apply to the first judicial district court for an order to compel compliance with the subpoena. The district court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unlawful, the district court shall enter an order requiring compliance in full or as modified and order whatever relief justice may require. Disobedience of the court order shall be punished as contempt of the district court in the same manner and by the same procedure as provided for like conduct committed in the course of judicial proceedings.

**G.** Department files and records, including but not limited to investigation reports, statements, memoranda, correspondence, or other data pertaining to the proceeding shall be made available for inspection and copying by the parties prior to any hearing. If the department asserts that any such information contained in the department's files and records should not be made available for any reason of confidentiality or privilege recognized by law, the question shall be determined by the hearing officer, upon application by the party requesting the information and after a hearing on the matter following reasonable notice to the parties. The hearing officer's ruling, if it is one that requires disclosure, is immediately appealable to the first judicial district court which shall hear the matter as expeditiously as possible.

**H.** Any hearing officer or commissioner shall withdraw from any proceedings in which he cannot accord a fair and impartial hearing or consideration.

**(I)** Any party may request a disqualification of any hearing officer or commissioner on the grounds of the person's inability to be fair and impartial by filing an affidavit with the commission promptly upon the discovery of the alleged grounds for disqualification, stating with particularity the grounds which it is claimed that

the person cannot be fair and impartial.

(2) The disqualification shall be mandatory if sufficient factual basis is set forth in the affidavit.

(3) The commission shall promptly appoint a fair and impartial replacement for the hearing officer disqualified. If a commission member is disqualified, that commissioner shall not take part in the proceedings. If the replacement hearing officer is disqualified, or in any other case not otherwise provided for, a replacement shall be appointed by a justice of the New Mexico supreme court.

[10.5.500.15 NMAC - N, 6-30-04]

**10.5.500.16 EX PARTE COMMUNICATIONS:** No party or representative of a party or any other person shall communicate with any commission member or counsel for the commission or hearing officer who participates in making the decision in any proceeding under this part unless a copy of the communication is sent to all parties to the proceeding.

[10.5.500.16 NMAC - N, 6-30-04]

**10.5.500.17 DECISION:** The hearing officer shall prepare and submit to the commission a summary of evidence taken at the hearing, proposed finding findings of fact and conclusions of law, separately stated. The sole issue to be decided by the commission conducted pursuant to these rules and Section 29-2-11C is whether, by a preponderance of the evidence, just cause exists to support the action proposed by the department.

**A.** If the commission finds the action proposed by the department is supported by just cause, the commission shall adopt and enter findings of fact and conclusions of law submitted by the hearing officer in its determination and these findings of fact and conclusions of law shall form the final decision.

**B.** If the commission finds the action proposed by the department is without just cause, the commission shall enter findings of fact and conclusions of law to support its determination in the form of a final decision. In the event that a final decision of the commission that just cause did not exist to support the action taken by the department the commission may also make recommendations to the secretary of the department of public safety as to what, if any, discipline would be supported by the evidence. If the secretary agrees with the recommendation of the commission he may so notify them and they shall enter such findings of fact and conclusions of law to support their recommended discipline and a final order imposing the discipline.

[10.5.500.17 NMAC - N, 6-30-04]

**10.5.500.18 PETITION FOR JUDICIAL REVIEW:** An officer subject to discipline under this part and Section 29-2-11C may appeal the final decision to the first judicial district court pursuant to Section 39-3.1.1 NMSA 1978.

[10.5.500.18 NMAC - N, 6-30-04]

**HISTORY OF 10.5.500 NMAC:** [RESERVED]