

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT**  
**CHAPTER 12 PUBLIC DEFENDER DEPARTMENT**  
**PART 1 GENERAL PROVISIONS**

**10.12.1.1 ISSUING AGENCY:** Public Defender Commission  
[10.12.1.1 NMAC - N, 7/1/2015]

**10.12.1.2 SCOPE:** Applies to all employees.  
[10.12.1.2 NMAC - N, 7/1/2015]

**10.12.1.3 STATUTORY AUTHORITY:** Section 31-15-2.4(B)(6) NMSA 1978; Section 31-15-7 NMSA 1978; 42 U.S.C Section 12101 et seq.; Section 14: NMSA 1978, Section 14-2-1 NMSA 1978 and 42 U.S.C Section 101 et seq; Chapter 173, laws of 1997.  
[10.12.1.3 NMAC - N, 7/1/2015]

**10.12.1.4 DURATION:** Permanent.  
[10.12.1.4 NMAC - N, 7/1/2015]

**10.12.1.5 EFFECTIVE DATE:** 7/1/2015 unless a later date is cited at the end of a section.  
[10.12.1.5 NMAC - N, 7/1/2015]

**10.12.1.6 OBJECTIVE:** The objective of Part 1 of Chapter 12 is: to define words and phrases used throughout Chapter 12, to cite provisions pertaining to different parts of Chapter 12, to require maintenance of employment records, and to detail provisions that do not warrant a separate part.  
[10.12.1.6 NMAC - N, 7/1/2015]

**10.12.1.7 DEFINITIONS:**

- A.** "Agency" means any state department, unit, bureau, division, branch or administrative group which is under the same employer.
- B.** "Anniversary date" means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or change to a different classification in the same pay band. The human resource director shall resolve disputes over how an anniversary date is derived.
- C.** "Applicant" means any person, who has applied for a position.
- D.** "Board" means the disciplinary review board.
- E.** "Break in employment" means any period of separation of at least one workday of not being in the public defender department.
- F.** "Candidate" means any person who is on the employment list for a position.
- G.** "Chief" means the chief public defender.
- H.** "Classification" means a job that is occupationally and quantifiably distinct.
- I.** "Compa-ratio" means pay expressed as a percentage of the midpoint of a pay range.
- J.** "Demotion" means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's pay band or from a position in one pay band to a position in a lower pay band with a reduction in pay, and/or removal of supervisory responsibilities and pay for disciplinary reasons.
- K.** "Department" means the public defender department.
- L.** "Dismissal" means the involuntary separation from employment for disciplinary reasons.
- M.** "Employee" means a person in a position in the department. [Note: For purposes of brevity and consistency, this definition differs from Section 10-9-3-(I) NMSA 1978 but in no way confers a greater right on certain persons than contemplated by Section 10-9-3(I).
- N.** "Employer" means any authority having power to fill positions in the department.
- O.** "Employment list" means the list of names, certified by the human resource director, from which a candidate may be selected for appointment.
- P.** "Established requirements" means a position's individual job related qualification standards established by the department in accordance with the specific requirements and/or needs of the position and are subject to review by the human resource director.
- Q.** "Examination" means quantitative competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including oral or written tests.

- R.** “Exempt service” means at will positions in the department.
  - S.** “Filed” means received by the office.
  - T.** “First line supervisor” means an employee in a non-manager classification who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of other employees and may have the authority in the interest of the department to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or human resource directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.
  - U.** “Involuntary separation” means involuntary removal of an employee from the department without prejudice as provided for in 10.12.10.13 NMAC.
  - V.** “Manager” means an employee in a position that manages internal staff and/or external staff, and who plans, organizes, integrates, coordinates, and controls the activities of others or directs a specific program or project. A manager also is held accountable for the performance of people, services, systems, programs and resources and can change their direction, objectives and assignments to meet performance and business needs.
  - W.** “Midpoint” means the salary midway between the minimum and maximum pay rates of a pay range that represents the competitive market rate for jobs of the same relative worth in the relevant labor market(s). Midpoint represents a compa-ratio value of 1.00 or 100%.
  - X.** “Minimum qualifications” means statutory requirements as required by law, which shall be used to reject applicants.
  - Y.** “Office” means the human resources bureau.
  - Z.** “Pay range” means the range of pay rates, from minimum to maximum.
  - AA.** “Probationer” means an employee in the department who has not completed the one-year probationary period.
  - BB.** “Promotion” means the change of an employee from a position in one pay range to a position in a higher pay range.
  - CC.** “Reduction” means a voluntary change without prejudice, within an employee’s pay range, or from a position in one pay range to a position in a lower pay range, or voluntary removal of supervisory or leadworker responsibilities and pay.
  - DD.** “Relation by blood or marriage within the third degree” includes spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, and great-grandparent.
  - EE.** “Resignation” means the voluntary separation of an employee from the department.
  - FF.** “Rules” means the rules and regulations of the public defender department.
  - GG.** “Status” means all of the rights and privileges of an appointment.
  - HH.** “Suspension” means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days.
  - II.** “Transfer” means the movement of an employee from one position to another in the same pay range without a break in employment.
  - JJ.** “Without prejudice” means a declaration that no rights or privileges of the employee concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided.
  - KK.** “Writing or written” means in the written form and/or an alternative format, where deemed appropriate, and when requested.
- [10.12.1.7 NMAC - N, 7/1/2015]

#### **10.12.1.8 APPROVAL AUTHORITY:**

- A.** Pursuant to the provision of Section 31-15-7 NMSA 1978 the chief public defender shall supervise all administrative and technical personnel activities of the department. The chief public defender may designate duties as needed.
  - (1)** The human resource director, pursuant to direction from the chief, will establish a quality assurance review program. The chief will review the quality assurance review program.
  - (2)** The human resource director shall ensure that all programs are reviewed, as outlined in the quality assurance review program, which will enable the chief to supervise all administrative and technical personnel activities of the state and ensure compliance with the rules. The human resource director shall submit the findings to the chief.

[10.12.1.8 NMAC - N, 7/1/2015]

**10.12.1.9 INTERPRETATIONS:** The chief shall establish a procedure for the issuance of interpretations of these rules.

[10.12.1.9 NMAC - N, 7/1/2015]

**10.12.1.10 METHOD OF SERVING NOTICE:** Any notice required of the department by these rules, shall be delivered by a method that provides proof of service or attempted service.

[10.12.1.10 NMAC - N, 7/1/2015]

**10.12.1.11 COMPUTATION OF TIME:**

**A.** In computing any period of time prescribed or allowed by these rules, the day from which 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 a legal holiday is observed. In such a case, 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 or legal holiday is excluded from the computation.

**B.** Whenever an employee is permitted or required by these rules to respond or do some other act within a prescribed period after service of a notice or paper upon the employee and the notice or paper is served by mail or courier service, 3 calendar days shall be added to the prescribed period.

[10.12.1.11 NMAC - N, 7/1/2015]

**10.12.1.12 EMPLOYMENT RECORDS:**

**A.** The office shall maintain a record of each employee's employment history in accordance with operational necessity and applicable state and federal law requirements. Employees shall have access to their own file. Employment-related confidential records shall be available for inspection by prospective employers when the employee has provided a signed release. No materials shall be placed in an employee's employment history without providing the employee with a copy. Employees may submit a written rebuttal to any material placed in their employment history. The department shall transfer the complete record of an employee's employment history upon inter-agency transfer.

**B.** Employment records, except confidential records, are subject to inspection by the general public. Confidential records may be inspected with the written permission of the employee or pursuant to a lawful court order.

**C.** For the purpose of inspection of public records under Section 14-2-1 NMSA 1978 et seq., the following material shall be regarded as confidential and exempted from public inspection: records and documentation pertaining to physical or mental illness, injury or examinations, sick leave and medical treatment of persons; records and documentation maintained for purposes of the Americans with Disabilities Act [42 U.S.C. Section 12101 et seq.]; letters of reference concerning employment, licensing, or permits; records and documentation containing matters of opinion; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed; college transcripts; military discharge; information on the race, color, religion, sex, national origin, political affiliation, age, and disability of employees; home address and personal telephone number unless related to public business; social security number; laboratory reports or test results generated according to the provisions of 10.12.8 NMAC; and as otherwise provided by state or federal law.

[10.12.1.12 NMAC - N, 7/1/2015]

**10.12.1.13 SETTLEMENT AGREEMENTS:** Any settlement agreement reached by the department and an employee to resolve a matter in dispute between them, that incorporates provisions covered by these rules, must conform to the provisions of these rules and have the prior approval of the chief. The chief may approve a settlement agreement, which does not conform to the provisions of these rules if, in the judgment of the chief, the settlement is in the best interest of the public defender department.

[10.12.1.13 NMAC - N, 7/1/2015]

**10.12.1.14 HUMAN RESOURCE POLICIES:** The department shall make human resource policies available to employees and insure that policies conform to requirements of law.

[10.12.1.14 NMAC - N, 7/1/2015]

**10.12.1.15        TRAINING AND DEVELOPMENT:** The human resource director in conjunction with the training director shall establish, pursuant to direction from the chief, maintain a training and development work plan. The chief will review the training and development work plan on an annual basis.  
[10.12.1.15 NMAC - N, 7/1/2015]

**10.12.1.16        SEVERABILITY:** A determination by a court of competent jurisdiction that any provision of these rules is unconstitutional or invalid shall not adversely affect the constitutionality, validity or enforceability of the remaining provisions.  
[10.12.1.16 NMAC - N, 7/1/2015]

**HISTORY OF 10.12.1 NMAC [RESERVED]**