

TITLE 22: COURTS
CHAPTER 600: ADMINISTRATIVE HEARINGS OFFICE
PART 2: CODE OF CONDUCT FOR ADMINISTRATIVE HEARINGS

22.600.2.1 ISSUING AGENCY: Administrative Hearings Office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.
[22.600.2.1 NMAC - N, 2/1/2018]

22.600.2.2 SCOPE: This part applies to all proceedings before the administrative hearings office and all parties that appear before the administrative hearings office, unless a more specific statutory or regulatory provision applies to the specific hearing type being conducted.
[22.600.2.2 NMAC - N, 2/1/2018]

22.600.2.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.
[22.600.2.3 NMAC - N, 2/1/2018]

22.600.2.4 DURATION: Permanent.
[22.600.2.4 NMAC - N, 2/1/2018]

22.600.2.5 EFFECTIVE DATE: February 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[22.600.2.5 NMAC - N, 2/1/2018]

22.600.2.6 OBJECTIVE: The objective of this part is to establish a code of conduct for the administrative hearings office hearing officers and those appearing before the administrative hearings office.
[22.600.2.6 NMAC - N, 2/1/2018]

22.600.2.7 DEFINITIONS: The following terms apply to:

- A. “Administrative hearings office”** is the agency established under Section 7-1B-1 NMSA 1978.
 - B. “Chief hearing officer”** is the appointed head of the administrative hearings office under the Administrative Hearings Office Act, Section 7-1B-3 NMSA 1978, or the chief hearing officer’s designee during the absence of the chief hearing officer, or the acting, interim chief hearing officer pending appointment of that position.
 - C. “Hearing officer”** is the attorney assigned by the chief hearing officer or designee of the chief hearing officer to serve as a neutral decision maker in any adjudicatory proceeding before the administrative hearings office. The person assigned as hearing officer must be licensed to practice law in New Mexico or eligible for temporary licensure to practice in New Mexico as determined by the New Mexico supreme court. The hearing officer may be a classified employee in the state personnel system with the administrative hearings office, either as an attorney or administrative law judge, may be under contract with the administrative hearings office as a contract attorney, administrative law judge, or judge, or may be an attorney, administrative law judge, or judge serving in a voluntary capacity for the administrative hearings office.
 - D. “Party”** shall include the real parties of interest and their representatives, including bona fide employees, attorneys, certified public accountants, enrolled agents, agency staff, agency attorneys, or other representatives authorized by the Administrative Hearings Office Act to appear on behalf of a party.
 - E. “Third degree of relationship”** include the following persons, by blood or marriage: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.
- [22.600.2.7 NMAC - N, 1/1/2018]

22.600.2.8 APPLICABILITY OF THESE RULES: These rules apply to hearing officers conducting and adjudicating administrative hearings for the administrative hearings office, and parties appearing before the administrative hearings office.
[22.600.2.8 NMAC - N, 2/1/2018]

22.600.2.9 HEARING OFFICERS SHALL PROMOTE PUBLIC CONFIDENCE IN THE INTEGRITY AND FAIRNESS OF THE HEARING PROCESS: A hearing officer shall act in a manner that promotes public confidence in the fairness, integrity, and impartiality of the hearing process. A hearing officer shall not abuse the public trust granted to the hearing officer in adjudicating hearings to advance the personal, professional, or economic interest of the hearing officer, family, friends, or current or former business associates nor shall the hearing officer knowingly permit others to do the same on his or her behalf.
[22.600.2.9 NMAC - N, 2/1/2018]

22.600.2.10 AVOIDING IMPROPRIETY AND THE APPEARANCE THEREOF: A hearing officer shall avoid impropriety. A hearing officer shall also avoid the reasonable appearance of impropriety. A reasonable appearance of impropriety occurs whenever a reasonable person would have serious doubts about whether the hearing officer could be fair given the circumstances. If the hearing officer, initially unaware of any potential issue, becomes aware of any potential appearance of impropriety during the course of the hearing, the hearing officer shall promptly disclose on the record the potential appearance of impropriety to the parties, allow the parties to appropriately respond or object, and then make a formal determination as to whether the hearing officer can continue to proceed in the hearing without violating this provision. The hearing officer may consult with other hearings officers and the chief hearing officer about any potential appearance of impropriety issues as part of the process of determining whether the assigned hearing officer can continue presiding over the matter. The rule of necessity may require a hearing officer to proceed in the matter if there is no other hearing officer available to conduct the matter before expiration of a mandatory, jurisdictional deadline.
[22.600.2.10 NMAC - N, 2/1/2018]

22.600.2.11 HEARING OFFICER COMPETENCY: Hearing officers should perform their duties diligently and competently. Hearing officers should know, and have the capacity to apply the applicable substantive and procedural law at issue in the hearing, including standards governing due process and evidence. Hearing officers should have the capacity to properly weigh evidence and assess the credibility of witnesses whether present in person for the hearing or appearing remotely via telephone, videoconference, or other equivalent electronic means. Hearing officers shall possess the writing skills necessary to craft legally competent and readable documents, including citation to legal authority and hearing record as necessary or appropriate. Hearing officers should be skilled in conducting hearings efficiently, fairly, developing an appropriate record, and maintaining good order during the proceeding. Hearing officer should regularly participate in, attend, or conduct continuing education and appropriate legal community outreach/service to improve their competency, to stay current in the knowledge of the law and the hearing process, and to remain engaged in the broader legal community.
[22.600.2.11 NMAC - N, 2/1/2018]

22.600.2.12 INDEPENDENCE: In deciding matters, a hearing officer shall be faithful to their reasonable understanding of controlling law. A hearing officer shall not be swayed by partisan interests, public clamor, or fear of criticism. Hearing officers shall not permit family, social, political, financial, or other personal interests or relationships to influence their conduct or judgment. A hearing officer shall not convey nor permit others to convey the impression that any person or organization is in a position to improperly influence the hearing officer. This provision is not intended to prevent a hearing officer from consulting and discussing a pending matter with other hearing officers or a supervising hearing officer within the administrative hearings office.
[22.600.2.12 NMAC - N, 2/1/2018]

22.600.2.13 ORDER AND DECORUM OF PROCEEDING:

A. A hearing officer should require order and decorum in official proceedings. Hearing officers should promote the dignity and decorum of the administrative hearing process. Hearing officers should exercise their lawful authority in any proceeding to ensure that all persons involved conduct themselves with proper decorum.

B. Attorneys, certified public accountants, enrolled agents and other authorized representatives appearing before the hearing officer should treat the tribunal with appropriate professionalism, dignity and respect, including showing candor to the tribunal, in line with their own obligations for professional and ethical conduct. Failure to do so may result in reporting the representative to the appropriate governing body and other appropriate remedies needed to ensure an orderly hearing process, including in extreme circumstances, excluding the representative from further representation.

[22.600.2.13 NMAC - N, 2/1/2018]

22.600.2.14 HEARINGS TO BE CONDUCTED WITH IMPARTIALITY: Hearing officers should always strive to conduct proceedings before them in an impartial, fair, and respectful manner. This requires a hearing officer to treat all persons involved in the proceeding, including the appealing or petitioning parties and their representatives, the agency, agency staff or representatives, witnesses, interpreters, interveners, observers, and any other person who appears before the hearing officer with appropriate respect. It is not a violation of this provision for hearing officers: to reasonably ask questions during the proceeding; to reasonably state what they believe the legal analysis applicable to the case requires in order to ensure an orderly, relevant, and efficient presentation of the case; to reasonably press a party on their legal position during the course of the proceeding in order to test the contours of an issue; to reasonably encourage resolution or narrowing of the issues in a case; and to take other reasonable actions necessary to ensure the conduct of an orderly hearing, or gain control of a hearing if a party violates the decorum of the proceeding, such as but not limited to reprimanding a participant for continuing inappropriate, disrespectful, or disruptive conduct.
[22.600.2.14 NMAC - N, 2/1/2018]

22.600.2.15 HEARINGS TO BE CONDUCTED WITHOUT BIAS, PREJUDICE, OR HARASSMENT: A hearing officer shall not, by words or conduct, show any bias or prejudice, or harass any party or person present at a hearing, based on race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, socioeconomic status, political affiliation, age, physical or mental disability or serious medical condition. To the extent reasonably possible, a hearing officer shall not permit or allow others involved in the hearing process, including the hearing officer's staff or representatives of the parties, to engage in such bias, prejudice, or harassment. A hearing officer and others may make legitimate and respectful reference to, and discuss, the listed factors when they are relevant to an issue in the proceeding.
[22.600.2.15 NMAC - N, 2/1/2018]

22.600.2.16 EX PARTE COMMUNICATIONS:

A. A hearing officer on an assigned case may not engage in any prohibited ex parte communications about the substantive issues with either party on any matter before the administrative hearings office. A prohibited ex parte communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not a prohibited ex parte communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

B. Where circumstances require it, ex parte communications for procedural, administrative, or emergency purposes that does not address the substantive matters or issues on the merits are permitted if the hearing officer reasonably believes that no party will gain an advantage as a result of the non-substantive ex parte communication and the hearing officer makes provisions to promptly notify all parties of the substance of the ex parte communication.

C. As part of the deliberative process, a hearing officer may consult with other hearing officers, except those who have previously been disqualified from the matter, and support personnel of the administrative hearings office about a pending matter. Such communication does not amount to a prohibited ex parte communication.

D. In the event a hearing officer receives an unsolicited ex parte communication, such as but not limited to the receipt of an email or a facsimile, the hearing officer receiving the unsolicited communication shall promptly forward a copy of the communication to the opposing party and admonish the sending party to comply with the ex parte communication prohibition in all future communications. An unsolicited ex parte communication does not constitute a prohibited ex parte communication unless the assigned hearing officer deems that the communication caused a genuine advantage to the non-complying, submitting party.

E. The chief hearing officer or designated staff, may make inquiries about the status of a scheduled case or cases, or the conduct of a case or cases that have already occurred, with either or both parties as part of the management of the docket, staff, and state resources. This communication does not amount to prohibited ex parte communication.

F. With consent of the parties, the hearing officer may confer separately with the parties or their representatives in an effort to mediate or settle pending matters. With consent, such communication does not amount to a prohibited ex parte communication.

G. Absent providing administrative notice to the parties with an opportunity for the parties to respond or object, or receiving prior consent from the parties to do so, a hearing officer shall not investigate facts that are reasonably in dispute in a matter independently of what has been presented on the record. This does not preclude a

hearing officer from researching the applicable law relevant to the facts presented regardless of whether such legal authority was cited by either party. Nor does it preclude the hearing officer from taking administrative notice of facts that cannot reasonably be disputed.

H. A hearing officer may engage in ex parte communications when expressly authorized by law to do so.

I. So long as no confidential or privileged information about the case or the identities of the parties is disclosed, a hearing officer may consult with other hearing officers, other staff, ethics advisory committees, outside counsel, judges who will not serve in an appellate capacity in the matter, mentors, or other legal experts concerning the hearing officer's obligations and compliance with provisions of this code without disclosing such communication to any person or party.

[22.600.2.16 NMAC - N, 2/1/2018]

22.600.2.17 PUBLIC STATEMENTS ON PENDING MATTERS AND HEARING OFFICER INVOLVEMENT IN PUBLIC EVENTS/ORGANIZATIONS:

A. A hearing officer shall not make any public statement about a pending matter that might reasonably be expected to affect the outcome or impair the fairness of proceedings in a pending matter, or make pledges, promises or commitments that are inconsistent with the impartial performance of the hearing officer's adjudicatory duties.

B. A hearing officer shall not publicly comment on any case in which the hearing officer presided over other than, upon inquiry, refer to any publically available final decision and order, if any, issued in the matter.

C. A hearing officer may make public statements to explain tribunal procedures and confirm basic status and scheduling details for a hearing that is statutorily open to the public.

D. While a hearing officer may not publically advocate for or against the formulation of any particular substantive tax policy or statute, a hearing officer may provide general information in a public forum, including before the Legislature, about the policies, practices, procedures of the office, and the possible effects of proposed change of statutes on the efficiency of the hearing process, hearing procedures, and the resource needs of the office.

E. A hearing officer is encouraged to participate in legal forums, trainings, educational or academic settings, bar association, judicial association, or other public community events where the hearing officer's knowledge of the issues, law, and procedures may be useful to the legal system, the public understanding about the hearing process, and the administration of justice, or where other participants at the event may provide similar insight to the hearing officer.

F. Consistent with other controlling state statutes, rules, regulations, and policies, and with consent of the chief hearing officer, a hearing officer may voluntarily serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice, so long as such service would not create an appearance of impropriety, a potential conflict of interest, or otherwise reasonably interfere with the hearing officer's ability to fairly, impartially, and efficiently adjudicate cases in the subject matters that regularly are heard before the administrative hearings office.

[22.600.2.17 NMAC - N, 2/1/2018]

22.600.2.18 PERSONAL CONDUCT:

A. Hearing officers shall not participate in outside activities that will interfere with the hearing officer's official duties or participate in activities that will lead to frequent disqualification of the hearing officer. The hearing officer should refrain from conduct and not participate in activities, or belong to organizations, that would appear to a reasonable person to undermine the hearing officer's independence, integrity, impartiality, or judgment. A hearing officer should not hold membership in any organization that practices invidious discrimination on the basis of race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender, gender identity, marital status, socioeconomic status, political affiliation, age, physical or mental disability, or serious medical condition.

B. The hearing officer must be knowledgeable about and comply with all statutes, ordinances, regulations, and policies governing conduct of public employees.

C. A hearing officer shall not accept any gifts, loans, bequests, benefits, donations, or things of value if acceptance is prohibited by law or would appear to a reasonable person to undermine the hearing officer's integrity or impartiality in performance of hearing officer duties, or if the source is a party or other person, including a lawyer, who has or is likely to come before the hearing officer.

D. A hearing officer shall not request or receive an honorarium or payment for a speech, presentation, training, educational activity, or other event related to the hearing officer's duties except for reasonable reimbursement for meals, lodging, and actual travel expenses incurred for such activity.
[22.600.2.18 NMAC - N, 2/1/2018]

22.600.2.19 CONFIDENTIALITY: A hearing officer shall not intentionally disclose or use nonpublic information acquired by virtue of his or her position for any purpose unrelated to the hearing officer's duties or in violation of the law. A hearing officer shall be knowledgeable about and shall comply with all laws and regulations governing confidentiality of information before the agency and tribunal.
[22.600.2.19 NMAC - N, 2/1/2018]

22.600.2.20 COMPLIANCE WITH ETHICAL RULES: A hearing officer shall strive to comply with these rules and, to the extent they are not in direct conflict with these rules or other statutory authority applicable to the administrative hearings office, any other relevant administrative rules, codes of conduct, or policies regarding ethics, professionalism, or conduct. Hearing officers should work to ensure that their own staff and others appearing in a proceeding before them also comply with these rules and other applicable rules governing conduct. Hearing officers have a duty to report a clear violation of a known ethical, professional or conduct standard they observe to the appropriate authority, including the governing bodies that regulate attorneys, certified public accountants, and enrolled agents that appear at hearings as representatives.
[22.600.2.20 NMAC - N, 2/1/2018]

22.600.2.21 DUTY TO HEAR ASSIGNED CASES AND RECUSALS:

A. A hearing officer has a professional responsibility to hear and decide cases assigned to them, including difficult, time consuming, controversial, or high profile matters, and adjudicate all assigned cases unless there are clear grounds under this code or other applicable standards or law requiring disqualification.

B. A hearing officer shall recuse himself or herself in any proceeding in which the hearing officer's impartiality might reasonably be questioned, including:

(1) The hearing officer has a personal preference for, or bias or prejudice against a party or a party's lawyer, or has direct personal knowledge of facts that are in dispute in the proceeding.

(2) The hearing officer knows that the hearing officer, the hearing officer's spouse or domestic partner, or person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person, or a member of the hearing officer's staff is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person has more than a de minimis interest that could substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The hearing officer knows that he or she, individually or as fiduciary, or the hearing officer's spouse, domestic partner, parent, or child, or any other person residing in the hearing officer's household, has more than a de minimis economic interest in the subject matter in controversy or is a party to the proceeding. Because tax controversies can involve companies and business with a substantial public consumer, retail, or general services presence in commerce, the mere fact that the assigned hearing officer, or their immediate family residing in their household, may be an occasional customer of a company or consumer of a company's products is not necessarily grounds for recusal unless the hearing officer has more than a de minimis economic interest beyond being an average consumer, shopper, or user of the goods and services of the company or the circumstances are sufficient to raise reasonable questions about the hearing officer's impartiality.

C. In consultation with the chief hearing officer about the reasons and necessity for recusal, a hearing officer may recuse himself or herself from the case through notice of recusal, or through the chief hearing officer's issuance of a notice of reassignment, without further explanation to the parties in the proceeding about the basis of the recusal. The recused hearing officer shall play no further role in the proceeding and reasonable steps should be taken to exclude the recused hearing officer from any further contact, review, or substantive discussions about the proceeding. A hearing officer's own decision to recuse himself or herself from a proceeding should not be construed as an admission of a conflict of interest, misconduct, impropriety, violation of this code or other relevant ethical or professional code, or as an admission that the hearing officer cannot be impartial in a particular matter.

D. A hearing officer may disclose on the record the basis of the hearing officer's prospective recusal and may ask the parties and their lawyers to consider whether to waive the potential issue necessitating the recusal. If, following this disclosure, the parties and lawyers agree for the record that the hearing officer should not be recused, the hearing officer may continue to participate in the matter.

E. The rule of necessity may require a hearing officer to proceed in a case where they otherwise might wish to recuse themselves if, after reasonable efforts to secure a continuance or reassignment of the matter to another hearing officer, there are no other competent hearing officers available to timely hear the matter before expiration of a mandatory jurisdictional deadline. If the hearing officer is relying on the rule of necessity to proceed, that determination must be disclosed on the record.

[22.600.2.21 NMAC - N, 2/1/2018]

22.600.2.22 COMPLAINT PROCEDURE AND DISQUALIFICATION:

A. A party may make an informal, verbal complaint of a violation of this code with the chief hearing officer. Such complaints will be investigated internally and informally by the chief hearing officer as part of the management of personnel of the office. If the complaint is justified, the chief hearing officer may implement informal actions designed to educate or correct the hearing officer's conduct, mitigate the violation, or take other justified actions under the circumstances.

B. Whenever any party believes the hearing officer for any reason should be formally disqualified because there is a substantial doubt as to whether the hearing officer can conduct the matter fairly, such party may file with the chief hearing officer a formal written motion for disqualification of the assigned hearing officer, along with supporting affidavits or exhibits setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the opposing party and on the hearing officer whose disqualification is sought.

(1) Upon receipt of a formal motion for disqualification, the chief hearing officer may:

- (a) summarily dismiss the motion if it is clear that the complaint fails to state grounds that raise a reasonable doubt as to the hearing officer's ability to provide a fair and impartial hearing, is frivolous in that it either has the primary purpose of seeking to delay the proceeding or is an attempt to relitigate an unfavorable ruling that is better addressed as part of the traditional appellate process; or
- (b) conduct further investigation either directly or through another agency or entity as circumstances justify; or
- (c) in order to ensure an efficient hearing process in light of a mandatory jurisdictional deadline, reassign the case to another hearing officer pending further investigation. Such reassignment for efficiency of hearing process pending further investigation does not constitute a finding that the motion for disqualification has any validity, only a recognition of the practical jurisdictional deadlines applicable in a matter.

(2) If further investigation is merited, the hearing officer shall have 10 days from service of the motion to accede or to reply to the allegations. The noncomplaining other party may also choose to file a response within 10 days. If the hearing officer does not recuse himself or herself within that time, the chief hearing officer shall promptly review the complaint, the responses, and the results of any investigation to determine whether or not the hearing officer shall be disqualified. The chief hearing officer's determination shall be reduced to writing in the form of a letter or order and shall be included in the record of the proceeding. Subject to appellate review, the chief hearing officer's decision in response to a formal motion seeking disqualification shall be final.

C. If the hearing officer is disqualified, the chief hearing officer shall designate another person to act as hearing officer in the matter.

D. As a result of the motion for disqualification and any related investigation, the chief hearing officer may take other appropriate internal corrective or disciplinary personnel actions consistent with the State Personnel Act. Any such additional personnel action is confidential in accord with the controlling provisions of the State Personnel Act.

E. The complaining party's remedies for violations of this code are limited to disqualification of the hearing officer from the particular proceeding before the administrative hearings office. Nothing in this section creates an independent cause of action by either party outside of this complaint procedure described herein, or an independent basis to seek discipline under either the code of judicial conduct or the rules of professional conduct.

[22.600.2.22 NMAC - N, 2/1/2018]

HISTORY of 22.600.2 NMAC: [RESERVED]