

**TITLE 9 HUMAN RIGHTS**  
**CHAPTER 1 HUMAN RIGHTS GENERAL PROVISIONS**  
**PART 1 ADMINISTRATIVE PROCEDURES FOR THE HUMAN RIGHTS BUREAU/COMMISSION**

**9.1.1.1 ISSUING AGENCY:** New Mexico Department of Workforce Solutions, Labor Relations Division, Human Rights Bureau  
[9.1.1.1 NMAC - Rp, 9.1.1.1 NMAC, 11/14/2017]

**9.1.1.2 SCOPE:**  
**A.** These rules apply to the general public and contain specific limitations from applicability, as noted.  
**B.** Application of rules of civil procedure: In the absence of a specific provision governing an action in the Human Rights Act or in these rules, the human rights bureau and the human rights commission may look for guidance to the New Mexico Rules of Civil Procedure for the District Courts, Rules 1-001 to 1-102 NMRA 1998 and as may be revised.  
[9.1.1.2 NMAC - Rp, 9.1.1.2 NMAC, 11/14/2017]

**9.1.1.3 STATUTORY AUTHORITY:** These rules and regulations are adopted by the secretary of the New Mexico department of workforce solutions to carry out the provisions of the Human Rights Act, Sections 28-1-1 to 28-1-7, 28-1-9 to 28-1-14 NMSA 1978 and 28-23-1 to 28-23-6 NMSA 1978, as amended, or as such provisions may be amended by law.  
[9.1.1.3 NMAC – Rp, 9.1.1.3 NMAC, 11/14/2017]

**9.1.1.4 DURATION:** Permanent.  
[9.1.1.4 NMAC - Rp, 9.1.1.4 NMAC, 11/14/2017]

**9.1.1.5 EFFECTIVE DATE:** November 14, 2017 unless a later date is cited at the end of a section.  
[9.1.1.5 NMAC - Rp, 9.1.1.5 NMAC, 11/14/2017]

**9.1.1.6 OBJECTIVE:** These rules and regulations govern procedure for discrimination complaints with the human rights bureau, and the subsequent investigation and administrative hearing process.  
[9.1.1.6 NMAC - Rp, 9.1.1.6 NMAC, 11/14/2017]

**9.1.1.7 DEFINITIONS:** As used in these rules incorporates the definitions of 28-1-2 NMSA 1978 and:  
**A.** “act” means the Human Rights Act, Sections 28-1-1 to 28-1-7, 28-1-9 to 28-1-14 and 28-23-1 to 28-23-6 NMSA 1978, and all subsequent amendments and provisions;  
**B.** “applicant for employment” means a person applying or attempting to apply for a position as an employee;  
**C.** “bureau” means the human rights bureau of the labor relations division of the New Mexico department of workforce solutions.  
**D.** “chairperson” and “vice chairperson”:  
(1) “chairperson” means a member of the commission designated by the governor to serve as chair.  
(2) “vice chairperson” means a member of the commission designated by the commission to preside in the absence or incapacity of the chairperson.  
**E.** “commission” means the New Mexico human rights commission;  
**F.** “commissioner” means one of the members appointed by the governor to serve on the New Mexico human rights commission;

**G.** “complainant” means any person who claims to be aggrieved by an unlawful discriminatory practice and who has filed a complaint with the human rights bureau within 300 days after the alleged unlawful discriminatory act was committed;

**H.** “complaint” and “commission complaint”:

(1) “complaint” means a charge of discrimination signed by the complainant on an HRD charge of discrimination form, on an equal employment opportunity commission (EEOC) form 5 or on such other form as may be deemed acceptable to the human rights division;

(2) “commission complaint” means a written complaint issued by the commission on behalf of the complainant against the respondent, setting forth the alleged discriminatory practice, the section of the act alleged to have been violated and the relief requested by complainant; the commission complaint is based upon the complaint filed by complainant with the division.

**I.** “determination” means a formal decision made by the division director, relating to a complaint filed with the human rights bureau of the labor relations division of the New Mexico department of workforce solutions;

**J.** “disabled person” means any person who has a physical or mental disability as defined in these rules as “physical or mental disability” and “physical or mental handicap” as used in Subsection M of Section 28-1-2 NMSA 1978, as amended;

**K.** “division” means the labor relations division of the New Mexico department of workforce solutions;

**L.** “good cause” means a substantial reason. The bureau may consider any relevant factors to determine if good cause exists.

**M.** “hearing clerk” means the person designated by the commission to maintain the official record of the proceedings;

**N.** “hearing officer” means the person conducting a hearing of a matter brought before the commission; a hearing officer may be:

(1) a member of the commission designated by the chairperson to act as the hearing officer;

or

(2) a hearing officer employed by the human rights bureau of the New Mexico department of workforce solutions.

**O.** “labor organization” means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment;

**P.** “major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, as provided in Subsection N of Section 28-1-2 NMSA 1978, as amended, or as currently defined by regulations governing interpretation of the Americans with Disabilities Act of 1990, as amended;

**Q.** “person” means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions;

**R.** “physical or mental handicap” or “physical or mental disability” means a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

(1) An individual is also considered to be physically or mentally disabled, if he or she:

(a) has a record of a physical or mental disability; or

(b) is regarded as having a physical or mental disability.

(2) “Has a record of such a disability” means has a history or recorded classification of having a mental or physical impairment that substantially limits one or more major life activities.

(3) “Is regarded as having a disability” means:

(a) having a physical or mental impairment that does not substantially limit major life activities, but being treated by a respondent as having such a limitation;

(b) having a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or

(c) having none of the impairments described above, but being treated by a respondent as having such an impairment.

**S.** “physical or mental impairment” is defined to include, but is not limited to, any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; endocrine; or any mental or psychological

disorder, such as development disability, organic brain syndrome, emotional or mental illness and specific learning disabilities;

**T.** “probable cause” and “no probable cause”:

(1) “probable cause” means that the allegations in the complaint are supported by evidence providing reasonable grounds to believe an unlawful discriminatory practice occurred, pursuant to the act.

(2) “no probable cause” means that the allegations in the complaint are not supported by evidence providing reasonable grounds to believe an unlawful discriminatory practice occurred, pursuant to the act.

**U.** “protected groups” for complaint purposes are all of the groups identified by the bases provided in Section 28-1-7 NMSA 1978, as amended;

**V.** “qualified disabled person with respect to employment” means a disabled person who, with reasonable accommodation, can perform the essential functions of the job in question and shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in employment under any program or activity;

**W.** “qualified disabled person with respect to housing, accommodation, credit and acquisition or maintenance of particular real property” means a disabled person whose disability does not limit that person’s ability to fulfill the obligations of occupancy, tenancy, ownership or credit responsibilities;

**X.** “reasonable accommodation” means, for employment purposes, such modifications or adaptations of the work environment or job responsibilities of a disabled person as are necessary to enable him or her to perform the essential functions of the job in question and which do not impose an undue hardship on the employer;

**Y.** “respondent” means the person, company, union, association, organization, agency or any other enterprise named in a complaint as having allegedly engaged in an unlawful discriminatory practice;

**Z.** “serious medical condition” means a serious health-related impairment other than a disability, which substantially limits one or more of an individual’s major life activities, as “major life activities” is defined within these rules, and which is verifiable by medical diagnosis.

(1) An individual is also considered to have a serious medical condition, if he or she:

- (a) has a record of a serious health-related impairment; or
- (b) is regarded as having a serious health-related impairment.

(2) “Has a record of serious health-related impairment” means has a history or recorded classification of having a serious medical condition that substantially limits one or more major life activities.

(3) “Is regarded as having a serious health-related impairment” means:

- (a) having a serious medical condition that does not substantially limit major life activities, but being treated by a respondent as having such a limitation;
- (b) having a serious medical condition that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or
- (c) having none of the impairments described above, but being treated by a respondent as having such an impairment.

(4) The term “serious medical condition” is intended to apply to a serious health-related impairment that requires protection against discrimination due to the severity and duration of the impairment or due to having a record of such impairment.

**AA.** “sex discrimination” is defined to include, but is not limited to, the following:

(1) “Sexual harassment” means any unwanted or repeated physical or verbal act that is sexual, including sexual advances, sexual conduct, verbal or nonverbal sexual suggestions, sexual ridicule or sexual innuendoes in order to:

- (a) affect employment status relating to matters of compensation or the terms and conditions of employment;
- (b) obtain credit;
- (c) obtain housing, continue housing agreements; or
- (d) be denied access to or limit public accommodations;

(2) “Pregnancy, childbirth, or related medical condition;” women affected by pregnancy, childbirth or related medical conditions shall be treated the same as other persons who are temporarily disabled for all employment-related purposes, including receipt of benefits under fringe benefit programs; further, women affected by pregnancy, childbirth or related medical conditions shall be treated the same as other persons who are temporarily disabled in the areas of credit, housing and public accommodations.

**BB.** “unlawful discriminatory practices” means those unlawful practices and acts specified in Section 28-1-7 NMSA 1978, as amended.

[9.1.1.7 NMAC - Rp, 9.1.1.7 NMAC, 11/14/2017]

**9.1.1.8 FILING A COMPLAINT:**

**A. Persons who may file a complaint:**

(1) Any person claiming to be aggrieved by an unlawful discriminatory practice may by himself or herself, or through his or her legally authorized representative, make and sign a complaint and file said complaint with the bureau.

(2) Any member of the commission who has reason to believe that an unlawful discriminatory practice has occurred may make, sign and file a written complaint with the bureau, on behalf of a complainant. The complaint must state the facts which gave the member of the commission reason to believe that an unlawful discriminatory practice has occurred.

**B. Time limit for filing:** All complaints shall be filed with the bureau within 300 days after the last alleged act of unlawful discrimination was committed.

**C. Form of complaint:**

(1) The complaint of any person claiming to be aggrieved or the complaint of a commissioner who has reason to believe an unlawful discriminatory practice has occurred shall be in writing on a human rights bureau discrimination complaint form, on an EEOC form 5 or on such other form as the human rights bureau may deem acceptable. The complainant may be assisted by the staff of the human rights bureau in preparing his or her complaint, unless the complainant is represented by legal counsel, in which case complainant's counsel will be required to prepare and file the complaint on behalf of the complainant.

(2) A relief requested form shall be completed and signed by the complainant and made part of the investigative file.

**D. Contents of the written complaint:** Each complaint shall contain:

- (1) the name and current address of the complainant;
- (2) the name and address of the respondent;
- (3) a statement describing the occurrence of an unlawful discriminatory practice, by which complainant alleges he or she was aggrieved. This description is to include:
  - (a) a statement of the general nature of complainant's claim; and
  - (b) an identification of the particular provision of the statute or of these regulations upon which the complainant bases his claim; and
  - (c) the time, place and nature of the occurrence alleged to be an unlawful

discriminatory practice;

(4) the factual basis or grounds supporting complainant's allegation that he or she was aggrieved by an unlawful discriminatory practice; and

(5) the signature of the complainant and the date of signing.

**E. Manner of filing the complaint:**

(1) The complaint shall be deemed filed as of the date it is received at the bureau office. For the purpose of complying with the filing time limit of 300 days, as provided in Subsection A of Section 28-1-10 NMSA 1978, as amended, a complaint which is first filed with any duly authorized civil rights agency holding a work sharing agreement or memorandum of understanding with the bureau shall be deemed to have been filed with the bureau as of the date on which the complaint was first filed with any of these agencies.

(2) When the complaint is received at the bureau office, the person accepting the complaint shall stamp the complaint with the date it is received. An electronically delivered copy of the complaint will be stamped and accepted as filed.

**F. Jurisdiction:**

(1) At the time of filing, the bureau shall determine initially whether the allegations in the complaint sufficiently state a claim under the act in order to proceed with the investigation. During the investigation, the bureau may also determine, based upon the facts established, whether the bureau has jurisdiction of the complaint.

(2) If at the time of filing or at any subsequent time it is determined that there is a lack of jurisdiction, the complaint shall be dismissed. The complainant shall be promptly notified of the dismissal by certified mail. The respondent shall be notified of the dismissal by regular mail.

(3) When a disability or serious medical condition is alleged in the complaint, the complainant must offer evidence of the disability or serious medical condition during the course of the investigation. Evidence documenting a disability or serious medical condition may be provided by the written certification of a physician or other appropriate medical authority unless the existence of the disability or serious medical condition is not a matter in dispute.

**G.** Notice to respondent: Upon the filing of a complaint, the bureau shall, within 10 days, furnish the respondent with a copy thereof by certified mail.

**H.** Withdrawal or dismissal of the complaint and requests to reopen the case.

(1) The complainant may withdraw the complaint at any time by signing a letter requesting dismissal of the complaint or a withdrawal form provided by the bureau and submitting it to the bureau.

(2) In the event that the complainant cannot be contacted for a 30 day period at his or her last known address or forwarding address, or in the event that the complainant refuses to cooperate with the bureau, the director shall dismiss the complaint without prejudice and administratively close the case.

(3) Requests for reopening a case will be made to the bureau based on the specific situation. The complainant must establish good cause to reopen the case. The director shall consider all circumstances relative to the request and determine whether the request is jurisdictional and timely made and whether good cause has been shown establishing reasonable grounds for reopening the case. The complainant and the respondent will be notified in writing, when the director decides whether the case will be reopened.

(4) In the event of a withdrawal or closure of a complaint, the bureau shall promptly notify the respondent of such action by mail, provided that the respondent has been notified of the complaint.

**I.** Request for director's order of nondetermination:

(1) Immediately after the bureau's receipt of a complainant's complaint, a complainant who seeks to remove the complaint from the bureau and pursue the complaint in district court may request and shall receive from the director an order of nondetermination.

(2) The director's order of nondetermination may be appealed to the district court, pursuant to the provisions of Section 28-1-13 NMSA 1978, or as these provisions may otherwise be amended. The director's order of nondetermination shall be deemed a final order of the commission for purposes of appeal, pursuant to Section 28-1-13 NMSA 1978.

[9.1.1.8 NMAC - Rp, 9.1.1.8 NMAC, 11/14/2017]

#### **9.1.1.9 INVESTIGATIONS AND ALTERNATIVE DISPUTE RESOLUTION (ADR):**

**A.** Investigative procedure:

(1) The respondent will be required to respond and submit documents within 30 days from the date of the inquiry from the bureau with the investigator's request for information. The deadline may be extended by the investigator for up to 10 days. Any requests for additional time beyond that must be made in writing to the bureau detailing the reason for the request, and may be granted for good cause.

(2) The complainant will be required to provide a rebuttal to the respondent's response by the deadline provided with the investigator's request for rebuttal. The deadline may be extended by the investigator up to 20 days. Any requests for additional time beyond that must be made in writing to the bureau detailing the reason for the request, and may be granted for good cause. The complainant may file an amendment to the complaint at any time prior to the rebuttal request. After the rebuttal has been requested, the complainant will be required to file a new complaint if the complainant wishes to make additional allegations not included within the original complaint.

**B.** The bureau's authority to investigate a complaint is not limited to the procedure outlined in Subsection A of this section.

**C.** Prior to an investigation, the director will invite the parties to engage in mediation discussions. Should an agreement resolving the complaint be reached through mediation, the terms shall be reduced to writing in a settlement agreement and will be signed by the parties. If a settlement agreement is signed, no determination will be issued by the director. The bureau shall dismiss the complaint upon receipt of the fully-executed settlement agreement.

**D.** Failure of the respondent or the complainant to abide by a fully-executed settlement agreement will require the aggrieved party to seek enforcement of the agreement in court.

[9.1.1.9 NMAC - Rp, 9.1.1.9 NMAC, 11/14/2017]

#### **9.1.1.10 DIRECTOR'S DETERMINATION OF PROBABLE CAUSE OR NO PROBABLE CAUSE:**

**A.** After an investigation is completed, the director will issue a determination of probable or no probable cause.

**B.** If the director determines that no probable cause exists, the director shall dismiss the complaint and notify the parties of the dismissal. The complainant will be notified by certified mail, and the respondent will be notified by regular mail. Upon dismissing the complaint, the director will advise the complainant of his or her right to appeal the determination in district court within 90 days after receipt of the determination.

C. If the director determines that probable cause exists, both parties will be notified of the determination by certified mail. The director will attempt to conciliate the matter. If conciliation attempts fail, the director shall have a commission complaint issued, setting the matter for hearing before the commission; provided that the complainant has not requested a waiver of right to hearing pursuant to Subsection J of Section 28-1-10 NMSA 1978.

[9.1.1.10 NMAC - Rp, 9.1.1.10 NMAC, 11/14/2017]

**9.1.1.11 WAIVER OF COMPLAINANT'S RIGHT TO HEARING:**

A. Within 60 days of service of the director's determination of probable cause, the complainant may make a written request to the director for a waiver of complainant's right to a commission hearing and seek a trial de novo in district court, pursuant to Subsection J of Section 28-1-10 NMSA 1978, as amended.

B. The director shall approve a waiver request which is timely made and shall serve notice of the waiver upon the complainant and the respondent. The director's issuance of a waiver notice shall be deemed a final order of the commission for the purpose of appeal, pursuant to Section 28-1-13 NMSA 1978, as amended.

C. Within 90 days from the date of service of the waiver notice, the complainant may request a trial de novo, pursuant to Section 28-1-13 NMSA 1978, as amended.

[9.1.1.11 NMAC - Rp, 9.1.1.11 NMAC, 11/14/2017]

**9.1.1.12 CONCILIATION PROCESS BEFORE AND AFTER ISSUANCE OF COMMISSION COMPLAINT:**

A. Conciliation process prior to issuance of commission complaint:

(1) The director will attempt to achieve a satisfactory adjustment of the complaint by means of conciliation with the complainant and the respondent.

(2) If conciliation attempts are successful, the parties shall prepare and sign a written settlement agreement. When the complainant and the respondent have executed a written settlement agreement by signing it, they shall provide the director with written notification that a settlement agreement between the parties has been executed.

(3) If a settlement agreement is reached between the complainant and the respondent through bureau mediation, the executed settlement agreement shall be forwarded to the director and will serve as the parties' written notification to the director of the executed settlement agreement.

(4) Once the director has received the parties' written notification that a settlement agreement has been executed, the complaint will be dismissed and the case will be administratively closed. The parties will be provided with notice by mail of the dismissal of the complaint and the administrative closure of the case.

(5) Failure by the respondent or the complainant to abide by a fully-executed settlement agreement will require the aggrieved party to seek enforcement of the agreement in court.

B. Conciliation process after issuance of commission complaint:

(1) If a settlement agreement is reached between the complainant and the respondent through the conciliation process, the complainant will be required to submit a motion to dismiss pursuant to this rule.

(2) The motion to dismiss will be deliberated and decided upon at a commission review panel.

(3) The parties will be notified by regular mail of the date, time, and location of the review panel at which the motion will be considered. The parties are not required to attend the review panel in person.

(4) Following its deliberation, the commission will issue an order on the matter and notify the parties pursuant to Subsection E of Section 28-1-11 NMSA 1978.

[9.1.1.12 NMAC - Rp, 9.1.1.11 NMAC, 11/14/2017]

**9.1.1.13 HEARING PREPARATION:**

A. Time limits:

(1) Unless the complaint has already been dismissed or a satisfactory adjustment of the complaint has been reached, a commission complaint will be issued on behalf of the complainant within one year of the complainant's filing of a complaint with the bureau, as provided in Subsection G of Section 28-1-10 NMSA 1978 of the New Mexico Human Rights Act, or as such time limit may be otherwise amended by law.

(2) A hearing date will be set not more than 15 days or less than 10 days after service of the commission complaint, pursuant to Subsection F of Section 28-1-10 NMSA 1978 of the New Mexico Human Rights Act, or as such provision may be otherwise amended by law.

**B. Case preparation for commission hearing:**

(1) Case presentation: Each party is responsible for preparing its case for presentation to the commission at hearing. Each party may represent himself or herself at hearing or may be represented by an attorney or another qualified representative.

(2) Evidence:

(a) Each party, either in person or through its attorney or other representative, may present evidence in support of its case at hearing, by calling witnesses to testify and introducing exhibits. Each party, either in person or through its attorney or other representative, may examine and cross-examine witnesses.

(b) Any materials or information contained in the bureau investigative files are not before the commission or the hearing officer at hearing, unless a party has obtained these materials before the time of hearing and seeks to introduce them as evidence at the hearing. Once a commission complaint is issued and the matter is set for hearing, the materials generally before the commission or the hearing officer are the commission complaint and the notice of hearing.

(c) A party's preparation for hearing should include, but is not limited to: determining what evidence a party intends to present at hearing; identifying the witnesses whom a party wishes to call at hearing; verifying the witnesses' availability to appear at hearing; determining whether subpoenas will be needed to secure the witnesses' appearance at hearing, requesting issuance of subpoenas and subpoenas duces tecum, if needed; arranging for service of subpoenas; identifying materials to be introduced as exhibits through witness testimony; obtaining the materials to be introduced as exhibits; and preparing exhibits for presentation at hearing.

**C. Exhibit requirements:**

(1) Marking to identify exhibits: Each party shall have its exhibits marked for identification before the hearing. Complainant's exhibits shall be marked with numbers, for example: EXHIBIT 1, EXHIBIT 2, etc. Respondent's exhibits shall be marked with alphabetical letters, for example: EXHIBIT A, EXHIBIT B, etc. Identification of an exhibit is to be placed on the lower right corner of the first page of each exhibit, if there is space available. If space is not available on the lower right corner, identification should be placed on the first page of the exhibit, at the top or bottom of the page where space is available. The identification number or letter of an exhibit shall remain the same, whether the exhibit is accepted or rejected. Separate documents, photographs, papers and other written or printed instruments shall each be given a separate exhibit number or exhibit letter. An exhibit consisting of more than one page shall be fastened, and each page shall be numbered.

(2) Number of copies: Exhibits are to be provided only at the hearing and not provided to the commission prior to the hearing. The original and six copies of each exhibit shall be provided at the commission hearing when the matter is to be heard by a three-member panel of commissioners. The original is filed with the hearing clerk, and four copies are retained by the commission for commission purposes. The two remaining copies include one copy for the opposing party and one copy for the witness testifying. When the matter is to be heard by a single hearing officer, the original and three copies of each exhibit shall be provided at the hearing.

(3) Large exhibits: The use of large charts and diagrams, models and other bulky items for illustrative purposes is permitted. The introduction of such large items in evidence is discouraged. Exhibits offered in evidence should be limited to 8.5 x 11 inches, or capable of being folded and placed in 8.5 x 11 inch envelopes, unless otherwise necessary for adequate presentation of evidence.

**D. Witness identification:**

(1) Request for identity of witnesses: Prior to the hearing any party is entitled to obtain and may request from another party witness information, to the extent that it is known, unless a protective order is issued to protect such information from disclosure. The following information may be requested:

(a) the names and addresses of witnesses whom a party anticipates may be called to testify at the hearing;

(b) the relationship, if any, of each witness to the party intending to call the witness;  
and

(c) a brief description of the general subject matter about which the witness is anticipated to testify.

(2) The witness information specified above need not be provided as to any officer, employee or agent of the party from whom the witness information is requested, unless the party responding to the request intends to call the officer, employee or agent to testify at the hearing.

(3) Response to request for identity of witnesses: A party's request for the identity of witnesses shall be answered within 10 days of service, unless otherwise ordered by the commission or the hearing officer, upon a motion for a protective order and a showing of good cause.

(4) Protective order: Upon a motion for a protective order and upon a showing of good cause, the commission or the hearing officer may grant a motion for a protective order and issue an order to protect such witness information from disclosure. If the motion for a protective order is denied, the requested information shall be disclosed.

**E. Subpoenas and subpoenas duces tecum:**

(1) The commission may issue subpoenas commanding the appearance and testimony of witnesses at the hearing. The commission may also issue subpoenas duces tecum commanding the appearance of witnesses and their production of certain specific documents or other items at the hearing.

(2) The commission may issue subpoenas and subpoenas duces tecum upon the request of a party to the proceeding.

(3) Service of the subpoenas and subpoenas duces tecum shall be made by the requesting party, in the same manner as prescribed by law for civil actions in the district courts of the state of New Mexico.

(4) The cost of service and witness and mileage fees for all hearings shall be borne by the party at whose request the subpoenas and the subpoenas duces tecum are issued. The fees paid, therefore, shall be the same as those paid by the district courts of the state of New Mexico.

(5) Requests for subpoenas or subpoenas duces tecum will be submitted to the commission through the hearing clerk no later than seven working days prior to the hearing date. Requests must be made in writing and must include the name and last known address for each person for whom a subpoena is requested. Requests for subpoenas duces tecum must include a separate list of documents for attachment to the subpoena.

**F. Filing, service and form of documents submitted by parties:**

(1) Filing of documents: Except as otherwise provided, a party shall file the originals of all documents served in the proceeding with the hearing clerk at the human rights bureau. A party shall also serve copies thereof upon all other parties. Service shall be attested by a certificate of service, indicating the date of service, the means of service, who was served and by whom service was made.

(2) Service of documents: Except as otherwise provided, all documents shall be served in person or by mail. If service is by mail, three days shall be added to time allowed by these rules for filing of a responsive document.

(3) Form of motions, responses and other documents submitted to the commission: Unless otherwise provided by these rules or by order of the commission or hearing officer, all documents, except exhibits, shall comply with the following requirements:

(a) documents shall be prepared on 8.5 x 11 inch white paper;

(b) the first page of each document shall contain a centered heading, a caption beginning at the left margin which designates the parties and the case number, and a descriptive title identifying the nature and purpose of the document, as follows:

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF NEW MEXICO

(Name of Complainant),  
Complainant,

v.  
(Name of Respondent),  
Respondent,

HRD No. \_\_\_\_\_

[DESCRIPTIVE TITLE OF THE DOCUMENT]

**G. Motions:**

(1) General matters: All motions, except those made orally during the hearing, shall be in writing, shall state the grounds for the motion, and shall specify the relief sought. The commission or the hearing officer may direct that an oral motion made at hearing shall be made in writing, stating the grounds for the motion and specifying the relief sought. If the motion relies upon facts which are not in the hearing records, each motion shall be accompanied by an affidavit, certificate or other evidence relied upon. Motions shall be filed and served, as provided in these rules for the filing and service of documents.

(2) Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was sought and granted. With an unopposed motion, the moving party shall also submit a proposed order, approved by all parties, for the commission's or the hearing officer's consideration.

(3) **Opposed motions:** Any opposed motion shall state that concurrence was sought and denied, or shall state why concurrence was not sought. An opposed motion may be accompanied by a memorandum brief in support of the motion.

(4) **Response to motions:** Any party upon whom an opposed motion is served shall have 10 days after service of the motion to file a response unless the commission or the hearing officer directs otherwise. A non-moving party who fails to file a response within that period or within any extension of time granted by the commission or hearing officer shall be deemed to have waived any objection to the granting of that motion.

(5) **Decisions:** All motions shall be decided by the commission or the hearing officer without a hearing, unless the commission or the hearing officer orders otherwise. Any party may submit a written request for a commission order granting a hearing on a motion.

**H.** **Issuance of documents by the commission or the hearing officer:** All documents issued by the commission or the hearing officer shall be filed with the hearing clerk. As soon as is practicable or otherwise provided by law, the hearing clerk shall serve copies of the documents upon all the parties in person or by first-class mail.

**I.** **Statement of intent to present evidence at hearing:**

(1) **Filing requirement:** No later than five days prior to the hearing, each party shall file with the hearing clerk an original and four copies of the party's statement of intent to present evidence at the hearing. Each party shall also serve a copy of this statement on all parties of record.

(2) **Content of statement:** The statement of intent to present evidence shall include:

(a) the name of the party filing the statement;  
(b) a witness list, including the name of each witness who will testify at hearing and an estimate of the length of time required for the direct testimony of each witness named; and  
(c) a list of the exhibits, if any, to be offered into evidence at the hearing.

(3) **Modifications to witness list or exhibit list after filing of statement of intent:** If there are any modifications to a party's witness list or exhibit list after filing the statement of intent to present evidence, the party shall provide its modified witness list or exhibit list to the commission and all parties of record before the hearing or at the hearing.

[9.1.1.13 NMAC - Rp, 9.1.1.12 NMAC, 11/14/2017]

#### **9.1.1.14 COMMISSION HEARING:**

**A.** **Issuance of commission complaint:**

(1) If after a probable cause determination, efforts at conciliation have failed, the commission shall issue a written complaint in its own name, on behalf of the complainant, against the respondent. The commission shall set forth the alleged discriminatory practice, the section of the Human Rights Act alleged to have been violated and the relief requested.

(2) The commission complaint shall require the respondent to answer the allegations of the commission complaint by appearing at a hearing before the commission on the date, time and place specified in the commission complaint. The respondent may also file a written answer to the commission complaint.

(3) The commission complaint shall be served on the complainant and the respondent or their legal representatives by certified mail, return receipt requested. Such complaint shall advise the parties that failure to appear at the hearing may result in the entry of a judgment or order against the party that fails to appear.

(4) The complainant shall review the commission complaint and verify that the complaint sets forth the discriminatory practice that is alleged to have occurred. Any motion by the complainant to amend the commission complaint should be made as soon as possible and in advance of the hearing. If a motion to amend the complaint is made on the day the hearing is set to commence, the commission may allow the respondent additional time to prepare. The commission will not allow an amendment to the complaint which alleges a discriminatory practice that was not raised and investigated at the bureau level or that was dismissed at the bureau level.

**B.** **Scheduling the hearing:**

(1) **Hearing date:** The hearing clerk, in coordination with the commission and the hearing officer, shall schedule a hearing date which shall not be more than 15 nor less than 10 days after service of the complaint.

(2) **Location of hearing:** Such hearings shall be held in the county where respondent is doing business or where the alleged discriminatory practice occurred.

(3) **Hearing mode:** A hearing may be scheduled to be heard by a three-member panel of commissioners or a single hearing officer.

(4) **Notice of hearing:** The hearing clerk shall:

(a) serve a copy of the written commission complaint and notice of hearing upon each party;

(b) send copies of the notice of hearing, with a request for publication, to at least one newspaper of general circulation in the state; and

(c) file the following documents in the official case file: a copy of the commission complaint; a copy of the notice of hearing with affidavits of publication attached; and documentation of how and when the commission complaint and the notice of hearing was served on the parties.

**C. Hearing procedures:**

(1) Appearance and representation:

(a) The complainant shall be present at the hearing, may present testimony or evidence and may be represented by an attorney or other representative. The complainant or complainant's representative shall present the case supporting the complaint at hearing.

(b) If the complainant does not appear at the hearing after proper notice has been served, the complaint may be dismissed for failure of the complainant to appear and present the complainant's case at hearing as required in Subsections A and C of Section 28-1-11 NMSA 1978, as amended.

(c) The respondent to a complaint may file a written answer to the complaint, may appear at the hearing, may give testimony and may be represented by an attorney or other representative. If the respondent is an entity, the respondent may designate a person to serve as its representative at the hearing. The respondent, respondent's representative or respondent's counsel may present the case responding to the complaint at hearing.

(d) Commission counsel may advise the commission during the hearing on legal matters and will assist in the preparation of the findings of fact, the conclusions of law and the order.

(2) Sequence of the proceeding:

(a) introduction to the proceeding by the presiding commissioner or the hearing officer;

(b) consideration of any preliminary matters or motions;

(c) administration of oath of the parties and the witnesses by presiding commissioner or hearing officer;

(d) opening statement by the complainant or the complainant's attorney or other representative;

(e) opening statement by the respondent or the respondent's attorney or other representative;

(f) presentation of the complainant's case;

(g) presentation of the respondent's case;

(h) closing argument by the complainant or the complainant's attorney or other representative;

(i) closing argument by the respondent or the respondent's attorney or other representative;

(j) instructions to the parties as to the schedule for filing findings of fact, conclusions of law, briefs or other documents with the commission following the hearing; and

(k) final adjournment of the hearing.

(4) Sequestering witnesses: The commission shall sequester the witnesses from the hearing until the time of their testimony. A complainant or the designated representative for respondent will be allowed to be present throughout the hearing, even though the complainant or the designated representative for respondent may be called to testify.

(5) Custody of evidence: Evidence introduced as exhibits at the hearing will be retained in the custody of the hearing clerk at the bureau for commission purposes.

(6) Matters of proof:

(a) Burden of proof: Complainant has the burden of proof.

(b) Standard of proof: The complainant must prove his or her case by a preponderance of the evidence.

(7) Evidentiary matters at hearing:

(a) Formal rules of evidence not binding on the commission: The formal rules of evidence governing the courts of law or equity shall not bind the commission or the hearing officer in hearing the evidence, as provided in Subsection D of Section 28-1-11 NMSA 1978, as amended.

(b) Objections to evidence offered: A party who has an objection to the evidence offered or to procedural matters in the proceeding may raise the objection orally during the hearing. The party raising the objection must state the grounds for the objection. The ruling on the objection, made by the presiding commissioner or hearing officer, shall be made a part of the record. A party's exception to each overruled objection shall be automatic and is not waived by the party's further participation in the hearing.

(c) Offers of proof: Whenever there is a ruling to exclude the evidence offered, the party offering the evidence may make an offer of proof, which shall be included in the record. An offer of proof for excluded evidence consists of a brief description of the nature of the evidence excluded, the purpose for which it is offered and its relevance to the issues before the commission. An offer of proof for excluded documents or exhibits shall additionally include the insertion into the record of the excluded documents or exhibits. If the commission decides that a hearing officer's ruling to exclude evidence was both erroneous and prejudicial, the commission may consider the excluded evidence and may reopen the proceedings to take such evidence.

(8) Continuation and adjournment: The presiding commissioner or the hearing officer may continue a hearing from day to day or adjourn it to a later date.

(9) Improper conduct: The commission may exclude from the hearing room any person who engages in improper conduct.

(10) Closing arguments, briefs and findings of fact and conclusions of law:

(a) Closing arguments: At the hearing, a party or the party's attorney may present an oral closing argument in support of the party's position. The commission or hearing officer may elect to allow the parties to present a written closing argument in addition to or in place of an oral closing argument. Written closing arguments, where applicable, shall be filed with the commission and served on all parties of record within 10 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise.

(b) Findings of fact and conclusions of law: Each party may submit proposed findings of fact and conclusions of law to the commission within 10 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise.

(c) Briefs and answer briefs:

(i) Briefs: Each party may submit a brief in support of its position, including an argument of how the law applies to the facts in the case. If a party elects to submit a brief, it shall be filed with the commission and a copy served on all parties of record within 10 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise.

(ii) Answer briefs: When a party has filed a brief, the opposing party may submit an answer brief to the commission and serve a copy on all parties of record within five calendar days of the filing of the brief, unless the commission or the hearing officer directs otherwise.

(d) Attorney fees:

(i) If the complainant is represented by private legal counsel and seeks to recover attorney fees from the respondent, complainant's counsel is required to submit an attorney affidavit setting forth his or her fees. The attorney affidavit shall be submitted to the commission and a copy served on the respondent within 15 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise. The attorney affidavit shall include an itemization of fees, be signed by the attorney and be notarized.

(ii) The respondent may submit a written objection, if any, to the attorney fees requested by the complainant. The objection to attorney fees shall be submitted to the commission and a copy served on the complainant within five calendar days after the submission of the attorney affidavit setting forth fees, unless the commission or the hearing officer directs otherwise.

(11) Close of the hearing record: The hearing record closes following the final adjournment of the hearing, when the last time set for the submission of all documents to the commission has expired.

[9.1.1.14 NMAC - Rp, 9.1.1.12 NMAC, 11/14/2017]

#### **9.1.1.15 COMMISSION RULING AND FINAL ORDER:**

- A.** The final decision and ruling on the merits in each case is reserved to the commission.
- B.** Where a hearing is before a three-member panel of commissioners, the commission will publicly announce its decision and final order within 30 days, or at such other time as the commission may direct. The decision and final order will be announced orally at a public meeting, for which notice will be given. Within five days thereafter, the commission shall cause a written copy of the decision and final order to be sent by certified mail,

return receipt requested, to each party and to the party's attorney, if any, at the address of record for the party and for the party's attorney.

**C.** Where a hearing is conducted by a hearing officer, the hearing officer shall prepare a written report, setting forth proposed findings of fact, proposed conclusions of law and a recommended action to be taken by the commission, after the last time set for the submission of all documents following the final adjournment of a hearing, or at such other time as the commission may direct. The hearing officer's report shall be submitted for consideration by a review panel, consisting of no more than three commissioners designated by the chairperson. The commission may adopt, modify or reject the findings of fact, the conclusions of law and the recommended action proposed by the hearing officer. The commission's decision and final order will be announced orally at a public meeting, for which notice will be given. Within five days thereafter, the commission shall cause a written copy of the decision and final order to be sent by certified mail, return receipt requested, to each party and to the party's attorney, if any, at the address of record for the party and for the party's attorney.

[9.1.1.15 NMAC - Rp, 9.1.1.13 NMAC, 11/14/2017]

#### **9.1.1.16 TRANSCRIPTS:**

**A.** Upon receipt of a notice of appeal, the division will supply as much of the transcript of the record as is requested by the parties or the district court, pursuant to Subsection B of Section 28-1-13 NMSA 1978.

**B.** All costs of providing the transcript of record on appeal will be paid by the party requesting the transcript. However, nothing in these rules will be deemed as prohibiting an agreement between a complainant and a respondent concerning the cost of providing the transcript on appeal.

[9.1.1.16 NMAC - Rp, 9.1.1.14 NMAC, 11/14/2017]

#### **9.1.1.17 CONFIDENTIALITY AND PUBLIC RECORDS:**

**A.** The commission complaint, commission decision and commission orders will be considered public records. Any other information contained within a division investigation file will not be considered public records, except as determined by law. The deliberations of the commission related to a case which the commission is hearing are not part of an open public meeting and are not considered to be public records.

**B.** These provisions will not be applicable to the request for information about a pending case by the complainant, the respondent or their respective attorneys in that particular pending case prior to hearing. Nor do they apply to the disclosure of necessary information by the bureau to a representative of any duly authorized civil rights agency holding a work sharing agreement or memorandum of understanding with the bureaus.

**C.** Requests for records under the Inspection of Public Records Act (NMSA 1978 Chapter 14, Article 2) should be submitted in writing to the record custodian of the department of workforce solutions. Documents that are part of complaints dually filed with the EEOC are not available from the department of workforce solutions pursuant to Section 14-2-1(8) NMSA 1978.

[9.1.1.17 NMAC - Rp, 9.1.1.15 NMAC, 11/14/2017]

#### **9.1.1.18 [RESERVED]**

#### **HISTORY OF 9.1.1 NMAC:**

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

HRC 70-1, Rules and Regulations for Implementation of the Human Rights Act, filed 3/11/70;

HRC 72-1 Rules and Regulations for Implementation of the Human Rights Act, filed 7/11/72;

HRC 74-1, Rules and Regulations, filed 3/26/74;

HRC 77-1, Rules and Regulations, filed 6/10/77;

HRC-I, Definitions, filed 5/26/80;

HRC-II, Filing a Complaint, filed 5/26/80;

HRC-III, Investigations, filed 5/26/80;

HRC-IV, Pre-Determination Procedures, filed 5/26/80;

HRC-V, Dismissal, filed 5/26/80;

HRC-VI, Review Hearing by Commission, filed 5/26/80;

HRC-VII, Conciliation and Persuasion, filed 5/26/80;

HRC-VIII, Confidentiality, filed 5/26/80;

HRC-IX, Hearing, filed 5/26/80;

HRC-X, Subpoenas and Subpoenas Duces Tecum, filed 5/26/80;  
HRC-XI, Final Order, filed 5/26/80;  
HRC-XII, Transcripts, filed 5/26/80;  
HRC-XIII, Affirmative Action Definition, filed 5/26/80;  
HRC-XIV, Procedures for Filing an Affirmative Action Plan with the Human Rights Commission, filed 5/26/80;  
HRC-XV, Affirmative Action Plan Contents, filed 5/26/80;  
FEPC 68-1, Rules and Regulations for the State of New Mexico, Fair Employment Practices Commission, filed 5/31/68;  
HRC 83-1, Rules and Regulations, filed 11/10/83 and HRC 88-1, Rules and Regulations, filed 10/13/88.

**History of Repealed Material:**

9.1.1 NMAC filed 9/1/1998 and recompiled 10/1/2001, repealed effective 11/14/2017.