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**NMAC**

**Transmittal Form**



Volume:  Issue:  Publication date:  Number of pages:  (ALD Use Only) Sequence No.

Issuing agency name and address:  Agency DFA code:

Contact person's name:  Phone number:  E-mail address:

Type of rule action:  New  Amendment  Repeal  Emergency  Renumber  (ALD Use Only) Most recent filing date:

Title number:  Title name:

Chapter number:  Chapter name:

Part number:  Part name:

Amendment description (If filing an amendment):   
Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes  No  Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes  No  Public domain

**Specific statutory or other authority authorizing rulemaking:**

Subsection H of Section 10-16G-7 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

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## Concise Explanatory Statement For Rulemaking Adoption:

### Findings required for rulemaking adoption:

#### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

See attachment: CONCISE EXPLANATORY STATEMENT FOR NMAC 1.8.2.

#### Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

New Mexico State Ethics Commission

Check if authority has been delegated

Title:

Executive Director

Signature: (BLACK ink only)

Date signed:



12/5/2019



NEW MEXICO STATE ETHICS COMMISSION

800 Bradbury DR SE, Ste. 217, Albuquerque, New Mexico 87106  
Jeremy D. Farris, *Executive Director*, (505) 490-0951

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Hon. William F. Lang (*Chair*)  
Jeff Baker  
Stuart M. Bluestone  
Hon. Garrey Carruthers  
Ron Solimon  
Dr. Judy Villanueva  
Frances F. Williams

**CONCISE EXPLANATORY STATEMENT FOR NMAC 1.8.2**  
(NMSA 1978, § 14-4-5.5 & 1.24.25.14.F NMAC)

Submitted to New Mexico State Records Center and Archives: December 5, 2019

1. Citation to authority authorizing rule: Subsection H of Section 10-16G-7 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.
2. Effective date of rule: January 1, 2020
3. Date of adoption of rule: December 4, 2019
4. Date of meeting at which agency voted to approve rule: December 4, 2019
5. Reasons for adopting rule: To ensure that all decisions and actions taken by the state ethics commission are free of undue or unlawful influences of any kind, real or apparent. The rule requires commissioners to evaluate their personal interests and attitudes, and to fairly and honestly consider such issues whether or not raised by parties. When appropriate, commissioners shall withdraw from acting on any matter where a real or apparent conflict of interest could undermine the confidence of the public in the fairness of the commission.
6. Reasons for any change between the published proposed rule and the final rule: *See* Attachment 1.
7. Reasons for not accepting substantive arguments made through public comment: *See* Attachment 2.



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**CONCISE EXPLANATORY STATEMENT FOR NMAC 1.8.2**  
(NMSA 1978, § 14-4-5.5 & 1.24.25.14.F NMAC)

**Reasons for any change between the initial published rule and final adopted rule**

Submitted to New Mexico State Records Center and Archives: December 5, 2019

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**Section 1.8.2.1 through 1.8.2.7**

No changes.

**Section 1.8.2.8**

1.8.2.8(C)(4): Adds “and make available to the public”

Rationale: This amendment provides that, where a commissioner who is subject to recusal under 1.8.2.8(A) elects not to recuse in a particular matter, then that commission not only has to provide a full written explanation of refusal to recuse, but also that this written explanation will be made available to the public.

**Section 1.8.2.10**

1.8.2.10(A): Adds “recusal or”, so that sentence provides: “Upon recusal or disqualification of two or more commissioners from a proceeding, the remaining commissioners shall, by a majority vote, appoint temporary commissioners to participate in that proceeding.”

Rationale: For completion. Temporary commissioners should preside where a commissioner is either disqualified by the commission or voluntarily recuses.



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**CONCISE EXPLANATORY STATEMENT FOR NMAC 1.8.2**  
(NMSA 1978, § 14-4-5.5 & 1.24.25.14.F NMAC)

**Reasons for not accepting substantive arguments made through written pre-filed public  
comment**

Submitted to New Mexico State Records Center and Archives: December 5, 2019

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**Section 1.8.2.1 through 1.8.2.10**

No comments were received.

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**TITLE 1           GENERAL GOVERNMENT ADMINISTRATION**  
**CHAPTER 8       STATE ETHICS COMMISSION**  
**PART 2           RECUSAL AND DISQUALIFICATION OF COMMISSIONERS**

**1.8.2.1           ISSUING AGENCY:** State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.  
[1.8.2.1 NMAC-N, 1/1/2020]

**1.8.2.2           SCOPE:** This part applies to all proceedings, cases, and hearings before the commission and all parties that appear before the commission, unless a more specific statutory or regulatory provision applies to the specific type of hearing being conducted.  
[1.8.2.2 NMAC-N, 1/1/2020]

**1.8.2.3           STATUTORY AUTHORITY:** Subsection H of Section 10-16G-7 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.  
[1.8.2.3 NMAC-N, 1/1/2020]

**1.8.2.4           DURATION:** Permanent.  
[1.8.2.4 NMAC-N, 1/1/2020]

**1.8.2.5           EFFECTIVE DATE:** January 1, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[1.8.2.5 NMAC-N, 1/1/2020]

**1.8.2.6           OBJECTIVE:** The objective of this part is to ensure that all decisions and actions taken by the state ethics commission are free of undue or unlawful influences of any kind, real or apparent. The rule requires commissioners to evaluate their personal interests and attitudes, and to fairly and honestly consider such issues whether or not raised by parties. When appropriate, commissioners shall withdraw from acting on any matter where a real or apparent conflict of interest could undermine the confidence of the public in the fairness of the commission. The rules adopted in this part shall be interpreted and applied to achieve the purposes and objectives for which the commission has been established.  
[1.8.2.6 NMAC-N, 1/1/2020]

**1.8.2.7           DEFINITIONS:**

- A.           “Disqualification”** means the removal by the commission of a commissioner from involvement in a matter of any kind upon a motion by any party alleging a real or apparent conflict of interest or other cause that reasonably calls into question the commissioner’s ability to act impartially in that matter;
- B.           “Pecuniary interest”** means the stricter applicable definition of “financial interest” in Subsection F of Section 10-16-2, the Governmental Conduct Act, Section 10-16-1 NMSA 1978, or in Section 13-1-57, the Procurement Code, Section 13-1-28 NMSA 1978;
- C.           “Personal bias or prejudice”** of a commissioner means a predisposition toward or against a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner’s functions impartially;
- D.           “Recusal”** means the withdrawal of a commissioner from a commission matter of any kind on the grounds that it is inappropriate for the commissioner to participate because of an actual or apparent conflict of interest or lack of impartiality in that matter;
- E.           Other words and phrases** used in this part have the same meaning as found in 1.8.1.7 and 1.8.3.7 NMAC.

[1.8.2.7 NMAC-N, 1/1/2020]

**1.8.2.8   RECUSAL AND DISQUALIFICATION OF COMMISSIONERS:**

- A.           GROUNDS FOR RECUSAL:**       A commissioner shall recuse from a matter in which the commissioner is unable to make a fair and impartial decision, or in which there is reasonable doubt over whether the commissioner can make a fair and impartial decision, because the commissioner:
  - (1)**       has, or appears to have, a personal bias or prejudice concerning a party to the matter;
  - (2)**       has prejudged a disputed evidentiary fact involved in the matter;

- (3) has a pecuniary interest in the outcome of the matter;
- (4) has previously served as an attorney, advisor, consultant or witness in the matter in controversy;
- (5) has served as a hearing officer in the matter pursuant to Subsection A of 1.8.3.13 NMAC;
- or
- (6) believes it is inappropriate to participate in the matter because of an actual or apparent conflict of interest or lack of impartiality in the matter.

**B. NOTICE OF RECUSAL:** The commissioner shall send notice in writing to the director of a decision to recuse on a matter. That decision shall be communicated to the other commissioners and be publicly disclosed in accordance with the disclosure provisions that apply to commission proceedings.

**C. PROCEDURE FOR REQUESTING RECUSAL OR DISQUALIFICATION:** When a commissioner subject to recusal under subpart A of this rule does not recuse on his or her own initiative:

- (1) a party may request that the commissioner be disqualified, in a motion setting forth the grounds for the request;
- (2) such a motion shall be filed with the director, not less than 10 days prior to a hearing in which the commissioner may participate, unless the party did not or could not reasonably have known of the alleged grounds for the request at that time;
- (3) the director shall immediately notify the subject commissioner of the motion and ascertain whether the commissioner intends to recuse;
- (4) if the commissioner does not recuse, the commissioner shall provide and make available to the public a full written explanation of the refusal to recuse.

**D. APPEAL FROM REFUSAL TO RECUSE:**

- (1) The party requesting recusal may appeal to the full commission the decision by the commissioner not to recuse.
  - (2) The rest of the commissioners shall, by majority vote, decide whether to disqualify the commissioner who is the subject of the disqualification motion.
- [1.8.2.8 NMAC-N, 1/1/2020]

**1.8.2.9 LIMITATIONS ON PARTICIPATION BY A COMMISSIONER WHO HAS RECUSED OR BEEN DISQUALIFIED:**

- A.** A commissioner who has recused or been disqualified on a matter:
    - (1) shall not participate further in any proceedings relating to the matter;
    - (2) shall be excused from the meeting for any part of the proceedings relating to the matter.
  - B.** The minutes of the commission meetings shall record the name of any commissioner not voting on a matter by reason of disqualification or recusal.
- [1.8.2.9 NMAC-N, 1/1/2020]

**1.8.2.10 APPOINTMENT OF TEMPORARY COMMISSIONERS WHEN SEVERAL COMMISSIONERS RECUSE OR ARE DISQUALIFIED**

- A.** Upon recusal or disqualification of two or more commissioners from a proceeding, the remaining commissioners shall, by a majority vote, appoint temporary commissioners to participate in that proceeding.
  - B.** Temporary commissioners shall be appointed in accordance with the political affiliation, geographical representation, cultural diversity and other qualifications set forth in the State Ethics Commission Act.
- [1.8.2.10 NMAC-N, 1/1/2020]

**History of 1.8.2 NMAC: [RESERVED]**