

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT**  
**CHAPTER 12 PUBLIC DEFENDER DEPARTMENT**  
**PART 11 DISCIPLINE**

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

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

**10.12.11.3 STATUTORY AUTHORITY:** Section 31-15-2.4(B)(6), NMSA 1978; Section 31-15-7, NMSA 1978 and Sections 28-2-1 to 28-2-6 NMSA 1978.  
[10.12.11.3 NMAC - N, 7/1/2015]

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

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

**10.12.11.6 OBJECTIVE:** The objective of Part 11 of Chapter 12 is: to provide a mechanism by which management can implement constructive, progressive steps towards solving performance or conduct problems.  
[10.12.11.6 NMAC - N, 7/1/2015]

**10.12.11.7 DEFINITIONS: [RESERVED]**  
[10.12.11.7 NMAC - N, 7/1/2015]

**10.12.11.8 DISCIPLINE:**

- A.** The primary purpose of discipline is to correct performance or conduct that is below acceptable standards, or contrary to the department's legitimate interests, in a constructive manner that promotes employee responsibility.
- B.** Progressive discipline shall be used whenever appropriate. Progressive discipline can range from a reminder, to an oral or written reprimand, to a suspension, demotion or dismissal. There are instances when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline.
- C.** Alternative methods to resolve conflicts or improve employee performance or conduct shall be utilized whenever appropriate.

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

**10.12.11.9 NOTICES AND COMPUTATION OF TIME:**

- A.** Notices prescribed by 10.12.11 NMAC shall be served in accordance with the provisions of 10.12.1.10 NMAC.
- B.** The computation of time prescribed or allowed by 10.12.11 NMAC shall be in accordance with the provisions of 10.7.1.11 NMAC.

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

**10.12.11.10 JUST CAUSE:**

- A.** An employee who has completed the probationary period required by Subsection A of 10.12.2.8 NMAC may be suspended, demoted, or dismissed only for just cause which is any behavior relating to the employee's work that is inconsistent with the employee's obligation to the department.
- B.** Just cause includes, but is not limited to: inefficiency; incompetency; misconduct; negligence; insubordination; performance which continues to be unsatisfactory after the employee has been given a reasonable opportunity to correct it; absence without leave; any reasons prescribed in 10.12.8 NMAC; failure to comply with any provision of office policies and procedures after the employee has been given an opportunity to correct the conduct; failure to comply with any provisions of these Rules; falsifying official records and/or documents such as employment applications, or conviction of a felony or misdemeanor when the provisions of the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6, NMSA 1978 apply.

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

**10.12.11.11 PROBATIONERS AND EMPLOYEES IN EMERGENCY OR TEMPORARY STATUS:**

Probationers and employees in emergency or temporary status may be suspended, demoted, or dismissed effective immediately with written notice and without right of appeal. The written notice shall advise the employee of the conduct, actions, or omissions which resulted in the suspension, demotion, or dismissal which may or may not amount to just cause.

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

**10.12.11.12 ADMINISTRATIVE LEAVE PENDING DISCIPLINARY ACTION:** The chief may authorize administrative leave for a period sufficient and consistent with the best interests of the department to complete a disciplinary action proceeding or investigation.

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

**10.12.11.13 EMPLOYEES IN CAREER STATUS:**

**A.** Notice of contemplated action:

(1) To initiate the suspension, demotion, or dismissal of an employee in career status and an employee in term status who has completed the probationary period, a notice of contemplated action shall be served on the employee which: describes the conduct, actions, or omissions which form the basis for the contemplated disciplinary action; gives a general explanation of the evidence; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has 11 calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response.

(2) When the notice of contemplated action is served by mail, the employee receiving service shall have three additional calendar days in which to file a response.

**B.** Response to notice of contemplated action:

(1) A representative of the employee's choosing, subject to some restrictions, may respond in writing to the notice of contemplated action on behalf of the employee and shall be subject to the same timelines stated herein and any final decision made will be binding on the employee directly. A member of management or human resources may not serve as a representative during a disciplinary action.

(2) If there is a request for an oral response to the notice of contemplated action, management representatives shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the human resource director agree in writing to an extension of time.

(3) The purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

**C.** Notice of final action:

(1) If the employee does not respond to the notice of contemplated action a notice of final action shall be issued within 11 calendar days following the response period.

(2) If the employee has filed a written response or has been provided an opportunity for oral response, the department shall issue a notice of final action no later than 11 calendar days from the date of receipt of the oral or written response.

(3) The notice of final action shall:

(a) specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no disciplinary action;

(b) describe the conduct, actions, or omissions which form the basis for the disciplinary action, which may not include allegations not included in the notice of contemplated action;

(c) give a general explanation of the evidence the agency has;

(d) specify when the disciplinary action will be effective, which must be but no more than 30 calendar days from the time of service of the notice of final action; and

(e) inform the employee of his or her appeal rights.

(4) Appeal rights:

(a) an employee, not covered by a collective bargaining agreement, may appeal a final disciplinary action to the chief by delivering a written statement of the grounds for appeal to the human resources director at 301 North Guadalupe Street, Suite 101, Santa Fe, New Mexico 87501 no later than 30 calendar

days from the issuance date of the final disciplinary action; the employee must submit a copy of the notice of final disciplinary action with the notice of appeal;

(b) an employee who is covered by a collective bargaining agreement may either appeal the final disciplinary action to the chief as stated above in Subparagraph (a) of Paragraph (4) of Subsection C of 10.12.11.13 NMAC or make an irrevocable election to appeal to an arbitrator pursuant to any collective bargaining agreement then in effect.

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

**HISTORY OF 10.12.11 NMAC [RESERVED]**