

## 62-19-23. Ex parte communications.

A. A commissioner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking or adjudication.

C. Notwithstanding the provisions of Subsections A and B of this section, the following ex parte communications are permitted:

(1) where circumstances require, ex parte communications for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are allowed if the commissioner or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication and the commissioner or hearing examiner makes provision to promptly notify all other parties of the substance of the ex parte communication;

(2) a commissioner may consult with another commissioner or with advisory staff whose function is to advise the commission in carrying out the commissioner's rulemaking or adjudicative responsibilities;

(3) a hearing examiner may consult with the commission's advisory staff;

(4) a commissioner or hearing examiner may obtain the advice of a nonparty expert on an issue raised in the rulemaking or adjudication if the commissioner or hearing examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond; and

(5) pursuant to the public regulation commission's rulemaking authority a party to a proceeding may consult with the commission's advisory staff. By July 1, 2004, the commission shall establish such rules.

D. A commissioner or hearing examiner who receives or who makes or knowingly causes to be made a communication prohibited by this section shall disclose it to all parties and give other parties an opportunity to respond.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a commissioner or hearing examiner in violation of this section, the commissioner or hearing examiner may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

**History:** Laws 1998, ch. 108, § 17; 2003, ch. 346, § 3; 2004, ch. 81, § 1; § 8-8-17, recompiled as § 62-19-23 by Laws 2020, ch. 9, § 59.

### ANNOTATIONS

**Recompilations.** — Laws 2020, ch. 9, § 59 recompiled former 8-8-17 NMSA 1978 as 62-19-23 NMSA

1978, effective January 1, 2023.

**The 2004 amendments**, effective May 19, 2004, revised Paragraph (2) of Subsection C to require the adoption of rules governing consultation with the commission's advisory staff.

**The 2003 amendment**, effective June 20, 2003, added Paragraph C(5).

**Expert's status.** — Although an expert's relationship with the PRC and the expert's advice fell within the definition of advisory staff in Section 8-8-13(A) NMSA 1978 so that the PRC was not required to provide the parties with the substance of the expert's advice, under another set of facts the expert could fall under the category of a non-party expert subject to the restrictions on ex parte communications of Section 8-8-17 NMSA 1978. *Qwest Corp. v. N.M. Public Regulation Comm'n*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.