

# Rules Governing the New Mexico Bar

## 24-101. Board of Bar Commissioners.

A. **Organization of the State Bar of New Mexico.** In order to aid the courts in improving the administration of justice, to promote the interests of the legal profession in the State of New Mexico, to promote and support the needs of all members, to be cognizant of the needs of individual and minority members of the profession, including the full and equal participation of minorities and women in the State Bar of New Mexico and the profession at large, to improve the relations between the legal profession and the public, to encourage and assist in the delivery of legal services to all in need of those services, to foster and maintain high ideals of integrity, learning, competence, and public service, to provide a forum for the discussion of subjects pertaining to the practice of law and law reform, to promote and provide continuing legal education in technical fields of substantive law and practice, and to participate in the legislative, executive, and judicial processes by informing its membership about issues affecting the legal system and relating to the purpose of the State Bar of New Mexico, and on approval by the Board of Bar Commissioners, to take any further action as may be necessary to present the views of the bar commission to the appropriate court, executive office, or legislative body for consideration; and to the end that the responsibility of the legal profession and the individual members of the legal profession may be more effectively and efficiently discharged in the public interest, and acting within the powers vested in it by the New Mexico Constitution and its inherent power over members of the legal profession as officers of the court, the Supreme Court does hereby create and continue an organization known as the State Bar of New Mexico, and all persons now or hereafter licensed in this state to engage in the practice of law shall be members of the State Bar of New Mexico in accordance with the rules of this Court. The State Bar of New Mexico may incorporate, sue and be sued, enter into contracts, and acquire, hold, encumber, dispose of, and deal in and with real and personal property, and promote and further the aims as set forth herein and hereinafter in these rules.

Except as otherwise provided by rules adopted by the Supreme Court, no person shall practice law in this state or hold himself or herself out as one who may practice law in this state unless that person is an active member of the State Bar of New Mexico, and no suspended or disbarred member shall practice law in this state or hold himself or herself out as one who may practice law in this state, while suspended or disbarred.

B. **Divisions created.** The Supreme Court does hereby create the following divisions of the State Bar of New Mexico:

(1) a young lawyers division. Membership in the Young Lawyers Division shall consist of all members of the State Bar of New Mexico in good standing under thirty-six (36) years of age and those members who have been admitted to the practice of law in any state less than five (5) years. Membership shall terminate automatically as of December 31 after a member attains thirty-six (36) years of age or five (5) years after

admission to the practice of law in any state, whichever occurs last. However, a member elected to the office of chair-elect prior to reaching thirty-six (36) years of age may serve as chair-elect, chair, and past chair even if the member's service in those offices will extend beyond the date that the member attains thirty-six (36) years of age. Except as provided in this subparagraph, no person who is thirty-six (36) years of age or older may serve as an elected officer of the Young Lawyers Division. A person who qualifies for membership in the Young Lawyers Division because that person has not been admitted to any state bar for more than five (5) years shall not serve as an officer of the Young Lawyers Division if the service would extend more than five (5) years beyond that person's admission to any state bar. The Young Lawyers Division shall adopt bylaws applicable to its division which shall be approved by the Board of Bar Commissioners. The bylaws shall not be inconsistent with these rules. The bylaws of the Young Lawyers Division shall establish the process for the election of its officers and directors;

(2) a senior lawyers division. Membership in the Senior Lawyers Division shall consist of

(a) all members of the State Bar of New Mexico in good standing who are fifty-five (55) years of age or older and who have practiced law for twenty-five (25) years or more; and

(b) any member of the State Bar of New Mexico in good standing who

(1) is fifty-five (55) years of age or older; or

(2) has practiced law for twenty-five (25) years or more; and

(3) gives written notice to the executive director of the State Bar of New Mexico of the member's election to become a member of this division and of the member's qualification of membership in the division.

The Senior Lawyers Division shall adopt bylaws applicable to its division which shall be approved by the Board of Bar Commissioners. The bylaws shall not be inconsistent with these rules. The bylaws of the Senior Lawyers Division shall establish the process for the election of its officers and directors; and

(3) a paralegal division. A person may become a member of the Paralegal Division if the person meets the requirements of Rule 24-101.1 NMRA. The Paralegal Division shall adopt bylaws applicable to its division which shall have been approved by the Board of Bar Commissioners. The bylaws shall not be inconsistent with these rules. The bylaws of the Paralegal Division shall establish the process for the election of its officers and directors.

**C. Board membership and powers.** The Board of Bar Commissioners shall be the governing board of the State Bar of New Mexico. Each commissioner shall have one

(1) vote. Except as otherwise provided by Paragraph J, the Board of Bar Commissioners shall consist of twenty-two (22) bar commissioners, consisting of those district bar commissioners elected under Paragraph D, and the chair of the Young Lawyers Division and the elected delegate of the Senior Lawyers Division. The Board of Bar Commissioners has perpetual succession and may use a common seal. The Board of Bar Commissioners may employ an executive director. The Board of Bar Commissioners may adopt bylaws applicable to the State Bar of New Mexico and the Board of Bar Commissioners; provided, however, any bylaws inconsistent with these rules shall be invalid.

**D. Bar commissioner districts.** Bar Commissioner Districts shall follow the established State Judicial Districts and each district shall be represented by the indicated number of district bar commissioners, each of whom shall have their principal place of practice in the judicial district(s) represented and shall be nominated and elected by the members of the State Bar of New Mexico in accordance with this rule and the bylaws of the State Bar of New Mexico, as follows:

- (1) the first judicial district, which consists of Rio Arriba, Los Alamos, and Santa Fe counties, shall be represented by three bar commissioners;
- (2) the second judicial district, which consists of Bernalillo County, shall be represented by six (6) bar commissioners;
- (3) the third and sixth judicial districts, which consist of Dona Ana, Grant, Hidalgo, and Luna counties, shall be represented by three (3) bar commissioners;
- (4) the fourth and eighth judicial districts, which consist of Taos, Colfax, Union, Mora, San Miguel, and Guadalupe counties, shall be represented by one (1) bar commissioner;
- (5) the fifth judicial district, which consists of Chaves, Eddy, and Lea counties, shall be represented by one (1) bar commissioner;
- (6) the seventh and thirteenth judicial districts, which consist of Catron, Sierra, Socorro, Torrance, Cibola, Sandoval, and Valencia counties, shall be represented by two (2) bar commissioners;
- (7) the ninth and tenth judicial districts, which consist of Curry, Roosevelt, De Baca, Harding, and Quay counties, shall be represented by one (1) bar commissioner;
- (8) the eleventh judicial district, which consists of McKinley and San Juan counties, shall be represented by one (1) bar commissioner; and
- (9) the twelfth judicial district, which consists of Lincoln and Otero counties, shall be represented by one (1) bar commissioner.

(10) Out-of-state district. There shall be one (1) bar commissioner whose principal place of practice is in New Mexico and who shall represent the interests of all out-of-state members except for those members who reside in El Paso County, Texas, who shall be represented by the commissioners of the third and sixth judicial districts. The commissioner for the out-of-state district shall be a full commissioner of the Board of Bar Commissioners and entitled to hold office, vote, participate in committees, and seek reimbursement as any commissioner.

**E. Terms of office.** The district bar commissioners shall be elected to terms of three (3) years and shall hold office until their successors are elected or appointed and qualified. No district bar commissioner shall be elected to more than three (3) consecutive three (3)-year terms or serve more than ten (10) consecutive years.

**F. Vacancies.** Vacancies of district bar commissioners shall be filled by appointment of the Board of Bar Commissioners, and district bar commissioners so appointed shall serve until December 31. An election of a district bar commissioner to fill the unexpired term shall be held with the next regular election of district bar commissioners following the appointment to fill the vacancy.

**G. Nominations for district commissioners.** Nominations to the office of district bar commissioner shall be by the written petition of any ten (10) or more active status members of the State Bar of New Mexico in good standing. Any number of candidates may be nominated on a single petition which shall be received by the executive director within a period to be fixed by the bylaws of the State Bar of New Mexico. No state or federal judge shall be eligible to serve as a member of the Board of Bar Commissioners of the State Bar of New Mexico while in office.

**H. Election results.** The annual election of commissioners shall close at noon on November 30th and the ballots canvassed by at least three (3) commissioners not running for reelection as appointed by the president, and the results shall be published in the Bar Bulletin and posted to the State Bar of New Mexico's web site.

**I. Officers of Board of Bar Commissioners; election.** In accordance with the bylaws of the State Bar of New Mexico, the Board of Bar Commissioners shall elect a president, a president-elect, and a secretary-treasurer, who shall take office. The immediate past president shall also be an officer of the Board of Bar Commissioners. All officers shall be members of the Board of Bar Commissioners and shall be officers of the State Bar of New Mexico and of its Board of Bar Commissioners. Terms of office for the officers of the Board of Bar Commissioners shall commence January 1st and those officers shall serve for one (1) year.

**J. Extension of commissioner terms.** If a district bar commissioner's term of office expires after the commissioner has been elected to the position of secretary-treasurer, president-elect, or president, that commissioner's term shall be extended until the completion of his or her term as immediate past president provided that the commissioner was elected to the Board of Bar Commissioners for his or her current

term. During the extended term, there shall be elected from that commissioner's district one fewer member to the Board of Bar Commissioners than that district would be otherwise entitled to under these rules.

[As amended, effective January 1, 1987; July 1, 1987; June 1, 1992; October 1, 1992; December 1, 1993; June 15, 1994; February 7, 1995; June 8, 1998; April 17, 2000; August 14, 2000; January 30, 2004; August 31, 2004; as amended by Supreme Court Order No. 06-8300-035, effective January 1, 2007; as amended by Supreme Court Order No. 13-8300-039, effective December 31, 2013; as amended by Supreme Court Order No. 16-8300-036, effective immediately for the 2016 elections; as amended by Supreme Court Order No. 19-8300-007, effective July 1, 2019; as amended by Supreme Court Order No. 20-8300-016, effective December 31, 2020.]

## ANNOTATIONS

**The 2020 amendment**, approved by Supreme Court Order No. 20-8300-016, effective December 31, 2020, increased the number of Board of Bar Commissioners from twenty-one to twenty-two members, required the bar commissioner districts to follow the established state judicial districts, reestablished the number of bar commissioners for each district, and made numerous technical amendments; replaced each occurrence of "state bar" with "State Bar of New Mexico" and each occurrence of "board" with "Board of Bar Commissioners"; in Subparagraph B(3), after "meets the requirements of", deleted "Rule 24-101A" and added "Rule 24-101.1"; in Paragraph C, after "Board of Bar Commissioners shall consist of", deleted "twenty-one (21)" and added "twenty-two (22)"; in Paragraph D, in the introductory clause, deleted "The following bar commissioner districts are established" and added "Bar Commissioner Districts shall follow the established State Judicial Districts", and after "in accordance with", added "this rule and", in Subparagraph D(1), after "first", deleted "bar commissioner" and added "judicial", after "consists of", deleted "Bernalillo County" and added "Rio Arriba, Los Alamos, and Santa Fe counties", and after "shall be represented by", deleted "eight (8)" and added "three", in Subparagraph D(2), after "second", deleted "bar commissioner" and added "judicial", after "consists of", deleted "San Juan, McKinley, Cibola, and Valencia counties" and added "Bernalillo County", and after "represented by", deleted "one (1)" and added "six (6)", in Subparagraph D(3), after "third", deleted "bar commissioner district" and added "and sixth judicial districts", and after "consist of", deleted "Rio Arriba, Sandoval, Los Alamos, and Santa Fe counties" and added "Dona Ana, Grant, Hidalgo, and Luna counties", in Subparagraph D(4), after "fourth", deleted "bar commissioner district" and added "and eighth judicial districts", and after "Mora", deleted "Harding", in Subparagraph D(5), after "fifth", deleted "bar commissioner" and added "judicial", and after "consists of", deleted "Quay, Curry, Roosevelt, and De Baca" and added "Chaves, Eddy, and Lea", in Subparagraph D(6), after "the", deleted "sixth bar commissioner district", and added "seventh and thirteenth judicial districts", after "consist of", deleted "Lea, Eddy, Chaves, Lincoln, and Otero" and added "Catron, Sierra, Socorro, Torrance, Cibola, Sandoval, and Valencia", and after "represented by", deleted "three (3)" and added "two (2)", in Subparagraph D(7), after "the", deleted "seventh bar commissioner district" and added "ninth and tenth judicial districts", after "consist of",

deleted “Catron, Socorro, Torrance, Sierra, Hidalgo, Luna, Grant, and Dona Ana” and added “Curry, Roosevelt, De Baca, Harding, and Quay”, and after “represented by”, deleted “two (2) commissioners” and added “one (1) commissioner”, and added Subparagraphs D(8) through D(10); and in Paragraph J, after “term of office expires”, deleted “while the commissioner is serving in” and added “after the commissioner has been elected to”, after “that commissioner’s district”, deleted “in which the commissioner resides”, and after “one”, deleted “less” and added “fewer”.

**The 2019 amendment**, approved by Supreme Court Order No. 19-8300-007, effective July 1, 2019, added an additional eligibility provision for membership in the Senior Lawyers Division, and made technical and clarifying changes; in Paragraph B, in Subparagraph (1), after “extend more”, deleted “that” and added “than”, and in Subparagraph (2), added new subparagraph designation “(a)” and added new Subparagraph (b); and in Paragraph H, after “Bar Bulletin”, added “and posted to the State Bar of New Mexico’s web site”.

**The 2016 amendment**, approved by Supreme Court Order No. 16-8300-036, effective immediately for the 2016 elections, revised the list of officers that comprise the Board of Bar Commissioners, and made certain technical amendments throughout the rule; in Paragraph A, in the second paragraph, after “provided by”, deleted “the” and changed “rule” to “rules”; in Paragraph C, after “shall have one”, added “(1)”, and after “commissioners elected”, deleted “pursuant to” and added “under”; in Paragraph H, after “reelection”, added “as”, and after “and the results”, added “shall be”; in Paragraph I, after “president-elect”, deleted “a vice president”, and added “The immediate past president shall also be an officer of the board.”; and in Paragraph J, after “secretary-treasurer”, deleted “vice president”.

**The 2013 amendment**, approved by Supreme Court Order No. 13-8300-039, effective December 31, 2013, provided for limits on successive terms and consecutive years in office; provided that appointments to fill vacancies expire on December 31; required that an election to fill the unexpired term be held at the next regular election following the appointment to fill a vacancy; provided for the extension of a commissioner’s term when the term expires during the commissioner’s term as secretary-treasurer or vice-president; in Paragraph E, in the first sentence, after “successors are elected”, added “or appointed”, and added the second sentence; in Paragraph F, in the first sentence, after “shall serve until”, deleted “the next regular election of district bar commissioners, at which time an” and added “December 31”, and in the second sentence, added “An”, and after “shall be held”, added the remainder of the sentence; and in Paragraph J, in the first sentence, after “serving in the position of”, added “secretary-treasurer, vice-president”, after “president-elect”, added “or”, after “or president”, deleted “or immediate past president”, after “term shall be extended”, deleted “for an additional three-year term; but the commissioner shall serve only the portion of the term which ends one (1) year after the commissioner’s term as president” and added the remainder of the sentence, and deleted the former last sentence, which required that an election be held in the district at the regular election one year after the year the president’s term expired to elect a member to serve for the remainder of the president’s term.

**The 2006 amendment**, approved by Supreme Court Order No. 06-8300-035, effective January 1, 2007, revised Subparagraph (1) of Paragraph B, relating to the young lawyers division, to terminate membership automatically December 31 rather than at the adjournment of the annual bar convention, to add the third, fourth and fifth paragraphs relating to officers serving after attaining the age of thirty-six (36) and to prohibit a person from serving as an officer if it would extend that person's membership beyond five (5) years from the date of admission to any state bar.

**The second 2004 amendment**, effective August 31, 2004, substituted "five (5)" for "three (3)" in the first and second sentences in Subparagraph (1) of Paragraph B.

**The first 2004 amendment**, effective January 30, 2004, rewrote the first paragraph and substituted "paralegal" for "legal assistants" in the first and last sentences of the second paragraph in Subparagraph (3) of Paragraph B.

**The second 2000 amendment**, effective August 14, 2000, redesignated former Paragraphs H and J as Paragraphs I and J; added Paragraph H concerning election results; in Paragraph I, deleted "at the annual meeting of the state bar" at the end of the first sentence, substituted "January 1st" for "as of the annual meeting of the state bar" and substituted "for one (1) year" for "until the next annual meeting of the state bar unless said officer(s) resign in which case they shall serve until their successors are elected and take office" in the third sentence.

**The first 2000 amendment**, effective April 17, 2000, inserted "to promote and support the needs of all members" and "including the full and equal participation of minorities and women in the State Bar and the profession at large" near the beginning of Paragraph A.

**The 1998 amendment**, effective June 8, 1998, substituted "applied for membership before April 30, 1998" for "become members within three (3) years after the effective date of the amendment of this rule to establish the legal assistance division" in Subparagraph B(3)(f).

**The 1995 amendment**, effective February 7, 1995, added Subparagraph B(3) relating to the legal assistants division.

**The 1994 amendment**, effective June 15, 1994, substituted "the chair of the Young Lawyers Division and the elected delegate of the Senior Lawyers Division" for "the chairs of the Young Lawyers Division and the Senior Lawyers Division" in the second sentence of Paragraph C.

**The 1993 amendment**, effective December 1, 1993, in Paragraph B, substituted the present paragraph heading for "Young lawyers division established", inserted the Subparagraph B(1) designation, added Subparagraph B(2), and made stylistic changes; in Paragraph C, substituted "membership and powers" for "established" in the paragraph heading, substituted "The Board of Bar Commissioners shall be" for "A Board

of Bar Commissioners is established as" in the first sentence, and substituted "twenty-one (21)" for "twenty (20)" and "the chairs of the Young Lawyers Division and the Senior Lawyers Division" for "the chair of the Young Lawyers Division" in the second sentence; and substituted "in accordance with the bylaws of the state bar" for "from the district in which the member's principal place of practice is located" at the end of the introductory language of Paragraph D.

**The second 1992 amendment**, effective October 1, 1992, in the third sentence in Paragraph C, substituted "twenty (20)" for "twenty-one (21)" and deleted "as well as the immediate past president of the state bar" preceding "and the chair"; in Paragraph H, deleted the former second paragraph, relating to the immediate past president as a voting member for one year; and rewrote Paragraph I.

**The first 1992 amendment**, effective June 1, 1992, in Paragraph A, rewrote the first paragraph and made gender neutral changes in the second paragraph; in Paragraph B, substituted "practice of law in any state" for "State Bar of New Mexico" in two places and made minor stylistic changes; in the third sentence in Paragraph C, substituted "twenty-one (21) bar commissioners" for "twenty (20) bar commissioners" and inserted "immediate past" and "of the state bar and the chair"; in Paragraph H, substituted "Board of Bar Commissioners" for "board of commissioners" in the second sentence of the first paragraph, and, in the second paragraph, substituted "a voting member" for "ex officio member", made a gender neutral change, and deleted ", but shall have no vote unless he is serving as an elected member of the board" from the end; rewrote Paragraph I; and deleted former Paragraph J, a temporary provision relating to two new district bar commissioners elected pursuant to the 1986 amendment.

**Cross references.** — For Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

For effect of Parental Responsibility Act on licensing of lawyers and other persons by the supreme court, see 40-5A-10 NMSA 1978.

**Rule 24-101 NMRA applies to all courts of this state without exception.** — The practice of law in any court is limited to duly licensed attorneys who are members of the State Bar or otherwise authorized by the Supreme Court's rules in specific, limited circumstances. The limited exceptions that allow certain individuals without a bar license to practice law in New Mexico courts require that a proper authority must be notified in writing of their non-licensed status, the State Bar in the case of an out-of-state attorney and the judge presiding over the proceeding in the case of a clinical law student. *State v. Rivera*, 2012-NMSC-003, 268 P.3d 40, *rev'g in part* 2010-NMCA-109, 149 N.M. 406, 249 P.3d 944.

**Prosecution of criminal case by a non-licensed individual.** — Where an assistant district attorney and an individual who was not licensed to practice law in New Mexico participated in the prosecution of a DWI case in Metropolitan Court; the assistant district attorney was present for the entire trial and personally conducted most of the trial; and



the unlicensed individual examined only one of the state's witnesses, defendant was not prejudiced by the unlicensed individual's impermissible participation at trial. *State v. Rivera*, 2012-NMSC-003, 268 P.3d 40, *rev'g in part* 2010-NMCA-109, 149 N.M. 406, 249 P.3d 944.

**"State bar" deemed generic term.** — "State bar" is a generic term referring to that group of attorneys which has been admitted to practice before the courts of this state. *State Bar v. Guardian Abstract & Title Co.*, 1978-NMSC-016, 91 N.M. 434, 575 P.2d 943.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7 Am. Jur. 2d Attorneys at Law §§ 2, 7.

7 C.J.S. Attorney and Client § 8.

## **24-101.1. Paralegal division.**

A. **Membership.** A person is eligible to become a member of the paralegal division of the state bar if the person meets the qualifications set forth in this rule and bylaws approved by the Board of Bar Commissioners.

B. **Employment qualifications.** A person may become a member of the paralegal division if the person:

- (1) contracts with or is employed by an attorney, law firm, corporation, governmental agency or other entity;
- (2) performs substantive legal work as defined in Rule 20-102 NMRA; and
- (3) meets one or more of the qualifications described in Paragraph B[C] of this rule.

C. **Educational and experience qualifications.** In addition to the employment qualifications set forth in Paragraph B of this rule, an applicant for membership to the paralegal division, shall meet one or more of the following educational or experience qualifications:

- (1) graduation from a paralegal program that is:
  - (a) approved by the American Bar Association;
  - (b) an associate degree program;
  - (c) a post-baccalaureate certificate program in paralegal studies; or
  - (d) a bachelor's degree program;

(2) graduation from a post-secondary legal assistant program which consists of a minimum of sixty (60) semester hours or equivalent, as defined by the American Bar Association Guidelines for the Approval of Paralegal Education Programs, of which at least eighteen (18) semester hours or equivalent are general education courses and eighteen (18) semester hours or equivalent are legal specialty courses;

(3) a bachelor's degree in any field plus two years of substantive law-related experience under the supervision of a licensed attorney. Successful completion of at least fifteen (15) semester hours of substantive paralegal courses may be substituted for one year of law-related experience;

(4) graduation from an accredited law school and not disbarred or suspended from the practice of law by the State of New Mexico or any other jurisdiction; or

(5) certification by the National Association of Legal Assistants, Incorporated, the National Federation of Paralegal Associations, Incorporated or other equivalent national or state competency examination plus at least one (1) year of substantive law-related experience under the supervision of a licensed attorney.

[Approved, effective January 30, 2004; 24-101A, recompiled as 24-101.1 by Supreme Court Order No. 20-8300-017, effective December 31, 2020.]

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed “[C]” in Paragraph B(3) was inserted by the compiler to correct an apparent typo and is not part of the rule.

**Recompilations.** — Pursuant to Supreme Court Order No. 20-8300-017, former 24-101A NMRA was recompiled as 24-101.1 NMRA, effective December 31, 2020.

#### **24-101A. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** — Pursuant to Supreme Court Order No. 20-8300-017, former 24-101A NMRA was recompiled as 24-101.1 NMRA, effective December 31, 2020.

#### **24-102. Annual license fee.**

A. **Determination of fees.** Every member of the state bar shall, prior to the first day of January of each year, pay to the executive director of the state bar an annual license fee, which fee shall be determined and fixed by the Board of Bar Commissioners prior to January of each calendar year.

B. **Late penalties.** Members whose dues are received after the first day of February will be assessed a late payment penalty of one hundred dollars (\$100.00). Active

members who fail to disclose professional liability insurance coverage information after the first day of March will be assessed a late disclosure penalty of one hundred dollars (\$100.00).

**C. Delinquency certification.** If an inactive member's dues and late penalty are not received before the last day of March, the Board of Bar Commissioners shall, through its executive director, certify to the Supreme Court the name of such member on a list of names of all members failing to pay their annual license fees and late penalties. If an inactive member's dues and late penalty are not received before the last day of March, the inactive member shall be automatically placed on inactive suspended status by the state bar without referral to the Supreme Court and until such time as the inactive member corrects the deficiency. During the period of delinquency, the inactive member's membership status shall not be in good standing with the state bar, provided that the inactive suspended status shall not be reported to the Supreme Court nor reflected on the attorney's permanent record with the Supreme Court.

**D. Suspension process for delinquency.** Whenever the Board of Bar Commissioners of the State Bar shall cause to be certified to the Supreme Court that any active member of the state bar has failed or refused to pay the license fee or late penalty fee immediately upon receipt of said certification from the executive director of the state bar, the clerk of the Supreme Court shall issue a citation requiring the delinquent member to show cause before the Court, within fifteen (15) days after service of such citation, why such member should not be suspended from the right to practice in the courts of this state. Service of such citation may be personal or by first class mail. The payment of such delinquent license fee on or before the return day of such citation, and payment of accrued costs, shall be deemed sufficient showing of cause, and shall serve to dismiss the citation. Suspension orders shall be served by certified mail.

**E. Reinstatement.** Any member suspended under the provisions of this rule shall be required to petition the Board of Bar Examiners for reinstatement, and as a condition precedent to any granting of reinstatement pursuant to Paragraph B of Rule 15-302 NMRA shall be required to pay a reinstatement fee of:

- (1) twice that member's then license fee, plus
- (2) all fees in arrears, plus
- (3) all accrued late penalty payments.

**F. Withdrawn status.** Any active or inactive attorney in good standing may file a written notice with the Supreme Court for voluntary withdrawal as a member of the bar of this state. Upon the filing of such written notice, the Supreme Court Clerk shall issue a certificate of withdrawal terminating the petitioner's membership in the bar of this state, and the petitioner shall not thereafter be entitled to practice law in the courts of this state. No order of suspension for failure thereafter to pay the annual bar license fee

will be entered against such member, and the member's withdrawal will not prejudice the member's record or standing during the period of membership in the bar of this state. Unless otherwise ordered by the Supreme Court, a member who has voluntarily withdrawn or been placed on withdrawn status by the Supreme Court shall be required to readmit under Rule 15-103 NMRA, including taking the bar examination or qualifying for admission by motion under Rule 15-107 NMRA.

**G. Waiver requests.** The Board of Bar Commissioners may waive all or part of any license fee in cases of extreme individual hardship. If the Board of Bar Commissioners receives a petition for waiver for all or part of any license fee relying on a physical, mental, or emotional infirmity, impairment, incapacity, or illness as an extreme individual hardship under this rule, the Board of Bar Commissioners shall refer the matter to the Disciplinary Board for a determination under Rule 17-208 NMRA. If the Disciplinary Board decides not to initiate proceedings under Rule 17-208 NMRA, the Board of Bar Commissioners shall be notified that it may proceed to consider whether the petition for waiver should be granted on the basis of an extreme individual hardship. In cases where a petition for waiver of all or part of any license fee has been rejected by the Board of Bar Commissioners, an attorney may petition the Supreme Court for modification or reversal of the action of the board.

**H. Deposit, disbursement, and audit of fees collected.** All moneys collected by the executive director in accordance with the provisions of this rule shall be deposited to an account designated as State Bar of New Mexico general fund and shall be disbursed by order of the Board of Bar Commissioners in carrying out the functions, duties, and powers vested in said board. The Board of Bar Commissioners shall, on or before March 1 of each year, submit to the Supreme Court of New Mexico an accounting and audit of all funds received and disbursed during the prior calendar year. Such audit shall be performed by an auditor to be selected by the board. No member of the Board of Bar Commissioners or any committee member appointed by the board shall receive any compensation, but shall receive mileage and per diem at the same rate as provided for public officers and employees of the state and may be reimbursed with the approval of the Board of Bar Commissioners for expenses incurred in conjunction with travel on Board of Bar Commission business.

[As amended December 22, 1986; May 9, 1985; March 1, 1988; September 1, 1991; June 1, 1992; April 19, 2001; as amended by Supreme Court Order No. 06-8300-022, effective October 24, 2006; as amended by Supreme Court Order No. 13-8300-039, effective December 31, 2013; as amended by Supreme Court Order No. 16-8300-035, effective for status changes on or after December 31, 2016.]

## **ANNOTATIONS**

**The 2016 amendment**, approved by Supreme Court Order No. 16-8300-035, effective December 31, 2016, limited the application of Paragraph C to inactive members of the State Bar and limited the application of Paragraph D to active members of the State Bar, provided additional consequences for an inactive member's failure to pay certain

dues or late penalties, and provided for the readmission to the State Bar for those members who have voluntarily withdrawn or have been placed on withdrawn status; in Paragraph C, after "If", deleted "a" and added "an inactive", and after the first sentence, added the remainder of the paragraph; in Paragraph D, after "Supreme Court that any", added "active"; in Paragraph F, in the heading, deleted "Voluntary withdrawal" and added "Withdrawn status", after "Any", added "active or inactive", and added the last sentence.

**The 2013 amendment**, approved by Supreme Court Order No. 13-8300-039, effective December 31, 2013, eliminated the former provision for proration of new admittees' annual license fees and the assessment of a penalty for late payment of new admittees' fees; provided for withdrawal from the bar by written notice rather than by petition; required the Disciplinary Board to determine whether to initiate suspension proceedings when a lawyer petitions for waiver of fees due to a physical, mental, or emotional condition; added the titles of Paragraphs A through I; in Paragraph C, deleted the former provision which provided for a prorated license fee for new admittees, a penalty for late payment of a new admittee's license fee, and certification of the name of a new admittee who has failed to pay the license fee and penalty; in Paragraph F, in the first sentence, after "may file a", deleted "petition" and added "written notice", and in the second sentence, after "Upon the filing of such", deleted "petition" and added "written notice", after "written notice", changed "the Court" to "the Supreme Court Clerk", after "the Supreme Court Clerk", deleted "may enter an order" and added "shall issue a certificate of withdrawal"; and in Paragraph G, added the second and third sentences.

**The 2006 amendment**, approved by Supreme Court Order No. 06-8300-022, effective October 24, 2006, added the second sentence providing for a one hundred dollar (\$100) penalty for a late disclosure of professional liability insurance coverage.

**The 2001 amendment**, effective April 23, 2001, in the second paragraph, substituted "fee" for "imposed herein" in the first sentence, "first class" for "registered" in the second sentence, "dismiss" for "discharge" in the third sentence and added the last sentence; in the third paragraph, inserted "pursuant to Paragraph B of Rule 15-302 NMRA" in the first sentence.

**The 1992 amendment**, effective June 1, 1992, in the second paragraph, inserted "Bar" near the beginning; made gender neutral and stylistic changes in the second paragraph and the third paragraph from the end; and added the next-to-last paragraph.

**The 1991 amendment**, effective September 1, 1991, in the second sentence of the last paragraph, substituted "shall on or before March 1" for "shall submit on or before January 1 of each year a proposed budget to the Supreme Court of New Mexico. It shall likewise on or before March 1".

**Injunctive relief improper remedy.** — Plaintiffs (attorneys), who were contesting the State Bar's budget due to improper categorization, failed to show that emergency injunctive relief was justified. Although State Bar members must pay their dues by

January 1, no affirmative action is taken by the State Bar to secure payment until March 31; thus, there was no irreparable injury warranting an injunction. *Popejoy v. New Mexico Bd. of Bar Comm'rs*, 847 F. Supp. 155 (D.N.M. 1994).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7 Am. Jur. 2d Attorneys at Law § 7.

Use of compulsory bar association dues or fees for activities from which particular members dissent, 40 A.L.R.4th 672.

7 C.J.S. Attorney and Client § 7.

### **24-103. Annual meeting of the state bar.**

There shall be an annual meeting presided over by the president of the state bar, open to all members of the bar in good standing, and held at such time and place as the Board of Bar Commissioners may designate, for the discussion of the affairs of the bar and the administration of justice.

[As amended, effective August 14, 2000.]

#### **ANNOTATIONS**

**The 2000 amendment**, effective August 14, 2000, substituted "on November 30th" for "(12:00 n. seven (7) days prior to the first day of such meeting)" and "published in the Bar Bulletin" for "announced at the annual meeting" in the second sentence.

### **24-104. Withdrawn.**

#### **ANNOTATIONS**

**Withdrawals.** — Pursuant to a court order dated December 30, 1993, 24-104 NMRA, relating to the annual budget of the state bar, was withdrawn effective on and after February 1, 1994.

### **24-105. Honorary judicial members.**

All circuit court of appeals judges, district court judges, bankruptcy judges and full-time magistrates of the United States who reside in New Mexico and all full-time judges of tribal courts who have an L.L.B. or J.D. degree and who reside in New Mexico or exercise jurisdiction in New Mexico shall be honorary members of the state bar with the same rights and privileges as active status members. Honorary members shall not pay any license fees. Honorary members may not engage in the private or public practice of law.

[Adopted, effective January 1, 1994.]

## **24-106. Practice by nonadmitted lawyers.**

**A. Conditions of appearance.** Upon compliance with the requirements of this rule, but only in association with an active member in good standing as a member of the State Bar of New Mexico, an attorney authorized to practice law before the highest court of record in any state or country (“nonadmitted attorney”) may perform legal services on behalf of a client or a party, even though the attorney is not licensed to practice law in this state unless otherwise excepted under Rule 16-505(F) NMRA. A non-admitted attorney shall comply separately for each action, suit, proceeding, or transactional matter in which the attorney plans to perform legal services with the limitation that the non-admitted attorney may not register more than five (5) times in any given calendar year.

**B. Registration certificate.** For each action, suit, proceeding, or transactional matter in which the attorney intends to appear, the nonadmitted attorney shall file a registration certificate with the State Bar of New Mexico. Information related to the non-admitted attorney’s registration under this rule is publicly available. The attorney shall identify the proceeding in which the attorney intends to appear and the local counsel with whom the attorney is associating, and shall certify that

(1) the attorney is admitted or licensed as an attorney in good standing in another state or country and shall submit a certificate of good standing from every state or country in which the attorney is admitted or licensed;

(2) the attorney has not been disciplined, suspended, or disbarred in any jurisdiction;

(3) the attorney has not had a pro hac vice admission revoked in any jurisdiction;

(4) the attorney will comply with applicable statutes, laws, and procedural rules of the state of New Mexico; and

(5) the attorney will comply with the Rules of Professional Conduct, the Rules Governing Discipline, the Rules Governing the New Mexico Bar, and the rules governing civil, criminal, and appellate procedure approved by the Supreme Court, and will submit to the jurisdiction of the New Mexico courts and the Disciplinary Board with respect to acts and omissions occurring during the attorney’s admission under this rule and with respect to the requirements of Rules 1-089.1, 2-107, 3-107, 5-108, 12-302, 16-104(C) and 24-106 NMRA;

### **C. Process following disclosure of discipline.**

(1) If the attorney has been disciplined, suspended, disbarred, or had a pro hac vice admission revoked in any jurisdiction, the attorney shall submit the details of

the same to the Disciplinary Board for investigation and recommendation to the court in which the attorney seeks to practice pro hac vice.

(2) During the pendency of the pro hac vice application or admission, should the attorney's status in any jurisdiction change the attorney shall immediately notify the court in which the attorney is practicing pro hac vice, the State Bar of New Mexico, and the Disciplinary Board for further action.

**D. Payment of fee.** With the first registration certificate in any given calendar year, the nonadmitted attorney shall pay a non-refundable fee of four hundred fifty dollars (\$450) to the State Bar of New Mexico. For each subsequent registration certificate in a given calendar year, the nonadmitted attorney shall pay a fee of two hundred seventy-five dollars (\$275). The fee shall be waived if

(1) the nonadmitted attorney certifies that the attorney is employed by a governmental authority and will be performing legal services on behalf of a governmental authority in the proceeding for which the attorney is registering;

(2) the attorney is employed by an agency providing legal services to indigent clients and will be performing legal services on behalf of an indigent client in the proceeding for which the attorney is registering; or

(3) the attorney will otherwise be performing legal services on behalf of an indigent client in a proceeding for which the attorney is registering and will be charging no fee for the services.

**E. Use of fees.** From the first fee collected in a given calendar year, the State Bar of New Mexico shall pay an amount equal to the annual disciplinary fee assessment under Rule 17-203(A) NMRA to the Disciplinary Board and an amount equal to the annual client protection assessment pursuant to Rule 17A-003 NMRA to the Client Protection Fund. From each fee collected under this rule, the State Bar of New Mexico may deduct an administrative and processing charge of not more than twenty-five dollars (\$25). The balance of all such fees shall be held by the State Bar of New Mexico in a special fund to support the delivery of civil legal services to the poor. The Board of Bar Commissioners shall distribute all fees held in the special fund at least annually to nonprofit organizations providing or supporting the provision of civil legal services to the poor as recommended by the New Mexico Commission on Access to Justice and approved by the Supreme Court.

[Approved, effective January 20, 2005; as amended by Supreme Court Order No. 13-8300-040, effective for all pro hac vice registration certificates filed on or after December 31, 2013.]

## ANNOTATIONS



**The 2013 amendment**, approved by Supreme Court Order No. 13-8300-040, effective December 31, 2013, provides for the practice of law in New Mexico of non-admitted lawyers; provided a limitation on the number of matters a non-admitted lawyer may undertake in each year; required local counsel to certify to the non-admitted lawyer's standing in other jurisdictions; required non-admitted lawyers to disclose disciplinary actions against them; increased the registration fee; provided for the distribution of the registration fee; in the title, after "lawyers", deleted "before state courts"; in Paragraph A, in the first sentence, after "(nonadmitted attorney) may", deleted "appear" and added "perform legal services", after "on behalf of a", deleted "party in any civil proceeding pending before a court of this state" and added "client or a party", and after "practice law in this state", added the remainder of the sentence, and in the second sentence, after "separately for each", deleted "civil action, suit or proceeding" and added "action, suit proceeding, or transactional matter", after "in which the attorney", deleted "intends to appear" and added the remainder of the sentence"; in Paragraph B, in the introductory paragraph, in the first sentence, after "For each", deleted "civil" and added "action, suit" and after "proceeding", added "or transactional matter", added the second sentence, and in the third sentence, added "The" and after "intends to appear", added "and the local counsel with whom the attorney is associating"; in Subparagraph (1), after "state or country", added the remainder of the sentence; added Subparagraph (2); in Subparagraph (3), at the beginning of the sentence, deleted "has or" and added "the attorney has not had" and after "has not had", deleted "any law license or" and added the remainder of the sentence; in Subparagraph (5), after "Professional Conduct", deleted "and", after "Rules Governing Discipline", added "the Rules Governing the New Mexico Bar, and the rules governing civil, criminal, and appellate procedure", and after "admission under this rule", added the remainder of the sentence; added Paragraph C; in Paragraph D, in the introductory paragraph, in the first sentence, after "With", deleted "each" and added "the first", after "registration certificate", added "in any given calendar year", and after "non-refundable fee of", deleted "two hundred fifty dollars (\$250)" and added "four hundred fifty dollars (\$450)", and added the second sentence; in Subparagraph (1), after "and will be", deleted "appearing" and added "performing legal services"; in Subparagraph (2), at the beginning of the sentence, deleted "that" and after "and will be", deleted "appearing" and added "performing legal services"; in Subparagraph (3), at the beginning of the sentence, deleted "that", after "will otherwise be", deleted "appearing" and added "performing legal services, and after "no fee for the", deleted "appearance" and added "services"; and in Paragraph E, added the first sentence, in the second sentence, after "not more than", deleted "ten dollars (\$10)" and added the remainder of the sentence, and in the fourth sentence, after "services to the poor", deleted "and shall use the State Bar of New Mexico's state plan as a guide to distribution" and added the remainder of the sentence.

## **24-107. Lawyer limited liability entities.**

A. **Authorized entities.** A lawyer may practice law as a shareholder, member, owner, partner or employee of any limited liability entity, including but not limited to a domestic or foreign limited liability company, professional corporation or limited liability partnership, provided that the statutory law governing the limited liability entity:

- (1) does not expressly prohibit the practice of law in such entity form; and
- (2) expressly provides that nothing in the statute shall be construed to immunize a lawyer from liability or prospectively limit a lawyer's liability for the consequences of the lawyer's own acts or omissions.

B. **Retroactive effect.** This rule shall be given retroactive effect.

[Approved, effective March 28, 2005.]

### ANNOTATIONS

**Compiler's note.** — Rule 24-107 NMRA was approved by Supreme Court Order No. 05-8300-008, dated March 28, 2005.

### 24-108. Pro bono publico service.

A. **Professional Responsibility.** In attempting to meet the professional responsibility established in Rule 16-601 NMRA of the Rules of Professional Conduct, a lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year. The substantial majority of the fifty (50) hours of service should be provided as indicated in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 NMRA of the Rules of Professional Conduct. Additional services may be provided as indicated in Paragraphs B or C of Rule 16-601 NMRA of the Rules of Professional Conduct.

B. **Financial Contribution.** Alternatively or in addition to the service provided under Paragraph A of this rule, a lawyer may fulfill this professional responsibility by:

(1) contributing financial support to organizations that provide legal services to persons of limited means in New Mexico, in the amount of five hundred dollars (\$500) per year; or

(2) providing a combination of pro bono hours and a financial contribution as suggested in this table:

Pro Bono Hours	0	5	10	15	20	25	30	35	40	45	50+
Suggested Contribution	\$500	\$450	\$400	\$350	\$300	\$250	\$200	\$150	\$100	\$50	Attorney Discretion

C. **Pro Bono Certification.** Each lawyer of the bar shall annually certify whether the lawyer has satisfied the lawyer's professional responsibility to provide pro bono services to the poor. Each lawyer shall certify this information through a form that is made a part of the lawyer's annual membership fees statement that shall require the lawyer to report the following information:

- (1) the number of hours the lawyer dedicated to pro bono legal services, and
- (2) if the lawyer has satisfied the obligation by contribution or part contribution, the amount of that contribution.

[Approved by Supreme Court Order No. 08-8300-004, effective March 15, 2008.]

**Committee commentary.** — The provisions of Rule 24-108 NMRA of the Rules Governing the New Mexico Bar are an affirmation of the lawyer's professional responsibility, as provided in Rule 16-601 NMRA of the Rules of Professional Conduct and are not mandatory nor do they constitute a basis for discipline under the Rules Governing Discipline for the State Bar of New Mexico. However, the reporting requirements of Paragraph C of Rule 24-108 NMRA of the Rules Governing the New Mexico Bar are mandatory and the failure to report this information shall be treated in the same manner as failure to pay dues or comply with mandatory continuing legal education. The information provided pursuant to this rule is designed for statistical purposes only and shall be used by the State Bar of New Mexico and distributed only in statistical form. Individual attorney responses shall remain confidential.

While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 NMRA of the Rules of Professional Conduct, to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in the variety of ways as set forth in Paragraphs B, C and D of Rule 16-601 NMRA of the Rules of Professional Conduct. Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 NMRA of the Rules of Professional Conduct. Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in Paragraphs B, C and D of Rule 16-601 NMRA of the Rules of Professional Conduct.

Attorneys licensed in New Mexico who reside outside of New Mexico may fulfill their pro bono responsibilities in their own state or provide monetary contributions to organizations providing assistance in New Mexico.

To facilitate the goals of this rule the Supreme Court adopted an order on April 28, 2006, establishing district court pro bono committees in each judicial district. Under the Pro Bono Plan adopted by the Court, a local pro bono committee convened by the chief judge and comprised of local lawyers, judges, legal service providers and other interested participants shall establish a local pro bono plan. The time deadlines and content for local pro bono plans shall be recommended by the Supreme Court's Access to Justice Commission and established by further administrative order of the Supreme Court.

## **24-109. Trust accounts; special requirements for IOLTA trust accounts.**

A. **IOLTA-eligible funds.** Funds of a client or third person shall be deemed IOLTA-eligible and shall be deposited in a lawyer's or law firm's IOLTA account unless the funds can earn income for the benefit of the client or third person in excess of the costs incurred to secure and distribute such income to the client or third person. In determining whether a client's or third person's funds can earn income in excess of the costs to secure and distribute such income, the lawyer or law firm shall consider the following factors:

- (1) the amount of interest or dividends that the funds are expected to earn during the period they are expected to be deposited;
- (2) the cost of establishing and administering non-IOLTA accounts for the benefit of clients or third persons, including the costs of the lawyer's services, and the costs of preparing any tax reports required for interest or dividends on earned funds;
- (3) the capability of financial institutions, lawyers, or law firms to calculate and pay interest or dividends to individual clients or third persons; and
- (4) any other circumstances that affect the ability of the client's or third-person's funds to earn interest or dividends in excess of the costs to secure such interest or dividends.

The lawyer or law firm shall review its IOLTA account at reasonable intervals to determine whether any changed circumstances require further action with respect to the funds of any client or third person.

B. **Special requirements for trust accounts containing IOLTA-eligible funds.** Except as provided in Subparagraph (8) of this paragraph, a lawyer or law firm shall establish and maintain in compliance with the following provisions one or more interest or dividend-bearing trust accounts for the deposit of all IOLTA-eligible funds of clients or third persons. Each such account shall be referred to as an IOLTA account.

- (1) No interest or dividends from an IOLTA account shall be made available to a lawyer or law firm.
- (2) An IOLTA account shall be established with any financial institution authorized by federal or state law to do business in New Mexico, the deposits of which are insured by an agency or instrumentality of the federal government. Funds in each IOLTA account shall be subject to withdrawal upon request and without delay except as permitted by law.
- (3) Lawyers may maintain IOLTA accounts only in eligible financial institutions. Eligible financial institutions are those that voluntarily offer IOLTA accounts

and comply with the requirements of this rule, including maintaining IOLTA accounts that pay the highest rate of interest or dividends generally available from the institution to its non-IOLTA customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest rate of interest or dividends generally available from the institution to its non-IOLTA customers, an eligible financial institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting rates of interest or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account. The determination of whether a financial institution is an eligible financial institution and whether it is meeting the requirements of this rule shall be made by the State Bar of New Mexico. The State Bar of New Mexico shall maintain a list of participating eligible financial institutions and shall provide a copy of the list to any lawyer upon request.

(a) An eligible financial institution may satisfy these comparability requirements by electing one of the following options:

- (i) establish the IOLTA account as the comparable rate product;
- (ii) pay the comparable rate on the IOLTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product; or
- (iii) pay an amount on funds that would otherwise qualify for the investment options noted in Subparagraph (c) of Subparagraph (3) of this paragraph equal to fifty-five percent (55%) of the federal funds targeted rate as of the first business day of the month or other IOLTA remitting period, which amount is deemed to be already net of allowable reasonable service charges or fees. This “benchmark yield amount” may be adjusted once per year by the State Bar of New Mexico, upon ninety (90) days’ written notice to financial institutions participating in the IOLTA program.

(b) IOLTA accounts may be established as:

- (i) a business checking account with an automated investment feature, such as an overnight investment in repurchase agreements or money market funds invested solely in or fully collateralized by United States government securities, including United States Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof;
- (ii) a checking account paying preferred interest rates, such as money market or indexed rates;
- (iii) a government interest-bearing checking account such as an account used for municipal deposits;

(iv) an interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest; or

(v) any other suitable interest or dividend-bearing deposit account offered by the institution to its non-IOLTA customers.

(c) A daily financial institution repurchase agreement shall be fully collateralized by United States government securities and may be established only with an eligible institution that is “well capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund shall be invested solely in United States government securities or repurchase agreements fully collateralized by United States government securities, shall hold itself out as a “money-market fund” as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 and, at the time of investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(d) Nothing in this rule shall preclude a participating financial institution from paying a higher rate of interest or dividends than described above or electing to waive any service charges or fees on IOLTA accounts.

(e) Interest and dividends shall be calculated in accordance with the participating financial institution’s standard practice for non-IOLTA customers.

(f) “Allowable reasonable service charges or fees” for IOLTA accounts are defined as per check charges, per deposit charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administrative fee.

(g) Allowable reasonable service charges or fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable service charges and fees may be assessed against or deducted from the interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable service charges and fees shall be the sole responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.

(4) Lawyers or law firms depositing IOLTA-eligible funds in an IOLTA account pursuant to this paragraph shall direct the financial institution

(a) to remit at least quarterly to the State Bar of New Mexico all interest or dividends, net of any allowable reasonable service charges or fees, computed on the average monthly balance in the account or otherwise computed in accordance with the institution's standard accounting practices, provided that the financial institution may elect to waive any or all such charges or fees;

(b) to transmit to the State Bar of New Mexico with each remittance a report showing the name of the lawyer or law firm on whose behalf the remittance is sent, the amount of remittance attributable to each IOLTA account, the time period covered by the report, the IOLTA account number for each account, the rate of interest or dividends remitted, the amount and type of service charges or fees deducted, if any, the average daily account balance of the period for which the report is made, and such other information as may be reasonably required by the State Bar of New Mexico;

(c) to transmit to the depositing lawyer or law firm a statement in accordance with normal procedures for reporting to depositors of the financial institution; and (d) not to deduct any service charges or fees in excess of the interest or dividends earned during the remitting period from the principal of an IOLTA account or from interest, dividends, or principal of any other IOLTA account.

(5) The lawyer or law firm may deposit the lawyer's or law firm's own funds in an IOLTA account for the sole purpose of paying service charges or fees on the account or obtaining a waiver thereof, but only in an amount necessary for that purpose.

(6) The State Bar of New Mexico shall hold all funds transmitted to it in a separate account created solely for the purpose of operating the IOLTA program in accordance with this rule. The State Bar of New Mexico shall submit for approval by the Supreme Court an annual report and budget for administering the IOLTA program. In addition to paying for the costs of administering the IOLTA program in accordance with the annual budget approved by the Supreme Court, the State Bar may disburse funds and award grants in consultation with the New Mexico Commission on Access to Justice and approval of the Supreme Court for the following public purposes:

(a) to provide legal assistance to the poor;

(b) to provide legal education;

(c) to improve the administration of justice; and

(d) for such other programs for the benefit of the public as are specifically approved by the Supreme Court of New Mexico from time to time.

(7) Every lawyer not exempt from this paragraph shall certify in compliance with Rule 17-204 NMRA that all IOLTA-eligible funds held by the lawyer for the benefit of any client or third-person are deposited in an IOLTA account.

(8) A lawyer is exempt from the requirements of this paragraph if

(a) the lawyer is a judge, an employee of a local, state, federal, or tribal government, corporate counsel, or a teacher of law, or is otherwise not engaged in the private practice of law;

(b) the nature of the lawyer's practice is such that the lawyer does not hold IOLTA-eligible funds of any client or third person;

(c) the lawyer does not have an office within the State of New Mexico or has the client's or third person's permission to hold the funds out of state; or

(d) the lawyer has applied for and obtained an exemption from the State Bar of New Mexico based on undue hardship for the lawyer based on geographic distance between the lawyer's principal office and the closest financial institution that is participating in the IOLTA program in accordance with criteria and procedures the State Bar of New Mexico shall establish.

**C. Interest or dividend-producing trust accounts for the benefit of a client or third person.** A lawyer or law firm may establish one or more interest or dividend-bearing trust accounts for the deposit of a client's or third person's funds that are not IOLTA-eligible, the net income from which will be paid to the client or third person.

**D. Good-faith judgment.** The determination of whether the funds of a client or third person are IOLTA-eligible in that they can earn income in excess of costs as provided in Paragraph A of this rule shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety based on the good-faith exercise of such judgment.

**E. Designation as eligible financial institution.** The designation of a financial institution as an eligible financial institution by the State Bar of New Mexico pursuant to this rule shall not constitute a warranty, representation or guaranty by the State Bar of New Mexico as to the financial soundness, business practices, or other attributes of the financial institution. The designation of a financial institution as eligible under this rule means only that the financial institution has agreed to meet the comparability requirements in Subparagraph (3) of Paragraph B of this rule for IOLTA accounts. Every attorney is responsible for determining whether the funds of each individual client will be insured under the laws, rules, and regulations governing the financial institution that the attorney selects for the deposit of IOLTA-eligible funds. If an attorney establishes an IOLTA account with a federally insured credit union, the attorney is responsible for determining whether each client whose funds will be deposited in the IOLTA account must be a member of the credit union for that client's funds to be federally insured. If so, the attorney shall either ensure that the client is a member of the credit union or deposit the client's IOLTA-eligible funds in another eligible financial institution where the funds will be federally insured.

[Adopted by Supreme Court Order No. 08-8300-027, effective January 1, 2009; as amended by Supreme Court Order No. 11-8300-018, effective May 17, 2011; as amended by Supreme Court Order No. 14-8300-026, effective January 1, 2015.]

## **ANNOTATIONS**



**The 2014 amendment**, approved by Supreme Court Order No. 14-8300-026, effective January 1, 2015, replaced “Center for Civic Values” with “State Bar of New Mexico” throughout the rule; in Paragraph B(6), deleted language that gave the Center for Civic Values the responsibility of distributing IOLTA funds, and added language requiring the State Bar of New Mexico to hold IOLTA funds in an account created solely for the purpose of operating the IOLTA program, requiring the State Bar of New Mexico to submit an annual report and budget for administering the IOLTA program, and giving the State Bar of New Mexico the authority to “disburse funds and award grants in consultation with the New Mexico Commission on Access to Justice and approval of the Supreme Court”.

**The 2011 amendment**, approved by Supreme Court Order No. 11-8300-018, effective May 17, 2011, added Paragraph E to exclude any warranty, representation, or guaranty as to the financial soundness, business practice or other attributes of financial institutions designated by the Center for Civic Values and to require attorneys to determine the soundness of financial institutions selected for IOLTA-eligible funds and whether the funds are insured.

## **24-110. "Bridge the Gap: Transitioning into the Profession" program.**

**A. Applicability; deadlines; continuing legal education credit.** Every new lawyer, as defined herein, admitted to practice law in New Mexico shall timely complete the requirements of the “Bridge the Gap: Transitioning into the Profession” (Bridge the Gap) program administered by the State Bar of New Mexico unless otherwise specified in this rule. For purposes of this rule, a “new lawyer” means any person admitted to the active practice of law as a member of the State Bar of New Mexico after the effective date of this rule.

(1) A new lawyer shall enroll in the Bridge the Gap program within thirty (30) days after admission to the bar. A new lawyer shall complete the Bridge the Gap program by December 31 of the first full calendar year following the date that the new lawyer is admitted to the bar, which includes but is not limited to filing with the bar a Bridge the Gap Completion Certification executed by the assigned mentor attesting to successful completion of the Bridge the Gap program.

(2) A new lawyer who successfully completes the Bridge the Gap program shall receive credit for the first full year of minimum continuing legal education requirements. The Commission on Professionalism shall certify the new lawyer’s completion of the program to the Minimum Continuing Legal Education Board, and the credits shall be awarded in the compliance year when the program was completed. Any deferral or exemption granted to a new lawyer under Paragraphs D or E of this rule does not defer or exempt the new lawyer from the minimum continuing legal education requirements under Rule 18-201 NMRA.

**B. Appointment and training of qualified mentors; continuing legal education credit.**

(1) The Commission on Professionalism shall certify and recommend qualifying lawyers to serve as mentors in accordance with the minimum requirements of the Bridge the Gap program guidelines for appointment by the Supreme Court. The Commission shall also be responsible for providing training materials for new mentors in accordance with the Bridge the Gap program guidelines. The Supreme Court shall issue orders of appointment for all lawyers appointed as mentors, who are then authorized, but not required, to serve indefinitely as mentors in the Bridge the Gap program unless otherwise ordered by the Supreme Court.

(2) A lawyer who participates in the Bridge the Gap program as an appointed mentor may receive up to one (1) compliance year's worth of continuing legal education credits every other compliance year. The Supreme Court's Commission on Professionalism shall certify to the Minimum Continuing Legal Education Board when a mentor has completed participation in a mentorship program with a new lawyer.

**C. Administration.** The State Bar of New Mexico shall be responsible for administering the Bridge the Gap program, which shall include the following:

(1) establish guidelines for the program subject to approval of the Supreme Court under Paragraph H of this rule;

(2) certify compliance and completion of the program by new lawyers;

(3) develop and approve the program's operating procedures, budget, and staffing; and

(4) submit an annual status report to the Supreme Court by March 1 of each year.

**D. Deferrals.**

(1) A new lawyer serving a judicial law clerkship may apply for a deferral from the state bar depending on the expected termination date of the new lawyer's clerkship, which shall be granted for the duration of the new lawyer's clerkship provided that the new lawyer reports annually to the state bar on the status of the clerkship and enrolls in the Bridge the Gap program within thirty (30) days of the termination of the clerkship.

(2) A new lawyer who is not engaged in the practice of law or who is unemployed may petition the state bar for temporary deferral of the requirements in this rule, which may be granted on a showing of financial hardship or other good cause. A new lawyer who is denied a temporary deferral may petition the Commission on Professionalism for review. The Commission's decision is final.

(3) A new lawyer granted a deferral under this paragraph shall enroll in the Bridge the Gap program no later than thirty (30) days after expiration of the deferral period and shall complete the Bridge the Gap program requirements by December 31 of the first full calendar year following the expiration of the deferral period.

**E. Exemptions.** The following new lawyers are exempt from completing the Bridge the Gap program:

(1) new lawyers on active status who

(a) do not maintain an office or other systematic presence for the practice of law in New Mexico;

(b) do not represent any client who is a resident of or whose principal place of business is in New Mexico;

(c) do not have any legal matters that involve transactions in, real or personal property in, or legal issues specific to New Mexico or New Mexico law; and

(d) do not have any active cases in New Mexico;

(2) new lawyers who have practiced law in another state for a minimum of two (2) years in the last five (5) years prior to admission in this state; and

(3) new lawyers admitted under a limited license under Rule 15-301.1 NMRA or Rule 15-301.2 NMRA and whose practice of law under those rules does not exceed one year.

Any lawyer who is exempt from completing the Bridge the Gap program shall, within one month of any change in circumstance that makes the lawyer no longer eligible for the exemption, notify the Bridge the Gap program of the change in circumstance. The lawyer may then be required to complete the requirements of the Bridge the Gap program if deemed necessary by the executive director of the State Bar of New Mexico or the director's designee.

**F. Cost.** Participation in the Bridge the Gap program requires payment of a three hundred dollar (\$300.00) administrative fee by the new lawyer to the state bar. One-half of the fee is due on or before March 1 of the year immediately after admission and the remainder of the fee is due by December 31 of that same year.

**G. Administrative suspension process for non-compliance.** Whenever the executive director of the State Bar of New Mexico shall certify in writing to the Supreme Court that a new lawyer has failed or refused to comply with the provisions of this rule, the clerk of the Supreme Court shall issue a citation to the new lawyer requiring the new lawyer to show cause before the Court, within fifteen (15) days after service of the citation, why the new lawyer should not be suspended from the right to practice in the

courts of this state. Service of the citation may be by personal service or by first class mail, postage prepaid. The new lawyer's compliance with the provisions of this rule on or before the return day of the citation shall be deemed sufficient showing of cause and shall serve to discharge the citation. If any response filed by the new lawyer raises questions of fact concerning the new lawyer's compliance with this rule, the clerk shall refer the matter to the Office of Disciplinary Counsel for an investigation, which may include convening a hearing committee consisting of three (3) members drawn from the roster of hearing committee members used in disciplinary matters to take evidence, issue findings of fact, and submit a recommendation to the Supreme Court for resolution of the citation and order to show cause. The new lawyer shall bear the burden at the hearing of adducing evidence demonstrating the lawyer's compliance or efforts to comply with this rule. If the new lawyer does not file a response or files a response that does not raise questions of fact, the clerk shall submit the matter to the Court for final resolution.

**H. Bridge the Gap program curriculum and other information.** The state bar is responsible for developing and maintaining a program manual and other training materials, to be approved by the Supreme Court, necessary for the implementation and operation of the program.

**I. Conflicts and confidentiality in outside mentoring.**

(1) An outside mentoring relationship exists when the mentoring lawyer and new lawyer are not employed by the same law firm or agency. The mentoring lawyer is presumed not to have a lawyer-client relationship with the new lawyer's clients and the new lawyer's clients are not intended beneficiaries of the outside mentoring relationship between the mentoring lawyer and the new lawyer. When allowed by Rule 16-101 NMRA, the mentoring lawyer may provide or the new lawyer may seek short-term limited guidance or counsel, within an outside mentoring relationship, without expectation by either lawyer or the new lawyer's clients that a lawyer-client relationship has been formed by the mentoring lawyer with the new lawyer's clients or that representation is being provided in the matter to the new lawyer's clients by the mentoring lawyer.

(2) Where practical the new lawyer and the mentoring lawyer shall discuss the new lawyer's client specific issues in hypothetical terms within an outside mentoring relationship. Regardless of whether issues are discussed in hypothetical terms, the outside mentoring lawyer shall run a conflict check and shall treat all client information discussed with the new lawyer as confidential under Rules 16-106 to -112 NMRA. Although the outside mentoring lawyer is presumed not to have a lawyer-client relationship with the new lawyer's clients, the outside mentoring lawyer is presumed to be a representative of the new lawyer employed to assist the new lawyer in the rendition of professional legal services under Rule 11-503(A)(3) NMRA.

(3) Subparagraphs (1) and (2) of this paragraph do not apply to lawyers who are outside mentors providing, or new lawyers seeking, counsel or guidance on an on-

going or regular basis relating to the needs of or litigation regarding a specific client, whether within or without the context of the mentoring relationship. If the lawyers are engaged in on-going or regular guidance or counsel related to a specific client or clients such that a lawyer-client relationship exists between the new lawyer's client and the mentoring lawyer, then the new lawyer and the mentoring lawyer must comply with the relevant Rules of Professional Conduct.

[Adopted by Supreme Court Order No. 11-8300-024, effective for all lawyers admitted to practice law in New Mexico after April 6, 2011; as amended by Supreme Court Order No. 14-8300-018, effective December 31, 2014; as amended by Supreme Court Order No. 16-8300-028, effective December 31, 2016; as amended by Supreme Court Order No. 17-8300-014, effective December 31, 2017.]

## ANNOTATIONS

**The 2017 amendment**, approved by Supreme Court Order No. 17-8300-014, effective December 31, 2017, provided additional rules regarding exemptions from completing the requirements of the Bridge the Gap program; in Paragraph A, in the introductory paragraph, after the first occurrence of "New Mexico", deleted "on active status", after "any person admitted to", added "the active", and after "law", added "as a member of the State Bar of"; and in Paragraph E, in Subparagraph E(1), after "status who", deleted "do not practice in New Mexico;" and added Subparagraphs E(1)(a) through E(1)(d), in Subparagraph E(3), after "Rule 15-301.2 NMRA", added "and whose practice of law under those rules does not exceed one year."; and added the last two undesignated sentences of Paragraph E.

**The 2016 amendment**, approved by Supreme Court Order No. 16-8300-028, effective December 31, 2016, revised the process for non-compliance with the provisions of this rule, including the provision of an investigation and hearing when questions of fact are raised regarding the new lawyer's compliance with this rule, and made stylistic changes; in Subparagraph A(2), after "completion of the program to the", deleted "minimum continuing legal education board" and added "Minimum Continuing Legal Education"; in Subparagraph B(2), after "shall certify to the", deleted "minimum continuing legal education board" and added "Minimum continuing Legal Education Board"; in Subparagraph E(3), after "limited license", deleted "pursuant to" and added "under"; in Paragraph F, after "the new lawyer to the", deleted "State Bar of New Mexico" and added "state bar", and after the next period, deleted "One half" and added "One-half"; in Paragraph G, in the heading, after "suspension", deleted "of license" and added "process", after "(15) days after service of", deleted "such" and added "the", after "the return day of", deleted "such" and added "the", and after "serve to discharge the citation.", added the remainder of the paragraph; in Subparagraph I(1), after "with the new lawyer's", deleted "client" and added "clients", after "and the new lawyer's", deleted "client is" and added "clients are", after "not", deleted "an", after "intended", deleted "beneficiary" and added "beneficiaries"; in Subparagraph I(2), after "shall discuss", added "the", after "new", deleted "lawyer" and added "lawyer's", after Rule 16-106 to", deleted "16-112" and added "-112", after "with the new lawyer's", deleted "client" and

added “clients”, and after “professional legal services under”, deleted “Subparagraph (3) of Paragraph A of rule 11-503” and added “Rule 11-503(A)(3)”; and in Subparagraph I(3), after “comply with the relevant”, deleted “New Mexico”.

**The 2014 amendment**, approved by Supreme Court Order No. 14-8300-018, effective December 31, 2014, eliminated the time restriction on deferrals; permitted deferrals to be granted for the duration of the lawyers clerkship; required the lawyer to annually report on the status of the lawyer’s clerkship and to enroll in the Bridge the Gap program after the clerkship terminates; in Paragraph D (1), after “may apply for a”, deleted “one (1) or two (2) year” and after “date of the new lawyer’s clerkship”, added the remainder of the sentence; and in Paragraph E (1), after “who do not”, deleted “reside” and added “practice”.

## **24-111. Emeritus attorney.**

### **A. Definitions.**

(1) *Emeritus attorney.* An “emeritus attorney” is an attorney who is or was a licensed attorney in good standing in the State of New Mexico or other jurisdiction who voluntarily withdrew from the practice of law or transferred to inactive status and does not ask for or receive compensation of any kind for the performance of legal services, but who is granted permission under Paragraph D of this rule to participate in the emeritus pro bono program described in Paragraph B of this rule.

(2) *Approved legal aid organization.* An “approved legal aid organization” for purposes of an emeritus pro bono program is a not for profit legal services organization whose primary purpose is to provide legal services to low income clients or a legal department within a non-profit organization that employs at least one (1) lawyer full-time to provide legal services to low income clients and

(a) is an organization described in Section 501(c)(3) and exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 or corresponding provisions of federal income tax laws from time to time in effect;

(b) is registered with the New Mexico Attorney General Registry of Charitable Organizations in compliance with the New Mexico Charitable Solicitations Act;

(c) is recommended by the New Mexico Commission on Access to Justice;  
and

(d) provides lawyer malpractice insurance for the emeritus attorney to cover services rendered by the attorney while under its supervision.

(3) *Supervising attorney.* A “supervising attorney” as used in this rule is an active status member in good standing of the New Mexico Bar who directs and

supervises an emeritus attorney who is participating in the emeritus pro bono program. A supervising attorney shall

(a) be employed by or be a participating volunteer for an approved legal aid organization; and

(b) assume personal professional responsibility for supervising the services rendered by an emeritus attorney.

**B. Emeritus pro bono program.** An emeritus attorney, in association with an approved legal aid organization and under the supervision of a supervising attorney, may perform the following activities:

(1) Appear in any court or before any administrative tribunal in New Mexico on behalf of a client of an approved legal aid organization provided the client has consented in writing to that appearance and the supervising attorney has given written approval for that appearance. A copy of the written consent and approval shall be filed in the record of each case along with the entry of appearance of the emeritus attorney;

(2) Prepare pleadings and other documents to be filed in any court or before any administrative tribunal in New Mexico in any matter in which the emeritus attorney is involved; and

(3) Provide such other services as are authorized by an approved legal aid organization with the approval and consent of the supervising attorney.

**C. Payment, expenses, and award of fees.** Although an emeritus attorney is prohibited from personally receiving compensation for services performed in an emeritus pro bono program, the approved legal aid organization may reimburse the emeritus attorney for actual expenses incurred while rendering services in the program. An approved legal aid organization is not prohibited from charging for the services rendered by an emeritus attorney provided such charges normally would be charged by the organization. In addition, an approved legal aid organization shall be entitled to receive all court-awarded attorney fees and costs for the services rendered by an emeritus attorney.

**D. Certification.** To obtain permission to perform services in an emeritus pro bono program, an attorney who has voluntarily withdrawn as a member of the New Mexico Bar, or other jurisdiction, or transferred to inactive status shall file with the Supreme Court a motion to be approved as an emeritus attorney. Upon entry of an order by the Supreme Court granting the motion, an emeritus attorney is authorized to perform services in an emeritus pro bono program. The motion shall include the following:

(1) a sworn statement that the movant:

(a) has filed a notice with the Supreme Court for voluntary withdrawal as a member of the New Mexico Bar under Rule 24-102(F) NMRA or has transferred to inactive status under Rule 17-202(D) NMRA, and/or has voluntarily withdrawn or transferred to inactive status in compliance with all applicable rules of all other jurisdictions in which the movant was licensed;

(b) agrees to abide by the New Mexico Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court for disciplinary purposes;

(c) has not been disciplined, suspended, disbarred, or resigned in lieu of discipline in any jurisdiction. If the movant has been disciplined, suspended, disbarred, or resigned in lieu of discipline in any jurisdiction the movant shall disclose the details of same and the motion to be approved as an emeritus attorney shall be referred to the Disciplinary Board for investigation by the Board and a recommendation to the Supreme Court following such investigation;

(d) will not hold himself or herself out to be an active member of the New Mexico Bar;

(e) will not ask for or receive compensation of any kind for the legal services to be rendered in an emeritus pro bono program; and

(f) agrees to abide by the requirements and limitations of being an emeritus attorney.

(2) A certification by an approved legal aid organization stating that the emeritus attorney will associate with that legal aid organization once approved by the Supreme Court to do so, and that an attorney employed by or participating as a volunteer with that organization will assume the responsibility of supervising the emeritus attorney as required by these rules.

**E. Exemption from certain fees and reporting requirements.** An emeritus attorney shall not be responsible for the payment of the annual license fee under Rule 24-102 NMRA, the annual disciplinary fee under Rule 17-203 NMRA, or the annual client protection fund fee under Rule 17A-003 NMRA. An emeritus attorney shall not be required to comply with minimum continuing education requirements under Rule 18-201 NMRA, the mandatory disclosure of professional liability insurance under Rule 16-104 NMRA, or the trust account certification under Rule 17-204 NMRA.

**F. Other Authorized Activities.** An emeritus attorney may also serve on Supreme Court and state bar committees, boards, commissions, or other working groups engaged in activities designed to improve the legal profession.

[Adopted by Supreme Court Order No. 16-8300-006, effective December 31, 2016.]

## **Appendix Chapter 24**



## **Appendix 1. Part A: Sample fact pattern and jury instructions for malpractice of attorney in handling divorce case.**

### **FACTS**

Attorney Adams represented Ruben in a divorce with Maria. The result of the divorce was a division of assets between the two parties. The assets consisted of real property and cash. Maria received the real estate that was community property, as well as a large lump sum cash payment. Ruben later discovered that the property Maria received in the divorce may have been significantly undervalued in the divorce decree, which may have resulted in a larger cash payment to Maria than she would have otherwise received.

Ruben did not know when he hired Attorney Adams that: 1) Adams in the past had represented Maria as her real estate lawyer and real estate development lawyer related to separate property that she owns; and 2) Maria still owes Adams a considerable fee for work he performed for her land development company.

Ruben brings a legal malpractice suit against Adams, alleging breach of fiduciary duty.

### **INSTRUCTIONS**

*The instructions set forth below represent one way in which the instructions in a legal malpractice case for breach of fiduciary duty could be structured. There are other equally acceptable ways to arrange these instructions, provided the general design of the 302 series of instructions (UJI 13-302A through 13-302F) is followed. The goal is to provide the jury with a clear set of instructions. Logic should be the guide in sequencing instructions. For purposes of this example, preliminary jury instructions (e.g., those found in Chapter 1), general instructions (e.g., those found in Chapter 2 and Chapter 20), and verdict forms have not been included. (Examples of verdict forms can be found in Chapter 22.) For purposes of trial, such instructions should be used as appropriate given the facts and circumstances of the case. These instructions have been modified from the Uniform Jury Instructions where appropriate to reflect the issues in dispute in the fact pattern.*

#### **UJI 13-302A**

In this civil case, Ruben is seeking compensation from Adams for damages Ruben claims were caused by Adams' failure to disclose that Adams had a conflict of interest in representing Ruben because he had previously represented Maria in a substantially related matter, and is owed money by Maria.

#### **UJI 13-302B**

To establish his claim of legal malpractice, Ruben has the burden of proving that Adams put his own interests before those of Ruben, and that Adams did not disclose his representation of Maria and obtain a written waiver of conflict.

### **UJI 13-302C**

Adams denies Ruben's contentions. Adams contends there was no conflict of interest because the previous representation of Maria regarding her separate property was not substantially related to the divorce proceeding.

### **UJI 13-2401**

For Ruben to recover from Adams on Ruben's claim of legal malpractice, you must find that the following have been proved by a preponderance of the evidence:

1. Adams owed a duty to Ruben;
2. Adams breach that duty; and
3. That breach was a cause of a loss to Ruben.

### **UJI 13-2404**

A lawyer has a fiduciary duty to

1. Have undivided loyalty to the client.
2. Disclose conflicts of interest to the client and obtain informed consent in writing that the client has waived the conflict.

A lawyer who fails to do so breaches his fiduciary duties.

### **UJI 13-2406**

A lawyer has a duty of loyalty to a client. A lawyer breaches the duty of loyalty by putting the lawyer's own interests, or the interests of another, before those of the client.

### **UJI 13-2411**

The Rules of Professional Conduct provide guidance to lawyers. Evidence regarding the Rules of Professional Conduct may be considered in deciding whether Adams owed Ruben a duty, and whether Adams breached that duty. However, that evidence is not conclusive. You must consider all of the evidence that you have heard in deciding the questions of duty and breach.

**Part B: Sample fact pattern and jury instructions for malpractice of attorney in handling personal injury case.**

**FACTS**

Lawyer Ana Lee represented client Lawrence Marton in his medical malpractice case against General Hospital and Dr. Park after Mr. Marton was injured when his stroke was not timely diagnosed by Dr. Park. Before being credentialed by General Hospital, Dr. Park lost credentials at another hospital for failing to timely complete medical records. Ms. Lee decided not to hire an expert in support of Mr. Marton's negligent credentialing claim against General Hospital for credentialing a doctor who had been fired from another hospital in the past, reasoning that the negligence would be clearly understood by the jury. Mr. Marton then settled his claim against the doctor. Mr. Marton's only claim against the hospital was for negligent credentialing. The hospital filed a motion for summary judgment on the negligent credentialing claim because there was no expert testimony as to the standard of care. The motion was granted. After the conclusion of his medical malpractice case, Mr. Marton brought suit against Ms. Lee, claiming he would have prevailed on his negligent credentialing claim if Ms. Lee had retained an expert. As there was no issue of untimely completed medical records Mr. Marton's case, the hospital disputed that any causal link between the malpractice and the negligent credentialing claim existed.

**INSTRUCTIONS**

*The instructions set forth below represent one way in which the instructions in a legal malpractice case for negligence could be structured. This case provides an example for compiling instructions in a case where causation and damages in the underlying case are at issue. The New Mexico Supreme Court has not expressly adopted the “trial-within-a-trial” approach. George v. Caton, 1979-NMCA-028, ¶¶ 46-47, 93 N.M. 370, 600 P.2d. 822. In a legal malpractice case where the malpractice asserted is negligence in handling an underlying claim or case, the jury must determine whether the plaintiff would have achieved a more favorable outcome in the underlying case. To enable the jury to assess the underlying claim, it may be appropriate either to present expert testimony as to the likely result of the underlying case, or for the jury to decide the probable outcome of the underlying case as if the jury were the jury on that case (i.e., calling and examining those persons who would have been witnesses and presenting the demonstrative and documentary evidence that would have been presented but for the attorney’s negligence). See 5 R. Mallen & J. Smith, Legal Malpractice, § 33.8; see also Andrews v. Saylor, 2003-NMCA-132, ¶ 16, 134 N.M. 545, 80 P.3d 482. The method employed will depend on whether the trial court adopts the “trial-within-a-trial” approach, or an approach based on the use of expert testimony. If the trial court adopts the “trial-within-a-trial” approach, the jury should be provided with instructions for determining the probable outcome of the underlying case.*

**UJI 13-302A**

In this civil case, Lawrence Marton is seeking compensation from Ana Lee for damages Mr. Marton claims were caused by Ms. Lee's decision not to hire an expert in support of Mr. Marton's negligent credentialing claim against General Hospital.

### **UJI 13-302B**

To establish his claim of legal malpractice, Mr. Marton has the burden of proving that he would have prevailed on his negligent credentialing claim had Ms. Lee retained an expert.

### **UJI 13-302C**

Ms. Lee denies that Mr. Marton would have had been awarded damages had his negligent credentialing claim gone to the jury. She also claims that her decision not to hire an expert was not negligent, but was a reasonable decision at the time based on the information she had.

### **UJI 13-2401**

For Mr. Marton to recover from Ms. Lee on Mr. Marton's claim of legal malpractice, you must find that the following have been proved by a preponderance of the evidence:

1. Ms. Lee owed a duty to Lawrence;
2. Ms. Lee breached that duty; and
3. That breach was a cause of a loss to Mr. Marton.

### **UJI 13-2403**

A lawyer has a duty to use the same degree of care, skill, and diligence ordinarily used by attorneys under similar circumstances. A lawyer who fails to do so is negligent.

### **UJI 13-2407**

A lawyer has a duty to advise the client of negative consequences a reasonable lawyer would conclude may result from the course of action the lawyer recommends. This duty does not require a lawyer to discuss with his client every possibility, no matter how small or remote.

### **UJI 13-2412**

A lawyer does not necessarily breach a duty to a client just because she makes a decision and it turns out that another decision would have been a better choice.

### **UJI 13-2414**

The damages that may be recovered in a legal malpractice action are those which the plaintiff would have recovered in the absence of the lawyer's negligence. The damages that may be recovered also include expenses that the plaintiff incurred to avoid or reduce the loss caused by the lawyer's negligence. You will receive additional instructions regarding how you are to determine the damages the plaintiff would have recovered in the absence of the lawyer's negligence.

[Adopted by Supreme Court Order No. 17-8300-013, effective for all cases pending or filed on or after December 31, 2017.]

## Table Of Corresponding Rules

The first table below reflects the disposition of the former Rules Governing the New Mexico Bar. The left-hand column contains the former rule number, and the right-hand column contains the corresponding present Rule Governing the New Mexico Bar.

The second table below reflects the antecedent provisions in the former Rules Governing the New Mexico Bar (right-hand column) of the present Rules Governing the New Mexico Bar.

Former Rule	NMRA	Former Rule	NMRA
1	24-101	5	24-103
2	Withdrawn	6	15-102
3	15-104	7	Withdrawn
4	24-102		
NMRA	Former Rule	NMRA	Former Rule
24-101	1	24-103	5
24-102	4		