Rules Governing Discipline

Preface

The Supreme Court has the inherent power and the duty to prescribe the qualifications that shall be required for admission to practice law; to admit persons to practice law; to prescribe standards of conduct for lawyers; to determine what constitutes grounds for the discipline of lawyers; to discipline, for cause, persons admitted to practice law in this state; and to revoke the license of every lawyer whose unfitness to practice law has been duly established.

The purpose of discipline of lawyers is the protection of the public, the profession and the administration of justice, and not the punishment of the person disciplined.

Only persons of integrity and good character should be permitted to practice law.

Persons admitted to practice law in this state are a part of the judicial system of the state and officers of its courts.

A license to practice law confers no vested right, but is a conditional privilege, revocable for cause.

An attorney who has been suspended and who seeks readmission has the burden of establishing by clear and convincing proof that he possesses the qualifications for readmission, which should not be less than those required for original admission.

It is the obligation of the organized bar and the individual lawyer to give unstinted cooperation and assistance to the Supreme Court, and its agency the disciplinary board, in discharging its function and duty with respect to discipline and in purging the profession of the unworthy.

In the exercise of its inherent jurisdiction to admit persons to practice law and to discipline, for cause, all such persons, the Supreme Court adopts and promulgates the following rules which shall govern disciplinary proceedings against members of the New Mexico bar and all attorneys within this court's jurisdiction.

ARTICLE 1
Disciplinary Board

17-101. The Disciplinary Board.

A. **Appointment and composition.** There is established a board to be known as "the Disciplinary Board", hereinafter referred to as "the board", which shall consist of twelve members, as follows: ten members of the bar of this state and two non-lawyer

public members. The Supreme Court shall appoint nine of the lawyer members and the two non-lawyer public members. The president of the state bar shall appoint one lawyer member of the board. Each disciplinary district shall have at least one attorney member on the board.

B. **Qualifications of public members.** A "nonlawyer public member" is a person who:

(1) has never engaged in the practice of law; and

(2) has not graduated from a law school. The nonlawyer public members may not be directly employed by a lawyer subject to the jurisdiction of these rules or have any direct significant financial interest in the practice of law.

C. **Terms of office.** The term of office of members of the disciplinary board shall be three (3) years. No member shall serve for more than six (6) consecutive years. A member may, however, be reappointed after a lapse of one (1) year. Six members shall constitute a quorum; provided, however, that reviews of hearing committee reports may be conducted and decisions thereon made by a panel consisting of a lesser number of members as hereinafter provided.

D. **Abstention of board members.** Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. No member of the board may personally represent a lawyer in any proceeding conducted pursuant to these rules while serving as a member of the board or for a period of one (1) year following completion of service as a member of the board.

E. **Officers.** The Supreme Court shall designate one attorney member as chair, and another as vice-chair to act in the absence or disability of the chair. The chair shall not participate in the review of any hearing committee decision by the disciplinary board, or by a panel thereof. In addition to the chair and vice-chair designated by the Supreme Court, the Disciplinary Board shall, from time to time, designate one of its members to act as secretary. The secretary shall record and keep permanent records of all plenary proceedings of the board.

[As amended effective, September 1, 1995.]

ANNOTATIONS

The 1995 amendment, effective September 1, 1995, deleted "one of whom shall be designated by the Court as chairman and another as vice chairman to act in the absence or disability of the chairman" following "lawyer members" in the second sentence in Paragraph A, added Paragraph D and redesignated former Paragraph D as Paragraph E, and rewrote the last sentence of Paragraph E and made gender neutral changes throughout that paragraph.

Compiler's notes. — The following cases were decided pursuant to 21-2-1(3), div. 3 (1.01) and (1.02), 1953 Comp., of the former "Supreme Court Rules", which are similar to this rule.

Though recommendation of referees is not controlling upon supreme court, it is entitled to great weight. *In re Southerland*, 1966-NMSC-091, 76 N.M. 266, 414 P.2d 495.

Respondent must be allowed record without advance payment. — The requirements of procedural due process are not met if respondent in disciplinary proceeding is denied the benefit of the record upon which the referee's recommendation is based, unless he pays for it in advance. Since under the procedure specified in the rules the hearing is before referees and the court's decision is based on their findings, conclusions and recommendations, when exceptions are taken to the proof relied upon to support the same, it would seem self-evident that the record of that proof must be available for examination and review. *In re Nelson*, 1968-NMSC-028, 78 N.M. 739, 437 P.2d 1008.

Law reviews. — For comment, "The Clark Report and the Revised New Mexico Disciplinary Procedures," see 2 N.M.L. Rev. 292 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 87 to 97.

Delay in prosecution of disciplinary proceeding as defense or mitigating circumstance, 93 A.L.R.3d 1057.

7A C.J.S. Attorney and Client § 88.

17-102. Powers and duties.

A. **Disciplinary Board.** The board shall have the power and duty

(1) pursuant to the procedures herein provided, to consider and investigate the conduct of any attorney within the jurisdiction of the Supreme Court, and may initiate an investigation on its own motion or may undertake the same upon complaint by any person;

(2) to review the findings of fact, conclusions, and recommendations of hearing committees, and take such action thereon as permitted by these rules;

(3) to formally reprimand attorneys in accordance with these rules, and to report the fact thereof to the Supreme Court, where it shall be a matter of record;

(4) to conduct an annual meeting at a time and place to be determined by the Chief Justice and chair of the Disciplinary Board. The meeting will be sponsored by the

Supreme Court, and those invited to attend shall be the members of the Disciplinary Board, members of the Supreme Court, and all systems participants including hearing committee members and disciplinary counsel. The purpose of this meeting will be to review rules, discuss problems, establish performance criteria, and discuss any other matters the board or Supreme Court deems necessary; and

(5) to adopt rules of procedure subject to approval by the Supreme Court.

B. **Chair.** The chair of the Disciplinary Board, or the vice chair in the chair's absence, shall be chief executive officer of the Disciplinary Board and shall oversee the operations of the disciplinary counsel's office, the several hearing committees, and the review panels of the board. The chair shall preside at all meetings of the board. The chair or the chair's designee

(1) shall be responsible for maintenance of a docket or other control of all formal charges instituted, the expedition of the proceedings, and the assembly and preservation of the record of all proceedings;

(2) shall transmit or arrange for the transmission of all board recommendations in disciplinary matters to the Supreme Court;

(3) shall report to the Supreme Court any formal reprimands administered by order of the board;

(4) shall exercise the board's authority on its behalf in certain ministerial duties involving hearing committees and disciplinary counsel pursuant to any policies or procedures as adopted by the Supreme Court or by the board;

(5) shall assign formal charges to a hearing committee as provided in Rule 17-104 NMRA of these rules; and

(6) shall refer to an appropriate hearing committee motions for reinstatement when provided by these rules.

[As amended by Supreme Court Order No. 13-8300-045, effective December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-045, effective December 31, 2013, made terms gender neutral; simplified the structure of sentences; in Subparagraph (4) of Paragraph A, in the first sentence, after "Chief Justice and", deleted "chairman" and added "chair" and in the third sentence, after "the board or", deleted "court" and added "Supreme Court"; in Paragraph B, deleted the former title of the paragraph "Chairman" and added the current title, in the first sentence, at the beginning of the sentence, after "The", deleted "chairman" and added "chair", after "or the vice", deleted "chairman" and added "chair", after "vice chair in", deleted "his" and

added “the chair’s”, in the second sentence, at the beginning of the sentence” deleted “He” and added “The chair”, and in the third sentence, after “The”, deleted “chairman” and added “chair or the chair’s designee”; in Subparagraph (5) of Paragraph B, at the beginning of the sentence, deleted “or his designee”, and in Subparagraph (6) of Paragraph B, at the beginning of the sentence, deleted “or his designee”.

Law reviews. — For comment, "The Clark Report and the Revised New Mexico Disciplinary Procedures," see 2 N.M.L. Rev. 292 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 28, 29.

7 C.J.S. Attorney and Client §§ 59 to 61.

17-103. Disciplinary districts.

The state shall be divided into the following disciplinary districts:

A. **Central.** Central, composed of Bernalillo, Sandoval, Cibola, Valencia and Socorro Counties;

B. **Northern.** Northern, composed of San Juan, McKinley, Rio Arriba, Santa Fe, Los Alamos, Taos, Colfax, San Miguel, Harding, Union, Guadalupe, Torrance, Quay and Mora Counties;

C. **Southern.** Southern, composed of De Baca, Curry, Roosevelt, Chaves, Eddy, Lea, Lincoln, Otero, Dona Ana, Catron, Grant, Luna, Hidalgo and Sierra Counties.

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-045, effective December 31, 2013, made terms gender neutral; simplified the structure of sentences; in Subparagraph (4) of Paragraph A, in the first sentence, after “Chief Justice and”, deleted “chairman” and added “chair” and in the third sentence, after “the board or”, deleted “court” and added “Supreme Court”; in Paragraph B, deleted the former title of the paragraph “Chairman” and added the current title, in the first sentence, at the beginning of the sentence, after “The”, deleted “chairman” and added “chair”, after “or the vice”, deleted “chairman” and added “chair”, after “vice chair in”, deleted “his” and added “the chair’s”, in the second sentence, at the beginning of the sentence” deleted “He” and added “The chair”, and in the third sentence, after “The”, deleted “chairman” and added “chair or the chair’s designee”; in Subparagraph (5) of Paragraph B, at the beginning of the sentence, deleted “or his designee”, and in Subparagraph (6) of Paragraph B, at the beginning of the sentence, deleted “or his designee”.

Law reviews. — For comment, "The Clark Report and the Revised New Mexico Disciplinary Procedures," see 2 N.M.L. Rev. 292 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 28, 29.

7 C.J.S. Attorney and Client §§ 59 to 61.

17-104. Hearing officers and committees.

A. **Appointment and composition.** The Disciplinary Board shall provide for the organization of two or more hearing committees or the appointment of two or more hearing officers within each disciplinary district, each committee to consist of three members. Hearing officers shall be members of the bar of this state. Members of hearing committees may be members of the bar of this state or "non-lawyer public members", as defined in Paragraph B of Rule 17-101, appointed by the Disciplinary Board upon recommendations of the board. The board may, from time to time, designate hearing committee members to sit temporarily upon committees other than those of which they are regular members, whether within or without their own district as the business of the committees may require. Hearing committees shall act only with a concurrence of a majority of their members. Two members of each committee shall be members of the bar of this state. Two members of a committee shall constitute a quorum.

B. **Reviewing officers.** Any member of a hearing committee may serve as a reviewing officer. A reviewing officer, upon request of disciplinary counsel or the chair of the board, shall have the authority and duty to review, approve, modify or disapprove dismissals of complaints docketed for formal investigation and offers of informal admonitions proposed by disciplinary counsel. Any member of a hearing committee who participates as a reviewing officer during the investigation of an attorney shall not serve as a member of a hearing committee for any charges filed as a result of such investigation. The identity of the reviewing officer involved in a particular investigation shall remain confidential at all times, including after the filing of formal disciplinary charges. Upon request, the reviewing officer's report, without identifying information, may be made available to the attorney being investigated.

C. **Powers and duties.** Hearing officers and committees shall have the power and duty:

(1) to conduct hearings into formal charges of misconduct upon assignment by the chair of the Disciplinary Board;

(2) to conduct hearings upon motions for reinstatement and remission of deferred sanctions upon assignment by the chair of the Disciplinary Board; and

(3) to report to the Disciplinary Board their findings of fact, conclusions of law and recommendations, together with the records of all proceedings.

D. **Abstention of hearing officers.** Hearing officers shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. No hearing officer shall personally represent a lawyer in any investigation or proceeding conducted pursuant to these rules while actively serving on a hearing committee in a pending proceeding. For purposes of this rule, a term of active service in a pending proceeding shall begin on the date the hearing officer receives notice of assignment to a committee and concludes on the date the committee submits its notice of findings in accordance with Paragraph E of Rule 17-313.

E. **Venue.** Unless otherwise ordered by the chair of the Disciplinary Board, a disciplinary proceeding shall be brought in the disciplinary district in which the respondent-attorney's principal office is located or, if the respondent-attorney does not maintain a principal office in this state, in a district in which any part of the conduct under investigation occurred.

[As amended, effective January 1, 1987; September 1, 1989; September 1, 1995; October 25, 1996.]

ANNOTATIONS

The 1996 amendment, effective October 25, 1996, added the last two sentences in Paragraph B.

The 1995 amendment, effective September 1, 1995, added Paragraph D and redesignated former Paragraph D as Paragraph E, and made gender neutral changes throughout the rule.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 30.

7A C.J.S. Attorney and Client §§ 105 to 108, 111.

17-105. Disciplinary counsel.

A. **Appointment.** Subject to the approval of the Supreme Court, the Disciplinary Board shall appoint a chief disciplinary counsel, and a deputy disciplinary counsel. The Disciplinary Board shall appoint such other assistant disciplinary counsel as may be recommended by chief disciplinary counsel and required for efficient performance of the work and all to serve at the pleasure of the board under the supervision of chief disciplinary counsel, or chief disciplinary counsel’s designee. Chief disciplinary counsel’s supervisory authority shall include but not be limited to the authority to discipline, including the authority to terminate the employment of any employee of the Disciplinary Board without prior approval of the board. Subject to the approval of the

Supreme Court, the board shall fix the compensation of counsel, if any, and shall promulgate policies for the orderly and efficient conduct of their duties.

B. **Powers.** Chief disciplinary counsel, or chief disciplinary counsel's designee when approved by chief disciplinary counsel, shall have the power to do the following:

(1) to docket for formal investigation any complaint which sets forth reasonable grounds to believe that a violation of the Rules of Professional Conduct or a violation of these rules has occurred;

(2) to investigate or to refer for investigation to deputy disciplinary counsel, assistant disciplinary counsel, special assistant disciplinary counsel as provided in Paragraph F of Rule 17-307 NMRA, or to an investigator, all matters involving alleged misconduct by an attorney subject to the jurisdiction of the Supreme Court when called to chief disciplinary counsel's attention by the written complaint of any person. If the complaint is initiated by chief disciplinary counsel, it shall be entitled "chief disciplinary counsel complaint". All investigations and hearings shall be promptly conducted and any matter resulting in a consent to or recommendation of discipline involving suspension, disbarment, public censure or probation shall be reported upon to the Supreme Court as quickly as reasonably possible unless the Disciplinary Board determines that a stay is necessary to avoid interference with pending civil or criminal litigation, prejudice to clients or injury to public interest;

(3) to dispose of all matters involving alleged misconduct by an attorney by the following:

(a) dismissal of the complaint. A dismissal of a complaint that has been docketed for formal investigation is effective only after review and concurrence by a reviewing officer;

(b) letter of caution;

(c) informal admonition. An informal admonition may be made by disciplinary counsel only after review and approval by a reviewing officer; or

(d) the filing of formal charges with the Disciplinary Board;

(4) to prosecute all disciplinary proceedings before hearing committees, the Disciplinary Board and the Supreme Court either in person or through deputy disciplinary counsel, assistant disciplinary counsel, or special assistant disciplinary counsel as provided in Paragraph F of Rule 17-307 NMRA; and

(5) to seek to resolve informally allegations which on their face would not, even if true, involve violations of the Rules of Professional Conduct but which are of concern to the complainant and could easily be corrected by the attorney.

C. **Duties.** Chief disciplinary counsel shall have the duty to do the following:

(1) to receive or initiate in the first instance all complaints, and to maintain docket control, files and records upon any matter upon which an investigation is initiated;

(2) to appear at hearings conducted upon motions for reinstatement by suspended or disbarred attorneys; to cross-examine witnesses testifying in support of the motions and to present any evidence in opposition to reinstatement either in person or through deputy disciplinary counsel, assistant disciplinary counsel, or special assistant disciplinary counsel as provided in Paragraph F of Rule 17-307 NMRA;

(3) to maintain permanent records of all matters processed and the disposition thereof, and to act as the general administrative officer for the Disciplinary Board under its direction and supervision;

(4) to file quarterly status reports with the Disciplinary Board and the Supreme Court indicating the receipt, processing, and status of all complaints. A full explanation shall be orally presented to the chair of the board or the chair's designee, for any matters pending in investigation for over ninety (90) days; and

(5) to keep all complaints and other disciplinary matters confidential except as otherwise provided by these rules.

D. **Investigators.** The Disciplinary Board may appoint one or more experienced investigators to assist disciplinary counsel in the performance of their duties under these rules. Such investigator shall serve under terms and conditions, and for such period and compensation, as may, from time to time, be specified by the board, and shall be subject to the rules of the board regarding confidentiality of investigations conducted by disciplinary counsel.

E. **Private practice prohibited.** Salaried disciplinary counsel shall not engage in the private practice of law. With prior permission of the Disciplinary Board, they may, however, speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice

[As amended, effective December 1, 1990; as amended by Supreme Court Order No. 11-8300-022, effective March 28, 2011.]

ANNOTATIONS

The 2011 amendment, approved by Supreme Court Order No. 11-8300-022, effective March 28, 2011, in Paragraph A, provided for the appointment of assistant disciplinary counsel by the chief disciplinary counsel and the supervision and discipline, including termination, of assistant disciplinary counsel by the chief disciplinary counsel or a designee; in Paragraph B, permitted the chief disciplinary counsel to authorize a

designee to investigate alleged misconduct and to prosecute disciplinary proceedings, required hearings to be conducted promptly, and required consents to or recommendations of discipline involving suspension, disbarment, public censure or probation to be promptly reported to the Supreme Court; and in Paragraph E, removed the qualification that only full-time employees are prohibited from engaging in the practice of law.

The 1990 amendment, effective December 1, 1990, added Paragraph B(5).

Law reviews. — For comment, "The Clark Report and the Revised New Mexico Disciplinary Procedures," see 2 N.M.L. Rev. 292 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 30, 88.

7A C.J.S. Attorney and Client § 95.

17-106. Salaries and expenses; assessments.

A. **Salaries and expenses.** The annual salaries of disciplinary counsel, their expenses, the per diem and mileage expenses of the members of the Disciplinary Board and hearing committees and other fixed overhead costs incurred in the implementation or administration of these rules shall be paid by the board out of the funds collected under the provisions of Rule 17-203.

B. **Assessments.** The Supreme Court, or in the case of formal reprimands and informal admonitions the Disciplinary Board, has the power and authority to assess against the respondent-attorney who has been determined to have committed an act or omission which violates the Rules of Professional Conduct or these rules, all costs incurred in a disciplinary proceeding, including, but not limited to, the cost of depositions, exhibits, transcripts, witnesses and the expenses of hearing committee members and members of the Disciplinary Board who participate in the proceedings. The Supreme Court, or in the case of formal reprimands and informal admonitions the Disciplinary Board, may also assess a respondent-attorney for the expenses and costs of an investigation which were incurred in the handling of a disciplinary proceeding against the attorney. The order imposing discipline will include a statement of any costs assessed, a date by which said costs will be paid to the Disciplinary Board and the rate of interest that will accrue thereafter. The order of discipline assessing costs will constitute an enforceable judgment as defined by law, and the Disciplinary Board may enforce any unpaid judgment pursuant to the remedies available at law to any judgment creditor.

[As amended, effective September 1, 1989; February 1, 1994; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-022, effective December 31, 2015, authorized the assessment of certain costs for informal admonitions against respondent-attorneys who have violated the Rules of Professional Conduct; in Paragraph B, after each occurrence of “formal reprimands”, added “and informal admonitions”.

The 1994 amendment, effective February 1, 1994, substituted "The Supreme Court, or in the case of formal reprimands" for "Upon recommendation of the hearing committee" at the beginning of Paragraph B, and added the last two sentences of Paragraph B.

Cross references. — For costs in disbarment proceedings, see 36-2-22 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney and Client § 119.

ARTICLE 2
Disciplinary Rules

17-201. Jurisdiction.

Any attorney regularly admitted to practice law in this state, any attorney specially admitted to practice by a court of this state or any individual admitted to practice as an attorney in any other jurisdiction who engages in the practice of law within this state as house counsel to corporations or other entities, as counsel for governmental agencies or otherwise is subject to the exclusive disciplinary jurisdiction of the Supreme Court and the Disciplinary Board hereinafter established.

Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit local bar associations from censuring, suspending or expelling their members from membership in their associations.

Committee commentary. — The Supreme Court has the inherent power and the duty to determine what constitutes the practice of law. It also has the power and duty to determine grounds for discipline of lawyers and to discipline a lawyer who violates the rules of the Supreme Court. The purpose of Rule 17-201 NMRA is to establish that the Supreme Court and the Disciplinary Board have exclusive disciplinary jurisdiction over any attorney who engages in the practice of law within the state with respect to enforcement of its rules governing acts and omissions that may constitute grounds for discipline. Disciplinary jurisdiction does not authorize or permit the unauthorized practice of law by any person. Under this rule, an attorney who is not licensed to practice in this state but engages in the practice of law and commits acts or omissions that may constitute grounds for discipline is subject to the exclusive disciplinary jurisdiction of the Supreme Court and the Disciplinary Board. As an example, an attorney who has engaged in the practice of law within the state, whether admitted to practice or admitted as an attorney in any other jurisdiction, and who violates the Rules

of Professional Conduct or other Supreme Court Rules could be disciplined by the Supreme Court or the Disciplinary Board pursuant to Rule 17-206 NMRA.

[Effective, February 28, 2002.]

ANNOTATIONS

Cross references. — For statutory provisions concerning the practice of law, see 36-2-1 to 36-2-40 NMSA 1978.

Suspension of an attorney from practicing before the workers' compensation administration. — Where the director of the worker's compensation administration suspended an attorney from practicing before the workers' compensation administration, the suspension did not infringe upon the exclusive authority of the supreme court to discipline attorneys because the workers' compensation administration took no action against the attorney's status as an attorney as such. *Chavez v. N.M. Workers' Comp. Admin.,* 2012-NMCA-060, 280 P.3d 927.

Sanction of an attorney exceeded the workers' compensation administration's authority. — Where a stipulated order suspending an attorney from practicing before the workers' compensation administration prohibited the attorney from generating any fees associated with worker's compensation matters, the prohibition exceeded the workers' compensation administration's authority to control proceedings before it and infringed upon the Supreme Court's exclusive jurisdiction to discipline attorneys. *Chavez v. N.M. Workers' Comp. Admin.,* 2012-NMCA-060, 280 P.3d 927.

No authority to take disciplinary action. — The New Mexico state racing commission does not have the authority to prohibit an attorney from representing a client before the commission in adjudicatory proceedings or public hearings on the basis of alleged misconduct. The supreme court has the exclusive authority to discipline lawyers. 1987 Op. Att'y Gen. No. 87-61.

Avoidance of sanctions. — One cannot avoid disciplinary sanctions simply by concealing himself within or leaving the jurisdiction and failing to notify the clerk of a change in address. *In re Nails*, 1987-NMSC-036, 105 N.M. 639, 735 P.2d 1145.

In disbarment proceeding, respondent is entitled to procedural due process guaranteed by the fourteenth and fifteenth amendments to the United States Constitution. *In re Nelson*, 1968-NMSC-028, 78 N.M. 739, 437 P.2d 1008.

Absence of intention to do wrong not enough. — Maintenance of high standards of professional conduct requires more of a member of the bar than mere absence of intention to do wrong. *In re Moyer*, 1966-NMSC-267, 77 N.M. 253, 421 P.2d 781.

Law reviews. — For comment, "The Clark Report and the Revised New Mexico Disciplinary Procedures," see 2 N.M.L. Rev. 292 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 28, 29.

7 C.J.S. Attorney and Client §§ 59 to 61.

17-202. Registration of attorneys.

A. **Registration statement.**

(1) Within three (3) months of admission to practice in this state, and, thereafter, on or before January 1 of every year, every attorney admitted to practice in this state shall submit to the state bar and to the clerk of the Supreme Court, on forms provided by the state bar and approved by the Supreme Court, a registration statement setting forth the following:

(a) the attorney's address of record;

(b) the street address where client files or other materials related to the attorney's practice are located;

(c) the attorney's telephone number of record;

(d) the attorney's email address of record; and

(e) such other information as the Supreme Court may from time to time direct.

(2) The attorney's "address of record" is the attorney's official address for service of notices, pleadings, papers, and information. The "address of record" is a public record and upon request will be provided to any member of the public. The attorney may also maintain a separate address with the state bar for purposes of publications of the state bar and solicitations.

(3) In addition to the annual registration statement, every attorney shall file a supplemental statement with the state bar and with the clerk of the Supreme Court showing any change in the information previously submitted within thirty (30) days of such change. Upon the request of any attorney providing a street address under the provisions of this rule that is not the "address of record," the street address shall not be disclosed to any member of the public.

(4) The attorney's email address of record may be used in the Supreme Court's electronic filing system in accordance with Rule 12-307.2 NMRA for the electronic service of any documents filed in the Supreme Court under the Rules Governing Discipline.

B. **Certificate of compliance.** In order to enable an attorney to demonstrate compliance with the requirements of Paragraph A of this rule, upon request of an

attorney, the clerk of the Supreme Court shall issue a certificate of compliance to an attorney who has complied with the annual registration requirements of these rules.

C. **Failure to file.** Any attorney who fails to file the registration statement, or supplement thereto, in accordance with the requirements of Paragraph A of this rule, may be summarily suspended and barred from practicing law in this state until the attorney has complied therewith.

D. **Inactive attorneys.** An attorney who has retired, or is not engaged in practice as provided in Paragraph A of this rule, may petition the Board of Bar Commissioners on forms provided by the state bar that the attorney desires to assume inactive status and to discontinue the practice of law. Upon the receipt of such petition by the Board of Bar Commissioners, the attorney shall no longer be eligible to practice law in any jurisdiction pursuant to the attorney's New Mexico license, except as provided by the Legal Service Provider Limited Law License under Rule 15-301.2 NMRA and as an emeritus attorney as authorized under Rule 24-111 and shall continue to file an annual inactive status registration statement with the state bar. The attorney will be relieved from the payment of the fee imposed by Rule 17-203 NMRA, and Rule 17A-003 NMRA, but is required to pay the inactive status fee set by the Board of Bar Commissioners, provided, however, that an emeritus attorney as authorized under Rule 24-111 shall not be required to pay the inactive status fee. Upon the filing of a petition to assume inactive status, the state bar shall notify the Supreme Court of the filing of the petition. Upon receipt of the notice, the Supreme Court shall change the membership status of the attorney on the official roll of attorneys effective as of the date on the petition submitted to the Board of Bar Commissioners.

E. **Reinstatement of inactive attorneys.** The inactive attorney may petition for reinstatement on a form prescribed by the Board of Bar Examiners and may be granted reinstatement by the Supreme Court upon recommendation of the Board of Bar Examiners as provided in Rule 15-302(B) and (C) NMRA. A petition for reinstatement shall be granted as a matter of course, unless the Board of Bar Examiners shall determine for good cause that the petition should be denied, in which event the applicant shall have the right to a hearing as provided in Rule 15-301 NMRA of the Rules Governing Admission to the Bar. Prior to reinstatement, the Board of Bar Examiners shall inquire of the Disciplinary Board if it knows of any reason why the attorney should not be reinstated.

F. **Service.** The Supreme Court or Disciplinary Board may serve any order, pleading, or other matter on an attorney by mailing or emailing a copy of such order, pleading, or other matter to the attorney at the address of record or email address of record shown on the latest registration statement on file with the Supreme Court and this shall constitute notice as required by these rules.

G. **Applicability of rule.** The provisions of this rule shall not apply to justices of the Supreme Court, judges of the Court of Appeals, district judges, magistrate judges,

metropolitan judges, or municipal judges who are prohibited by statute or ordinance from practicing law.

[As amended, effective January 1, 1987; January 1, 1997; November 30, 2004; as amended by Supreme Court Order 06-8300-32, effective January 15, 2007; as amended by Supreme Court Order No. 16-8300-035, effective for status changes on or after December 31, 2016; as amended by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 17-8300-022, effective for status changes on or after December 31, 2017.]

ANNOTATIONS

The second 2017 amendment, approved by Supreme Court Order No. 17-8300-022, effective December 31, 2017, at the end of Paragraph D, changed "Board of Bar Examiners" to "Board of Bar Commissioners".

The first 2017 amendment, approved by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017, revised the required contents of a registration statement required to be submitted by all attorneys admitted to practice in this state, and authorized electronic service of any order, pleading, or other matter by the Supreme Court or Disciplinary Board on an attorney by emailing a copy of such order, pleading or other matter; in Paragraph A, added the subparagraph designation "(1)" after "setting forth the", added "following:", and added subparagraph designations "(a)" and "(b)", in Subparagraph A(1)(a), added "the attorney's", added Subparagraphs A(1)(c) and A(1)(d), added the subparagraph designation "(e)", added subparagraph designations "(2)" and "(3)", and added new Subparagraph A(4); in Paragraph B, after "issue a certificate of", deleted "good standing" and added "compliance"; and in Paragraph F, after "by mailing", added "or emailing", and added "of record or email address of record".

The 2016 amendment, approved by Supreme Court Order No. 16-8300-035, effective December 31, 2016, made certain exceptions for attorneys on inactive status to be eligible to practice law in New Mexico, required inactive attorneys to continue filing annual inactive status registration statements as long as they are on inactive status, relieved inactive attorneys from paying certain fees, and provided a petition procedure for inactive attorneys for reinstatement to active status; in Paragraph D, after "New Mexico license", deleted "but" and added "except as provided by the Legal Service Provider Limited Law License under Rule 15-301.2 NMRA and as emeritus attorney as authorized under Rule 24-111 and", after "shall continue to file", added "an annual inactive status", after "registration", deleted "statements for five (5) years thereafter in order to be located in the event complaints are made about the attorney's conduct while engaged in practice" and added "statement with the state bar", after "Rule 17-203 NMRA", added "and Rule 17A-003 NMRA", after "Board of Bar Commissioners", added "provided, however, that an emeritus attorney as authorized under Rule 24-111 shall not be required to pay the inactive status fee", after "official roll of attorneys", added

“effective as of the date on the petition submitted to the Board of Bar Examiners”; and deleted the last sentence of the paragraph, which provided for reinstatement to active status for inactive attorneys; in Paragraph E, after the paragraph heading, added “The inactive attorney may petition for reinstatement on a form prescribed by the Board of Bar Examiners and may be granted reinstatement by the Supreme Court upon recommendation of the Board of Bar Examiners as provided in Rule 15-302(B) and (C) NMRA.”; in Paragraph G, after “district judges”, deleted “magistrates or” and added “magistrate judges”, and after “metropolitan”, added “judges”.

The 2006 amendment, approved by Supreme Court Order No. 06-8300-032, effective January 15, 2007, revised Paragraph A to provide that the attorney annual registration statement include the street address where client files or other materials are located and to provide that the street address shall not be a public record.

The 2004 amendment, effective November 30, 2004, in Paragraph A, inserted “and to the clerk of the Supreme Court” and “and approved by the Supreme Court” and substituted “address of record” for “date of admission to the Supreme Court, the attorney’s current residence and office addresses” in the first sentence, and inserted the second, third, and fourth sentences.

The 1997 amendment, effective January 1, 1997, rewrote Paragraph A, substituted "good standing" for "registration" in Paragraph B and deleted the former last sentence of Paragraph B relating to the certificate distinguishing between admitted attorneys and attorneys not admitted but regularly practicing, rewrote Paragraph D, and made minor stylistic changes in Paragraphs C and F.

Law reviews. — For comment, "The Clark Report and the Revised New Mexico Disciplinary Procedures," see 2 N.M.L. Rev. 292 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 12, 22 to 24.

Validity and construction of procedures to temporarily suspend attorney from practice, or place attorney on inactive status, pending investigation of, and action upon, disciplinary charges, 80 A.L.R.4th 136.

7 C.J.S. Attorney and Client § 24.

17-203. Assessment of attorneys; child support compliance.

A. **Annual disciplinary fee assessment.** Every attorney required to register in accordance with Rule 17-202 NMRA, other than attorneys who serve or retired as a justice, judge, or magistrate and retired, suspended, or disbarred attorneys, shall, prior to January of each year, pay to the Disciplinary Board an annual disciplinary fee in the amount of one hundred fifty dollars ($150.00). The annual disciplinary fee assessment shall be submitted to the state bar at the time the registration statement required under

Rule 17-202 NMRA is submitted. Annual disciplinary fee assessments collected by the state bar shall be deposited in an account in a financial institution in the name of the Disciplinary Board. The funds deposited in the Disciplinary Board account may be expended to defray the costs of processing attorney registration, disciplinary enforcement, and for such other purposes as the Disciplinary Board shall, with the approval of the Court, from time to time determine upon the signature of the chair or vice-chair of the Board. The Disciplinary Board shall make a monthly financial report to the Supreme Court of all receipts and disbursements.

B. **Failure to pay.** Any attorney who fails to pay the fee required under Paragraph A of this rule shall be summarily suspended. Members whose fees are received after the last day of February may be assessed a late penalty fee as determined by the Disciplinary Board and if received after March 31 an additional late penalty fee may be assessed.

C. **Failure to comply with child support obligations.** Every attorney admitted to practice in this state must comply with any "judgment and order for support" as defined in the Parental Responsibility Act. Any attorney who fails to comply with a child support order shall be summarily suspended upon the filing with the Supreme Court of a certificate of non-compliance issued by the Child Support Enforcement Division of the Human Services Department and a certified copy of the order of a court of competent jurisdiction finding non-compliance with the attorney's child support obligation. A suspended attorney may be readmitted upon filing with the Supreme Court a certificate of compliance issued by the Child Support Enforcement Division of the Human Services Department, provided that the certificate of compliance is dated no later than six (6) months after the effective date of the summary suspension of the attorney. If an attorney remains suspended for more than six (6) months for failure to comply with a child support order, the attorney shall seek reinstatement under Rule 17-214(B)(2), (D), (E), (F), and (G) NMRA.

D. **Payment of arrears.** Any attorney who has been suspended under the provisions of Paragraph B of this rule shall, as a condition precedent to reinstatement, pay all arrears due from the date of the attorney's last payment to the date of the attorney's request for reinstatement.

E. **Reinstatement.** Prior to the reinstatement of any attorney under Rule 17-214 NMRA, the attorney shall pay the annual disciplinary and state bar fees for the year of reinstatement and any costs or restitution ordered or agreed to be paid by the attorney in any disciplinary matter.

[As amended, effective January 1, 1988; January 1, 1999; as amended by Supreme Court Order No. 05-8300-015, effective August 26, 2005; as amended by Supreme Court Order No. 15-8300-023, effective December 31, 2015; as amended by Supreme Court Order No. 18-8300-009, effective December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-009, effective December 31, 2018, provided additional rules for the reinstatement of attorneys suspended for failure to comply with child support obligations; in Paragraph C, after "Human Services Department", added "provided that the certificate of compliance is dated no later than six (6) months after the effective date of the summary suspension of the attorney. If an attorney remains suspended for more than six (6) months for failure to comply with a child support order, the attorney shall seek reinstatement under Rule 17-214(B)(2), (D), (E), (F), and (G) NMRA".

The 2015 amendment, approved by Supreme Court Order No. 15-8300-023, effective December 31, 2015, made stylistic changes; in Paragraph A, in the first sentence, after "other than attorneys", deleted "appointed or elected to" and added "who", after "serve", added "or retired", in the second sentence, after "shall be", deleted "mailed" and added "submitted", and in the fourth sentence, after "signature of the", deleted "chairman or vice-chairman" and added "chair or vice-chair"; in Paragraph C, in the second sentence, after "non-compliance with the", deleted "lawyer's" and added "attorney's"; in Paragraph D, after each occurrence of "the date of", deleted "his" and added "the attorney's"; and in Paragraph E, after the first occurrence of "attorney", deleted "pursuant to" and added "under", and after "Rule 17-214 NMRA", deleted "of these rules".

The 2005 amendment, approved by Supreme Court Order No. 05-8300-015, effective August 26, 2005, amended Paragraph A to specify the amount of the disciplinary fee previously approved by the Supreme Court.

The 1998 amendment, effective January 1, 1999, added present Paragraph C and redesignated former Paragraphs C and D as Paragraphs D and E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 10, 11.

7 C.J.S. Attorney and Client § 7.

17-204. Trust accounting.

A. **Required records; maintenance and reporting.**

(1) *Types of records.* Every attorney subject to these rules shall maintain complete records, in either hard copy or stored electronically on a computer, of the receipt, deposit, investment, and disbursement of all funds, securities, and other property received by the attorney from or on behalf of a client and shall further maintain on a current basis all books and records that will establish the attorney's compliance with this rule, Rule 16-115 NMRA of the Rules of Professional Conduct, and Rule 24-109 NMRA of the Rules Governing the New Mexico Bar. For purpose of this rule, an attorney is deemed to have the necessary "required records" by maintaining the following:

(a) a record of all deposits into and withdrawals from each trust account, specifically identifying the date, source, and description of each item deposited as well as the date, payee, and purpose of each disbursement, and all deposit slips shall separately identify each item deposited;

(b) a separate ledger or account for each separate trust client, containing the information required by Subparagraph (1)(a) of this paragraph, which shall include a continuing balance of each individual client trust account ledger maintained with the total of the balances of all individual client trust account ledgers equaling the beginning balance of all individual client trust accounts, plus the total of all additional amounts received in trust, minus the total of all trust monies disbursed;

(c) copies of all retainer and compensation agreements with clients;

(d) copies of all statements to clients, which statements shall reflect all transactions on the trust account for the period to which the statements relate;

(e) all checkbooks, check stubs, bank statements, copies of cancelled checks, and duplicate deposit slips on each trust checking account;

(f) copies of invoices and statements received from others and paid out of trust funds;

(g) written reconciliations made at least monthly of the checkbook balance, the bank statement balance, and the client trust ledger sheet balances;

(h) copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining to the client's case file;

(i) proof of compliance with Rule 24-109 NMRA and copies of reports received from the financial institution in compliance with Rule 24-109(B) NMRA;

(j) for properties other than cash, a separate ledger for each client identifying the date received, the name of the person from whom received, the description of the property (including make, model, serial number, and other identifying marks), its location in the attorney's office or other location, the date released by the attorney and to whom released.

(2) *Written trust account plan required.* In addition to the records required under Subparagraph (1) of this rule, a written trust account plan shall be maintained for all client trust accounts that includes, at a minimum, the following:

(a) the name of every attorney who has authority to sign client trust account checks;

(b) the name of every attorney who is responsible for monthly reconciliation of the law firm's trust accounts;

(c) the name of every attorney who is responsible for answering questions, including those from the Disciplinary Board, regarding the client trust accounts; and

(d) the name of every attorney who will be responsible for maintaining the records of and continuing the maintenance of the client trust accounts in the event the law firm dissolves, is sold, or otherwise ceases to exist or provide legal services. The existence of the written trust account plan, including the designation of an attorney responsible for monthly reconciliations of the law firm's trust accounts, the maintenance of records of the trust accounts, and the responsibility for answering questions pertaining to the trust accounts, does not relieve any attorney from compliance with the terms of this rule, Rule 16-115 NMRA, Rule 24-109 NMRA, or any other Rules of Professional Conduct or Rules Governing the New Mexico Bar.

(3) *Trust account reporting requirements.* In addition to the requirements of Rule 16-115 NMRA and Rule 24-109 NMRA, an attorney shall keep a complete record and report annually on the certificate of compliance required under Paragraph D of this rule the name of each financial institution and each account number of every financial institution in which the attorney maintains funds received from or on behalf of a client.

(4) *Duration and preservation of records.* The records required by this rule shall cover the entire time from receipt to the time of final disposition by the attorney of all such funds, securities, and other properties. Attorneys shall preserve all such records for a period of five (5) years after final disposition of said funds, securities, or other properties, or, as to fiduciary or trust records, five (5) years following the termination of the fiduciary or trust relationship.

(5) *Accessibility; duty to produce; administrative suspension sanctions.* An attorney shall produce records requested by the Disciplinary Board or the New Mexico Client Protection Fund Commission within ten (10) days of the request unless the attorney has a good faith objection to producing the records. Failure to produce the records may result in immediate suspension of the attorney's license to practice law under Rule 17-207(B) NMRA.

(6) *Trust account disbursements and oversight responsibilities.* Trust account disbursements shall be made only by authorized bank transfer, including electronic transfer, or by check payable to a named payee, but not to cash. Signature authority for an attorney trust account may not be delegated to a nonattorney. At least one (1) attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account and shall be responsible for either making or overseeing monthly reconciliations of the client trust account ledger, checkbook, and bank statement and also shall be responsible for answering questions regarding the client trust account, although all attorneys in the law firm must comply with this rule, Rule 16-115 NMRA, and Rule 24-109 NMRA.

B. **Trust account overdraft notification.**

(1) *Definitions.* As used in this paragraph the following definitions apply:

(a) “financial institution” means 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.

(b) “properly payable” means that an instrument presented in the normal course of business is in a form requiring payment under the laws of New Mexico.

(c) “notice of dishonor” means the notice that a financial institution is required to give under the laws of New Mexico upon presentation of an instrument that the institution dishonors.

(2) *Clearly identified trust accounts required.* Attorneys who practice law in New Mexico shall deposit all funds held in trust in New Mexico in accordance with Rule 16-115 NMRA and Rule 24-109 NMRA in accounts clearly identified as “Attorney Trust Account” or “IOLTA Account” referred to in this rule as “trust accounts” and shall take all steps necessary to inform the financial institution of the purpose and identity of such accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation whether as trustee, agent, guardian, executor, or otherwise. Trust accounts shall be maintained only in financial institutions approved by the Disciplinary Board. Any trust accounts that are IOLTA accounts shall also be maintained in financial institutions approved by the State Bar of New Mexico under Rule 24-109(B)(3) NMRA. The Disciplinary Board and State Bar of New Mexico shall coordinate their respective oversight functions to ensure that all trust accounts comply with the applicable requirements in this rule and Rule 24-109 NMRA.

(3) *Overdraft notification agreement required.* A financial institution shall be approved as a depository for trust accounts if it has filed with the Disciplinary Board an agreement in a form provided by the Disciplinary Board to report to the Office of Disciplinary Counsel whenever any properly payable instrument is presented against a trust account containing insufficient funds, whether or not the instrument is honored. The Supreme Court shall establish rules governing approval and termination of approval status for financial institutions, and, in consultation with the Disciplinary Board, the State Bar of New Mexico shall annually publish a list of approved financial institutions for purposes of this rule and Rule 24-109 NMRA. No trust account shall be maintained in any financial institution that does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Supreme Court or the Disciplinary Board.

(4) *Overdraft reports.* The overdraft notification agreement required by Subparagraph (3) of this paragraph shall provide that all reports to the Office of Disciplinary Counsel made by the financial institution shall be in the following format:

(a) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor and should include a copy of the dishonored instrument if such a copy is normally provided to depositors.

(b) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment and the date paid as well as the amount of overdraft created thereby. Such reports shall be made simultaneously with and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored then the report shall be made to the Office of Disciplinary Counsel within five (5) banking days of the date of presentation for payment against insufficient funds.

(5) *Consent by attorneys.* Every attorney practicing or admitted to practice in New Mexico is deemed to consent, as a condition thereof, to the reporting and production requirements mandated by this rule.

(6) *Designation of financial institution as approved depository.* The designation of a financial institution as an approved depository pursuant to this rule shall not constitute a warranty representation or guaranty by the Supreme Court, the Disciplinary Board or the Office of Disciplinary Counsel as to the financial soundness, business practices, or other attributes of the financial institution. Approval of a financial institution under this rule means only that the financial institution has agreed to meet the reporting requirements in this paragraph.

(7) *Costs.* Nothing in this rule precludes a financial institution from charging an attorney or a law firm for the reasonable cost of producing all reports and records required by this rule.

(8) *Proof of compliance.* Upon receipt of an overdraft notification concerning an attorney trust account, disciplinary counsel may, in addition to requiring a response to all other inquiries concerning the overdraft, require proof of compliance with all of the requirements set forth in Paragraph A of this rule.

C. **Continuing education requirement.** Every attorney subject to these rules shall, no less than once every three (3) years, attend a continuing legal education course offered or approved by the Disciplinary Board and approved for one (1) hour or more of continuing legal education credit by the New Mexico Minimum Continuing Legal Education Board on the topic of client trust account procedures and maintenance. An attorney who is exempted from the terms of this rule under Paragraph E of this rule shall take such a course within one (1) year of any change in circumstance that results in this rule becoming applicable to that attorney.

D. **Certificate of compliance.** On forms provided by the state bar and approved by the Supreme Court, every attorney shall annually submit to the state bar the attorney's Trust Account Certification/IOLTA Compliance form demonstrating either compliance

with this rule, including compliance with Paragraph C of this rule, and Rule 24-109 NMRA, or claiming an exemption from this rule under Paragraph E of this rule. Such form shall include the financial institution name, the account name, and the account number of any and all accounts in which client funds are held, and the date, title, and location of the last course taken by the attorney as required by Paragraph C of this rule, and shall be submitted to the state bar with the registration statement filed under Rule 17-202 NMRA. The state bar shall retain the original of each form and shall provide to the Disciplinary Board a copy of any form requested. When the state bar certifies to the Supreme Court that any member of the state bar has failed or refused to comply with the provisions of this paragraph, the clerk of the Supreme Court shall issue a citation to such member requiring the member to show cause before the Court, within fifteen (15) days after service of such citation, why the member 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 member's compliance with the provisions of this paragraph on or before the return day of such citation shall be deemed sufficient showing of cause and shall serve to discharge the citation.

E. **Applicability of rule.** This rule shall not apply

(1) to any attorney whose entire compensation derived from the practice of law during the year preceding the filing of any registration statement was received in the attorney's capacity as an employee of a corporation handling legal matters for that corporation or as an employee of an agency of the federal, state, or local government; or

(2) to any attorney who does not and, in the year preceding the filing of the certificate of compliance has not had possession of any funds, securities, or other properties of a client. Any attorney claiming an exemption from this rule must do so on the certificate of compliance set forth in Paragraph D of this rule.

[As amended, effective January 1, 1990; July 1, 1991; April 1, 2002; as amended by Supreme Court Order No. 08-8300-026, effective January 1, 2009; as amended by Supreme Court Order No. 09-8300-019, effective January 1, 2010; as amended by Supreme Court Order No. 14-8300-026, effective January 1, 2015; as amended by Supreme Court Order No. 16-8300-026, effective December 31, 2016.]

Committee commentary. – The overdraft notification provisions in Paragraph B of this rule require that all overdrafts on trust accounts be reported by financial institutions to the Office of Disciplinary Counsel simultaneously with notice to the attorney of the overdraft. Only financial institutions that agree to do so will be approved as depositories for trust accounts.

The overdraft notification provisions in this rule are intended to help prevent misappropriation by providing a method for early warning of improprieties in the handling of attorney trust accounts; the two most obvious indications of possible misappropriation are a trust account overdraft or a dishonored trust account check.

Upon receipt of an overdraft notification, the Office of Disciplinary Counsel will contact the attorney or law firm and request an explanation for the overdraft; a letter may also be sent requesting a documented explanation. If the overdraft is the result of an accounting error, the attorney or law firm shall submit a written explanation, including any documents to substantiate the explanation. If the explanation is satisfactory, the overdraft notice will not be recorded as a complaint against the attorney, and the matter will be at an end. If the attorney or law firm cannot supply an adequate or complete explanation for the overdraft, the overdraft notice will be recorded as a complaint, and further investigation will ensue.

[Adopted by Supreme Court Order No. 09-8300-019, effective January 1, 2010.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-026, effective December 31, 2016, rewrote the rule to provide for the types of accounting records that are required to be maintained by every attorney; in the heading, deleted "Required records." and added "Trust accounting."; in Paragraph A, in the heading, added "maintenance and reporting"; added the subparagraph designation "(1)"; in Subparagraph (A)(1), added "Types of records.", after "complete records", added "in either hard copy or stored electronically on a computer", after "compliance with", added "this rule", and after "Rules Governing the New Mexico Bar.", deleted the remainder of the paragraph and added the new language in the paragraph; in Subparagraph (B)(2), after "Rule 16-115 NMRA", deleted "of the Rules of Professional Conduct", after "Rule 24-109 NMRA", deleted "of the Rules Governing the New Mexico Bar", after "referred to", deleted "herein" and added "in this rule", after "State Bar of New Mexico under", deleted "Subparagraph (3) of Paragraph B of", and after "Rule 24-109", added "(B)(3)"; added a new Subparagraph (B)(8); added a new Paragraph C and redesignated former Paragraphs C and D as Paragraphs D and E, respectively; in Paragraph D, after "every attorney", deleted "subject to these rules", after "demonstrating", added "either", after "compliance with this rule", added "including compliance with Paragraph C of this rule", after "Rule 24-109 NMRA", added "or claiming an exemption from this rule under Paragraph E of this rule", after "funds are held", added "and the date, title, and location of the last course taken by the attorney as required by Paragraph C of this rule", after "registration statement filed", deleted "pursuant to" and added "under", and deleted "Whenever the State Bar of New Mexico shall certify" and added "When the state bar certifies"; in Paragraph E, added new subparagraph designations (1) and (2); in Subparagraph (E)(1), after "an employee", added "of a corporation", after "legal matters", deleted "of a" and added "for that", after "corporation or", added "as an employee of", and after "government", added "or"; and in Subparagraph (E)(2), deleted "Any such attorney shall, in lieu of the required certificate, certify on the same form provided by the clerk that the attorney has not had possession of any funds, securities, or other properties of a client." and added all new language.

The 2014 amendment, approved by Supreme Court Order No. 14-8300-026, effective January 1, 2015, in the third unnumbered paragraph of Paragraph A, added "the

following” after “maintaining”; in Paragraph B(2), replaced “Center for Civic Values” with “State Bar of New Mexico” as the institution that has approval authority over financial institutions that maintain trust accounts, and added the last sentence; in Paragraph B(3), added language requiring the State Bar of New Mexico, “in consultation with” the Disciplinary Board, to publish a list of financial institutions approved to maintain trust accounts; and in Paragraph C, replaced “of the Rules Governing the New Mexico Bar” with “NMRA” and replaced the “Center for Civic Values” with the “State Bar of New Mexico” as the institution required to retain certificates of compliance and to inform the Supreme Court when any member of the state bar has failed to comply with Paragraph C.

The 2009 amendment, approved by Supreme Court Order No. 09-8300-019, effective January 1, 2010, in Subparagraph (5) of the second paragraph of Paragraph A, after "bank statements", added "copies of"; and added Paragraph B.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-026, effective January 1, 2009, added the references to Rule 24-109 NMRA in the first and second unnumbered paragraphs of Paragraph A; in Subparagraph (9) of Paragraph A, deleted the phrase "if the attorney participates in the IOLTA program" and the reference to Rule 16-115 NMRA and added the references to Rule 24-109 NMRA; and in Paragraph B, provided that forms shall be provided by the state bar and approved by the Supreme Court, deleted the provision that forms will be prescribed by the disciplinary board, added the provision requiring attorneys to submit the Trust Account Certification/IOLTA Compliance form demonstrating compliance with this rule and Rule 24-109 NMRA, deleted the reference to Rule 16-115 NMRA, provided that the form shall include the financial institution name, account name and the account number of all accounts in which client funds are held, deleted the requirement that the state bar forward certificates of compliance to the disciplinary board, and added the last four sentences.

The 2002 amendment, effective April 9, 2002, in Subparagraph A(1), substituted "each trust account" for "the attorney's trust account(s)"; in Subparagraph A(9), deleted "Subparagraph (5) of" preceding "Paragraph D of Rule 16-115"; and in Paragraph B, substituted "The original of each certificate of" for "all certificates of" and "and a copy of each certificate of compliance to the Center for Civil Values" for "for filing" in the last sentence.

Attorney may not claim attorney-client privilege. — Since the purpose of this rule is to insure that client funds are at all times protected while in an attorney's possession, to allow an attorney to claim confidentiality or the client's privilege to preclude the examination of these records would defeat the entire purpose of the rule. *In re Rawson*, 1992-NMSC-036, 113 N.M. 758, 833 P.2d 235.

ATM cards. — This rule prohibits disbursements to cash; therefore, an attorney with an automatic withdrawal card available on his trust account was in violation of this rule and subject to suspension. *In re Ruybalid*, 1994-NMSC-117, 118 N.M. 587, 884 P.2d 478.

Trust account requirements. — This rule and Rule 16-115 NMRA set forth in detail exactly what an attorney must do to be in compliance with the requirements for maintaining attorney trust accounts. An attorney who produced ledger sheets which did not contain the information required to be recorded and who refused to cooperate with disciplinary counsel in violation of Rule 16-803 NMRA was subject to suspension. An attorney's failure to properly maintain an attorney trust account will be viewed as a transgression of the most serious nature. *In re Ruybalid*, 1994-NMSC-117, 118 N.M. 587, 884 P.2d 478.

Failure to follow procedures. — Since the attorney failed to comply with the requirements for maintaining his trust account, the Supreme Court imposed the recommended discipline of a two-year deferred suspension, with probation throughout the deferral period; if the attorney successfully completed his probation and the other conditions included in the discipline being imposed, he would be automatically reinstated to full licensure at the conclusion of the two-year period. *In re Turpen*, 1995-NMSC-009, 119 N.M. 227, 889 P.2d 835.

Failure of an attorney to properly maintain his trust account records constituted a violation of Rules 16-115 and 16-804H NMRA and, coupled with other violations, such failure warranted disbarment. *In re Greenfield*, 1996-NMSC-015, 121 N.M. 633, 916 P.2d 833.

Attorney was guilty of misuse of trust funds when, for a short period of time, he withdrew client funds amounting to more than he had earned as of that date; a two-year deferred suspension, with supervised probation, was the appropriate sanction. *In re Cannain*, 1997-NMSC-001, 122 N.M. 710, 930 P.2d 1162.

Burden of suspended attorney. — Suspended attorney has the burden of demonstrating that his readmission poses no danger to the public, the profession, or the administration of justice, and a mere statement of a desire to engage in the practice of law does not satisfy this requirement. *In re Stafford*, 1987-NMSC-091, 106 N.M. 298, 742 P.2d 510.

Awareness of recent legal developments. — Simply reading an occasional borrowed bar bulletin does not suffice to show an awareness of recent legal developments. An attorney seeking readmission should attend seminars designed to acquaint attorneys with the present state of the law. *In re Stafford*, 1987-NMSC-091, 106 N.M. 298, 742 P.2d 510.

Duty where restitution at issue. — When restitution is at issue, an applicant for reinstatement should be prepared to disclose his financial situation and present in good faith a realistic plan for making payments once the financial problems are alleviated. *In re Stafford*, 1987-NMSC-091, 106 N.M. 298, 742 P.2d 510.

Disbarment warranted. — Disbarment was the appropriate sanction, since defendant commingled his own monies with a trust account, issued checks to clients for whom no

monies were on deposit, issued checks against insufficient funds and transferred monies from the trust account to his own accounts. *In re Rawson*, 1992-NMSC-036, 113 N.M. 758, 833 P.2d 235.

Indefinite suspension warranted. *In re Chavez*, 1996-NMSC-059, 122 N.M. 504, 927 P.2d 1042.

Two-year suspension warranted. *In re Reid*, 1996-NMSC-060, 122 N.M. 517, 927 P.2d 1055.

Law reviews. — For comment, "The Clark Report and the Revised New Mexico Disciplinary Procedures," see 2 N.M.L. Rev. 292 (1972).

17-205. Grounds for discipline.

The license to practice law in this state is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the court. It is the duty of every recipient of the conditional privilege to practice law to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for that privilege.

Acts or omissions by an attorney, individually or in concert with any other person which violate the Rules of Professional Conduct or violate the provisions of a court rule, statute or other law shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

ANNOTATIONS

Cross references. — For grounds for disbarment and suspension by supreme court, see 36-2-17 to 36-2-20 NMSA 1978.

For various prohibited activities with respect to attorneys, see 36-2-27 to 36-2-38 NMSA 1978.

Compiler's notes. — The following cases were decided pursuant to 22-2-1(3), div. 3 (2.01) and (2.04), 1953 Comp., of the former "Supreme Court Rules", which are similar to this rule.

Due process contention invalid when charge concerns activity as attorney. — Respondent's contentions that, in some way, he had been denied procedural and substantive due process of law and equal protection of the law had no validity because the conduct charged against him was wholly and entirely concerned with his activity as an attorney. *In re Nelson*, 1969-NMSC-012, 79 N.M. 779, 450 P.2d 188.

Punishment is not meted out in disciplinary proceeding. The action is required for the protection of the public, the profession and the administration of justice, and not the punishment of the person disciplined. *In re Nelson*, 1969-NMSC-012, 79 N.M. 779, 450 P.2d 188.

Membership in bar requires more than mere absence of intention to do wrong; otherwise a high standard of conduct could not be maintained. *In re Nelson*, 1969-NMSC-012, 79 N.M. 779, 450 P.2d 188.

Question in disbarment is whether act contrary to good morals. — Whether the misconduct with which a person is charged is a crime involving moral turpitude or, if a crime, whether it is malum prohibitum or malum in se or, for that matter, if the act is neither a felony or misdemeanor is not the issue. The true question in considering disbarment is: was the act to which respondent pleaded guilty "contrary to honesty, justice or good morals"? *In re Morris*, 1964-NMSC-235, 74 N.M. 679, 397 P.2d 475.

Moral turpitude is not necessary element to support discipline, nor is it synonymous with "conduct contrary to honesty, justice or good morals". *In re Morris*, 1964-NMSC-235, 74 N.M. 679, 397 P.2d 475.

Context of misconduct irrelevant. — If an attorney engages in fraudulent acts or other conduct prejudicial to the administration of justice or reflecting adversely upon his or her fitness to practice law, the attorney can and will be disciplined regardless of the context in which the misconduct occurs. *In re Nails*, 1986-NMSC-089, 105 N.M. 89, 728 P.2d 840.

Disbarment was warranted where the respondent engaged in violations of Rules 16-101, 16-103, 16-107(B), 16-302, 16-303(A), 16-305(C), 16-404, 16-801(A), 16-804(D), and 16-804(H). *In re Neal*, 2003-NMSC-032, 134 N.M. 611, 81 P.3d 47.

Involuntary manslaughter sufficient to support suspension. — When a member of the bar is guilty of the crime of involuntary manslaughter resulting from driving a motor vehicle while under the influence of intoxicating liquor, such offense is an act contrary to honesty, justice or good morals sufficient to support a suspension from practice. *In re Morris*, 1964-NMSC-235, 74 N.M. 679, 397 P.2d 475.

Although the first offense of driving while under the influence of intoxicating liquor when considered with the penalty provided is a petty offense, it does not follow that the offense of involuntary manslaughter, which requires a much greater penalty, is likewise a petty offense as under our law it is clearly a felony. *In re Morris*, 1964-NMSC-235, 74 N.M. 679, 397 P.2d 475.

Willful failure to file income tax return is defined as a "serious crime" warranting the entry of an order of immediate suspension. *In re Patton*, 1974-NMSC-017, 86 N.M. 52, 519 P.2d 288.

Six-month suspension warranted. — An attorney's personal misconduct involving his failure to pay a mechanic for automobile repairs, and his misrepresentations and lack of cooperation in ensuing litigation and disciplinary proceedings, warranted a six months' suspension from the practice of law. *In re Nails*, 1986-NMSC-089, 105 N.M. 89, 728 P.2d 840.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 36 to 39.

Attorney's criticism of judicial acts as ground for disciplinary action, 12 A.L.R.3d 1408.

Participation in allegedly collusive or connived divorce proceedings as subjecting attorney to disciplinary action, 13 A.L.R.3d 1010.

What constitutes representation of conflicting interests subjecting attorney to disciplinary action, 17 A.L.R.3d 835.

Homicide or assault as ground for disciplinary measures against attorney, 21 A.L.R.3d 887.

Fabrication or suppression of evidence as ground for disciplinary action against attorney, 40 A.L.R.3d 169.

Publication and distribution of announcement of new or changed associations or addresses, change of firm name or the like as ground for disciplinary action, 53 A.L.R.3d 1261.

Disciplinary proceeding based upon attorney's naming of himself or associate as executor or attorney for executor in will drafted by him, 57 A.L.R.3d 703.

Misconduct in capacity as judge as basis for disciplinary action against attorney, 57 A.L.R.3d 1150.

Entrapment as a defense in proceedings to revoke or suspend license to practice law or medicine, 61 A.L.R.3d 357.

Failure to communicate with client as basis for disciplinary action against attorney, 80 A.L.R.3d 1240.

Attorney's failure to report promptly receipt of money or property belonging to client as ground for disciplinary action, 91 A.L.R.3d 975.

Conduct of attorney in capacity of excutor or administrator of decedent's estate as ground for disciplinary action, 92 A.L.R.3d 655.

Method employed in collecting debt due client as ground for disciplinary action against attorney, 93 A.L.R.3d 880.

Attorney's commingling of client's funds with his own as ground for disciplinary action - modern status, 94 A.L.R.3d 846.

Disciplinary action against attorney for misconduct related to performance of official duties as prosecuting attorney, 10 A.L.R.4th 605.

Attorney's charging excessive fee as ground for disciplinary action, 11 A.L.R.4th 133.

Admissibility and necessity of expert evidence as to standards of practice and negligence in malpractice action against attorney, 14 A.L.R.4th 170.

Attorney's conduct in connection with malpractice claim against himself as meriting disciplinary action, 14 A.L.R.4th 209.

Attorney's delay in handling decedent's estate as ground for disciplinary action, 21 A.L.R.4th 75.

Disciplinary action against attorney based on communications to judge respecting merits of cause, 22 A.L.R.4th 917.

Communication with party represented by counsel as ground for disciplining attorney, 26 A.L.R.4th 102.

Mental or emotional disturbance as defense to or mitigation of charges against attorney in disciplinary proceeding, 26 A.L.R.4th 995.

Use of assumed or trade name as ground for disciplining attorney, 26 A.L.R.4th 1083.

Advertising as ground for disciplining attorney, 30 A.L.R.4th 742.

Sexual misconduct as ground for disciplining attorney or judge, 43 A.L.R.4th 1062.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving formation or dissolution of business organization as ground for disciplinary action - modern cases, 63 A.L.R.4th 656.

Imposition of sanctions upon attorneys or parties for miscitation or misrepresentation of authorities, 63 A.L.R.4th 1199.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving real estate transactions as ground for disciplinary action - modern cases, 65 A.L.R.4th 24.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in tax matters as ground for disciplinary action - modern cases, 66 A.L.R.4th 314.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in estate or probate matters as ground for disciplinary action - modern cases, 66 A.L.R.4th 342.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in family law matters as ground for disciplinary action - modern cases, 67 A.L.R.4th 415.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in personal injury or property damage actions as ground for disciplinary action, 68 A.L.R.4th 694.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in criminal matters as ground for disciplinary action, 69 A.L.R.4th 410.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in bankruptcy matters as ground for disciplinary action - modern cases, 70 A.L.R.4th 786.

Attorney's argument as to evidence previously ruled inadmissible as contempt, 82 A.L.R.4th 886.

Bringing of frivolous civil claim or action as ground for discipline of attorney, 85 A.L.R.4th 544.

Soliciting client to commit illegal or immoral act as ground for discipline of attorney, 85 A.L.R.4th 567.

Liability in tort for interference with attorney-client relationship, 90 A.L.R.4th 621.

Misconduct involving intoxication as ground for disciplinary action against attorney, 1 A.L.R.5th 874.

Disciplinary action against attorney taking loan from client, 9 A.L.R.5th 193.

Attorneys at law: disciplinary proceedings for drafting instrument such as will or trust under which attorney-drafter or member of attorney's family or law firm is beneficiary, grantee, legatee, or devisee, 80 A.L.R.5th 597.

7 C.J.S. Attorney and Client §§ 66 to 87.

17-206. Types of discipline.

A. **Types of discipline.** A violation of the Rules of Professional Conduct or of these rules shall be grounds for

(1) disbarment by the Supreme Court;

(2) suspension by the Supreme Court for a time certain with automatic reinstatement;

(3) indefinite suspension by the Supreme Court with reinstatement upon application as provided under Rule 17-214(B) NMRA unless timely objections are filed;

(4) public censure by the Supreme Court;

(5) formal reprimand by the Disciplinary Board;

(6) informal admonition

(a) by disciplinary counsel without formal hearing and when acquiesced in by the respondent and approved by a hearing committee reviewing officer; or

(b) by the Disciplinary Board upon recommendation of a hearing committee after formal disciplinary proceedings; or

(7) requirement by the Disciplinary Board that an attorney successfully pass the multi-state professional responsibility examination given by the Board of Bar Examiners the next time that it is given or be suspended for a period to be prescribed by the Disciplinary Board.

B. **Probation.** In addition to the foregoing, if the record discloses that a respondent can still perform legal services with proper supervision

(1) the Supreme Court, in its discretion and under such conditions as it may specify, may impose probation or other conditions as a type of discipline by itself or may defer the effect of the sanctions specified in Subparagraphs (A)(1), (2), (3) and (4) of this rule, in whole or in part, or the effect of an indefinite suspension imposed on account of incapacity under Rule 17-208 NMRA, upon condition that the respondent accept probationary status for such time as the Court may prescribe, and that the respondent faithfully fulfills all of the conditions thereof; or

(2) if the discipline is imposed under Subparagraph (A)(5) or (6) of this rule, the Disciplinary Board may in its discretion impose probation or other conditions as a type of discipline by itself or may defer the sanctions imposed by that subparagraph.

C. **Restitution.** An attorney who has been disciplined under this rule may be required to make restitution and, also, to reimburse the Client Protection Fund of the State Bar of New Mexico for any expenditure that it has made arising out of the

attorney's misconduct. Any order of restitution does not preclude damages being awarded by a court of competent jurisdiction. The order of restitution may be set forth by the Court in the order imposing discipline, or in a separate order by the Court. An order of restitution shall constitute an enforceable judgment as defined by the law, and the person in whose favor the order is entered may enforce any unpaid judgment under the remedies at law to any judgment creditor. Both a hearing committee and the Disciplinary Board may recommend that a respondent make restitution and reimburse the Client Protection Fund of the State Bar of New Mexico for any expenditure that it has made arising out of the attorney's misconduct, but all such recommendations must be approved and ordered by the Court.

D. **Publication of discipline.** Disbarments, definite and indefinite suspensions, and public censures shall be filed in the Supreme Court clerk's office and shall be published in the Bar Bulletin and New Mexico Appellate Reports. All formal opinions shall be published in accordance with Rule 12-405(C) NMRA. Formal reprimands by the Disciplinary Board shall be published in the Bar Bulletin and shall be filed in the Supreme Court clerk's office.

E. **Effective date.** The effective date of any discipline imposed under this rule shall be set forth in the order of the Supreme Court or Disciplinary Board.

F. **Supreme Court order.** Any order of the New Mexico Supreme Court suspending or disbarring an attorney shall contain a provision requiring the attorney to comply with the provisions of Rule 17-212 NMRA.

G. **Contempt.** Any condition of probation or terms of any other order of the Disciplinary Board or the Supreme Court imposing discipline under this rule shall be enforceable by the contempt powers of the Supreme Court. Failure by an attorney disciplined under this rule to comply with any such terms or conditions shall be brought to the attention of the Supreme Court by the chief disciplinary counsel in a verified motion for order to show cause. If the Supreme Court finds good cause to enter an order to show cause why the attorney should not be held in contempt, it may direct the attorney to appear before the Court to show cause why additional discipline should not be imposed, or if factual allegations are in dispute, remand the matter to the Disciplinary Board for an expedited evidentiary hearing under Rule 17-314(E) NMRA. If held in contempt of court, the attorney may be censured, fined, suspended, or disbarred.

H. **Alternatives to formal discipline; diversion programs.**

(1) *Referral to Program*. In accordance with the terms of this rule as set forth below, upon recommendation of disciplinary counsel after approval by a hearing committee reviewing officer, and with the consent of the respondent-attorney, disciplinary counsel can offer a respondent-attorney participation in an alternative to formal discipline program ("diversion"). Diversion may include the following:

(a) mediation between the respondent-attorney and the respondent-attorney's client by a mediator selected by disciplinary counsel;

(b) fee arbitration;

(c) law office management assistance or monitoring;

(d) evaluation and treatment for substance abuse, psychological evaluation and treatment, medical evaluation and treatment, or other similar evaluation and treatment in coordination with and through the New Mexico Judges and Lawyers Assistance Program ("JLAP") or an equivalent assistance program;

(e) auditing of, education on, and monitoring of the respondent-attorney's practice or accounting procedures, including the respondent-attorney's IOLTA;

(f) continuing legal education in excess of the amount otherwise required of all practicing attorneys in New Mexico including, but not limited to, ethics school (a/k/a/ “Ethicspalooza”);

(g) requiring the respondent-attorney to retake the Multistate Professional Responsibility Examination; or

(h) any other program authorized by the Disciplinary Board or the Supreme Court.

(2) *Participation in the program permitted*. A respondent-attorney may participate in a diversion program in cases where

(a) the alleged violations of the Rules of Professional Conduct are relatively minor;

(b) there is little likelihood that the respondent-attorney will harm the public during the period of participation;

(c) disciplinary counsel can adequately supervise the conditions of diversion; and

(d) participation in the diversion program is likely to improve the respondent-attorney’s future professional conduct and accomplish the goals of attorney discipline and the diversion program.

(3) *Participation in the program prohibited*. A respondent-attorney will not be offered nor able to participate in diversion when

(a) the presumptive form of discipline for the alleged violations, as set forth in the ABA Standards for Imposing Lawyer Sanctions is greater than a reprimand, taking into account all relevant mitigating and aggravating factors;

(b) the misconduct involves misappropriation of funds or property of a client or a third party;

(c) the misconduct involves a felony charge or conviction, or an alleged or proven criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(d) the misconduct involves dishonesty, deceit, misrepresentation, or fraud;

(e) the misconduct involves false statements of law or fact, or the tendering of false evidence to a tribunal;

(f) the misconduct resulted in actual injury (loss of money, legal rights, or valuable property rights) to a client or other person, unless full restitution is made prior to the respondent-attorney entering into the diversion program;

(g) the respondent-attorney has been publicly disciplined in the last three (3) years;

(h) the matter is of the same nature as misconduct for which the respondent-attorney has been disciplined in the last five (5) years; or

(i) the misconduct is part of a pattern of similar misconduct.

(4) *Diversion Agreement*. If a respondent-attorney agrees to an offer of diversion as provided by this rule, the terms of the diversion shall be set forth in a written consent agreement prior to the filing of a specification of charges as otherwise provided for in the Rules Governing Discipline. The agreement shall

(a) recite the issues and Rules of Professional Conduct at issue which led to the referral of the matter to diversion;

(b) specify the type of program, or programs, to which the respondent-attorney shall be diverted;

(c) specify the goals, general purpose, and expected outcome of the diversion program;

(d) specify the manner in which compliance is to be monitored;

(e) set forth any requirement for payment of restitution or cost;

(f) provide for the affirmative agreement to all terms by the respondent-attorney, including confirmation that the respondent-attorney understands that by agreeing the respondent-attorney is waiving the right to a formal hearing and voluntarily and without coercion, force, or threat agrees to the diversion program; and

(g) provide for the signature of the respondent-attorney and disciplinary counsel.

The agreement, along with the hearing committee reviewing officer's approval of the proposed diversion and any underlying investigation, shall then be tendered to the chair of the Disciplinary Board, or the chair's designee, for review and approval. The chair, or the chair's designee, may approve or reject the agreement or may recommend and approve a modified agreement if approved by disciplinary counsel and the respondent-attorney. If the chair, or the chair's designee, rejects the agreement or proposes a modified agreement that is not approved by both disciplinary counsel and the respondent-attorney, the agreement, and any and all factual stipulations or admissions or legal conclusions made in connection with the agreement shall be withdrawn and cannot be used against the respondent-attorney or disciplinary counsel in any subsequent disciplinary proceedings or in any other judicial proceeding. Thereafter, the disciplinary matter shall proceed in accordance with the Rules Governing Discipline as if no diversion program was proposed or accepted.

(5) *Costs of the diversion*. The respondent-attorney shall pay all the direct costs incurred in connection with participation in any diversion program. The respondent-attorney shall also pay the administrative cost of the proceeding as determined by the Disciplinary Board.

(6) *Effect of diversion*. When the recommendation for diversion becomes final, the respondent-attorney shall enter into the diversion program, or diversion programs, and complete the requirements thereof. Upon the respondent-attorney's entry into the diversion program, or diversion programs, the underlying matter shall be held by disciplinary counsel and classified as "pending successful completion of diversion." Diversion shall not constitute a form of discipline.

(7) *Effect of successful completion of the diversion program*. If disciplinary counsel determines that the respondent-attorney has successfully completed all aspects of the agreed upon diversion program, the matter will be closed and any inquiry concerning the complaint, or complaints, that led to the investigation and diversion program will be handled by disciplinary counsel in the same manner as a dismissed complaint, subject to the fact that any complaining party will be notified by disciplinary counsel that the respondent-attorney was referred to a diversion program and successfully completed the program. Otherwise, the fact of the complaint, the investigation, and the diversion agreement and program will be held confidential by disciplinary counsel in accordance with Rule 17-304 NMRA, subject to disciplinary counsel's need to make any inquiries or disclosures necessary to achieve, determine, and report successful completion of the diversion program.

(8) *Breach of diversion agreement*. If disciplinary counsel has reason to believe that the respondent-attorney has breached the diversion agreement, disciplinary counsel shall notify the respondent-attorney of the apparent breach and the respondent-attorney will have the opportunity to respond. If disciplinary counsel is not satisfied with the respondent-attorney's response, the matter shall be referred to a three (3)-member panel of the Disciplinary Board for hearing. Disciplinary counsel will have the burden by a preponderance of the evidence to establish the breach itself and the materiality of the breach, and the respondent-attorney will have the burden by a preponderance of the evidence to establish justification for the breach. The hearing shall proceed before the Disciplinary Board panel in the same manner as formal hearings before a hearing committee under Rule 17-213(D) NMRA, subject to the fact that the matter remains confidential under subparagraph (10) of this paragraph. Within fourteen (14) days of the court reporter notifying the parties that the transcript of hearing is complete, disciplinary counsel and the respondent-attorney shall submit to the Disciplinary Board panel proposed written findings of fact, conclusion of law, and a recommendation. Within thirty (30) days of receipt of the parties' submissions, the Disciplinary Board panel will enter its findings of fact, conclusions of law, and determination. If the Disciplinary Board panel determines that the respondent-attorney has materially breached the diversion agreement, the diversion agreement shall be terminated by the Disciplinary Board, the complaint or complaints that led to the diversion agreement shall be reclassified as "open," and the matter will proceed in accordance with the Rules Governing Discipline. If the Disciplinary Board determines that the respondent-attorney breached the diversion agreement, but the breach was immaterial, the Disciplinary Board may, to the extent it deems necessary, modify the original diversion agreement to obviate any future immaterial breaches or it may simply order that the original diversion agreement remain in full force and effect. If the Disciplinary Board determines that the respondent-attorney did not breach the diversion agreement, the original diversion agreement shall remain in full force and effect and the matter will proceed under the terms of the original diversion agreement.

(9) *Effect of rejection of recommendation for diversion*. If a respondent-attorney rejects a diversion offer, the matter shall proceed as otherwise provided in the Rules Governing Discipline.

(10) *Confidentiality*. Subject to notice to the complaining party of the status of the complaint as otherwise provided for in the Rules Governing Discipline, complaints against respondent-attorneys, including the fact of the complaint, the investigation, and the diversion agreement and program will be held confidential by disciplinary counsel in accordance with Rule 17-304 NMRA unless and until the diversion agreement is breached by the respondent-attorney and terminated as set forth in this rule, and the matter thereafter proceeds to formal disciplinary charges or otherwise becomes public in accordance with Rule 17-304 NMRA.

[As amended, effective May 1, 1986, April 1, 1987; September 1, 1992; January 1, 1995; as amended by Supreme Court Order No. 05-8300-023, effective December 13, 2005; by Supreme Court Order No. 12-8300-007, effective March 5, 2012; as amended

by Supreme Court Order No. 15-8300-022, effective December 31, 2015; as amended by Supreme Court Order No. 18-8300-009, effective December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-009, effective December 31, 2018, provided alternatives to formal discipline for violations of the Rules of Professional Conduct, created diversion programs for attorneys who have violated the Rules of Professional Conduct as an alternative to formal discipline, provided consequences for the breach of a diversion agreement, and made technical language changes; added Paragraph H.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-022, effective December 31, 2015, authorized the Disciplinary Board to recommend that a respondent-attorney make restitution and reimburse the Client Protection Fund for any expenditure the Disciplinary Board incurred as a result of the attorney's misconduct; in Subparagraph A(6), provided new subparagraph designations "(a)" and "(b)"; in Subparagraph A(6)(a), after "formal hearing", added "and"; and in Paragraph C, added the last sentence.

The 2012 amendment, approved by Supreme Court Order No. 12-8300-007 , effective March 5, 2012, provided that an order of restitution may be entered in the order imposing discipline or in a separate order; that an order of restitution is a judgment that may be enforced pursuant to the remedies at law available to a judgment creditor; and required that disciplinary action be published in the New Mexico Appellate Reports; in Paragraph C, in the first sentence, after "also, to reimburse the", deleted "client's security fund" and added the third and fourth sentences; and in Paragraph D, in the first sentence, after "public censures shall be", added "be filed in the Supreme Court clerk's office and shall be"; after "published in", deleted "the New Mexico Reports and"; after "the Bar Bulletin", deleted "and shall be filed in the Supreme Court clerk's office" and added "and New Mexico Appellate Reports"; and added the second sentence.

The 2005 amendment, approved by Supreme Court Order No. 05-8300-023, effective December 13, 2005, amended Paragraph C to change "client security fund" to "client protection fund" and amended Paragraph E to change "day" to "date".

The 1995 amendment, effective January 1, 1995, added the third sentence in Paragraph G.

The 1992 amendment, effective September 1, 1992, inserted "or by the Disciplinary Board upon recommendation of a hearing committee after formal disciplinary proceedings" in Subparagraph (6) of Paragraph A and inserted "or (6)" in Subparagraph (2) of Paragraph B.

Cross references. — For the effect of disbarment, see 36-2-23 NMSA 1978 and Rule 17-212 NMRA.

For reinstatement, see 36-2-23 NMSA 1978 and Rule 17-214 NMRA.

Deferred period of suspension warranted. — Where respondent engaged in conduct involving intentional misrepresentations and the unauthorized practice of law; the conduct occurred shortly before and after respondent was admitted to practice law in New Mexico; respondent was unwilling or unable to understand the nature of respondent's misconduct; there was no indication that respondent was acting with a selfish motive or desire to secure a private benefit for respondent; and all of respondent's misconduct centered around respondent's single-minded purpose of righting what respondent perceived to be a wrong, a deferred one-year suspension from the practice of law was appropriate. *In the Matter of Convisser*, 2010-NMSC-037, 148 N.M. 732, 242 P.3d 299.

Disbarment held to be warranted. — Disbarment for not less than five years was warranted for an attorney who represented a husband and wife in a guardianship and conservatorship proceeding in state district court to determine the husband's competency, yet at the same time filed two lawsuits in federal court to drastically alter the husband's estate in favor of the wife while acknowledging the husband's potential incapacity; continued to represent the husband and the wife and changed the husband's will and trust after he was disqualified by the state district court from representing the husband and the wife; refused to acknowledge the wrongful nature of his conduct; expressed his disdain and contempt for the disciplinary board; and within the past two years had been formally reprimanded for the same conduct in another case. *In the Matter of Stein*, 2008-NMSC-013, 143 N.M. 462, 177 P.3d 513.

Permanent disbarment appropriate. — Where respondent counseled one client to bribe witnesses, unnecessarily revealed confidential communications in a fee dispute case, made material misrepresentations to tribunals and the disciplinary board, and where respondent converted money for his own use that was provided by a second client's parents for the sole purpose of posting a bond for the client, and where respondent filed a lien against the property of a third client's mother to secure a fee owed to him by the client, respondent's permanent disbarment from the practice of law in New Mexico was appropriate. *In re Venie*, 2017-NMSC-018.

Authority to discipline attorney who is conditionally discharged of criminal act. — Supreme Court has sole authority to direct what constitutes grounds for the discipline of lawyers under N.M. Constitution, Art. VI, § 3 and has authority to impose discipline on an attorney who has pled no contest to a criminal act and who has been given a conditional discharge pursuant to Section 31-20-13(A) NMSA 1978. *In re Treinen*, 2006-NMSC-013, 139 N.M. 318, 131 P.3d 1282.

Discipline for acts committed prior to admission to Bar. — An attorney may be disciplined for acts committed prior to admission, but not discovered until after admission. *In re Mikus*, 2006-NMSC-012, 139 N.M. 266, 131 P.3d 653.

Purpose of probation. — By imposing probation, the court allows the lawyer to continue to practice law while requiring him to meet certain conditions that will insure the protection of the public and assist him in understanding and meeting his ethical obligations. These conditions are not mere guidelines, but are orders of the court which are to be obeyed. *In re Rawson*, 1986-NMSC-044, 104 N.M. 387, 722 P.2d 638.

Duty of lawyer on probation. — A lawyer on probation should take great care to demonstrate that he appreciates his situation and diligently fulfills all of the conditions of his probation. *In re Rawson*, 1986-NMSC-044, 104 N.M. 387, 722 P.2d 638.

The objective of a period of supervised probation is not merely to insure that an attorney comports himself or herself in accordance with the Rules of Professional Conduct and other rules of law and procedure during the period of probation, and thereafter be free to return with impunity to whatever aberrant behavior brought about the sanction in the first place; an attorney on probation is obligated to utilize the assistance and guidance of the supervisor to modify the practices or habits which led to the initial finding of misconduct. *In re Tapia*, 1996-NMSC-025, 121 N.M. 707, 917 P.2d 1379.

Attorney's violations of a disbarment order and failure to appear at court proceedings to explain why he should not be sanctioned warranted five months of incarceration. *In re Herkenhoff*, 1997-NMSC-007, 122 N.M. 766, 931 P.2d 1382.

Attorneys should not be allowed to practice law while on probation under a criminal sentence and the court may disbar such an attorney until he is no longer on probation. *In re Norrid*, 1983-NMSC-076, 100 N.M. 326, 670 P.2d 580.

Exception to rule of suspension during probation for criminal conviction. — A narrow, limited exception to the Supreme Court's general rule that attorneys on probation for a criminal offense will not be permitted to practice law exists where the record is clear that the continued practice of law by the attorney will in no way endanger either the public or the reputation of the profession. *In re Treinen*, 2006-NMSC-013, 139 N.M. 318, 131 P.3d 1282.

Exception to rule of suspension during probation for criminal conviction applied. — Where attorney pled no contest to a criminal act and was conditionally discharged pursuant to Section 31-20-13(A) NMSA 1978, and where record was clear that because attorney was devoted to providing legal services to the poor and disadvantaged, took responsibility for his criminal conduct, was sincerely remorseful, self-reported his conviction to the office of disciplinary counsel, was cooperative during disciplinary proceedings, and had no previous history of disciplinary complaints or criminal conduct, the continued practice of law by the attorney would in no way endanger either the public or the reputation of the profession and the attorney should be allowed to practice law during his probation. *In re Treinen*, 2006-NMSC-013, 139 N.M. 318, 131 P.3d 1282.

One-year suspension warranted. — By keeping money that erroneously was given to him and then refusing to respond to demands that he properly channel the funds,

attorney's conduct warranted suspension from the practice of law for a definite period of one year, with suspension deferred under prescribed terms and conditions. *In re Norton*, 1990-NMSC-029, 109 N.M. 616, 788 P.2d 372.

Deferred suspension from practice for one year, subject to prescribed terms and conditions, was ordered for an attorney who incompetently handled his clients' bankruptcy proceedings. *In re Hanratty*, 1990-NMSC-079, 110 N.M. 354, 796 P.2d 247.

Deferred suspension from practice for two years, subject to prescribed terms and conditions, was warranted for an attorney because his failure to properly pursue his client's criminal appeal violated the following rules: Rule 16-101, by failing to provide competent representation to his client; Rule 16-103, by failing to act diligently and promptly on his client's behalf; Rule 16-302, by failing to make reasonable efforts to expedite the appeal; Rule 16-804(D), by engaging in conduct prejudicial to the administration of justice; and Rule 16-804(H), by engaging in conduct which reflected adversely on his fitness to practice law. *In re Neal*, 2001-NMSC-007, 130 N.M. 139, 20 P.3d 121.

Deferred suspension and orders for restitution were warranted by an attorney's neglect of clients' cases and failure to communicate with them on a regular basis, and because of his failure to comply with court rules upon his withdrawal of representation of clients by reason of ill health. *In re Barrera*, 1997-NMSC-057, 124 N.M. 220, 947 P.2d 495.

Circumstances when suspension warranted. — When an attorney has been reprimanded but continues to engage in the same or similar misconduct, suspension from practice is generally the appropriate sanction. *In re Rivera*, 1991-NMSC-064, 112 N.M. 217, 813 P.2d 1015.

Suspension for failure to supplement bar application. — Where attorney failed to report on his application for admission to the Bar that he had been involved in a crime prior to the filing of the application and failed to supplement his application with the facts of his indictment and conviction of the crime after he had been admitted to the Bar, suspension of the attorney was the appropriate sanction. *In re Mikus*, 2006-NMSC-012, 139 N.M. 266, 131 P.3d 653.

Indefinite suspension warranted. — Indefinite suspension warranted if intentional violation of procedural rule involved. *In re Quintana*, 1985-NMSC-101, 103 N.M. 458, 709 P.2d 180.

Indefinite suspension ordered for violations of former Code of Professional Responsibility and present Rules of Professional Conduct involving invasion of trust account, failure to maintain appropriate records, dishonesty, negligence, conflict of interest, and cumulative misconduct, adversely reflecting on fitness to practice law. *In re Benavidez*, 1988-NMSC-074, 107 N.M. 520, 760 P.2d 1286.

Solo practitioner was suspended indefinitely for a minimum period of one year, since his failure to keep his case load within manageable proportions could not excuse his neglecting cases and missing deadlines. *In re Klipstine*, 1989-NMSC-036, 108 N.M. 481, 775 P.2d 247.

Attorney was suspended indefinitely for a minimum period of two years for failure to appear on three separate occasions or to file requests for a continuance in advance of his failures to appear despite receiving timely notices of trial settings. *In re Tapia*, 1989-NMSC-051, 108 N.M. 650, 777 P.2d 378.

Indefinite suspension from practice for a period of no less than one year was ordered in the case of an attorney who neglected one client's case, failed to pay another client's bills after settling claims, and failed to appear on a third client's behalf at an administrative hearing. *In re Privette*, 1990-NMSC-078, 110 N.M. 352, 796 P.2d 245.

A disciplined attorney's failure to provide full cooperation to disciplinary counsel, to take the Multistate Professional Responsibility Exam as ordered, and to petition for reinstatement in order to be terminated from probationary status warranted indefinite suspension of not less than one year. *In re Norton*, 1991-NMSC-053, 112 N.M. 75, 811 P.2d 573.

An attorney who collected a fee to represent a client in a criminal matter and who failed to return the fee even though the charge was dismissed without any action by the lawyer, who subsequently contended, knowingly and dishonestly, that he was entitled to the fee in disciplinary proceedings, and who forged a physician's signature on a fitness to practice law form on an application to the Arizona bar, was suspended indefinitely. *In re Cherryhomes*, 1993-NMSC-044, 115 N.M. 734, 858 P.2d 401.

Violating probationary terms warrants indefinite suspension. *In re Tapia*, 1996-NMSC-025, 121 N.M. 707, 917 P.2d 1379.

Attorney was suspended indefinitely for violations of the following rules: Rule 16-101, by failing to provide competent representation; Rule 16-103, by failing to act with diligence and promptness in representing a client; Rule 16-104, by failing to keep a client reasonably informed; Rule 16-116(D), by failing to surrender papers and property to which a client was entitled; Rule 16-302, by failing to expedite litigation consistent with the interests of a client; Rule 16-801(B), by failing to respond to lawful requests for information from the office of disciplinary counsel; Rule 16-803(D), by failing to cooperate with disciplinary counsel in the course of the investigation; and 16-804 (C), (D), and (H) by engaging in conduct involving dishonesty, deceit, and misrepresentation, by engaging in conduct prejudicial to the administration of justice, and by engaging in conduct that adversely reflected upon his fitness to practice law. *In re Romero*, 2001-NMSC-008, 130 N.M. 190, 22 P.3d 215.

Attorney was suspended indefinitely, pursuant to (A)(3), for a minimum period of two years with specific conditions, where the attorney mishandled client funds, charged

excessive fees, committed deceit in charging the excessive fees, and delayed the handling of a client's matter. *In re O'Brien*, 2001-NMSC-025, 130 N.M. 643, 29 P.3d 1044.

Suspension pursuant to Subparagraph A(3). — Attorney suspended from practice of law for indefinite period of time pursuant to Subparagraph A(3). *In re Steere*, 1991-NMSC-063, 112 N.M. 205, 813 P.2d 482.

Attorney suspended indefinitely for failing to preserve identity of client's funds. *In re Harrison*, 1985-NMSC-110, 103 N.M. 537, 710 P.2d 731.

Suspension for lying under oath. — Attorney was suspended for a period of six months for knowingly giving false statements under oath. *In re C'de Baca*, 1989-NMSC-049, 108 N.M. 622, 776 P.2d 551.

Public censure and suspension. — Attorney was publicly censured and suspended for a minimum period of one year for intentionally altering a copy of a late-filed complaint in an effort to assure his client that it had been timely filed. *In re Neundorf*, 1989-NMSC-052, 108 N.M. 653, 777 P.2d 381.

Attorney's misconduct, which included charging his client an unreasonable fee for representation in an extradition matter, warranted a public censure and a 30-day suspension from the practice of law. *In re Silverberg*, 1989-NMSC-035, 108 N.M. 760, 779 P.2d 546.

Public censure and deferred suspension sufficient to protect the public. — Where attorney was hired by a client to pursue a personal injury case as a result of injuries that the client suffered, and where the case was dismissed for failure to prosecute because the attorney delayed filing the lawsuit for two years and failed to do anything on the client’s behalf, a one-year deferred suspension with a public censure was adequate to protect the public because although the attorney committed negligence and attempted to remedy his negligence by deception, the attorney’s neglect of his client was an isolated incidence of negligence and lack of diligence, the attorney attempted to make his client whole, and the attorney demonstrated sincere remorse for his actions. *In re Torres*, 2016-NMSC-019.

Probation of indefinite suspension for mishandling trust funds warranted. *In re Gabriel*, 1990-NMSC-091, 110 N.M. 691, 799 P.2d 127.

Disbarment appropriate for attorney convicted of tampering with evidence and making false report. *In re McCulloch*, 1985-NMSC-117, 103 N.M. 542, 710 P.2d 736.

Disbarment for manufacturing evidence. — When an attorney, who is an officer of the court and whose duty is it to protect the integrity of the adversarial system, intentionally lies under oath and manufactures documents designed to achieve an

advantage in litigation, he demonstrates a complete lack of fitness to practice law. *In re Gabell*, 1993-NMSC-045, 115 N.M. 737, 858 P.2d 404.

Disbarment held to be warranted. — Disbarment was warranted where an attorney was found to have violated the Code of Professional Responsibility (now Rules of Professional Conduct) by forging his client's name to a settlement check and absconding with her money, by charging a clearly excessive fee, and by failing to cooperate with the Disciplinary Board in its investigation. *In re Hill*, 1987-NMSC-037, 105 N.M. 641, 735 P.2d 1147.

Disbarment was warranted for an attorney's actions in taking money from clients and thereafter performing little or no work, as well as for his conversion of trust monies to his own use. *In re Nails*, 1987-NMSC-036, 105 N.M. 639, 735 P.2d 1145.

Disbarment was warranted for an attorney convicted of bribery in violation of 30-24-2 NMSA 1978. *In re Esquibel*, 1992-NMSC-007, 113 N.M. 24, 822 P.2d 121.

It was appropriate to impose discipline identical to that imposed by the State of Texas, since defendant was originally suspended by a New Mexico court, yet failed or refused to abide by the orders of the court that he comply with the notice requirements, failed to appear before court and failed to show cause why discipline identical to that imposed in Texas should not be imposed here. *In re Deutsch*, 1992-NMSC-034, 113 N.M. 711, 832 P.2d 402.

Disbarment of an attorney was warranted where, based on his pleas of guilty to three counts of fraud and three counts of embezzlement, a hearing committee of the disciplinary board concluded that he violated Paragraphs B and H of Rule 16-804. *In re Frontino*, 2001-NMSC-010, 130 N.M. 175, 21 P.3d 635.

Disbarment of an attorney for 20 months, with automatic reinstatement on a probationary basis, was warranted based on the necessary intervention in his law practice because he was abusing crack cocaine and on his admission that during his drug addiction he had misappropriated money from his attorney trust account in violation of Paragraph A of Rule 16-115, by failing to safeguard a client's property, and Paragraphs C and H of Rule 16-804, by engaging in conduct involving dishonesty, and conduct adversely reflecting upon one's fitness to practice law. *In re Zamora*, 2001-NMSC-011, 130 N.M. 161, 21 P.3d 30.

Lawyer was disbarred for five-year period for conduct involving paying personal expenses from his trust account, converting client funds, lying to a court, and failing to cooperate with disciplinary counsel. *In re Quintana*, 2001-NMSC-021, 130 N.M. 627, 29 P.3d 527.

Disbarment was warranted where the respondent engaged in violations of Rules 16-101, 16-103, 16-107(B), 16-302, 16-303(A), 16-305(C), 16-404, 16-801(A), 16-804(D), and 16-804(H). *In re Neal*, 2003-NMSC-032, 134 N.M. 611, 81 P.3d 47.

New evidence of misconduct prior to original suspension. — When, while an attorney's license was suspended, additional charges were filed and the misconduct alleged was serious, but the alleged misconduct occurred prior to the original order of suspension and also he agreed to make restitution to the clients involved, assured the supreme court that these problems had been addressed and would not recur in the future, attended several CLE courses, undertook to revise his fee agreement forms, had (prior to his suspension) maintained his trust account in a manner satisfactory to an auditor selected by the disciplinary board, and had also taken and passed the Multistate Professional Responsibility Examination and, by all appearances, had modified his attitude toward his professional and ethical obligations, he was reinstated to the practice of law, but his license to practice was suspended for an additional period of one year pursuant to Paragraph A(2) but said period of suspension was deferred and he was placed on probation under certain terms and conditions. *In re Rawson*, 1987-NMSC-071, 106 N.M. 172, 740 P.2d 1156.

Facts warranted extending an attorney's existing suspension for one additional year, for prior misconduct which came to light after suspension had been imposed. *In re Tapia*, 1990-NMSC-092, 110 N.M 693, 799 P.2d 129.

Six-month suspension was deferred for one year, since there were mitigating factors, and respondent, who had experienced a drinking problem during the period when the misconduct occurred, had abstained from the use of alcohol for more than six months. *In re Rivera*, 1991-NMSC-064, 112 N.M. 217, 813 P.2d 1015.

Mental disability can be considered in mitigation only if the attorney's recovery from the condition can be demonstrated by a meaningful and sustained period of successful rehabilitation. Thus, a mental disability, such as depression, can only mitigate the discipline to be imposed if it can be demonstrated that the condition is no longer likely to result in harm to the public. *In re Smith*, 1993-NMSC-042, 115 N.M. 769, 858 P.2d 857.

ABA Standards. — In imposing discipline, the court looks to the ABA Standards for Imposing Lawyer Sanctions. *In re Estrada*, 2006-NMSC-047, 140 N.M. 492, 143 P.3d 731.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 33 to 35.

Attorney's failure to report promptly receipt of money or property belonging to client as ground for disciplinary action, 91 A.L.R.3d 975.

Conduct of attorney in connection with settlement of client's case as ground for disciplinary action, 92 A.L.R.3d 288.

Conduct of attorney in capacity of executor or administrator of decedent's estate as ground for disciplinary action, 92 A.L.R.3d 655.

Disciplinary action against attorney based on misconduct prior to admission to bar, 92 A.L.R.3d 807.

Attorney's commingling of client's funds with his own as ground for disciplinary action - modern status, 94 A.L.R.3d 846.

Restitution as mitigating circumstance in disciplinary action against attorney based on wrongful conduct, 95 A.L.R.3d 724.

Disciplinary action against attorney for misconduct related to performance of official duties as prosecuting attorney, 10 A.L.R.4th 605.

Validity and construction of procedures to temporarily suspend attorney from practice, or place attorney on inactive status, pending investigation of, and action upon, disciplinary charges, 80 A.L.R.4th 136.

17-207. Summary suspension.

A. **Summary suspension.**

(1) *Petition for summary suspension.* Upon recommendation by the Disciplinary Board, an attorney may be summarily suspended from the practice of law by the Supreme Court

(a) upon the filing with the Supreme Court of a certified copy of a judgment finding an attorney guilty of a felony or other serious crime, as provided in Rule 16-804 NMRA of the Rules of Professional Conduct;

(b) upon the Disciplinary Board demonstrating by certificate or otherwise that an attorney has been convicted of or has pleaded guilty or no contest to a felony or serious crime;

(c) upon the filing with the Supreme Court of an order or judgment declaring the attorney to be incompetent or incapacitated;

(d) upon the Disciplinary Board demonstrating by certificate or otherwise that an attorney is incapacitated from continuing to practice law or to defend himself or herself; or

(e) upon the filing in the Supreme Court and service upon an attorney by chief disciplinary counsel of a petition which sets forth facts demonstrating that the continued practice of law by an attorney will result in a substantial probability of harm, loss, or damage to the public and that

(i) the attorney is under investigation by disciplinary counsel for an alleged violation of the Rules of Professional Conduct or a violation of a court rule, statute, or other law;

(ii) formal disciplinary charges have been filed against the attorney; or

(iii) a criminal complaint, information, or indictment has been filed against the attorney. Prior to suspending an attorney pursuant to this Subparagraph (A)(1)(e), the Supreme Court shall cause to be served on the attorney an order to show cause why the petition of chief disciplinary counsel should not be granted and requiring the attorney to appear before the Supreme Court to respond to the allegations set forth in the petition. The petition shall be served on the attorney at least ten (10) days prior to the date set for the hearing unless a shorter time is ordered by the Supreme Court. At any time prior to the hearing, an attorney may file an answer to the petition. A copy of the answer shall be served on chief disciplinary counsel.

(2) *Suspension order.* Upon a showing made pursuant to Subparagraph (A)(1) of this rule, the Supreme Court may enter an order immediately suspending the attorney pending the conclusion of a disciplinary proceeding, regardless of the pendency of an appeal from the conviction of a felony or serious crime or order or judgment declaring the attorney to be incompetent or incapacitated.

(3) *Evidence of commission of crime.* A judgment or plea of guilty or no contest by an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

(4) *Reinstatement.* An attorney suspended under the provisions of Subparagraph (A)(1) of this rule shall be reinstated immediately upon the filing of a certificate by the Disciplinary Board demonstrating that,

(a) if the suspension was for conviction of a crime, the underlying conviction for the felony or other serious crime has been reversed and no further proceedings have been ordered by the reviewing court;

(b) if the suspension was imposed because of incompetency or incapacity, the Disciplinary Board certifies that such incapacity or incompetency no longer exists; or

(c) if the suspension was imposed on a showing that the continued practice of law by the attorney would result in a substantial probability of harm, loss, or damage to the public, the Disciplinary Board certifies that such a probability no longer exists.

(5) *Effect of reinstatement.* Reinstatement after a summary suspension ordered under the provisions of Subparagraph (A)(1) of this rule shall not terminate any formal disciplinary proceeding then pending against the attorney, the disposition of

which shall be determined by the hearing committee and the Disciplinary Board as provided in these rules.

(6) *Duty of clerk or judge.* Any clerk or judge of any court within this state who has knowledge that a member of the bar of this state has been convicted of a felony or other serious crime shall, within ten (10) days of said conviction, transmit a certificate thereof to the Disciplinary Board.

(7) *Failure to forward certificate.* Upon being advised that an attorney has been convicted of a felony or other serious crime within this state, disciplinary counsel shall determine whether the court in which the conviction occurred has forwarded a judgment of conviction to the Disciplinary Board in accordance with the provisions of this rule. If the judgment has not been forwarded to the Disciplinary Board, or if the conviction occurred in another jurisdiction, it shall be the responsibility of disciplinary counsel to obtain a copy of the judgment of the conviction.

B. **Administrative suspension for failure to cooperate.**

(1) *Application.* The provisions of this paragraph shall apply in all cases where there is a request for investigation or a specification of charges pending against an attorney under these rules. If the respondent-attorney fails to cooperate by

(a) failing to respond to requests for information;

(b) failing to respond to requests for investigation;

(c) failing to appear for a scheduled deposition or hearing;

(d) failing to answer the specification of charges; or

(e) failing to produce information or records requested by disciplinary counsel absent a good-faith objection, then disciplinary counsel may file a petition for suspension of the attorney's license to practice law. Proceedings commenced against an attorney under the provisions of this paragraph are administrative suspension proceedings. Suspension of an attorney's license to practice law under the provisions of this paragraph is not a form of discipline and shall not necessarily bar disciplinary action.

(2) *Petition for suspension.* Disciplinary counsel may file a petition for suspension with the Supreme Court alleging that the attorney has not responded to requests for information, has not responded to the request for investigation, has not appeared for a scheduled deposition or hearing, has not timely answered the specification of charges, or has not produced records or documents requested by disciplinary counsel and has not interposed a good-faith objection to producing the records or documents. The petition shall be supported by an affidavit setting forth sufficient facts to demonstrate the efforts undertaken by disciplinary counsel to obtain

the attorney's cooperation and compliance. A copy of the petition shall be served on the respondent-attorney pursuant to Rule 17-301(C) NMRA.

(3) *Response to the petition.* If the respondent-attorney fails to file a response in opposition to the petition within fourteen (14) days after service of the petition, the Supreme Court may enter an order suspending the attorney's license to practice law until further order of the Supreme Court. The attorney's response shall set forth facts showing that the attorney has complied with the requests or the reasons why the attorney has not complied, and the attorney may request a hearing.

(4) *Supreme Court action.* Upon consideration of a petition for suspension and the attorney's response, if any, the Supreme Court may suspend the attorney's license to practice law for an indefinite period pending further order of the Supreme Court, deny the petition, or issue any other appropriate orders. If a response to the petition is filed and the attorney requests a hearing on the petition, the Supreme Court may conduct a hearing or it may refer the matter to the Disciplinary Board for an expedited evidentiary hearing pursuant to Rule 17-314(E) NMRA. The board's findings of fact and recommendations shall be sent directly to the Supreme Court within seven (7) days after receipt of the parties' proposed findings and conclusions if requested by the board.

(5) *Reinstatement.* An attorney suspended under Paragraph B of this rule may apply to the Supreme Court for reinstatement upon proof of compliance with the requests of disciplinary counsel as alleged in the petition, or as otherwise ordered by the Court. A copy of the application must be delivered to disciplinary counsel, who may file a response to the application within two (2) business days after being served with a copy of the application. The Supreme Court may summarily reinstate an attorney suspended under the provisions of this paragraph upon proof of compliance with the requests of disciplinary counsel.

[As amended by Supreme Court Order No. 13-8300-045, effective December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-045, effective December 31, 2013, provided for administrative suspension for failure to cooperate; in Subparagraph (1) of Paragraph A, added the title of the subparagraph; in Paragraph B, in the first unnumbered paragraph, in the first sentence, after "Subparagraph", deleted the parenthesis and number "(5)", added the letters and number "(A)(1)(e)", and in the second sentence, after "is ordered by the", deleted "court" and added "Supreme Court"; in Subparagraph (2) of Paragraph A, after "made pursuant to", deleted "Paragraph A" and added "Subparagraph (A)(1)"; in Subparagraph (4) of Paragraph A, after "the provisions of", deleted "Paragraph A" and added "Subparagraph (A)(1)"; in Subparagraph (5) of Paragraph A, after "a summary suspension", added "ordered under the provisions of Subparagraph (A)(1) of this rule"; and added Paragraph B.

Moral turpitude is not necessary element to support discipline, nor is it synonymous with "conduct contrary to honesty, justice or good morals". *In re Morris*, 1964-NMSC-235, 74 N.M. 679, 397 P.2d 475 (decided under former disciplinary rules 21-2-1(3), div. 3 (2.04) to (2.06), 1953 Comp., of the former "Supreme Court Rules").

Question in disbarment is whether act contrary to good morals. — Whether the misconduct with which a person is charged is a crime involving moral turpitude or, if a crime, whether it is malum prohibitum or malum in se or, for that matter, if the act is neither a felony or misdemeanor is not the issue. The true question in considering disbarment is: was the act to which respondent pleaded guilty "contrary to honesty, justice or good morals"? *In re Morris*, 1964-NMSC-235, 74 N.M. 679, 397 P.2d 475 (decided under former disciplinary rules, 21-2-1(3), div. 3 (2.04) to (2.06), 1953 Comp., of the former "Supreme Court Rules").

Attorneys should not be allowed to practice law while on probation under a criminal sentence and the court may disbar such an attorney until he is no longer on probation. *In re Norrid*, 1983-NMSC-076, 100 N.M. 326, 670 P.2d 580.

Second-degree murder conviction justifies disbarment. — Since there was a judgment of conviction of second-degree murder preceded by a plea of nolo contendere, it amounted to conclusive proof of a crime involving moral turpitude and disbarment was justified. *In re Noble*, 1967-NMSC-038, 77 N.M. 461, 423 P.2d 984 (decided under former disciplinary rules, 21-2-1(3), div. 3 (2.04) to (2.06), 1953 Comp., of the former "Supreme Court Rules").

False statement and attempted tax evasion justify suspension. — An attorney convicted of false statement and attempted tax evasion, in relation to his legal obligations under the New Mexico gross receipts tax laws, was suspended from the practice of law in all courts in the state for a period of 13 months, with the last six months of the suspension lifted and deferred on condition of his compliance with the terms of his probation. *In re Martin*, 1977-NMSC-012, 90 N.M. 226, 561 P.2d 925.

Involuntary manslaughter sufficient to support suspension. — When a member of the bar is guilty of the crime of involuntary manslaughter resulting from driving a motor vehicle while under the influence of intoxicating liquor, such offense is an act contrary to honesty, justice or good morals sufficient to support a suspension from practice. *In re Morris*, 1964-NMSC-235, 74 N.M. 679, 397 P.2d 475 (decided under former disciplinary rules, 21-2-1(3), div. 3 (2.04) to (2.05), 1953 Comp., of the former "Supreme Court Rules").

Although the first offense of driving while under the influence of intoxicating liquor when considered with the penalty provided is a petty offense, it does not follow that the offense of involuntary manslaughter, which requires a much greater penalty, is likewise a petty offense as under our law it is clearly a felony. *In re Morris*, 1964-NMSC-235, 74 N.M. 679, 397 P.2d 475 (decided under former disciplinary rules, 21-2-1(3), div. 3 (2.04) to (2.06), 1953 Comp., of the former "Supreme Court Rules").

Six-month suspension and other penalties warranted since attorney accepted one-half of fee and failed to represent client, allowing default to be entered against client. *In re Trujillo*, 1990-NMSC-062, 110 N.M. 180, 793 P.2d 862.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 74 to 83.

Federal income tax conviction as involving moral turpitude warranting disciplinary action against attorney, 63 A.L.R.3d 476.

Federal income tax conviction as constituting nonprofessional misconduct warranting disciplinary action against attorney, 63 A.L.R.3d 512.

Disciplinary action against attorney prior to exhaustion of appellate review of conviction, 76 A.L.R.3d 1061.

7 C.J.S. Attorney and Client §§ 71 to 75.

17-208. Incompetency or incapacity.

A. **Disability inactive status.**

(1) In addition to or in lieu of the provisions of Rule 17-207 NMRA, where it is shown that an attorney is unable to fulfill professional responsibilities competently because of physical, mental, or emotional infirmity, impairment, incapacity, or illness, the Disciplinary Board may petition the Supreme Court to place the attorney on disability inactive status. If the Court places an attorney on disability inactive status the attorney shall not engage in the practice of law.

(2) Proceedings instituted against an attorney under this paragraph are disability or incapacity proceedings, not disciplinary proceedings. Transfer to disability inactive status is not a form of discipline and does not involve a finding of a violation of the Rules of Professional Conduct. The pendency of proceedings provided for by this rule shall not defer or abate other proceedings, including disciplinary proceedings conducted under the Rules Governing Discipline, unless the Supreme Court or the Disciplinary Board determines that the attorney is unable to assist in the defense of those other proceedings because of the disability or incapacity. If such other proceedings are deferred, then the deferral shall continue until such time as the attorney is found to be eligible for reinstatement as provided in Paragraph E of this rule.

B. **Transfer to disability inactive status upon determination of incompetency, disability, or incapacity.** When an attorney has been judicially declared incompetent or has been involuntarily committed for treatment for a mental or emotional condition, after appropriate judicial proceedings, or has been found not guilty of a crime by reason of insanity after appropriate judicial proceedings, the Supreme Court, upon receipt of a certificate and the recommendations from the Disciplinary Board so showing, may enter

an order transferring such attorney to disability inactive status effective immediately and for an indefinite period until the further order of the Supreme Court. The attorney, upon request, shall be afforded an opportunity to be heard on the continuation of the disability inactive status. A copy of such order shall be served upon the attorney, the attorney's guardian, and, if applicable, the director of the mental facility in such manner as the Supreme Court may direct.

C. **Procedure when a determination of incapacity is sought.** Except for those situations set forth in Paragraph B of this rule, whenever the Disciplinary Board believes that an attorney is unable to fulfill professional responsibilities competently because of physical, mental, or emotional infirmity, impairment, incapacity, or illness, the Disciplinary Board may, in addition to or instead of proceeding under Rule 17-207 NMRA, petition the Supreme Court to determine whether the attorney is incapacitated from continuing the practice of law and whether the attorney should be transferred to disability inactive status. Upon receipt of such a petition, the Supreme Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Supreme Court may designate and an expedited hearing before the Disciplinary Board under the provisions of Paragraph E of Rule 17-314 NMRA. If, upon due consideration of the matter, the Supreme Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order placing the attorney on disability inactive status on the ground of such disability or incapacity for an indefinite period and until the further order of the Supreme Court. Pending disciplinary proceedings against the attorney may be held in abeyance. The Supreme Court shall provide for such notice to the respondent-attorney of proceedings in the matter as is consistent with fundamental fairness and due process and may appoint an attorney to represent the respondent-attorney if the respondent-attorney is without adequate representation.

D. **Inability to defend self during disciplinary proceeding.** If, during the course of a disciplinary proceeding, the respondent-attorney contends, or it becomes apparent to the hearing committee or the Disciplinary Board, that the respondent-attorney is incapacitated to an extent which makes it impossible for the respondent-attorney to adequately present a defense, the hearing committee or the Disciplinary Board may order that the disciplinary proceedings be suspended and the matter may proceed in accordance with Paragraph C of this rule. Alternatively or additionally, in the discretion of the Disciplinary Board, it may move the Supreme Court under Rule 17-207 NMRA to enter an order immediately suspending the respondent-attorney from continuing to practice law. If the respondent-attorney is transferred to disability inactive status, the disciplinary proceedings shall be stayed until such time as the respondent-attorney is found to be eligible for reinstatement as provided in Paragraph E of this rule. If, in the course of a proceeding under this rule and Paragraph C, the Supreme Court determines that the respondent-attorney is not incapacitated from practicing law, it shall take such action as it deems proper and advisable, including a direction for the resumption of the disciplinary proceeding against the respondent-attorney.

E. **Reinstatement.** Unless otherwise determined by the Court in the course of a disability inactive proceeding, an attorney placed on disability inactive status under the terms of this rule may apply for reinstatement in accordance with Rule 17-214(C), (D) and (E) NMRA.

F. **Burden of proof.** In a proceeding under Paragraph C of this rule, the burden of proof by a preponderance of the evidence shall rest with the Disciplinary Board.

G. **Proceedings under seal.** Upon the request of the Disciplinary Board or the attorney, proceedings taken under this rule may be placed under seal in the sole discretion of the Supreme Court.

[As amended, effective September 1, 1994; January 1, 1995; as amended by Supreme Court Order No. 13-8300-045, effective December 31, 2013; as amended by Supreme Court Order No. 16-8300-026, effective December 31, 2016.]

ANNOTATIONS

The 2016 amendment, approved by Supreme Court Order No. 16-8300-026, effective December 31, 2016, qualified an attorney's ability to apply for reinstatement after being placed on disability inactive status, changed "pursuant to" to "under" throughout the rule and made technical revisions; in Subparagraph (A)(2), after "including disciplinary", changed "proceeding" to "proceedings"; and in Paragraph E, added "Unless otherwise determined by the Court in the course of a disability inactive proceeding", and after "Rule 17-214(C)", added "(D) and (E)".

The 2013 amendment, approved by Supreme Court Order No. 13-8300-045, effective December 31, 2013, provided for disability inactive status; the procedure for determination of incapacity, alternative proceedings when an attorney in a disciplinary hearing cannot present a defense because of incapacity, reinstatement, and sealing the proceedings; added Paragraph A; in Paragraph B, in the title of the paragraph, at the beginning of the title, deleted "Determination" and added "Transfer to disability inactive status upon determination", after "of incompetency", added "disability, or incapacity", in the first sentence, after "judicial proceedings", added "or has been found not guilty of a crime by reason of insanity after appropriate judicial proceedings", after "may enter an order", deleted "suspending" and added "transferring", and after "such attorney", deleted "from the practice of law" and added "to disability inactive status", in the second sentence, after "on the continuation of the", deleted "suspension" and added "disability inactive status", and in the third sentence, after "served upon the", deleted "incompetent", after "attorney's guardian and", added "if applicable", and after "in such manner as the", added "Supreme"; in Paragraph C, in the title of the paragraph, at the beginning of the title, deleted "Determination" and added "Procedure when a determination" and after "of incapacity", added "is sought", in the first sentence, at the beginning of the sentence, deleted "Whenever" and added the language beginning with "Except" and ending with "illness", after "Disciplinary Board", deleted "shall" and added "may, in addition to or instead of proceeding under Rule 17-207 NMRA", and after "the

practice of law", added the remainder of the sentence, in the second sentence, at the beginning of the sentence, added "Upon receipt of such a petition", in the third sentence, after "shall enter an order", deleted "suspending" and added "placing", after "placing the attorney", added "on disability inactive status", and after "Supreme Court", deleted "and any pending" and a period, and in the fourth sentence, at the beginning of the sentence, added "Pending"; in Paragraph D, in the first sentence, after "adequately present a defense", added the remainder of the sentence, in the second sentence, at the beginning of the sentence, added "Alternatively or additionally, in the discretion of the Disciplinary Board, it may move", after "the Supreme Court", deleted "thereupon may", and after "continuing to practice law", deleted "until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of Paragraph B of this rule", added the third sentence, in the fourth sentence, after "proceeding under this rule", deleted "or in a disciplinary proceeding" and added "and Paragraph C"; in Paragraph E, deleted the former language of the paragraph that provided for the reinstatement of an attorney suspended under the rule after one year and at the end of each year after the date of the suspension order, and added the current language of the paragraph; in Paragraph F, after "proceeding", deleted "seeking an order of suspension under this rule" and added "under Paragraph C of this rule"; and added Paragraph G.

The 1995 amendment, effective January 1, 1995, added "and an expedited hearing before the Disciplinary Board pursuant to the provisions of Paragraph E of Rule 17-314" at the end of the first sentence in Paragraph B.

The 1994 amendment, effective September 1, 1994, inserted "or it becomes apparent to the hearing committee or the Disciplinary Board" near the beginning of Paragraph C, inserted "by a preponderance of the evidence" in Paragraph E, and made gender neutral changes throughout the rule.

Cross references. — For adjudication of incompetency generally, see 45-5-301 to 45-5-307 NMSA 1978.

Health issues. — Health issues generally are not considered in mitigation in disciplinary proceedings. *In re Martin*, 1999-NMSC-022, 127 N.M. 321, 980 P.2d 646.

Neither mental nor physical infirmity provides a defense to charges of professional misconduct. *In re Martin*, 1999-NMSC-022, 127 N.M. 321, 980 P.2d 646.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 36 to 39.

Validity and construction of rule or order requiring attorney to submit to physical or mental examination to determine capacity to continue in practice of law, 52 A.L.R.3d 1326.

Mental or emotional disturbance as defense to or mitigation of charges against attorney in disciplinary proceeding, 26 A.L.R.4th 995.

7 C.J.S. Attorney and Client § 66.

17-209. Resignation by attorneys under investigation.

A. **Protection of public.** An attorney who is the subject of an investigation into allegations of misconduct may resign from the bar of this state only with consent of the Supreme Court and upon such just terms as the Court may impose for the protection of the public.

B. **Sworn statement.** An attorney wishing to resign under the provisions of this rule shall submit a sworn written statement to the Supreme Court admitting to the truth of the charges served, or if no charges have been served by the Disciplinary Board, admitting to the truth of the allegations filed against the attorney and consenting to the Supreme Court requiring reasonable conditions for protection of the public, including making a permanent record of the fact of the resignation under this rule with all appropriate authorities, state or national.

C. **Procedure.** The Supreme Court shall notify disciplinary counsel of any application to resign and disciplinary counsel may submit such matter of fact or argument as disciplinary counsel may desire. The Court shall then enter its order accepting or rejecting the tendered resignation upon such just terms as may be appropriate.

D. **Final order.** The application for leave to resign and the Supreme Court's final order disposing thereof are matters of public record and subject to publication.

E. **Reinstatement.** Any attorney whose resignation under this rule is accepted may not apply for readmission or reinstatement to the bar of this state, except by leave of the Supreme Court which the Supreme Court may grant or deny in its sole discretion. If the Supreme Court allows an application for readmission to be filed, the matter shall be referred to the Disciplinary Board for review in accordance with Rule 17-214. The Supreme Court may in the order accepting a resignation provide that an attorney may not apply for readmission or reinstatement to the bar of this state, or it may set a minimum time period that must pass before an attorney may apply for readmission or reinstatement. If the Supreme Court does not prohibit an attorney from applying for readmission or reinstatement and does not otherwise set a minimum time period before such an application may be filed, any attorney who resigns may not apply for readmission or reinstatement any sooner than three (3) years after the attorney’s resignation is effective. If the Supreme Court allows an attorney to apply for readmission or reinstatement, the Court may condition reinstatement upon: (1) the successful completion of the New Mexico Bar Examination prior to reinstatement; (2) a character and fitness evaluation by the Board of Bar Examiners, with the applicant paying whatever fee the Board of Bar Examiners determines is appropriate for such evaluation,

and directing that any recommendations based on such evaluation shall be made a part of the record during reinstatement proceedings; (3) a medical, mental health and/or substance abuse evaluation by an evaluator approved by the Court and paid for by the applicant to determine the applicant's fitness to return to the practice of law; (4) the successful completion of all continuing education credit requirements applicable to active, licensed New Mexico attorneys for each compliance year during the applicant's absence from practice; (5) taking and attaining at least an 85 scaled score on the Multi-State Professional Responsibility Examination given by the Board of Bar Examiners; and (6) such other conditions as the Court may require.

[As amended by Supreme Court Order No. 12-8300-008, effective April 5, 2012.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-008, effective April 5, 2012, permitted the Supreme Court to deny an attorney who has resigned the right to apply for readmission or reinstatement and to set minimum time periods before an attorney may apply for readmission or reinstatement, specified requirements the Supreme Court may impose as conditions of reinstatement; provided that if the Supreme Court does not set a minimum time period before an attorney may apply for readmission or reinstatement, the minimum time period is three years after the date of the resignation; in Paragraph B, after "sworn written statement", added "to the Supreme Court"; after "admitting to the truth of the charges", deleted "against him" and added "served"; in Paragraph C, in the first sentence, after "any application to resign and", added "disciplinary"; in Paragraph D, after "public record", added "and subject to publication"; and in Paragraph E, in the first sentence, after "except by leave of the Supreme Court", added the remainder of the sentence: in the second sentence, after "The Supreme Court may", added the remainder of the sentence; added the fourth sentence; and in the fifth sentence, added the language before "the Multi-State Professional Responsibility Examination", and added the remainder of the sentence after "the Multi-State Professional Responsibility Examination".

Voluntary surrender of license. — When respondent, at the hearing before the Supreme Court on charges of commingling of funds, offered to surrender his license to practice, and requested that such voluntary surrender of his license be accepted by the court under the provisions of Rule 3.04 of the Rules for Disciplinary Procedure adopted August 22, 1960 (after the misconduct charged occurred), he could not, after the court's acceptance of his license, thereafter be heard to complain that such rule was inapplicable. *State Bar of N.M. v. Muldavin*, 1963-NMSC-005, 71 N.M. 230, 377 P.2d 526 (decided pursuant to 21-2-1(3), div. 3 (3.04), 1953 Comp.)

Resignation by attorney permissible. — Resignation by attorney was permissible since there were no allegations or admissions establishing conclusively that the attorney who commingled client funds actually converted the funds to his own use and where the attorney acknowledged his wrongdoing and requested permission to resign prior to the

conclusion of a hearing and the entry of findings of misconduct. *In re Norton*, 1991-NMSC-100, 113 N.M. 56, 823 P.2d 298.

Resignation by attorney is not permissible if it has been found that he engaged in intentional misconduct involving misrepresentation and moral turpitude in the misappropriation of his clients' funds and after receiving notice that the Disciplinary Board had recommended his disbarment to the court. *In re Duffy*, 1985-NMSC-034, 102 N.M. 524, 697 P.2d 943.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 27.

Propriety of attorney's resignation from bar in light of pending or potential disciplinary action, 54 A.L.R.4th 264.

7 C.J.S. Attorney and Client §§ 5, 59.

17-210. Reciprocal discipline.

A. **Discipline in another jurisdiction.** Upon being disciplined, summarily suspended, transferred to inactive status, or suspended due to incompetency, incapacity, or disability, or resigning during the pendency of a disciplinary investigation or proceeding in another jurisdiction, a lawyer admitted to practice in this state shall immediately inform disciplinary counsel of this state. Upon receipt of such notification, disciplinary counsel shall obtain a certificate of the disciplinary order, suspension, transfer, or resignation from the other jurisdiction and may file it with the Disciplinary Board and the Supreme Court along with a motion to impose reciprocal discipline.

B. **Order of the Supreme Court.** Upon receipt of a certificate that an attorney admitted to practice in this state has been disciplined, summarily suspended, transferred to disability inactive status, or suspended due to incompetency, incapacity, or disability, or resigned during the pendency of a disciplinary investigation or proceeding in another jurisdiction, and a motion by disciplinary counsel, the Supreme Court may enter an order imposing the identical discipline or, in its discretion, may

(1) modify the discipline upon motion of the respondent-attorney or disciplinary counsel in accordance with Paragraph D of this rule; or

(2) suspend the attorney pending investigation and the imposition of final discipline in accordance with these rules.

C. **Stay of discipline.** In the event the discipline imposed in the other jurisdiction has been stayed there, the entry of an order under the provisions of Paragraph B of this rule may be deferred until such stay expires.

D. **Modification of discipline.** At the time the motion for discipline is filed or in response to the motion, the Disciplinary Board or the respondent-attorney may move

the Supreme Court for an order modifying the reciprocal discipline upon the ground that upon the face of the record upon which the discipline is predicated, it clearly appears

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Supreme Court could not accept as final the conclusion on that subject;

(3) the imposition of the same discipline by the Supreme Court would result in grave injustice; or

(4) the misconduct established has been held by the Supreme Court to warrant substantially different or greater discipline.

E. **Suspension.** In the event the Supreme Court suspends the attorney who has been disciplined, summarily suspended, transferred to disability inactive status, or suspended due to incompetency, incapacity, or disability, or who has resigned during the pendency of a disciplinary investigation or proceeding in another jurisdiction pending imposition of final discipline, under the provisions of Paragraph B of this rule, the Court shall issue an order requiring the attorney to show cause why the identical or other discipline should not be imposed in this jurisdiction. The attorney's response to the order to show cause shall be limited to the above-enumerated criteria as reflected in the record of the proceeding resulting in the imposition of discipline in the foreign jurisdiction.

F. **Evidence of misconduct.** In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this state.

G. **Reinstatement.** Except in the case of disbarment, in the event the Supreme Court imposes discipline upon an attorney or places an attorney on disability inactive status solely under the terms of this rule, upon proof by the attorney of reinstatement to practice in the other jurisdiction that led to reciprocal discipline or disability inactive status in this jurisdiction, the attorney may petition the Supreme Court to be reinstated to practice. The attorney shall file with the petition a certified copy of all opinions and orders reinstating the attorney to practice in the other jurisdiction, and serve a copy of the petition and supporting documents upon disciplinary counsel. The attorney will automatically be reinstated by order of the Supreme Court fourteen (14) days after service of the petition upon disciplinary counsel unless, prior to the expiration of such time, disciplinary counsel has filed with the Supreme Court written objections. If objections are filed, the application shall be referred to the Disciplinary Board which shall proceed to handle the matter under Rule 17-214(E) NMRA. In accordance with Rule 17-214(A) NMRA, an attorney who has been reciprocally disbarred may not apply

for reinstatement regardless of whether the jurisdiction that led to the reciprocal disbarment readmits the attorney.

[As amended by Supreme Court Order No. 12-8300-008, effective April 5, 2012; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015; as amended by Supreme Court Order No. 18-8300-009, effective December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-009, effective December 31, 2018, provided the reinstatement process for an attorney who has received reciprocal discipline in this jurisdiction after being disciplined in another jurisdiction, and made certain technical language changes; added Paragraph G.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-022, effective December 31, 2015, authorized the Supreme Court to modify the reciprocal discipline for an attorney that has been disciplined in another jurisdiction and amended the deadlines for the filing of a motion to modify reciprocal discipline; added new Subparagraph B(1) and designated the remainder of the paragraph as Subparagraph B(2); in Paragraph D, added “At the time the motion for discipline is filed or in response to the motion”, and after “Supreme Court”, deleted “within thirty (30) days after the entry of an order imposing reciprocal discipline pursuant to the provisions of Paragraph B of this rule”.

The 2012 amendment, approved by Supreme Court Order No. 12-8300-008, effective April 5, 2012, required an attorney who has been disciplined, suspended, transferred to inactive status or who has resigned during a disciplinary action in another state to inform disciplinary counsel in New Mexico; authorized disciplinary counsel to seek reciprocal discipline in New Mexico; added a new Paragraph A; in Paragraph B, after "in this state has been disciplined", added the language preceding "in another jurisdiction" and after "in another jurisdiction" added "and a motion by disciplinary counsel"; and in Paragraph E, in the first sentence, after "Supreme Court suspends the attorney" added "who has been", after "attorney who has been disciplined", added the language before "in another jurisdiction", and after "Paragraph", changed "A" to "B".

Federal court system is "foreign jurisdiction". — The federal court system is a "foreign jurisdiction" within the meaning of this rule. *In re Allred*, 1989-NMSC-053, 108 N.M. 666, 777 P.2d 905.

No automatic disbarment for federal disbarment. — Because the privilege of practicing before a federal court generally is contingent solely upon one's admission to a state bar and can be summarily withdrawn for violations of the federal court's procedural rules, New Mexico will not automatically impose the sanction of disbarment when one is disbarred from practice in a federal court. *In re Roberts-Hohl*, 1994-NMSC-004, 116 N.M. 700, 866 P.2d 1167.

Public censure and suspension appropriate. — Public censure and a period of supervised probation was the appropriate sanction in the case of an attorney who had been disbarred from practice before a federal court, where there was no claim by the attorney's client that he was harmed, nor any statement by the federal court that the attorney's conduct violated any ethical rules. *In re Allred*, 1989-NMSC-053, 108 N.M. 666, 777 P.2d 905.

Disbarment held to be warranted. — It was appropriate to impose discipline identical to that imposed by the State of Texas, where defendant was originally suspended by a New Mexico court, yet failed or refused to abide by the orders of the court that he comply with the notice requirements, failed to appear before court and failed to show cause why discipline identical to that imposed in Texas should not be imposed here. *In re Deutsch*, 1992-NMSC-034, 113 N.M. 711, 832 P.2d 402).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 81.

Disbarment or suspension of attorney in one state as affecting right to continue practice in another state, 81 A.L.R.3d 1281.

7A C.J.S. Attorney and Client §§ 120, 121.

17-211. Discipline by consent; stipulated facts.

A. **Conditional admission.** At any time prior to a hearing committee holding a formal hearing and issuing its findings of fact, conclusions of law, and recommended discipline, an attorney against whom formal charges have been made may tender to disciplinary counsel, by a sworn written statement, a conditional agreement admitting to or agreeing not to contest any or all of the allegations or charges.

B. **Acceptance.** The tendered agreement shall be submitted to the hearing committee for consideration along with the recommendations of disciplinary counsel. Within thirty (30) days of the agreement being tendered to the hearing committee, the hearing committee shall issue a decision either accepting or rejecting the agreement. In considering the agreement and reaching its decision, the hearing committee shall take any and all steps that it deems are reasonably necessary to consider the factual basis for the admission of, or agreement not to contest, any or all of the allegations or charges, including the factual basis for the finding of, or agreement that, the respondent-attorney has violated the New Mexico Rules of Professional Conduct and that the agreed upon discipline is appropriate in light of the stipulated misconduct and the previous discipline imposed in reasonably similar matters. Such steps may include, but are not limited to, admitting and considering stipulated exhibits, reviewing any written admissions or stipulations of fact offered to the committee, reviewing memoranda or briefs submitted by either the respondent-attorney or disciplinary counsel, or, in the committee’s discretion, setting a hearing to question and otherwise take testimony from the respondent-attorney and, if necessary, other witnesses, concerning the agreement. If the hearing committee rejects the agreement, it shall

proceed to schedule and conduct a hearing pursuant to Rule 17-313 NMRA. If the hearing committee accepts the agreement, it shall forward it to the board along with an explanation of its reasons for recommending the acceptance and the record made by the hearing committee in considering the agreement. The agreement may be approved or rejected by the board. The board may convene a hearing to consider the tendered agreement and may seek the supplementation of the record with any additional evidence it deems necessary to consider the agreement. If the board accepts an agreement

(1) it shall approve the disposition provided for in the tendered agreement and:

(a) if the discipline agreed to by the attorney includes resignation, disbarment, suspension, probation, transfer to disability inactive status, or public censure by the Supreme Court, the agreement, along with the complete record of the proceedings, shall be filed by the board with the Supreme Court for consideration of the entry of an order imposing the discipline provided for in the agreement, rejection of the agreement, or approval of the agreement with any modifications requested by the Supreme Court and agreed to by the respondent-attorney and disciplinary counsel;

(b) if the discipline agreed to by the attorney provides for a formal reprimand or probation by the board, the board shall impose the discipline provided for in the agreement; or

(c) if the discipline agreed to by the attorney provides for an informal admonition by disciplinary counsel, the board shall direct disciplinary counsel to impose the discipline provided for in the agreement; or

(2) if the attorney admitted sufficient facts to permit a finding that the allegations are true, but does not agree that the facts constitute misconduct or to a specific form of discipline, the hearing committee shall conduct a hearing pursuant to Rule 17-313 NMRA to determine whether the facts constitute misconduct and, if they do, the appropriate form of discipline, if any, to be imposed. The committee shall then file its findings, conclusions, and recommendations with the board in accordance with Rule 17-313 NMRA.

C. **Rejection.** If the agreement is rejected by the hearing committee, board or Supreme Court, the admission shall be withdrawn and the agreement, or any factual stipulations or admissions made in connection with the agreement or at any hearing held to consider the agreement, cannot be used against the attorney or disciplinary counsel in any subsequent disciplinary proceedings or in any other judicial proceeding.

D. **Inquiry of attorney.** The board shall not accept an agreement without first determining from the attorney that

(1) the attorney understands the charges against the attorney;

(2) the attorney understands the proposed disposition of the proceedings;

(3) the attorney understands that if the agreement is accepted the attorney is waiving the right to a hearing before a hearing committee and the board and is waiving an appeal to the Supreme Court; and

(4) the admission or provisions of the consent decree are voluntary and not the result of force or threats or promises other than any consent decree agreement reached.

E. **Filing of agreement.** If the agreement is accepted by the board and if the agreement provides for resignation, disbarment, suspension, probation, transfer to disability status, or public censure by the Supreme Court, the chair of the board shall file the agreement with the Supreme Court along with the record of the proceedings. Upon the application of the chair, and for good cause shown, the Supreme Court may order the agreement sealed and in such event it shall not be disclosed or made available for use in any other proceeding except upon order of the Supreme Court. An order imposing discipline pursuant to an agreement shall not be sealed.

[As amended, effective January 1, 1986 and April 1, 1988; as amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007; as amended by Supreme Court Order No. 13-8300-045, effective December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-045, effective December 31, 2013, provided for the evaluation by the hearing committee of the factual basis of a conditional agreement or agreement not to contest disciplinary charges; provided for a thirty-day limitation within which to accept or reject an agreement; in Paragraph A, at the beginning of the sentence, deleted “An” and adds the language beginning with “At” and ending with “discipline, an”, after “disciplinary counsel”, added “by a sworn written statement”, after “conditional agreement admitting to”, added “or agreeing not to contest”, after “not to contest any”, added “or all”, after “or all of the”, added “allegations or”, and after “allegations or charges”, deleted “by a sworn written statement: (1) admitting sufficient facts to permit a finding that the allegations are true; or (2) declaring the attorney’s intention not to contest the allegations”; in Paragraph B, adds the second through the fourth sentences, in the sixth sentence, after “recommending the acceptance”, added the remainder of the sentence, and in the eighth sentence, at the beginning of the sentence, after “The”, deleted “committee or board, or both” and added “board” and after “the tendered agreement”, added the remainder of the sentence; in Item (a) of Subparagraph (1) of Paragraph B, after “Supreme Court, the agreement”, added “along with the complete record of the proceedings”, after “shall be filed”, added “by the board”, after “with the Supreme Court for”, added “consideration of the”, and after “provided for in the agreement”, added the remainder of the sentence; in Paragraph C, after “If the”, deleted “agreement was conditioned upon a particular sanction and the”, after “shall be withdrawn and”, added

“the agreement, or any factual stipulations or admissions made in connection with the disciplinary counsel”, and after “against the attorney”, added “or disciplinary counsel”, and in Paragraph E, in the first sentence after “the agreement with the Supreme Court”, added “along with the record of the proceedings”.

The 2006 amendment, approved by Supreme Court Order No. 06-8300-32, effective January 15, 2007, revised the first sentence of Paragraph E to require the filing of a discipline by consent agreement with the Supreme Court if the agreement provides for resignation, disbarment, suspension, probation or transfer to disability status or public censure by the Supreme Court.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 27, 31.

7A C.J.S. Attorney and Client §§ 99, 108.

17-212. Resigned, disbarred or suspended attorneys.

A. **Notification of clients in pending matters.** An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended pursuant to the Rules Governing Discipline shall promptly notify by registered or certified mail, return receipt requested, in a form prescribed or approved by disciplinary counsel, all clients being represented by the attorney in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of the resignation, disbarment or suspension and consequent inability to act as an attorney after the effective date of the resignation, disbarment or suspension, and shall inform the clients to seek legal advice elsewhere. If accepted by the Supreme Court, an attorney who enters into a conditional agreement pursuant to Rule 17-211 NMRA that results in the attorney’s resignation, suspension or disbarment shall provide the notice required herein to all clients whom the attorney represented as of the date that the conditional agreement was signed by the attorney. In any matter not involving a conditional agreement but in which the order of the Supreme Court suspending or disbarring an attorney delays the effective date of the resignation, suspension or disbarment, the attorney shall provide the notice required to all clients whom the attorney represented as of the date that the Court entered its order, regardless of the subsequent date that the suspension or disbarment takes effect. In all cases, the attorney shall also provide to each of the attorney’s clients a copy of the order accepting or providing for the attorney’s resignation or disbarring or suspending the attorney. An attorney who has resigned, been disbarred or suspended from the practice of law, or who has signed a conditional agreement providing for the attorney’s resignation, suspension or disbarment, may not recommend to the attorney’s clients any other lawyer to represent them but shall inform the client that the client may contact the State Bar of New Mexico for one of its lawyer referral programs.

B. **Notification in litigated matters.** An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended pursuant to the Rules

Governing Discipline shall promptly give notice of disbarment, suspension or resignation in a form prescribed or approved by the Disciplinary Board by registered or certified mail, return receipt requested: to each of his clients who is involved in litigated matters or administrative proceedings; to the attorney for each adverse party in such matter or proceeding; and to the court or administrative agency in which the matter is pending. The notice of disbarment, suspension or resignation shall set forth the effective date of the attorney's resignation, disbarment or suspension. The notice to be given to the client shall inform the client that he should seek the legal advice of another attorney or attorneys in his place. If accepted by the Supreme Court, an attorney who enters into a conditional agreement pursuant to Rule 17-211 NMRA which results in the attorney's resignation, suspension or disbarment shall provide the notice required herein to all clients and all opposing counsel, courts and administrative agencies in all litigated or administrative matters pending on the date that the conditional agreement was signed by the attorney. In any matter not involving a conditional agreement but in which the order of the Supreme Court suspending or disbarring an attorney delays the effective date of the resignation, suspension or disbarment, the attorney shall provide the notice required to all clients and all opposing counsel, courts and administrative agencies in all litigated or administrative matters pending, on the date that the Court entered its order, regardless of the subsequent date that the suspension or disbarment takes effect. In all cases, the attorney shall also provide to each of the attorney's clients, to every opposing counsel and to every court or administrative agency in each litigated or administrative matter a copy of the order accepting or providing for the attorney's resignation or disbarring or suspending the attorney. An attorney who has resigned, been disbarred or suspended from the practice of law, or who has signed a conditional agreement providing for the attorney's resignation, suspension or disbarment, may not recommend to the attorney's clients any other lawyer to represent them. In the event the client does not obtain substitute counsel before the effective date of the resignation, disbarment or suspension, it shall be the responsibility of the attorney to advise in writing the court or agency in which the proceeding is pending, of the attorney's automatic withdrawal from participating further in the proceeding. The notice to be given to the attorney for an adverse party shall state the place of residence of the client of the attorney.

C. **Unauthorized practice of law.** An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or is suspended pursuant to these rules, shall not accept any new retainer or engage as attorney for another in any case or legal matter of any nature. Further, an attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or is suspended pursuant to these rules shall not act as a non-attorney representative for another in any state, county, city or local public body administrative or personnel proceeding or matter of any kind unless specifically authorized by the Supreme Court and then only upon such terms and conditions as the Court deems appropriate. Subject to the approval of the Supreme Court, until the effective date of the resignation, suspension or disbarment, the attorney may on behalf of any client act on such matters that were pending on the date of the agreement or order.

D. **Affidavit of compliance.** Within ten (10) days after the effective date of the resignation, disbarment or suspension order, the attorney shall file with the Supreme Court an affidavit showing:

(1) the attorney has fully complied with the provisions of the order and with this rule; and

(2) the attorney has served a copy of such affidavit upon disciplinary counsel.

The attorney shall file with the affidavit copies of the letters required to be sent pursuant to Paragraphs A and B of this rule. Such affidavit shall also set forth the residential or other address where communications may thereafter be directed to the attorney. In order that the attorney can be located in the event complaints are made about the attorney's conduct while the attorney was engaged in practice, for a period of five (5) years following the effective date of the resignation, disbarment or suspension order, the attorney shall continue to file a registration statement in accordance with Rule 17-202 NMRA, listing the residence or other address where communications may thereafter be directed to the attorney.

E. **Required records.** An attorney who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended shall keep and maintain records of the various steps taken by the attorney under this rule so that upon any subsequent proceeding instituted by or against the attorney, proof of compliance with these rules and with the disbarment or suspension order will be available.

F. **Contempt.** Any attorney who fails or refuses to comply with the provisions of this rule may be held in contempt of the Supreme Court.

[As amended by Supreme Court Order No. 12-8300-008, effective April 5, 2012; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-022, effective December 31, 2015, prohibited an attorney, who has resigned pursuant to Rule 17-209 NMRA or has been disbarred or suspended from the practice of law, from acting as a non-attorney representative for another in any proceeding unless authorized by the Supreme Court; in Paragraph C, in the first sentence, after "disbarred or", added "is", and after "another in any", deleted "new", and added the second sentence.

The 2012 amendment, approved by Supreme Court Order No. 12-8300-008, effective April 5, 2012, required that notices to clients be in a form prescribed or approved by disciplinary counsel; required attorneys to give notice to all clients represented by the attorney and in litigated matters, to opposing counsel, and courts and administrative agencies in litigated matters as of the date a conditional agreement is signed or if a conditional agreement has not been signed, as of the date of the Supreme Court order

accepting or providing for the attorney's resignation or disbarring or suspending the attorney, together with a copy of the order; required the attorney to inform the clients that they may contact the State Bar for lawyer referral programs; prohibited the attorney in litigated matters from recommending any other lawyer to the attorney's clients; required the attorney to file registration statements for a period of five years after the date of the resignation, disbarment or suspension; in Paragraph A, in the first sentence, after "has been disbarred or suspended", added "pursuant to the Rules Governing Discipline" and after "return receipt requested", added "in a form prescribed or approved by disciplinary counsel", added the second, third and fourth sentences, and in the fifth sentence, after "practice of law", added "or who has signed a conditional agreement providing for the attorney's resignation, suspension or disbarment", and after "any other lawyer to represent them", added the remainder of the sentence; in Paragraph B, in the first sentence, after "disbarred or suspended", added "pursuant to the Rules Governing Discipline", and added the fourth, fifth, sixth, and seventh sentences; and in Paragraph D, in the second unlettered subparagraph, after "Paragraphs A", added "and B" and in the third unlettered subparagraph, in the second sentence, added the language at the beginning of the sentence before "the attorney shall continue to file a registration statement", and at the end of the second sentence after "communications may thereafter be directed to the attorney", deleted "for a period of five (5) years following the effective date of his resignation, disbarment or suspension order, so that he can be located in the event complaints are made about his conduct while he was engaged in practice".

Obligations. — Where lawyer was summarily suspended, the obligations of this rule were activated; suspension from the practice of law involuntarily terminated the representation, but it did not extinguish the lawyer's responsibility to protect client interests. *In re Quintana*, 2001-NMSC-021, 130 N.M. 627, 29 P.3d 527.

Conduct of suspended attorneys. — Attorneys, even though suspended, are still subject to the jurisdiction of the supreme court and are required to follow rules in closing their practices. *In re Herkenhoff*, 1995-NMSC-011, 119 N.M. 232, 889 P.2d 840.

An attorney who was previously suspended in a disciplinary proceeding was held in contempt for failing to comply with the notice requirements of this rule, and the revocation of an automatic reinstatement provision contained in the prior order of suspension was authorized. *In re Ruybalid*, 1995-NMSC-065, 120 N.M. 495, 903 P.2d 237.

A more severe sanction is necessary to protect the public when a lesser sanction has proven insufficient to stop a suspended lawyer from repeating the same type of misconduct with another client and to vindicate the supreme court's authority when a lawyer has disregarded the directions issued by the court in a prior order imposing a term of suspension *In re Chavez*, 2000-NMSC-015, 129 N.M. 035, 1 P.3d 417.

Disbarment held to be warranted. — It was appropriate to impose discipline identical to that imposed by the State of Texas, since defendant was originally suspended by a

New Mexico court, yet failed or refused to abide by the orders of the court that he comply with the notice requirements, failed to appear before court and failed to show cause why discipline identical to that imposed in Texas should not be imposed here. *In re Deutsch*, 1992-NMSC-034, 113 N.M. 711, 832 P.2d 402.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 33 to 35.

Power of court to order restitution to wronged client in disciplinary proceeding against attorney, 75 A.L.R.3d 307.

Propriety of attorney's resignation from bar in light of pending or potential disciplinary action, 54 A.L.R.4th 264.

7A C.J.S. Attorney and Client §§ 120, 121.

17-213. Appointment of counsel.

A. **When appointed.** Whenever an attorney is disbarred, suspended, resigns, becomes incapacitated or dies and no partner, executor or other responsible party capable of conducting the respondent-attorney's affairs is known to exist, the Supreme Court, upon request of chief disciplinary counsel or chief disciplinary counsel's designee, may appoint an attorney or attorneys, including chief disciplinary counsel or chief disciplinary counsel's designee, to inventory the files of the respondent-attorney and to take such action as seems indicated to protect the interests of clients of the attorney, as well as the interest of the attorney. In addition to the assessment of costs provided by Rule 17-106 NMRA, the Disciplinary Board or Supreme Court may assess against a respondent-attorney any reasonable costs incurred by a client or inventorying-attorney that were incurred because of the suspension, disbarment or resignation of the respondent-attorney. An inventorying-attorney also may apply to the Disciplinary Board for reimbursement of costs incurred because of the incapacitation or death of a respondent-attorney, which the board, in its discretion, may grant.

B. **Confidentiality of files.** Any attorney appointed pursuant to this rule shall not disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out the order of the Court appointing the attorney to make such inventory.

C. **Procedures.**

(1) The inventorying attorney shall prepare a list of all client files obtained by the inventorying attorney from the attorney who was suspended, disbarred, resigned, died or became incapacitated and provide this list to disciplinary counsel, identifying each matter by client name, last known address and phone number, the status of the matter (open or closed) and, if closed, the date the matter was closed.

(2) The inventorying attorney shall send to all clients of the attorney who are named on the list provided to disciplinary counsel written notice of the appointment of an inventorying attorney at the client's last known address, the grounds which required such appointment, and, for active cases, the need of the clients to obtain substitute counsel.

(3) A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. The inventorying attorney shall deliver all such receipts to disciplinary counsel at the time of filing the application for discharge. On approval by the New Mexico Supreme Court of the application for discharge of the inventorying attorney, all files remaining in the possession of the inventorying attorney shall be transferred to the Office of Disciplinary Counsel and, thereafter, maintained for a period of five (5) years. After five (5) years, the files may be destroyed by disciplinary counsel in a secure manner which protects the confidentiality of the files provided that six (6) weeks before the destruction of such files, disciplinary counsel shall notify the client or former client at the last known address that the file will be destroyed on a date six (6) weeks after the date of the letter unless the file is retrieved from the Office of Disciplinary Counsel by the client or former client prior to that date.

(4) The inventorying attorney may be authorized by the New Mexico Supreme Court to ascertain the identity of clients to whom refunds of unearned fee payments should be made, to take possession of all client trust funds, to make distributions of trust funds as to which there are no legitimately disputed claims of entitlement and to safeguard trust funds as to which there are legitimately disputed claims of entitlement until such claims can be resolved. If so authorized, the inventorying attorney shall reconcile trust account records, compile a list of all clients to be reimbursed, and compile a list of all disputed claims of entitlement and provide such list to disciplinary counsel. The inventorying attorney shall deliver to disciplinary counsel at the time of filing the application for discharge a complete, final accounting of all trust fund transactions. Whenever any sum of money is payable to a client or former client and the inventorying attorney is unable to locate the client or former client, after notice to the client's or former client's last known address, the inventorying attorney shall, after six (6) weeks have passed after notice as set forth above, apply to the court in which the action was brought, or, if no action was commenced to the New Mexico Supreme Court, for an order directing payment to the disbarred, resigned, suspended or incapacitated lawyer, or the deceased lawyer's estate, of any fees and disbursements that are owed by the client and the balance, if any, to the New Mexico Client Protection Fund for safeguarding and disbursement to persons who are entitled thereto.

D. **Role of inventorying attorney.** An inventorying attorney is not deemed to be representing the clients of the attorney who was disbarred, suspended, resigned, died or became incapacitated unless the inventorying attorney and the client or former client enter into a separate representation agreement. Such an agreement may be reached only after the client or former client is notified, in writing, that he or she has the right to seek other counsel.

E. **Statute of limitations.** The filing by disciplinary counsel of an application for the appointment of an inventorying attorney under these rules shall toll any statute of limitations, any limitation on time for appeal, and any other such limitation period for a period of 180 days from the date that the application is filed with the New Mexico Supreme Court.

F. **Liability of inventorying attorney.**

(1) Except as provided in Subparagraph (2) of Paragraph F of this rule, an inventorying attorney appointed under these rules shall:

(a) Not be regarded as having an attorney-client relationship with clients of the attorney who was suspended, disbarred, resigned, died or became incapacitated, except that the inventorying attorney shall be bound by the obligation of confidentiality imposed by the Rules of Professional Conduct with respect to information acquired as an inventorying attorney;

(b) Have no liability to the clients of the attorney who was suspended, disbarred, resigned, died or became incapacitated except for injury to such clients caused by intentional, willful, or grossly negligent breach of duties as an inventorying attorney;

(c) Be immune to separate suit brought by or on behalf of the attorney who was suspended, disbarred, resigned, died or became incapacitated.

(2) If the inventorying attorney and any client or former client of the disbarred, resigned, suspended, incapacitated or deceased lawyer enter into a separate representation agreement to allow the inventorying attorney to represent the client or former client, the normal and customary attorney-client relationship shall then exist between the inventorying attorney and the client or former client and the provisions contained in Subparagraph (1) of Paragraph F of this rule shall no longer apply or be effective as to that client or former client from the date such agreement is reached. Such provisions shall, however, remain effective for such client or former client for any services performed as an inventorying attorney prior to the date of the retention agreement, and shall likewise remain effective for all other clients or former clients of the lawyer who is disbarred, resigned, suspended, incapacitated or deceased.

[As amended, effective August 1, 1988; as amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007; by Supreme Court Order No. 12-8300-008, effective April 5, 2012.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-008, effective April 5, 2012, prescribed the procedures and role of the inventorying attorney; provided for tolling of limitations periods after the filing of an application for appointment of an

inventorying attorney; limited the liability of the inventorying attorney; in Paragraph A, in the first sentence, after "upon request of chief disciplinary counsel", added "or chief disciplinary counsel's designee" and after "appoint an attorney or attorneys" added "including chief disciplinary counsel or chief disciplinary counsel's designee"; and added Paragraphs C, D, E and F.

The 2006 amendment, approved by Supreme Court Order No. 06-8300-032, effective January 15, 2007, revised Paragraph A to insert in the first sentence "becomes incapacitated" and to add the last sentence of the paragraph to permit reimbursement of costs of an "inventorying-attorney".

Law reviews. — For comment, "The Clark Report and the Revised New Mexico Disciplinary Procedures," see 2 N.M.L. Rev. 292 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Appointment of counsel for attorney facing disciplinary charges, 86 A.L.R.4th 1071.

17-214. Reinstatement.

A. **Disbarred attorney.** A person who has been disbarred may not apply for reinstatement.

B. **Suspended attorneys.**

(1) An attorney who has been suspended for a specific period of time of six (6) months or less, not including any period of deferment, shall be automatically reinstated at the expiration of the period specified in the order of suspension, provided that at least two (2) weeks prior to the date of the expiration of the period of suspension the attorney shall file an affidavit of compliance stating that the attorney has complied with any previously imposed conditions of reinstatement and serve a copy of the same upon disciplinary counsel. The affidavit of compliance shall set out every condition for reinstatement and state, separately for each condition, what the suspended attorney did to comply with that condition. The suspended attorney will automatically be reinstated as of the day after the expiration of the period of suspension unless, prior to the expiration of such time, disciplinary counsel has filed with the Supreme Court written objections. If objections are filed, the application shall be referred to the Disciplinary Board which shall refer the matter for determination as provided in Paragraph E of this rule.

(2) Except as provided in Paragraph C of this rule, an attorney who has been suspended for a definite period of time more than six (6) months or for an indefinite period of time, not including any period of deferment, at any time after complying with the conditions of reinstatement, but in the case of the latter, no sooner than one (1) year after the date of the suspension, not including any period of deferment, and unless otherwise ordered by the Supreme Court, may file with the Disciplinary Board a petition for reinstatement attaching to the petition a copy of the order of suspension and an

affidavit of compliance, where appropriate, stating that the attorney has complied with previously imposed conditions of reinstatement. The petition shall be considered by the Disciplinary Board under Paragraph E of this rule. If after receiving the recommendations of the Disciplinary Board, the petition is denied by the Supreme Court, the attorney is not entitled to petition for reinstatement prior to the expiration of a twelve (12) month period, commencing the date that the petition is denied by the Supreme Court unless a shorter interval is directed in the order denying the petition for reinstatement.

C. **Reinstatement from disability inactive status.** Under the provisions of this paragraph and Paragraphs D and E of this rule, an attorney who has been suspended indefinitely due to incompetency or incapacity under the provisions of Rule 17-208 NMRA may move for reinstatement upon clear and convincing evidence that the incapacity, disability, or other condition that led to the attorney's placement on disability inactive status has been terminated and that the attorney is once again fit to resume the practice of law; provided, however, that in the event that a motion for reinstatement is denied, no further motion for reinstatement may be made until the expiration of at least one (1) year following the denial, unless a different period for renewing the motion for reinstatement is specified by the Supreme Court.

D. **Costs deposits.** Any person filing a petition for reinstatement under Subparagraph (B)(2) or Paragraph C of this rule must attach to the motion or petition a certified check in the amount of one thousand five hundred dollars ($1,500) payable to the Disciplinary Board as a deposit toward the costs of the proceeding. Any amounts not expended for costs as enumerated in Rule 17-106 NMRA shall be refunded to the respondent-attorney by the Disciplinary Board within thirty (30) days of the entry of the order of the Supreme Court granting or denying reinstatement. Nothing in this paragraph will prevent the Supreme Court from assessing against the person seeking reinstatement any additional costs incurred in the reinstatement proceedings, regardless of the outcome of the proceedings.

E. **Procedure of reinstatement hearing.** Applications for reinstatement by attorneys who have been suspended for a definite period of time more than six (6) months, not including any period of deferment, or who have been indefinitely suspended for any period of time greater than six (6) months, not including any period of deferment, on account of misconduct, incompetency, or incapacity, or who have resigned while under investigation by the Disciplinary Board under Rule 17-209 NMRA, or who were placed on disability inactive status under Rule 17-208 NMRA shall be referred by the Disciplinary Board to an appropriate hearing committee. The hearing committee shall promptly schedule a hearing at which the respondent-attorney shall have the burden of demonstrating by clear and convincing evidence that the respondent-attorney has the moral qualifications to practice law; that the respondent-attorney is once again fit to resume the practice of law; and that the resumption of the respondent-attorney's practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or the public interest. At the conclusion of the hearing, the hearing committee shall promptly file a report containing its findings of fact, conclusions,

and recommendations, and shall transmit the same, together with the record, to the Disciplinary Board. The Board shall review the report of the hearing committee and the record, and it may, upon request of either the respondent-attorney or disciplinary counsel made within ten (10) days of the receipt of the hearing committee's record by the Board, require the submission of briefs and hear oral argument. The Board shall consider only the evidence in the record before the hearing committee and shall not admit any new evidence before the Board. Within ninety (90) days of its receipt of the hearing committee record or within thirty (30) days of hearing oral argument, whichever period is shorter, the Board shall file its own recommendations with the Supreme Court, together with the record. The motion shall then be scheduled for oral argument and the submission of briefs to the Supreme Court if and as the Supreme Court may direct, after which the Supreme Court shall determine whether or not the motion should be granted in its sound discretion. The Supreme Court may require as a condition to reinstatement that the attorney successfully pass the New Mexico Bar Examination prior to reinstatement; that the attorney undergo a character and fitness evaluation by the Board of Bar Examiners, paying whatever fee the Board of Bar Examiners determines is appropriate for such evaluation, and directing that any recommendations based on such evaluation shall be made a part of the record during reinstatement proceedings; that the attorney submit to a medical, mental health, and/or substance abuse evaluation by an evaluator approved by the Supreme Court and paid for by the attorney to determine the attorney's fitness to return to the practice of law; that the attorney meet the continuing education credit requirements applicable to active, licensed New Mexico attorneys for each compliance year during the attorney's suspension; that the attorney take and attain at least an eighty-five (85) scaled score on the Multi-State Professional Responsibility Examination given by the Board of Bar Examiners; and that the attorney satisfy such other conditions as the Court may require.

F. **Duties of disciplinary counsel.** In all proceedings before the Disciplinary Board upon a motion for reinstatement, cross-examination of the respondent-attorney's evidence in support of the motion and the submission of evidence, if any, in opposition to the motion for reinstatement shall be conducted by disciplinary counsel.

G. **Expenses.** The Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and processing of a motion for reinstatement be paid by the respondent-attorney.

H. **Attorneys on probation.** If an attorney has been placed on probation under Rule 17-206(B) NMRA, and is not otherwise required to or has successfully petitioned for reinstatement under Paragraph E of this rule, upon completion of the probationary period, the attorney may file with the Disciplinary Board a petition to be released from probation, along with an affidavit of compliance and any supporting documentation detailing the manner in which the attorney has satisfied or complied with the terms and conditions of probation. The petition, affidavit of compliance with probation, and any objections by disciplinary counsel to the petition shall be reviewed by a member of the Disciplinary Board. Oral argument, briefing, or both may be held in the discretion of the Board member upon request of either party or at the request of the Board member. If

argument is held, it shall be conducted in accordance with procedures set forth in Rule 17-314 NMRA. The Board member may also refer the petition to a hearing committee for further proceedings under Paragraph E of this rule. After reviewing and investigating a petition for reinstatement, the Disciplinary Board may order the following:

(1) full release of the attorney from probation; or

(2) extension of some or all of the terms of probation for a period not to exceed two (2) years.

I. **Waiver of psychotherapist-patient privilege.** The filing of an application for reinstatement by an attorney suspended for incompetency or incapacity, or placed on disability inactive status, shall be deemed to constitute a waiver of any psychotherapist-patient privilege with respect to the treatment of the attorney during the period of the attorney's disability. In the application for reinstatement, the attorney shall be required to disclose the name and address of every psychiatrist, psychologist, physician, hospital, or other institution by whom or in which the attorney has been examined or treated for the condition upon which the attorney was determined disabled since the attorney's suspension or transfer to disability inactive status, and the attorney shall furnish to the Disciplinary Board or disciplinary counsel written consent for each psychiatrist, psychologist, physician, hospital, or other institution to divulge such information and records as requested by the Board or any court-appointed or Board-retained medical experts.

[As amended, effective May 1, 1986; September 1, 1992; as amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007; as amended by Supreme Court Order No. 12-8300-008, effective April 5, 2012; as amended by Supreme Court Order No. 12-8300-021, effective June 18, 2012; as amended by Supreme Court Order No. 13-8300-045, effective December 31, 2013; as amended by Supreme Court Order No. 16-8300-026, effective December 31, 2016; as amended by Supreme Court Order No. 18-8300-009, effective December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-009, effective December 31, 2018, excluded any period of deferment in calculating the suspension period for purposes of reinstatement of attorneys who have been suspended from the practice of law, and revised the provisions related to petitions to be released from probation for attorneys who have been placed on probation; in Paragraph B, in Subparagraph B(1), after "(6) months or less", added "not including any period of deferment", and in Subparagraph B(2), after "indefinite period of time", added "not including any period of deferment", and after "(1) year after the date of suspension", added "not including any period of deferment"; in Paragraph E, after "six (6) months," added "not including any period of deferment", and after "indefinitely suspended", added "for any period of time greater than six (6) months, not including any period of deferment"; and in Paragraph H, deleted "Upon" and added "If an attorney has been

placed on probation under Rule 17-206(B) NMRA, and is not otherwise required to or has successfully petitioned for reinstatement under Paragraph E of this rule, upon", after "completion of the probationary period", deleted "an attorney who has been put on formal probationary status under Rule 17-206 NMRA shall" and added "the attorney may", after "petition", deleted "for reinstatement" and added "to be released from probation along", after "affidavit of compliance", added "and any supporting documentation detailing the manner in which the attorney has satisfied or complied", after "conditions of probation", deleted "attached, in order to be terminated from probationary status", after and added "The petition", after "and any", deleted "to reinstatement", after "shall be reviewed by a", deleted "panel" and added "member", after "Oral argument", deleted "will" and added "briefing, or both may", after "be held", added "in the discretion of the Board member", after "The Board", deleted "panel" and added "member", and after "Disciplinary Board may", deleted "recommend" and added "order the following", in Subparagraph H(1), after "full", deleted "reinstatement" and added "release of the attorney from probation; or", in Subparagraph H(2), after "extension of", deleted "the period" and added "some or all of the terms", and deleted former Subparagraph H(3), which related to the imposition of alternative discipline.

The 2016 amendment, approved by Supreme Court Order No. 16-8300-026, effective December 31, 2016, changed "pursuant to" to "under" throughout the rule and made technical and clarifying revisions; in Paragraph C, added "Under the provisions of this paragraph and Paragraphs D and E of this rule"; in Paragraph D, after "Subparagraph", added "(B)" and deleted "of Paragraph B"; in Paragraph E, in the first sentence, after "misconduct, incompetency or incapacity, or", deleted "by attorneys", and after "disability inactive status", added "under Rule 17-2018 NMRA"; and in Paragraph H, after "Rule 17-206 NMRA", deleted "must" and added "shall", after "reinstatement", deleted "attaching thereto" and added "with", and after "terms and conditions of probation", added "attached".

The 2013 amendment, approved by Supreme Court Order No. 13-8300-045, effective December 31, 2013, provided for reinstatement from any condition that led to the attorney's placement on disability inactive status; in Paragraph C, deleted the former title of the paragraph "Suspension due to incompetency or incapacity" and added the current title, after "convincing evidence that the", added "incapacity", and after "incapacity, disability", added "or other condition that led to the attorney's placement on disability inactive status"; in Paragraph E, in the first sentence, after "Rule 17-209 NMRA", added "or who were placed on disability inactive status", and in the second sentence, after "the moral qualifications", added "to practice law"; and in Paragraph I, in the first sentence, after "incompetency or incapacity", added "or placed on disability inactive status", and in the second sentence, after "or transfer to disability", added "inactive", after "the attorney shall furnish to the", deleted "Supreme Court" and added "Disciplinary Board or disciplinary counsel", after "records as requested by", added "the board or any", and after "or any court-appointed", added "or board-retained".

The second 2012 amendment, approved by Supreme Court Order No. 12-8300-021, effective June 18, 2012, required disciplinary counsel to conduct all proceedings before

the Disciplinary Board; authorized the Supreme Court to assess costs to the respondent-attorney; provided the procedure for review of petitions to reinstate attorneys on formal probation and specified the recommendations that the Disciplinary Board may make with regard to reinstatement; provided that an application for reinstatement by an attorney suspended for incompetency or incapacity constitutes a waiver of any psychotherapist-patient privilege and required the attorney to provide the name and address of the attorney's treating medical professional or institution and written consent for each treating medical professional or institution to divulge the attorney's medical information and records to the Supreme Court; and added Paragraphs F through I.

The first 2012 amendment, approved by Supreme Court Order No. 12-8300-008, effective April 5, 2012, prohibited the reinstatement of disbarred attorneys; provided that an attorney suspended for six months or less is automatically reinstated at the expiration of the suspension period; provided that an attorney who have been suspended for a definite period of more than six months may apply for reinstatement after the end of the suspension period; provided that an attorney who has been suspended for an indefinite period of time may not apply for reinstatement for one year after the expiration of the suspension period; in considering whether to recommend reinstatement of an attorney who has been suspended for a period of more than six month, required the Disciplinary Board to consider only the evidence in the record before the hearing committee and imposed deadlines for filing the Disciplinary Board's recommendations with the Supreme Court; permitted the Supreme Court to impose conditions to reinstatement; in Paragraph A, deleted the former language, which provided the procedure for reinstatement of a disbarred attorney; in Paragraph B(1), in the first sentence, after "suspended for a specific period of time", added "six (6) months or less"; in Paragraph B(2), in the first sentence, after "an attorney who has been suspended", added "for a definite period of time more than six (6) months", after "conditions of reinstatement", added "but in the case of the latter, no sooner that one (1) year after the date of the suspension unless otherwise ordered by the Supreme Court", after "may file with the", deleted "clerk of the Supreme Court" and added "Disciplinary Board"; and in the second sentence, after "The petition shall be", deleted "referred to" and added "considered by", and after "considered by the Disciplinary Board", deleted the "for a hearing and recommendations"; in Paragraph D, in the first sentence, after "Any person filing", deleted "a motion for permission to apply for reinstatement pursuant to Paragraph A of this rule or", and after "payable to the Disciplinary Board", deleted the phrase that began the former second sentence "If the matter is remanded to the Disciplinary Board for proceedings as provided in Paragraph E of this rule, the clerk shall forward the check to the Disciplinary Board"; in Paragraph E, in the first sentence, after "Applications for reinstatement by attorneys", added "who have been suspended for a definite period of time more that six (6) months, or who have been", and after "or by attorneys who have", deleted "been disbarred or who have"; in the fourth sentence, after "hearing committee and the record, and", added the remainder of the sentence; added the fifth sentence; in the sixth sentence, added the language before "shall file its own recommendations"; in the eighth sentence, after "the attorney successfully pass", added the language before "the Multi-State Professional Responsibility Examination",

and after "the Multi-State Professional Responsibility Examination" added the remainder of the sentence; deleted former Paragraph F, which prescribed the duties of disciplinary counsel; deleted former Paragraph G, which permitted the Supreme Court to assess costs to the respondent attorney; deleted former Paragraph H, which provided for the reinstatement of attorneys on probation; and deleted former Paragraph I, which provided for the waiver of the psychologist-patient privilege of attorneys suspended for incompetency or incapacity.

The 2006 amendment, approved by Supreme Court Order No. 06-8300-032, effective January 15, 2007, amended Paragraph A to increase the number of years that a disbarred attorney must wait before filing for reinstatement from 3 to 5 years and to add the second and third sentences of the paragraph relating to an affidavit of compliance; and revised Subparagraph (1) of Paragraph B to provide for the filing of an affidavit of compliance 2 weeks prior to the expiration of the period of a suspension.

The 1992 amendment, effective September 1, 1992, in Paragraph B, substituted "Paragraph E" for "Paragraph D" in the second sentence of Subparagraph (2); added present Paragraph D; redesignated former Paragraphs D to H as present Paragraphs E to I; and made gender neutral substitutions in Paragraphs B, C, E, and I.

Cross references. — For reinstatement, see 36-2-23 NMSA 1978.

Definite suspension and reinstatement. — When circumstances warrant only an indefinite suspension, an attorney may petition the Supreme Court for reinstatement as soon as she or he has satisfied the conditions for reinstatement. When circumstances warrant the more serious discipline of a period of definite suspension, the attorney remains suspended for that period, regardless of whether or not any conditions for reinstatement have been satisfied. If the attorney has not satisfied the conditions imposed by the Supreme Court when the period of definite suspension expires, disciplinary counsel is permitted to file objections to the attorney's reinstatement. *In the Matter of Yalkut*, 2008-NMSC-009, 143 N.M. 387, 176 P.3d 1119.

Duty of lawyer on probation. — The objective of a period of supervised probation is not merely to insure that an attorney comports himself or herself in accordance with the Rules of Professional Conduct and other rules of law and procedure during the period of probation, and thereafter be free to return with impunity to whatever aberrant behavior brought about the sanction in the first place; an attorney on probation is obligated to utilize the assistance and guidance of the supervisor to modify the practices or habits which led to the initial finding of misconduct. *In re Tapia*, 1996-NMSC-025, 121 N.M. 707, 917 P.2d 1379.

Restitution required. — When an attorney was suspended from the practice of law for a period of six months, he was required, as a prerequisite to reinstatement, to show that he had paid in full all restitution with interest and costs of these disciplinary proceedings. *In re Trujillo*, 1990-NMSC-062, 110 N.M. 180, 793 P.2d 862.

Failure to petition for reinstatement. — A disciplined attorney's failure to provide full cooperation to disciplinary counsel, to take the Multistate Professional Responsibility Exam as ordered, and to petition for reinstatement in order to be terminated from probationary status warranted indefinite suspension of not less than one year. *In re Norton*, 1991-NMSC-053, 112 N.M. 75, 811 P.2d 573.

Failure to show rehabilitation. — An indefinitely suspended attorney who failed to produce adequate testimony of current knowledge of the law, or that he had been treated for a personality disorder believed to have contributed to his misconduct, and who failed to make restitution or to pay the costs of the original proceeding against him was not entitled to reinstatement. *In re Quintana*, 1991-NMSC-055, 112 N.M. 132, 812 P.2d 786.

Condition of showing fitness to practice. — When an indefinite suspension is imposed pursuant to Paragraph B(2), the attorney is not automatically reinstated. The attorney must satisfy all imposed conditions before any consideration of an application for reinstatement. The conditions in this case recommended by the hearing committee and Disciplinary Board, which this court hereby adopts, include that the attorney must demonstrate by clear and convincing evidence that she is fit to resume the practice of law and that the resumption of the practice of law will not be detrimental to the public interest. Considering the gravity of her breach of the trust given her by this court and the public, demonstrating that she is fit to resume the practice of law and is no longer a threat to the public will be a heavy burden indeed. *In re Shepard*, 1993-NMSC-038, 115 N.M. 687, 858 P.2d 63.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 98 to 100.

Reinstatement of attorney after disbarment, suspension, or resignation, 70 A.L.R.2d 268, 58 A.L.R.3d 1191.

Bar admission or reinstatement of attorney as affected by alcoholism or alcohol abuse, 39 A.L.R.4th 567.

Conditioning reinstatement of attorney upon reaffirmation of debt discharged in bankruptcy, 39 A.L.R.4th 586.

7A C.J.S. Attorney and Client §§ 122 to 130.

ARTICLE 3
Rules of Procedure

17-301. Applicability of rules; application of Rules of Civil Procedure and Rules of Appellate Procedure; service.

A. **Application of rules.** This article governs the procedure in disciplinary proceedings before the New Mexico Supreme Court, the Disciplinary Board and its hearing committees and reviewing officers.

B. **Application of Rules of Civil Procedure and Rules of Appellate Procedure.** Except where clearly inapplicable to disciplinary proceedings or inconsistent with or otherwise provided for by these rules, the Rules of Civil Procedure for the District Courts of New Mexico shall be used in formal disciplinary proceedings. Except where clearly inapplicable to disciplinary proceedings or inconsistent with or otherwise provided for by these rules or by Court order, the Rules of Appellate Procedure shall apply to documents filed in the Supreme Court.

C. **Service.** Except as otherwise provided in these rules, the specification of charges, all pleadings, notices, motions, orders, or other papers required to be served may be served on a party unless the party is represented by an attorney in which case service may be upon the attorney. Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or party, by mailing it to the attorney or party at the address listed on the most recent registration statement filed under Rule 17-202 NMRA or by electronic transmission in accordance with Rule 12-307.2 NMRA to the email address of record listed on the most recent registration statement filed under Rule 17-202 NMRA. “Delivering a copy” as used in this rule means handing it to the attorney or to the party; leaving it at the attorney’s or party’s office with the attorney’s or party’s clerk or other person in charge thereof, or if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the attorney’s or party’s dwelling house or usual place of abode with some person of suitable age and discretion therein. Service by mail is complete upon mailing and shall constitute notice as required by these rules. Service by electronic transmission is complete as defined by Rule 12-307.2 NMRA.

D. **Proof of service.** Except as otherwise provided in these rules or by order of the Supreme Court or Disciplinary Board, proof of service of any pleading, motion, order, or other paper required to be served shall be made by the certificate of the attorney of record, or if made by any other person, by the affidavit of such person. Such certificate or affidavit shall be filed with the Disciplinary Board or with the Supreme Court, as appropriate, or endorsed on the pleading, motion, or other paper required to be served.

E. **Additional time after service by mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period.

[As amended by Supreme Court order No. 13-8300-045, effective December 31, 2013; as amended by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017.]

ANNOTATIONS

The 2017 amendment, approved by Supreme Court Order No. 17-8300-004, effective for all cases pending or filed on or after July 1, 2017, provided that, in disciplinary proceedings, the rules of appellate procedure apply to all documents filed in the Supreme Court, except where clearly inapplicable, and provided that all papers required to be served may be served by electronic transmission in accordance with Rule 12-307.2 NMRA; in the heading, added "and Rules of Appellate Procedure"; in Paragraph B, in the heading, added "and Rules of Appellate Procedure", and added the last sentence of the paragraph; and in Paragraph C, after "specification of", deleted "changes" and added "charges", after "Rule 17-202 NMRA", added "or by electronic transmission in accordance with Rule 12-307.2 NMRA to the email address of record listed on the most recent registration statement filed under Rule 17-202 NMRA", added quotation marks around "Delivering a copy", deleted "within" and added "as used", and added the last sentence of the paragraph.

The 2013 amendment, approved by Supreme Court Order No. 13-8300-045, effective December 31, 2013, made the reference to the recipient of service gender neutral; in Paragraph C, in the second sentence, after "by delivering a copy", deleted "him" and added "the attorney or party" and after "by mailing it to", deleted "him" and added "the attorney's or party's", and in the third sentence, after "to the party; leaving it at", deleted "his" and added "the attorney's or party's", after "party's office with" deleted "his" and added "the attorney's or party's", and after "no office, leaving it at", deleted "his" and added "the attorney's or party's".

Cross references. — For the Rules of Civil Procedure for the District Courts, see Rule 1-001 NMRA et seq.

Adequate notice. — While due process does require adequate notice, the rules are clear that personal service and service by mail shall constitute such notice. Insufficient notice cannot be found on the basis of an attorney's own failure to open and read what is received by him. *In re Martinez*, 1988-NMSC-033, 107 N.M. 171, 754 P.2d 842.

Insufficient basis for reinstatement. — The mere passage of time or a statement that one wishes to resume a legal career will not suffice as a basis for reentry into the profession. *In re Ayala*, 1991-NMSC-056, 112 N.M. 109, 812 P.2d 358.

Burden of proof. — The disbarred or suspended attorney who seeks to be reinstated bears a heavy burden and must demonstrate not only by words but also by deeds that he or she can undertake the practice of law without endangering the public or the reputation of the profession. *In re Ayala*, 1991-NMSC-056, 112 N.M. 109, 812 P.2d 358.

17-302. Evidence.

In formal hearings, a hearing committee shall consider only such evidence as would be admissible in the trial of a civil case although it may receive and consider any evidence it believes to be cogent and credible in the exercise of sound judicial

discretion. The hearing committee chairman shall preside and shall make rulings upon questions of admissibility of evidence and conduct of proceedings.

ANNOTATIONS

Cross references. — For Rules of Evidence, see Rule 11-101 NMRA et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 94.

Privilege in connection with proceedings to disbar or discipline attorney, 77 A.L.R.2d 493.

Use in disbarment proceeding of testimony given by attorney in criminal proceeding under grant of immunity, 62 A.L.R.3d 1145.

Admissibility of lie detector test results, or of offer or refusal to take test, in attorney disciplinary proceeding, 79 A.L.R.4th 576.

7A C.J.S. Attorney and Client §§ 99 to 104.

17-303. Statute of limitations.

No statute of limitation or other time limitation restricts filing a complaint or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what, if any, action or sanction is warranted.

[As amended, effective February 1, 1994; as amended by Supreme Court Order No. 13-8300-045, effective December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-045, effective December 31, 2013, eliminated a set limitation period; deleted the former language of the rule that provided for a four-year limitation period and added the current language of the rule.

The 1994 amendment, effective February 1, 1994, added "Except in cases involving theft or misappropriation, conviction of a crime, or a knowing act of concealment," at the beginning of the rule and substituted "four (4) years" for "three (3) years" near the end of the rule.

Abolishment of period of limitations. — Where respondent was alleged to have committed professional misconduct on or about May 22, 2011 and where the disciplinary board filed a complaint and amended complaint on April 20, 2015 and September 9, 2015, respectively, the disciplinary charges against respondent were not barred by the four-year limitations period set forth in the 1994 version of Rule 17-303

NMRA, because the 2013 amendment to Rule 17-303 eliminated the limitations period, and although the abolishment or extension of a limitations period cannot revive a previously time-barred prosecution, it can extend an unexpired limitation period, because such extension does not impair vested rights acquired under prior law, require new obligations, impose new duties, or affix new disabilities to past transactions. *In re Venie*, 2017-NMSC-018.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 89.

7 C.J.S. Attorney and Client § 63.

17-304. Confidentiality of investigations; exceptions; hearings.

A. **Confidentiality.** Except as otherwise provided by this rule, any investigation and any investigatory hearing conducted by or under the direction of disciplinary counsel, or disciplinary counsel's authorized agents, shall be held entirely confidential by disciplinary counsel and by disciplinary counsel's authorized agents unless and until they:

(1) become matters of public record by:

(a) the filing of a formal specification of charges with the Disciplinary Board pursuant to Rule 17-309 NMRA;

(b) the filing of a summary suspension proceeding pursuant to Rule 17-207 NMRA;

(c) the filing of an incompetency or incapacity proceeding pursuant to Rule 17-208 NMRA;

(d) the filing of a reinstatement proceeding pursuant to Rule 17-214 NMRA; or

(e) the filing of a motion for order to show cause why a respondent should not be held in contempt pursuant to Paragraph G of Rule 17-206 NMRA; or

(2) are otherwise released according to these rules.

B. **Exceptions.** Information relating to disciplinary proceedings may be released by disciplinary counsel prior to filing formal charges as follows:

(1) where investigation reasonably causes disciplinary counsel to believe in good faith that a crime may have been committed by an attorney, the name of the subject, general nature of the possible crime, relevant facts and documents and names of known witnesses to relevant facts shall be made available to an appropriate prosecuting authority;

(2) if the respondent-attorney has filed with the office of disciplinary counsel a written waiver of confidentiality; or

(3) upon written request from the Client Protection Fund Commission, such information as may assist the committee in determining the validity or worthiness of a specific claim filed with that commission may be submitted to that commission with the understanding and condition that commission members receiving and reviewing such information are subject to the provisions of Subparagraph (5) of Paragraph C of Rule 17-105 NMRA as well as the rules of confidentiality governing the Client Protection Fund Commission.

C. **Exceptions to public record.** The Disciplinary Board or a hearing committee may, in the exercise of discretion, place the following matters under seal, upon request of disciplinary counsel, the respondent or sua sponte:

(1) documents, pleadings and testimony relating to the physical or mental condition or treatment of the respondent;

(2) matters regarding allegations of substance abuse by the respondent; or

(3) matters resulting in private discipline or dismissal pursuant to a consent to discipline agreement, the recommendation of a hearing committee, the decision of the Disciplinary Board. Upon the filing of proceedings in the Supreme Court, the proceedings shall no longer be confidential or sealed unless ordered by the Supreme Court on its own motion or the motion of a party. A party may request the proceedings be sealed by the Supreme Court by filing a motion to seal the proceedings with the pleadings and transcript.

D. **Immunity from civil suit.** Members of the board, members of hearing committees, disciplinary counsel, monitors or any other person acting on their behalf and staff shall be immune from suit as provided by statute or common law for all conduct in the course of their official duties. Immunity from suit shall also extend, as provided by statute or common law, to complainants and witnesses for all communications to the board, hearing committees or disciplinary counsel relating to lawyer misconduct or disability.

E. **Witness immunity.** If a person has been or may be called to testify or to produce a record, document, or other object in an official proceeding conducted under the disciplinary authority of a hearing officer, hearing committee, the board or the Supreme Court, disciplinary counsel may file a written application with the Supreme Court requesting the Court to issue a written order requiring the person to testify or to produce the record, document or other object notwithstanding his privilege against self-incrimination. Disciplinary counsel shall give the appropriate prosecuting authority notice of any application filed pursuant to this paragraph. Upon consideration of the application and any objection that may be filed by the appropriate prosecuting authority, the Court may grant the application and issue a written order pursuant to this paragraph if it finds:

(1) the testimony, or the record, document or other object may be necessary to protect the public interest; and

(2) the person has refused or is likely to refuse to testify or to produce the record, document or other subject on the basis of his privilege against self-incrimination.

F. **Use of evidence obtained under immunity order precluded.** Evidence compelled under an order issued pursuant to the provisions of Paragraph E of this rule requiring testimony or the production of a record, document or other object notwithstanding a privilege against self-incrimination, or any information directly or indirectly derived from such evidence, may not be used against the person compelled to testify or produce in any criminal case, except a prosecution for perjury committed in the course of the testimony or in a contempt proceeding for failure to comply with the order.

G. **Hearings.** Formal proceedings conducted before a hearing committee or the Disciplinary Board shall be open to the public. Any person may publicly comment thereon. Attorneys remain subject to the restrictions of Rule 16-306 NMRA.

H. **Disposition.** Complainants shall be advised every six (6) months as to the status of the investigation and shall be immediately advised of the final disposition of their complaints.

I. **Testimony in or about Disciplinary Proceedings.** In no case shall Disciplinary Counsel, a Disciplinary Board member or a member of a hearing committee be subject to a subpoena or otherwise compelled to testify in any proceeding, including a pending disciplinary proceeding, regarding any matter investigated or considered in such person's official capacity.

[As amended, effective September 1, 1992; February 14, 1995; August 31, 2004; December 13, 2005; as amended by Supreme Court Order No. 07-8300-010, effective April 30, 2007; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-022, effective December 31, 2015, prohibited disciplinary counsel, a disciplinary board member or a member of a disciplinary hearing committee from being compelled to testify in any proceeding regarding any matter investigated or considered in such person’s official capacity; and added new Paragraph I.

The 2007 amendments, approved by Supreme Court Order No. 07-8300-010, effective April 30, 2007, amends Paragraph A to limit confidentiality to disciplinary counsel and disciplinary counsel's authorized agents; adds Paragraph D relating to immunity from suit; adds Paragraph E, relating to witness immunity; adds Paragraph F relating to use

of evidence obtained under immunity order and reletters Paragraphs D and E as Paragraphs G and H.

The 2005 amendment, approved by Supreme Court Order No. 05-8300-023, effective December 13, 2005 amended Subparagraph (3) of Paragraph B to change "Client Security Fund Committee" to "Client Protection Commission".

The 2004 amendment, effective August 31, 2004, substituted “disciplinary counsel’s” for “their” in the introductory language of Paragraph A and deleted “Supreme Court, the” preceding “Disciplinary” in the introductory language of Paragraph C, and, in Subparagraph (3) of that paragraph, deleted “or the Supreme Court” following “Board” at the end of the first sentence and added the second and third sentences providing upon the filing of proceedings in the Supreme Court, the proceedings are no longer confidential.

The 1995 amendment, effective February 14, 1995, inserted the Subparagraph A(1) and A(1)(a) designations, added Subparagraphs A(1)(b) through A(1)(e), and added Paragraph C.

The 1992 amendment, effective September 1, 1992, in Paragraph A, substituted "by the filing of a formal specification of charges with the Disciplinary Board pursuant to Rule 17-309" for "by being filed in the Supreme Court"; in Paragraph B, substituted "by disciplinary counsel prior to filing formal charges" for "by the Disciplinary Board" in the introductory language, substituted "disciplinary counsel" for "the Disciplinary Board" and inserted "by an attorney" and "relevant facts and documents" in Subparagraph (1), and substituted "office of disciplinary counsel" for "the Disciplinary Board" in Subparagraph (2); and, in Paragraph C, rewrote the first sentence and added the second sentence.

Cross references. — For the Tort Claims Act, see 41-4-1 NMSA 1978.

Common-law sovereign immunity abolished. — Common-law sovereign immunity may no longer be interposed as a defense by the state or any of its political subdivisions in tort actions. *Hicks v. State*, 1975-NMSC-056, 88 N.M. 588, 544 P.2d 1153.

In derogation of common law. — Insofar as it re-established sovereign immunity, the Tort Claims Act was in derogation of the common law, but in its exceptions, the Act restored the common law right to sue in those specific situations; because of the complex relationship between the Act and the common law, the more useful canon of construction is that requiring courts to give effect to the legislature's intent. *Brenneman v. Board of Regents of U.N.M.*, 2004-NMCA-003, 135 N.M. 68, 84 P.3d 685, cert. denied, 2003-NMCERT-003.

Not protected by tort of breach of confidence. — Any duty of confidentiality created by the rules as between attorney-complainants acting for a client and attorney-respondents is not of the sort protected by the tort of breach of confidence. *Fernandez-Wells v. Beauvais*, 1999-NMCA-071, 127 N.M. 487, 983 P.2d 1006.

17-305. Abatement of investigation.

A. **Failure to prosecute; effect of.** Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, compromise or restitution, shall, in itself, justify abatement of an investigation into the conduct of an attorney.

B. **Other proceedings; effect of.** Similarity of the substance of complaints to the material allegations of pending criminal or civil litigation shall not of itself prevent or delay disciplinary action against the attorney involved in such litigation, except to the extent provided in Rule 17-207. The acquittal of the respondent-attorney on criminal charges, or a verdict or judgment in his favor in civil litigation involving material allegations similar in substance to complaints for disciplinary action, shall not in and of itself justify abatement of a disciplinary investigation predicated upon the same or substantially the same material allegations.

17-306. Required presence of attorney; subpoena power.

A. **During investigation.**

(1) Disciplinary counsel, at any stage of an investigation after the respondent-attorney has been notified of the investigation, may serve interrogatories on the respondent-attorney. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them. The respondent-attorney shall serve a copy of the answers and objections, if any, to the office of disciplinary counsel within thirty (30) days after service of the interrogatories. The chair of the Disciplinary Board may allow a shorter or longer time in which to file answers upon a motion filed by either the respondent-attorney or disciplinary counsel within ten (10) days of service of the interrogatories on the respondent-attorney. The interrogatory answers may be used by disciplinary counsel at any future hearings in the investigation.

(2) Disciplinary counsel at any stage of an investigation after the respondent-attorney has been notified of the investigation, may request or invite the respondent-attorney to appear before a reviewing officer and answer questions related to allegations under investigation by disciplinary counsel. The invitation or request shall be accompanied by a statement from disciplinary counsel describing the allegations being investigated and the areas about which the respondent-attorney will be asked to comment. At an appearance before a reviewing officer, the respondent-attorney has a right to the presence of counsel, the right to make opening and closing statements and the right to introduce documentary evidence. A taped record will be made of the respondent-attorney's responses, a copy of which will be provided to the respondent-attorney.

(3) Upon a showing of good cause, the chair of the Disciplinary Board, at any stage of the investigation after the respondent-attorney has been notified of the investigation, may issue a subpoena for the production of records and other documents of the respondent-attorney or any other witness necessary to the investigation as well as for requiring the presence and testimony of witnesses or the respondent-attorney under oath. The respondent-attorney shall have notice of the subpoena, shall have the right to be present and cross-examine witnesses and shall have the right to be accompanied by counsel.

(4) If it appears that the respondent-attorney or a witness may alter, destroy, secrete or remove from the jurisdiction of this state any books, records, documents or other evidence relevant or material to an investigation, at any stage of the investigation, disciplinary counsel, if authorized by the Disciplinary Board, may petition the Supreme Court for an order to compel the attendance of witnesses before a hearing committee and the production before a hearing committee of any books, records, documents or other evidence relevant or material to an investigation before notifying the respondent-attorney. The petition shall contain or have attached a sworn written statement of facts showing probable cause to believe that the records may be altered, destroyed, secreted or removed from the State of New Mexico. Any and all proceedings before the Supreme Court pursuant to this subparagraph shall be conducted in camera and shall be kept under the seal of the Supreme Court.

B. **Formal disciplinary proceedings.** At request of either disciplinary counsel or the respondent-attorney, the chair of a hearing committee may issue subpoenas:

(1) requiring the presence of a witness at a deposition for discovery that has been authorized pursuant to Rule 17-311 NMRA and that, if so authorized, may command the witness to produce the designated books, papers, documents or tangible things;

(2) requiring the person to whom the subpoena is directed to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises at a specified time and place. A command to produce evidence or to permit inspection may be joined with a command to appear at a hearing or at deposition, or may be issued separately;

(3) requiring the presence of witnesses at a formal hearing before a hearing committee or the Disciplinary Board;

(4) commanding the person to whom it is directed to produce at a formal hearing before a hearing committee the books, papers, documents or tangible things designated therein.

C. **Contents.** No subpoena shall be issued pursuant to this rule unless it sets forth:

(1) the reason or purpose for the investigation or hearing;

(2) with reasonable definiteness, any records or other documents to be produced which are relevant to the investigation or hearing;

(3) a statement that the witness has a right to be accompanied by counsel; and

(4) the date, time and place at which the witness is to appear.

D. **Enforcement.**

(1) Failure to cooperate with an investigation of the Disciplinary Board, or failure to respond to letters from disciplinary counsel regarding an investigation shall be grounds for submission of a motion to the Supreme Court to order that the offending respondent-attorney be held in contempt of court.

(2) Any person who has been served with a subpoena pursuant to this rule may apply to the officer issuing the subpoena for an order to quash the subpoena. If any person fails to comply with a subpoena issued by the chair of the Disciplinary Board or the chair of a hearing committee in accordance with the provisions of this rule or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, at the request of the officer issuing the subpoena, disciplinary counsel may apply to the Supreme Court for an order directing that person to take the requisite action. The Supreme Court may issue such order or may quash the subpoena. Should any person willfully fail to comply with an order of the Supreme Court, the Court may punish such person for contempt of court.

E. **Subpoena; request of another jurisdiction.** For good cause shown, the chair of the Disciplinary Board, or a member of the board designated by the chair, may issue a subpoena to compel the attendance of witnesses and production of documents in this state for use in lawyer disciplinary or disability proceedings in another jurisdiction. The subpoena may be requested by disciplinary counsel of this state when the request is by the disciplinary authority of the other jurisdiction, by an attorney admitted to practice in this state when the request is by a respondent in a proceeding in another jurisdiction, or by a respondent in a proceeding in another jurisdiction acting *pro se*. The person seeking the subpoena shall certify that the subpoena has been approved or authorized under the law or disciplinary rules of the other jurisdiction. Service, enforcement and challenges to a subpoena issued pursuant to this paragraph shall be in accordance with the Rules Governing Discipline.

[As amended, effective August 31, 1995; January 3, 2006; as amended by Supreme Court Order No. 12-8300-008, effective April 5, 2012.]

ANNOTATIONS

The 2012 amendment, approved by Supreme Court Order No. 12-8300-008, effective April 5, 2012, required a showing of good cause of the issuance of a subpoena of witnesses or for the production of records and documents; in Paragraph A, in Subparagraph (3), at the beginning of the first sentence, added "Upon a showing of good cause"; and in Paragraph E, at the beginning of the first sentence, added "For good cause shown", and in the second sentence, after "by a respondent in a proceeding in another jurisdiction", added the remainder of the sentence.

The 2006 amendment, approved by Supreme Court Order No. 06-8300-001, effective January 3, 2006, limited the applicability of Paragraph B to formal disciplinary hearings, added new Subparagraphs (1) and (2) of Paragraph B relating to the issuance of subpoenas for discovery purposes, redesignated former Subparagraphs (1) and (2) of Paragraph B as Subparagraphs (3) and (4) of Paragraph B and deleted the second sentence in each of these subparagraphs, added Subparagraph (4) of Paragraph C, amended Subparagraph (2) of Paragraph D to provide for the filing of an application to quash a subpoena with the officer issuing the subpoena rather than the Supreme Court and added new Paragraph E relating to the request of another jurisdiction for a subpoena to compel the attendance of witnesses and documents for use in a disciplinary proceeding.

The 1995 amendment, effective October 1, 1995, in Paragraph A, added Subparagraph (1) and redesignated the remaining subparagraphs accordingly, substituted "respondent-attorney" for "attorney" throughout the paragraph, inserted "after the respondent-attorney has been notified of an investigation" in the first sentence of Subparagraph (2) and rewrote the second sentence of Subparagraph (2), rewrote Subparagraph (3), and substituted "Disciplinary Board" for "board" in Subparagraph (4); substituted "counsel" for "an attorney" in Subparagraph B(3); substituted "disciplinary counsel" for "bar counsel" and "respondent-attorney" for "attorney" in Subparagraph D(1); and substituted "chair" for "chairman" and deleted "chief" preceding "disciplinary counsel" throughout the rule.

Cross references. — *See* Rule 1-045 NMRA for issuance of subpoenas pursuant to the Rules of Civil Procedure for the District Courts.

17-307. Investigation of complaints.

A. **Initiation.** Chief disciplinary counsel, deputy disciplinary counsel or assistant disciplinary counsel shall initiate all investigations, whether upon complaint or otherwise. Investigations shall be conducted by disciplinary counsel staff attorneys or, when necessary because of a conflict of interest referred by chief disciplinary counsel to an appropriate special assistant disciplinary counsel or commissioned investigator, for investigation, report, recommendations, and, when appropriate, prosecution. Investigations, examinations and verifications shall be conducted so as to preserve the private confidential nature of the lawyer’s records insofar as is consistent with these rules and law.

B. **Disposition prior to formal investigation.** If the complaint does not set forth allegations which if true state reasonable cause to believe that a respondent-attorney has violated the Rules of Professional Conduct, or, if in the discretion of chief disciplinary counsel or chief disciplinary counsel's designee, sufficient proof of a violation of the Rules of Professional Conduct is lacking, a disciplinary counsel staff attorney may dismiss the complaint, provided that all doubts shall be resolved in favor of conducting a formal hearing. Within thirty (30) days after receipt of a complaint, if the allegations are serious enough to warrant a formal investigation the office of disciplinary counsel shall notify the respondent-attorney of the nature of the complaint. Upon good cause shown to the Supreme Court, the Court may order the delay in notifying the respondent-attorney of the pending investigation. Upon the request of any person affected by a dismissal, or sua sponte, the chair of the Disciplinary Board or a board member designated by the chair may, at any time, order further investigation of a complaint that has been dismissed by a disciplinary counsel staff attorney.

C. **Procedure of formal investigation.** Prior to the filing of a formal specification of charges with the Disciplinary Board the respondent-attorney shall always be advised of the general nature of the allegations and shall be given a fair opportunity to present any matter of fact or mitigation the respondent-attorney wants disciplinary counsel to consider. With the consent of the respondent-attorney, disciplinary counsel may conduct any part of the investigation in the form of an informal hearing allowing parties to present evidence and requiring them to answer questions in compliance with Rule 17-306 NMRA.

D. **Investigation report.** If disciplinary counsel determines the file should be reviewed by a reviewing officer pursuant to Paragraph B of Rule 17-104 NMRA, disciplinary counsel shall write a brief summary report to include the following:

(1) a summary statement of the facts of the situation with reference to the provisions of the Rules of Professional Conduct or other rule or law claimed to have been violated, and a statement of whether or not disciplinary counsel believes that there is probable cause to believe any violation has occurred;

(2) a statement of the opposing positions of the parties and of the facts disciplinary counsel believes would find support in the evidence, together with an analysis of the probable result of a hearing in the event formal charges were filed; and

(3) recommendations for further handling in accordance with this rule.

E. **Review prior to filing formal charges.** Any deputy disciplinary counsel or assistant counsel shall present a draft of the proposed specification of charges to chief disciplinary counsel or, when necessary, to chief disciplinary counsel's designee, prior to filing the specification of charges. Chief disciplinary counsel or, when necessary, chief disciplinary counsel's designee, shall either

(1) approve the filing of the specification of charges; or

(2) recommend an alternate course of action consistent with these rules.

F. **Special assistant disciplinary counsel; special board.** If, after chief disciplinary counsel reviews the initial response to a complaint and determines that the matter cannot be summarily dismissed, and further investigation pursuant to Paragraph A of this rule appears appropriate, whether upon complaint filed or otherwise, relating to disciplinary counsel, a member of a hearing committee, or a member of the board; relating to a spouse, parent, child, or sibling of disciplinary counsel or a board member; or relating to a partner or associate of a board member, the matter shall proceed in accordance with these rules except that

(1) chief disciplinary counsel or, when necessary, chief disciplinary counsel's designee shall refer the matter to a special assistant disciplinary counsel who is not a paid employee of the board;

(2) special assistant disciplinary counsel shall proceed in accordance with these rules in investigating and, if appropriate, prosecuting the complaint;

(3) if special assistant disciplinary counsel prosecutes the matter and a hearing must be held, the Chief Justice shall be notified by special assistant disciplinary counsel and shall appoint a special board consisting of three (3) members of the bar who are not members of the board; and

(4) the special board shall perform the functions of a hearing committee under these rules and shall submit its recommendations directly to the Supreme Court for review under Rule 17-316 NMRA.

[As amended, effective October 25, 1996; November 30, 2004; as amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007; by Supreme Court Order No. 12-8300-008, effective April 5, 2012; as amended by Supreme Court Order No. 13-8300-045, effective December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-045, effective December 31, 2013, eliminated the designation of attorneys by the Disciplinary Board to investigate or review complaints; provided that investigations shall be conducted by disciplinary counsel staff; provided for the appointment of special assistant disciplinary counsel; in Paragraph A, in the first sentence, after "disciplinary counsel of assistant", added "disciplinary" and after "assistant disciplinary counsel" deleted "designated by the chair of the Disciplinary Board" and in the second sentence, after "staff attorneys or", added "when necessary because of a conflict of interest", after "conflict of interest referred", added "by chief disciplinary counsel", after "to an appropriate", added "special", after "appropriate special assistant", added "disciplinary", after "investigator for", added "investigation", and after "report, recommendations", added "and, when appropriate, prosecution"; in Paragraph D, in the first sentence, after "Professional

Conduct”, added “or, if in the discretion of chief disciplinary counsel or chief disciplinary counsel’s designee, sufficient proof of a violation of the Rules of Professional Conduct is lacking”; in Paragraph E, after “disciplinary counsel or assistant counsel”, deleted “designated by the chair of the Disciplinary Board”; in Paragraph F, in the title of the paragraph, after “Special”, added “assistant disciplinary” and at the beginning of the sentence, after “If”, deleted “an” and added “after chief disciplinary counsel reviews the initial response to a complaint and determines that the matter cannot be summarily dismissed, and further”, in Subparagraph (1) of Paragraph F, at the beginning of the sentence, deleted “the board” and added “chief disciplinary counsel or, when necessary, chief disciplinary counsel’s designee”, after “chief disciplinary counsel’s designee”, deleted “the board”, after “chief disciplinary counsel’s designee shall”, deleted “appoint” and added “refer the matter to”, after “refer the matter to a special”, added “assistant disciplinary”, and after “special assistant disciplinary counsel who”, added the remainder of the sentence; in Subparagraph (2) of Paragraph F, at the beginning of the sentence added “special assistant disciplinary counsel”, and after “shall proceed in accordance with”, deleted “Paragraph B of Rule 17-105 NMRA” and added the remainder of the sentence; in Subparagraph (3) of Paragraph F, at the beginning of the sentence, deleted “and if the respondent is a member of the board or is a spouse, parent, child, or sibling of a board member, the chief justice” and added “if special assistant disciplinary counsel prosecutes the matter and a hearing must be held, the Chief Justice shall be notified by special assistant disciplinary counsel and”, and after “members of the bar”, deleted “to hear the case and to report its findings, conclusions and recommendations directly to the Supreme Court” and added “who are not members of the board; and”; and added Subparagraph (4) of Paragraph F.

The 2012 amendment, approved by Supreme Court Order No. 12-8300-008, effective April 5, 2012, permitted a draft of the proposed specification of charges to be presented to the chief disciplinary counsel’s designee; in Paragraph E, in the first sentence, after "charges to chief disciplinary counsel", added "or, when necessary, to chief disciplinary counsel’s designee" and in the second sentence, after "Chief disciplinary counsel", added "or, when necessary, chief disciplinary counsel’s designee".

The 2006 amendment, approved by Supreme Court Order No. 06-8300-032, effective January 15, 2007, revised Paragraph D to require that probable cause of a violation of the Rules of Professional Conduct be found by "disciplinary counsel" instead of an investigator.

The 2004 amendment, effective November 30, 2004, inserted “or a board member designated by the chair” and substituted “further” for “an” in the last sentence of Paragraph B.

The 1996 amendment, effective October 25, 1996, in Paragraph A, substituted "disciplinary counsel staff attorneys" for "chief disciplinary counsel personally" in the second sentence; in Paragraph B, substituted "respondent-attorney" for "attorney" throughout, substituted "a disciplinary counsel staff attorney" for "chief disciplinary counsel" near the end of the first sentence, substituted "a formal investigation" for "an

investigation" and "office of disciplinary counsel" for "Disciplinary Board" in the second sentence, and substituted "a disciplinary counsel staff attorney" for "staff" in the last sentence; rewrote Paragraph D; deleted former Paragraph E relating to counsel's recommendation and added current Paragraph E; and made gender neutral and other stylistic changes throughout the rule.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 88.

Propriety of attorney's resignation from bar in light of pending or potential disciplinary action, 54 A.L.R.4th 264.

7A C.J.S. Attorney and Client §§ 93, 95.

17-308. Informal admonitions.

A. **Proposal letters.** When an informal written admonition has been recommended and approved as provided in Rule 17-206(A)(6)(a) NMRA, chief disciplinary counsel, or chief disciplinary counsel’s designee, shall advise the respondent-attorney by letter that an admonition has been officially proposed; that respondent may accept or reject the admonition; that if accepted, a copy of the written admonition will remain in the respondent's records in the private files in disciplinary counsel's office and that the fact thereof may be offered in evidence, if relevant and made within the last ten (10) years, during the course of the hearing on any formal charges that might be filed against the respondent upon future complaints; and that if rejected, disciplinary counsel is required to file formal charges upon and prosecute the current complaint.

B. **Issuance.** At disciplinary counsel's option, the letter of informal admonition shall be mailed to the respondent-attorney or delivered to the respondent-attorney in person.

C. **Rejection.** If the proposal to resolve a complaint by the issuance of an informal written admonition is rejected by the respondent-attorney, disciplinary counsel shall file a formal specification of charges. In the charges, counsel will indicate that they have been filed pursuant to the requirements of this rule and because an offer of informal admonition was declined. This fact may not be considered as evidence that the respondent-attorney has engaged in the misconduct alleged in the charges.

D. **Copies.** Copies of all proposal letters and a report of the acceptance, delivery or rejection of the written informal admonitions shall be furnished the chairman of the Disciplinary Board.

E. **Informal Admonition.** Upon recommendation of a hearing committee under Rule 17-206(A)(6)(b) NMRA, the Disciplinary Board may issue an informal admonition to a respondent-attorney upon recommendation of a hearing committee after formal disciplinary proceedings.

[As amended, effective January 1, 1987; September 1, 1990; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-022, effective December 31, 2015, authorized the disciplinary board to issue an informal admonition to a respondent-attorney upon recommendation of a disciplinary hearing committee after formal disciplinary proceedings, and made technical changes; in Paragraph A, after "provided in", deleted "Article 2 of these rules" and added "Rule 17-206(A)(6)(a) NMRA", and after "chief disciplinary counsel", added "or chief disciplinary counsel's designee"; and added new Paragraph E.

The 1990 amendment, effective September 1, 1990, added Paragraph C and redesignated former Paragraph C as Paragraph D.

17-309. Formal charges; designation of hearing officer or committee.

A. **Institution of proceedings.** Formal disciplinary proceedings shall be instituted by the filing of a specification of charges with the chair of the Disciplinary Board and the issuance by the chair of a formal notice to the respondent-attorney. A copy of the notice, together with a copy of the specification of charges, shall be served upon the respondent-attorney.

B. **Contents of specification of charges.** The specification of charges shall contain:

(1) a brief and plain statement of the charge, or if more than one, each of the separate charges of professional misconduct asserted against the respondent-attorney;

(2) the provisions of the Rules of Professional Conduct, court rule, statute or other law claimed to have been violated;

(3) the names and addresses of all known witnesses against the respondent-attorney;

(4) all known factors in aggravation; and

(5) the name and address of the particular disciplinary counsel who is expected to prosecute the matter.

After review and approval as provided for in Paragraph E of Rule 17-307 NMRA, specification of charges shall be signed by chief disciplinary counsel, deputy disciplinary counsel, assistant disciplinary counsel, or special assistant disciplinary counsel.

C. **Designation of hearing officer or committee and notice.** Upon filing of the specification of charges, the chair of the Disciplinary Board, or the chair's designee, shall forthwith designate a hearing officer or a hearing committee to hear the matter, and shall mail copies of the specification of charges to the hearing officer or to the members of the committee. The chair shall issue a formal notice to the respondent-attorney which shall advise the respondent-attorney that formal charges of unprofessional conduct have been instituted against the respondent-attorney and referred for hearing to a hearing officer or hearing committee giving the names and addresses of the members thereof and identification of its chair. The notice shall formally advise the respondent-attorney of the following:

(1) the right to file an answer to the specification of charges;

(2) the facts alleged in the specification of charges shall be deemed admitted if not specifically denied by answer or if no answer is filed within the prescribed time, in which event the sole issue to be determined by the hearing officer or committee shall be the nature of the officer's or committee's recommendation of discipline to the Disciplinary Board after consideration of any facts in aggravation or mitigation of the respondent-attorney's fault;

(3) the respondent-attorney has the right to be represented by counsel, to appear at all hearings, to confront and cross-examine the witnesses and to present relevant evidence in the respondent-attorney's own behalf;

(4) the right to the assistance of subpoenas to be issued at the respondent-attorney's request and to discovery in accordance with these rules; and

(5) within ten (10) days of receipt of notification of the designation of the members of a hearing committee, the respondent-attorney has the right to object to the qualification of the hearing officer or any member of the hearing committee setting forth facts which establish that such member cannot impartially decide the matter. Any objection to the qualification of any member of the hearing committee to sit and deliberate upon the matter must be filed with the committee chair and will be passed upon by members of said committee in the exercise of their sound discretion. Any objection to the qualification of a hearing officer shall be to the chair of the Disciplinary Board. A hearing officer or any member of a hearing committee who feels unable to sit impartially in any disciplinary proceeding may withdraw upon the filing of a notice of recusal stating the reasons for the recusal.

D. **Service.** Service of the specification of charges and formal notice shall be made upon the respondent-attorney in the manner prescribed by these rules. A copy of any procedural rules adopted by the Supreme Court or Disciplinary Board which have not been published in the NMRA shall be served on the respondent-attorney with the specification of charges. If service is by mail it shall be by certified mail, return receipt requested, directed to the respondent-attorney's address of record in the office of the

clerk of the Supreme Court and shall be complete upon receipt by the respondent-attorney, or five (5) days after service or mailing, whichever is earlier.

[As amended, effective January 1, 1987; as amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007; by Supreme Court Order No. 11-8300-028, effective June 1, 2011.]

ANNOTATIONS

The 2011 amendment, approved by Supreme Court Order No. 11-8300-028, effective June 1, 2011, permitted deputy disciplinary counsel, assistant disciplinary counsel, or special assistant disciplinary counsel to sign a specification of charges after the chief disciplinary counsel has reviewed and approved the charges.

The 2006 amendment, approved by Supreme Court Order No. 06-8300-032, effective January 15, 2007, added a new Subparagraph (4) of Paragraph B requiring the specification of charges to include "all known factors in aggravation" and re-lettered former Subparagraph (4) as Subparagraph (5).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 87, 89 to 92, 96.

7A C.J.S. Attorney and Clients §§ 88 to 111.

17-310. Answer.

A. **Contents.** The answer of the respondent-attorney shall contain the following:

(1) a brief and plain statement by the respondent-attorney reflecting the respondent-attorney's admissions, denials and any other relevant and material matter that the respondent-attorney wishes to convey concerning each of the factual charges against the respondent-attorney;

(2) any matter in mitigation; and

(3) the names and addresses of the witnesses that the respondent-attorney proposes to call in the respondent-attorney's defense.

B. **Filing and service.** Within twenty (20) days after service of the specification of charges, the respondent-attorney may file an answer to the charges. The answer shall be filed with the chair of the hearing committee. Copies shall be served upon the members of the designated hearing committee and opposing counsel. Service may be by mail.

C. **Failure to answer.** If the respondent-attorney fails to answer the charges within twenty (20) days, in accordance with Paragraph B, or if the charges are not specifically

denied in the answer, the charges will be deemed admitted. In this event, the sole issue to be determined by the hearing committee shall be the nature of the committee's recommendation to the Disciplinary Board after consideration of any facts in aggravation or mitigation of the respondent-attorney's misconduct.

[As amended, effective May 1, 1986; as amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007.]

ANNOTATIONS

The 2006 amendment, approved by Supreme Court Order No. 06-8300-032, effective January 15, 2007, revised Subparagraph (2) of Paragraph A to delete the former requirement that matters in mitigation be included in the answer only when the matters in mitigation were in connection with admitted violations.

Failure to answer. — The language of Paragraph C is mandatory and applies to all allegations in the specification of charges, not merely the factual allegations. Once an attorney has failed to deny the charges, the only task for the hearing committee is to hear evidence in aggravation or mitigation and recommend an appropriate sanction. This is not to say that a hearing committee may never set aside a finding that an attorney is in default and permit the filing of a belated answer. The hearing committee or the board may, for good cause shown, set aside a finding of default pursuant to Rules 1-055C and 1-060 NMRA. *In re Roberts-Hohl*, 1994-NMSC-004, 116 N.M. 700, 866 P.2d 1167; *In re Krob*, 1997-NMSC-037, 123 N.M. 652, 944 P.2d 881.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney and Client § 97.

17-311. Discovery.

A party may apply to the chair of the hearing committee for permission to conduct discovery prior to a formal hearing. Upon a showing of good cause, the chair may permit discovery upon such terms as may be appropriate under the circumstances.

[As amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007.]

ANNOTATIONS

The 2006 amendment, approved by Supreme Court Order No. 06-8300-032, effective January 15, 2007, replaced the "written showing of need" for discovery requirement with a "showing of good cause" for discovery.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 93.

Restricting access to records of disciplinary proceedings against attorneys, 83 A.L.R.3d 749.

Discovery or inspection of state bar records of complaints against or investigations of attorneys, 83 A.L.R.3d 777.

17-312. Motions; prehearing conference; supplemental witness lists.

A. **Motions.** All prehearing motions shall be filed with the chairman of the hearing committee and shall be determined by the committee in its sound discretion. Copies shall be served upon members of the hearing committee and upon opposing counsel. Service may be by mail.

B. **Prehearing conference.** The chairman of the hearing committee to which the matter is assigned may, if he deems it necessary, schedule a prehearing conference with disciplinary counsel and respondent to clarify the issues and encourage stipulations or admissions of fact.

C. **Supplemental witness lists.** If, subsequent to the filing of specification of charges or the filing of an answer by the respondent-attorney, a party discovers additional material witnesses which the party intends to call to testify at the formal hearing, the party shall promptly give written notice to the other party of the names and addresses of the additional witnesses.

[As amended, effective May 1, 1986.]

17-313. Hearings.

A. **Time for commencement.** Within forty-five (45) days after the service of the specification of charges, the chair of the hearing committee shall set a time and date for a formal hearing on the charges. The formal hearing shall be set no later than one hundred and fifty (150) days from the date of the service of the specification of charges. With respect to a hearing held following the rejection of a conditional agreement as provided for in Rule 17-211 NMRA, such hearing shall be set no later than ninety (90) days following the rejection of the conditional agreement. Upon motion and a showing of good cause, the chair of the Disciplinary Board may extend the time for the commencement of the hearing. The deadlines set forth in this rule to set and hold the hearing are not jurisdictional and any failure to hold a hearing within the specified time period does not otherwise divest the hearing committee, the Board, or the Court of jurisdiction to hold the hearing, and to consider and rule upon the charges against the respondent.

B. **Notice of hearings.** The chair of the hearing committee shall give prompt written notice of the time and place of the hearings to the parties.

C. **Record of proceedings.** The chair of the hearing committee shall arrange for the taking of a record of all evidence received during the course of the hearing. The expense for the transcript of proceedings shall be paid for by the Disciplinary Board, but

may be assessed against the respondent-attorney in accordance with Rule 17-106(B) NMRA. The record in all disciplinary hearings may be taken on an audio recording device approved by the administrative office of the courts or the chair of the hearing committee shall arrange for a stenographic record of the proceedings to be prepared. The committee shall cause a copy of the record to be filed with the Disciplinary Board, together with the hearing committee's file of all pleadings and other material submitted to it and all exhibits. The record of the hearing shall comply with the Rules Governing the Recording of Judicial Proceedings.

D. **Procedure of hearings.** Formal hearings will proceed in the following manner:

(1) formal hearings will be adversary in nature, prosecuted by disciplinary counsel, and determined by a majority vote of the hearing committee. The chair of the Disciplinary Board or, in emergencies, the vice chair of the Disciplinary Board, may designate members of another committee to substitute for any absent or disqualified member, if necessary;

(2) all witnesses shall be sworn;

(3) disciplinary counsel shall present evidence in support of all allegations in the specification of charges, followed by the respondent's evidence;

(4) the committee chair shall preside and shall make rulings upon questions of admissibility of evidence and conduct of proceedings;

(5) all committee members may ask questions of any witness, including the respondent-attorney, at any stage of the proceedings;

(6) hearings may be adjourned from time to time at the discretion of the chair of the hearing committee;

(7) the complaining witness or witnesses, the respondent-attorney, and disciplinary counsel may be present throughout the formal hearing. Other witnesses may be excluded, except when testifying, at the discretion of the chair of the committee; and

(8) within fourteen (14) days after the court reporter notifies the parties that the transcript of the hearing is complete or within a time period otherwise agreed to by the parties and the committee, both parties shall have the right to submit proposed findings and conclusions after which the hearing committee shall consider the case and shall, within thirty (30) days after the requested findings and conclusions are submitted, prepare, sign, and transmit to the Disciplinary Board its findings of fact, conclusions, and recommendations for discipline or other disposition of the matter. Upon the request of the chair of the hearing committee and upon a showing of good cause, the chair of the Disciplinary Board may extend the time for preparation and transmission to the Disciplinary Board of the committee's findings of fact, conclusions, and

recommendations, which request may be made before or after the thirty (30) days, but such extension shall not exceed an additional sixty (60) days without a further showing of good cause. Regardless, the deadline for the hearing committee to submit its findings of fact, conclusions of law, and recommendations for discipline or other disposition is not jurisdictional and any failure by the hearing committee to submit its findings, conclusions, and recommendations in the specified time period does not otherwise divest the hearing committee, the Board, or the Supreme Court of jurisdiction to consider and rule upon the charges against the respondent.

E. **Notice of findings, conclusions and recommendations.** Upon the filing in the chair's office of the record of the formal hearing and the findings of fact, conclusions, and recommendations of any hearing committee, the chair of the Disciplinary Board shall give written notice of the filing date thereof with copies of the findings, conclusions, and recommendations to chief disciplinary counsel, prosecuting disciplinary counsel, the respondent, and counsel for the respondent. The respondent may request a copy of the record of proceedings directly from the court reporter and at the respondent's own expense. At the same time, the chair shall advise the parties that they have ten (10) days from the date of mailing of the findings, conclusions, and recommendations to request oral argument or permission to submit briefs before the Disciplinary Board if they wish to do so, and shall advise them of the names of the members of the panel of the Board that will be designated to consider the matter. Requests for oral argument and requests for permission to file briefs shall be deemed to be filed when mailed.

F. **Record defined.** As used in these rules, "record" means

(1) a tape that was recorded by an audio recording device approved by the administrative office of the courts for use in the district courts of this state. Where the transcript of the proceedings is a tape, the chair of the hearing committee shall cause an index log to be prepared for the tape. The tapes shall not be transcribed for purposes of an appeal;

(2) statement of facts and proceedings stipulated to by the parties for purposes of review; or

(3) stenographic notes that must be transcribed when a "record" is required to be filed.

[As amended, effective January 1, 1986; August 1, 1988; as amended by Supreme Court Order No. 08-8300-001, effective January 16, 2008; by Supreme Court Order No. 12-8300-008, effective April 5, 2012; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015; as amended by Supreme Court Order No. 18-8300-009, effective December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-009, effective December 31, 2018, clarified that any failure by the hearing committee to submit its findings, conclusions, and recommendations in the specified time period does not divest the hearing committee, the Board, or the Supreme Court of jurisdiction to consider and rule upon the charges against the respondent; in Subparagraph D(8), after “sixty (60) days without a further showing of good cause”, added the remainder of the subparagraph.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-022, effective December 31, 2015, increased the time allowed for parties to submit proposed findings and conclusions; in Subparagraph D(8), deleted “within ten (10) days after the conclusion of the hearing” and added “within fourteen (14) days after the court reporter notifies the parties that the transcript of the hearing is complete”.

The 2012 amendment, approved by Supreme Court Order No. 12-8300-008, effective April 5, 2012, enlarged the time period for setting and holding a hearing after service of the specification of charges; specified the time period for setting a hearing after rejection of a conditional agreement; provided that the deadlines for setting and holding hearings are not jurisdictional; in Paragraph A, in the first sentence, after "Within", deleted "thirty (30)" and added "forty-five (45)" and after "days after the", deleted "expiration of time for filing an answer" and added "service of the specification of charges"; in the second sentence, after "hearing shall be set no later than", deleted "one hundred and twenty (120)" and added "one hundred and fifty (150)" and after "from the date of the", deleted "expiration of time for filing an answer" and added "service of the specification of charges"; added the third sentence; in the fourth sentence, after "Upon", added "motion and"; and added the fifth sentence.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-001, effective January 16, 2008, added the last sentence of Paragraph E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney and Client §§ 105 to 111.

17-314. Consideration by the Disciplinary Board.

A. **Appointment of hearing panel.** Upon receipt of the findings of fact, conclusions, and recommendations of the hearing committee, the chair of the Disciplinary Board shall appoint one or more members of the board to serve as a hearing panel, with one member designated as chair.

B. **Submission of briefs and requests for oral argument.** Requests for oral argument and submission of briefs shall be made as provided in Paragraph E of Rule 17-313 NMRA and shall state with specificity the issues to be addressed in the proposed argument or brief.

C. **No additional evidence before the board.** The Disciplinary Board panel shall consider only evidence in the record of the hearing committee. No additional evidence will be admitted at the hearing before the board panel. If the board panel determines that there are conflicting factual findings by the hearing committee, the board panel may remand a matter to the hearing committee for clarification of the committee's factual findings. The board panel will specifically identify the conflicting findings and state what clarification is sought from the hearing committee upon remand.

D. **Oral argument.** When oral argument is allowed, the party requesting the oral argument shall proceed first, but may reserve a portion of the allotted time for rebuttal. The amount of time for oral argument may be determined by the board panel.

E. **Proceedings on remand from the Supreme Court.** If the Supreme Court remands a matter to the Disciplinary Board for evidentiary proceedings pursuant to Paragraph G of Rule 17-206 NMRA, Paragraph B of Rule 17-207 NMRA, or Paragraph B of Rule 17-208 NMRA, the chair shall assign the case to a panel of one or more members of the Disciplinary Board and shall appoint a member of the panel to chair the panel. The panel shall hold a hearing within thirty (30) days of the assignment. Upon a showing of good cause, the chair of the Disciplinary Board may grant an extension of time within which the hearing may be held. The panel shall follow the procedures set forth in Rule 17-313 NMRA as if the panel were a hearing committee, except that the panel shall forward the record of the proceedings and its findings and recommendations directly to the Supreme Court.

[As amended, effective January 1, 1986; January 1, 1987; May 16, 1994; January 1, 1995; as amended by Supreme Court Order No. 08-8300-001, effective January 16, 2008; as amended by Supreme Court Order No. 13-8300-045, effective December 31, 2013.]

ANNOTATIONS

The 2013 amendment, approved by Supreme Court Order No. 13-8300-045, effective December 31, 2013, provided for the remand of a matter to the hearing committee for a clarification of the committee's finding when there are conflicting findings; in Subparagraph C, in the second sentence, at the end of the sentence, added "panel", added the third and fourth sentences; in Paragraph D, in the second sentence, after "may be determined by the", added "board"; and in Paragraph E, in the first sentence, after "Rule 17-206 NMRA, added "Paragraph B of Rule 17-207 NMRA".

The 2008 amendment, approved by Supreme Court Order No. 08-8300-001, effective January 16, 2008, rewrote Paragraph B.

The 1995 amendment, effective January 1, 1995, added Paragraph E.

The 1994 amendment, effective May 16, 1994, divided former Paragraph A to form Paragraphs A and B and rewrote those paragraphs, redesignated former Paragraphs B

and C as Paragraphs C and D, inserted "panel" and substituted "evidence in the record" for "evidence present in the record" in Paragraph C, and substituted "panel" for "Disciplinary Board" in Paragraph D.

Constitutional claims. — The Disciplinary Board has jurisdiction over a petition for a declaratory judgment on constitutional claims and should use the procedures outlined in Paragraph A of this rule to govern the proceedings. *Stein v. Legal Advertising Com.*, 272 F.2d 1260 (10th Cir. 2004).

New evidence not admissible at oral argument. — When, during oral argument, an attorney attempted to introduce additional evidence to show that he had taken remedial steps to address some of the deficiencies noted by the committee in its report, the board panel correctly refused to admit the additional evidence. Argument before the board panel is not meant to constitute a trial de novo. *In re Quintana*, 1991-NMSC-055, 112 N.M. 132, 812 P.2d 786.

Standard of review. — When reviewing the findings of a hearing committee, the hearing panel should defer to the hearing committee on matters of weight and credibility, reviewing the evidence in the light most favorable to the hearing committee's decision and resolving all conflicts and reasonable inferences in favor of the decision reached by the hearing committee. *In re Bristol*, 2006-NMSC-041, 140 N.M. 317, 142 P.3d 905.

The hearing panel is not bound by the hearing committee's legal conclusions or recommendations for discipline and reviews such matters under a de novo standard of review. *In re Bristol*, 2006-NMSC-041, 140 N.M. 317, 142 P.3d 905.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 94, 95, 97.

7A C.J.S. Attorney and Client §§ 99 to 112.

17-315. Disciplinary Board decision.

Within thirty (30) days following the submission of briefs or oral argument or the receipt of the hearing committee's findings and recommendations, whichever date is last, the Disciplinary Board or panel shall render its decision. Upon a showing of good cause, the chair of the Disciplinary Board may extend the time within which the decision must be rendered. Regardless, the deadline for the Board or panel to render its decision is not jurisdictional and any failure to issue its decision within the specified time period does not otherwise divest the hearing committee, the Board, or the Supreme Court of jurisdiction to consider and rule upon the charges against the respondent and the hearing committee's decision. The Disciplinary Board or panel may accept, reject, modify, or increase the sanctions contained in the recommendations of the hearing committee. The Disciplinary Board is not restricted to the findings of the hearing committee and may render its decision based upon the record and any additional

findings that it may make. The decision of the Board will be carried out in the following manner:

A. **Dismissal.** In the event of a dismissal, the Board shall so notify the complainant, the respondent-attorney, disciplinary counsel, and chief disciplinary counsel;

B. **Informal Admonition.** In the event of a determination of an informal admonition, the Board shall instruct disciplinary counsel to prepare and deliver to the respondent-attorney a letter of informal admonition. At disciplinary counsel's option, the letter of informal admonition shall be mailed to the respondent-attorney or delivered to the respondent-attorney in person;

C. **Formal reprimand.** In the event of a determination of formal reprimand by the Board or probation, the Board shall arrange for the respondent-attorney to appear before the Board, and the chair of the Board or the chair's designee shall deliver the reprimand orally and in writing. Copies of the written reprimand shall be delivered to the respondent-attorney and disciplinary counsel;

D. **Probation by the Board.** In the event of a determination by the Board to impose probation or other conditions as a type of discipline by itself or in addition to an informal admonition or formal reprimand under Rule 17-206(B)(2) NMRA, the Board shall enter an order detailing the terms and conditions of such probation or other conditions and state whether the probation or other conditions are discipline by themselves or are in addition to an informal admonition or formal reprimand;

E. **Suspension; disbarment; public censure; restitution.** In the event of a determination by the Board to recommend suspension, disbarment, public censure, or probation by the Supreme Court under Rule 17-206(B)(1) NMRA, or restitution by the respondent-attorney, it shall prepare its written report and recommendations over the signature of the chair of the Board, or at the chair's option, the chair of the reviewing panel and transmit seven (7) copies of the same with three (3) copies of the entire record of the hearing and the pleadings filed in the proceedings to the clerk of the Supreme Court within thirty (30) days of the Board's decision. A copy of the report and recommendations shall be served on the respondent-attorney at the time it is transmitted to the clerk of the Supreme Court.

[As amended, effective August 1, 1988; as amended by Supreme Court Order No. 07-8300-015, effective June 13, 2007; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015; as amended by Supreme Court Order No. 18-8300-009, effective December 31, 2018.]

ANNOTATIONS

The 2018 amendment, approved by Supreme Court Order No. 18-8300-009, effective December 31, 2018, clarified that any failure to issue its decision within the specified time period does not divest the hearing committee, the Board, or the Supreme Court of

jurisdiction to consider and rule upon the charges against the respondent and the hearing committee's decision; added the third sentence of the introduction, which states "Regardless, the deadline for the Board or panel to render its decision is not jurisdictional and any failure to issue its decision within the specified time period does not otherwise divest the hearing committee, the Board or the Supreme Court of jurisdiction to consider and rule upon the charges against the respondent and the hearing committee's decision".

The 2015 amendment, approved by Supreme Court Order No. 15-8300-022, effective December 31, 2015, provided additional procedures in the event of a determination of an informal admonition and in the event of a determination by the disciplinary board to impose probation or other conditions as a type of discipline; added new Paragraph B and redesignated former Paragraph B as Paragraph C; added new Paragraph D and redesignated former Paragraph C as Paragraph E; in Paragraph E, in the heading, after "public censure", deleted "probation" and added "restitution", in the first sentence, after "Rule 17-206", added "(B)(1) NMRA", and added "or restitution by the respondent-attorney".

The 2007 amendment, approved by Supreme Court Order No. 07-8300-015, effective June 13, 2007, amended Paragraph C to require the disciplinary board transmit to the Supreme Court seven copies of its recommendations within thirty days after the board's decision and to require a copy to be served on the respondent attorney at the time it is transmitted to the Supreme Court.

17-316. Review by the Supreme Court.

A. **Decisions subject to review.** There are three methods for seeking review by the Supreme Court of a recommendation or decision of the Disciplinary Board entered pursuant to Rule 17-315 NMRA:

(1) if the decision recommends public censure by the Supreme Court, suspension, disbarment, probation by the Supreme Court, restitution by the respondent-attorney, reinstatement after suspension or disbarment or denial of reinstatement after suspension or disbarment, a respondent-attorney or disciplinary counsel may request a hearing before the Supreme Court by filing a request for hearing with the clerk of the Supreme Court within fifteen (15) days of service of the decision and recommendations of the Disciplinary Board on the party requesting the hearing which the court, in its discretion, may grant;

(2) if the decision of the board is to assess costs, to impose a formal public reprimand by the board, to issue an informal admonition to the respondent-attorney, or to impose or terminate probation previously ordered by the Board, within fifteen (15) days of service of the decision, the respondent-attorney or disciplinary counsel may petition the Supreme Court for a hearing, which the Court, in its discretion, may grant. The petition must allege one of the following:

(a) the decision of the Disciplinary Board is in conflict with a decision of the Supreme Court;

(b) a significant question of law is involved;

(c) there is no substantial evidence in the record to support a material finding of fact upon which the decision of the Disciplinary Board is based; or

(d) the petition involves an issue of substantial public interest that should be determined by the Supreme Court; or

(3) if the decision of the board is to dismiss the charges, within fifteen (15) days of service of the decision, the respondent-attorney or disciplinary counsel may petition the Supreme Court for a hearing, which the Court, in its discretion, may grant. The petition must allege one or more of the following:

(a) the decision of the Disciplinary Board is in conflict with a decision of the Supreme Court;

(b) a significant question of law is involved;

(c) there is no substantial evidence in the record to support a material finding of fact upon which the decision of the Disciplinary Board is based; or

(d) the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

B. **Procedure.** If a hearing is held in accordance with this rule, the clerk of the Supreme Court shall notify the respondent-attorney and disciplinary counsel of the time and place of the hearing. Proper notice shall be presumed by mailing to the address on file in the Supreme Court office. Briefs shall be submitted only if requested by the Supreme Court. In this event, the clerk of the court will advise the parties of dates when their respective briefs must be submitted and the issues which are to be addressed. The form of any such briefs, including length limitations, shall be that which is prescribed by the Rules of Appellate Procedure.

C. **Failure to request a hearing.** If, within fifteen (15) days from the date that the recommendations of the Disciplinary Board are served, a respondent-attorney or disciplinary counsel has not requested or petitioned for a hearing with the Supreme Court in accordance with this rule, and:

(1) the recommendation is for public censure by the Supreme Court, suspension, disbarment, probation by the Supreme Court, or restitution by the respondent-attorney, the Supreme Court may issue a mandate accepting the recommendations of the Disciplinary Board or it may take such other action as it deems appropriate;

(2) the decision is to impose a formal reprimand by the Disciplinary Board, issue an informal admonition to the respondent-attorney, or order probation by the Disciplinary Board, the Disciplinary Board may issue the admonition, publish the formal reprimand, or place the attorney on probation in accordance with its decision.

D. **Supreme Court decision.** The Supreme Court, in its discretion and under such conditions as it may specify, may:

(1) reject any or all of the findings, conclusions or recommendations of the Disciplinary Board;

(2) accept any or all of the findings and conclusions of the board;

(3) impose the discipline recommended by the board or any other greater or lesser discipline that it deems appropriate under the circumstances including disbarment; or

(4) impose probation or other conditions as a type of discipline by itself or may defer the effect of the discipline imposed.

[As amended, effective May 1, 1986; April 12, 2001; as amended by Supreme Court Order No. 06-8300-032, effective January 15, 2007; by Supreme Court Order No. 10-8300-011, effective March 3, 2010; as amended by Supreme Court Order No. 15-8300-022, effective December 31, 2015.]

ANNOTATIONS

The 2015 amendment, approved by Supreme Court Order No. 15-8300-022, effective December 31, 2015, made review procedures applicable to certain additional recommendations or decisions of the Disciplinary Board; in Subparagraph A(1), after “disbarment”, added “probation by the Supreme Court, restitution by the respondent-attorney”; in Subparagraph A(2), after “reprimand by the board”, added “to issue an informal admonition to the respondent-attorney”, and after “terminate probation”, added “previously ordered by the Board”; in Subparagraph C(1), after “suspension”, deleted “or”, and after “disbarment”, added “probation by the Supreme Court, or restitution by the respondent-attorney”; and in Subparagraph C(2), after the first occurrence of “Disciplinary Board”, added “issue an informal admonition to the respondent-attorney”, after “or”, added “order”, after “probation”, added “by the Disciplinary Board”, after “Disciplinary Board may”, added “issue the admonition”, and after “publish the”, deleted “public” and added “formal”.

The 2010 amendment, approved by Supreme Court Order No. 10-8300-011, effective March 3, 2010, in Paragraph B, in the third sentence, after "form of any such briefs" added "including length limitations".

The 2006 amendment, approved by Supreme Court Order No. 06-8300-032, effective January 15, 2007, revised Subparagraph (1) of Paragraph A to provide that an attorney may request a hearing before the Supreme Court if the decision of the Disciplinary Board recommends "reinstatement after suspension or disbarment or denial of reinstatement after suspension or disbarment".

The 2001 amendment, effective April 12, 2001, added Paragraph A(3).

Imposition of discipline greater than that recommended by board. — The Supreme Court exercised its authority pursuant to Paragraph D(3) to impose a period of actual suspension for intentional misconduct, since the hearing committee's recommended deferral of suspension did not serve the overriding public interest in the integrity of the system of justice. *In re Lindsey*, 1991-NMSC-047, 112 N.M. 17, 810 P.2d 1237.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A C.J.S. Attorney and Client, §§ 109 to 115.

Table Of Corresponding Rules

The first table below reflects the disposition of the former Supreme Court Rules Governing Discipline and the Supreme Court Disciplinary Board Rules of Procedure (designated "(Bd.)"). The left-hand column contains the former rule number, and the right-hand column contains the corresponding present Rule Governing Discipline.

The second table below reflects the antecedent provisions in the former Supreme Court Rules Governing Discipline and the Supreme Court Disciplinary Board Rules of Procedure (designated "(Bd.)") (right-hand column) of the present Rules Governing Discipline (left-hand column).

Former Rule	NMRA
1	17-201
2	17-103
3	17-202
4	17-203
5	17-204
6	17-101, 17-102
7	17-104
8	17-105
9	17-106
10	17-205
11	17-206
12	17-207

Former Rule	NMRA
20 to 22	None
1 (Bd.)	17-301
2 (Bd.)	17-302
3 (Bd.)	17-303
4 (Bd.)	17-304
5 (Bd.), 6 (Bd.)	17-305
7 (Bd.)	17-306
8 (Bd.)	17-307
9 (Bd.)	17-308
10 (Bd.)	17-309
11 (Bd.)	17-310
12 (Bd.)	17-311

13	17-208
14	17-209
15	17-210
16	17-211
17	17-212
18	17-213
19	17-214

13 (Bd.)	17-312
14 (Bd.)	17-313
15 (Bd.)	17-314, 17-315
16 (Bd.)	17-316

NMRA	Former Rule
17-101	6
17-102	6(e)(f)
17-103	2
17-104	7
17-105	8
17-106	9
17-201	1
17-202	3
17-203	4
17-204	5
17-205	10
17-206	11
17-207	12
17-208	13
17-209	14
17-210	15
17-211	16
17-212	17
17-213	18

NMRA	Former Rule
17-214	19
17-301	1 (Bd.)
17-302	2 (Bd.)
17-303	3 (Bd.)
17-304	4 (Bd.)
17-305	5 (Bd.), 6 (Bd.)
17-306	7 (Bd.)
17-307	8 (Bd.)
17-308	9 (Bd.)
17-309	10 (Bd.)
17-310	11 (Bd.)
17-311	12 (Bd.)
17-312	13 (Bd.)
17-313	14 (Bd.)
17-314	15(a)-(c) (Bd.)
17-315	15(d) (Bd.)
17-316	16 (Bd.)