

Rules Governing the New Mexico Bar

24-101. Board of Bar Commissioners.

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

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

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

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

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

(2) a senior lawyers division. Membership in the Senior Lawyers Division shall consist of all members of the State Bar of New Mexico in good standing who are fifty-five (55) years of age or older and who have practiced law for twenty-five (25) years or more. The senior lawyers division shall adopt bylaws applicable to its division which shall be approved by the Board of Bar Commissioners. Such bylaws shall not be inconsistent with these rules. The bylaws of the senior lawyers division shall establish the process for the election of its officers and directors; and

(3) a paralegal division. A person may become a member of the paralegal division if the person meets the requirements of Rule 24-101A NMRA of these rules. The paralegal division shall adopt bylaws applicable to its division which shall have been approved by the Board of Bar Commissioners. Such bylaws shall not be inconsistent with these rules. The bylaws of the paralegal division shall establish the process for the election of its officers and directors.

C. Board membership and powers. The Board of Bar Commissioners shall be the governing board of the state bar. Each commissioner shall have one vote. Except as otherwise provided by Paragraph I, the board shall consist of twenty-one (21) bar commissioners, consisting of those district bar commissioners elected pursuant to Paragraph D, and the chair of the young lawyers division and the elected delegate of the senior lawyers division. The board has perpetual succession and may use a common seal. The board may employ an executive director. The board may adopt bylaws applicable to the state bar and the board; provided, however, any such bylaws inconsistent with these rules shall be invalid.

D. Bar commissioner districts. The following bar commissioner districts are established and each district shall be represented by the indicated number of district bar commissioners, each of whom shall have their principal place of practice in the district represented and shall be nominated and elected by the members of the bar in accordance with the bylaws of the state bar:

(1) the first bar commissioner district, which consists of Bernalillo County, shall be represented by eight bar commissioners;

(2) the second bar commissioner district, which consists of San Juan, McKinley, Cibola and Valencia counties, shall be represented by one bar commissioner;

(3) the third bar commissioner district, which consists of Rio Arriba, Sandoval, Los Alamos and Santa Fe counties, shall be represented by three bar commissioners;

(4) the fourth bar commissioner district, which consists of Taos, Colfax, Union, Mora, Harding, San Miguel and Guadalupe counties, shall be represented by one bar commissioner;

(5) the fifth bar commissioner district, which consists of Quay, Curry, Roosevelt and DeBaca counties, shall be represented by one bar commissioner;

(6) the sixth bar commissioner district, which consists of Lea, Eddy, Chaves, Lincoln and Otero counties, shall be represented by three bar commissioners; and

(7) the seventh bar commissioner district, which consists of Catron, Socorro, Torrance, Sierra, Hidalgo, Luna, Grant and Dona Ana counties, shall be represented by two bar commissioners.

E. Terms of office. The district bar commissioners shall be elected to terms of three (3) years and shall hold office until their successors are elected and qualified.

F. Vacancies. Vacancies on the board of the district bar commissioners shall be filled by appointment of the board, and district bar commissioners so appointed shall serve until the next regular election of district bar commissioners, at which time an election of a district bar commissioner to fill the unexpired term shall be held.

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

H. Election results. The annual election of commissioners shall close at noon on November 30th and the ballots canvassed by at least three commissioners not running for reelection, appointed by the president and the results published in the Bar Bulletin.

I. Officers of board of commissioners; election. In accordance with the bylaws of the state bar, the Board of Bar Commissioners shall elect a president, a president-elect, a vice president, and a secretary-treasurer, who shall take office. All of said officers shall be members of the Board of Bar Commissioners and shall be officers of

the state bar and of its Board of Bar Commissioners. Terms of office for the officers of the board shall commence January 1st and those officers shall serve for one (1) year.

J. Extension of commissioner terms. If a district bar commissioner's term of office expires while such commissioner is serving in the position of president-elect, president or immediate past president, such commissioner's term shall be extended for an additional three-year term; but the commissioner shall serve only the portion of the term which ends one (1) year after the commissioner's term as president. During the extended term, there shall be elected from the district in which the commissioner resides, one less member to the board than said district would be otherwise entitled to under these rules. At the regular election of commissioners one year after the year when the said president's term of office expires, an election shall be held in the district to elect a member from that district to the board who shall serve for the remainder of the term.

[As amended, effective January 1, 1987; July 1, 1987; June 1, 1992; October 1, 1992; December 1, 1993; June 15, 1994; February 7, 1995; June 8, 1998; April 17, 2000; August 14, 2000; January 30, 2004; August 31, 2004; as amended by Supreme Court Order 06-8300-35, effective January 1, 2007.]

ANNOTATIONS

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

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

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

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

The 1993 amendment, effective December 1, 1993, in Paragraph B, substituted the present paragraph heading for "Young lawyers division established", inserted the Subparagraph B(1) designation, added Subparagraph B(2), and made stylistic changes; in Paragraph C, substituted "membership and powers" for "established" in the paragraph heading, substituted "The Board of Bar Commissioners shall be" for "A Board of Bar Commissioners is established as" in the first sentence, and substituted "twenty-one (21)" for "twenty (20)" and "the chairs of the Young Lawyers Division and the Senior Lawyers Division" for "the chair of the Young Lawyers Division" in the second sentence; and substituted "in accordance with the bylaws of the state bar" for "from the district in which the member's principal place of practice is located" at the end of the introductory language of Paragraph D.

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

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

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

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

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

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

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

The 2006 amendment, approved by Supreme Court Order 06-8300-35, effective January 1, 2007, revised Subparagraph (1) of Paragraph B, relating to the young lawyers division, to terminate membership automatically December 31 rather than at the adjournment of the annual bar convention, to add the third, fourth and fifth paragraphs relating to officers serving after attaining the age of thirty-six (36) and to prohibit a person from serving as an officer if it would extend that person's membership beyond five (5) years from the date of admission to any state bar.

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

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

7 C.J.S. Attorney and Client § 8.

24-101A. Paralegal division.

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

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

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

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

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

(d) a bachelor's degree program;

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

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

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

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

[Approved, effective January 30, 2004.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated January 30, 2004, this rule is effective January 30, 2004.

24-102. Annual license fee.

Every member of the state bar shall, prior to the first day of January of each year, pay to the executive director of the state bar an annual license fee, which fee shall be determined and fixed by the Board of Bar Commissioners prior to January of each calendar year. Members whose dues are received after the first day of February will be assessed a late payment penalty of one hundred dollars (\$100.00). Active members who fail to disclose professional liability insurance coverage information after the first day of March will be assessed a late disclosure penalty of one hundred dollars (\$100.00). If a member's dues and late penalty are not received before the last day of March, the Board of Bar Commissioners shall, through its executive director, certify to the Supreme Court the name of such member on a list of names of all members failing to pay their annual license fees and late penalties. New admittees shall pay the annual license fee fixed by the bar on or before the first day of the first month following the date of their admission prorated for the number of full months remaining in the calendar year following the date of their admission to the bar. New admittees whose dues are received after the first day of the second month following their admission will be assessed a late payment penalty of one hundred dollars (\$100.00). If a new admittee's dues and late

penalty are not received after the first day of the third month following the new admittee's admission, the Board of Bar Commissioners shall, through its executive director, certify to the Supreme Court the name of such member on a list of names of all members failing to pay their annual license fees and late penalties.

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

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

- A. twice that member's then license fee, plus
- B. all fees in arrears, plus
- C. all accrued late penalty payments.

Any attorney in good standing may file a petition with the Supreme Court for voluntary withdrawal as a member of the bar of this state. Upon the filing of such petition, the Court may enter an order terminating the petitioner's membership in the bar of this state, and the petitioner shall not thereafter be entitled to practice law in the courts of this state. No order of suspension for failure thereafter to pay the annual bar license fee will be entered against such member, and the member's withdrawal will not prejudice the member's record or standing during the period of membership in the bar of this state.

The Board of Bar Commissioners may waive all or part of any license fee in cases of extreme individual hardship. In cases where a petition for waiver of all or part of any license fee has been rejected by the Board of Bar Commissioners, an attorney may petition the Supreme Court for modification or reversal of the action of the board.

All moneys collected by the executive director in accordance with the provisions of this rule shall be deposited to an account designated as State Bar of New Mexico general fund and shall be disbursed by order of the Board of Bar Commissioners in carrying out the functions, duties and powers vested in said board. The Board of Bar

Commissioners shall on or before March 1 of each year submit to the Supreme Court of New Mexico an accounting and audit of all funds received and disbursed during the prior calendar year. Such audit shall be performed by an auditor to be selected by the board. No member of the Board of Bar Commissioners or any committee member appointed by the board shall receive any compensation, but shall receive mileage and per diem at the same rate as provided for public officers and employees of the state and may be reimbursed with the approval of the Board of Bar Commissioners for expenses incurred in conjunction with travel on Board of Bar Commission business.

[As amended December 22, 1986; May 9, 1985; March 1, 1988; September 1, 1991; June 1, 1992; April 19, 2001; as amended by Supreme Court Order 06-8300-22, effective October 24, 2006.]

ANNOTATIONS

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

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

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

The 2006 amendment, approved by Supreme Court Order 06-8300-22, effective October 24, 2006, added the second sentence providing for a one hundred dollar (\$100) penalty for a late disclosure of professional liability insurance coverage.

Injunctive relief improper remedy. — Plaintiffs (attorneys), who were contesting the State Bar's budget due to improper categorization, failed to show that emergency injunctive relief was justified. Although State Bar members must pay their dues by January 1, no affirmative action is taken by the State Bar to secure payment until March 31; thus, there was no irreparable injury warranting an injunction. *Popejoy v. New Mexico Bd. of Bar Comm'rs*, 847 F. Supp. 155 (D.N.M. 1994).

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

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

7 C.J.S. Attorney and Client § 7.

24-103. Annual meeting of the state bar.

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

[As amended, effective August 14, 2000.]

ANNOTATIONS

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

24-104. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated December 30, 1993, this rule, relating to the annual budget of the state bar, is withdrawn effective on and after February 1, 1994.

24-105. Honorary judicial members.

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

[Adopted, effective January 1, 1994.]

24-106. Practice by nonadmitted lawyers before state courts.

A. **Conditions of appearance.** Upon compliance with the requirements of this rule, but only in association with an active member in good standing as a member of the State Bar of New Mexico, an attorney authorized to practice law before the highest court of record in any state or country ("nonadmitted attorney") may appear on behalf of a party in any civil proceeding pending before a court of this state, even though the attorney is not licensed to practice law in this state. A non-admitted attorney shall

comply separately for each civil action, suit or proceeding in which the attorney intends to appear.

B. Registration certificate. For each civil proceeding in which the attorney intends to appear, the nonadmitted attorney shall file a registration certificate with the State Bar of New Mexico in which the attorney shall identify the proceeding in which the attorney intends to appear and shall certify that:

(1) the attorney is admitted or licensed as an attorney in good standing in another state or country;

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

(3) the attorney will comply with the Rules of Professional Conduct and the Rules Governing Discipline approved by the Supreme Court, and will submit to the jurisdiction of the New Mexico courts and the Disciplinary Board with respect to acts and omissions occurring during the attorney's admission under this rule.

C. Payment of fee. With each registration certificate the nonadmitted attorney shall pay a non-refundable fee of two hundred fifty dollars (\$250) to the State Bar of New Mexico. The fee shall be waived if the nonadmitted attorney certifies that the attorney is employed by a governmental authority and will be appearing on behalf of a governmental authority in the proceeding for which the attorney is registering, that the attorney is employed by an agency providing legal services to indigent clients and will be appearing on behalf of an indigent client in the proceeding for which the attorney is registering, or that the attorney will otherwise be appearing on behalf of an indigent client in the proceeding for which the attorney is registering and will be charging no fee for the appearance.

D. Use of fees. From each fee collected under this rule, the State Bar of New Mexico may deduct an administrative and processing charge of not more than ten dollars (\$10.00). The balance of all such fees shall be held by the State Bar of New Mexico in a special fund to support the delivery of civil legal services to the poor. The Board of Bar Commissioners shall distribute all fees held in the special fund at least annually to nonprofit organizations providing or supporting the provision of civil legal services to the poor and shall use the State Bar of New Mexico's state plan as a guide to distribution.

[Approved, effective January 20, 2005.]

ANNOTATIONS

Effective dates. — Pursuant to a court order dated September 29, 2004, this rule is effective January 20, 2005.

24-107. Lawyer limited liability entities.

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

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

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

[Approved, effective March 28, 2005.]

ANNOTATIONS

Compiler's note. — Rule 24-107 NMRA was approved by Supreme Court Order 05-8300-08, dated March 28, 2005.

24-108. Pro bono publico service.

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

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

- (1) contributing financial support to organizations that provide legal services to persons of limited means in New Mexico, in the amount of five hundred dollars (\$500) per year; or
- (2) providing a combination of pro bono hours and a financial contribution as suggested in this table:

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

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

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

[Approved by Supreme Court Order 08-8300-04, effective March 15, 2008.]

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

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

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

To facilitate the goals of this rule the Supreme Court adopted an order on April 28, 2006, establishing district court pro bono committees in each judicial district. Under the

Pro Bono Plan adopted by the Court, a local pro bono committee convened by the chief judge and comprised of local lawyers, judges, legal service providers and other interested participants shall establish a local pro bono plan. The time deadlines and content for local pro bono plans shall be recommended by the Supreme Court's Access to Justice Commission and established by further administrative order of the Supreme Court.

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

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

(1) the amount of interest or dividends that the funds are expected to earn during the period they are expected to be deposited;

(2) the cost of establishing and administering non-IOLTA accounts for the benefit of clients or third persons, including the costs of the lawyer's services, and the costs of preparing any tax reports required for interest or dividends on earned funds;

(3) the capability of financial institutions, lawyers or law firms to calculate and pay interest or dividends to individual clients or third persons; and

(4) any other circumstances that affect the ability of the client's or third-person's funds to earn interest or dividends in excess of the costs to secure such interest or dividends.

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

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

(1) No interest or dividends from an IOLTA account shall be made available to a lawyer or law firm.

(2) An IOLTA account shall be established with any financial institution authorized by federal or state law to do business in New Mexico, the deposits of which are insured by an agency or instrumentality of the federal government. Funds in each IOLTA account shall be subject to withdrawal upon request and without delay except as permitted by law.

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

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

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

(b) IOLTA accounts may be established as:

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

(ii) a checking account paying preferred interest rates, such as money market or indexed rates;

(iii) a government interest-bearing checking account such as an account used for municipal deposits;

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

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

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

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

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

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

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

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

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

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

(c) to transmit to the depositing lawyer or law firm a statement in accordance with normal procedures for reporting to depositors of the financial institution; and

(d) not to deduct any service charges or fees in excess of the interest or dividends earned during the remitting period from the principal of an IOLTA account or from interest, dividends or principal of any other IOLTA account.

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

(6) The Center for Civic Values shall hold all funds transmitted to it and shall distribute such funds periodically in accordance with a plan of distribution that shall be prepared at least annually and approved by the Supreme Court of New Mexico for the following public purposes:

(a) to provide legal assistance to the poor;

(b) to provide legal education;

(c) to improve the administration of justice; and

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

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

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

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

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

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

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

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

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

[Adopted by Supreme Court Order No. 08-8300-27, effective January 1, 2009.]

Table Of Corresponding Rules

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

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

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

NMRA	Former Rule
24-101	1
24-102	4

NMRA	Former Rule
24-103	5